

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
OFFICE OF THE DIRECTOR

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IN RE: APPEALS OF DECISION OF )  
REGIONAL DIRECTOR, WESTERN )  
REGIONAL OFFICE, BUREAU OF )  
INDIAN AFFAIRS, DATED OCTOBER )  
17, 2023, CONCERNING RECOGNITION )  
OF A REPRESENTATIVE OF THE )  
TE-MOAK TRIBE OF WESTERN )  
SHOSHONE INDIANS OF NEVADA )

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**DECISION**

**I. Introduction.**

Since 2021, the Te-Moak Tribe of Western Shoshone Indians (Tribe) has been embroiled in an internal dispute as to the membership of (1) the Tribal Council; (2) the Tribe's constituent Bands' Councils; and (3) the Tribal judiciary. Confronted with the need to identify a Tribal representative through which to fulfill the federal government's obligations to the Tribe, on October 17, 2023, the Regional Director (RD) of the Western Regional Office (WRO) of the Bureau of Indian Affairs (BIA) issued a decision (RD's Decision)<sup>1</sup> recognizing Danena Ike as the interim Tribal representative through whom the BIA can maintain government-to-government relations as the Tribe attempts to resolve its internal disputes.

Pursuant to Indian Affairs' newly revised administrative appeals regulations (25 C.F.R. Part 2, effective September 8, 2023), because the RD issued a tribal leadership recognition decision in the first instance, the Director of the Bureau of Indian Affairs (DBIA) has jurisdiction over appeals of the RD's Decision. Parties appealed the Decision.

For the reasons set out below, I vacate the RD's Decision to recognize Danena Ike as the individual Tribal Representative for a limited time and purpose. I hereby recognize the Garcia-Ike Council, as currently composed,<sup>2</sup> as the government of the Te-Moak Tribe for purposes of

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<sup>1</sup> The WRO provided this office with two voluminous administrative records, one for the RD's decision of September 30, 2022, which was appealed to the Interior Board of Indian Appeals (IBIA), and one for the RD's Decision of October 17, 2023. I have prepared a separate administrative record and excerpts of record for this decision, with the documents in chronological order. I include the indexes for the RD's administrative records.

<sup>2</sup> The Garcia-Ike Notice of Appeal (NOA) identifies the Tribal Council as composed of: Vince Garcia, Chairman, South Fork Band; Danena Ike, Vice Chairwoman, Elko Band; Angie Quintana, South Fork Band; Rhonda Hicks, Battle Mountain Band; and Leah Brady, Elko Band. Garcia-Ike NOA caption and ¶¶ 11-13 (Oct. 23, 2023). Mr. Garcia passed away in January 2024. I understand that there may have been other changes to the membership of the Council; to the extent that is the case, those individuals currently serving on that Tribal Council will replace any of the above-named individuals who are no longer active on the Council.

conducting business with the federal government and for preparing for the next election cycle, pending the Tribe’s ultimate resolution of its internal disputes via tribal mechanisms.

## **II. Background.**

### **a. Te-Moak elections in October 2021.**

The Tribe is composed of four constituent Bands – Elko, South Fork, Battle Mountain, and Wells. As explained in the RD’s Decision, the Tribe’s Constitution provides that each Band “has a Band Council of seven members, and the Constitution identifies powers of the Band Councils. Each Band Council selects representatives to the Tribal Council from the membership of their respective Band Councils to represent the Band in the Te-Moak Tribal Council within fourteen days after the Regular Band Council Elections.”<sup>3</sup>

Pursuant to Tribal law, elections for Band Council members are to be conducted in the second week of October of every third year.<sup>4</sup> The Constitution provides that the “election for Band Council members shall be held on the same day in each Band.”<sup>5</sup> Elections for Tribal Council Chairman are to be held no more than three weeks after the Band Council elections.<sup>6</sup> Pursuant to the Tribe’s Election Ordinance, the Tribal Council is to pass a resolution in the first week of July establishing the dates of the Band and Tribal Elections.<sup>7</sup>

As mandated by Tribal law, the most recent elections were due in October 2021.<sup>8</sup> The 2018-21 Tribal Council under then-Chairman Joseph Holley did not timely schedule the elections for 2021.<sup>9</sup> In September 2021, the Holley Council passed a resolution scheduling the Band elections for October 25, but the Holley Council never scheduled the Tribal Chairperson election.<sup>10</sup>

Three Bands, Elko, Wells, and South Fork, held elections on October 25, 2021.<sup>11</sup> The results of the Elko Band’s elections were certified by the Band’s Election Committee and the elected Council members sworn in by the Magistrate Judge of the Department of the Interior’s Court of Indian Offenses for the Western Region.<sup>12</sup>

The Wells Band Elections were not properly posted. The Band’s Election Committee did not certify the results.<sup>13</sup>

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<sup>3</sup> RD’s Decision at 5 (cleaned up).

<sup>4</sup> Constitution, Article 7, section 1. Election Ordinance, section 13-4-2(a)(1).

<sup>5</sup> Constitution, Article 7, section 4(a).

<sup>6</sup> Constitution, Article 7, section 3.

<sup>7</sup> Election Ordinance, Section 13-4-2(a)(1).

<sup>8</sup> See, e.g., Garcia-Ike NOA at ¶ 2. (Oct. 30, 2023).

<sup>9</sup> *Id.* at ¶¶ 1-2.

<sup>10</sup> Resolution 21-TM-117 (Sept. 19, 2021); See also Garcia-Ike NOA at ¶ 2.

<sup>11</sup> Email, Vince Garcia to RD, July 12, 2022. See “Recollection from Steve Brady, 2022 Wells Chairman regarding the October 25<sup>th</sup> and February 8<sup>th</sup> election process for the Wells Band Council,” describing attempt to hold election at Wells Band on October 25. Estimated date June 1, 2022.

<sup>12</sup> Letter, Jay Allison to Joseph McDade, Superintendent, Eastern Nevada Agency, at 1-2. July 25, 2022.

<sup>13</sup> See “Recollection from Steve Brady, *supra*.

The South Fork Band Council as elected in October 2021 consisted of Larsen Bill, Kirk Malotte, Vincent Garcia, Duane Garcia, Dallas Smales, Annette Clark and Tyler Reynolds. Upon the death of Larsen Bill, Angie Quintana was added to the Council. Dallas Smales declined to be placed on the Council.<sup>14</sup> The day after the election, in response to two challenges, the South Fork Band Election Committee invalidated the election.<sup>15</sup> People elected in the October 2021 South Fork Band election filed suit in the Court of Indian Offenses, challenging the Election Committee's invalidation of the October election.<sup>16</sup> In their current appeal of the RD's Decision, the Garcia-Ike faction argues that the challenges to the South Fork Band October 25, 2021, elections were submitted untimely, and by invalid challengers.<sup>17</sup>

On December 5, 2021, Judge Samuel Biers swore into office as South Fork Council Angie Quintana, Annette Clark, Kirk Mallotte, and Vince Garcia.<sup>18</sup> On December 8, 2021, Judge Biers issued a decision finding that the Elko Band and South Fork Band elections of October 25, 2021, were valid.<sup>19</sup> By contrast, months later Judge Wendall Hayes<sup>20</sup> concluded that the Band elections conducted on October 25, 2021 were not valid.<sup>21</sup>

Battle Mountain Band did not conduct elections on October 25, 2021.<sup>22</sup>

The Garcia-Ike Notice of Appeal (NOA) states that Garcia, Ike, Angie Quintana, Chauna Cota, and Jay Allison were sworn in as members of the Tribal Council on December 14, 2021.<sup>23</sup> Evidence in the record indicates that an election was conducted for Tribal Council Chairman on January 26, 2022.<sup>24</sup> The tally sheet indicates three candidates, two of whom were from Elko Band (Danena Ike and Chauna Cota) and one from South Fork (Vince Garcia). Vince Garcia received the most votes, followed by Danena Ike. The tally sheet indicates that 103 valid ballots were cast.

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<sup>14</sup> Order, "In the Matter of Te-Moak Tribal Council and Tribal Assets," at 4; case no. 2021-TMSC-024 (Te-Moak Supreme Court, Dec. 8, 2021) (Biers, J.).

<sup>15</sup> Letter, Elwood Mose, Chairman, South Fork Band Election Committee, to South Fork Band Council, Oct. 26, 2021.

<sup>16</sup> *Id.*

<sup>17</sup> Garcia-Ike NOA, at 2.

<sup>18</sup> Samuel Biers had been appointed to the office of the Appellate Judge of the Te-Moak Supreme Court by the Tribal Council via a Tribal Resolution dated February 3, 2021. On September 9, 2021, the Tribal Council passed a resolution stating that the Council had resolved, on or shortly after March 5, 2021, to remove Samuel Biers from his judgeship based on Biers' alleged material misrepresentations about his qualifications. Mr. Biers' status as Supreme Court judge is a point of contention in this matter.

<sup>19</sup> Order, "In the Matter of Te-Moak Tribal Council and Tribal Assets," *supra*, at 14, paragraph 18.

<sup>20</sup> The record includes an Oath of Office dated September 23, 2021, purporting to place Wendall Hayes as the Tribe's Supreme/Appellate Court judge. The record includes orders signed by Hayes as the "Chief Judge" of the "Tribal Court." Mr. Hayes' status as Tribal court judge is a point of contention in this matter.

<sup>21</sup> Order, *Carrera v. Band Election Committees of Elko, Battle Mountain, South Fork, and Wells Bands of the Te-Moak Tribe, and Te-Moak Tribal Election Board*, ("Carrera") case no. BM-CV-03-21, at 9 (the handwritten page numbers are incomplete and inaccurate). (Te-Moak Tribal Court, May 6, 2022).

<sup>22</sup> The RD stated that the Wells Band did not hold an election on October 25, 2021. RD's Decision at 10. In a decision issued May 6, 2022, Judge Hayes asserted that the petitioner, David Carrera, "states that Wells Band held an election on October 25, 2021 but its Band Election Chairman failed to certify the election for unspecified reasons." Order, *Carrera*, *supra*, at 3, paragraph 17.

<sup>23</sup> Garcia-Ike NOA at ¶ 7.

<sup>24</sup> "Official Tally Sheet," Tribal Council Chairman election, January 26, 2022.

### **b. Te-Moak elections in February 2022.**

The Holley Council passed a resolution on December 9, 2021, declaring that the Band elections conducted in October were invalid and directing all four Bands to hold elections on February 8, 2022. As justification, the Holley Council cited the Constitutional requirement that all four Bands hold elections on the same day, and the requirement that newly elected officers be sworn in by either the chief judge of the Tribal court or the Chairman of the Tribal Election Board.<sup>25</sup> On December 16, 2021, Joseph Holley wrote to the Superintendent of BIA's Eastern Nevada Agency, asserting that the election conducted by Elko Band on October 25, 2021, violated Tribal law and was void.<sup>26</sup> On December 27, 2021, Wendall Hayes, writing as Chief Judge of the Te-Moak Tribal Court, issued an Emergency Temporary Restraining Order granting the request of the Te-Moak Tribal Council, as led by Mr. Holley, to enjoin any recognition of the people elected in October 2021, and retaining the officials who were in office prior to October 2021.<sup>27</sup>

Elko Band did not hold an election on February 8, 2022, asserting that their October 2021 election results were valid.<sup>28</sup>

South Fork Band held an election on February 8, 2022, which was certified by the Band's Election Committee.<sup>29</sup>

The Wells Band did not hold an election on October 25, 2021, but held an election on February 8, 2022, which was certified by the Band's Election Committee.<sup>30</sup>

The Battle Mountain Band did not hold an election on October 25, 2021. The Band held an election on February 8, 2022, the results of which were certified by the Band's Election Committee.<sup>31</sup> On May 6, 2022, Judge Hayes issued a decision in *David Carrera v. Band Election Committees*, Case No. BM-CV-03-21, ordering Battle Mountain Band and Elko Band to hold new Band elections on or before July 29, 2022.<sup>32</sup> It does not appear that the Battle Mountain Band conducted an election in July 2022, but it did conduct an election on September 19, 2022.<sup>33</sup>

### **c. The Te-Moak intratribal dispute.**

Two factions now claim to be the Tribal Council. One group is led by Joseph Holley, who had been elected Tribal Chairman in the previous election in 2018. The other group was led by Vince Garcia, who claimed to have been validly elected as Tribal Chairman in 2021, until his

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<sup>25</sup> Te-Moak Resolution 2-TM-132, "Tribal Elections," Dec. 9, 2021.

