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6 OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS

7 THE NOOKSACK INDIAN TRIBE,

Docket No. IBIA 17-045

8 Appellant,

**INTERVENOR 271 NOOKSACK
TRIBAL MEMBERS' STATUS
REPORT**

9 v.
10

11 DIRECTOR, PORTLAND AREA, INDIAN
12 HEALTH SERVICE,

13 Appellee.
14

15 Intervenor submit this separate Status Report pursuant to the Interior Board of Indian
16 Appeals' June 30, 2017, and October 11, 2017 Orders. As foreshadowed in Intervenor's October
17 10, 2017 letter, Intervenor do not oppose dismissal,¹ but they take issue with Appellant's bad
18 faith behavior pursuant to the Board's June 30, 2017 stay Order ("Stay Order") and the "Joint"
19 Status Report Appellant filed on October 4, 2017, and feel compelled to set the record straight
20 before this "appeal" is closed.
21

22 **PROCEDURAL HISTORY**

23 As the Board knows, its Stay Order was expressly predicated on a June 26, 2017 stay
24 Order issued by the U.S. District Court in *Nooksack Indian Tribe v. Zinke*, No. 17-0219-JCC
25 (W.D. Wash. June 26, 2017), Dkt. #49. Both in *Zinke* and before this Board, the Parties—

¹ Indeed, Intervenor agree with Appellee that Appellant's "appeal" was premature to begin with.

1 including the same 271 Intervenor in both proceedings—stipulated to a 120-day stay of
2 litigation. Intervenor stipulated to both stays, provided they “be included in the referenced
3 ‘ongoing negotiations.’” *Id.*, Dkt. #50 at 2; *see also* Stay Order (“Intervenor stated in the
4 teleconference that they do not oppose the request.”). Both the *Zinke* Court and this Board
5 granted the Parties’ stay requests.
6

7 On June 26, 2017, the U.S. District Court ordered: “The parties, **including Intervenor**
8 **Defendants**, are ORDERED to file a joint status report prior . . . informing the Court of the status
9 of **their** negotiations” by October 25, 2017. *Zinke*, No. 17-0219, Dkt. #51 at 1 (emphasis added).
10

11 The Board will recall that during its June 30, 2017 status conference, Appellant’s counsel
12 represented that Intervenor were not contemplated by the U.S. District Court’s stay Order, and
13 that Intervenor corrected his misstatement. *See* Appendix A (Rickie Armstrong “misstated” to
14 the Board that Intervenor were not mentioned in the *Zinke* Court’s stay Order, “fuel[ing] our
15 suspicion that our folks are being excluded from those negotiations, or that they lack good faith . .
16 . .”). That same day, this Board “ORDERED that the parties will file a status report, either jointly
17 or separately, by no later than October 23, 2016, **updating this tribunal of the status of the**
18 **related district court case** . . . and suggesting how to proceed with the instant matter.” Stay
19 Order, at 2 (emphasis added).
20

21 Appellant now admits that the Board’s Stay Order “paralleled the stay in the federal
22 litigation,” which expressly included Intervenor as settlement parties. Joint Status Report, at 2.
23 As Appellee is not a party to the related U.S. District Court case, Intervenor understood that
24 Appellant would at the very least attempt to confer with Intervenor about the status of *Zinke*
25 before filing any status report regarding the status of that related case. *See* Stay Order, at 2. It
seems Appellee agrees. *See* Appendix B. Appellant did not. *See id.*

1 Intervenor do understand that Appellant was allowed to file its own status report here, but
2 Appellant's behavior during the stay period in *Zinke* and in advance of filing its "Joint" Status
3 Report here demonstrates, at worst, bad faith; or at best, a lack of common courtesy. *See*
4 Appendix B. In fact, after both stay Orders were issued, Appellant—*i.e.*, the holdover Nooksack
5 tribal council via legal counsel—excluded Intervenor from the "negotiations" that both Orders
6 were predicated upon. *See* Joint Status Report, at 2; *Zinke*, Dkt. #51 at 1; Appendix A.

