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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALTURAS INDIAN RANCHERIA,

Plaintiff,

v.

KENNETH L. SALAZAR, et al.,

Defendants.

No. CIV. S-10-1997 LKK/EFB

ORDER

This is a proceeding brought by plaintiff Indian tribe to determine whether the government is in contempt of the court's January 13, 2012 order in this case (ECF No 126). Plaintiff asserts that the following portion of the court's order required the government to pay "contract support costs" associated with the "self-determination" contracts it entered into with plaintiff:

The BIA has approved the Tribe's self-determination contract requests for the fiscal years 2009, 2010, 2011, and 2012, and shall transfer the amounts provided in those requests to the Tribe's bank account ... in accordance with the terms contained in the contract award documents.

1 Order of January 13, 2012, ECF No. 126 ¶ 2 ("Settlement Agreement
2 and Stipulation for Entry of Judgment and Order").

3 For the reasons that follow, plaintiff's request to enforce
4 the judgment or for a contempt order will be denied.

5 I. BACKGROUND

6 Plaintiff Alturas Indian Rancheria (the "Tribe") is a
7 federally recognized Indian tribe. Pursuant to the Indian Self-
8 Determination and Education Assistance Act ("ISDA"), 25 U.S.C.
9 §§ 450, et seq., the Secretary of the Interior "is directed" to
10 enter into "self-determination" contracts with willing tribes,
11 "pursuant to which those tribes will provide services such as
12 education and law enforcement that otherwise would have been
13 provided by the Federal Government." Salazar v. Ramah Navaho
14 Chapter, 567 U.S. ____, 132 S. Ct. 2181, 2186 (2012).¹ Under the

15
16 ¹ The government has submitted "Supplemental Briefing" (ECF
17 No. 140), asserting that plaintiff is a class member in Salazar
18 (Ramah Navajo Chapter v. Lujan, Civ. No. 1:90-cv-00957-LH-KBM
19 (D.N.M.) (Hansen, J.)). As a result, the government argues,
20 "unless the Tribe can show that it has opted out of the Ramah
21 class, the Tribe should not be allowed to pursue its claim for
22 contract support costs under its ISDEAA [ISDA] contracts here."
23 ECF No. 140 at 2. There are at least two obvious problems with
24 the government's assertion. First, the government has not
25 attached the operative complaint or class certification order in
26 Ramah so that this court could determine whether plaintiff
27 actually is a member of the class. Second, the Ramah litigation
28 was commenced 23 years ago, in 1990, and the class was certified
20 years ago, in 1993. See Ramah Docket Nos. 1 & 96. The time
for the government to notify the court that plaintiff was barred
from pursuing its claims was 13 years ago, when plaintiff filed
this lawsuit against the government, not two weeks ago. This
lawsuit has now been litigated all the way to a final judgment by
settlement, and accordingly, there is no longer a "claim" to be
barred by plaintiff's alleged class membership. Rather,
plaintiff seeks to enforce the judgment which both parties agreed
to in this litigation. In short, this contempt proceeding is not
barred by plaintiff's alleged membership in the Ramah class.

1 ISDA, once the Tribe has submitted a proposal for a self-
2 determination contract, "or a proposal to amend or renew" such a
3 contract, the Secretary "shall" approve the proposal and award
4 the contract within ninety (90) days, unless an enumerated reason
5 for refusal exists. 25 U.S.C. § 450f(a)(2).

6 The amount of funds provided to the Tribe under these
7 contracts is to be no less than the amount the Secretary would
8 have spent to run the program, plus "contract support costs." 25
9 U.S.C. § 450j-1(a)(1) & (2) ("There shall be added to the amount
10 required by paragraph (1) contract support costs which shall
11 consist of an amount for the reasonable costs for activities
12 which must be carried on by a tribal organization as a contractor
13 to ensure compliance with the terms of the contract and prudent
14 management"); Salazar, 132 S. Ct. at 2186 ("ISDA mandates that
15 the Secretary shall pay the full amount of 'contract support
16 costs' incurred by tribes in performing their contracts").²

17 Late in 2008, the Tribe wrote to the Bureau of Indian
18 Affairs ("BIA"), requesting a renewal of its "2008 Annual Funding
19 Agreement" (the self-determination contract), for the 2009 fiscal
20 year. Declaration of Terry J. Lincoln [for Defendants] ("Lincoln
21 Decl.") (ECF No. 137-1) ¶ 4 & Exh. 1. On January 15, 2009, the
22 Tribe entered into the requested "self-determination" contract
23 with BIA. BIA paid the requested funding on March 12, 2009.
24 Lincoln Decl. ¶ 4. At some unspecified "later" date in 2009, BIA
25

26 ² See also, Cherokee Nation of Oklahoma v. Leavitt, 543 U.S. 631,
27 634 (2005) (when the government enters into contracts promising
28 to pay contract support costs, that promise is legally binding).

