

1
2
3
4
5
6
7 **IN THE TRIBAL COURT OF THE NOOKSACK TRIBE OF INDIANS FOR THE**
8 **NOOKSACK INDIAN TRIBE**

9
10 NOOKSACK INDIAN TRIBE,

11 Plaintiff,

12 vs.

13 NORTHWEST INTERTRIBAL COURTS
14 SYSTEM, a Washington non-profit
15 corporation; and DAN KAMKOFF, its
16 Executive Director,

Defendants.

NO. 2016-CI-CL-006

**Defendants' Response to Order to
Show Cause**

Note for Hearing: November 1, 2016
at 10:00 a.m.

17 **INTRODUCTION**

18
19 On March 12, 2013, the Nooksack Indian Tribe contracted with the Northwest
20 Intertribal Courts System (NICS) to staff the Nooksack Court of Appeals. NICS has
21 performed the Agreement in good faith. Now, however, members of the Tribal Council
22 allege NICS violated the Tribe's contract by issuing a series of decisions from the Court
23 of Appeals. The Council members do not have standing to bring this claim. Because a
24 quorum of duly elected Tribal Council members does not exist, the Nooksack Tribe
25 cannot act in its official capacity, and consequently, has not filed this lawsuit.
26

**Defendants' Response to
Order to Show Cause -- 1**

**BURIFUNSTON
MUMFORD**
attorneys at law

BuriFunstonMumford, PLLC

1601 F Street
Bellingham, Washington 98225
P 360.752.1500 | F 360.752.1502

1 The Department of Interior has invalidated Nooksack Tribal Council actions,
2 including filing this lawsuit, made after March 2016.

3 We will not recognize any actions until duly elected officials are seated in
4 accordance with the Tribe's Constitution and Bylaws. This includes recent
5 actions by you and two Council members to enjoin the authority of the
6 Northwest Intertribal Court System (NICS). Since NICS was authorized by
a quorum of the Council to adjudicate matters prior to March 24, 2016, we
will continue to recognize judicial decisions issued by the NICS.

7 (10/17/16 Roberts Letter at 1) (Attachment 1). The Council members' lawsuit
8 challenges the independence and authority of the Nooksack Tribal Court system.

9 NICS respectfully requests this Court to vacate its ex parte Temporary
10 Restraining Order and dismiss this lawsuit for three reasons. First, the current Council
11 members do not have standing to allege breach of a contract between the Nooksack
12 Tribe and NICS. Second, NICS has not violated any terms of its contract with the Tribe.
13 The appellate panels have exercised their judicial authority in good faith, and NICS has
14 provided an appellate system with integrity. And third, no reasonable grounds exist for
15 granting injunctive relief
16

17 **I. Statement of Facts**

18 The Nooksack Tribe created its appellate court by resolution on June 10, 1986.
19 (Resolution No. 86-30). In 2012 after extensive discussions, the Tribe decided to hire
20 the Northwest Intertribal Courts System to staff and operate its Court of Appeals.
21 (Kamkoff Dec. ¶¶ 5-6). Founded in 1979, NICS is a consortium of Native American
22 Tribes in the Pacific Northwest, providing trial and appellate judges for tribal court
23 systems, training for court staff, and assistance with developing tribal codes. (Kamkoff
24
25
26

Dec. ¶ 3). A number of Pacific Northwest tribes, including the Nooksacks, use NICS to provide appellate court services.

A. Resolution No. 13-24: Developing The Court of Appeals

On February 14, 2013, the Tribal Council adopted Resolution No. 13-24, establishing the qualifications for appellate judges under the NICS contract. The Resolution required NICS to

submit to the Tribal Council at the time of their nomination, the resume, credentials, examples of relevant work product (e.g., judicial opinions, court briefs, or legal opinions), and a letter in support of nomination for each attorney nominated by NICS to serve as a judge on the Nooksack Court of Appeals, which nomination the Tribal Council shall move to approve or deny.

(Resolution No. 13-24; Exhibit B to Barnard Dec.). The Resolution then described the initial terms for the appellate judges as two years. The Council, not NICS, had the obligation of reappointing them to successive terms.