8 After the Memorandum of Agreement was reached between the U.S. Department of the
9 Interior and "the Tribe, through its Chairman," on August 25, 2017, and the Tribe's health care
10 (and other governmental) funding was restored ("Joint" Status Report, at 2), Appellant advised
11 Intervenor that their "lack of involvement was of no immediate concern"—despite at least the
12 *Zinke* Court's concern that Intervenor be involved. Appendix C. Intervenor were further told
13 that the MOA "negotiations did not involve any specific litigation," which seems to mean this
14 "appeal," too. *Id.* But now Appellant represents that the MOA and related funding restoration
15 "mooted the basis(es) for this appeal"; in other words, Appellant claims that settlement *did*
16 involve this specific litigation. Joint Status Report, at 2. Through unrelenting gamesmanship
17 immediately before and throughout the stay period, Appellant has sought to have it both ways
18 over those 120 days. With soiled hands, Appellant and its counsel have abused the equity
19 invoked for purpose of both stays. *Cf. Precision Instrument Mfg. Co. v. Auto. Maint. Mach.*
20 *Co.*, 324 U.S. 806, 814-15 (1945) ("He who comes into equity must come with clean hands.").

23 Intervenor are grateful that the apparent byproduct of the settlement reached between the
24 other parties to both stay Orders is that as of September 22, 2017, the Nooksack Indian Tribe
25 must now "provide health care delivery to Nooksack Tribal members and their descendants"—
including Intervenor, who were illegally denied such direct services by the holdover council

1 since November 2016—on at least an interim basis. Appendix D. Therefore, Intervenor do not
2 oppose this Board’s dismissal of Appellant’s “appeal.”

3
4 **STATUS REPORT**

5 In specific response to this Board’s Stay Order, there has been no change in regard to that
6 related case district court case, *Zinke*, since June 30, 2017. See Stay Order, at 2.² That matter
7 remains stayed until October 25, 2017. *Zinke*, No. 17-0219, Dkt. #51 at 1. The holdover tribal
8 council has stated regarding *Zinke*: “None of the claims asserted by the Tribe were resolved by
9 the MOA, and the Tribe welcomes the opportunity to litigate those claims when the stay is lifted.”
10 Appendix E. As such, it remains to be seen what will transpire in *Zinke* after October 25, 2017.

11 DATED this 12th day of October, 2017.

12 GALANDA BROADMAN PLLC

13 /s/ Gabriel S. Galanda

14 Gabriel S. Galanda, WSBA #30331

15 Anthony S. Broadman, WSBA #39508

16 Ryan D. Dreveskracht, WSBA #42593

17 Bree R. Black Horse, WSBA #47803

18 P.O. Box 15416

19 8606 35th Avenue NE, Suite L1

20 Seattle, WA 98115

21 PH: 206-557-7509

22 FX: 206-299-7690

23 gabe@galandabroadman.com

24 anthony@galandabroadman.com

25 ryan@galandabroadman.com

bree@galandabroadman.com

Attorneys for Intervenor

² Appellant did not specifically advise the Board about the status of *Zinke*, as ordered. See “Joint” Status Report.

1 I, Wendy Foster, declare as follows:

2 1. I am now and at all times herein mentioned a legal and permanent resident of the
3 United States and the State of Washington, over the age of eighteen years, not a party to the
4 above-entitled action, and competent to testify as a witness.

5 2. I am employed with the law firm of Galanda Broadman PLLC, 8606 35th Avenue
6 NE, Ste. L1, Seattle, WA 98115.

7 3. Today, I filed and served the foregoing document via Certified Mail, Return
8 Receipt Requested to:

9
10 Indian Board of Indian Appeals
11 Office of Hearings and Appeals
12 U.S. Department of the Interior
13 801 N. Quincy Street, Suite 300
Arlington, VA 22203

14 and via email, fax and regular USPS mail to:

15 Rickie Wayne Amstrong, Esq.
16 Office of the Tribal Attorney
PO Box 63
Deming, WA 98244
17 Fax: 360-592-2227/360-592-2215
Email: rarmstrong@nooksack-nsn.gov

18 Jay L. Furtick
19 Assistant Regional Counsel
20 U.S. Department of Health & Human Services
Office of General Counsel, Region 10
701 Fifth Avenue, Suite 1600, MS/10
21 Seattle, WA 98104
22 Fax: 206-615-2286
Email: Jay.Furtick@hhs.gov

23 The foregoing statement is made under penalty of perjury and under the laws of the State
24 of Washington and is true and correct.

