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THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

THE NOOKSACK INDIAN TRIBE,

Plaintiff,

v.

RYAN K. ZINKE, in his official capacity as Acting Secretary of the Interior; the U.S. DEPARTMENT OF THE INTERIOR; JOHN TAHSUDA, in his official capacity as Acting Assistant Secretary - Indian Affairs; BRYAN RICE, in his official capacity as Director, Bureau of Indian Affairs, Department of the Interior; STANLEY M. SPEAKS, in his official capacity as Regional Director, Northwest Region, Bureau of Indian Affairs; MARCELLA L. TETERS, in her official capacity as Superintendent, Puget Sound Agency, Bureau of Indian Affairs; TIMOTHY BROWN, in his official capacity as Senior Regional Awarding Official for the Bureau of Indian Affairs, Northwest Region; and THE UNITED STATES OF AMERICA,

Defendants.

Case No. 2:17-cv-00219-JCC

JOINT STATUS REPORT

Pursuant to the Court’s June 27, 2017 Minute Order (Dkt. 51), the parties provide this Joint Status Report.

Chairman Robert Kelly and then-Acting Assistant Secretary-Indian Affairs Michael

1 Black met on June 15, 2017. The Intervenor Defendants were not invited to participate in
2 that meeting.

3 Following that meeting, at Plaintiff's request, Plaintiff and the Federal Defendants
4 jointly moved to stay the proceedings, including its decision on the Tribe's pending Motion
5 for Reconsideration, to "afford them an opportunity to further pursue ongoing negotiations
6 which they hope and expect will lead to a resolution of the dispute which is the subject of
7 this lawsuit." (Dkt. 49).

8 Statement of Intervenor Defendants: Intervenor Defendants did not oppose this stay
9 request, provided they "be included in the referenced 'ongoing negotiations'" (Dkt. No. 50).
10 The Court instructed the "parties, **including Intervenor Defendants** . . . to file a joint status
11 report . . . informing the Court of the status of their negotiations," by October 25, 2017 (Dkt.
12 51) (emphasis added).

13 The negotiations that began with the June 15, 2017 meeting eventually resulted in the
14 execution of a Memorandum of Agreement on August 25, 2017 between Chairman Kelly and
15 Acting Assistant Secretary-Indian Affairs Black (MOA). A copy of the executed MOA is
16 appended hereto.

17 Statement of Federal Defendants: Under the MOA, all tribal members purportedly
18 disenrolled since March 24, 2016 are members of the Nooksack Indian Tribe, entitled to vote
19 in Tribal Elections, to run for Tribal office, and to receive the benefits of Tribal membership
20 equally with all other Tribal members. (MOA, ¶ F).

21 Statement of Intervenor Defendants: Despite the MOA, Intervenor Defendants are
22 still being denied certain benefits and rights, for example, certain Intervenor Defendants are
23 being denied public school supply assistance; certain other Intervenor Defendants, who
24 turned voting age (18) since March 24, 2016, are being denied the right to vote.

25 Statement of Plaintiff: The Tribe denies Intervenor Defendants' contentions. In
26

1 addition, under the MOA, only “eligible Nooksack voters **as of March 2016** shall be eligible
2 to vote in the resulting election.” (MOA, ¶ B, emphasis added). Thus, voters who turned 18
3 after March 24, 2016 are ineligible to vote under the terms of the MOA.

4 Statement of Federal Defendants: In addition, under the MOA, the Assistant
5 Secretary only recognizes actions taken by the Nooksack Indian Tribal Council prior to
6 March 24, 2016 when a quorum existed. The Assistant Secretary does not recognize
7 Nooksack Indian Tribal Council actions taken without a quorum. This includes the
8 purported recall of Councilmember Carmen Tageant in April 2016. (MOA, ¶ B).

9 Statement of Intervenor Defendants: Despite the MOA, Councilmember Tageant is
10 still being denied her seat on the Tribal Council by Chairman Kelly.

11 Statement of Plaintiff: The MOA did not restore Ms. Tageant to a seat on the
12 Council. In addition, there is no recognized Council on which to sit at present, as
13 acknowledged by the MOA.

14 Statement of the Federal Defendants: The MOA outlines a procedure by which the
15 federal government may recognize a Tribal Council, elected through a Special Council
16 Election under Nooksack law, as the governing body of the Nooksack Indian Tribe. (MOA,
17 ¶¶ A, B). However, whether the federal government will recognize a Tribal Council
18 resulting from this Special Election is wholly dependent upon an endorsement of the results
19 of the Special Election by the Regional Director of the Bureau of Indian Affairs and the
20 issuance of a letter granting full recognition by the Assistant Secretary – Indian Affairs (AS-
21 IA). Under the MOA, there are no guarantees that the results of this Special Election will be
22 endorsed by the Regional Director or that recognition of the resulting Tribal Council will be
23 granted by the AS-IA.
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1 While, as acknowledged in the MOA, there is no recognized Tribal Council at
2 present, on an interim basis, Federal Defendants agreed to recognize Chairman Kelly as a
3 person of authority within the Tribe with whom the DOI will maintain government-to-
4 government relations, for such time as the MOA is in effect. (MOA, ¶ C).

