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UNITED STATES DEPARTMENT OF THE INTERIOR
BOARD OF INDIAN APPEALS

ELEANOR J. BELMONT; OLIVE T. OSHIRO; FRANCINE ADAMS; ANTHONY ADAMS; BRINA ALDREDGE; BRITTANY ALDREDGE; NORMA ALDREDGE; ANGELITA AURE; DOE AURE; CHELSEA BAKER; KELSEA BAKER; PRICILLA BAKER; JERIC BAKER; FLORENTINO BARRIL; CALEB BARRIL-BOTHELL; CATHALINA BARRILL; BILLIE BARTLE; ELIZABETH BELLO; PATRICK BELLO; ELPIDO BELLO JR.; EUGENA BELLO; JOSEPH BELLO; LUCAS BELLO; NICHOLAS ELPEDIO BELLO; DOMINIC BELLO; RICHARD BELLO; DIONNE BENNETT; OLIVA BOTHELL; KIRK BROWN; CHRISTINA BUMATAY; ANDREA BUMATAY; ROBERT BUMATAY; ANDREW BUMATAY; JAMES BUMATAY; BARTON BUMATAY; ANGELA BUMATAY; NOELANI BUMATAY-JEFFERSON; MARIAH BUMATAY-JEFFERSON; CAROL CAILING; KEITH CAILING; NEVEAH CAILING; ANITA CAMPBELL; ALEXANDREA CARR; LEE CARR; ROBLEY CARR; ANNA CARR; QUOLIA CARR; CHRISSE CASONO; NINA CHOW; KYLE COBLE; LISA COBLE; STEVE COBLE; GILDA CORPUZ; PEDRO CORPUZ; CHRISTINA CORPUZ-PEATO; JORDAN CRAIN; NARCISCO CUNANAN; DONALD EDWARDS; BRIONNA ERICKSON; SETH ERICKSON; TERESA

NO.
APPELLANTS' NOTICE OF APPEAL
AND INITIAL STATEMENT OF
REASONS

1 ERICKSON; MICHAEL FAULKS;
VICTORIA FRANZ; ROMA FURUTA;
2 ELEANOR GABRIEL; JESSICA GABRIEL;
REGINALD GABRIEL; AYL A GARDIPE;
3 DANCHO GARDIPE; DAVID GARDIPE;
DONNA GASPAR; GUADALUPE GASPAR;
4 JADE GASPAR; JESUS GASPAR; ASIA
GILYARD; LEONARD GLADSTONE; LOIS
5 GLADSTONE; MIKALA GLADSTONE;
RICHARD GLADSTONE; TYRONE
6 GLADSTONE; MAILE GOMEZ-RABANG;
MARIE HADDOW; MIRANDA HADDOW;
7 DOLLY HADDOW; TINA HANCOCK;
AMYA HART; ANITA HART; CHARLOTTE
8 HART; JENNIFER HART; LINDA HART;
PHILLIP L. HART; ROSE HERNANDEZ;
9 KIMBERLY ISEDA; JUANITA JAVIER;
MANUEL JAVIER; SATURNINO JAVIER;
10 KALEIOLANI JEFFERSON; JOHNNY
JENSEN; MAXIMO KAUFFMAN; MARC
11 ANTHONY KAUFFMAN; CAMERON
LAWRENCE; ADRIAN LOPEZ JR.; ADRIAN
12 LOPEZ SR.; ARSENIO LOPEZ; BERTA
LOPEZ (RABANG); TRINA LOPEZ (HARO);
13 TRENT LOUGHNANE; KIYOMIE
MARSHALL; CARLOS MIGUEL;
14 LAWRENCE MIGUEL; MATIAS MIGUEL;
RONALD MIGUEL III; RONALD MIGUEL
15 JR.; TONI MIGUEL; DANTE NARTE;
FRAZER NARTE; JAIME NARTE; JENAIA
16 NARTE; KAILEE NARTE; MARIO NARTE
JR.; MARIO NARTE; PHILLIP D. NARTE;
17 ANTONIO NARTE; ANDREW NICOL;
TERIA ANN NICOL; ROY NICOL;
18 ALEXANDER NICOL-MILLS; DUSTIN
OSHIRO; ELIZABETH OSHIRO; MATTHEW
19 OSHIRO; OLIVIA OSHIRO; TIANA
OSHIRO; STEVEN PARK; EDMUND PARK;
20 ADELINA PARKER; KUAIKA PELETI;
RENE PELETI; TINO PELETI; MORENO
21 PERALTA; SAMSON PHILLIPS; SELIA
RABANG; SHALENE RABANG; CLARA
22 RABANG; LEONARD RABANG; MAXINA
RABANG; MIANA RABANG; REANNA
23 RABANG; TYRONE RABANG JR.; TYRONE
RABANG; WILLIAM RABANG; ANGEL
24 RABANG; ANGELITA RABANG;
ANTHONY RABANG; BRIANNA RABANG;
25