25 Signed at Seattle, Washington, this 12th day of October, 2017.

/s/ Wendy Foster
Wendy Foster

APPENDIX A



Gabe Galanda <gabe@galandabroadman.com>

Re: Settlement Negotiations [IWOV-pdx.FID3377810]

1 message

Gabe Galanda <gabe@galandabroadman.com>

Tue, Aug 1, 2017 at 10:38 AM

To: "Martin, Connie Sue" <CSMartin@schwabe.com>

Cc: Charles Hurt <churt@nooksack-nsn.gov>, "Kipnis, Brian (USAWAW)" <Brian.Kipnis@usdoj.gov>, AB <anthony@galandabroadman.com>, "ryan@galandabroadman.com" <ryan@galandabroadman.com>, Bree Blackhorse <bree@galandabroadman.com>

Thanks for this reply, Connie Sue. If you are unaware of things, then we hope to hear from Mr. Hurt, either through you given his email complications; or from him directly. It is specious to claim that any settlement negotiations flowing from Chairman Kelly's meeting with ASIA Mike Black on June 15, which gave rise to the joint stay request, is somehow a separate settlement process that does not involve our clients, as parties to the litigation that any settlement would resolve. And, a confidentiality agreement is news to us, underscoring our growing concern about being deliberately boxed out of the settlement process by Plaintiff, despite the Court's clear inclusion of our clients in the settlement process. In all, if neither you nor Mr. Hurt see fit to communicate with us about settlement on behalf of Plaintiff, we will take the matter up with the Court in due course.

Gabriel S. Galanda

Attorney at Law

Galanda Broadman, PLLC

o: 206.557.7509

d: 206.300.7801

gabe@galandabroadman.com

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On Tue, Aug 1, 2017 at 10:29 AM, Martin, Connie Sue <CSMartin@schwabe.com> wrote:

Gabe,

I have not participated in any settlement negotiations. I am aware that settlement negotiations did occur prior to the filing of the Joint Motion for Stay, and I have been informed that those negotiations are governed by a confidentiality agreement. I am not aware of the current status.

Connie Sue

Schwabe Williamson & Wyatt

Connie Sue M. Martin

Shareholder

Direct: 206-407-1556

Mobile: 206-331-7337

csmartin@schwabe.com

Vcard LinkedIn

Ideas fuel industries. Learn more at:www.schwabe.com**From:** Gabe Galanda [mailto:gabe@galandabroadman.com]**Sent:** Tuesday, August 01, 2017 10:09 AM**To:** Martin, Connie Sue <CSMartin@SCHWABE.com>; Charles Hurt <churt@nooksack-nsn.gov>**Cc:** Kipnis, Brian (USAWAW) <Brian.Kipnis@usdoj.gov>; AB <anthony@galandabroadman.com>; ryan@galandabroadman.com; Bree Blackhorse <bree@galandabroadman.com>**Subject:** Re: Settlement Negotiations

Connie Sue, Mr. Hurt:

We still have yet to hear from the Plaintiff as to your settlement negotiations with Interior, although we are aware those negotiations are occurring. Nor have either of you extended the courtesy of a reply to my email below of two weeks ago. (My emails to Mr. Hurt continue to be "BLOCKED," which certainly doesn't make our communication any easier.) Please be advised that if some form of agreement is reached between "the Tribe" or Chairman Kelly and the Federal Defendants, and we---the parties whose civil rights will be most directly affected by any agreement that contemplates an election---have still not been meaningfully involved in the current negotiations, we will likely oppose it and seek relief before the U.S. District Court.

We hope for your reply or other form of communication.

Gabriel S. Galanda

Attorney at Law

Galanda Broadman, PLLC

o: 206.557.7509

d: 206.300.7801

gabe@galandabroadman.com

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On Tue, Jul 18, 2017 at 11:42 AM, Gabe Galanda <gabe@galandabroadman.com> wrote:

Connie Sue, Mr. Hurt:

It's been three weeks since Judge Coughenour entered his Minute Order memorializing our clients' role, as intervenor-parties, in settlement negotiations; in what we believe, from statements made by Rickie to the ALJ in the first IHS IBIA proceeding, are global settlement negotiations.

A week later Rickie misstated to the ALJ that we were not mentioned in that Minute Order; I corrected him but his comments fuel our suspicion that our folks are being excluded from those negotiations, or that they lack good faith as far as your clients are concerned.