<sup>26</sup> Letter, Holley to Superintendent J. McDade, Dec. 16, 2021.

<sup>27</sup> Emergency Temporary Restraining Order, *Te-Moak Tribal Council v. Garcia et al.*, (Te-Moak Tribal Court, Dec. 27, 2021) (Judge Wendall Hayes).

<sup>28</sup> See Garcia-Ike NOA at ¶ 3.

<sup>29</sup> South Fork Resolution 22-SF-08, Feb. 17, 2022.

<sup>30</sup> Wells Band Election Committee certification of election results, Feb. 9, 2022.

<sup>31</sup> See Letter, Stephen Joseph McDade to RD, at 5. June 2, 2023.

<sup>32</sup> See *Timeline* prepared by Garcia-led Tribal Council, paragraph 27. July 25, 2022.

<sup>33</sup> RD's Decision at 10-11.

death in January 2024, and is now led by Danena Ike, Vice-Chairwoman of the Garcia factional Council.

In addition to the two factions claiming to be the Tribal Council, at least two people claim to be Tribal court judges. Samuel Biers, who supports the validity of the Garcia-Ike Council, asserts he was validly appointed to the role of “Appellate Judge” of the Tribe’s “Supreme Court.”<sup>34</sup> Biers urges that he has never been removed from office.<sup>35</sup> Wendall Hayes, apparently allied to Mr. Holley,<sup>36</sup> purports to be a judge for the Te-Moak Tribal Court. In light of these internal divisions, BIA has been unable to recognize any group as the Tribal Council.

In March 2022, the RD recognized the last undisputed Tribal government, led by Joseph Holley, solely for the purpose of completing transfer to the Tribe of the judicial jurisdiction formerly exercised by the C.F.R. courts.<sup>37</sup> The RD explained that the BIA’s recognition of the Holley-led Council was “for the limited purpose of transferring judicial jurisdiction from the C.F.R. Court to the Tribe . . . [i]t is not a general letter of recognition, does not finally resolve the present Te-Moak intra-governmental dispute, and is not a final decision regarding the validity of the Tribal Court or the Tribal Judge. That is a matter for a tribal forum.”<sup>38</sup>

In September 2022, the RD declined a request for official recognition submitted by Vince Garcia.<sup>39</sup> In her decision letter, the RD emphasized that “At this time, we do not recognize the last undisputed council as the tribal governing body as we are not recognizing any tribal government, pending tribal resolution of these issues.”<sup>40</sup> Garcia appealed that decision to the Interior Board of Indian Appeals (IBIA).<sup>41</sup> The IBIA issued an order allowing the RD to make a leadership recognition decision while the appeal was pending, if the BIA needed to take an action. The appeal was stayed, but the stay has been lifted, and the Garcia-Ike appeal of the RD’s September 2022 decision declining to recognize Garcia remains pending in the IBIA.

#### **d. New administrative appeals regulations.**

On August 9, 2023, the Assistant Secretary – Indian Affairs (AS-IA) published in the Federal Register revised regulations governing administrative appeals of decisions by BIA officials (25 C.F.R. Part 2).<sup>42</sup> As provided in the Federal Register Notice, those regulations went into effect on September 9, 2023. In an effort to minimize the harmful consequences, to Tribes and the Department, of lengthy interruptions in government-to-government relations caused by intratribal leadership disputes, the new Part 2 regulations include a subpart intended to minimize the time between the BIA’s initial decision recognizing a Tribal Representative and the effective

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<sup>34</sup> Te-Moak Tribal Resolution 21-TM-21, Feb. 3, 2021.

<sup>35</sup> Biers Reply to RD’s Response to SOR, at 18. Jan. 21, 2024.

<sup>36</sup> Neither Holley nor Hayes filed a Notice of Appeal in this matter.

<sup>37</sup> Regional Director’s Decision letter, March 2, 2022; as modified by the Regional Director’s letter of March 17, 2022.

<sup>38</sup> Regional Director’s letter, March 17, 2022.

<sup>39</sup> Letter, RD to Sandven for Garcia. Sept. 30, 2022. Declining to “interfere in this intratribal dispute.”

<sup>40</sup> *Id.* at 2.

<sup>41</sup> Notice of Appeal to IBIA, Sandven for Garcia. Oct. 24, 2022.

<sup>42</sup> 88 Fed. Reg. 53788 (Aug. 9, 2023).

date of that decision.<sup>43</sup> The regulations provide that, if the initial decision is issued by the RD, the reviewing official to whom appeals are directed is the DBIA.<sup>44</sup> The regulations further provide that the reviewing official's decision on an appeal of a Tribal representative recognition decision is immediately effective.<sup>45</sup> At that point, an interested party may choose between continuing to pursue administrative review by filing an appeal to the IBIA, or challenging the reviewing official's decision in federal court.<sup>46</sup>

### **III. The Regional Director's Decision.**

On September 29, 2023, the RD issued a decision laying out the facts and history of the dispute and identifying several reasons why the BIA needed to identify a Tribal representative. The RD did not include the 25 C.F.R. Part 2 subpart G appeals rights notice in her decision letter of September 29, 2023. Instead, she used the general purpose appeals rights set out in 25 C.F.R. Part 2 subparts A and B. No notices of appeal were filed challenging the September 29 decision.<sup>47</sup>

On October 3, 2023, the Regional Solicitor filed with the IBIA a motion to put the RD's September 29 decision into immediate effect.<sup>48</sup> On October 16, the IBIA issued an order noting the recent revisions to the 25 C.F.R. Part 2 appeals regulations. On October 17, 2023, the RD issued a corrected decision (the RD's Decision), unchanged from her September 29 decision except for the corrected appeals rights notice. The RD's Decision sets out the history of the intratribal dispute in detail and the facts and law relied on by the RD in reaching her decision to recognize Danena Ike for a limited time (ninety days or until a Chairman is elected) and purpose (for those limited times when continuation of necessary government-to-government relations requires the United States to identify a Tribal representative).<sup>49</sup> The RD specified that the recognition of Ms. Ike as Tribal representative was "not to be construed as a general recognition for all Tribal purposes."<sup>50</sup>

The RD identified several circumstances that required, and therefore justified, the BIA's making a tribal representative recognition decision:

- The Elko Band submitted a request for federal funds available to assist Tribes improving their transportation infrastructure. BIA is obligated to provide such funding, but the Band's request required approval from a Tribal Council.
- Tribal members sought approval and assignment of leases. BIA approval requires Tribal authorization of the lease. In order for BIA to fulfill its obligations to

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<sup>43</sup> 25 C.F.R. Subpart G (Sections 2.700 to 2.714).

<sup>44</sup> 25 C.F.R. 2.702, mandatory appeals rights notice.

<sup>45</sup> 25 C.F.R. 2.714. *See also* 25 C.F.R. 2.202, Table 1: Decisions by the DBIA are appealed to IBIA.

<sup>46</sup> *Id.*

<sup>47</sup> While not styled as a Notice of Appeal, Vince Garcia, writing as Chairman of the Te-Moak Tribe, submitted a letter to the RD on October 10, 2023, setting out objections to the RD's September 29, 2023, decision.

<sup>48</sup> Motion to Make Decision Effective Immediately, *Te-Moak Tribal Council v. Western Regional Director*, IBIA docket number 23-005 (filed Oct. 3, 2023).

<sup>49</sup> RD's decision at 12.

<sup>50</sup> *Id.*

Tribal leaseholders, BIA must identify a Tribal representative to authorize the lease.

- The South Fork Band sought to amend its 638 contract for law enforcement. Federal regulations (25 C.F.R. § 900.12) require that 638 contract requests be submitted by a Tribe or Tribal organization. When a Tribe is embroiled in a government dispute, BIA must identify a representative authorized to submit a 638 renewal proposal.

While recognizing the IBIA's rule that another federal agency's need to identify a Tribal government does not vest the BIA with authority to make a tribal government recognition determination,<sup>51</sup> the RD noted that, in addition to matters requiring the BIA to identify a tribal representative, both the Department of Housing and Urban Development and the Indian Health Service of the Department of Health and Human Services identified time-sensitive matters requiring the identification of Tribal authority.

The RD reviewed the record and recognized the results of elections "that tribal members voted in in good faith."<sup>52</sup> The RD accordingly identified the Band Committees elected by each Band as set out below.<sup>53</sup>

The RD recognized the results of Elko Band's October 2021 election, as well as subsequent changes to Council membership. It appears that Danena Ike is the only Elko Band Council member elected in October 2021 who is still on the Council.<sup>54</sup>

The RD recognized the validity of the February 8, 2022, election for the Wells Band.<sup>55</sup> The Battle Mountain Band conducted elections on February 8, 2022, and September 19, 2022. Garcia-Ike asserts that the Wells Band and Battle Mountain Band Election Committees certified the election results.<sup>56</sup> Judge Hayes, however, ruled that the Battle Mountain Band elections were invalid.<sup>57</sup> The RD noted ongoing disputes between the Battle Mountain Band Council elected in February 2022 and the Council elected in September 2022.<sup>58</sup> The RD construed Tribal law as not vesting the Tribal judiciary with jurisdiction to review the Election Committees' certification of election results. On that basis, the RD recognized the Battle Mountain Band Council elected in the February 8, 2022, election.<sup>59</sup>

The RD acknowledged that the South Fork Band held an election on October 25, 2021, the date set by the Tribal Council in 2021. The RD also acknowledged, however, that the South Fork

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<sup>51</sup> *Alturas Indian Rancheria v. Pac. Reg'l Dir.*, BIA, 54 IBIA 138, 143-44 (2011).

<sup>52</sup> RD's Decision at 8.

<sup>53</sup> *Id.* at 8 – 11.

<sup>54</sup> Compare Jay Allison letter of July 25, 2022, *supra*, at 1-2, to RD's Decision at 9.

<sup>55</sup> RD's decision at 10-11. The RD noted that Steven Brady, elected Chairman of the Wells Band, had passed away, and been succeeded by Harvey Healey.

<sup>56</sup> Garcia-Ike Timeline at ¶ 23. July 25, 2022.

<sup>57</sup> Order, *Carrera v. Band Election Committees*, Case No. BM-CV-03-21 at 8 (Te-Moak Tribal Court, May 5, 2022).

<sup>58</sup> RD's Decision at 7; 10-11.

<sup>59</sup> *Id.* at 11. See also at 7: "Neither the Constitution nor Election Ordinance expressly provide for judicial review of final decisions from Band or Tribal Council Election Committees."

Band Election Committee ruled that the Band's October 2022 election was invalid.<sup>60</sup> The Band held another election on February 8, 2022. The Band's Election Committee certified the results of that election. Interpreting the Te-Moak Constitution as vesting the Bands' Election Committees with final, unreviewable, authority to determine the validity of Band elections, the RD recognized the Tribal Council elected by the South Fork Band in its February 8, 2022, election.<sup>61</sup>

In sum, the RD concluded that Band Councils for all four Bands had been validly elected pursuant to Tribal law: the Elko Council elected on October 25, 2021, and the Councils for the other three Bands elected on February 8, 2022.

By contrast, the RD concluded that no Tribal Council had been validly elected. In a letter issued a year prior to the RD's Decision, the RD stated that the BIA did not recognize any Tribal Council.<sup>62</sup> Nothing had changed by the time of the RD's Decision, in which the RD explained that "there are at least two factions that purport to represent the Te-Moak Tribal Council: a faction led by Vince Garcia and a faction led by Joseph Holley."<sup>63</sup> The RD asserted that neither group conducted elections for Tribal Chairman.<sup>64</sup> There is no evidence in the record suggesting that the Holley faction conducted an election for Tribal Chairman. Rather, as is made clear in Resolutions by the Holley faction and opinions by Judge Hayes, the Holley Council bases its claim to authority, and Holley's claim to Chairmanship, on the theory that they were elected in 2018 and no successors were validly elected in 2021.<sup>65</sup>

The RD acknowledged that the Garcia Faction purported to conduct an election for the Te-Moak Tribal Council Chairman on January 26, 2022. But because the slate of candidates for that election held only three names, representing just two of the Bands, the RD concluded the election was invalid as a matter of Tribal law.<sup>66</sup>

Based on the foregoing analysis, the RD found that neither of the factions had established that it was the valid Tribal Council. The RD reasoned that, by virtue of her identification of the valid membership of the individual Band Councils, "the Bands can identify their respective Te-Moak Council representatives, who can then conduct a tribal-wide election for Tribal Chairman."<sup>67</sup>

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<sup>60</sup> *Id.* at 9.

