

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SHOALWATER BAY INDIAN TRIBE,)	CV 01-1119-JE
)	
Plaintiff,)	ORDER
)	
v.)	
)	
TOMMY G. THOMPSON, in his official)	
capacity as Secretary of the)	
United States Department of Health)	
and Human Services; MICHAEL H.)	
TRUJILLO, in his official capacity)	
as Director of the Indian Health)	
Service; and DONI WILDER, in her)	
official capacity as Director of)	
the Portland Area Office of the)	
Indian Health Service; the UNITED)	
STATES DEPARTMENT OF HEALTH AND)	
HUMAN SERVICES; and the UNITED)	
STATES OF AMERICA,)	
)	
Defendants.)	

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BROWN, Judge.

Magistrate Judge John Jelderks issued Findings and Recommendation (#44) on May 2, 2002, in which he recommended the Court deny Plaintiff's Motion for Summary Judgment (#27) and grant Defendants' Motion for Summary Judgment (#30). Plaintiff Shoalwater Bay Indian Tribe filed timely objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988); *McDonnell Douglas Corp. v. Commodore Business Machines, Inc.*, 656 F.2d 1309, 1313

(9th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982). Because the objecting party did not arrange for the transcription of the record pursuant to Fed. R. Civ. P. 72(b) nor did any party protest the lack of a transcript, the Court did not review a transcript or tape recording of the proceedings held April 24, 2002, before the Magistrate Judge as part of the Court's *de novo* review. See *Spaulding v. University of Washington*, 686 F.2d 1232, 1235 (9th Cir. 1982).

In its objections, Plaintiff criticized the Magistrate Judge's Findings and Recommendation for a lack of analysis. After reviewing the record *de novo* and after hearing oral argument on September 3, 2002, this Court, however, is satisfied the Magistrate Judge correctly concluded there are no issues of material fact and Defendants are entitled to judgment as a matter of law. The contracts at issue are unambiguous. They impose no contractual obligation requiring Defendants to "re-program" funds in Fiscal Year 1999. It follows, therefore, that Plaintiff cannot prevail on a breach of contract claim premised on Defendants' failure to do so. This Court, therefore, finds no error in the Magistrate Judge's Findings and Recommendation.

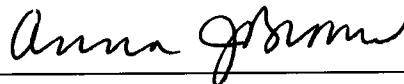
CONCLUSION

The Court **ADOPTS** Magistrate Judge Jelderks's Findings and Recommendation (#44). Accordingly, the Court **DENIES** Plaintiff's

Motion for Summary Judgment (#27) and **GRANTS** Defendants' Motion for Summary Judgment (#30).

IT IS SO ORDERED.

Dated this 4th day of September, 2002.



ANNA J. BROWN
United States District Judge