Please advise us as to where those negotiations stand. Of course as our folks are now parties to both proceedings we will eventually have to advise both Judges as to the status of things, as ordered, even if that means to advise them of our exclusion from the process and/or your clients' bad faith.

Finally, our emails to Mr. Hurt continue to get rejected by the Nooksack server.

That started happening early last year amidst the Tribal Council and Court breakdown but now that we are in multiple federal legal proceedings, perhaps counsel could make arrangements to have our email addresses no longer blocked at Nooksack. At a minimum, Connie Sue, please forward this email to Mr. Hurt.

Thanks,

Gabriel S. Galanda

Attorney at Law

Galanda Broadman, PLLC

o: 206.557.7509

d: 206.300.7801

gabe@galandabroadman.com

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APPENDIX B



Gabe Galanda <gabe@galandabroadman.com>

RE: Nooksack / IBIA 17-045

1 message

Furtick, Jay L. (HHS/OGC) <Jay.Furtick@hhs.gov>
To: Gabe Galanda <gabe@galandabroadman.com>

Tue, Oct 10, 2017 at 9:08 AM

Gabe,

Yes, he did have our permission. I saw your name on the document, so I assumed he was contacting you as well. That appeal was premature and should have been dismissed a while ago, but we agreed to a stay to avoid having to file a motion to dismiss earlier because we were hopeful a settlement would be reached.

Jay

From: Gabe Galanda [mailto:gabe@galandabroadman.com]
Sent: Friday, October 06, 2017 2:27 PM
To: Furtick, Jay L. (HHS/OGC)
Subject: Fwd: Nooksack / IBIA 17-045

Jay:

This is news to us.

Did Rickie really have your permission to sign this JSR? If so, it appears we'll be left to file our own status report, which is fine.

Although consistent with their bad faith behavior throughout the stay here and in Zinke, this catches us by surprise.

Our attached brief, filed before Judge Coughenour today, gives you a broader sense of how things have played out since all of the litigation was stayed this spring.

Gabriel S. Galanda

Attorney at Law

Galanda Broadman, PLLC

o: 206.557.7509

d: 206.300.7801

gabe@galandabroadman.com

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----- Forwarded message -----

From: **Alice Hall** <alice@galandabroadman.com>

Date: Fri, Oct 6, 2017 at 2:20 PM

Subject: Nooksack / IBIA 17-045

To: Gabriel Galanda <gabe@galandabroadman.com>, Amber Penn-Roco <amber@galandabroadman.com>, Ryan Dreveskracht <ryan@galandabroadman.com>, Joe Sexton <joe@galandabroadman.com>, Bree Black Horse <bree@galandabroadman.com>, Elisabeth Guard <elisabeth@galandabroadman.com>

10-4-17 Joint Status Report and Motion to Dismiss Appeal and Declaration of Service

--

Alice Hall

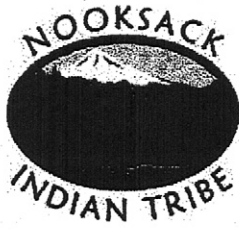
Office Manager

Galanda Broadman PLLC

206-557-7509

alice@galandabroadman.com

APPENDIX C



Nooksack Indian Tribe Office of Tribal Attorney

5047 Mt. Baker Hwy
PO Box 63
Deming, WA 98244

Ph: (360) 592-4158 Fx: (360) 592-2227

September 13, 2017

Galanda Broadman
Attn: Gabriel Galanda
8606 35th Avenue NE
Seattle, WA 98115

Re: Your Nooksack Special Tribal Council Election Concerns

Mr. Galanda:

I am in receipt of your letter of concern dated September 7, 2017. The Tribe and the Department of Interior recently memorialized an understanding leading to Tribal Council recognition. As the negotiations were in the nature of government-to-government consultations, your office's lack of involvement was of no immediate concern. Those negotiations did not involve any specific litigation. I provide this response solely to address your questions and misunderstandings regarding the Tribe's Special Election and the recently published Notice of Election. The coming election will proceed pursuant to the Tribe's Election Ordinance, Title 63 (Resolution 15-163) with certain provisos that are provided for in the Tribe's agreement with Interior.

