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GENERAL MEMORANDUM 22-006

D.C. District Court Upholds Certain Navajo Tribal Court Funding In Contract Amount Dispute

On March 21, 2022, the U.S. District Court for the District of Columbia issued an opinion in *Navajo Nation v. Dep't of the Interior*, No. 16-CV-0011-TSC (D.D.C. Jan. 5, 2016), concluding that the Department of the Interior (DOI), violated the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301 *et seq.* (ISDEEA), by partially declining the Navajo Nation's annual funding requests for operations of its Judicial Branch from 2015 to 2020. The District Court awarded the Navajo Nation damages for breach of contract in two of the six consolidated lawsuits for \$15.7 million each. The District Court, however, dismissed the remaining cases or lifted stays to allow settlement.

This case stems from a dispute over the amount of contract funding for the Navajo judicial system for 2014. The Navajo Nation sought \$17,055,517 in their proposed 2014 Annual Funding Agreement (AFA), an increase of \$15,762,985 over the previous year's funding. During a partial government shutdown in 2013, Navajo employees hand-delivered their proposal to the Bureau of Indian Affairs (BIA) Navajo Regional Office. BIA officials did not initially respond to the proposal, and eventually issued a partial declination letter after the shutdown. Because the BIA did not issue the declination with the 90-day window under 25 C.F.R. § 900.18 and 25 U.S.C. § 5321(a)(2), the proposed AFA had been "deemed approved." The Navajo Nation filed suit to require the BIA to provide the funding deemed approved by operation of ISDEEA. Although the District Court initially supported the BIA's declination, the D.C. Circuit reversed and upheld the Nation's \$15.7 million funding increase. The Navajo Nation and the BIA continued to negotiate AFAs pursuant to the 2012 self-determination contract and its successor 2017 contract.

The Navajo Nation sued to include the funding increase in all of its subsequent AFAs, leading to the six companion cases for each subsequent year that the funding request was declined. In the two most recent cases, the Navajo Nation also challenged the BIA's removal of two provisions regarding good faith efforts to address funding shortfalls that the Nation included in its 2018, 2019, and 2020 proposed AFAs. The District Court agreed with the Navajo Nation that the BIA could not decline successor funding agreements on the same contract, to the extent they sought the same amount of funding for substantially the same purpose as the previous year, even at the increased \$17 million amount deemed approved in 2014. The District Court elaborated that the amount could not be lowered from the previous year except for one of the narrow reasons provided in the ISDEEA, none of which applied. The District Court also agreed that the BIA could not remove language from an AFA that it had agreed to in previous years.

The District Court, however, concluded that the AFAs under the new 2017 contract were not successor funding agreements entered into under the same contract as 2012, and accordingly the BIA was free to decline the \$15.7 million increase above the amount the BIA had to provide under the prior contract. The District Court therefore only awarded the contract costs owed for the 2015 and 2016 AFAs, in addition to the amount previously awarded for the 2014 AFA, and ordered the BIA to restore the language it removed.

Although these facts are unique, this case illustrates that a court will generally side with a tribe in the event that the BIA attempts to reduce ISDEAA funding or remove language from an AFA that is “substantially the same” as the prior year’s AFA under the same contract.

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If you have further questions or need assistance negotiating and navigating ISDEAA funding agreements and contracts, please reach out to:

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