

# TE-MOAK TRIBE OF WESTERN SHOSHONE

## RESOLUTION OF THE GOVERNING BODY OF THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA

RESOLUTION NO: 16-TM-35

**BE IT RESOLVED BY THE TE-MOAK TRIBAL COUNCIL OF THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA; THAT**

**WHEREAS**, this organization is a recognized Indian Organization as defined under the Indian Reorganization Act of 1934, as amended, and exercises rights of home rule and is responsible for the promotion of the economic and social welfare and well-being of its members, **and**

**WHEREAS**, the Te-Moak is composed of four (4) constituent Bands, Elko, Battle Mountain, South Fork and Wells and is the parent council of said bands, **and**

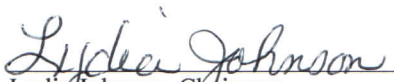
**WHEREAS**, as per the Te-Moak Constitution Article 9, Section 3(d) - To charter and regulate independent organizations, subordinate organizations, committees, and boards of officials of the Tribe; and to delegate powers as appropriate, retaining the right to supervise and to rescind delegated powers, **and**

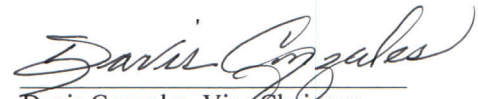
**WHEREAS**, on October 13, 2015 a general election was held in all of the constituent Bands of Elko, Battle Mountain, South Fork and Wells, **and**

**WHEREAS**, on November 3, 2015 a Tribal Chairman election was held and a Chairperson and Vice Chairman were elected.

**THEREFORE BE IT RESOLVED**, Lydia Johnson, Tribal Chairperson and Davis Gonzales, Vice Chairperson are officially recognized through this resolution **16-TM-35**.

We, the undersigned, as Chairperson and Vice Chairperson of the Te-Moak Tribal Council, do hereby certify that the Tribal Council is composed of nine (9) members of whom 9 whom have conducted a poll vote which constituted a quorum, and the foregoing resolution was adopted by such poll vote by a vote of 8 FOR, 0 AGAINST, 0 ABSTENTION pursuant to the authority of Article 4, Section 3 of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

  
Lydia Johnson, Chairman  
Te-Moak Tribe of Western Shoshone

  
Davis Gonzales, Vice Chairman  
Te-Moak Tribe of Western Shoshone



ATTEST:

  
Phaline Conklin, Recording Secretary  
Te-Moak Tribal Council



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
WESTERN REGIONAL OFFICE  
2600 North Central Avenue  
Phoenix, Arizona 85004



IN REPLY REFER TO:  
Indian Self-Determination Services  
MS 303

JUN 28 2016

Certified Mail – Return Receipt No. 7014 1200 0001 1485 3995

Honorable Lydia Johnson  
Chairperson, Te-Moak Tribe of Western Shoshone  
525 Sunset Street  
Elko, Nevada 89801

Dear Chairperson Johnson:

On March 24, 2016, the Bureau of Indian Affairs (BIA) sent the enclosed letter to Mr. Davis Gonzales, with a courtesy copy to all Chairpersons currently presiding over the individual Bands that comprise the Te-Moak Tribe of Western Shoshone ("Tribe"). In our letter, we acknowledged receipt of numerous documents received from the Tribe, and we questioned the legitimacy of actions taken by the Tribe as its council lacked established chairpersons and/or functioning quorums. We requested a response from the Tribe within thirty (30) calendar days to describe the means by which the Tribe would resolve its internal disputes. While we have received additional responses from different parties in the matter, we have not received a unified response from the Tribe, nor a plan on how the Tribe will resolve its disputes.

"When the federal government engages in government-to-government relations with a tribe, it must ensure that it is dealing with a duly constituted government that represents the tribe as a whole." *See*, Cal. Valley Miwok Tribe v. Jewell, 5 F.Supp.3d 86, 97 (D.D.C. 2013); and Morris v. Watt, 640 F.2d 404, 415, 205 U.S. App. D.C. 318 (D.C. Cir. 1981). Further, when administering funds meant to provide programs and services to tribal members, this obligation "should . . . be judged by the most exacting fiduciary standards." *Seminole Nation v. United States*, 316 U.S. 286, 296-297 (1942). For this reason, and in response to recent actions brought to its attention, the BIA is compelled to take necessary steps to ensure that Tribal funds are protected.