Your concerns related to the recently published Notice of Election are unfounded. The Notice of Election appearing on the Tribe's website is accurate. Your haste to send your concerns to my attention (and to the Regional Office) led to the mistaken conclusion that the Notice appeared only on the Tribe's website. The Notice was published pursuant to Title 63 and has been mailed to all eligible voters.

Further, Candidate Packets became available on September 7, 2017. As in past years (and in accordance with Tribal law), packets will remain available until the deadline to return the packets. IN accordance with the Election Ordinance, the deadline established is September 22, 2017. Tribal members have roughly two (2) weeks to pick up, complete, and return the packet. Again, this is consistent with past elections.

Next, your concern that certain members would be unable to timely return ballots is unpersuasive. The complaint is that thirty (30) days is insufficient time to return a ballot, as numerous Tribal members reside in Canada. This argument closely resembles a similar argument you made in the context of voter registration during the 2013 Secretarial Election. As you recall, this complaint was similarly rejected. The results of past mail-out elections

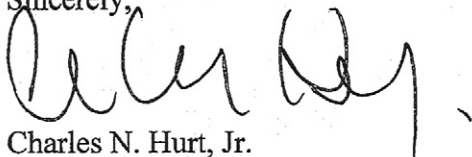
demonstrate that the Tribal members residing in Canada have sufficient time to return their ballots, and in fact, have done so in large numbers. Numerous jurisdictions across the United States have similar deadlines, a non-discriminatory rule controlling the mechanics of voting. As such the deadline is permissible.

Your concern that the Tribe may not have accurate addresses for some of its members is a valid concern held by many governments. The Tribe has continually inserted provisions into its policies, ordinances, and other official documents to increase the accuracy of its voter list. Further, the Tribe's Enrollment Ordinance imposes a duty upon Tribal members to notify the Enrollment Department of their current addresses. Unfortunately, certain members will, inevitably, have an old address on file with the Enrollment Office. The Election Ordinance contains provisions to address this circumstance, which will allow those members the opportunity to obtain a replacement ballot.

In the coming weeks, the Elections Board and Superintendent are likely to publish additional material. I sincerely hope that prior to spreading misinformation or jumping to precipitate conclusions regarding the elections process, you first verify your information.

If you have any questions or concerns, please feel free to contact the Election Superintendent at (360) 592-5176.

Sincerely,



Charles N. Hurt, Jr.
Senior Tribal Attorney
Nooksack Indian Tribe

cc: Nooksack Tribal Council
Ms. Katherine Canete, General Manager
Ms. Katrice Romero, Election Superintendent
John Hay, Esq., U.S. Department of Interior
Marcella Teeters, NW Region BIA Office
Greg Norton, NW Region BIA Office

APPENDIX D



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

SEP 22 2017

PORTLAND AREA
INDIAN HEALTH SERVICE
1414 NW NORTHROP, Suite 800
PORTLAND, OREGON 97209

Dear Nooksack Tribal Members:

I am writing to advise you that the Indian Health Service (IHS) has negotiated a contract with the Nooksack Indian Tribe (Tribe) to resume tribally-operated health care services under the Indian Self-Determination and Education Assistance Act. Under this contract, health services are available to all eligible beneficiaries, including Nooksack Indian Tribal members, as well as those recently disenrolled. If you were eligible prior to March 24, 2016, you remain eligible for health services. Health care delivery will be effective on September 22, 2017.

The U.S. Department of the Interior (DOI) has provided interim recognition to the Nooksack Indian Tribe through the current Tribal Chairman, the Honorable Robert Kelly.¹ During interim recognition, Chairman Kelly is the person of authority to represent the Nooksack Indian Tribe in a Government-to-Government relationship with the IHS, as well as other Federal agencies.

The tribal clinic will provide health care delivery to Nooksack Tribal members and their descendants, as well as other eligible beneficiaries from the Nooksack community. As of September 22, 2017, health services provided by the Nooksack Indian Tribe, are considered covered services by the IHS.

The IHS contract with the Nooksack Indian Tribe for health delivery will continue as long as the Tribe meets the requirements set forth by the Memorandum of Agreement with DOI, and the DOI continues to recognize Tribal leadership as a governing body of the Nooksack Indian Tribe.

If you have questions regarding this letter, please contact Mr. Terry Dean, Director, Office of Tribal and Service Unit Operations, by telephone at (503) 414-5555.