1 DOMINGO A. RABANG SR.; DOMINGO F.
RABANG; FRANCISCA L.G. RABANG;
2 FRANCISCA S. RABANG; FRANCISCO A.
RABANG; FRANCISCO D.G. RABANG;
3 FRANCISCO RABANG JR.; GINA RABANG;
JAMES RABANG; LAJUNE RABANG;
4 MARTINO RABANG; MICHAEL RABANG;
RACHEL RABANG; ROBERT JAMES
5 RABANG JR.; ROBERT JAMES RABANG
SR.; SANTANA RABANG; TIERRA
6 RABANG; TINA RABANG; SUNSIE
RABANG; WILLIAM RABANG JR.;
7 SHARON RABANG-BROWN; ALLEN
RAPADA; ANDREW RAPADA; BART
8 RAPADA; CALVIN RAPADA; DANIEL
FRED RAPADA; DANIEL FELIX RAPADA;
9 DARRELL RAPADA; EMILY RAPADA;
GERALD RAPADA; HONORATO RAPADA
10 III; HONORATO RAPADA; JAMES
RAPADA; KIMBERLY RAPADA; MELISSA
11 RAPADA; MILDRED RAPADA; RECONAR
RAPADA; RECONAR G.B. RAPADA; SONIA
12 RAPADA; TIERRA RAPADA; ZACK
RAPADA; NADINE RAPADA; ANGELA
13 RAPADA; BETSIEBO RAPADA;
MARCELLINA RENTERIA; SYLVIA
14 RENTERIA; VINCENT RENTERIA; ALLEN
RICHAMIRE; VERONICA RICHMIRE;
15 ANGELO RITUALO; DIANA (MONA)
RITUALO; FELIPE RITUALO; TERESA
16 RITUALO; BRITTON ROBERTS; MICHELLE
JOAN ROBERTS; RAFFINAND ROBERTS;
17 DEANNA ROMERO; RUDY ROMERO;
EMMANUAL ROMERO-DANCEL;
18 KRISTOFFER SILVA; SEVINA SILVA;
TYLER SILVA; DEBBIE SMITH (NARTE);
19 ALEX ST. GERMAIN; BREANNA ST.
GERMAIN; RUDY ST. GERMAIN; TAYLOR
20 ST. GERMAIN; TERRY ST. GERMAIN JR.;
ROSE TOVAR; AND JOCELYN TOVAR;
21 CHERYL TRAINOR; KRISTAL TRAINOR;
DEBORAH EILEEN GLADSTONE
22 ALEXANDER; ROBERT STANLEY FORBES
GLADSTONE; MARGRETTY (MARJORIE)
23 LAJUNE RABANG; BONNIE CLARA
GLADSTONE FORBES RUSSELL,
24

Appellants,

25

1
2 v.

3 ACTING NORTHWEST REGIONAL
4 DIRECTOR, BUREAU OF INDIAN
5 AFFAIRS,

Appellee.