[T]he initial appointment of a judge shall be for a two-year term, after which the Tribal Council, upon review and recommendation by NICS, may reappoint the judge for successive three-year terms.

(Resolution No. 13-24). This is the only mention of a two-year term. Neither the Tribe's contract with NICS nor its Appellate Code, Title 80, has any term limits for appellate judges or requirement that NICS seek their reappointment at the end of this initial term.

B. The Contract For Appellate Services

The Tribe and NICS executed their contract for appellate services on March 12, 2013. (Contract; Exhibit C to Bernard Dec.) The Agreement has four provisions that are significant to this lawsuit. First, the Tribe, not NICS, provides the list of judges

1 eligible to serve on the Nooksack Court of Appeals. Under its list of responsibilities, the
2 Tribe agreed to:

3 provide NICS a resolution of the Tribal Council that includes a current list
4 of eligible judges or a description of the eligibility requirements for judges
5 who are to serve the Tribe under this Agreement, unless such eligibility
6 requirements are already set forth in a duly adopted ordinance of the
7 Tribe. *The Tribe* may update the list of eligible judges or the eligibility
8 requirements at any time during which this Agreement is in effect and
such updated list or requirements shall govern all future case
assignments, but such action shall not result in the removal of a judge
previously deemed eligible from any case to which that judge has already
been assigned.

9 (Contract Art. IV ¶ A; Exhibit C to Bernard Dec.) (emphasis added). NICS' only
10 requirement was that a Nooksack appellate judge maintain "a professional services
11 agreement with NICS". (Contract Art. III ¶ A(4)).

12 Second, the Agreement is in effect "until December 31, 2016 or termination of
13 this Agreement in writing, whichever occurs first, provided however that if NICS still has
14 obligations pending under this Agreement...all terms, conditions and obligations of this
15 Agreement shall remain in effect...until...those pending obligations has been
16 performed." (Contract Art. II).

17 Third, either party may terminate the Agreement on 20 days' written notice.
18 (Contract Art. VII). Termination does not, however, affect existing appeals unless
19 mutually agreed.

20 And fourth, the contract allocated responsibilities between NICS and the Tribe for
21 operating the Court of Appeals. (Contract Art. III and IV). Under the scope of work for
22 its staff, NICS agreed to process notices from the Tribal Court, review the record for
23 procedural compliance, assess the appeal, assemble a panel of judges, assist the
24
25
26

1 Tribe's Clerk of Court, and submit quarterly bills. (Contract Art. III ¶ A). The appointed
2 judges agreed to hear the appeals, and important for this case, "comply with all judicial
3 standards of conduct, court rules, and other provisions of Tribal law applicable to the
4 administration and proceedings of the Tribal Court of Appeals." (Contract Art. III ¶ B(2)).

5 Under the Tribe's scope of work, it agreed to provide a current list of eligible
6 judges, as quoted above, and "have its own Tribal Court clerk serve as a point of
7 contact for the filing of all notices, motions, briefs, and other pleadings and
8 communications by the parties." (Contract Art IV ¶ 4(F)). This case illustrates what
9 happens when the Court clerk does not fulfill this role.
10

11 C. Resolution No 13-82: Appointing The Appellate Judges

12 On May 30, 2013, the Tribe appointed its appellate judges, again by resolution.

13 [T]he Tribal Council hereby approves that NICS will choose a panel of
14 three judges for each appeal from this list of individuals: Lisa Atkinson,
15 Randy Doucet, Douglas Nash, Eric Nielsen, Mark Pouley, Dan Raas, and
Gregory Silverman.

16 (Resolution 13-82; Exhibit D to Bernard Dec.). The Resolution does not limit these
17 appointments to a two-year term, nor does it require NICS to seek reappointment at the
18 end of two years.

