

IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

OCT 3 0 2003

**CERTIFIED MAIL NO 7002 3150 0005 2284 9783
RETURN RECEIPT REQUESTED**

Shirley Summers, Chairperson
Timbisha Shoshone Tribe
P.O. Box 786
Bishop, California 93514

Dear Ms. Summers:

The purpose of this correspondence is in response to your letters to the Bureau of Indian Affairs (BIA), Acting Pacific Regional Director; one dated September 2, 2003 regarding the Timbisha Tribal Council Member Installation; the other letter dated August 22, 2003 concerning the Timbisha Shoshone Tribe (Tribe) and the Special Election held on August 2, 2003.

We have completed a review of the information made available to the Bureau of Indian Affairs (BIA), and have determined that the action initiated by the Kennedy Council and the Election Committee appear to conform with the Acting Regional Director's decision of May 28, 2003 and complies with the will of the General Council of the Timbisha Shoshone Tribe to hold another Special Election. Therefore, we recognize the results of the Special Election held on August 2, 2003 and the newly elected Tribal Council of the Timbisha Shoshone Tribe for the reasons stated below.

BACKGROUND

On May 28, 2003, the BIA, Pacific Region Acting Regional Director (Regional Director) issued a decision concerning the leadership of the Timbisha Shoshone Tribe. In the decision, the Regional Director found that based on the information made available to the BIA, it could not be determined which slate of candidates was the rightfully elected Tribal Council. Further hampering the BIA review were irregularities in prior elections that appeared to have been tolerated by the Tribe. Ultimately, and most important, was it appeared that no efforts were made to resolve this dispute internally. Therefore, the BIA decision was to remand this matter to enable the parties to this dispute to exhaust their Tribal remedies. Further, the BIA continued to recognize the Kennedy Council until both parties exhausted their tribal remedies and advised the BIA of the outcome or until notified of the results of the next regularly scheduled election; whichever occurred first.

Minutes of a June 2, 2003 Timbisha Shoshone Tribe Tribal Council meeting indicates that the Kennedy Council appointed Ms. Doreen Mason to fill the vacant Tribal Council member position. As a result of the Acting Regional Director's decision of May 28, 2003, the Kennedy Council appointed Ms. Angelica Gonzales, Mr. Frank Shoshone and Ms. Dora Jones to the Election Committee. The Election Committee was directed to undertake necessary action to ascertain the will of the General Council in regard to the possibility of holding another election to resolve the Tribal leadership dispute.

By letter dated June 3, 2003 from the Acting Chairperson of the Kennedy Council to the Acting Pacific Regional Director, she informed the Director that the Tribal Council, headed by Georgia Kennedy, had appointed two members to fill the existing vacancies on the Tribal Council: Doreen Mason and Erick Mason. The Tribal Council was as follows:

Georgia Kennedy, Chairperson
Shirley Summers, Vice-Chairperson
Madeline Frank, Secretary-Treasure
Erick Mason, Member
Doreen Mason, Member

By notice dated June 3, 2003, the Tribal Council informed the Timbisha Shoshone General Council that the BIA on May 28, 2003 responded to the appeals filed by the Kennedy Council and the Boland Council regarding the November 12, 2002 and December 12, 2002 tribal elections. The decision stated that BIA will continue to recognize the Kennedy Council until both parties have exhausted their tribal remedies and advised the BIA of the outcome or until notified of the results of the next regularly scheduled election; whichever occurs first. Further, the Tribal Council has appointed Ms. Angelica Gonzales, Mr. Frank Shoshone and Dora Jones to the Election Committee to conduct a Special Election as soon as possible pursuant to tribal law. Furthermore, the Tribal Council asked the General Council to vote on the question of whether to schedule a Special Election for a new Tribal Council and whether to request BIA assistance and ballots must be returned by June 17, 2003. Notices will be posted of the Special Election to take place July 19, 2003.