6 Pursuant to 25 C.F.R. Part 2, Appellants appeal the Acting Northwest Regional Director's
7 May 21, 2018, decision to acknowledge Roswell "Ross" Cline Sr. as the legally elected Tribal
8 Council Chairman of the Nooksack Tribe on May 5, 2018 ("Decision"). **Appendix A.**
9 Appellants are 230 Nooksack Indians who are over the age of eighteen.

10 The Acting Northwest Regional Director's Decision is a sharp departure from Interior's
11 established policy of interpreting Nooksack Tribal constitutional, statutory, and common law to
12 determine whether the Nooksack Tribal Council was validly seated as the governing body of the
13 Tribe for the purposes of the government-to-government relationship between the Federal
14 Government and the Nooksack Indian Tribe. The failure to distinguish its past practice is a clear
15 indication of a lack of reasoned articulation and responsibility. This final agency decision is
16 arbitrary and capricious for the reasons initially outlined below.

17 1. On October 17, 2016, U.S. Department of the Interior Principal Deputy Assistant
18 Secretary ("PDAS") Lawrence Roberts issued a determination to then-Nooksack Tribal
19 Chairman Robert Kelly Jr., insisting that Nooksack Tribal Council elections be "open to 'all
20 enrolled members of the Nooksack Tribe, eighteen years of age or over' regardless of county
21 residency, to vote to fill the vacant Council seats." PDAS Roberts warned: "elections
22 inconsistent with Nooksack law will not be recognized by the Department." This determination
23 reflects Interior's policy of interpreting Tribal constitutional, statutory, and common law to
24 determine whether the Tribal Council was validly seated as the Tribal governing body for the
25

1 purposes of the government-to-government relationship. Interior established a policy to
2 undertake the responsibility of interpreting Tribal constitutional, statutory, and common law to
3 determine the legality of Tribal Council elections to ensure that the Federal Government only
4 participates in the government-to-government relationship with the validly seated Tribal
5 governing body.

6 2. On November 14, 2016, PDAS Roberts issued a second determination to
7 Chairman Kelly, again insisting that Nooksack Tribal Council elections be “open to ‘all enrolled
8 members of the Nooksack Tribe, eighteen years or older,’ regardless of county residency. . . .”

9 3. On December 23, 2016, PDAS Roberts issued a third determination to Chairman
10 Kelly, repeating that: “Elections or actions inconsistent with . . . Nooksack law will not be
11 recognized by the Department.”

12 4. On January 16, 2018, PDAS John Tahsuda issued a fourth determination to
13 Chairman Kelly, affirming “the three letters issued by Principal Deputy Assistant Secretary
14 Roberts in 2016.” In regard to the “Nooksack Tribal Council Election scheduled for March 17,
15 2018,” PDAS Tahsuda likewise mandated “all eligible Nooksack voters as of March 2018 shall
16 be eligible to vote, regardless of county residency.” PDAS Tahsuda also made plain that that
17 “those purportedly disenrolled members since March 24, 2016, are entitled to vote in the Tribal
18 elections.”

19 5. On March 9, 2018, PDAS Tahsuda acknowledged the validity of Nooksack Tribal
20 Council on an interim basis upon the completion and endorsement of a Nooksack Tribal Council
21 Special Election that concluded on December 2, 2017.¹ PDAS Tahsuda extended that interim
22 recognition “until the results of the general election originally scheduled for March 17, 2018, can
23

24 ¹ Appellants do not appeal PDAS Tahsuda’s March 9, 2018, decision to “recognize the validity of the Tribal
25 Council,” or any other agency action pertaining to the December 2, 2017, Special Election. That decision and any
related action are subject to direct appeal to the U.S. District Court. 5 U.S.C. § 704.

1 be certified” (“General Election”). The General Election was postponed, and eventually
2 occurred on May 5, 2018.