5
6 The special election process contemplated in the MOA is under way. The primary
7 election is scheduled for November 4, 2017 and the final election is scheduled for December
8 2, 2017.

9 Aside from the discussions leading to the execution of the MOA, the Plaintiff and the
10 Federal Defendants have had no further settlement discussions although there have been a
11 variety of communications concerning Plaintiff's implementation of the MOA.

12
13 There have been no discussions or settlement negotiations involving the Plaintiff, the
14 Federal Defendants, and the Intervenor Defendants although there have been a variety of
15 communications concerning Plaintiff's implementation of the MOA.

16 Statement of Intervenor Defendants: In contravention of the Court's Order (Dkt. 51),
17 Plaintiff excluded Intervenor Defendants from the negotiations leading to the execution of
18 the MOA, telling Intervenor Defendants, among other things, that "[a]s the negotiations were
19 in the nature of government-to-government consultations," their "lack of involvement was of
20 no immediate concern" to Plaintiff. Federal Defendants, on the other hand, kept Intervenor
21 Defendants apprised of the negotiations to some extent.

22
23 Intervenor Defendants communicated with Plaintiff and the Federal Defendants
24 concerning Plaintiff's implementation of the MOA, expressing concern about various
25 election and voting irregularities, many of which were foreseeable to Intervenor Defendants
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1 and thus could have been addressed in the MOA were they not excluded from the
2 negotiations by Plaintiff.

3 The MOA does not directly address this litigation, or directly resolve the claims
4 asserted by the Plaintiff.

5
6 Statement of the Federal Defendants: However, presumably, a lawful and fair
7 Special Election which results in the seating of duly elected Council members and
8 recognition of the Tribal government by the AS-IA will render this dispute between the
9 parties moot and effectively terminate this lawsuit.

10 Statement of Plaintiff: Plaintiff does not believe an extension of the stay will result in
11 fruitful discussions leading to the resolution of the Plaintiff's claims and a settlement of this
12 litigation.

13
14 Statement of Federal Defendants and Intervenor Defendants: It was Federal
15 Defendants' and Intervenor Defendants' understanding in entering into the stipulation and
16 agreeing to the extended stay sought by Plaintiff that they were assenting to a course of
17 action that would bring this lawsuit to an amicable resolution without a need for further
18 litigation and expenditure of time and resources, and represented this belief to the Court by
19 entering into the stipulation. While Federal Defendants and Intervenor Defendants still
20 believe that this is possible, Plaintiff believes otherwise.

21
22 Statement of Intervenor Defendants: Intervenor Defendants only believe that such a
23 course of action is still possible provided they are included in the negotiations, as originally
24 intended (Dkt. No. 50; Dkt. 51). Otherwise, Intervenor Defendants maintain that Plaintiff
25 has committed a bait and switch upon this Court, which should not be condoned or
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1 perpetuated.

2 Statement of Plaintiff: Plaintiff agrees that at the time the stay was sought, the Tribe
3 thought a stay could lead to resolution of the Tribe's claims without need of further litigation,
4 and its counsel so represented to the Court. However, the MOA that was signed two months
5 thereafter did not resolve the issue of the Federal Defendants' failure to recognize the
6 Council after March 2016, and the failure to fully restore the Tribe's 638 funding, among
7 other issues. That is the basis for Plaintiff's belief and assertion that the extension of the
8 stay will not lead to the resolution of Plaintiff's claims and a settlement of this litigation.
9

10 The Plaintiff requests that, upon the expiration of the stay, the Court renote Plaintiff's
11 Motion for Reconsideration (Dkt. No. 45). Under the circumstances, the Defendants and
12 Intervenor Defendants do not oppose that request with the understanding that the briefing is
13 complete, the issues are joined, and the matter is submitted and ready for adjudication by the
14 Court.
15

16 DATED this 27th day of October, 2017.

17 Presented by:

18 SCHWABE WILLIAMSON & WYATT,
19 P.C.

ANNETTE L. HAYES
UNITED STATES ATTORNEY

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26 JOINT STATUS REPORT – Page 6
2:17-cv-00219-JCC

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the 26th day of October, 2017, I arranged for service of the foregoing JOINT STATUS REPORT to the parties via the Court’s CM/ECF system as follows:

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/s/ Connie Sue Martin
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