

March 12, 2014

By Certified Mail/Return Receipt Requested

Interior Board of Indian Appeals
Office of Hearings and Appeals
U.S. Department of the Interior
801 N. Quincy St., Suite 300
Arlington, VA 22203

Re: NOTICE OF APPEAL

Ladies and Gentlemen:

Dentons US LLP files this Notice of Appeal on behalf of appellants Joe Kennedy, the last lawfully elected Chair of the Timbisha Shoshone Tribal Council, along with former tribal officials Grace Goad, Erick Mason, Pauline Esteves, Madeline Esteves, John Doe and John Roe.¹ All of these individuals are enrolled members of the Timbisha Shoshone Tribe (hereinafter the "Tribe") and their names are listed on the 1978 Base Roll approved by the Bureau of Indian Affairs ("BIA") in 1982 (except John Doe and John Roe who are members because they are direct descendants of persons listed on the 1978 base roll). All but John Doe and John Roe have served in various tribal elected capacities, including serving as elected members of the last lawfully elected Tribal Council elected between 2008-2010.

Decision Being Appealed

The appellants hereby appeal the January 6, 2014 decision of the Pacific Regional Director, BIA ("Decision"), authorizing the Superintendent of the Central California Agency, BIA, to call and conduct a Secretarial election to adopt or reject a proposed Constitution of the Timbisha Shoshone Tribe in accordance with 25 C.F.R. Part 81. Appellants received notice of the Decision in a letter from Troy Burdick, Superintendent, Central California Agency, BIA, dated February 10, 2014 ("Letter"), to eligible voters of the Timbisha Shoshone Tribe, attached hereto as Exhibit A.

Statement of the Reasons for the Appeal

The Decision of the Pacific Regional Director is contrary to applicable law. The governing regulations limit the electorate in tribal constitutional elections to "members who have duly registered." 25 C.F.R. § 81.16(d) (emphasis added). The Decision initiates a federal election without any attempt by the

¹ John Roe and John Doe are minors who are given fictitious names to protect their identities and to prevent reprisal due to their involvement in this matter.

Agency to require or ensure that individual voters meet these established legal requirements for participation.

The Decision is dispositive and not just an intermediate step, because it irreversibly initiates a federal election without any further means or process for the Agency to determine whether the election complies with federal law governing voter eligibility. The Agency's Decision permits the purported tribal government to create a voter list without regard for the Tribe's constitutional membership requirements. Then, under the regulations, appointees of the tribal government will control the Election Board tasked with reviewing any challenges to that same voter list. This is a substantive matter and not a procedural interim matter because the central issue is the Agency's acquiescence to the unlawful participation of non-members in a federal election.

All appellants are enrolled members of the Tribe and all except John Doe and John Roe are duly registered with the Election Board to vote in the Secretarial election. John Doe, who is 16 years old, and John Roe, who is 17 years old, did not receive election notices or voter registration forms, presumably because the Election Board unlawfully excluded 16- and 17-year-old-members from the voting pool, in violation of the present Constitution and law of the Tribe. See Timbisha Shoshone Constitution, Article IV, § 2.

As such, appellants have standing to challenge the Decision as interested parties whose interests are adversely affected by the Decision. More specifically, through its Decision, the Agency is implementing a unilateral and unlawful expansion of the electorate to include non-members and, at the same time, exclude fully eligible 16- and 17-year-old members, which causes appellants to suffer particularized harm to their plain, distinct, and adequate interest in maintaining the effectiveness of their votes. The Decision puts the control and government of the Tribe in the hands of an electorate that includes a very large number of non-members, and strips members who are entitled to vote of their right to vote. The rights of appellants to establish and be governed by their own tribal government, and to cast votes not offset by the votes of ineligible voters, are thus violated and denied by the Decision.