3 6. On March 15, 2018, the interim Nooksack Tribal Council purportedly “ratified
4 and reaffirmed” a 2016 “Resolution officially removing [Appellants] from the roll of currently
5 enrolled members.” In doing so, the interim Council ignored no less than ten federal laws and
6 Nooksack Tribal Court and Tribal Court of Appeals orders that stayed or enjoined any
7 disenrollment at Nooksack, including the federal regulations that attach to the pending appeal
8 before this Board in *St. Germain v. Acting N.W. Reg’l Dir.*, 17 IBIA No. 16-022 (Bd. of Indian
9 App. 2016).²

10 7. On April 6, 2018, then-Acting Northwest Regional Director Twyla Stange was
11 notified of Appellants’ illegal disenrollment “even though disenrollment at Nooksack is currently

12 ² Appellants’ Opening Brief at 4, *St. Germain v. Acting N.W. Reg’l Dir.*, 17 IBIA No. 16-022 (Bd. of Indian App.
13 2016) (Appealing “whether the Superintendent and Regional Director approved the Tribe’s proposed amendments to
14 Title 63 in accordance with the administrative rules, procedures, and laws that direct BIA decision making.”); 43
15 C.F.R. § 4.314(a) (2004) (“No decision of an administrative law judge, Indian probate judge, or BIA official that at
16 the time of its rendition is subject to appeal to the Board, will be considered final . . .”); 25 C.F.R. § 2.6(a) (1989)
17 (“No decision, which at the time of its rendition is subject to appeal to a superior authority in the Department, shall
18 be considered final . . .”); 25 C.F.R. § 2.6(b) (1989) (“Decisions made by officials of the Bureau of Indian Affairs
19 shall be effective when the time for filing a notice of appeal has expired and no notice of appeal has been filed.”);
20 Order at 2, *Michelle Roberts, et al., v. Robert Kelly, et al.*, No. 2013-CI-CL-003 and *Belmont, et al., v. Kelly, et al.*,
21 No. 2014-CI-CL-007, (Nooksack Tribal Ct. Feb. 26, 2015) (“the Parties shall maintain the status quo . . . until a
22 decision approving Title 63 becomes final for the Department of the Interior pursuant to 25 C.F.R. § 2.6.”),
23 available at <https://turtletalk.files.wordpress.com/2015/02/order.pdf>; see also Opinion at 9, *Michelle Roberts, et al.,*
24 *v. Robert Kelly, et al.*, No. 2013- CI-CL-003 (Nooksack Tribal App. Ct. Mar. 18, 2014) (“[T]hese procedures were
25 not properly adopted in accordance with the strict requirements of the Nooksack Constitution, and any procedural
rules governing disenrollment proceedings must be adopted by ordinance and the ordinance approved by the
Secretary of the Interior as provided for in the Nooksack Constitution.”), available at
<https://turtletalk.files.wordpress.com/2014/03/roberts-v-kelly-coa-opinion.pdf>; Decision and Order Granting
Plaintiffs’ Motion for Preliminary Injunction, *Belmont et al., v. Kelly, et al.*, No. 2014-CI-CL-007 (Nooksack Tribal
Ct. June 12, 2014) (granting Plaintiff’s motion for preliminary injunction holding “[t]his approach appears to be an
attempt to circumvent the very clear holdings of the Court of Appeals that disenrollment procedures . . . must be
approved by the Secretary of the Interior . . .”), available at [https://turtletalk.files.wordpress.com/2014/06/belmont-](https://turtletalk.files.wordpress.com/2014/06/belmont-v-kelly-case-no-2014-ci-cl-007-decision-and-order-granting-plaintiffs-motion-for-preliminary-injunction.pdf)
[v-kelly-case-no-2014-ci-cl-007-decision-and-order-](https://turtletalk.files.wordpress.com/2014/06/belmont-v-kelly-case-no-2014-ci-cl-007-decision-and-order-granting-plaintiffs-motion-for-preliminary-injunction.pdf)
granting-plaintiffs-motion-for-preliminary-injunction.pdf; Order
Enjoining Disenrollment Proceedings, *Michelle Roberts, et al., v. Robert Kelly, et al.*, No. 2013-CI-CL-003
(Nooksack Tribal Ct. Mar. 31, 2014) (Court “hereby issues a permanent injunction against the Defendants enjoining
them from undertaking disenrollment proceedings . . .”), available at
[https://turtletalk.files.wordpress.com/2014/04/roberts-v-kelly-order-permanently-enjoining-](https://turtletalk.files.wordpress.com/2014/04/roberts-v-kelly-order-permanently-enjoining-disenrollment-proceedings.pdf)
disenrollment-
proceedings.pdf; Second Order Granting Request to Join April 15, 2016, Motion and Be Subject to June 28, 2016,
Order, *Belmont, et al., v. Kelly, et al.*, No. 2014-CI-CL-007 (Nooksack Tribal App. Ct. Sept. 28, 2016) (order
granting Formal Indications to 127 more plaintiffs regarding Nooksack Tribal Court June 28, Order); Order
Granting Requests to Join April 15, 2016, Motion and Be Subject to June 28, 2016, Order, *Belmont, et al., v. Kelly, et*
al., No. 2014-CI-CL-007 (Nooksack Tribal App. Ct. Sept. 21, 2016) (order granting Formal Indications to 17
plaintiffs regarding Nooksack Tribal Court June 28, 2016 Order).