<sup>61</sup> *Id.*

<sup>62</sup> Letter, RD to Steven Sandven for Vince Garcia, at 2 (Sept. 30, 2022).

<sup>63</sup> *Id.* at 1.

<sup>64</sup> *Id.* at 11.

<sup>65</sup> See Holley Council Resolution 21-TM-132 (Dec. 9, 2021), finding the October 25, 2021, elections were invalid; Judge Hayes' "Emergency Temporary Restraining Order," (Dec. 27, 2021), declaring the October 25, 2021, elections were invalid and directing that the Holley Council be retained in office; Judge Hayes' "Temporary Order," (Feb. 26, 2022), declaring, *inter alia*, that "Joseph Holley is officially recognized as the only legitimately elected Chairman of the Te-Moak Tribal Council" (*Id.* at 2); and Judge Hayes' Order of May 6, 2022, accepting the validity of the February 8, 2022, elections at Wells and South Fork Bands, but rejecting the elections at Elko and Battle Mountain, and again holding the Joseph Holley is the only legitimate Chairman and his Council the only legitimate Tribal Council (at paragraph 38).

<sup>66</sup> RD's Decision at 12.

<sup>67</sup> *Id.* at 11.



The RD continued, “[u]ntil the Bands select their representatives to the Te-Moak Tribal Council and hold a tribal election, this office cannot determine who is the lawful Tribal Chairman or full Tribal Council.”<sup>68</sup>

“Nevertheless,” continued the RD, “the issues pending that require Bureau action are urgent, and waiting an additional ninety days for a tribal-wide election for Tribal Chairman could materially disrupt or impede necessary government-to-government relations.”<sup>69</sup> The RD accordingly recognized Danena Ike, “Chairwoman of the Elko Band and one of the Elko Band’s Te-Moak Council Representatives, to act as the interim Te-Moak tribal representative authorized to execute contracts and agreements with the federal Government on behalf of the Te-Moak Tribe.”<sup>70</sup> The RD acknowledged that “While it is common in the midst of intra-tribal disputes to recognize the last undisputed council or chairperson, *Rosales v. Sacramento Area Director*, 32 IBIA 158, 167 (1998), the Tribe’s structure, with its constituent Bands, leads us to believe the interim recognition of Danena Ike is the least intrusive option available because she has already been selected as a Te-Moak Tribal representative by a duly elected Band Council.”<sup>71</sup>

The RD stated that the recognition of Ms. Ike was limited to “ninety days from the date of this decision or until a chairman is elected” and that the recognition is “only for times when continuation of necessary government-to-government relations requires the United States to identify a Tribal representative and is not to be construed as a general recognition for all Tribal purposes.”<sup>72</sup>

When the RD initially issued her decision on September 29, 2023, she included an appeals rights notice tracking the generally applicable appeals rights language set out in 25 C.F.R. 2.205 – 2.207. While no appeals were filed, on October 10 the Garcia-Ike Council submitted a letter to the RD setting out objections and criticisms. On October 17, 2023, the RD issued her corrected decision setting out the special appeals rights applicable to BIA decisions recognizing tribal governments or representatives, set out at 25 C.F.R. 2.700 – 2.714.

#### **IV. Appeals.**

Three entities filed appeal documents, and the RD filed responses to those appeals.<sup>73</sup>

October 17, 2023: RD issues corrected Te-Moak Decision.

October 23: Biers Notice of Appeal (NOA) filed.

October 25: Biers Statement of Reasons (SOR) filed.

October 30: Garcia-Ike NOA filed.

(Unknown): Te-Moak Housing Authority (TMHA) NOA filed.

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<sup>68</sup> *Id.* at 12.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> For ease of reference, I will refer to the Te Moak Housing Authority, Mr. Biers, and the Garcia-Ike Council collectively as “Appellants” unless context requires otherwise. In addition, references to “Garcia-Ike” denote filings or correspondence from the Garcia Council before and after Mr. Garcia’s death and Ms. Ike’s assumption of leadership over that Council.

December 19: Garcia-Ike objection to TMHA appeal filed.  
December 21: TMHA SOR filed.  
January 2, 2024: TMHA Response to Garcia-Ike objection filed.  
January 8: RD Response to Appellants' SORs filed.  
January 21: Biers reply to RD's Response filed.  
January 23: TMHA reply to RD's Response filed.  
January 30: Garcia-Ike reply to RD's Response filed.  
January 30: TMHA Supplemental Response to Garcia-Ike filed.  
February 8: RD's Reply to Biers Reply filed.  
February 14: Garcia-Ike Supplemental Response to TMHA Response filed.  
March 12: TMHA Supplemental Response to Garcia-Ike Supplemental Response filed.

Neither former Chairman Joseph Holley nor any member of his Council, nor Judge Hayes, appealed the RD's Decision or filed any briefs.

**a. Garcia-Ike Tribal Council.**

An appeal was filed by the purported Te-Moak Tribal Council, comprising Vince Garcia, Chairman, Danena Ike, Vice-Chairwoman, and Angie Quintana, Rhonda Hicks, and Leah Brady, members (the Garcia-Ike Council).<sup>74</sup> Appeals documents filed by the Garcia-Ike Council explained at length the history of the 2021 elections, and claim that five people were sworn in as members of the Tribal Council on December 14, 2021.<sup>75</sup> The Garcia-Ike Council said Judge Biers rendered a decision holding that the October 25 elections at Elko and South Fork were valid,<sup>76</sup> but noted that the RD has never recognized the appointment of Biers as Tribal Supreme Court judge. The Garcia-Ike Council asserts that Tribal Council elections were held on or about January 26, 2022, in which Vince Garcia was elected Chairman and Danena Ike was elected Vice Chairwoman.<sup>77</sup> The Garcia-Ike Council argue that none of the people who had been members of the prior Tribal Council – the “last recognized Tribal Council” led by Joseph Holley – had been validly elected in 2021.<sup>78</sup> The Garcia-Ike Council argued that the TMHA appeal should be dismissed because (1) it was not timely filed, and (2) the TMHA lacks standing to appeal, because it is “under the supervision of the Tribal Council and lacks the authority to independently act on behalf of the Te-Moak Tribe.”<sup>79</sup>

The Garcia-Ike Council's chief argument is that it (the Garcia-led Council) had been validly elected and validly sworn in by Judge Biers.<sup>80</sup> They also assert that recognition of an individual person (Ms. Ike) as tribal representative instead of recognizing a full Tribal Council “ignore[ed]

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<sup>74</sup> Filings were signed by Vince Garcia until his death on January 15, 2024. Subsequent filings have been signed by Danena Ike.

<sup>75</sup> Garcia-Ike NOA at ¶ 7 (Oct. 23, 2023), asserting that V. Garcia, Danena Ike, Angie Quintana, Chauna Cota, and Jay Allison “were sworn to office as members of the Te-Moak Tribal Council” on or about December 14, 2021.

<sup>76</sup> *Id.* at ¶ 9.

<sup>77</sup> *Id.* at ¶ 11.

<sup>78</sup> *Id.* ¶ 16-17.

<sup>79</sup> Garcia-Ike Objection to Notice of Appeal of the Te-Moak Housing Authority at ¶¶ 1-2. Dec. 19, 2023.

<sup>80</sup> Garcia-Ike Reply to RD's Response at ¶ 11.

settled IBIA decisions and federal caselaw.”<sup>81</sup> The Garcia-Ike Council also argues that Judge Biers was validly appointed to the position of Judge of the Tribe’s Appellate Court, and has never been validly removed from that position. And further, this Council argues that Judge Biers upheld the certification of the election for Tribal Committee Chairman conducted January 26, 2022.<sup>82</sup> The Garcia-Ike Council seeks recognition by the BIA of the entire Council, not just Ms. Ike as representative.

**b. Judge Samuel L. Biers.**

Samuel Biers, appointed by the Joseph Holley Tribal Council to be the “Appellate Judge” of the “Supreme Court of the Te-Moak Tribe,”<sup>83</sup> appealed the RD’s decision.<sup>84</sup>

Biers explained the validity of his appointment as Judge of the Tribal Appellate Court by the Tribal Council under Joseph Holley in February 2021. Biers disputes the RD’s conclusion that the certification of election results by Election Committees was final and unreviewable by the Tribal judiciary, pointing out that the Tribal Constitution vests the judicial branch of the Tribal government with “all judicial powers of the Tribe” and that such authority extends to “all cases in law or equity arising under the Constitution or Tribal enactments.”<sup>85</sup> In addition, the Tribe’s Election Ordinance provides that elected officials be sworn into office “by the Chief Judge of the Tribal Court, or in his/her absence, the Chairman of the Tribal Election Board.”<sup>86</sup>

Judge Biers next argues that the RD’s Decision violates the controlling precedent set out in *Goodface v. Grassrope*<sup>87</sup> (a case discussed in further depth below) in two ways – by failing to recognize a Tribal government (as opposed to just a Tribal representative) and by failing to accept and defer to decisions of the Tribal Court.<sup>88</sup> On that basis, he asserts that the RD’s Decision should have been bound by the decisions set out in Judge Biers’ *Certified Question and Answer*, dated June 19, 2023. In that document, Judge Biers concluded that the BIA should recognize the Elko Band and South Fork Band elections of October 25, 2021, the Battle Mountain Band and Wells Band elections of February 8, 2022, and the Tribal Council Chairman elections of January 26, 2022. Biers asserts that there are no remaining intratribal disputes, because his decisions as Tribal Supreme Court Judge have resolved them.<sup>89</sup>

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<sup>81</sup> Garcia-Ike NOA at ¶ 23.

<sup>82</sup> Garcia-Ike Reply to Regional Director’s Response, ¶ 3. January 30, 2024.

<sup>83</sup> Resolution No. 21-TM-29, Appointment of Samuel L. Biers as Appellate Judge, February 3, 2021. See Constitution, Article 8, section 1.

<sup>84</sup> In briefing before DBIA on the appeal, the RD urges that DBIA should dismiss Judge Biers’ appeal for lack of standing. The RD’s standing analysis followed rulings of the IBIA, applying the standing tests employed by federal courts. But the Part 2 regulations specify the requirement for standing applicable to appeals to higher authority within the BIA: an appellant must show, by “credible statements” that it was “adversely affected.” While much of Judge Biers’ filings raise collateral issues that are not relevant to the question of whether the Decision should be affirmed, he makes a credible statement that the Decision denies Biers’ valid authority as Tribal Supreme Court Judge, and thereby adversely affects him. I therefore decline to dismiss Judge Biers’ appeal and have accepted and considered Judge Biers’ filings.

<sup>85</sup> Te-Moak Constitution, Article 8.

<sup>86</sup> Te-Moak Election Ordinance, Chapter 12, section 13-12-1(a).

<sup>87</sup> *Goodface v. Grassrope*, 708 F. 2d 335 (8th Cir 1983)

<sup>88</sup> Biers SOR at 7-8.

<sup>89</sup> *Id.* at 5.

**c. Te-Moak Housing Authority.**

The Te-Moak Housing Authority (TMHA) also appealed the RD's Decision. TMHA asserted that the RD's recognition of Ms. Ike as Tribal representative was "arbitrary, capricious and an abuse of discretion."<sup>90</sup> Specifically, TMHA asserts that the RD's recognition of Ms. Ike as Tribal representative did not accomplish its stated purpose, because HUD funds that were approved for TMHA were not transmitted to TMHA.<sup>91</sup> TMHA notes that the RD had recognized the last undisputed government led by Mr. Holley for purposes of transfer of court function discussed above, and that the BIA implicitly recognizes the validity of Judge Wendall Hayes by "prosecuting Tribal offenses through the Hayes Court and only the Hayes Court."<sup>92</sup> TMHA also asserts that Ms. Ike improperly attempted to gain sole authority over the TMHA bank account. TMHA accordingly urges that the BIA recognize the last undisputed government, led by Joseph Holley.<sup>93</sup>

TMHA argues that there are two competing factions purporting to be the Tribal Council (Garcia and Holley) and that, when confronted with such an intratribal government dispute, the BIA "normally" recognizes the last undisputed government; in this case, the Holley faction.<sup>94</sup> TMHA asserts that, by recognizing Ms. Ike instead of the Holley faction, the RD deviated from this so-called norm, and thus abused her discretion.<sup>95</sup>

**d. The Regional Director's response.**

The Regional Director submitted a response to Appellants' briefs.<sup>96</sup>

The RD argued that Samuel Biers' appeal should be dismissed for lack of standing. The RD cited IBIA precedent wherein the Board dismissed appeals by Tribal members challenging BIA decisions recognizing, or declining to recognize, Tribal governments.<sup>97</sup> The RD cited the test for standing articulated by the IBIA, which is the test applied in federal court.<sup>98</sup> The RD asserted that Mr. Biers' only interest in the dispute was his employment as a Tribal judge.<sup>99</sup> Noting that Mr. Biers' employment was a matter that depended on decisions by the Tribal government, the RD argued that Biers' complaint would not be redressed by the DBIA's ruling on the matter.<sup>100</sup>

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<sup>90</sup> Te-Moak Housing Authority SOR at 3 (Dec. 21, 2023).