1 agreed to pay contract support costs as well as additional funds
2 under the contract. Lincoln Decl. ¶ 4. However, by that time,
3 the Tribe was embroiled in a dispute over who was a member of the
4 Tribe and who represented the Tribe. Declaration of Wayne Smith
5 [for Plaintiff] ("Smith Decl.") (ECF No. 130) ¶ 3. The contract
6 support costs, and the additional 2009 funds, were accordingly
7 not paid until that dispute was resolved. Lincoln Decl. ¶ 4.

8 While the Tribe's leadership dispute was on-going, the BIA
9 declined to enter into self-determination contracts with the
10 Tribe. Smith Decl. ¶ 4. The Tribe thereupon filed this lawsuit
11 to compel the Secretary to award the self-determination contract
12 for 2010.

13 On January 5, 2012, after the Tribe had resolved its
14 internal power struggle,³ the Tribe and BIA settled their dispute
15 by signing an agreement to cover the Tribe's self-determination
16 contract requests for 2009, 2010, 2011 and 2012. See Smith Decl.
17 ¶ 7 & Exh. 1 (attached self-determination contract includes "the
18 grant funding for 2010 and 2011 as well as the funding for
19 2012");⁴ Lincoln Decl. ¶ 7 & Exh. 4 (attached self-determination
20 contract award document includes funding for 2010, 2011 and
21 2012).⁵

22 ³ See ECF No. 126 ¶ 1 (resolving the identity of the Tribe's
23 governing body).

24 ⁴ The Tribe asserts that the contract was entered "[s]ubsequent"
25 to the court's order. Smith Decl. ¶ 7. However, the cited
26 document plainly shows that it was signed by both parties on
27 January 5, 2012, before the court's January 13, 2012 order. See
28 Smith Decl. Exh. 1 (ECF No. 131-1 at 1).

⁵ There appears to be no further dispute about the 2009 fiscal
year contract. The government paid the agreed-upon amounts,

1 The contract for 2010 calls for \$198,562 in funding. See
2 Lincoln Decl. ¶ 7 & Exh. 4 (ECF No. 137-1 at 35 & 42). The
3 contract for 2011 calls for \$198,547 in funding. See Lincoln
4 Decl. ¶ 7 & Exh. 4 (ECF No. 137-1 at 14). For 2012, the contract
5 calls for \$198,244 in funding.⁶ See Lincoln Decl. ¶ 7 & Exh. 4
6 (ECF No. 137-1 at 35 & 43). This totals \$595,353 for all three
7 years.

8 On January 13, 2012, the court entered a judgment approving
9 the parties' stipulated settlement. See ECF No. 126. Pursuant
10 to the settlement and order, the BIA "approved the Tribe's self-
11 determination contact requests for the fiscal years 2009, 2010,
12 2011, and 2012." ECF No. 126 ¶ 2. The settlement and order
13 further provided that BIA

14 shall transfer the amounts provided in those
15 requests to the Tribe's bank account ... in
16 accordance with the terms contained in the
 contract award documents.

17 Id.

18 Plaintiff seeks a contempt order asserting that the above-
19 quoted language from the court's order requires defendants to pay
20 contract support costs. Defendants assert that the court's order
21 does not require payment of those costs.

22 ////

23
24 including the contract support costs for that year.

25 ⁶ In all candor, the court cannot make heads nor tails of the
26 submitted contracts, and does not know how the government reads
27 them to call for these amounts. However, the Tribe does not
28 dispute the government's interpretations of these amounts, so the
court accepts them as established.

1 amounts provided in those requests totals \$595,353. Lincoln
2 Decl. ¶ 7. The government paid \$595,353 into the Tribe's bank
3 accounts by July 5, 2012. None of this is disputed.

4 The Tribe argues that "[t]he Judgment requires that the
5 Federal Defendants pay the contract support costs." ECF No. 129
6 at 6. Tellingly, the Tribe never says what specific amount (or
7 even what general neighborhood) those support costs are.

