



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

Departmental Cases Hearings Division

351 South West Temple, Suite 6.300

Salt Lake City, Utah 84101

TELEPHONE (801) 524-5344

FACSIMILE (801) 524-5539

April 28, 2017

ORDER

NOOKSACK INDIAN TRIBE,	)	IBIA 17-045
)	
Appellant	)	Appeal of letters dated January 19,
	)	2017, indicating that the Tribal
v.	)	Council lacks authority to submit a
	)	proposed annual funding
DIRECTOR, PORTLAND AREA,	)	agreement to the Indian Health
INDIAN HEALTH SERVICE,	)	Service for approval or
	)	disapproval.
Appellee)	
	)	Indian Self Determination and
	)	Education Assistance Act (ISDA)
	)	25 U.S.C. §§ 5301-5332

Joint Motion to Stay Proceedings Granted; **Motion to Intervene Taken Under Advisement**

On April 28, 2017, Appellant and Appellee filed a Joint Motion to Stay Proceedings ("Motion"). In the Motion, the parties agree that the outcome in a related matter filed by Appellant against the U.S. Department of the Interior ("DOI") in Federal District Court will affect the outcome of the current matter. *See Nooksack Indian Tribe v. Zinke, et al.*, Case No. 2:17-cv-00219 (W.D. Wa.). The parties represent that the district court case concerns Appellant challenging the DOI's refusal to recognize the Nooksack Tribal Council since March 2016, and the parties argue that a decision in the federal court case will assist in the resolution of the instant matter. As part of the Motion, the parties identify certain contingencies to their agreement to stay this case.

Upon review of the Motion and for good cause shown, the Motion is GRANTED. It is further ORDERED that the stay of this matter is contingent upon:

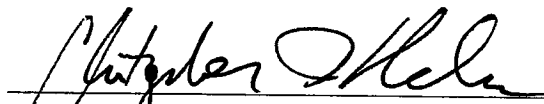
(1) Appellee continuing to fund Appellant to carry out the programs, functions, services, and activities ("PFSAs") listed in the parties' most recent Indian Determination and Education Assistance Act ("ISDEAA") contract; and

(2) the continued availability of health services for the 289 tribal members disenrolled by Appellant in November 2016.

It is further ORDERED that, in order to ensure that these health services are accessible to those disenrolled members, Appellee will retain \$88,955 from Appellant's ISDEAA interim funding in order for Appellee to arrange for the provision of health services to those disenrolled members who seek such services while this matter is pending before this tribunal during fiscal year 2017. If the stay is lifted prior to the end of the fiscal year, Appellee will return any unused funds unless continued services to those disenrolled member is required. If the stay in this matter continues into the next fiscal year, the parties will negotiate an additional amount to be withheld.

It is further ORDERED that this proceeding and the deadlines set forth in the March 20, 2017, Scheduling Order are indefinitely STAYED. In the event the district court issues a decision on the related cases (Case No. 2:17-cv-00219 (W.D. Wa.)), within fifteen (15) calendar days of such decision, the parties shall file a joint or separate status report requesting a teleconference and suggesting how to proceed with the instant matter.

Finally, on April 4, 2017, proposed Intervenor, 271 Nooksack Tribal Members ("proposed Intervenor"), filed a Motion to Intervene pursuant to 43 C.F.R. § 4.313(a) ("Motion to Intervene"). By facsimile received on April 3, 2017, Appellee filed a Statement of Non-Opposition to the Motion, in which Appellee noted that he neither supports nor opposes the Motion. On April 24, 2017, Appellant filed a Response in Opposition to Motion to Intervene. Given the stay issued herein, and in consideration of the litigation pending in the district court, it is premature to rule on the Motion to Intervene. Accordingly, this tribunal will take the Motion to Intervene under advisement, and will not issue a ruling at this time. However, given the potential interests involved, a copy of this Order is also being provided to counsel for the proposed Intervenor.


 Christopher D. Helms
 Administrative Law Judge

Distributed

By Fax and First Class Mail:

Rickie Wayne Armstrong, Esq.
Office of Tribal Attorney
P. O. Box 63
Deming, Washington 98244
Fax: (360) 592-2227
(Counsel for Appellant)

Jay L. Furtick, Esq.
Assistant Regional Counsel
U. S. Department of Health and Human Services
Office of the General Counsel, Region 10
701 Fifth Avenue, Suite 1600, MS/10
Seattle, Washington 98104
Fax: (206) 615-2286
(Counsel for Appellee)

Gabriel S. Galanda, Esq.
Anthony S. Broadman, Esq.
Ryan D. Dreveskracht, Esq.
Bree R. Black Horse, Esq.
P.O. Box 15416
8606 35th Avenue NE, Suite L1
Seattle, WA 98115
Fax: (206) 299-7690
(Counsel for Intervenors)