<sup>91</sup> It bears noting that the RD's statement that the recognition of Ms. Ike as Tribal Representative would only last for ninety days did not explain that the ninety days would not begin to run until the Decision went into effect. Because at least one appeal (Biers) was timely filed and appeals remain pending, the decision has never yet gone into effect.

<sup>92</sup> TMHA SOR at 3 (Dec. 21, 2023).

<sup>93</sup> The Garcia-Ike Council filed an objection to TMHA's appeal, arguing among other things that TMHA's filing was untimely. TMHA responded, pointing out that it was not served with a copy of the RD's decision, thus the appeals deadlines had not been triggered. Because I reject TMHA's arguments on their merits, any technical deficiencies in their filings are moot.

<sup>94</sup> TMHA SOR at 6 (Dec. 21, 2023).

<sup>95</sup> *Id.*

<sup>96</sup> RD's Response brief. (Jan. 8, 2024).

<sup>97</sup> *Id.* at 12-13.

<sup>98</sup> *Id.* at 11.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

The RD also noted that Biers' claims that that he is harmed by RD's alleged failure to defer to the authority of Biers' decisions as Tribal Judge do not vest Biers with standing to challenge the RD's decision.<sup>101</sup>

The RD noted the impossibility of relying on Tribal mechanisms to resolve the intra-Tribal dispute when the two competing governing councils are supported by two competing Tribal courts.<sup>102</sup> On the other hand, the RD was able to construe and rely on Tribal law to identify validly elected Band Councils.<sup>103</sup>

The RD next rebutted the TMHA appeal. The RD asserted that the IBIA had itself warned that, if recognizing the last undisputed government was the *rule*, it would "encourage gridlock and the perpetuation of a dispute by the faction that controls the last undisputed council."<sup>104</sup> The RD noted that Joseph Holley was not elected to his Band's Council in the 2021-2022 election cycle.<sup>105</sup> The RD contrasted the circumstances in March 2022, when she recognized the Holley Council for the limited and specific purpose of transferring the functions of the C.F.R. court to the Tribe, with the circumstances in late 2023, when the RD's Decision was issued.<sup>106</sup> Notably, by the time of the RD Decision, the RD was able to identify the valid Band Councils, who would have the authority to resolve the Tribal Council dispute by Tribal mechanisms under Tribal law. In response to TMHA's charges that the RD failed to defer to decisions by the Tribal Courts that resolved the election dispute, the RD noted that the status of both courts was disputed, and that rulings from the courts regarding election disputes were not authorized by Tribal law; therefore the RD was reasonable in basing her recognition of Band Councils on rulings by Band Election Committees.<sup>107</sup> In response to TMHA's assertions that Danena Ike lacked impartiality, had committed bad acts, and failed to fulfill the roles for which she was recognized, the RD pointed out that impartiality was not a requirement for recognizing Tribal leadership, that Ms. Ike had been elected by her Band, that it was not the RD's role to reject the Tribal members' judgment, and that any failure of Ms. Ike to fulfill her role as Tribal representative (at least as alleged by TMHA) may be explained by the fact that the RD's decision had not yet gone into effect.<sup>108</sup>

## **V. Applicable Law.**

### **a. Standard of Review.**

BIA officials have plenary authority over their subordinates, including with respect to policy-based determinations. The purpose of administrative review within the BIA is to ensure that an Indian Affairs *final* decision is the best it can be. The deferential standard of review applied by federal courts when reviewing agency action under the Administrative Procedure Act is not

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<sup>101</sup> *Id.* at 13.

<sup>102</sup> *Id.* at 15.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 18 (quoting *Picayune Rancheria of the Chukchansi Indians v. Pac. Reg'l Dir.*, 62 IBIA 103, 114 n.24 (2016)).

<sup>105</sup> *Id.* at 18.

<sup>106</sup> *Id.* at 19.

<sup>107</sup> *Id.* at 20.

<sup>108</sup> *Id.* at 21-22.

appropriate to an agency official's review of a subordinate's decision. Any review by a BIA official of his or her subordinates should be considered a de novo review.<sup>109</sup>

### **b. BIA's Limited Authority to Intervene in an Intratribal Dispute.**

The United States Supreme Court has explained that "Indian tribes retain their inherent power to determine tribal membership [and] to regulate domestic relations among members"<sup>110</sup> Likewise, "Indian tribes are 'distinct, independent political communities, retaining their original natural rights' in matters of local self-government."<sup>111</sup>

This inherent tribal sovereignty establishes the presumption that intratribal disputes (whether concerning leadership or membership) are beyond the jurisdiction of federal review.<sup>112</sup> These principles further inform the general federal policy that tribal government disputes must be resolved by tribal procedures, not by the Department.<sup>113</sup> Federal interference in internal tribal affairs interferes with powers of self-governance, subjects tribal disputes to a forum other than the one tribes establish for themselves, and diminishes tribal authority.<sup>114</sup>

It is well-established that "the ultimate determination of tribal governance must be left to tribal procedures."<sup>115</sup> Thus, "[i]t is for a tribe, and not BIA, to elect or otherwise designate the tribe's representative(s)."<sup>116</sup> But when a tribal governance dispute has not been resolved and BIA is required to interact with the tribe for government-to-government purposes, BIA may need to determine whom to recognize on an interim basis.<sup>117</sup> A BIA interim recognition decision "is intended to determine with whom BIA will interact for government-to-government purposes until the dispute is resolved or until developments within the tribe warrant a new BIA recognition decision, interim or otherwise."<sup>118</sup>

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<sup>109</sup> See RD's Response Brief, at 10; citing *State of South Dakota v. Great Plains Regional Director*, 69 IBIA 173, 190 (2023).

<sup>110</sup> *Montana v. United States*, 450 U.S. 544, 564 (1981); see also, e.g., *Knighton v. Cedarville Rancheria of N. Paiute Indians*, 922 F.3d 892, 903 (9th Cir. 2019) ("Indian tribes retain their inherent sovereign power to protect tribal self-government and to control internal relations.").

<sup>111</sup> *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1986) (citing *Worcester v. Georgia*, 6 Pet. 515, 559 (1832)).

<sup>112</sup> See, e.g., *id.* at 59-60 (noting that "resolution in a foreign forum of intratribal disputes of a more 'public' character, . . . cannot help but unsettle a tribal government's ability to maintain authority"). See also *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 332 (1983) ("Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory . . . The sovereignty retained by tribes includes the power of regulating their internal and social relations. A tribe's power to prescribe the conduct of tribal members has never been doubted.") (cleaned up); see also *E.E.O.C. v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1080 (9th Cir. 2001) (finding that the Age Discrimination in Employment Act did not apply to the Tribe because the Act "touches on 'purely internal matters' related to the tribe's self-governance").

<sup>113</sup> See, e.g., *Santa Clara Pueblo*, 436 U.S. at 65; *Fisher v. District Court*, 424 U.S. 382, 386-89 (1976); *Smith v. Babbitt*, 100 F.3d 556, 559 (8th Cir. 1996); *Wheeler v. Dep't of Interior*, 811 F.2d 549 (10th Cir. 1987); *Cahto Tribe of the Laytonville Rancheria v. Pac. Reg'l Dir.*, 38 IBIA 244, 249 (2002); *Carrigan v. Acting E. Okla. Area Dir.*, 36 IBIA 87, 88 (2001); *John v. Acting E. Area Dir.*, 29 IBIA 275, 277-278 (1996).

<sup>114</sup> *Cayuga Indian Nation of New York v. E. Reg'l Dir.*, 58 IBIA 171 (2014).

<sup>115</sup> *Wasson v. W. Reg'l Dir.*, 42 IBIA 141, 158 (2006).

<sup>116</sup> *Alturas Indian Rancheria v. Acting Pac. Reg'l Dirs.*, 54 IBIA 1, 11 (2011).

<sup>117</sup> See *LaRocque v. Aberdeen Area Dir.*, 29 IBIA 201, 203 (1996).

<sup>118</sup> *Picayune Rancheria of the Chukchansi Indians v. Pac. Reg'l Dir.*, 62 IBIA 103, 115 (2016).

While respect for Tribal sovereignty sharply limits the Department's authority to intervene in intratribal disputes, certain circumstances require, and therefore permit, such intervention. The primary fact pattern compelling the Department to intervene in an intratribal dispute is the duty to maintain government-to-government relations with Indian tribes. The leading case on this point is *Goodface v. Grassrope*.<sup>119</sup> At issue in *Goodface* was BIA's recognition of *both* competing factions of the Lower Brule Sioux Tribe as the lawful governments. The district court found the BIA violated the APA by failing to recognize a functional government. The United States Court of Appeals for the Eighth Circuit affirmed in relevant part, stating:

Such a recognition of both councils amounts to a recognition of neither. Thus, the district court correctly found that the BIA acted arbitrarily and capriciously by effectively creating a hiatus in tribal government which jeopardized the continuation of necessary day-to-day services on the reservation. The BIA, in its responsibility for carrying on government relations with the Tribe, is obligated to recognize and deal with some tribal governing body in the interim before resolution of the election dispute. We commend the BIA for its reluctance to intervene in the election dispute, but it was an abuse of discretion for the BIA to refuse to recognize one council or the other until such time as Indian contestants could resolve the dispute themselves. We conclude that, for the time being, the BIA should be required to deal with the 1982 council as the certified and sworn winners of the tribal election.<sup>120</sup>

Under *Goodface*, BIA has “a responsibility for carrying on government relations” with tribes, and “is obligated to recognize and deal with” a tribal representative pending tribal resolution of a tribal conflict, even if only on an interim basis.<sup>121</sup>

Federal courts, following *Goodface*, have found that BIA is obligated to recognize an interim tribal government if doing so is required to maintain government-to-government relations with a tribe. For example, in 2009 and 2010, competing factions of the Alturas Rancheria submitted ISDEAA contract proposals to BIA. BIA rejected both proposals for failing to have signatures of a quorum of the Tribe's General Council. One faction filed suit in federal court. In denying BIA's motion to dismiss, the court cited *Goodface* for the premise that “[l]ong-standing policy, as well as federal court precedent, require the Department, when faced with an obligation to interact with a governing body during a governance dispute, to temporarily recognize a governing body to interact with.”<sup>122</sup>

On a number of occasions when confronted with an intra-tribal leadership dispute, the BIA has recognized the last undisputed tribal government. It is sometimes the case, however, that the last undisputed government is no longer capable of functioning as a Tribal government, has itself factionalized or dissolved, or is an inappropriate choice for any of a number of reasons.<sup>123</sup>

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<sup>119</sup> 708 F.2d 335 (8th Cir. 1983).

<sup>120</sup> *Id.* at 338-39.

<sup>121</sup> *Id.*

<sup>122</sup> *Alturas Indian Rancheria v. Salazar*, No. 2:10-cv-1997, 2010 WL 4069455, at \*6 (E.D. Cal. Oct. 18, 2010) (citing *Goodface*, 708 F.2d 335 (8th Cir. 1983)).

<sup>123</sup> See, e.g., *Tarbell v. Dep't of the Interior*, 307 F. Supp. 2d 409 (N.D.N.Y. 2004).