By letter dated June 11, 2003, to BIA Superintendent, Central California Agency, from Judith Kammins Albietz, legal counsel for the Kennedy Council, she informed the Superintendent that the purpose of the letter was to (1) clarify the Tribal Council position regarding its composition; (2) provide documentation to support its position; and (3) request the Agency to reconsider who it recognizes as the Tribal Council. After the two disputed elections in November and December of 2002, several appeals were filed with the Pacific Regional Director. The January 10 and May 28, 2003 decisions by the BIA regarding these appeals stated that pending resolution of the election disputes the BIA would continue recognizing the Kennedy Council. On February 8, 2003 the Kennedy Council removed Grace Goad and appointed Clyde Patterson and Jason Parrie to the two vacant council seats; on May 10, 2003 Clyde Patterson and Jason Parrie resigned; on May 10, 2003, the Kennedy Council voted to accept their resignations and appointed Erick Mason to one of the vacant Tribal Council positions; on June 2, 2003, the Kennedy Council appointed Doreen Mason to the vacant Council position. Further, stating that pursuant to the Tribe's Constitution, the removal actions are authorized pursuant to Article XI, Removal and

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Recall, Section 1; appointments were also valid pursuant to Article IV, Governing Body, Section 3, and pursuant to Article X, Section 1, when a Tribal Council position becomes vacant by resignation, removal from office, if less than 12 months remaining on the term, the Tribal Council shall fill vacant positions by appointment. Furthermore, stating that the Kennedy Council was serving as an Interim Council pending resolution of the election dispute before the BIA.

On June 14, 2003, the Tribal Council selected Shirley Summers, as Chairperson, Erick Mason, as Vice-Chairperson, Doreen Mason, as Secretary-Treasurer, Georgia Kennedy, and Madeline Frank, as Council Members of the Timbisha Shoshone Tribe. In accordance with Resolution TC1-6-03, the Tribal Council stated that they have the power to select who on the Tribal Council shall serve in the positions of Chairperson, Vice-Chairperson and Secretary-Treasurer, and further stating that the reason for selecting new officers of the Tribal Council was because the prior Chairperson and Secretary-Treasurer were neglecting their duties.

By letter dated June 17, 2003 to the Chief Administrative Judge, Interior Board of Indian Appeals from Stephen V. Quesenberry, Attorney for Richard Boland et al., submitted the Appellants' Notice of Appeal of the May 28, 2003 decision of the Acting Pacific Regional Director, BIA, in reference to Richard Boland, et al. v. Acting Pacific Regional Director, BIA.

On June 20, 2003, the Election Committee Chairperson issued a notice to the Timbisha Shoshone General Council Members of the Special Election to be held on August 2, 2003 and that the first order of business was to formally register all voting members of the Tribe and to declare candidacy. The deadline for submitting the forms was July 7, 2003.

On June 26, 2003, Judith Kammins Albietz, legal counsel for the Kennedy Council, stated in her letter to the Acting Regional Director, that the Ballots were sent via certified mail to all 230 eligible voting members of the Tribe and that ninety-nine (99) voted yes for a new election, seventeen (17) members voted against a new election, seventy-five (75) members voted for technical assistance from BIA, forty-one (41) members voted against technical assistance from BIA, and thirteen (13) abstentions. Stating further that because the matter has been remanded back to the Tribe for resolution, it is the Tribal Council's assertion that the General Council has now given their indisputable direction and authority to conduct a third election for the purpose of resolving the tribal leadership dispute. Having a third election to resolve the matter was offered to the Boland party on numerous occasions and subsequently rejected to participate.

On July 7, 2003, the Election Committee reported receiving voter registration/absentee requests and declarations for candidacy from the voting members of the Tribe for the scheduled August 2, 2003 Special Election. Ten (10) declarations for candidacy were also received.

On July 8, 2003, Judith Kammins Albietz, legal counsel for the Kennedy Council submitted a chronology of the Election Committee actions in their preparation for the Special Election to be held on August 2, 2003.

On July 17, 2003, the Election Committee Chairperson requested the BIA to provide technical assistance for the Special Election to be held on August 2, 2003 and that the Election Committee will certify the candidates for the Special Election.

On July 18, 2003, Dorothy Alther, Attorney, on behalf of her clients, the Boland Group, declining the invitation to participate in the tribal election scheduled for August 2, 2003. Further stating that the Boland appeal of the May 28, 2003 decision, which was timely filed with IBIA, stays the decision and any remand to the General Council would leave the Tribe's election process open to illegal and unwarranted BIA intrusion.

