



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Western Regional Office

2600 N. Central Ave

Phoenix, Arizona 85004

IN REPLY REFER TO:
Tribal Government Services

NOV 08 2019

Honorable Phillip Bushhead,
Chairman, Shivwits Band Council
6060 West 3650 North
Ivins, Utah 84738

Dear Honorable Bushhead:

We are writing in response to the Shivwits Band of the Paiute Indian Tribe of Utah's (Shivwits Band) request for the Secretary of the Interior to call and conduct a Secretarial election.

On May 16, 2019, the Shivwits Band of the Paiute Indian Tribe of Utah's Council submitted a request for a Secretarial election to revoke the application of the Indian Reorganization Act and/or revoke the application of the Constitution of the Paiute Indian Tribe of Utah to the Shivwits Band Reservation. Resolution No. SBP08-2019 adopted May 16, 2019, by the Shivwits Band Council was also included with the request.

An Indian tribe has the right to adopt, amend, or revoke its constitution under the Indian Reorganization Act. As a constituent band of a federally recognized Indian tribe and for the reasons set forth below, we are returning your request for a Secretarial election since it does not meet the requirements of being a valid tribal request under 25 C.F.R. Part 81.

Background

The Shivwits Reservation was created with lands purchased by the Secretary of the Interior on November 1, 1903. The establishment of the Shivwits Reservation was formalized on April 21, 1916, by Executive Order.

On November 17, 1934, the Shivwits Band voted to accept the Indian Reorganization Act of June 18, 1934, 48 Stat. 984 (IRA). As a result, the Shivwits Band of Paiute Indians adopted a Constitution that was approved March 21, 1940. Cedar City voted to accept the Indian Reorganization Act on May 14, 1935; Kanosh accepted on May 7, 1934; and Koosharem on May 10, 1935. Kanosh Band was the only other Band amongst the Bands that adopted a Constitution which was approved December 2, 1942.

However, the Shivwits Band, along with the Kanosh Band, Koosharem Band, and the Indian Peaks Bands, were terminated March 1, 1957, pursuant to the Act of September 1, 1954, Pub. L. No. 762, 68 Stat. 1099, which terminated the trust relationship between the Federal Government and each of the Bands. Cedar City Band was not listed among the Bands noticed for termination, and its status remained unclear following the September 1, 1954 Act.

On April 3, 1980, Congress passed the Paiute Indian Tribe of Utah Restoration Act (Restoration Act), Pub. L. No. 96-227 Stat. 317, which restored the Federal trust relationship with the Band and recognized the Paiute Indian Tribe of Utah as a federally recognized Indian Tribe. Sec. 3(a) of the Restoration Act states, in part:

The Federal trust relationship is restored to the Shivwits, Kanosh, Koosharem, and Indian Peaks Bands of Paiute Indians of Utah and restored or confirmed with respect to the Cedar City Band of Paiute Indians of Utah.

The term “tribe” is defined in the Restoration Act to mean the Cedar City, Shivwits, Kanosh, Koosharem and Indian Peaks Bands of Paiute Indians of Utah.

An interim council was brought together and ultimately a membership roll was developed and the Constitution of the Paiute Indian Tribe of Utah was voted on, adopted by the majority members, and approved October 1, 1981.

The members of the Paiute Indian Tribe of Utah then voted to amend the Constitution which was approved July 15, 1991. No other amendment was completed since that time.

Discussion

A request for Secretarial election for purposes of amending or revoking a tribal constitution is governed by 25 C.F.R. Part 81. Pursuant to 25 C.F.R. § 81.2, the provisions of Part 81 apply only to federally recognized Indian tribes. The term “Tribe” is defined in 25 C.F.R. § 81.4 as “any Indian or Alaska Native tribe, band, nation, pueblo, village or community that is listed in the Federal Register under 25 U.S.C. [5131], as recognized and receiving services from the Bureau of Indian Affairs.” Because the Restoration Act established the Paiute Indian Tribe of Utah as the federally recognized tribal entity, a request for Secretarial election originating from a constituent band, rather than the recognized tribal entity, cannot be considered.

According to the Shivwits Band’s letter dated May 16, 2019, which requests the Secretary of the Interior to call and conduct a Secretarial election to revoke application of the IRA on the Shivwits Reservation, the Shivwits Band indicates that they are a, “federally recognized sovereign Indian Tribe” and cites the Paiute Restoration Act as the basis for this claim.