Mindful that *Goodface v. Grassrope* invalidated a BIA decision to recognize a Tribal governing authority that was unable to function as a government, the BIA must not recognize the last undisputed Tribal government without determining that the group can function in that role.<sup>124</sup> The BIA has also recognized individual tribal members as persons of authority within the Tribe through whom the BIA can maintain government to government relations pending resolution of the intratribal dispute by tribal processes.<sup>125</sup>

In addition to barring the BIA from recognizing a tribal government that cannot function, Federal courts have found that the BIA must not carry on government-to-government relations with a tribal government known to be, as the Supreme Court phrased it more than eighty years ago, “faithless to their own people and without integrity.”<sup>126</sup> Citing this precedent, the United States District Court for the District of Columbia has recognized that “DOI has the authority and responsibility to ensure that the [a tribe’s] representatives, with whom it must conduct government-to-government relations, are the valid representatives of the nation as a whole.”<sup>127</sup> The United States Court of Appeals for the D.C. Circuit has further explained that “a cornerstone” of the Government’s “distinctive obligation of trust” identified by the Supreme Court in *Seminole Nation* is “to promote a tribe’s political integrity, which includes ensuring that the will of tribal members is not thwarted by rogue leaders when it comes to decisions affecting federal benefits.”<sup>128</sup>

It is one of the most important principles of federal Indian law that tribes are the ultimate arbiters of their own laws, and that the BIA must defer to a Tribes *reasonable* interpretation of Tribal law.<sup>129</sup> That is, the BIA has a duty to ensure that its decisions satisfy the United States Constitution, the Administrative Procedure Act, and any other applicable federal laws, which BIA cannot do should it unquestionably approve obvious misapplication of tribal laws.

### **c. Tribal law.**

The Te-Moak Constitution provides that Band Council elections are to be conducted in October of every third year, and that Tribal Council elections are to be held no more than 21 days after

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<sup>124</sup> *Goodface*, 708 F. 2d at 338-9.

<sup>125</sup> See, e.g., *Cayuga v. Tanner*, 824 F. 3d 321, 326-27 (2nd Cir. 2016) (discussing BIA’s 2015 recognition of Clint Halftown as Tribal representative on an interim basis to give the Tribe time to resolve its internal dispute); *Cal. Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197, 200 (D.D.C. 2006) (discussing BIA’s recognition of Silvia Burley as person of authority pending organization of the Tribe); *Doucette v. Bernhardt*, No. 2:18-cv-00859; 2019 U.S. Dist. LEXIS 136494, \*6-7 (W.D. Wash. Jan. 28, 2019) (discussing BIA’s recognition of Chief Kelly as person of authority pending the Tribe’s special election for Tribal Council).

<sup>126</sup> *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942) (cleaned up).

<sup>127</sup> *Seminole Nation v. Norton*, 223 F. Supp. 2d, 122, 140 (D.D.C. 2002). The 2002 Seminole Constitution stated that the Principal Chief and Assistant Chief’s terms in office end when their successors have been elected and installed. Having ruled that Seminole’s 2001 elections violated the United States Constitution and the Tribe’s Constitution, the BIA declined to recognize the newly elected officials. and recognized the incumbent Tribal Chairman as Tribal representative. The Court upheld BIA’s decision.

<sup>128</sup> *Cal. Valley Miwok Tribe v. United States*, 515 F. 3d 1262, 1267 (D.C. Cir. 2008).

<sup>129</sup> *Ransom v. Babbitt*, 69 F. Supp. 2d 141, 150 (D.D.C. 1999).



Band Council elections.<sup>130</sup> Band elections are to be held “on the same day in each Band.”<sup>131</sup> Band elections are to be conducted and certified by each Band’s Election Committee.<sup>132</sup>

The Tribe’s Election Ordinance provides that disputes to a Band’s Election must be filed with the Band’s Election Committee within 24 hours of the election.<sup>133</sup> The Election Ordinance directs the Election Committee to meet and have a hearing on the disputer’s charges within the 24-hour appeals period, and to issue a written decision at that meeting.<sup>134</sup> Election Ordinance states that, if a Band election is disputed, the decisions of the Band Election Committees are “final.”<sup>135</sup> A Tribal Ordinance states that the Tribal Council is the “final interpreter of this [Election] Ordinance.”<sup>136</sup>

The Tribal Constitution provides for the establishment of a “court of general jurisdiction and a Supreme Court of appellate jurisdiction.”<sup>137</sup> The Constitution says that “[t]he judicial power shall extend to all cases in law or equity arising under this Constitution or Tribal enactments,” and that the appellate court of the Tribe “shall be the final interpreter of this Constitution and tribal laws.”<sup>138</sup> The Election Ordinance provides that members elected or appointed to Band or Tribal Council must take an oath administered by “the Chief Judge of the Tribal Court, or in his/her absence, the Chairman of the Tribal Election Board, prior to assuming the duties thereof.”<sup>139</sup>

## **VI. Analysis of Appeals.**

The Te-Moak Tribe’s internal political division has resulted in disputed legislative and judicial leadership. It is the Tribe’s responsibility to ultimately resolve these disputes once and for all. The BIA’s authority is limited to identifying a tribal representative(s) through which the BIA can fulfill its statutory and trust responsibilities to the Tribe pending resolution of the Tribe’s internal dispute through Tribal mechanisms. The RD’s Decision was therefore a legally authorized attempt to fulfill the BIA’s “obligat[ion] to recognize and deal with some tribal governing body in the interim before resolution of the election dispute.”<sup>140</sup>

The RD recognized Danena Ike as the Tribal representative for ninety days “or until a Chairman is elected, whichever is sooner.”<sup>141</sup> The RD envisioned Ms. Ike, and the Band Councils recognized by the RD, undertaking the tasks necessary to call and conduct Tribal elections within those 90 days.<sup>142</sup> As detailed above, the three appellants raised a number of challenges to the RD’s Decision, and the RD presented arguments in defense of her Decision. I must consider the

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<sup>130</sup> Te-Moak Constitution, Article 7, Sections 1 and 3.

<sup>131</sup> *Id.*, Section 4(a).

<sup>132</sup> *Id.*, Section 9.

<sup>133</sup> Election Ordinance, Section 13-10-1(a)(1). *See also* Section 13-4-7(a)(11).

<sup>134</sup> *Id.* at Section 13-10-1(c), (d).

<sup>135</sup> *Id.* at Section 13-10-1(e)(2).

<sup>136</sup> Ordinance No. 03-ORD-tm-01; quoted in Tribal Election Ordinance.

<sup>137</sup> Te-Moak Constitution, Article 8, Section 1.

<sup>138</sup> *Id.* at Section 3.

<sup>139</sup> Election Ordinance, Section 13-12-1.

<sup>140</sup> *Goodface*, 708 F.2d at 339.

<sup>141</sup> RD’s Decision at 12.

<sup>142</sup> *Id.* at 11.

relevant arguments and the evidence in the administrative record to determine which of the options available to me will enable the BIA to fulfill its obligations to the Tribe and optimize the Tribe's ability to resolve its internal dispute while minimizing federal intrusion into Tribal self-determination. My consideration of the following issues leads me to (1) reject the Holley-led carry-over Council; (2) vacate the RD's decision to recognize Danena Ike as the individual Tribal Representative; and (3) recognize the Garcia-Ike Tribal Council as interim Tribal leadership, as currently comprised.

**a. I decline to reject any filings on procedural or standing grounds.**

Some parties have argued that other parties' filings should be rejected on technical grounds. I conclude that considering all filings assists me in issuing a thoroughly considered decision and does not prejudice any appellant.<sup>143</sup>

The Garcia-Ike Council asserts that I should dismiss the TMHA appeal because it was not timely filed and because TMHA lacks standing. The RD asserts that I should dismiss Biers' appeal because Biers' lacks standing, and that I should dismiss Biers' reply for failing to seek leave to file, and for improper service.

Again, in the interest of rendering a thoroughly considered decision, I will not reject any party's filings based on lack of standing. It is important to note that the test for standing to file an appeal with a BIA official is not the same as the test for an appeal to the IBIA. The IBIA applies the standing tests employed by federal courts.<sup>144</sup> But the Part 2 regulations specify the requirement for standing applicable to appeals to higher authority within the BIA: an appellant must show, by "credible statements" that it was "adversely affected." The RD cited IBIA precedents where a Tribal member challenged the BIA's recognition of a Tribal government<sup>145</sup> and where the BIA declined to recognize any Tribal government.<sup>146</sup> The matter at hand differs from the cited precedents, in that the RD neither recognized a Tribal government, nor declined to recognize any government; here, the RD recognized an individual to be Tribal representative. Among a litany of alleged harms, Biers asserted that the "failure to recognize the authority of the Te-Moak Supreme Court and its judge . . . violate(s) the rights of the Appellant to hold judicial office."<sup>147</sup> For its part, TMHA asserts that it has failed to receive HUD funding because of the RD's recognition of Ms. Ike versus a full Tribal Council.<sup>148</sup> I conclude that Biers and TMHA made credible statements that they were adversely affected by BIA's recognition of a Tribal representative.

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<sup>143</sup> This determination in no way suggests that any agency official considering an appeal under 25 C.F.R. Part 2 is not authorized to reject untimely or otherwise procedurally defective filings.

<sup>144</sup> "Because the Board is guided by the elements of constitutional standing, a party must also show that (1) it has suffered an actual or imminent, concrete and particularized injury to or invasion of a legally protected interest; (2) the injury is causally connected with or fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable decision." *Kenny & Humbolt Alliance for Responsible Planning v. Pac. Reg'l Dir.*, 69 IBIA 226, 232 (2023) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

<sup>145</sup> *Tehaiento 'Tha' v. E. Reg'l Dir.*, 46 IBIA 326, 328 (2008).

<sup>146</sup> *Frease v. Sacramento Area Dir.*, 17 IBIA 250, 256 (1989).

<sup>147</sup> Biers' SOR at 7.

<sup>148</sup> TMHA SOR at 7.

**b. I decline to recognize the Holley Council on the basis of its “last recognized” status.**

The TMHA is the only appellant arguing that the RD erred by not recognizing the “last recognized government” led by Joseph Holley.<sup>149</sup> TMHA asserts that “the BIA’s recognition of Danena Ike in lieu of the last undisputed Tribal Council as the interim governance of the Tribe for purposes of government-to-government relationships deviates from the norm conceded by the BIA. ... This deviation from the norm is an abuse of discretion ripe for reversal.”<sup>150</sup> TMHA alleges misconduct by Ms. Ike that, it argues, should also justify reversing the RD.<sup>151</sup> TMHA also asserts that the RD’s recognition of Ms. Ike for purposes of disbursing federal funds to the Tribe, and TMHA in particular, had failed, and that TMHA had not received any HUD funding.<sup>152</sup>

There is no question that BIA’s recognizing the last validly elected tribal government can be an acceptable means of maintaining government-to-government relations with a tribe during an intratribal dispute.<sup>153</sup> But that practice “is not invariably required.”<sup>154</sup> Pursuant to the Eighth Circuit’s direction in *Goodface*, recognition of the last validly elected Tribal government would violate the APA if BIA knew that such a government could not function. And pursuant to *Seminole Nation*, recognition of the last validly elected government would be a violation of the APA if the BIA knew that that government had acted contrary to the interests of the Tribal members.

As discussed below, I find that the RD did not err in declining to recognize the Holley Council. In her Decision, the RD construed Tribal law to identify which Band Councils the BIA accepted as validly elected under Tribal law. The RD encouraged the Band Councils to identify their representatives to the Tribal Council, and encouraged the Tribe to conduct an election for Tribal Chairman: “[w]ith the above-recognized Band Councils, the Bands can identify their respective Te-Moak Council representatives, who can then conduct a tribal-wide election for Tribal Chairman.”<sup>155</sup> Recognizing that new elections are to be held in October of 2024, the RD recommended that the election for Tribal Council Chairman be held within ninety days of the Decision. The recognition of Ms. Ike as Tribal representative was only for the purpose of “execut[ing] contracts with the federal Government on behalf of the Te-Moak Tribe.” With respect to the Holley Council, the RD merely noted:

While it is common in the midst of intra-tribal disputes to recognize the last undisputed council or chairperson, ... the Tribe’s structure, with its constituent Bands, leads us to believe the interim recognition of Danena Ike is the least intrusive option available because she has already been selected as a Te-Moak Tribal representative by a duly elected Band Council.

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<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 7-9.

<sup>152</sup> *Id.* at 7.

<sup>153</sup> *Alturas, supra*, 54 IBIA at 11.

<sup>154</sup> *Id.*

<sup>155</sup> RD’s Decision at 11.