19 D. The 2014 Amendments Increasing The Contract Amount

20 Soon after the Agreement took effect, the volume of appeals surpassed the
21 \$2,000 annual budget on appellate services. (Contract Art. V(I)) ("cannot exceed
22 \$2,000 per year without prior approval of the Tribe"). Twice the parties amended the
23 contract limit, increasing the budget. First, on February 5, 2014, the parties agreed to
24 increase the amount to \$9,999. (Amended Contract; Exhibit C to Kamkoff Dec.) When
25
26

1 that proved insufficient, the parties signed a written amendment increasing the amount
2 to \$20,000. (Amendment Number One to Appellate Services Contract; Exhibit D to
3 Kamkoff Dec.). This was not an absolute limit on expenses, but rather a budget limit.
4 Any expenses above this amount needed prior approval from the Tribe before NICS
5 could expect payment.

6 E. The Galanda Broadman Case

7 The Council members' complaints with NICS' work comes from one case,
8 Galanda v. Nooksack Tribal Court, Court No. 2016-CI-CL-002. (Complaint § 5) (Motion
9 at 8) ("undoubtedly, the Parties had an Agreement that was performed without issue
10 until 2016"). Galanda Broadman PLLC, a law firm, represents Nooksack tribal
11 members subject to disenrollment from the Tribe. On February 24, 2016, the Tribal
12 Council adopted Resolution #16-28, removing lawyers at Galanda Broadman from the
13 list of Attorneys, Advocates/Spokespersons admitted to the Nooksack Tribal Bar. On
14 March 24, 2016, lawyers at Galanda Broadman filed their pro se complaint in Nooksack
15 Tribal Court, protesting their apparent disbarment. (3/24/16 Complaint; Attached to
16 Exhibit F to Kamkoff Dec.). The Court Clerk marked the complaint received that same
17 day. (3/24/16 Complaint).
18
19

20 On April 1, 2016, the Clerk returned the March 24th Complaint, citing procedural
21 errors and suggesting the attorneys could not file the complaint pro se.

22 The Clerk's Office has sought the advice of legal counsel regarding
23 whether a lawyer who is acting pro se is "practicing in tribal court,"
24 prohibited by Resolution #16-28. In the interim, or until such time as the
25 Nooksack Tribal Council takes further action, the Tribal Court is bound by
26 Resolution #16-28 barring you from practicing in Nooksack Tribal Court.

1 (4/1/16 Clerk's Letter; Exhibit B to Canete Dec.). On April 6, 2016, the Galanda
2 Broadman attorneys filed a Petition for Writ of Mandamus with the Nooksack Court of
3 Appeals, requesting an order requiring the Clerk to file the complaint and associated
4 pleadings. (4/6/16 Petition; Exhibit F to Kamkoff Dec.).

5 On April 25, 2016, a three-judge panel for the Nooksack Court of Appeals
6 granted the Petition, ordering

7 (1) that the Court Clerk of the Nooksack Tribal Court shall either accept
8 and file Petitioners complaints and related motions or file an answer to the
9 Petition for Writ of Mandamus with this Court on or before May 16th, 2016,
10 and (2) that the NCIS administrator serve a copy of the petition together
with this order by mail on the Court Clerk.

11 (Order on Mandamus; Exhibit G to Canete Dec.). When the Tribe and Tribal Court
12 failed to respond to the Order, the Court of Appeals entered a series of Orders finding
13 the Tribal Court Clerk in contempt. (Exhibits J, L, Q, T, V, BB, and CC to Canete Dec.).

14 On October 5, 2016, the Office of Tribal Attorney filed this action against NICS,
15 alleging breach of the appellate services contract. On October 7th, this Court granted a
16 temporary restraining order for Plaintiff and set for November 1, 2016 a Show Cause
17 hearing on why an injunction should not enter.

18 NICS now responds to the Plaintiff's motion and the Court's temporary order.
19 Because the Council members do not have standing to sue in the Nooksack Tribe's
20 name, and because NICS has performed its appellate services contract as agreed,
21 Defendant NICS respectfully requests this Court to deny the motion for injunctive relief
22 and to dismiss this case.
23

24 //

25 //

26 **Defendants' Response to
Order to Show Cause -- 7**

ARGUMENT

II. Lacking A Quorum, The Tribal Council Does Not Have Standing To Sue

The Nooksack Tribe, not individual Council members, contracted with NICS to provide appellate services. The Tribe is the real party in interest and only the Tribe has standing to sue for breach of contract. "A party to a contract is entitled to enforce it and to sue in his own name." Kim v. Moffett, 156 Wn. App. 689, 700, 234 P.3d 279 (2010).

