



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

NOOKSACK INDIAN TRIBE,	)	Notice of Receipt of Appeal, Order to
Appellant,	)	Show Cause, and Order Concerning
	)	Service
v.	)	
	)	Docket No. IBIA 17-102
DIRECTOR, PORTLAND AREA,	)	
INDIAN HEALTH SERVICE,	)	
Appellee.	)	July 5, 2017

On June 29, 2017, the Interior Board of Indian Appeals (Board) received a notice of appeal by the Nooksack Indian Tribe (Tribe or Appellant), through Charles N. Hurt, Jr., Esq., Office of Tribal Attorney.<sup>1</sup> Appellant seeks review of a March 27, 2017, “Notice of Non-Emergency Reassumption of Contract No. 248-96-0025” (Decision) from the Director, Portland Area Office (Director), Indian Health Service (IHS).<sup>2</sup> A copy of the Decision is not included with the notice of appeal. Previously, on January 19, 2017, IHS issued the Tribe an initial notice of non-emergency reassumption.<sup>3</sup>

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<sup>1</sup> The appeal was filed in the name of the Tribe, and the Board has captioned the case accordingly. This case involves a dispute, which is also the subject of district court litigation to which Appellant and the Secretary of the Interior are parties, over whether the Tribal Council, as constituted, has the required quorum to file a lawsuit and take other action on behalf of the Tribe. *See Nooksack Indian Tribe v. Zinke et al.*, No. 2:17-cv-00219-JCC (W.D. Wa.). That litigation is currently stayed for negotiations. The Board’s caption of this case and its references to the “Tribe” as the appellant shall not be construed as a determination on the merits regarding the authority of the Tribal Council to represent the Tribe or to bring an appeal in the name of the Tribe.

<sup>2</sup> Notice of Appeal, June 26, 2017, at 1.

<sup>3</sup> Appellant appealed the initial notice as a declination of a proposed Annual Funding Agreement. *See Nooksack Indian Tribe v. Director, Portland Area, Indian Health Service*, Docket No. IBIA 17-045. The Board concluded that it was not a “declination” decision and referred the appeal to an Administrative Law Judge who could sort out the issues that Appellant sought to raise and proceed in an appropriate manner. In doing so, the Board expressed no opinion on whether the January 19, 2017, letter was subject to appeal or on whether Appellant had standing. *See Order Referring Appeal*, Mar. 2, 2017. In light of the district court litigation, that appeal is currently stayed.

This appeal has been assigned the above case name and docket number, which should be cited in all future correspondence and pleadings concerning this case.

Under 25 C.F.R. § 900.160(a), within 5 days of receiving a notice of appeal from an Indian tribe or tribal organization, the Board must decide whether the subject matter of the appeal falls within the scope of 25 C.F.R. § 900.150. In the present case, however, a threshold jurisdictional issue exists as to whether the appeal is timely. If the appeal is not timely, the Board lacks jurisdiction to proceed to make a determination under subsection 900.160(a).<sup>4</sup>

### Order to Show Cause

In the notice of appeal, Appellant asserts that the appeal is filed in accordance with 25 C.F.R. § 900.158. Section 900.158 provides that the Indian tribe or tribal organization “shall file a notice of appeal with the [Board] within 30 days of receiving either the initial decision or[, following an informal conference,] the recommended decision.” 25 C.F.R. § 900.158(b). The effective date of filing a notice of appeal with the Board is the date of hand-delivery or the date of mailing by certified mail. *Id.*

According to Appellant’s notice of appeal, the Decision was issued on March 27, 2017. Appellant filed the appeal with the Board, by certified mail, approximately 3 months later on June 26, 2017. As an appeal from the Decision, the appeal would appear untimely. The notice of appeal does not indicate whether Appellant requested an informal conference—and if so, whether the request was timely or whether a conference was held. And if a conference was timely requested but not held, the notice of appeal does not address why Appellant believes the appeal from the Decision would otherwise be timely.

On or before July 21, 2017, Appellant is ordered to show cause why the appeal should not be dismissed as untimely. In responding to this order, Appellant shall provide the Board with copies of all correspondence between Appellant and IHS relevant to the timeliness issue. Within 10 days of receipt of Appellant’s response, the Director may file an answer on the issues of timeliness raised in this order and in Appellant’s response. The

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<sup>4</sup> Under the ISDA appeal regulations, only a “tribe or tribal organization” has a right of appeal. And the 5-day time period for the Board to make a determination under § 900.160(a) is only triggered by receipt of a notice of appeal from a “tribe or tribal organization.” The fact that the Board is issuing the present order within 5 business days from receipt of the appeal shall not be construed as expressing any view on the underlying merits of the appeal.

Director can provide copies of any other correspondence that he deems relevant to this issue.

Failure by Appellant to respond to or comply with this order may result in dismissal of this appeal without further notice.

Copies of all pleadings filed with the Board must be served on all interested parties. 43 C.F.R. §§ 4.310(b), 4.333(a). Parties who choose to serve and file by U.S. mail may use regular first-class mail; they do not need to use certified mail unless they wish to do so for their own record keeping purposes. If counsel is appearing for an interested party, counsel should enter an appearance, after which service should be made on counsel. A certificate or affidavit evidencing service shall be filed concurrently with the document furnished to the Board.

The parties are advised that the Board will not accept any filing by facsimile transmission (fax) unless the Board has first granted permission for the filing of that particular document by fax. The Board may grant permission to file by fax in extraordinary circumstances. Because documents filed with the Board are filed as of the date of mailing, extraordinary circumstances do not include the fact that a filing is due that day. Any document filed by fax without permission will not be accepted.

The Board's Internet website, containing a free, searchable database of its decisions, is located at [www.doi.gov/oha/organization/ibia](http://www.doi.gov/oha/organization/ibia). The Board's decisions are also available on the for-fee websites of WestLaw and Lexis-Nexis, although the Board's website generally is the most current.

### **Order Concerning Service**

A tribe or tribal organization filing an appeal must serve a copy of the notice of appeal upon the official whose decision it is appealing. A copy of the notice of appeal must also be served on the Secretary of Health and Human Services (Secretary). *See* 25 C.F.R. § 900.152. The notice of appeal does not indicate that it was served on the Secretary.

In addition, the fact that there is a dispute over whether Appellant is authorized to act in the name of the Tribe, and there is a group of individuals who claim standing to challenge Appellant's authority and who are Interveners in the related district court and administrative proceedings discussed *supra* at 1 nn.1 & 3, necessitates a special order concerning service. Under the circumstances, it is appropriate to require that those individuals be served.

On or before July 21, 2017, Appellant is ordered to serve a copy of its notice of appeal on (1) the Secretary, and (2) the individuals listed on the attached Distribution List,

and on or before that same date file with the Board a certificate of service stating that Appellant has complied with these service requirements. Failure by Appellant to comply with this order may result in dismissal of this appeal without further notice.



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Thomas A. Blaser  
Chief Administrative Judge

Distribution: See attached list.

**Distribution: IBIA 17-102**

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