Appellants' grounds for appealing the Decision include, but are not limited to:

1. The Decision authorizes a Secretarial election in which individuals who do not meet the membership requirements of the Tribe are permitted to vote.
2. The Decision was not sent to interested parties, such as the appellants, and violates applicable federal regulations requiring that notice and information about appealing a decision be given to interested parties.
3. The purported tribal government that supposedly requested the Secretarial election has, since 2011, permitted individuals who do not meet the Tribe's membership requirements to vote and hold office in the Tribe in direct violation of the present Constitution of the Tribe.
4. The purported tribal government that supposedly requested the Secretarial election has denied voting by members who do meet the membership requirements of the Tribe, by prohibiting 16- and 17-year-old members of the Tribe from voting, in direct violation of the governing Constitution and law of the Tribe.

5. Every stage of the Secretarial election now underway, from the Decision to the process outlined in the Letter, violates the existing Constitution of the Tribe.
6. The Decision contradicts the Department of Interior's prior decision recognizing the Tribe and spelling out who is eligible to be a member of the Tribe.

Relief Sought

During the pendency of this appeal, the appellants request interim relief in the form of an immediate stay of the Decision and suspension of the Secretarial election.

The appellants seek the following final relief:

1. Cancellation of the Secretarial election on rejection or adoption of the proposed Constitution; and
2. A requirement that all voters in any future Secretarial election be duly registered adult members of the Tribe under the plain standards of the current Timbisha Shoshone Constitution; and
3. Appropriate measures to ensure that the Department of the Interior's recognition is extended only to a government elected pursuant to the Tribe's Constitution in which the voters and office holders are limited to those who meet the membership requirements of the present Constitution.

Alternatively, and recognizing that issues impacting those raised by the Decision are also currently before the United States Court of Appeals for the Ninth Circuit—where the Court has effectively "stayed" the case—a stay of the Decision here is wholly appropriate. Specifically, on February 26, 2014, the briefing schedule in *Timbisha Shoshone Tribe v. United States Department of the Interior, et al.*, No. 13-16182, was vacated at the request of the Department of Justice. If DOI, or the federal court, allows the Tribe to challenge the merits of DOI's prior recognition of the purported tribal government that supposedly requested the Secretarial election here, and if the Tribe's challenge is successful, the requested Secretarial election will be moot. In contrast, if the Secretarial election proceeds as planned and results in a purported change to the tribal constitution, it will not moot the appeal in the Ninth Circuit. Rather, it will result in two versions of the constitution, and will only raise further substantive issues requiring resolution through appeal.

As a result, a stay of the instant Decision is not only fundamentally fair to the Tribe, it also serves the interest of governmental efficiency.

Respectfully submitted,
DENTONS US LLP



Ian Barker
Attorneys For Appellants

Attachment

CERTIFICATION

Pursuant to 43 C.F.R. §§ 4.332(a) and 4.333, and 25 C.F.R. § 2.20(b), I certify that, on March 12, 2014, a copy of this Notice of Appeal has been sent by first-class, postage prepaid, addressed as follows to the Assistant Secretary – Indian Affairs, the Pacific Regional Director who made the Decision being appealed, and each known interested party:

Kevin Washburn
Assistant Secretary – Indian Affairs
Department of the Interior
MS-3071-MIB
1849 C Street, NW
Washington, D.C. 20240

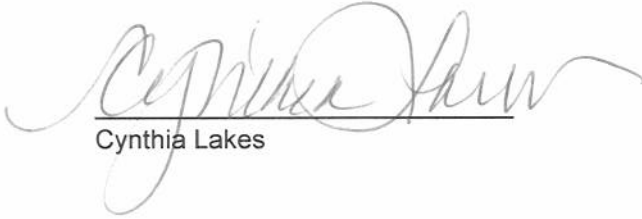
Amy L. Dutschke, Director
Pacific Region
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

Troy Burdick, Superintendent
Central California Agency
Bureau of Indian Affairs
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814-4710

Ernest Young, Chairperson
Secretarial Election Board
Central California Agency
Bureau of Indian Affairs
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814-4710

Purported Tribal Government
c/o George Gholson, Chairman

621 West Line Street, Suite 109
Bishop, CA 93514

A handwritten signature in cursive script, appearing to read 'Cynthia Lakes', written over a horizontal line.

