



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

ASSISTANT SECRETARY – INDIAN AFFAIRS UNITED STATES DEPARTMENT OF THE INTERIOR

Joseph Holley, Alice Tybo, Andrea Woods,)
Duane Garcia, Paula Garcia, Duane Gonzales,)
Thalia Martin, Julius Holley, and Larry Yeager,)
Appellants,)
)
The Housing Authority of the Te-Moak Tribe of)
Western Shoshone Indians of Nevada,)
Appellant,)
The South Fork Band of the Te-Moak Tribe of)
Western Shoshone Indians Of Nevada,)
Appellant,)
Steven McDade,)
Appellant, and,)
The Te-Moak Tribal Council,)
Appellant,)
)
v.)
)
Director, Bureau of Indian Affairs,)
Appellee.)
_____)

Decision

The Te-Moak Tribe of Western Shoshone Indians of Nevada (“Tribe”), a federally-recognized tribe comprised of four constituent Bands (Elko, South Fork, Battle Mountain, and Wells), has been embroiled in an intratribal dispute regarding the leadership of the tribal government since 2021.

On October 17, 2023, the Regional Director (“RD”) of the Bureau of Indian Affairs (“BIA”) Western Regional Office (“WRO”) issued a decision recognizing Danena Ike as a “person of authority” within the Tribe with whom BIA could maintain government-to-government relations with the Tribe. Pursuant to applicable regulations at 25 C.F.R. Part 2, various parties appealed the RD’s October 17 decision to the Director of BIA (“DBIA”). On July 18, 2024, DBIA issued a decision recognizing a council led by Danena Ike on an interim basis (“Ike Council”) to continue government-to-government relations with the Tribe pending an October-November 2024 tribal election (“Decision” or “DBIA Decision”) that would potentially end the intra-tribal

dispute under tribal law.¹ In addition, the DBIA ruled that neither of the various factions' purported tribal court judges were validly seated and declined to recognize the validity of the Tribal Court, to which the Department of the Interior ("Department") had previously transferred jurisdiction from the federally-operated Court of Indian Offenses for the Western Region ("C.F.R. Court"). Pursuant to 25 C.F.R. § 2.714, the Decision was immediately effective, but not final, for the Department.

Separately, on July 10, 2024, the RD issued a decision regarding jurisdiction of the Te-Moak Tribal Court ("C.F.R. Decision" or "RD Decision"). Following DBIA Decision, the RD found in the absence of a properly appointed Tribal Court judge, and given certain defects in Tribal Resolutions regarding the Tribal Court, it was necessary for continued provision of law enforcement services on the Tribe's Reservation to withdraw the transfer of jurisdiction from the C.F.R. Court to the Tribal Court, and to return jurisdiction to the C.F.R. Court until the Tribe validly re-established a Tribal Court.

Three parties filed appeals of DBIA's Decision, specifically concerning the interim recognition of the Ike Council, to the Interior Board of Indian Appeals ("IBIA") in July 2024, which the IBIA consolidated on August 1, 2024.² Subsequently, Steven McDade³ filed an appeal.⁴ On August 28, 2024, the IBIA consolidated all four appeals of the Decision. On September 4, 2024, I assumed jurisdiction over the consolidated IBIA appeals pursuant to 25 C.F.R. § 2.508.⁵ On September 5, 2024, the IBIA received a Notice of Appeal filed by Danena Ike, dated August 19, 2024, which the Board construed as a new appeal of DBIA Decision.⁶

In addition to the appeals concerning the interim governmental recognition, four parties also filed appeals with the IBIA challenging the RD's July 10, 2024, decision reinstating the C.F.R. Court for Te-Moak. The IBIA recognized several arguments in favor of referring the appeals of the C.F.R. Decision to the Assistant Secretary – Indian Affairs ("AS-IA"), including the fact that the appeals to "the Board involve arguments or issues that are relevant to the Assistant Secretary's review of the Director's decision."⁷ The IBIA consolidated the four appeals of the C.F.R. Decision and referred them to AS-IA.⁸

¹ DBIA initially issued the Decision on June 20, 2024. That decision was not dated and lacked a complete distribution list. The Director re-issued the Decision, with date and distribution list, on July 18, 2024, which was the effective date of the Decision for purposes of calculating appeals deadlines.