Sincerely,

/Stephen M. Rudd/

for / Dean M. Seyler
Director

¹ Memorandum of Agreement between Acting Assistant Secretary-Indian Affairs and Hon. Robert Kelly, Chairman of the Nooksack Indian Tribal Council. August 25, 2017.

APPENDIX E

September 13, 2017

Connie Sue Martin

Admitted in Washington, Oregon and
Hawaii

T: 206-407-1556

C: 206-331-7337

csmartin@schwabe.com

VIA E-MAIL

Mr. Gabriel S. Galanda
Galanda Broadman, PLLC
P.O.Box 15146
Seattle, WA 98115

RE: Nooksack Indian Tribe v. Zinke
USDC 2-17-cv-00219-JCC
Our File No.: 124302-192359

Dear Mr. Galanda:

This letter responds to your e-mail of September 17, 2017, which asserts that I have “ignore[d] all of [y]our outreach regarding the Court’s stay order”, and that you “may move to dissolve the stay as soon as tomorrow given the continued exploits of Chairman Kelly and the Holdover Council. . .”

It is a mystery to me what you are seeking from me through your “outreach.” As I have previously noted, I did not participate in the discussions that took place between the Tribe and Interior in Washington, D.C., although I understand that Mr. Kipnis did.

There are no ongoing settlement discussions between the Nooksack Tribe and the United States.

As you are aware, Michael Black, Acting Assistant Secretary – Indian Affairs and Chairman Kelly executed a Memorandum of Agreement (MOA) on August 25, 2017, a copy of which is enclosed. The purpose for the MOA, as stated in the document, “is to provide and to outline a procedure whereby the Assistant Secretary-Indian Affairs (Assistant Secretary) recognizes a Nooksack Indian Tribal Council as governing body of the Nooksack Indian Tribe. . .”

The MOA does not mention *Nooksack Indian Tribe v. Zinke*. Nowhere in the MOA is there any agreement to dismiss the pending litigation as a condition of executing the MOA.

Indeed, the MOA highlights the continuing dispute between the Tribe and the United States regarding the arbitrary and capricious conduct of former Deputy Assistant Secretary Lawrence Roberts in failing to recognize the Nooksack Tribal Council as the governing body of the Nooksack Tribe with a quorum to conduct Tribal business.

Mr. Gabriel S. Galanda
September 13, 2017
Page 2

The MOA is not a settlement agreement. None of the claims asserted by the Tribe were resolved by the MOA, and the Tribe welcomes the opportunity to litigate those claims when the stay is lifted.

I trust this has addressed your concerns, and no further consultation is required.

Sincerely,

A handwritten signature in cursive script, appearing to read "Connie Sue Martin".

Connie Sue Martin

Enclosure

cc: Brian Kipnis
Charles N. Hurt
Rickie Armstrong

PDX\124302\192359\CSMM\21469088.1

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA or MEMORANDUM) is entered into by and between: the ACTING ASSISTANT SECRETARY – INDIAN AFFAIRS, on Behalf of THE UNITED STATES DEPARTMENT OF THE INTERIOR, and the HON. ROBERT KELLY, CHAIRMAN OF THE NOOKSACK INDIAN TRIBAL COUNCIL, on this 25 day of AUGUST 2017.

A. Purpose. The purpose of this MEMORANDUM is to provide and to outline a procedure whereby the ASSISTANT SECRETARY-INDIAN AFFAIRS (ASSISTANT SECRETARY) recognizes a NOOKSACK INDIAN TRIBAL COUNCIL as governing body of the NOOKSACK INDIAN TRIBE, a federally recognized Indian Tribe located in Whatcom County, State of Washington.

