

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CROWNPOINT INSTITUTE OF TECHNOLOGY,
INC., a tribal organization of the Navajo Nation,

Plaintiff,

vs.

No. CIV 04-531 JP/DJS

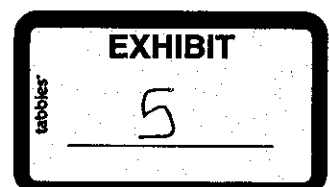
GALE A. NORTON, Secretary of the Interior,
DAVID W. ANDERSON, Assistant Secretary
of the Interior--Indian Affairs in the United
States Department of the Interior, ELOUISE
CHICHARELLO, Director, Navajo Regional
Office, Bureau of Indian Affairs, United States
Department of the Interior, and the UNITED
STATES OF AMERICA,

Defendants.

ORDER

On July 15, 2004, Plaintiff filed its Verified Application for Temporary Restraining Order and for Preliminary Injunction to Preserve Funds (Doc. No. 14). The Court held a hearing on Plaintiff's Verified Application for Temporary Restraining Order on July 15, 2004. Plaintiff was represented by Attorney Michael P. Gross. James M. Tutt, President of Plaintiff Crownpoint Institute of Technology, Inc., was personally present. Defendants were represented by Tamara Ulrich, Attorney for the United States Department of Justice, and Dory Richards, Attorney for the United States Department of the Interior. Having considered all relevant written information and oral presentations by counsel for the parties, the Court concludes that the Plaintiff has failed to meet the extremely high burden imposed by FED. R. CIV. P. 65 for the granting of extraordinary relief in advance of the development of a broader evidentiary record on which the Court can make a more deliberate judgment. The Court does not read City of Houston v. Department of Housing & Urban

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Development, 243 F.3d 1421 (D.C. Cir. 1994) to preclude Plaintiff from seeking and obtaining monetary damages in the event it is determined, after a more complete evidentiary hearing, that Plaintiff is entitled to damages from Defendants based on Plaintiff's claim for additional contract support costs. In its Verified Application for Temporary Restraining Order, Plaintiff requests the Court to grant the extraordinary relief of ordering the Secretary of the Interior immediately to pay into the registry of the Court \$758,050.00 of fiscal year 2004 funds appropriated to the Bureau of Indian Affairs for contract support costs and enjoining the Defendants from obligating that money to any other entity, so that the funds will be preserved for payment to the Plaintiff in the event it is eventually determined that the Plaintiff is entitled to that amount for contract support costs. However, as Plaintiff acknowledged in its Verified Complaint for Injunction and a Writ of Mandamus, for Declaratory Judgment and Other Relief (Doc. No. 1), "If those funds are no longer in the Secretary's possession plaintiff is entitled to a judgment against the United States to be drawn from the permanent and indefinite judgment fund pursuant to 25 U.S.C. § 450 m-1(a) and 1(d) and 41 U.S.C. § 612(a)." It appears to the Court that Plaintiff has failed to establish that it will suffer irreparable harm by the denial of Plaintiff's requested extraordinary relief.

IT IS THEREFORE ORDERED that Plaintiff's Verified Application for Temporary Restraining Order and for Preliminary Injunction to Preserve Funds (Doc. No. 14) is denied.



SENIOR UNITED STATES DISTRICT JUDGE