8 Instead, the Tribe relies solely on the following entries in the
9 contract, listed under the title "Catalog of Federal Domestic
10 Assistance (CFDA) - www.cfda.gov":

11 "CFDA Title: Indian Self-Determination Contract Support"

12 "BIA Program Title: TPA/Tribal Government/Contract Support"

13 and

14 "Contract Program Category: Contract Support."

15 Giving the Tribe the benefit of every available inference, the
16 court will tease out of these bare titles and subtitles the
17 conclusion that the contract is a part of the "Indian Self-
18 Determination Contract Support" program, as described within the
19 given website.⁷ However, there is still no way to get out of
20 these lines what specific amount, or even what general amount, or
21 even how to calculate the amount, that the Tribe asserts the
22 court's order requires defendants to pay.

23 Thus, even if the court were to read the contract as saying
24 "The Secretary shall pay contract support costs to the Tribe," it

25
26 ⁷ See

27 <https://www.cfda.gov/index?s=program&mode=form&tab=step1&id=f2b196f01b9e678326a276341a5836ba> (Indian Self-Determination Contract
28 Support program), last visited by the court on November 22, 2014.

1 is still not specific and definite enough to support a contempt
2 order, since it does not state a specific amount to be paid, a
3 minimum amount to be paid, nor any formula from which the
4 defendants could figure out how much is owed.⁸

5 The court notes that according to the regulations
6 implementing the ISDA, the contract requests "must contain" an
7 identification of "the amount of direct contract support costs,"
8 as well as "[a]n identification of funds the Indian tribe or
9 tribal organization requests to recover for indirect contract
10 support costs." 25 C.F.R. § 900.8(h)(2) & (3). If the Tribe had
11 complied with this requirement, or if the Secretary had insisted
12 that the Tribe comply, then perhaps there would be a specific
13 amount in the contract to which the court's order could have
14 applied. For reasons neither side explains, however, the Tribe's
15 contract requests did not include these required, specific
16 contract support cost amounts. See Smith Decl. ¶ 9 (admitting

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18 ⁸ The applicable regulations specify how these costs are
19 calculated. The Secretary determines the amount of indirect
20 contract support costs by: (a) applying the negotiated indirect
21 cost rate to the appropriate direct cost base; (b) using the
22 provisional rate; or (c) negotiating the amount of indirect
23 contract support. 25 C.F.R. § 1000.140; see Cherokee Nation, 543
24 U.S. at 635 ("Most contract support costs are indirect costs
25 'generally calculated by applying an "indirect cost rate" to the
26 amount of funds otherwise payable to the Tribe"). It is
27 undisputed that in this case, the parties reached agreement on
28 the contract support costs on June 25, 2013, 18 months after the
court's January 13, 2012 order issued. See Smith Decl. ¶ 8 &
Exh. 2 (ECF No. 133-1) ("Indirect Cost Negotiation Agreement"
dated June 25, 2013). Even under the Tribe's best interpreta-
tion, the court's order did not direct the Secretary to pay a
specific amount - and could not have done so - when that amount
would not be negotiated until a year and a half into the future.

1 that the Tribe and BIA "began negotiating" for contract support
2 costs after the contract was signed, and after the court's order
3 was issued); Salazar Opposition Brief (ECF No. 137) at 5 ("The
4 budget submitted by the Tribe does not specify any amount for
5 contract support costs").

6 It is true that by operation of law, the government is
7 obligated to pay contract support costs related to each of the
8 self-determination contracts.⁹ But the argument does not support
9 a Rule 70(e) contempt citation, which can only apply to the
10 violation of a court judgment, not the violation of a statute.


11 IV. CONCLUSION

12 By failing to identify the amount of contract support costs
13 applicable to the contract requests, even though such
14 identification was required by the applicable federal
15 regulations, the Tribe has made it impossible to hold defendants
16 in contempt for failing to pay such costs.

17 The Tribe's motion to enforce the judgment and for contempt
18 is therefore **DENIED**.

19 IT IS SO ORDERED.

20 DATED: November 22, 2013.


21 LAWRENCE K. KARLTON
22 SENIOR JUDGE
23 UNITED STATES DISTRICT COURT

23 ⁹ "ISDA mandates that the Secretary shall pay the full
24 amount of 'contract support costs' incurred by tribes in
25 performing their contracts." Salazar, 132 S. Ct. at 2186; 25
26 U.S.C. § 450j-1(a)(2) ("There shall be added to the amount
27 required by paragraph (1) contract support costs which shall
28 consist of an amount for the reasonable costs for activities
which must be carried on by a tribal organization as a contractor
to ensure compliance with the terms of the contract and prudent
management").