B. Special Council Election. CHAIRMAN ROBERT KELLY hereby agrees and stipulates that he shall as expeditiously as possible, and in any event no later than 120 days after the MOA is executed, conduct a Nooksack Indian Tribal Council election in accordance with the NOOKSACK CONSTITUTION, BYLAWS, AND TRIBAL LAWS and ORDINANCES except as otherwise provided herein. As set forth in previous letters from the PRINCIPAL DEPUTY ASSISTANT SECRETARY-INDIAN AFFAIRS to CHAIRMAN ROBERT KELLY dated October 17, 2016, November 14, 2016, and December 23, 2016, the ASSISTANT SECRETARY only recognizes actions taken by the NOOKSACK INDIAN TRIBAL COUNCIL prior to March 24, 2016 when a quorum existed. The ASSISTANT SECRETARY does not recognize NOOKSACK INDIAN TRIBAL COUNCIL actions taken without a quorum. This includes the purported recall of Councilmember Carmen Tageant in April 2016. All eligible Nooksack voters as of March 2016 shall be eligible to vote in the resulting election, regardless of county residency. This election shall be seen as a special election to replace the regular election that was to be held in March 2016. The Nooksack Election Board shall certify and submit all results of the special election to the BIA Regional Director of the Pacific Northwest Region, including a report demonstrating the above mentioned conditions were satisfied. Additionally, upon request from any party, THE ASSISTANT SECRETARY may have an observer present at any time ballots are being handled, processed or counted. The observer shall immediately report in

writing any irregularities observed to both parties to this MEMORANDUM and to the BIA Regional Director.

C. Interim Recognition. Immediately upon execution of this Memorandum, the ASSISTANT SECRETARY shall recognize Robert Kelly as a person of authority within the Nooksack Tribe, through whom the ASSISTANT SECRETARY will maintain government-to-government relations with the Tribe for such time as this MOA is in effect, for the purpose of the Nooksack Tribe holding a special election and receiving funding under the Indian Self-Determination and Education Assistance Act. The ASSISTANT SECRETARY's interim recognition shall remain in effect until one of the following three events occurs: the Tribe fills four seats on the Tribal Council via special election, including resolution of any and all challenges to said election; or the ASSISTANT SECRETARY (or other person exercising the authorities of the Assistant Secretary) notifies the Tribe that the MEMORANDUM is being terminated for cause, as provided for in Section H of this MEMORANDUM; or 120 days have passed since execution of this MEMORANDUM. Nothing in this agreement shall be construed to recognize or confer any legal status on unelected councilmembers to act in the place of legally elected councilmembers or to count towards a quorum for conducting tribal business or other affairs.

D. Final Tribal Council Recognition. Upon certification of the special election results as set forth in NOOKSACK TRIBAL LAWS AND ORDINANCES, the final resolution of any challenges to those results, and the submission of the Election Board's report to the Regional Director, the Regional Director shall forward to the ASSISTANT SECRETARY the Tribe's report along with the Regional Director's endorsement thereof, or an explanation for withholding such endorsement. Upon receipt of the Regional Director's endorsement, the ASSISTANT SECRETARY shall issue a letter granting full recognition of the NOOKSACK INDIAN TRIBAL COUNCIL as the valid governing body of the NOOKSACK INDIAN TRIBE in a form substantially similar to EXHIBIT A to this MEMORANDUM.

E. Purported Disenrollees. ROBERT KELLY and the NOOKSACK INDIAN TRIBE accept as a condition of the ASSISTANT SECRETARY's execution of this MEMORANDUM that the TRIBE is bound by the decision of the Nooksack Tribal Court of Appeals in *Belmont v. Kelly*, March 22, 2016, affirming the Tribal Court's finding that the Plaintiffs/Respondents "are currently enrolled members." Unless and until they are disenrolled via a Tribal mechanism that

accords due process and is otherwise in accordance with Nooksack Tribal law, all tribal members purportedly disenrolled since March 24, 2016 are members of the Nooksack Indian Tribe, entitled to vote in Tribal Elections, to run for Tribal office, and to receive the benefits of Tribal membership equally with all other Tribal members.

F. Funding. Immediately upon execution of this MEMORANDUM, the ASSISTANT SECRETARY shall resume funding Indian Self-Determination and Education Assistance Act Contracts with the Tribe. Pursuant to 25 U.S.C. § 5324(b) and 25 U.S.C. § 5329(c), model agreement section 1(b)(7), for contracts awarded to the Tribe pursuant to the Indian Self-Determination and Education Assistance Act, the parties agree that, until the ASSISTANT SECRETARY recognizes a Tribal Council for the Tribe pursuant to paragraph D, above:

- Each month, for each contract, the Tribe will provide to BIA a monthly certified SF-425, Financial Status Report to support contract expenditures.
- BIA will make payments of all contract funds, including contract support cost funds, to the Tribe by way of monthly advance installments, contingent on BIA's determination each month that:
 - the previous month's expenditures under the contracts have been reasonable, allowable and allocable to the contracts and that;
 - the contracts are being performed adequately for the benefit of the Indian people being served.
- If, in any month, BIA determines that the above two conditions have not been met, BIA will continue to make monthly payments by way of reimbursement, contingent on BIA's determination each month that:
 - previous expenditures under the contracts have been reasonable, allowable and allocable to the contracts and that;
 - the contracts are being performed adequately for the benefit of the Indian people being served.
- If, after BIA initiates monthly payments by way of reimbursement, BIA determines that the above two conditions have not been met, BIA will withhold contract payments, including payment of contract support cost funds, until the ASSISTANT SECRETARY recognizes a Tribal Council for the Tribe.

- Other payment methods will resume when the ASSISTANT SECRETARY recognizes a Tribal Council for the Tribe.

Disbursement of funds pursuant to this section shall cease upon termination of this MOA as provided in Paragraph C.

G. Dissemination of Agreement. The parties to this MEMORANDUM agree that this MEMORANDUM may be disseminated to other departments, agencies, and offices of the government of the UNITED STATES OF AMERICA.

H. Revocation of Interim Recognition. In the event that ROBERT KELLY fails to schedule and hold a special election as described in Paragraph A, above, or otherwise fails to fulfill any condition or obligation of this agreement, the ASSISTANT SECRETARY shall immediately contact him and attempt to cure any defects to the mutual satisfaction of both parties. In the event that the parties are unable to cure defects to their mutual satisfaction within 14 days of the ASSISTANT SECRETARY's notice to ROBERT KELLY, the ASSISTANT SECRETARY shall have the right to cancel this MEMORANDUM upon written notification to ROBERT KELLY.

I. Complete Agreement. This MEMORANDUM OF AGREEMENT is the complete agreement between the ASSISTANT SECRETARY - INDIAN AFFAIRS, UNITED STATES DEPARTMENT OF THE INTERIOR, and the HON. ROBERT KELLY, CHAIRMAN of the NOOKSACK INDIAN TRIBAL COUNCIL, and may be amended only by written agreement signed by both parties.

J. Enforceability. This MEMORANDUM is not intended by the parties to be either binding or enforceable upon either party, nor enforceable through an administrative process or in a court of law.

K. Signatures. This MEMORANDUM must be signed by both parties. Signatories attest that they are authorized to sign on behalf of their principal. Signatures must include the signatory's title and the principal's name.

For the Department of the Interior:

Authorized Official's signature: _____

Authorized Official's Printed Name: Michael S. Black

Authorized Official's Title: Acting Assistant Secretary - Indian Affairs

Address: _____

Telephone(s): _____ ; _____

E-Mail: _____

For Robert Kelly:

Authorized signature: _____

Signatory's Printed Name: Robert Kelly, Jr.

Signatory's Title: Chairman

Address: 5016 Deming Road, #157, Deming, WA 98244

Telephone(s): 360-592-5176 ; _____

E-Mail: bkelly@nooksack-nsn.gov

Exhibit A: Form of letter from AS-IA recognizing Tribal Council pursuant to September 2017 election

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

Dear Chairman Kelly:

Pursuant to the Memorandum of Agreement between you and the Acting Assistant Secretary – Indian Affairs, executed July _____, 2017, the Nooksack Tribe of Indians conducted a special election on _____ [DATE] to fill four seats on the Tribal Council. The Tribe's Election Board certified the results on [DATE]. The Regional Director of the Northwest Region of the Bureau of Indian Affairs informed me, by memo dated _____, that the BIA has not identified any reason to reject the validity of the Tribe's election.

Therefore, consistent with commitments made by the Acting Assistant Secretary in the Memorandum of Agreement referenced above, I hereby recognize the validity of the Nooksack Indian Tribal Council comprised of the four Council members elected in 2014 and the four council members elected in the [September] 2017 special election:

Robert Kelly,	Chairman
_____	Vice Chairman
_____	Treasurer
Nadene Rapada,	Secretary
Robert "Bob" Solomon,	Position A
Carmen Tageant,	Position B.
_____	Position C
_____	Position D

I look forward to working with the Nooksack Tribe in the future.