1 stayed or enjoined by no less than ten federal stay laws and Tribal Court and Tribal Court of
2 Appeals orders.” (emphasis in original). Appellants cited the ten federal and tribal authorities
3 cited, *supra* note 2, to Ms. Stange on April 6, 2018. She took no action.

4 8. By May 5, 2018, Appellants were barred from voting in the General Election,
5 during which Mr. Cline was purportedly elected Nooksack Tribal Council Chairman.

6 9. On May 7, 2017, Appellants notified Ms. Stange that despite PDAS
7 Tahsuda’s “January 18, 2018, directive that ‘all those purportedly disenrolled members since
8 March 24, 2016 are entitled to vote in Tribal elections,’ [Appellants] were wholly excluded from
9 the electoral process.” She again took no action.

10 10. On May 10, 2018, Appellants notified Ms. Stange that “between 200 and 210
11 eligible Nooksack voters were not allowed to vote in the election that involved only 568 counted
12 ballots.”³ She again took no action.

13 11. On May 14, 2018, Ms. Tammie Poitra replaced Ms. Stange as the Acting
14 Northwest Regional Director.

15 12. On May 21, 2018, the Acting Northwest Regional Director rendered her Decision
16 to acknowledge Mr. Cline as Tribal Council Chairman.⁴ Given PDAS Roberts and Tahsuda’s
17 various determinations that Appellants were entitled to vote in the General Election, and that
18 “[e]lections or actions inconsistent with . . . Nooksack law will not be recognized by the
19 Department,” the Acting Northwest Regional Director’s Decision to recognize Mr. Cline was a
20 sudden and unexplained departure from Interior’s established policy of interpreting Tribal
21 constitutional, statutory, and common law to determine the legality of Tribal Council elections to

22 ³ As it turns out, at least 230 eligible voters—Appellants, namely—were disqualified from voting. Appellants—the
23 so-called “Nooksack 306”—have included as many as 271 Nooksack Indians, in related litigation. The number 230
here excludes those who have walked on while purportedly disenrolled, or who are not of voting age 18.

24 ⁴ Appellants do not yet know, but production of the administration record should reveal, whether the Acting
25 Northwest Regional Director “certified” the General Election results, as PDAS Tahsuda intimated on March 9,
2018. If the Acting Northwest Regional Director did certify the General Election results, *i.e.*, for all four races,
Appellants reserve the right to expand this appeal to challenge any such election certification decision.