The letter also states:

As a federally-recognized tribe, the Shivwits Band has procedural and substantive rights under the IRA. According to the IRA, “the term ‘Indian tribe’ means any...band...that the Secretary of the Interior acknowledges to exist as an Indian tribe.” 25 USC 5130(2). The Secretary has specifically acknowledged the Shivwits Band by including the Band on the list of federally-recognized tribes pursuant to 25 U.S.C. 5130(3) and 5131. 83 FR 4235. Moreover, the Secretary is bound to acknowledge all tribes recognized by Congress.

The letter further states:

Notably, when the BIA conducted a Secretarial election regarding initial approval of the Constitution of the Paiute Indian Tribe of Utah, it erred by failing to conduct an election for each restored Band, on each reservation, as prescribed by the IRA. 25 USC 5123, 5125, 5129. Each tribe of Paiutes that had been restored by Congress in 1980 had a right to an election amongst its own members to determine if the IRA should apply on that tribe's reservation...The Shivwits Band objects to the applicability of the 1981 IRA Constitution to the Shivwits Band or the Shivwits Band Reservation because of that flaw in the initial Secretarial Election.

Upon review of the Restoration Act, its legislative history, relevant statutes, and regulations, we must determine whether the Shivwits Band has the authority to request to revoke the Paiute Indian Tribe of Utah's Constitution and/or vote against the Indian Reorganization Act.

Records do indicate, as stated in the background section of this letter, that the Shivwits Band did initially vote to accept the IRA and adopted its own constitution separate from the other bands; however, we must also look to the Restoration Act itself and other relevant documents to provide clarity on whether each band is separately recognized as an individual Indian tribe or as constituent bands of the singular Paiute Indian Tribe of Utah.

In looking at the Restoration Act itself, you can see a pattern that indicates that the Bands did come in together under one umbrella. Throughout the Restoration Act, there is a common use of the singular term of "the tribe", "for the tribe", or "of the tribe." Also, the Restoration Act itself is called the Paiute Indian Tribe of Utah Restoration Act.

As noted in Sec. 5 of the Restoration Act, the Secretary was charged with assisting with the establishment of the Interim Council for the Tribe. There is no indication that the Secretary was to create an Interim Council for each of the Bands. Section Six of the Act requires the Secretary to conduct a Secretarial election "for the purpose of adopting a constitution and bylaws for the tribe." Again, the Act used clear language indicating a singular tribe adopting a singular constitution.

Similarly, Section 7 of the Restoration Act allowed the Secretary to hold lands in trust either for the Tribe as a whole or for the constituent Bands individually. In addition, Section 7 appears to authorize the Secretary to negotiate with the Tribe or directly with the Bands specifically with respect to the acquisition of additional reservation lands. The fact that Congress authorized the Secretary to work directly with the Bands on matters of real property in Section 7 demonstrates that Congress knew how to confer benefits on the Bands separately from the Tribe, giving even greater significance to the fact that Congress only conferred tribal recognition and governing authority to the Paiute Indian Tribe of Utah as a whole.

We therefore believe that Congress unambiguously vested federal recognition and governing authority to the Paiute Indian Tribe of Utah as a whole.

Although we find the language of the Restoration Act to be unambiguous in this regard, the legislative history as well as subsequent federal actions further support this position.

In looking at the Senate hearings surrounding the restoration of the Bands, on November 8, 1979, a hearing before the Senate Select Committee on Indian Affairs regarding the Paiute Restoration Act, was conducted. On page 17 of the transcript of the hearing, the Director of the Bureau of Indian Affairs, Congressional and Legislative Affairs, Ralph Reeser stated:

Mr. Chairman, we do not think that the Cedar City group was terminated by the legislation, but there is some confusion in the legislative history. There is some evidence that it may have been thought that they were part of the Indian Peaks group.

