

FILED

JUN 24 2011

PATRICK E. DUFFY, CLERK

By _____
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

KENNETH DUPUIS,)	CV 10-21-M-DWM-RKS
)	
Plaintiff,)	
v.)	ORDER
)	
BUREAU OF INDIAN AFFAIRS,)	
)	
Defendant.)	
_____)	

Plaintiff filed a motion for summary judgment in this Federal Tort Claims Act case on March 9, 2011. Defendant filed its motion for summary judgment on March 16, 2011, in which it also responded to Plaintiff's motion. United States Magistrate Judge Keith Strong entered Findings and Recommendation (dkt #25) in this case on May 17, 2011. Judge Strong recommended that Defendant's motion be granted because Plaintiff's claim is barred by the discretionary function exception to the Federal Tort Claims Act.

The Plaintiff did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

I find no clear error with Judge Strong’s Findings and Recommendation.

IT IS HEREBY ORDERED that the Findings and Recommendation (dkt #25) are adopted in full. Plaintiff’s Motion for Summary Judgment (dkt #18) is DENIED and Defendant’s Motion for Summary Judgment (dkt. #19) is GRANTED.

IT IS FURTHER ORDERED that the Clerk of Court is directed to enter judgment by separate document in favor of Defendant and to close the case. The bench trial set for July 18, 2011 is VACATED.

Dated this 29th day of June, 2011.



Donald W. Molloy, District Judge
United States District Court