1 ensure that the Federal Government only participates in the government-to-government
2 relationship with the validly seated Tribal governing body. Without any explanation or valid
3 reason, this change in policy is arbitrary and capricious.

4 DATED this 11th of June 2018.

5
6 GALANDA BROADMAN PLLC

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Attorneys for Appellants

INTERESTED PARTIES

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Nooksack Indian Tribe
P.O. Box 157
Deming, WA, 98244

Tammie Poitra
Acting Northwest Regional Director
Northwest Regional Office
Bureau of Indian Affairs
US Department of the Interior
911 NE 11th Ave
Portland OR 97232

John Tahsuda
Principal Deputy Assistant Secretary – Indian Affairs
US Department of the Interior
1849 C Street, N.W., MS-4660-MIB
Washington, D.C. 20240

Darryl LaCounte
Acting Director of Bureau of Indian Affairs
Bureau of Indian Affairs,
1849 C Street, N.W., MS-4606
Washington, D.C. 20240

1 **CERTIFICATE OF SERVICE**

2 I, Alice Hall, say:

3 1. I am over eighteen years of age and am competent to testify, and have personal
4 knowledge of the facts set forth herein. I am employed with Galanda Broadman, PLLC, counsel
5 of record for Appellants.

6 2. Today, I caused the foregoing document to be filed, via US Mail, Certified Return
7 Receipt Requested, with the following:

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

13 John Tahsuda
14 Principal Deputy Assistant Secretary – Indian Affairs⁵
15 US Department of the Interior
16 1849 C Street, N.W., MS-4660-MIB
17 Washington, D.C. 20240

18 Tammie Poitra
19 Acting Northwest Regional Director
20 Northwest Regional Office
21 Bureau of Indian Affairs
22 US Department of the Interior
23 911 NE 11th Ave
24 Portland OR 97232

25 Christina Parker
Department Council
Office of the Pacific NW Regional Solicitor
U.S. Department of the Interior
805 SW Broadway, Suite 600
Portland, OR 97205

Darryl LaCounte
Acting Director of Bureau of Indian Affairs
Bureau of Indian Affairs,
1849 C Street, N.W., MS-4606
Washington, D.C. 20240

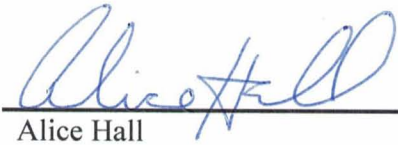
⁵ As an Assistant Secretary – Indian Affairs has not been confirmed by the U.S. Senate, notice of this appeal per 43 C.F.R. §§ 4.332(a) and 4.333, has been sent to PDAS Tahsuda in accordance with 5 U.S.C. § 3345.

1 Daniel Jorjani
Principal Deputy Solicitor
2 U.S. Department of the Interior
1849 C Street, N.W.
3 Washington DC 20240

4 Nooksack Indian Tribe
P.O. Box 157
5 Deming, WA, 98244

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

8 DATED this 11th day of June 2018.

9 
10 _____
Alice Hall

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APPENDIX A



United States Department of the Interior

Bureau of Indian Affairs
Northwest Regional Office
911 NE 11th Avenue
Portland, Oregon 97232-4169

MAY 21 2018

In Reply Refer To:
Regional Director's Office


The Honorable Roswell (Ross) Cline, Sr.
Nooksack Indian Tribe
Post Office Box 157
Deming, Washington 98244-0157

Dear Chairman Cline:

This letter is to acknowledge and congratulate you as the Chairman of the Nooksack Indian Tribe (Tribe). We wish you success and will strive to work with you and the Tribe in a continuing professional working relationship. If there is anything that the Bureau of Indian Affairs, Northwest Regional Office, can do to be of service to the Tribe, please contact me at (503) 231-6702. We look forward to working with you.

Sincerely,

Tammie Poitra


ACTING
Acting Northwest Regional Director