Because the remaining Council members do not constitute a quorum, they do not have authority to act on the Tribe's behalf.

As you know, the Nooksack Tribal Council (Council) lacks a quorum to conduct tribal business as required by the Nooksack Tribe's (Tribe) Constitution and Bylaws. Four Council members' terms expired in March 2016, and an election was never held to fill their seats. The Council currently consists of four members. The Nooksack constitution and bylaws provide:

"At any special or regular meeting of the tribal council, five (5) members present shall constitute a quorum and the tribal council may proceed to transact any business that may come before it."

Accordingly, pursuant to the plain language of the Tribe's Constitution and Bylaws, the Council must have five duly elected officers to take any official action.

(10/17/16 Roberts Letter at 1). Neither the remaining Tribal council members, nor the Office of the Tribal Attorney, has authority to sue as the contracting party. Under the Nooksack Constitution, only a quorum of duly-elected Council members can do that.

All actions taken without a quorum, including filing this lawsuit, are therefore invalid.

In rare situations where a tribal council does not maintain a quorum to take action pursuant to the Tribe's Constitution, the Department of the Interior (Department) does not recognize actions taken by the Tribe. This

1 is one of those exceedingly rare situations. Accordingly, I am writing to
2 inform you and the remaining Council members that the Department will
3 only recognize those actions taken by the Council prior to March 24, 2016,
4 when a quorum existed, and will not recognize any actions taken since
5 that time because of the lack of a quorum.

6 (10/17/16 Roberts Letter at 1).

7 When a non-party attempts to sue for breach of contract, the appropriate remedy
8 is dismissal. Kim, 156 Wn. App. at 706. The Council members may argue that they are
9 third-party beneficiaries of the contract and may enforce it. This is incorrect for two
10 reasons. First, "a third party beneficiary contract exists when the contracting parties, at
11 the time they enter into the contract, intend that the promisor will assume a direct
12 obligation to the claimed beneficiary." Kim v. Moffett, 156 Wn. App. at 701. The Tribe
13 as a whole, not individual Council members, was the beneficiary of a functioning Court
14 of Appeals. Neither the Tribal Court nor the Court of Appeals assumed a direct
15 obligation to the individual Council members.

16 Second, a contract for personal services, like that here, cannot be assigned.

17 Washington cases designate professional services (requiring particular
18 skill or discretion) as personal services...A contract to render professional
19 services is personal and nonassignable.

20 Kim, 156 Wn. App. at 704-5. Even if a quorum existed, the Council could not assign the
21 benefits of the appellate services contract to individual Council members. The Tribe,
22 and only the Tribe, may enforce this contract.

23 **III. NICS Has Performed The Contract Reasonably And In Good Faith**

24 The primary obligation of NICS and the appointed appellate judges is to follow
25 the Nooksack Tribal Code. (Contract Art. III ¶ B(2)) ("comply with all judicial standards
26 of conduct, court rules, and other provisions of Tribal law applicable to the

administration and proceedings of the Tribal Court of Appeals”). Here, the Court of Appeals in the Galanda case carefully examined whether it had authority *under the Nooksack Code* to accept a Petition for Writ of Mandamus.

Because Title 80 does not apply to the extraordinary process of a writ of mandamus, two questions arise. First, does the Nooksack Tribal Court have the power to issue the writ of mandamus as requested by Petitioners? Second, what is the process through which a petitioner should submit and the Court should entertain a petition for such a writ?

(Order on Mandamus at 2-3). The Court of Appeals did not assume it had the power; instead, it examined the Tribal Code painstakingly to see whether such power existed.

The Court of Appeals’ decision explained why it had to exercise mandamus jurisdiction and take the unusual step of accepting pleadings from the Petitioner rather than the Court Clerk.