Cynthia Lakes

81967762

EXHIBIT A



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814-4710

IN REPLY REFER TO

February 10, 2014

Dear Eligible Voter of the Timbisha Shoshone Tribe:

On January 6, 2014, the Director, Pacific Region, Bureau of Indian Affairs, authorized the Superintendent of the Central California Agency, Bureau of Indian Affairs, to call and conduct a Secretarial election on the proposed Constitution of the Timbisha Shoshone Tribe in accordance with Title 25 - Indians of the Code of Federal Regulations, Part 81. Therefore, all adult eligible voters of the Timbisha Shoshone Tribe are hereby advised that the Bureau of Indian Affairs, Central California Agency, shall conduct a Secretarial election on Saturday, March 29, 2014, entirely by absentee ballot, for the purpose of voting on the proposed Constitution.

ELECTION BOARD. In cooperation with the Timbisha Shoshone Tribe, the Bureau of Indian Affairs, Central California Agency, established a 4-member Election Board in accordance with 25 CFR §81.8. The official members of the Election Board are listed as follows:

Ernest Young, BIA, Chairperson
Eleanor Jackson, Election Board Representative
Ray Reyes, Election Board Representative
George Elliot Kennedy, Election Board Representative

ELECTION MATERIAL. It shall be the duty and responsibility of the Election Board to conduct the Secretarial election. The Board shall prepare all the necessary documents and material for the successful conduct of the election. All matters pertaining to the Secretarial election shall be addressed to a member of the Election Board.

REGISTRATION. You must register with the Election Board if you intend to vote. We are enclosing the following election material for your information and use in registering to vote in the Secretarial election: (1) Official Election Notice; (2) Voter Registration Form with pre-addressed return envelope; (3) Sample Ballot; (4) Copy of the proposed Constitution. These materials are being sent to all adult eligible voters who are 18 years of age and older. Please sign and return the Voter Registration form in the pre-addressed envelope to the Chairperson of the Election Board, Bureau of Indian Affairs, Central California Agency by Thursday, March 6, 2014. The List of Registered Voters will be posted on Friday, March 7, 2014, at the following locations: (1) Bureau of Indian Affairs, Central California Agency, 650 Capitol Mall, Suite 8-500, Sacramento, California; (2) Timbisha Shoshone Tribal Office, 621 West Line Street, Suite 109, Bishop, California 93514; and, (3) Timbisha Shoshone Tribal Office, located in Death Valley, Inyo County, California.

ABSENTEE VOTING. Pursuant to 25 CFR § 82.18(c), the Election Board chose not to use polling places and shall provide for the issuance and receipt of ballots entirely through the United States Postal Service. Absentee voting shall be used for all duly registered qualified voting members of the Timbisha Shoshone Tribe. The Election Board shall allow an absentee voter no less than 10 days from the mailing out of an absentee ballot to receive and return the ballot in accordance with 25 CFR 81.19. The Election Board must receive an absentee ballot at the Bureau of Indian Affairs, Central California Agency, by 4:30 p.m. on Friday, March 28, 2014, to be counted as a vote.

POSTING OF ELECTION NOTICE/RESULTS. The Election Notice and a copy of the proposed Constitution of the Timbisha Shoshone Tribe, and the Election Results will be posted at the following locations: (1) Bureau of Indian Affairs, Central California Agency, 650 Capitol Mall, Suite 8-500, Sacramento, California 95814; (2) Timbisha Shoshone Tribal Office, 621 West Line Street, Suite 109, Bishop, California 93514; and (3) Timbisha Shoshone Tribal Office, located in Death Valley, Inyo County, California.

Please contact the Chairperson of the Election Board, Ernest Young, Tribal Operations Specialist, at (916) 930-3766, should you require additional information with regard to this matter.

Sincerely,



Troy Burdick
Superintendent

Enclosures