The best hope for resolution of this acrimonious intratribal dispute lies in the Tribe holding valid tribal elections in October and November 2024. Ample, uncontradicted evidence in the record shows that the Joseph Holley-led Tribal Council – the last validly elected Tribal government – failed to adequately prepare the Tribe and the Bands for the 2021 elections.<sup>156</sup> As previously noted, the Tribe’s Election Ordinance requires the Tribal Council to pass a resolution in the first week of July establishing the dates of the Band and Tribal Elections.<sup>157</sup> The Holley Council did not set a date for the October elections until September 2021. Moreover, the Holley Council never scheduled an election for Tribal Chairman.<sup>158</sup>

Other evidence in the record demonstrates that the RD was justified in declining to recognize the Holley Council simply because it was the “last recognized council.” For example, the RD’s March 17 Decision carefully limited its recognition of the Holley Council:

It is reiterated that our interim recognition of this Council is for the limited purpose of transferring judicial jurisdiction from the CFR Court to the Tribe pursuant to 25 C.F.R. § 11.104. It is not a general letter of recognition, does not finally resolve the present Te-Moak intra-governmental dispute, and is not a final decision regarding the validity of the Tribal Court or the Tribal Judge.<sup>159</sup>

Ignoring the RD’s limitations, in a decision issued two months later, Judge Hayes mischaracterized the scope of the RD’s recognition of Holley: “in March of 2022, [the BIA] reaffirmed and officially recognized Chairman Joseph Holley and his Te-Moak Council as the only legitimate government for the Te-Moak Tribe.”<sup>160</sup> Also evidencing Mr. Holley’s misapplication of the scope of the RD’s March 2022 decision, and disregard for the RD’s later statement that the BIA “do[es] not recognize the last undisputed council as the tribal governing body,”<sup>161</sup> in the Record is a Tribal Resolution signed by Joseph Holley as Chairman, dated December 16, 2022.<sup>162</sup>

Mindful that the Government’s distinctive obligation of trust includes the duty to promote a tribe’s political integrity and noting that the Holley Council failed to timely schedule Band elections, failed entirely to schedule Tribal Chairman elections, and that neither Mr. Holley nor any member of his Council filed any document in this appeal, I decline to recognize the Holley Council on the basis of its “last recognized” status.

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<sup>156</sup> Neither Joseph Holley, nor any member of his Tribal Council, nor Judge Hayes, filed any briefs in this appeal. Joseph Holley was included in the distribution list of the RD’s Decision. The record indicates that Scott Sypolt is Joseph Holley’s attorney. See IBIA docketing order of Jan. 17, 2023, at 4. Scott Sypolt was included in the distribution lists of all appeals documents except Judge Biers Reply to the RD’s Response to Statements of Reasons, dated January 21, 2024.

<sup>157</sup> Election Ordinance, Section 13-4-2(a)(1).

<sup>158</sup> Resolution 21-TM-117 (Sept. 19, 2021); See also Garcia-Ike NOA at ¶ 2.

<sup>159</sup> Letter, RD to Holley, at 2. March 17, 2022.

<sup>160</sup> See TMHA Reply to RD’s Response, Jan. 26, 2024 (citing Order, *Carrera v. Band Election Committees*, Case No. BM-CV-03-21, at ¶ 36 (Te-Moak Tribal Court, May 6, 2022)).

<sup>161</sup> Letter, RD to Sandven for Garcia, at 2. Sept. 30, 2022.

<sup>162</sup> Resolution 22-TM-82, approving Julius Holley as Te-Moak Council Member. Dec. 7. 2022.

**c. I decline to recognize either Samuel Biers or Wendall Hayes as validly appointed Tribal court judges.**

Case law makes clear that, where an intratribal dispute is resolved by Tribal processes, BIA should accept that resolution.<sup>163</sup> A fundamental mechanism for resolution of internal disputes is a tribal court. If one of those Judges is a bona fide Tribal judge with jurisdiction over adjudicated claims relevant to this dispute under Tribal law, the BIA should accept his ruling unless it is demonstrably unreasonable as a matter of Tribal law. However, that mechanism may not be available here, because a central component of this dispute is the fact that two judges appointed by the Holley Council, Samuel Biers and Wendall Hayes, have issued competing and conflicting decisions regarding the Band and Council elections of 2021 and 2022.

Judge Biers argues that his appointment as the Tribe's Supreme Court judge in February 2021 was unquestionably valid.<sup>164</sup> It is undisputed, however, that the Tribal Council that appointed Biers (the Holley Council) was composed of twelve members at the time of Biers' appointment.<sup>165</sup> The Tribe's Constitution, as ratified in 1982, provides that "the initial composition of the Tribal Council shall consist of eight members; four from Elko, two from Battle Mountain, and two from South Fork."<sup>166</sup> The Constitution also provides for reapportionment when a new Band is added.<sup>167</sup>

On August 24, 2021, Magistrate Judge Harlan issued an order declaring that, pursuant to the Te-Moak Constitution, subsequent to a re-apportionment of Tribal representation in 2020, the Tribal Council is to comprise nine members.<sup>168</sup> On finding that the Holley Council comprised twelve members, Judge Harlan declared that "all actions taken by the Te-Moak Tribal Council since the 're-apportionment of 2020' are hereby declared NULL and VOID and are to be disregarded by any agency or entity as invalid."<sup>169</sup> Under Judge Harlan's August 24 Order, the appointment of Biers would have been unambiguously invalidated as one such unconstitutional action.

On September 9, Judge Harlan modified her order:

The Court, sua sponte, does modify its order this date to state that it will not hold the actions of the Tribal Council as NULL and VOID for the reason that same would be a substantial disruption to tribal government and could potentially create irreparable harm to the Te-Moak Tribe of Western Shoshone Indians. Rather than voiding all actions, this Court does hereby ORDER that any and decisions (sic) of the Tribal Council from the date of this Court's original Order of August 24, 2021

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<sup>163</sup> *Goodface*, 708 F.2d at 339, holding that BIA's interim recognition of a Tribal government "should continue only so long as the dispute remains unresolved by a tribal court." See also *Cayuga Nation v. Bernhardt*, 374 F. Supp. 3d 1, 14-15 (D.D.C. 2019) (affirming federal acceptance of resolution of an intratribal dispute via tribal mechanisms).

<sup>164</sup> Certified Answer and Decision, at 4.

<sup>165</sup> See Resolution 21-TM-29, appointing Samuel Biers as Appellate Judge. February 3, 2021.

<sup>166</sup> Te-Moak Constitution, Article 4, Section 2(a).

<sup>167</sup> *Id.* at (b).

<sup>168</sup> See Sua Sponte Order of Modification and Clarification, *Elko Band et al. v. Joseph Holley et al.*, case no. CIV-21-WR07, at 1 (Court of Indian Offenses for the Western Region, Sept. 9, 2021), referring to the court's August 24, 2021, Order, which does not appear to be in the record.

<sup>169</sup> *Id.*

shall be Null and Void until such time as the Tribal Council properly apportions the Council representation to comply with the Constitution of the Te-Moak Tribe.<sup>170</sup>

Judge Harlan's decision, as amended, did not vitiate the Holley Council's appointment of Judge Biers; but it could not, and did not purport to, rule that the invalid Holley Council validly appointed Mr. Biers. While retrospective invalidation of managerial activities of the Tribal Council, including for example, the expenditures of funds, would be indeed be disruptive, the appointment of a Tribal Judge is of long-term significance to the political integrity of the Tribe – the kind of activity requiring an indisputably Constitutionally valid Tribal Council. Based on the facts in the record, I cannot find Mr. Biers to have been validly appointed as Judge of the Te-Moak Supreme Court such that the RD erred in rejecting his claim that his rulings on the legitimacy of the Garcia-Ike Council foreclose additional federal analysis on Tribal leadership.<sup>171</sup>

Mr. Hayes was apparently sworn into office on September 23, 2021.<sup>172</sup> While I find no Tribal Resolution appointing Mr. Hayes, the record includes a Tribal resolution dated September 19, 2021, which indicates the Holley Council still comprised twelve members – thus still ineligible to take any valid actions pursuant to Magistrate Harlan's Order of September 9, 2021. I find no evidence that Wendall Hayes was validly appointed as a judge of the Te-Moak courts by a Tribal Council comprising nine members, as required by Magistrate Harlan's Order.

The RD declined to rule on the validity of either the appointment of, or any order issued by, the Hayes and Biers courts during the relevant timeframe, in reliance on her construction of Tribal law vesting the Election Committees and Election Board with unreviewable authority to certify Elections.<sup>173</sup> Based on my finding that neither Biers nor Hayes were validly appointed as Tribal Judges, I concur with the RD's determination that this intratribal dispute has not been definitively resolved by a Tribal Court such that the Department is required to defer to a Tribal decision on the matter.

#### **d. Whether the RD correctly identified the Band Councils.**

The Te-Moak Tribal Council is comprised of representatives from the Band Councils of the four Bands.<sup>174</sup> The Tribal Chairman is elected from among the members of the Tribal Council who choose to run for that office.<sup>175</sup> All adult Tribal members may vote in the election for Tribal Chairman.<sup>176</sup> Thus, any attempt to identify the valid Tribal Council begins with identification of valid Band Councils.

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<sup>170</sup> *Id.*

<sup>171</sup> See Letter, Jay Allison, Elko Band Chairman, to Joseph McDade, Superintendent, Eastern Nevada Agency, (Aug. 25, 2022), asserting that neither Biers nor Hayes was validly appointed.

<sup>172</sup> I do not find a Tribal resolution appointing Mr. Hayes in the record. The record includes two versions of what purports to be his oath of office, dated September 29, 2021. One version is signed by Hayes and two witnesses; the other is not signed by Hayes, but is signed by witnesses. The evidence suggests that the "witnesses" signed the document before Mr. Hayes did.

<sup>173</sup> RD's Response at 20.

<sup>174</sup> Constitution, Art. 4.

<sup>175</sup> Election Ordinance, Sec. 13-4-3(a)(2).

<sup>176</sup> *Id.* Sec. 13-4-3(a).

The RD reviewed the record and construed Tribal law to identify Band Councils for each of the four constituent Bands.<sup>177</sup> The RD concluded that valid elections were held at Elko Band on October 25, 2021, and at South Fork, Wells, and Battle Mountain Bands on February 8, 2022.

On appeal, TMHA disputes the validity of the Elko Band elections, emphasizing the decision rendered by Judge Hayes on May 6, 2022, ruling, among other things, that the elections held by Elko Band and South Fork Band on October 25, 2021, were invalid, but that the elections held at South Fork on February 8, 2022, were valid.<sup>178</sup> As discussed above, I reject the validity of the Holley Council's appointment of Wendall Hayes as Tribal Judge, and therefore I reject the validity of Judge Hayes's decisions. I therefore affirm the RDs recognition of the Elko Band election of October 25, 2021.

On appeal, the Garcia-Ike Council argue that the valid South Fork Band elections were those held on October 25, 2021, not February 8, 2022.<sup>179</sup> Vince Garcia (prior to his death) and Angie Quintana, recognized by Garcia-Ike and by Mr. Biers as members of the Te-Moak Tribal Council, were purportedly elected to the South Fork Band Council in October 2021.<sup>180</sup> Neither of them were elected to the Council purportedly elected on February 8, 2022, recognized by the RD.

Garcia-Ike asserts that the RD's reliance on the decision of the South Fork Election Committee to invalidate the October 25 election was unreasonable because "the South Fork Election Committee committed fraud and unlawfully conducted a second election to deny Band members the right to freely and fairly elect their representatives."<sup>181</sup> For example, Garcia-Ike points out that two members of the South Fork Council recognized by the RD were felons, in violation of the Tribe's election ordinance.<sup>182</sup>

For his part, Mr. Biers objects to the RD's conclusion that Tribal law does not provide for judicial review of Election Committee certification of results.<sup>183</sup> Biers asserts that he issued rulings that resolved all disputes about which Band Council elections were valid.<sup>184</sup> Like the Garcia-Ike appellants, and unlike the RD, Mr. Biers recognizes the South Fork Band Council election of October 25, 2021, not February 8, 2022.

The RD relied on the following provision in the Tribe's Election ordinance to conclude that the Tribe's judiciary lacked authority to invalidate a Band election:

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<sup>177</sup> RD's Decision, 8 – 11.

<sup>178</sup> Order, *Carrera v. Band Election Committees*, case no. BM-CV-03-21 (Te-Moak Tribal Court, May 6, 2022).

