

INDIAN LAW RESOURCE CENTER

CENTRO DE RECURSOS JURÍDICOS PARA LOS PUEBLOS INDÍGENAS

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October 11, 2013

Certified Mail/Return Receipt Requested

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

Re: **NOTICE OF APPEAL**

Dear Director Dutschke:

The Indian Law Resource Center, a nonprofit organization, files this Notice of Appeal on behalf of appellants Joe Kennedy, the last lawfully elected Chair of the Timbisha Shoshone Tribal Council, Grace Goad, Erick Mason, Pauline Esteves, and Madeline Esteves. All of these individuals are enrolled members of the Timbisha Shoshone Tribe (Tribe) and their names are listed on the 1978 Base Roll approved by the Bureau of Indian Affairs (BIA) in 1982. All have served in various tribal elected capacities, including elections between 2008-2010 to serve on the last lawfully elected Tribal Council.

Decision Being Appealed

The appellants hereby appeal the various actions of the Superintendent, Central California Agency, BIA announced September 25, 2013 (Decision), calling, establishing, and setting in motion the process for conducting a Secretarial election to adopt or reject a proposed Constitution of the Timbisha Shoshone Tribe in accordance with 25 C.F.R. Part 81. The Decision is explicitly described in a letter from Troy Burdick, Superintendent, Central California Agency, BIA (Superintendent), dated September 25, 2013 (Letter), to eligible voters of the Timbisha Shoshone Tribe, attached hereto as Exhibit A.

Reasons for the Appeal

The Decision of the Superintendent is contrary to applicable law, and 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 will be permitted to vote.
2. Notice of the Secretarial election was sent to adults listed on the membership list of the Tribe and present voter list, both of which include individuals who do not meet the membership requirements of the Tribe. See "Notice – Secretarial Election," attached as part of Exhibit A.
3. Prior notice of the various actions described in the Decision was not timely sent to interested parties such as the appellants.
4. In carrying out the Decision, the Superintendent appointed an Election Board that does not clearly comply with applicable federal regulations that require "at least two representatives of the tribal governing body or an authorized representative committee."
5. Under the contemplated process, the Election Board will permit voting by individuals who do not meet the membership requirements of the Tribe.
6. The 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.
7. 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.
8. The Decision is inconsistent with the Department of the Interior's prior decision recognizing the Tribe and spelling out who is eligible to be a member of the Tribe.
9. The Letter, which purports to conduct a Secretarial election entirely by absentee ballot, violates applicable federal regulations governing the entitlement of the Tribe's members to vote to approve or reject the proposed Constitution.

Appellants reserve the right to file a fuller statement of reasons for the appeal within 30 days after this notice.

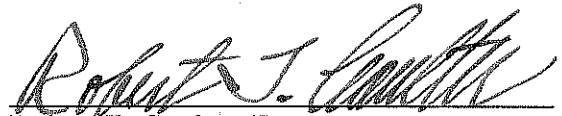
Relief Sought

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 call and conduct of the Secretarial election on rejection or adoption of the proposed Constitution; and
2. Appropriate measures to assure 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.

Respectfully Submitted,



Robert T. Coulter, Esq.

Jana L. Walker, Esq.

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ATTORNEYS FOR APPELLANTS

CERTIFICATION

Pursuant to 24 C.F.R. §§ 2.9(a), 2.9(c)(6), and 2.12, I certify that, on October 11th, 2013, a copy of this Notice of Appeal has been sent by first-class, postage prepaid, addressed as follows to the Pacific Regional Director who will decide the appeal, and each known interested party:

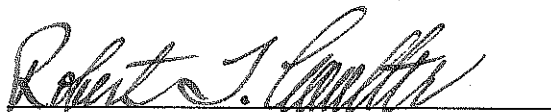
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RESPECTFULLY SUBMITTED on this 11th day of October, 2013.



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