Since the proposal is that the Cedar City Band be part of this *single tribal government* that is going to represent all bands, we recommend that they be dealt with in this legislation so there will be no problem in the future. (emphasis added)

On page 52 of the hearing transcript, testimony was provided by the Director of the Utah Division of Indian Affairs, Bruce Perry. Within the document, it states:

Although the legislation provides for the establishment of a tribal government, it is intended that the tribal governing body shall consist of a representative from each band and that each band shall control and govern assets owned or held by it and that each band shall determine who is a member of said band and thus a member of the Paiute Tribe. This intent is consistent with the traditional governing mechanism of the bands. However, it also recognizes the recent establishment by the bands of a cooperative tribal governing body as reflected in their nonprofit corporation. Lands or other property which may be owned by the tribe, or grants received or contracts entered into with the federal government would be governed by the tribal structure. Lands or other property currently owned or owned in the future by the bands would remain under the control of the band unless they desire to transfer the same to the tribal government. The Cedar City Band is included in the proposed bill even though they are not specifically mentioned in the 1954 Termination Act. This was done due to confusion as to whether the Cedar City Band was also terminated. In any event, the Band has at least suffered from *de facto* termination.

On page 62 of the documented hearing, Mr. Parry also stated:

As I indicated, they continue to perform some functions of self-government. Each of the bands has been informally organized since termination - having elected chairmen and other representatives. In 1974, the State assisted the Paiutes in forming the Utah Paiute Tribal Corp. The board of directors of that organization is composed of each of the five bands. They have been performing governmental functions for the Paiute members.

Other federal actions and documents confirm the unambiguous language of the Restoration Act recognizing only the Paiute Indian Tribe of Utah as a federally recognized Indian tribe. For example, in the July 8, 1981, Federal Register Notice on page 35361, there is a list of Indian Tribal Entities that have a Government-to-Government relationship with the United States. In that posting of the list, only the Paiute Indian Tribe of Utah is listed. There is no mention of any of the Bands separately within this list.

One singular membership roll was posted in the Federal Register, August 17, 1981, on page 41570, that lists all the members of the Paiute Indian Tribe of Utah. There is no immediate appearance of a separation between the list of members; however, if you look at the Identification No. there is a distinction between the groups of people. The numbers start out with 683, 684, 685, 686, and 688. This could be a distinction between each Band within the list of members.

You will also see similar language contained in the Bureau of Land Management Federal Register Notice posted September 13, 1984, which states:

Notice is hereby given that, pursuant to Public Law 98-219 (98 Stat. 11; 25 U.S.C. 766) dated February 17, 1984, certain public lands as depicted on maps contained in the draft document entitled "Proposed Paiute Indian Tribe of Utah Reservation Plan" (Bureau of Indian Affairs, January 24, 1982) are held in trust by the United States for the benefit of bands of the Paiute Indian Tribe of Utah and are part of the reservation of that tribe.

The most current Federal Register Notice, dated July 1, 2019, listing the Indian Tribal Entities within the Contiguous 48 States Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs does list the Paiute Indian Tribe of Utah on page 1202. Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes are also listed on the same line as the Paiute Indian Tribe of Utah in a parenthesis. The bands are not listed on separate lines as the other recognized tribes are within the listing.

Again, the legislative history and subsequent federal actions and documents described above support the unambiguous language of the Restoration Act restoring federal recognition to the singular Paiute Indian Tribe of Utah. We now turn to the statutory and regulatory framework for amending or revoking a tribe's constitution since the Shivwits Band's request contemplates and requires the amendment or revocation of the Paiute Indian Tribe of Utah's Constitution.

An Indian tribe recognized by the government has a right to adopt, amend, or revoke its constitution if the constitution requires it. According to 25 U.S.C. § 5123(b):

Any constitution or bylaws ratified and approved by the Secretary shall be revocable by an election open to the same voters and conducted in the same manner as provided in subsection (a) of this section for the adoption of a constitution or bylaws.

25 U.S.C. § 5123(a) states:

Any Indian tribe shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, and any amendments thereto, which shall become effective when-

- (1) ratified by the majority vote of the adult members of the tribe or tribes at a special election authorized and called by the Secretary under such rules and regulations as the Secretary may prescribe; and
- (2) approved by the Secretary pursuant to subsection (d) of this section.

Further, 25 U.S.C. § 5130(2) states:

The term "Indian tribe" means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe.

The same manner would include all the members of the Paiute Indian Tribe of Utah to participate or be requested by the appropriate governing body or by valid petition signed by at least thirty-three percent of the eligible voters of the tribe. In the "Definitions" section of 25 U.S.C. § 5123, it states:

(2) appropriate tribal request means receipt in the Area Office of the Bureau of Indian Affairs having administrative jurisdiction over the requesting tribe, of a duly enacted tribal resolution requesting a Secretarial election as well as a copy of the proposed tribal constitution and bylaws, amendment, or revocation action.