<sup>179</sup> Garcia-Ike NOA

<sup>180</sup> Angie Quintana did not receive enough votes on October 25, 2021, to be on the South Fork Council, but was elevated to Council member upon the death of Larsen Bill. Order, *In the Matter of Te-Moak Tribal Council and Tribal Assets*, case no. 21 TM SC 004 at ¶ 6 (Te Moak Tribal Court. Dec. 8, 2021.)

<sup>181</sup> Garcia-Ike Reply to RD's Response, at 7.

<sup>182</sup> *Id.*

<sup>183</sup> Biers' Reply to RD's Response, at 16 (Jan. 21, 2024).

<sup>184</sup> Biers' SOR at 5.

Chapter 10 of the Election Ordinance concerns election disputes, and expressly states that “[t]he decision of the Band Election Committee/Te-Moak Election Board shall be final” and does not otherwise speak to judicial review. *See* Election Ordinance Sec. 13-10-1.<sup>185</sup>

The RD found that the South Fork Election Board had invalidated the South Fork election of October 25, 2021, but had validated the South Fork election of February 2022.<sup>186</sup>

In apparent conflict with the provision in the Tribe’s Election Ordinance relied on by the RD, the Tribe’s Constitution provides that the “appellate court of the Tribe shall be the final interpreter of this Constitution and tribal laws.”<sup>187</sup> The Tribe’s Constitution is, of course, superior to the Ordinance. If the Constitutional provision was in irreconcilable conflict with the Election Ordinance, the Constitutional provision would prevail.

None of the appellants agreed with the RD’s ruling that Tribal courts lacked jurisdiction to review election outcomes. Garcia-Ike asserts that the RD’s analysis and conclusions regarding the South Fork Band Council disregarded decisions by, inter alia, the Tribal court.<sup>188</sup> Judge Biers issued a decision in June of 2023, wherein he answered “Yes” to the “certified question,” “should [the BIA] recognize the duly elected certified and sworn Te-Moak Tribal Council elected October 25, 2021 in Elko Band [and] South Fork Band . . . .”<sup>189</sup> In his own appeal, Mr. Biers argues “[t]he Te-Moak Supreme Court resolved the internal tribal and election disputes, the BIA seeks to substitute its judgment instead.”<sup>190</sup> Mr. Biers also asserts that Judge Harlan of the BIA’s Court of Indian Offenses ruled that Election Committee determinations are subject to judicial review. Mr. Biers included as an exhibit to his SOR excerpts from a transcript of a hearing before Judge Harlan held January 27, 2024. With respect to judicial review of Election Committee determinations, Judge Harlan said:

Nothing’s final at the Committee, because that Constitution you’re alleging, I’ve read your motion to dismiss where it says it all stops with the Committee. That’s not true. There’s a provision in your Constitution that specifically says that tribal members have the right to come to court, into the Tribe. So that has been argued up and down appellate court and it has been ruled that this court does have jurisdiction based upon that provision.<sup>191</sup>

Unfortunately, Judge Harlan did not provide a citation for, and I cannot find, any such provision in the Tribe’s Constitution or otherwise in the record.

Like Garcia-Ike and Biers, TMHA disagreed with the RD’s denial of Tribal courts’ authority to review Tribal elections, but invoked a decision by Judge Hayes, not by Judge Biers. TMHA

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<sup>185</sup> RD’s Decision at 8.

<sup>186</sup> *Id.* at 9.

<sup>187</sup> Constitution at Art. 8, Sec. 3.

<sup>188</sup> *Garcia-Ike Reply to RD’s Response*, at 8.

<sup>189</sup> Certified Answer and Decision, at 1. June 19, 2023.

<sup>190</sup> Biers’ SOR at 5.

<sup>191</sup> Partial transcript, *South Fork Band Elect v. South Fork Band Elect. Comm.*, Case No. PO-22-WR-07 (Court of Indian Offenses - Western Region, Jan. 27, 2022).



pointed to Judge Hayes’s decision in *Carrera v. Band Election Committees and Te-Moak Election Board* as representing the resolution of a Tribal dispute by a Tribal mechanism.<sup>192</sup> Judge Hayes had ruled that the Elko Band election of October 25, 2021 was invalid, that the elections at South Fork and Wells, held February 8, 2022, were valid, and that the election at Battle Mountain on February 8 was not valid. TMHA said the RD’s failure to abide by the *Carrera* decision “flies in the teeth of the duty to give full faith and credit to the Tribal judiciary.”<sup>193</sup>

I find that neither of the provisions of Tribal law at issue here speak unambiguously to the question of judicial review of Election Committee decisions. While the Ordinance states that decisions by the Election Committees and Election Board shall be “final,” the scope of that finality is not defined. It is possible that it is intended to prohibit any further administrative review, comparable to federal agencies’ decisions that are “final for the Department.” Such agency decisions are subject to review by the courts. In addition, even if the certification of a Band’s Election by that Band’s Election Committee precluded judicial review by Tribal courts, the courts would not be precluded from reviewing other aspects of elections as a matter of Tribal law. Notably relevant to this matter is the finding by the South Fork Election Committee that the question of whether the Band’s election was invalid because all Bands did not hold their elections on the same day, and the question of whether potentially disruptive actions by two Band members may have invalidated the election, were not within the Election Committee’s jurisdiction.<sup>194</sup> There seems no reason why Tribal courts would not have jurisdiction over election-related disputes that are not within the jurisdiction of the Election Committees.

It is indisputable that, if *either* Mr. Biers or Mr. Hayes validly exercised the authority of the Tribal court Judge, (and if Tribal law permitted judicial review of Election Committee decisions, and if his rulings applied a reasonable interpretation of Tribal law), his decisions in this intratribal dispute would be binding on the BIA and a resolution of this intratribal dispute. Unfortunately, as elaborated above, I cannot find that either gentleman was validly appointed Judge.

#### **i. Elko Band.**

The Elko Band held an election on October 25, 2021, in which Danena Ike and others were elected to the Elko Band Council. The Elko Election Committee certified the results of that election.<sup>195</sup>

On December 9, 2021, the Holley Council passed a Resolution declaring the October 25 elections “null and void.” The resolution directed that the Bands conduct new elections on February 8, 2022, until which time the Holley Council would continue to govern the Tribe.<sup>196</sup>

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<sup>192</sup> TMHA SOR at 8.

<sup>193</sup> *Id.*

<sup>194</sup> Letter, Elwood Mose, South Fork Band Election Committee Chairman, to South Fork Band Council (Oct. 26, 2021).

<sup>195</sup> RD’s Decision at 8.

<sup>196</sup> Resolution 21-TM-132 (Dec. 9, 2021).

Likewise, in a letter to the RD, Holley asserted that “the Band Election Committees and the Tribal Election Board have heard and resolved disputes and declared the Elko Band and South Band (sic) Elections invalid.”<sup>197</sup>

In a key “whereas” finding, the Resolution stated:

[A]t a regular meeting of the Te-Moak Election Board held after the Band Elections of October 2021, an official decision was made by the Te-Moak Election Board and announced by Elwood Mose, the Chairman of the Te-Moak Election Board, that the Band Elections of October 2021 violated both the Te-Moak Constitution and the TeMoak Election Ordinance and were therefore null and void.

But Chairman Mose specifically refuted this “whereas” provision of Holley’s December 9 Resolution. Contrary to the Resolution, Chairman Mose explained:

The [Tribal Election] board held an initial meeting 01 December and took only the action of selecting officers. There was general discussion on what had transpired with three bands’ elections and the fourth - Elko’s - which result pleased that community. As a body we would await further Band or Council decision.<sup>198</sup>

Chairman Mose went on to disagree with the fifth “Whereas” clause on page two of the December 9, 2021, Holley Council resolution, which said that the Council would “enforce the rulings of the Te-Moak Election Board holding the Band Elections of October 2021 null and void.” Chairman Mose denied that the Board had the authority to invalidate Band elections, asserting that “the [Tribal Election] board is unable to rule on local band elections. Its purview is strictly tribal chairperson, initiative or referendum.”

I must conclude that Holley’s December 9 Resolution misrepresented the actions of the Tribal Election Board. Holley’s Resolution stated that the elections were invalid because (1) all four bands did not conduct elections on the same day; and (2) the people elected in those elections were sworn into office by Judge Biers, whose authority was rejected by the Holley Council. With respect to the first argument, I note that the failure of all four bands to conduct valid elections on October 25 is almost certainly attributable to the failure of the Holley Council to publish an election schedule in July 2021, as mandated by the Te-Moak Election Ordinance.<sup>199</sup> Constitution.

With respect to the second basis for Holley’s rejection of the Elko Band election, I concur with the RD:

[O]aths of office have been provided to this office signed by various tribal court judges. Arguments have been made on all sides that these oaths of office are

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<sup>197</sup> Letter, Holley to RD, at 1 (Jan. 14, 2022).

<sup>198</sup> Letter, Tribal Council Election Board Chairman Mose to Tribal Council (Dec. 30, 2021).

<sup>199</sup> Election Ordinance Section 13-4-2(a).

invalid or that newly elected officials cannot take an oath of office because of no valid officiant. We recognize oaths taken as being taken in good faith to comply with tribal law.

Complying with the Tribal Council's election schedule, the Elko Band conducted its election on October 25, 2021. The Band's Election Committee certified the results. There is no justification for penalizing Elko Band members for the failures of other Bands. The people elected by the Elko Band swore the required oath of office before a putative Judge of the Tribe's Supreme Court. There is no justification for denying the people of Elko Band the representation they elected due to the dubious bona fides of the Judge. Considering the above facts, I conclude that the RD was right to recognize the Elko Band Council elected and on October 25, 2021.

## **ii. South Fork Band.**

The RD rejected the South Fork Band election conducted on October 25, 2021, and recognized the South Fork Band election held on February 8, 2022. The RD relied on the fact that the South Fork Band Election Committee invalidated the Band's October 25, 2021, election.<sup>200</sup> Two people had submitted disputes regarding the October 25 election to the Elko Band Election Committee.<sup>201</sup> The two challengers identified the same four bases for challenging the election: the Election Committee had failed to conduct required background checks on the candidates: (1) all four bands did not hold elections on the same day; (2) Vince Garcia's wife had sued the Election Committee and the decision was pending in the Court of Indian Appeals, Southern Plains Region; and (4) Councilmember Garcia was using his position to disrupt the Committee using his email and reservation address.<sup>202</sup>

The South Fork Election Committee issued its decision the day after the election. The Committee found that the failure of the Committee to screen the candidates' eligibility was grounds for invalidating the election. The Committee found that the issue of disruption of the election by the Garcias, and the issue of the failure of all Bands to hold elections on the same day, were not within the Committee's jurisdiction.<sup>203</sup>

In disputing the RD's rejection of the October 2021 election at South Fork, Garcia-Ike argues that:

The election was unconstitutionally disputed by two felons who were ineligible candidates, after the time had elapsed within which to file a candidate dispute. This issue was being litigated in the C.F.R. Court, before jurisdiction was transferred to the Te-Moak Tribal Court by way of letter, February 9, 2022, from Acting Western Region Director.<sup>204</sup>

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<sup>200</sup> RD's Decision at 9.

<sup>201</sup> Letter, South Fork Election Committee Chairman Elwood Mose to South Fork Band Council, Oct. 26, 2021.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> Garcia-Ike NOA at ¶ 3.

Garcia-Ike does not identify any provision of Tribal law that prohibits felons from challenging elections.<sup>205</sup> Nor do they state that the *election* disputes were untimely filed such that it would provide a basis for rejecting the RD's acceptance of the February 2022 elections.

I affirm the RD's finding that the South Fork Band Council election of February 8, 2022, was the valid election.

### **iii. Wells Band.**

It does not appear that any appellant disputes the validity of the election conducted on February 8, 2022, for the Wells Band.

### **iv. Battle Mountain Band.**

The RD stated that "It is undisputed that on October 25, 2021, Battle Mountain Band did not hold a Band Council election."<sup>206</sup> Battle Mountain held an election on February 8, 2022, the results of which were certified by the Band's Election Committee.<sup>207</sup> A challenge to actions by all the Band Election Committees was filed in Tribal Court before Judge Hayes. Judge Hayes found that Battle Mountain Band's election in February 2022 violated numerous provisions of the Election Ordinance, and ordered new elections at Elko and Battle Mountain to be conducted on July 29, 2022.<sup>208</sup>

The BIA had no evidence of an election at Battle Mountain in July 2022, but received documentation of an election held in September 2022.<sup>209</sup> The RD disregarded Judge Hayes's order for a new election, on the premise that "[n]either the [Tribal] Constitution nor the Election Ordinance provides for court review of election disputes."<sup>210</sup> On that basis, the RD recognized the Battle Mountain Council elected on February 8, 2022.