Therefore, this letter is to inform you that, effective immediately, appropriated funds of the Te-Moak Tribe of Western Shoshone will be distributed on a reimbursement basis.

Further, this action is supported by 2 CFR 200.338 and 2 CFR Part 200.207, which state that a Federal awarding agency may impose additional conditions should a non-Federal entity fail to comply with Federal statutes, regulations, or the terms and conditions of a Federal award.

This action is supported by the following:

- A letter dated December 15, 2015 (enclosed) from Ms. Lydia Johnson to Mr. Joseph McDade, Superintendent, Eastern Nevada, requesting that the Bureau take "immediate steps to protect all Federal funds" allocated to the Te-Moak Tribe of Western Shoshone;



- A memorandum from Mr. Davis Gonzales dated March 11, 2016 (enclosed), describing a Te-Moak Council meeting wherein of the five members comprising a quorum, three excused themselves from the meeting, leaving two to conduct official business;
- A letter dated March 15, 2016 from both Ms. Lydia Johnson and Mr. Davis Gonzales to the U.S. Office of the Solicitor, requesting clarification as to the legality of the actions taken by a two-person quorum;
- A letter dated March 31, 2016 (enclosed) from Ms. Lydia Johnson to Glenn Shafer, Regional Awarding Official, which references a request made to the Office of the Inspector General (OIG) for an investigation into the misappropriation of Federal funds;
- A letter dated April 5, 2016 (enclosed) from Ms. Lydia Johnson to Mr. Davis Gonzales concerning a payment issued to an attorney in the amount of \$6,963.55, which the Chairwoman declined to authorize.

Based on the correspondence listed above, the BIA believes that the Te-Moak Tribe of Western Shoshone is enduring an internal dispute that may be affecting its ability to conduct business on a day-to-day basis. While the BIA is unable to intervene in tribal leadership disputes, the BIA maintains a fiduciary duty with respect to tribal funds and resources, including funds disbursed under contracted 638 programs. Based on the above, the BIA finds cause for concern and is thereby taking action to ensure that Federal funds are being handled appropriately.

To resolve this situation and lift the imposition of cost reimbursement payments, we request the following:

- A duly ratified tribal resolution identifying tribal leadership – e.g. the Chairperson, Vice-Chairperson, and Members of the Council.

The resolution should be submitted with a cover letter signed by both the Chairperson and Vice-Chairperson. We are requesting both signatures to reflect a consensus between executive leadership as to how the Tribe will manage its 638 programs going forward.

Until the Tribe responds to this letter with the requested documentation, the following conditions are hereby imposed on the Tribe's contracted programs:

- The Tribe's funds will be placed on "Agency Review," preventing the Tribe from drawing down lump sum amounts in advance of qualifying expenditures;
- Payments will be made as reimbursements rather than as advance payments;
- The Bureau may require additional, more detailed financial reports to justify expenses;
- The Bureau may require additional project monitoring to ensure program integrity;

All payment requests will be reviewed by the Awarding Official's Technical Representative (AOTR) for the Tribe's contracts, Mr. Joseph McDade, Superintendent, Eastern Nevada Agency. Mr. McDade will review the payment requests and any requested financial reports for accuracy and compliance with the terms and conditions of each contract award. Should Mr. McDade find any discrepancies or require additional information, he will contact the Tribe to obtain such information. Mr. McDade's approval is required on each payment request and financial report before it will be accepted by this office.

The Regional Awarding Official may contact the Tribe within the next thirty (30) calendar days to schedule a monitoring visit at the Tribal Offices in Elko, Nevada at which time, technical assistance will also be provided.

Should you have any questions or concerns regarding this letter, please contact Mr. Glenn Shafer, Regional Awarding Official, at (602) 379-4189 or at [glenn.shafer@bia.gov](mailto:glenn.shafer@bia.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Glenn Shafer".

Regional Awarding Official

Enclosures

cc: Superintendent, Eastern Nevada Agency, w/cy encl.  
Davis Gonzales, Vice-Chairman, Te-Moak Tribe of Western Shoshone, w/cy encl.  
Phaline Conklin, Tribal Administrator, Te-Moak Tribe of Western Shoshone, w/cy encl.