The Shivwits Band is requesting its members to vote on whether they should revoke the application of the Indian Reorganization Act to the Shivwits Reservation. 25 U.S.C. § 5125 states:

This Act shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application. It shall be the duty of the Secretary of the Interior, within one year after June 18, 1934, to call such an election, which election shall be held by secret ballot upon thirty days' notice.

Further, it states, "The time for holding an election under this section was extended to June 18, 1936, by act June 15, 1935, ch. 260, §2, 49 Stat. 378." No further extensions were granted. We do not believe Shivwits Band may now vote to revoke the application of the Indian Reorganization Act to the Band

Finally, the Constitution of the Paiute Indian Tribe of Utah reflects an understanding that the Restoration Act intended to recognize a single Paiute Indian Tribe of Utah with each Band acting as a constituent Band of the unified Tribal entity. According to the Constitution of the Paiute Indian Tribe of Utah (Constitution) approved July 15, 1991, under Article III, Shivwits Band is listed as a constituent band of the tribe. Further, as a constituent band of the tribe, the Shivwits Band has the authority under Article VIII, Sec. (2)(f), "to recommend to the tribal council any changes in this constitution."

Further, Article XVI - Amendments to Constitution states, in part:

It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment at the request of four (4) members of the tribal council, or upon the presentation to the Secretary of the Interior of a valid petition signed by at least thirty-three percent (33%) of the eligible voters of the tribe.

Article IV – Tribal Council, Section 1, states that the tribal council is consisted of six members with one elected from each constituent band.

Conclusion

Based on the unambiguous language of the Restoration Act, together with its legislative history, we interpret the Restoration Act as recognizing the Shivwits Band as a constituent band of the singular federally recognized Paiute Indian Tribe of Utah. Because the Paiute Indian Tribe of Utah was recognized by congressional legislation, only congressional legislation can undo the Paiute Restoration Act and allow the Shivwits Band to be an independent tribe recognized by the federal government.

Pursuant to the authority delegated to me by the Secretary of the Interior by 3 IAM 4, we are denying your request for a Secretarial election and returning your request for a Secretarial election since it does not comply with the requirements of the Indian Reorganization Act or 25 C.F.R. Part 81 as a proper tribal request. We also recommend that the Band submit any recommendations for any amendments or revocation of the Paiute Indian Tribe of Utah's Constitution to the Tribe's governing body, which in turn may submit a request to the Secretary for a Secretarial election.

This decision may be appealed to the U.S. Department of the Interior, Interior Board of Indian Appeals, Office of Hearings and Appeals, 801 North Quincy Street, Suite 300, Arlington, Virginia 22203, in accordance with regulations in 43 CFR Part 4. Your Notice of Appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your Notice of Appeal to (1) The Assistant Secretary – Indian Affairs, U.S. Department of the Interior, 1849 C Street, N. W., MS-4660-MIB Washington, D.C. 20240, (2) each interest party known to you, and (3) this office. Your Notice of Appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties. If you file a Notice of Appeal, the Board of Indian Appeals will notify you of further appeal procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period.

If you have any questions, please contact Sharlot Johnson, Regional Tribal Operations Officer, or Sophia Torres, Tribal Operations Specialist, or Karrie Quartz, Tribal Government Specialist at (602) 379-6786.

Sincerely,



Bryan Bowker
Regional Director

Cc: See Distribution List

Distribution List:

Tamra Borchardt-Slayton, Chairwoman
Paiute Indian Tribe of Utah
440 N. Paiute Drive
Cedar City, Utah 84720

Mark A. Echo Hawk, Attorney
505 Pershing Avenue, Suite 100
Pocatello, Idaho 83205-6119

Chief Administrative Judge
Interior Board of Indian Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

Department of the Interior
Director, Bureau of Indian Affairs
1849 C Street, N.W., MS-4606
Washington, D.C. 20240

Department of the Interior
Office of the Solicitor, Intermountain Region
125 South State Street
Salt Lake City, Utah 84138

Bureau of Indian Affairs
Southern Paiute Agency
PO Box 720
St. George, Utah 84771