



# THE PAIUTE INDIAN TRIBE OF UTAH

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October 25, 2019

Superintendent James E. Williams  
Bureau of Indian Affairs, Southern Paiute Agency  
180 N. 200 E. #111  
P.O. Box 720  
St. George, UT 84771

**Re: *Letter from the Shivwits Band Council regarding the Paiute Indian Tribe of Utah***

Dear Mr. Williams,

I write on behalf of the Paiute Indian Tribe of Utah (“PITU”) to respond to the letter sent to you dated May 16, 2019, signed by the members of the Shivwits Band Council. The PITU Tribal Council has, by majority vote, authorized me to contact you to formally oppose the Band’s requests. This letter offers a different perspective and provides additional context for the Shivwits Band’s concerns expressed in its letter, to correct certain misinterpretations of the law, and to update you on the Tribe’s path forward to address the Band’s concerns.

The letter signed by members of the Shivwits Band Council requested a Secretarial Election pursuant to 25 U.S.C. § 5125 for Shivwits Band members to revoke application of the Indian Reorganization Act (IRA) on the Shivwits Reservation and to revoke the application of the PITU Constitution to the Shivwits Band. In the letter, members of the Shivwits Band Council assert that the Shivwits Band is a federally recognized Indian tribe with the authority to request a Secretarial Election for these purposes.

Despite the arguments made in the letter to you by the Shivwits Band Council to the contrary, the IRA and its implementing regulations make clear that the Secretarial Election procedures apply “only to federally recognized tribes” that have a constitution or bylaws already ratified and approved by the Secretary of the Interior. The IRA provides that “[a]ny 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(b). The adoption of a constitution or bylaws is effective when “ratified by a 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[.]” 25 U.S.C. § 5123(a)(1) (emphasis added). Similarly, the regulations governing Secretarial Election procedures apply only to tribes that seek to “revoke a governing document adopted under Federal statute” and the “Federal statute requires an election and approval for amendment or revocation.” 25 C.F.R. § 81.2(a)(3). The regulations define a

“tribe” to mean “any Indian or Alaska Native tribe, band, nation, pueblo, village or community that is listed in the Federal Register under 25 U.S.C. 479a—1(a) [recodified at 25 U.S.C. § 5130], as recognized and receiving services from the Bureau of Indian Affairs.” 25 C.F.R. § 81.4.

The Shivwits Band is not a federally recognized Indian tribe with authority to request a Secretarial Election to revoke either the PITU Constitution or the application of the IRA to the Shivwits Band. Contrary to the statements made by the Shivwits Band, the PITU bands are not separate Indian tribes. PITU is a federally recognized Indian tribe composed of five “constituent bands of the tribe.” PITU Constitution, Art. III. The BIA’s official list of “Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs” also recognizes the Paiute Indian Tribe of Utah as a single, federally recognized Indian Tribe. 84 Fed. Reg. 1200, 1202 (Feb. 1, 2019). Any federal recognition of the Shivwits Band (or any other PITU band) as an “Indian tribe” would require formal legislative action by Congress or administrative action by the Department of the Interior. Because the Shivwits Band is not a federally recognized Indian tribe, it does not have authority to request a Secretarial Election to revoke either the PITU Constitution or the application of the IRA to the Shivwits Band.

Further, 25 U.S.C. § 5125 does not authorize the Shivwits Band to request a Secretarial Election to change the organization of PITU or revoke application of the IRA to the Shivwits Reservation. The express language of 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.

This statutory provision provided only a limited amount of time for a tribe to opt out of the application of the IRA if a majority of adult tribal members voted against its application. The period for holding such an election was extended to two years on June 15, 1935. *See* 49 Stat. 378 (1935) (“The time for holding elections on the question of excluding a reservation from the application of said Act of June 18, 1934, is hereby extended to June 18, 1936.”). Because the period to hold a special election to vote against the application of the IRA to a reservation has expired, 25 U.S.C. § 5125, the Band’s reliance on that expired provision provides no support for its requests for a Secretarial Election to change the organization of PITU or revoke application of the IRA to the Shivwits Reservation.

It is also notable that the Band’s request expressly contradicts the PITU Constitution which provides that the Constitution can only be amended or rescinded through a proper Secretarial Election. The PITU Constitution also prohibits the Bands from proceeding under a conflicting process: “[t]he band councils shall take no action which is inconsistent with this constitution, or ordinances or resolutions of the tribe. . . .” Article VIII, Section 3. Therefore, this attempt by the Shivwits Band to withdraw the authority “delegated” to the Tribe in the PITU Constitution is prohibited by the PITU Constitution.

The PITU Tribal Council takes the Bands’ concerns seriously. As you know, the Tribal Council is composed of the five Chairpersons of the PITU Bands, with the PITU Tribal Chairperson elected by the five Band council members. As the Tribal Chairperson, I highly encourage support, effective communication, and collaboration among all five Band council members. The Bands’ concerns are the Tribe’s concerns, and I assure you that the internal governance issues raised in the letter to you are currently being addressed within and among the PITU Tribal Council. If, in the future, the Tribal Council or the PITU membership decide to request a Secretarial Election in accordance with our Constitution and federal law, the Tribe will coordinate with your office to proceed accordingly.

Please do not hesitate to contact me with any questions you may have about these trying issues.

Sincerely,



Tamra Borchardt-Slayton  
Chairwoman, Tribal Council  
Paiute Indian Tribe of Utah

cc: Geoff Strommer  
Paul Tsosie

Enclosures: Letter on Shivwits Band's Withdrawal from the PITU Tribal Council  
Letter on Shivwits Band's Proposal for Contract for Health Services  
Letter on Shivwits Band's Request for a Secretarial Election