



MAY 16 2017

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

Mr. Robert Kelly, Jr.
Chairman, Tribal Council
Nooksack Indian Tribe
P.O. Box 157
Deming, WA 98244

Dear Chairman Kelly:

I am writing to advise you that the Indian Health Service (“IHS” or “Agency”) does not have the authority to move forward with the informal conference scheduled for May 18, 2017, and will reassume all programs, functions, services, and activities (“PFSAs”) effective immediately. Although IHS originally scheduled an informal conference in response to the request received on April 27, 2017, IHS cannot engage in this manner with the Nooksack Indian Tribe as long as it is operating with a holdover council, for the same reasons that the Federal court ruled it did not have jurisdiction in *Nooksack Indian Tribe v. Zinke, et al.*, No. 2:17-cv-00219 (W.D. Wa. filed Feb. 13, 2017). The Parties agreed that the outcome of the above-referenced case would impact the reassumption matter, including the current appeal before the Interior Board of Indian Appeals (“IBIA”).

On May 11, 2017, the district court issued a decision dismissing the lawsuit. Specifically, the Judge ruled that:

[D]eference is owed to the [Department of Interior (“DOI”)] decisions and the holdover Council does not have authority to bring this case against the federal government in the interim period where the tribal leadership is considered inadequate by the DOI.

Nooksack Indian Tribe v. Zinke, et al., No. 2:17-cv-00219, slip op. at 10 (W.D. Wa. May 11, 2017) (order granting Defendants’ motion to dismiss). The Judge further held that:

[T]he decisions taken and the leadership in place after March 24, 2016, are not valid at this time and on an interim basis because the DOI or [the Bureau of Indian Affairs] have not recognized any Nooksack tribal leadership.

Id. In accordance with this decision, the holdover council does not have standing to represent the Nooksack Indian Tribe.

Therefore, the holdover council also does not have any authority to request an informal conference or seek any further review of IHS’s reassumption decision. Accordingly, IHS must fully rescind the contract and reassume all PFSAs pursuant to the March 27, 2017 reassumption letter issued by the contracting officer. Therefore, the reassumption is considered effective on April 29, 2017, and IHS will proceed to work toward an orderly transition to ensure continuity of patient care. The transition is expected to be completed by June 13, 2017.

IHS hereby requests the return of all remaining ISDEAA funds provided on May 12, 2017, and an accounting of all funds expended since that date. Payment, along with a copy of this letter, should be sent to the following address:

Portland Area Indian Health Service
Division of Finance Management
1414 NW Northrup St., Suite 800
Portland, OR 97209

As noted, the holdover council cannot challenge the Agency's actions when tribal leadership is considered inadequate by the DOI. As indicated in the district court's order, "the holdover Council lacks authority to bring its claims on behalf of the Tribe because the DOI decisions decline to recognize the holdover Council." *Id.* Accordingly, the DOI must recognize a newly elected Nooksack Indian Tribal Council before IHS can resume a government-to-government relationship.

The IHS does not take such action lightly, but the Agency must act promptly to carry out health services where there is not a recognized governing body as required for contracting under the Indian Self-Determination and Education Assistance Act ("ISDEAA"). Please be aware that any health services provided by the Tribe after June 13, 2017, are no longer considered covered services under the ISDEAA.

If you have questions regarding this letter or if you or your health care staff would like to meet to coordinate an orderly transition, please contact me by telephone at (503) 414-5558.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dean M. Seyler', written over a large, light-colored oval-shaped mark.

Dean M. Seyler
Director

cc: Tribal Council members, Nooksack Indian Tribe
Charles N. Hurt, Jr. Senior Tribal Attorney, Nooksack Indian Tribe