



# United States Department of the Interior


## OFFICE OF THE SECRETARY

Washington, DC 20240

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### Memorandum

To: Regional Director, Western Region

From: Bryan Newland   
Assistant Secretary – Indian Affairs

Subject: Regulatory Waiver Concerning Te-Moak C.F.R. Court

For many years, the Te-Moak Tribe of Western Shoshone Indians (Tribe) has dealt with an internal governmental dispute regarding. The Director of the Bureau of Indian Affairs (BIA) issued a decision in June 2024 (Director's Decision) recognizing the Tribal Council led by Ms. Danena Ike on an interim basis in order for that Council to hold scheduled Tribal elections in October 2024. After various parties appealed the Director's Decision to the Interior Board of Indian Appeals (IBIA), the Assistant Secretary – Indian Affairs (AS-IA) assumed jurisdiction over those appeals. Subsequently, opposing factions of the Tribe, led by Danena Ike and Joseph Holley, respectively, each held purported Tribal elections in October and November 2024.

The Director's Decision concluded that neither of the two individuals purportedly serving as judges of the Tribe's courts had been validly appointed. On July 10, 2024, the BIA Western Regional Director issued a decision concluding that, under the Director's Decision, the Tribe was without judicial services. The Regional Director explained that the Tribe had been served by a C.F.R. Court until the Department of the Interior (Department) transferred the C.F.R. Court's jurisdiction to the Tribe. The Regional Director found that the Tribal resolution on which the Regional Director relied in conveying jurisdiction to the Tribe had been enacted by the same invalid Tribal Council that had appointed the judges rejected by the Director's Decision. On that basis, the Regional Director concluded that the Tribal resolutions, and thus the transfer of C.F.R. Court jurisdiction to the Tribal Court, were likewise invalid. The Regional Director accordingly reestablished the C.F.R. Court for the Tribe to exercise civil and criminal jurisdiction over cases on behalf of the Tribe.

In the AS-IA Decision accompanying this waiver, I conclude that (1) the Ike Council's October and November 2024 elections reflect the will of the Tribe and therefore have mooted any challenges to the Director's Decision concerning leadership disputes; and (2) that the Regional Director did not err in withdrawing the Department's transfer of jurisdiction from the C.F.R. Court to the Tribal Court. However, there are two Department regulations governing C.F.R. Courts that may impede the ability of the C.F.R. Court to determine the justiciability of challenges to the Ike Council's elections moving forward. First, the regulations provide:

Each magistrate shall be appointed by the Assistant Secretary-Indian Affairs or his or her designee subject to confirmation by a majority vote of the tribal governing body of the tribe occupying the Indian country over which the court has jurisdiction . . .

25 C.F.R. § 11.201(a). The Department's regulations also provide that:

A Court of Indian Offenses may not adjudicate an election dispute, take jurisdiction over a suit against a tribe, or adjudicate any internal tribal government dispute, unless the relevant

tribal governing body passes a resolution, ordinance, or referendum granting the court jurisdiction.

25 C.F.R. § 11.118(b). The administrative record does not reflect whether the Tribe consented to grant C.F.R. Court jurisdiction over matters named in § 11.118(b); however, I note that the Magistrate of the C.F.R. Court has scrutinized the constitutionality under Tribal law of actions taken by a previous Tribal leadership group that is one of the factions in the current dispute.

It is possible that the ongoing dispute regarding the governing body of the Tribe may render it impossible for a magistrate appointed by the Department to be confirmed by majority vote of a Tribal governing body. In addition, the C.F.R. Court's jurisdiction may be unsettled in connection with matters arising from the October elections, or the C.F.R. Court may ultimately determine that 25 C.F.R. § 11.118(b) would preclude it from adjudicating disputes arising from the Ike Council's 2024 elections.

As a matter of law and policy, there is a strong presumption that the Department's regulations are appropriate to their purpose and require Departmental compliance. To provide the Secretary of the Interior (Secretary) with sufficient latitude to respond to extraordinary circumstances, however, the Department's regulations at 25 C.F.R. § 1.2 provide that the Secretary has the authority to waive or make exceptions to the regulations in Title 25 of the Code of Federal Regulations in all cases where permitted by law, so long as such waiver or exception is in the best interests of the Indians. The authority vested in the Secretary by 25 C.F.R. § 1.2 has been delegated to AS-IA via 209 DM 8.

I find that establishing a C.F.R. Court for the Tribe is very much in the best interest of Indians, to maintain law and order within the jurisdiction of the Tribe and its constituent Bands, and to resolve Tribal election disputes that would otherwise derail the process of establishing a Tribal governing body. I further find that waiving these regulations would not be contrary to law. Therefore, because recourse to an unbiased tribunal to decide disputes arising from the Band and Tribal elections of October and November 2024 is essential to the re-establishment of a recognized Tribal government, I hereby exercise my authority pursuant to 25 C.F.R. § 1.2 to waive the provision of 25 C.F.R. § 11.118(b) that precludes a C.F.R. Court from adjudicating election disputes and 25 C.F.R. § 11.201(a) (requiring tribal governing body confirmation of magistrate) with regard to the C.F.R. Court's jurisdiction as it applies to Te Moak.

This waiver shall be considered effective as of the date of this letter. The Department will revisit the necessity, scope, and duration of this waiver as warranted by ongoing progress toward establishing a Tribal justice system.