On July 28, 2003, the Election Committee Chairperson reported that, to date, the Election Committee had received approximately 108 completed voter registration forms and 101 requests for absentee ballots. During the Election Committee outreach efforts to encourage voter participation, many local members indicated that they preferred to register at the poles on Election Day, which is authorized by the Tribe's Election Ordinance. Also included in the report were the names of the candidacy, sample ballots and sample absentee ballots. Pursuant to the Election Ordinance, the Election Committee will certify the election results to the BIA recognized Kennedy Council.

On August 1, 2003, the Superintendent, Central California Agency, informed the Election Committee that the BIA was unable to provide the requested technical assistance.

On August 2, 2003, the Election Committee conducted the Special Election, which one hundred fifteen (115) members registered to vote and ninety-seven (97) members voted. Upon adhering to the time frames allowed for appeals and hearings, the Election Committee certified to the Kennedy Council the final Election results.

On August 6, 2003, the Election Committee filed a request with the Interior Board of Indian Appeals (Board) to be considered as Interested Party in the appeals before the Board regarding the Timbisha Shoshone Tribe's leadership dispute and included the actions that the Election Committee had undertaken to ascertain the will of the General Council of the Tribe.

On August 7, 2003, pursuant to the Board's Pre-Docketing Notice and Order Authorizing BIA to Implement Remand Order, dated July 7, 2003, and the Pacific Regional Director's decision of May 28, 2003, the Election Committee under the assumption that the Board will grant the Committee interested party status, reported to the Board the Timbisha Shoshone General Council's efforts to resolve the Tribal leadership dispute.

On August 7, 2003, Judith Kammins Albietz, legal counsel for the Kennedy Council also submitted a response to the Board's Pre-Docketing Notice and Order Authorizing BIA to Implement Remand Order, dated July 7, 2003, stated that the Acting Regional Director's decision of May 28, 2003 mooted the appeal in Docket No. IBIA 03-82-A, that the Kennedy Council recognized the General Council as the ultimate governing authority of the Tribe and supports the request of the Election Committee to be the interested party in the appeals filed, and that the Kennedy Council respects, agrees and supports the decision of the majority of General Council to call for a new election to resolve the leadership dispute. Further, the Kennedy

Council would like IBIA to consider the results of the Special Election held on August 2, 2003, and vacate all other appeals so that the Tribal government can rebuild tribal programs and services.

On August 8, 2003, the Acting Pacific Regional Director responded to the Board's Pre-Docketing Notice and Order Authorizing BIA to Implement Remand Order, dated July 7, 2003, stated that the Acting Regional Director's decision of May 28, 2003 mooted the appeal in Docket No. IBIA 03-82-A. As requested by the Board, the Regional Director reported the actions taken by the Acting Regional Director and the Superintendent regarding the leadership dispute.

On August 14, 2003, the Board, in regard to the appeals, Docket Nos. IBIA 03-82-A, and IBIA 03-119-A, issued a Notice of Assignment of Docket Number; Order concerning Representation; Order concerning Appearance by the Tribal Election Committee; and Order Allowing Response to Status Reports. The Board indicated that there was several matters to these two cases that needed to be addressed and one, in particular, was that the Election Committee had asked to be granted Interested Party status. The Board further stated that at this time, the Board believes that it would be more appropriate to allow the Election to participate in these appeals as amicus curiae under 43 C.F.R. §4.313.

On August 22, 2003, by letter to the Acting Regional Director, Pacific Region, the newly elected Chairperson of the Timbisha Shoshone Tribal Council stated that the Tribe had worked through its leadership dispute by holding a Special Election, which the General Council of the Tribe directed at the Tribe's General Council meeting held on May 3, 2003. Enclosed with the Tribal Council's letter was the Timbisha Election Committee's letter dated August 21, 2003, referencing their Report of the Special Election of August 2, 2003, which the Committee certified and stated that one hundred fifteen (115) General Council members registered to vote and ninety-seven (97) members voted. Also enclosed were the Minutes of the Election Committee meeting of August 21, 2003, a letter to Ms. Beverly Kendall regarding her election appeal hearing scheduled for August 21, 2003, which Ms. Kendall did not attend and a Proof of Service of a letter to Ms. Kendall.