[I]f a court clerk refuses to file a complaint it prevents the judge from performing his or her duty to adjudicate the complaint. NTC 10.30.040. If a defendant believes a complaint fails to state a cause of action, suffers from some other infirmity, or was filed by a party not entitled to file a complaint, the defendant can file the appropriate motion with the court and request the judge dismiss the complaint. The refusal to file a complaint, however, is akin to dismissing the complaint and the Clerk does not have the authority to perform that judicial function. To prevent the judge from performing his or her duty to adjudicate a complaint is tantamount to interfering with a court proceeding, something the Clerk has sworn not to do.

(Order on Mandamus at 4).

The Court of Appeals accepted the Petition to effectuate the code. Given a potential conflict between the NCIS staff’s responsibility to accept appeals from the Court Clerk, and a judge’s responsibility to comply with “provisions of Tribal law applicable to the administration and proceedings of the Tribal Court of Appeals”, the

1 Court of Appeals wisely chose the latter. This was not a breach of contract but rather
2 an exercise of judicial discretion.

3 A. Accepting The Petition Did Not Violate the Contract

4 In their pleadings, the Council members argue that the Court of Appeals never
5 should have accepted the Petition, exercised original jurisdiction, and allowed the
6 Petitioners to file more pleadings. (Motion at 1). Yet in the mandamus action, the Court
7 Clerk failed to answer, let alone raise these procedural errors. The Respondents
8 defaulted. Rather than allow its Court of Appeals to address these issues, the current
9 Council members have circumvented Title 80 and filed this contract action. That has
10 significant, negative consequences.
11

12 First, it undermines the independence of an appellate system the Tribe created.
13 The Council members allege errors of law, which all other litigants must raise with the
14 Court of Appeals. Alleging breach of contract undercuts the Court of Appeals' ability to
15 address and reverse procedural errors.

16 Second, it makes the appellate services contract, not Title 80, the law of the land.
17 The Nooksack Tribe published Title 80, reasonably expecting tribal members and the
18 courts to follow it. In fact, the Council members allege the Court of Appeals did not
19 adhere to Title 80. But rather than rely on its judicial system to enforce the code, the
20 Council members have turned to the appellate services contract to reverse the Court of
21 Appeals. If successful, the Council members will make the contract, not Title 80, the
22 final word on appellate jurisdiction. This erodes an appellate system the Tribe has
23 worked steadily to promote.
24
25
26

1 NICS and the judges the Tribe appointed have worked diligently to give meaning
2 to Title 80. The Council members, by defaulting in the mandamus action and filing this
3 lawsuit, have not. In effect, the Council members have frustrated the purpose of the
4 appellate contract and made its performance impossible by not recognize the Court it
5 created.

6 Finally, the Council members argue that the appellate services contract forbade
7 NICS from accepting the Petition or exercising mandamus jurisdiction. (Motion at 8).
8 The contract does not state that. Instead, it requires NCIS staff to “process notices of
9 appeal received from the Tribal Court.” (Contract Art III ¶ a(1)). Any restrictions on the
10 Court of Appeals’ ability to act should appear in Title 80, not the appellate services
11 contract. The contract states what NCIS and the appellate judges promise to do.
12

13 In sum, the Council member’s lawsuit transforms legal issues – proper procedure
14 and appellate jurisdiction – into contract terms. Not only does this conflict with the
15 wording of the contract, it also has corrosive consequences for the Nooksack’s judicial
16 system.

17
18 B. The Tribe Had The Obligation To Reappoint Its Judges

19 Under the appellate services contract and basic rules of governance, the Tribe,
20 not NCIS, had the responsibility of renewing an appellate judge’s term. Nothing in the
21 appointment of Nooksack judges limits their terms to two years. The Council members
22 cite to an earlier 2013 resolution, adopted before the contract began, limiting initial
23 terms to two years. (Resolution #13-24). Under the contract, the Tribe, not NCIS
24 provides the list of eligible judges. Furthermore, under the Resolution, the Tribe, not
25
26

1 NCIS, appoints the judges and renews their terms. And as a practical matter, no one in
2 Tribal government mentioned a two-year term until this lawsuit. (Kamkoff Dec. ¶ 8).

