



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 16 2018

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

Dear Chairman Kelly:

On August 25, 2017, Acting Assistant Secretary – Indian Affairs Mike Black endorsed a Memorandum of Agreement (MOA) which you counter-endorsed on or about July 20, 2017. Pursuant to the MOA, the Department of the Interior (Department) would recognize you as a person of authority within the Nooksack Tribe (Tribe) for purposes of receiving Indian Self-Determination and Education Assistance Act (ISDEAA) funding and for conducting a Special Council Election to fill four seats on the Nooksack Tribal Council.

The Tribe conducted such election and, consistent with the terms of the MOA, the Bureau of Indian Affairs (BIA) Regional Director, Northwest Region, is presently reviewing the Election Board's report. The Acting Regional Director will submit recommendations regarding the Tribal election, after which I will render a final agency decision as to whether the Tribe has elected a valid Tribal Council.

It is important to maintain the status quo pending the Department's review of the Special Council Election. Tribal members, BIA, and other Federal agencies have grounded their relationship with the Tribal Government in reliance on the conditions set out in the MOA. Termination or alteration of those conditions in advance of recognition of a valid Tribal government would cause a reversion to the circumstances that existed prior to the endorsement of the MOA, namely withdrawal of the recognition of the Tribal Council as the valid government of the Tribe and your authority to accept ISDEAA funding on behalf of the Tribe.

I hereby extend the Department's recognition of Robert Kelly as a person of authority within the Tribe, through whom the Department will maintain government-to-government relations for the limited purposes of receiving ISDEAA funding and conducting the Nooksack Tribal Council Election scheduled for March 17, 2018. In such election, all eligible Nooksack voters as of March 2018 shall be eligible to vote, regardless of county residency. Also, as outlined in Section E of the MOA, all those purportedly disenrolled members since March 24, 2016, are entitled to vote in Tribal elections. This interim recognition shall remain in effect until the Department renders a final agency determination on the validity of the Tribe's December 2017 election, or until March 30, 2018, whichever occurs first.

The commitments endorsed in Section E of the MOA are valid expressions of tribal law as determined by the Nooksack Tribal Court, and Federal law as described in the due process guarantees articulated in the Indian Civil Rights Act. Failure to abide by Section E of the MOA may result in the Department's repudiation of the currently constituted Tribal Government, consistent with the three letters issued by Principal Deputy Assistant Secretary Roberts in 2016.

Sincerely,



John Tahsuda
Principal Deputy Assistant Secretary – Indian Affairs
Exercising the Authority of the Assistant Secretary –
Indian Affairs

Enclosure: MOA

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 ____ day of JULY, 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: _____

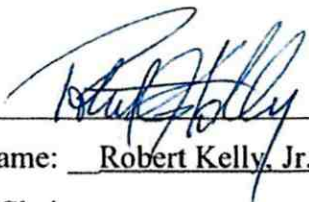
For Robert Kelly:
Authorized signature: 
Signatory's Printed Name: Robert Kelly, Jr.
Signatory's Title: Chairman
Address: 5016 Deming Road, #157, Deming, WA 98244
Telephone(s): 360-592-5176 ; _____
E-Mail: bkelly@nooksack-nsn.gov

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