



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

DEC 23 2016

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

Dear Chairman Kelly:

On October 17, 2016, and November 14, 2016, I sent letters to you regarding the status of the Nooksack Tribal Council (Tribal Council). The letters explained that, pursuant to Nooksack Tribe's (Tribe) constitution and laws, as of April 2016, the Tribal Council is no longer operating with a quorum and therefore lacks authority to conduct business on behalf of the Tribe. The letter stated further that the Department of the Interior (Department) will recognize only those actions taken by the Tribal Council prior to March 24, 2016, when a quorum existed, and would not recognize any subsequent actions by the Tribal Council until a valid election, consistent with the Tribe's constitution and the decisions of the Tribe's Court of Appeals, the Northwest Intertribal Court System, is held and a quorum of council members is achieved. This lack of a quorum and inability to take official action puts all Federal funding to the Tribe at risk, as we can only contract Federal services with a duly authorized tribal council pursuant to Federal law and a Tribe's constitution.

As we previously notified you, the actions by you and two members who have exceeded their term of office on Tribal Council to anoint yourselves as the Tribe's Supreme Court were taken without a quorum and without holding a valid election consistent with the Tribe's constitution. Accordingly, the Department will continue to recognize, for purposes of our government-to-government relationship, only court decisions made by the Northwest Intertribal Court System. Pursuant to the plain language of the Tribe's constitution, the Tribal Council did not have authority to remove the Northwest Intertribal Court System or to establish an alternative Court. Any actions taken by the Tribal Council after March 2016, including so-called tribal court actions and orders, are not valid for purposes of Federal services and funding.

It has come to the Department's attention that orders of eviction may have been recently issued to be served by the Nooksack Chief of Police or could be issued and served in the near future. It appears that such orders are based on actions taken by the Tribal Council after March 24, 2016. Therefore, as explained above and in the previous letters to you, those orders are invalid and the Department does not recognize them as lawful pursuant to our government-to-government relationship.

As you are aware, the Tribe is engaged in a Self-Determination, or "638," contract with the Bureau of Indian Affairs (BIA), which authorizes the Tribe to provide Federal law enforcement services on the reservation. Tribal law enforcement officers must act within the bounds of

Federal law. Only those actions determined to be within the scope of officers' professional duties are protected by the Federal Tort Claims Act (FTCA). Enforcement of invalid or unlawful orders is outside the scope of a law enforcement officer's duties, and, therefore, would not fall within the FTCA's protections.

In addition, such unlawful action would constitute a basis for the BIA Office of Justice Services to reassume the Tribe's law enforcement program. If the Tribe continues to pursue eviction actions stemming from actions taken by Tribal Council without a valid quorum, BIA is prepared to reassume jurisdiction.

We continue to urge the Tribe to hold elections for the vacant Tribal Council seats in accordance with the Tribe's Court of Appeals ruling in *Belmont v. Kelly*, issued on March 22, 2016. We do not view the recent primary election or the general election purportedly scheduled for January 21, 2017 as legitimate and we will not accept the results pursuant to our Nation-to-Nation relationship given that the primary election did not allow for votes by those allowed to vote under the Court of Appeals decision in *Belmont v. Kelly*. As the Tribe's Court of Appeals order clearly stated:

The trial court found that to date the Respondents are enrolled members of the Tribe. Order Denying Defendants' Motion for Reconsideration at 16. Under the Nooksack Constitution, an enrolled member of the Tribe is eligible to vote in elections. Const. Art. IV, Sec. 1. Although Respondents may eventually face disenrollment proceedings—they are currently enrolled members. Neither the Constitution nor the Nooksack election code prohibits an enrolled member from voting even where the member is the target of disenrollment proceedings.

Order of March 22, 2016 in *Belmont v. Kelly*. Elections or actions inconsistent with the Tribe's Court of Appeals March 22, 2016 Order in *Belmont v. Kelly*, the trial court's decisions of January 26, 2016, and February 29, 2016, and Nooksack law will not be recognized by the Department.

BIA Director Loudermilk and Regional Director Speaks stand ready to assist the Tribe in electing a constitutional tribal council so that Federal services and funding are not interrupted. If the Tribe does not hold such elections by March 31, 2017, the Department will have no choice but to reassume the provision of Federal services.

Sincerely,



Lawrence S. Roberts
Principal Deputy Assistant Secretary –
Indian Affairs

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