Without deciding whether as a matter of Tribal law, tribal courts have jurisdiction to review election outcomes certified by Band Councils, I affirm the RD's disregard of the Hayes decision based on my finding that his appointment was invalid. On that basis, I affirm the RD's recognition of the Battle Mountain Band Council elected on February 8, 2022.

### **e. Whether to affirm the RD's recognition of Danena Ike as representative.**

Having identified Band Councils and urged them to establish a Tribal Council, the RD recognized Danena Ike as the Tribe's representative for ninety days "from the date of this decision" or until establishment of a Tribal Council, whichever occurred first. But because the RD's Decision was appealed, Ms. Ike's representative status has never yet become effective.

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<sup>205</sup> Election Ordinance Section 13-10-1(a)(1): Any registered voter may file a dispute; Election Ordinance Section 13-3-1: any enrolled member who will be 18 or over at the time of the election may register to vote.

<sup>206</sup> RD's decision at 10.

<sup>207</sup> *Id.*

<sup>208</sup> Order, *Carrera v. Band Election Committees*, at 8 (Te-Moak Tribal Court, May 6, 2022).

<sup>209</sup> RD's Decision at 10.

<sup>210</sup> *Id.*

All of the appellants challenged the recognition of an individual Tribal member for the purpose of representing the Tribe to the BIA. First, Garcia-Ike argued that a Tribal Council had been validly put in place, such that the RD's recognition of Ms. Ike as Tribal representative was arbitrary and capricious.<sup>211</sup> Garcia-Ike further argued that as to the RD's recommendation that a new election be held for Tribal Chairperson, "[i]t is also not possible to constitutionally set another Tribal Chairperson election without a Tribal Council setting the election pursuant to Tribal law. One representative does not have the authority or legal standing to unilaterally call for any election."<sup>212</sup> And Ms. Ike herself, whom the RD proposed to recognize as Tribal representative, signed two filings urging me to recognize a Tribal Council, not just Ms. Ike.<sup>213</sup>

Samuel Biers, like the Garcia-Ike appellants, argued that the Garcia-Ike Council had been validly put in place through Tribal process, so the RD's decision to not recognize that Council was erroneous. Biers asserted that "the Te-Moak Supreme Court resolved the internal tribal and election disputes."<sup>214</sup> Biers had issued a "Certified Answer and Decision Regarding Te-Moak Constitutional Question of Law"<sup>215</sup> on June 19, 2023, in which he concluded that the Te-Moak Tribal Council comprising Vincent Garcia, Danena Ike, Rhonda Hicks, Steve Brady, Angie Quintana and Leah Brady had been democratically elected and lawfully seated.<sup>216</sup>

Unlike the other appellants, TMHA urged the BIA to recognize the holdover Holley-led Council. While the other appellants argued that the Garcia-Ike Council had been validly put in place and should be recognized by the BIA as the valid Tribal Council, TMHA focused on Ms. Ike's inability to properly exercise the authority of Tribal representative. TMHA argued:

[I]f the BIA's intent was to enable government-to-government relations in order for government grants to be paid to the Tribe and its agencies, appointing Ms. Ike, an individual, as the government rather than a Tribal Council as the interim government of the Tribe, isn't working. The TMHA has yet to receive its HUD funding. . . . Ms. Ike is anything but inobtrusive. She attempted to take possession of the TMHA's investment account funds without any authority whatsoever. Thomas Declaration, 10. As also shown, below, Ms. Ike is not a neutral. She is a member of the Vince Garcia faction that attempted to force their way into the South Fork Band and Te-Moak Tribal offices.<sup>217</sup>

Thus, all appellants agree that the RD's recognition of Ms. Ike as Tribal representative should be vacated.

In her response, the RD explained that recognition of Ms. Ike was intended to allow government-to-government relations to be carried out while the Band Councils recognized by the RD went through the process of identifying Tribal Council members, from whom the Tribe could elect a

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<sup>211</sup> Garcia-Ike NOA at ¶ 22.

<sup>212</sup> Garcia-Ike Response to RD's Response to SOR at ¶ 9.

<sup>213</sup> Garcia-Ike Objection to TMHA Appeal (Dec. 19, 2023); Garcia-Ike Supplemental Response to TMHA's Response, Feb. 14, 2024.

<sup>214</sup> Biers' SOR at 5.

<sup>215</sup> The Certified Question had been submitted to Judge Biers by the Garcia-Ike Council on June 13, 2023.

<sup>216</sup> Biers' Certified Question order at 25.

<sup>217</sup> TMHA SOR at 7.

Tribal Chairman.<sup>218</sup> The RD, citing each faction's rejection of rulings by the judge affiliated with the opposing faction, declined to find that the dispute, or the composition of the Tribal Council, had been resolved by the Tribal court.<sup>219</sup>

I decline to affirm the RD's decision to recognize Ms. Ike as the sole tribal representative authorized to entreat with the United States. Appellants, including Ms. Ike herself,<sup>220</sup> reject the RD's proposal to maintain government-to-government relations through an individual representative pending identification of a valid Tribal Council. Even more compelling, however, is the fact that the next election cycle is imminent: the Tribal Council must set dates for Band and Tribal Council elections in the first week of July.<sup>221</sup>

Importantly, the structure of the Te-Moak Tribe, comprised as it is of four constituent Bands, makes recognition of a single person as Tribal representative less appropriate than would be the case for a Tribe with a single governing body over all members. For such unitary Tribes, an individual representative would be able to speak for all Tribal members. The different considerations applicable to Te-Moak are evident in the Tribe's Constitution, which carefully ensures that each of the Bands is represented on the Tribal Council.<sup>222</sup> Even when circumstances prevent the BIA from recognizing a valid government, it is important for multiple Bands to be represented in dealings with the Federal government. This seems especially true now, in light of how important it is for the Tribe to be able to call and conduct a valid Tribal election in the near future. For these reasons, I conclude that I must recognize a Tribal Council, not an individual representative.

#### **f. Whether to recognize the Garcia-Ike Council.**

Concluding as I must that a Tribal Council is necessary to effectuate the upcoming tribal elections, evidence in the record makes clear that there are only two possible Tribal Councils for me to choose between: the Joseph Holley-led holdover Council (which, as noted, has not itself claimed leadership status in this appeal) or the Garcia-Ike Council. The most important role for the recognized Council to perform with regard to settling this dispute with finality is to take all necessary actions to ensure that valid elections take place in 2024.

I conclude that recognizing the Holley Council would violate my trust responsibility to promote the Tribe's political integrity. Not only has the Holley Council not itself claimed to currently represent the Tribe, but the current appeal is the result, in significant part, from the Holley Council's failure to properly schedule and conduct elections as is required under Tribal law.<sup>223</sup> Again, given the primacy of 2024 elections to resolving the Tribe's internal disputes, I cannot conclude that returning the Holley Council to power as the last recognized Tribal Council would

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<sup>218</sup> RD's Response at 11.

<sup>219</sup> *Id.* at 17.

<sup>220</sup> In addition, I note that there may at some point be circumstances justifying federal recognition of an interim tribal government of any kind over the objection of that government (or individual). However, under the current circumstances, I cannot conclude that recognizing Ms. Ike as the sole tribal representative, when she herself denies the validity of that decision, can satisfy the APA.

<sup>221</sup> Election Ordinance Section 13-4-2(a).

<sup>222</sup> Te-Moak Tribal Constitution, Article 4, Section 2.

<sup>223</sup> Election Ordinance Section 13-4-2(a).

satisfy either case law or the APA given that Council's history in overseeing and operating Tribal elections.

Recognition of the Garcia-Ike Council for limited purposes will be the best way to enable government-to-government relations and to optimize the Tribe's ability to conduct fair elections in 2024. As evidenced by the Garcia-Ike filings in this appeal, that group is keenly aware of the importance of fair elections, and the harmful consequences of the Holley Council's actions and inactions.<sup>224</sup> The group's commitment to a fair election, and their authority to conduct that election under Tribal law (as opposed to an individual representative's authority) is the premise of my recognition decision.

The Garcia-Ike NOA sought recognition of a Tribal Council comprising Vince Garcia, Chairman, South Fork Band; Danena Ike, Vice Chairwoman, Elko Band; Angie Quintana, South Fork Band; Rhonda Hicks, Battle Mountain Band; and Leah Brady, Elko Band, members.<sup>225</sup> Mr. Garcia passed away in January 2024. I understand that there may have been other changes to the membership of the Council. The Tribe's Constitution calls for a Tribal Council comprising nine people, representing all four Bands.<sup>226</sup> Because the purported Tribal Council identified in the Garcia-Ike NOA had only five members, from only three Bands, it does not meet the Constitutional requirements for a Tribal Council. Nonetheless, as elaborated by the RD and as set out above, the BIA must identify a Tribal representative through which the BIA can fulfill its own obligations. In order to restore government-to-government relations, I will recognize the Tribal Council formerly led by Vince Garcia, and currently led by Danena Ike.

## **V. Conclusion.**

For the reasons set out above, I vacate the Regional Director's Decision to recognize Danena Ike as the Tribal Representative for a limited time and purpose. I hereby recognize the Garcia-Ike Council, as currently composed, as the government of the Te-Moak Tribe for purposes of conducting business with the federal government and for preparing for the next election cycle.

## **Appeal rights**

As provide in our regulations at 25 C.F.R. 2.714, this decision –

is immediately effective, but not final for the Department. Therefore, any participant may appeal the reviewing official's decision as provided for in this part, or pursue judicial review in Federal court. Notwithstanding any other regulation, the reviewing official's Tribal representative recognition decision shall remain in effect and binding on the Department unless and until the reviewing official's decision is reversed by superior agency authority or reversed or stayed by order of a Federal court.

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<sup>224</sup> See, e.g., Garcia-Ike NOA, ¶¶ 1 – 6.

<sup>225</sup> Garcia-Ike NOA, caption and ¶¶ 11-13.

<sup>226</sup> Te-Moak Constitution, Article 4, Section 2 (calling for eight members).

A person adversely affected by this decision may choose to pursue administrative review by submitting a Notice of Appeal to the Interior Board of Indian Appeals (IBIA).<sup>227</sup> Your Notice of appeal must be filed no more than 30 days after your receipt of this Decision. Your Notice of Appeal to the Board must be signed by you or your attorney. It should clearly identify the decision being appealed - if possible, attach a copy of the decision to your Notice of Appeal. 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.

Appeals to the IBIA are governed by the rules set out in 43 C.F.R. part 4. You must submit your Notice of Appeal to the Board at this address:

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

You must also send copies of your Notice of Appeal to each interested party known to you, and this office. In addition, you must send a copy of your Notice of Appeal to the Assistant Secretary-Indian Affairs and to the Associate Solicitor for Indian Affairs.

Assistant Secretary-Indian Affairs  
1849 C Street NW  
MS 4660  
Washington, D.C. 20240

Associate Solicitor for Indian Affairs  
1849 C Street NW  
MS 6513  
Washington, D.C. 20240

You may submit your Notice to the AS-IA via email to: Stephanie.Cloud@bia.gov, with a copy to Clint.Bowers@bia.gov

Additional requirements for appeals to the IBIA are set out in 43 C.F.R. 4.331, 4.332, and 4.333, attached.<sup>228</sup>

Because this decision will be put into effect immediately, you are not required to pursue further administrative review. You may instead choose to file suit in federal court to challenge this decision.



Director, Bureau of Indian Affairs

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<sup>227</sup> 25 C.F.R. 2.202, Table 1.

<sup>228</sup> 43 C.F.R. 4.332 includes the statement that “(i)n accordance with 25 C.F.R. 2.20(c) a notice of appeal shall not be effective for 20 days from receipt by the Board, during which time the Assistant Secretary – Indian Affairs may decide to review the appeal.” Pursuant to the 2023 revisions to the Part 2 appeals regulations, AS-IA has 40 days to take jurisdiction over an appeal to the IBIA. 25 C.F.R. 2.508.



Attachments:

25 C.F.R. part 2 (2023).

43 C.F.R. 4.331-4.333 (1989, as amended).

Index to Director's Administrative Record and excerpts of record.

Index to RD's Administrative Record for decision of October 17, 2023.

Index to RD's Administrative Record for decision of September 30, 2022.