3 Certainly NCIS will follow any validly adopted procedure for appointing appellate
4 judges. It is not a breach of contract for NCIS to reasonably rely on the Tribe to
5 determine who is eligible and who is not.

6 C. NICS Did Not Bill Improperly For 2014

7 Finally, the Council members allege that two years ago, NCIS billed the Tribe for
8 “more than \$25,000 in 2014 without obtaining prior approval from the Tribe to do so.”
9 (Motion at 10). There are a number of problems with this argument. First, the Council
10 members’ total is inaccurate. In Exhibit C to her declaration, the Tribe’s Controller,
11 Elizabeth Ames, lists all invoices paid in 2014. (Ames Dec., Exhibit C). But the first
12 invoice, totaling \$15,672.90, represents work done in the last quarter of 2013. This was
13 the extra volume of appeals that prompted the parties to amend the appellate services
14 contract in 2014.
15

16 Second, NICS billed and the Tribe paid \$10,151.03 in 2014. (Kamkoff Dec. ¶ 12)
17 (2014 Invoices; Exhibit E to Kamkoff Dec.). This was within the budget limit. Not only
18 was there no breach of contract, there are no grounds for an injunction now for a billing
19 issue in 2013. Even the Council members concede the appellate services contract “was
20 performed without issue until 2016.” (Motion at 8).
21

22 **IV. No Reasonable Grounds Exist To Grant Injunctive Relief**

23 In its temporary restraining order, this Court ruled on the four elements
24 necessary for injunctive relief: (1) success on the merits; (2) irreparable harm; (3)
25 balance of the equities; and (4) public interest. (TRO at 9-11). The Court did so after
26

1 hearing only the Council member's arguments. Given all the facts, an injunction is
2 unwise and unwarranted.

3 A. Likelihood Of Success

4 As detailed above, the Council members do not have standing to sue for breach
5 of contract – and as significant, have lacked authority to act for the Tribe since March
6 24, 2016. Furthermore, NICS has not breached the appellate services contract but
7 rather performed as promised. Any faults in the Tribe's Court of Appeals' actions arise
8 from the Court clerk's failure to respond to the Petition. This dispute is legal, not
9 contractual.
10

11 B. Irreparable Harm

12 By ignoring their own Court of Appeals and now appointing themselves Supreme
13 Court Justices, the remaining Council members have undermined the Tribe's judicial
14 system, perhaps irrevocably. The Council member's actions have prompted the
15 Department of Interior to intervene in the "rare situation" where a tribal council does not
16 maintain a quorum to take action pursuant to the Tribe's Constitution. (10/17/16
17 Roberts Letter at 1). This Court would accordingly commit a constitutional violation by
18 acting on the Council member's request for relief.
19

20 C. Balance of the Equities

21 Throughout the disenrollment controversy, NICS has remained a neutral provider
22 of judicial services. Under difficult circumstances, it has labored to provide fair judges
23 and an independent appellate court to review tribal court actions. The Council
24 members, not NICS, have circumvented the Tribal code and used a contract action to
25 reverse its own Court of Appeals' decisions. Basic equitable principals require the
26

Council members to use the judicial review available to all Tribal members, not seek special treatment by asserting the Tribe's contractual rights.

D. Public Interest

The Council members' attempts to control the Tribe's judicial decisions devalues all tribal courts and their legitimacy. For years, non-tribal members have derided tribal courts as biased, unfair, and unreliable. The Council members' actions support this stereotype. When Pacific Northwest tribes formed NICS in the late 1970s, they sought to empower tribal courts and make them consistent, independent and just. This lawsuit sets back NICS mission considerably.

CONCLUSION

This lawsuit challenges the authority of the Nooksack Tribal Court and its appellate system. Rather than raise arguments before the Court of Appeal they helped create, the current Tribal Council members refused to answer a Petition for Writ of Mandamus in that Court and now use the appellate services contract to supersede the Tribal Code. Even a sovereign must at least raise the defense of sovereign immunity in a court of law.