DISCUSSION AND CONCLUSION

The fundamental issue is whether the actions of the Kennedy Council and appointed Election Committee were valid and as a result of their actions were the parties to this dispute allowed to exhaust their Tribal remedies, as stated in the BIA, Regional Director's decision of May 28, 2003 (Decision) in a manner that complies with the Decision and with the Indian Civil Rights Act of 1968, as amended (25 USC §§ 1301-1303).

Our recognition of the Kennedy Council was necessary and appropriate because during the pendency of an appeal there exists a need to recognize some entity in order to maintain the government-to-government relationship. Furthermore, the Tribe and the BIA are parties to an effective Multi-Activity Program Contracts, pursuant to the Indian Self-Determination and Education Assistance of 1975, as amended (25 USC 450 et seq.) The management of these contracts requires BIA recognition of some tribal entity. We believe that we took into consideration all relevant facts and acted appropriately in recognizing the Kennedy Council on

an interim bases until the pending appeal is decided. Since we did not restrict the Kennedy Council in carrying out their duties as the Tribal Council of the Tribe, we believe that the actions taken were not in conflict with the Tribe's Constitution.

Under the ICRA, "[n]o Indian tribe in exercising powers of self-government shall...deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law (25 USC § 1302 (8))". In its efforts to comply with the Decision, the General Council exercised several of the Tribe's powers of self-government---specifically, the power to elect its representatives. The General Council exercised such powers on two particular occasions: the General Council Meeting of May 3, 2003, and the Special Election of August 2, 2003. Since the General Council's actions involve the exercise of the Tribe's powers of self-government, these actions must conform to the ICRA and must not "deny to any person within its jurisdiction the equal protection of [the Tribe's] laws or deprive any person of liberty or property without due process of law." My analysis of these actions follows.

As a result of the BIA, Acting Regional Director's decision of May 28, 2003, the Kennedy Council and the Election Committee properly noticed all voting members to vote on whether to have a third election or not, upon receipt of the General Council's vote to have a third election, again noticed all voting members of the Special Election held on August 2, 2003 and continued keeping the General Council informed through the election process. Furthermore, the Election Committee issued a notice to the member who appealed the August 2, 2003, that a hearing was schedule for August 21, 2003.

Based upon the information provided to this Office, we feel that the actions initiated by the Kennedy Council and the Election Committee of the Timbisha Shoshone Tribe appear to conform with the Acting Regional Director's decision of May 28, 2003. Therefore, we recognize the results of the August 2, 2003 Special Election and also congratulate the following elected persons to represent and serve as officials of the Tribe:

Shirley Kennedy, Chairperson
Erick Mason, Vice-Chairperson
Doreen Mason, Secretary-Treasure
Mark Lee, Council Member
Dan Shoshone, Council Member

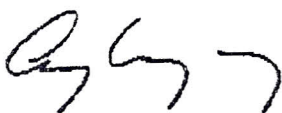
As a result of this decision to recognize the Tribal Council Officers and Council Members elected on September 2, 2003 and to continue and engage in the government-to-government relationship, please contact the BIA, Superintendent, Central California Agency, for information concerning contracts let under the Indian Self-Determination Education Assistance Act.

This decision may be appealed to the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203, in accordance with regulations in 43 CFR §§ 4.310 - 4.340. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within thirty 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,

4140 MIB, U.S. Department of the Interior, 1849 C Street, NW, Washington, D.C. 20240, (2) each interested 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 an attorney does not represent you, you may request assistance from this office in the preparation of your appeal. 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. No extension of time may be granted for filing a notice of appeal.

Please contact me at (916) 978-6000, should you require additional information with regard to this matter.

Sincerely,



Acting Regional Director

Distribution:

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California Indian Legal Services
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787 North Main Street
Bishop, CA 93514

Office of Hearing and Appeals
Interior Board of Indian Appeals
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Administrative Judge
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