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Walker River Paiute Tribe

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WALKER RIVER PAIUTE TRIBE, a
federally recognized Indian tribe,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN
DEVELOPMENT (“HUD”); SHAWN
DONOVAN, Secretary of HUD;
DEBORAH A. HERNANDEZ, General
Deputy Assistant Secretary for the Office of
Public and Indian Housing,

Defendants.

Case No: 3:08-CV-00627

**WALKER RIVER PAIUTE TRIBE’S
RESPONSE TO COURT’S ORDER OF
NOVEMBER 13, 2013 (DOC. 37)**

Plaintiff WALKER RIVER PAIUTE TRIBE (hereinafter “WRPT” or “Plaintiff”), through its undersigned counsel, hereby submits this brief in response to the Court’s Order entered on November 13, 2013 (Doc. 37) requiring the parties to address this Court’s subject matter jurisdiction based on the decision in *Fort Belknap Hous. Dep’t v. Office of Pub. & Indian Hous.*, 726 F.3d 1099 (9th Cir. 2013). The Ninth Circuit Court of Appeals determined that it did not have jurisdiction over the *Fort Belknap* case under 25 U.S.C. § 4161(d) because HUD had not taken any actions under § 4161. This Court correctly notes that HUD did not take any action under § 4161 to “recapture” funds from the WRPT. This is one of the primary problems with HUD’s actions, as it should have followed § 4161’s required actions to “recapture” funds from the WRPT. It refused to do so, which would have allowed the WRPT the opportunity to appeal HUD’s actions directly to the Ninth Circuit as allowed by § 4161(d). However since HUD did

not follow the proper process, the appeal process allowed by § 4161(d) does not apply to the WRPT, which left the WRPT with its only avenue for review with this Court.

HUD SHOULD HAVE FOLLOWED THE PROCEDURES STATED IN § 4161

HUD has attempted to recapture funds previously provided to the WRPT to operate its Housing program. One of the Tribe's primary contentions is that HUD failed to comply with the notice and opportunity for hearing requirements of Sections 401 and 405 of the Native American Housing Assistance and Self-Determination Act ("NAHASDA") (25 U.S.C. §§ 4161 and 4165), 24 C.F.R. §1000.532, and the due process clause of the United States Constitution, Amendment 5. Since HUD did not comply with these provisions, HUD's actions are unlawful. If HUD had followed this process, the WRPT could have filed for review of HUD's actions directly with the Ninth Circuit Court of Appeals pursuant to 25 U.S.C. § 4161(d).

Any recipient who receives notice under subsection (a) of this section of the termination, reduction, or limitation of payments under this chapter—

(A) may, not later than 60 days after receiving such notice, file with the United States Court of Appeals for the circuit in which such State is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the action of the Secretary;

25 U.S.C. § 4161(d)(1).

Since HUD did not follow the required notice and hearing requirements mandated by 25 U.S.C. § 4161(a), the WRPT did not have the opportunity to file directly with the Ninth Circuit. Based on this, the WRPT's only option to review HUD's actions was to file with the Federal District Court for the District of Nevada.

This is the process that the tribe in the *Fort Belknap* case should have followed. There the tribal entity filed directly with the Ninth Circuit. The Ninth Circuit ruled in *Fort Belknap* that it did not have jurisdiction because HUD did not take any actions under 25 U.S.C. § 4161(a). Since no action was taken under § 4161(a), then the tribe could not file for review directly to the Ninth Circuit under § 4161(d). The tribe in *Fort Belknap* should have filed its case in the local federal district court. *See Ft. Belknap*, fn.11 (HUD's attorney suggested at oral argument that the tribe could raise its claims in the appropriate district court).

Based on HUD's failure to follow the required procedures set out in § 4161(a), the WRPT did not file for review directly with the Ninth Circuit. Instead it filed this case. The

1 holding in *Fort Belknap* does not apply to this case, and does not preclude this Court's
2 jurisdiction over the WRPT's case.

3 RESPECTFULLY SUBMITTED on December 6, 2013.

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5 By: /s/ Wes Williams Jr.

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12 CERTIFICATE OF SERVICE

13 I hereby certify that on this 6th day of December 2013, I electronically filed the foregoing
14 "WALKER RIVER PAIUTE TRIBE'S RESPONSE TO COURT'S ORDER OF
15 NOVEMBER 13, 2013 (DOC. 37)" with the Clerk of the Court using the CM/ECF system,
16 which will send notification of such filing to the following via their email addresses:

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20 DATED: December 6, 2013

21 By: /s/ Wes Williams Jr.
22 Wes Williams Jr.