Because the Council members do not have standing to allege breach of contract, and because it fulfilled its contractual obligations, the Northwest Indian Courts System and its Executive Director, Daniel Kamkoff, respectfully request this Court to dissolve its injunction and dismiss this lawsuit.

//

//

EXECUTED at Bellingham, Washington, this 21 day of October, 2016.

BURI FUNSTON MUMFORD, PLLC


Philip Buri, WSBA 17637
Counsel for Defendants

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the date stated below, I mailed or caused delivery of Notice of Appearance to:

Rickie Wayne Armstrong
Nooksack Indian Tribe
Office of Tribal Attorney
PO Box 63
Deming, WA 982444

DATED this 21st day of October, 2016.


Heidi Main



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 17 2016

The Honorable Robert Kelly, Jr.
Chairman, Nooksack Tribe
P.O. Box 157
Deming, Washington 98244

Dear Chairman Kelly:

As you know, the Nooksack Tribal Council (Council) lacks a quorum to conduct tribal business as required by the Nooksack Tribe's (Tribe) Constitution and Bylaws. Four Council members' terms expired in March 2016, and an election was never held to fill their seats. The Council currently consists of four members.¹ The Nooksack constitution and bylaws provide:

"At any special or regular meeting of the tribal council, five (5) members present shall constitute a quorum and the tribal council may proceed to transact any business that may come before it."²

Accordingly, pursuant to the plain language of the Tribe's Constitution and Bylaws, the Council must have five duly elected officers to take any official action.

In rare situations where a tribal council does not maintain a quorum to take action pursuant to the Tribe's Constitution, the Department of the Interior (Department) does not recognize actions taken by the Tribe. This is one of those exceedingly rare situations. Accordingly, I am writing to inform you and the remaining Council members that the Department will only recognize those actions taken by the Council prior to March 24, 2016, when a quorum existed, and will not recognize any actions taken since that time because of the lack of a quorum.

We will not recognize any actions until duly elected officials are seated in accordance with the Tribe's Constitution and Bylaws. This includes recent actions by you and two Council members to enjoin the authority of the Northwest Intertribal Court System (NICS). Since the NICS was authorized by a quorum of the Council to adjudicate matters prior to March 24, 2016, we will continue to recognize judicial decisions issued by the NICS.

I want to be clear that the Department is not interpreting the Tribe's Constitution or interfering in internal tribal matters. The Department fully respects tribal sovereignty and tribal law. Rather, we are underscoring that pursuant to our government-to-government relationship between the United States and the Nooksack Tribe, we will only recognize action taken in accordance with the Tribe's Constitution and Bylaws.

¹ Another Council member was allegedly recalled via an election in April.

² Nooksack Bylaws Article II Section 4.

Under Federal law, the United States has a duty to ensure that tribal trust funds, Federal funds for the benefit of the Tribe, and our day-to-day government-to-government relationship is with a full quorum of the Council as plainly stated in the Tribe's Constitution and Bylaws. As such, the Bureau of Indian Affairs (BIA) will examine any self-determination contracts or funding agreements it has with the Tribe to ensure the Tribe's compliance with all contract provisions. In the event of non-compliance, BIA will take action to reassume the particular Federal services, in whole or in part, and provide direct services to currently enrolled tribal members.

The BIA stands ready to provide technical assistance and support to the Tribe to carry out elections open to "all enrolled members of the Nooksack Tribe, eighteen years of age or over" regardless of county residency, to vote to fill the vacant Council seats.³ Please be advised that elections inconsistent with Nooksack law will not be recognized by the Department. Should you have any questions, please contact my office at (202) 208-7163.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence S. Roberts", with a stylized flourish at the end.

Lawrence S. Roberts
Principal Deputy Assistant Secretary –
Indian Affairs

cc: Regional Director Speaks
Northwest Intertribal Court System
Nooksack Tribal Council members

³ Nooksack Constitution Art. IV Section 1. *See Belmont v Kelly*, No. 2014-CI-CL-007 (Nooksack Tribal Ct. Jan. 26, 2016).