² See Pre-Docketing Notice for Steven McDade Appeal, Order Consolidating Appeals, Order to Complete Service, and Order for Information from Appellant and Director on Timeliness of Appeal, *Holley et al. v. Dir., Bureau of Indian Affairs*, IBIA (Aug. 28, 2024) (Noting August 1, 2024 Order Consolidating Appeals of Joseph Holley, appeal dated July 25, 2024; the Te-Moak Housing Authority, appeal dated July 26, 2024; and The South Fork Band of the Te-Moak Tribe, appeal dated July 26, 2024).

³ Steven McDade served as Chairman of the Ike Council Tribal Election Board throughout the 2024 Ike Council elections. See Email from Danena Ike, Vice-Chairwoman, to RD Jessie Durham re: Swearing in of Elko Band Council Members (Oct. 16, 2024) (on file with AS-IA).

⁴ Notice of Appeal, Steven McDade, *Holley et al. v. Dir., Bureau of Indian Affairs*, IBIA (Aug. 16, 2024).

⁵ Notice of Assumption of Jurisdiction, AS-IA Bryan Newland to Honorable Thomas A. Blaser, Chief Judge, IBIA (Sept. 4, 2024).

⁶ Order Consolidating and Referring Appeals to the Assistant Secretary-Indian Affairs, *Holley v. W. Reg'l Dir., Holley, et al. v. Dir., Bureau of Indian Affairs*, at 2 (Sep. 9, 2024).

⁷ *Id.*

⁸ *Id.*

On September 4, 2024, Joseph Holley, the leader of the tribal government faction opposing the Ike Council (“Holley Group”), who had previously filed an appeal of the DBIA Decision with the IBIA prior to AS-IA’s assumption of jurisdiction, filed suit in the United States District Court for the District of Nevada (“District of Nevada”). Mr. Holley asked the court to (1) find the Decision was arbitrary and capricious under the Administrative Procedure Act (“APA”); and (2) reverse, stay, and enjoin the enforcement of the Decision pending adjudication on the merits.⁹ In response, the United States asked the court to stay the federal court proceedings to permit completion of AS-IA’s administrative review of the DBIA Decision.¹⁰ On October 7, 2024, the Court granted a stay of proceedings pending AS-IA’s administrative resolution of the consolidated appeals.¹¹ By the District of Nevada issuing its Order declining to grant the Holley Group emergency relief, pursuant to 25 C.F.R. § 2.714, the DBIA Decision “remain[ed] in effect and binding on the Department” pending my review of DBIA’s recognition of the Ike Council.

In light of the IBIA’s consolidation and referral of the appeals of the DBIA Decision and the RD Decision, and the District of Nevada’s stay of proceedings pending administrative resolution, two central issues are ripe for my review: (1) whether DBIA erred as a matter of law in recognizing the Ike Council on an interim basis for purposes of conducting business with the federal government and preparing for the Tribe’s scheduled October 2024 election cycle; and (2) whether the RD erred in withdrawing jurisdiction from the Te-Moak Tribal Court and transferring jurisdiction over criminal and civil cases on behalf of the Te-Moak Tribe to the C.F.R. Court unless and until the Tribe validly re-establishes a Tribal Court.

For the reasons stated below, I find:

- (1) DBIA recognized the Ike Council on an interim basis as the Tribal government to conduct the 2024 Tribal election, and the Ike Council validly held a Band election on October 12, 2024, followed by a Chairperson Election on November 2, 2024, which elected Edith Smartt as Chairwoman.
- (2) The Ike Council’s October 12 and November 2, 2024, elections constituted a tribal resolution to the intratribal dispute. Therefore, all challenges to the DBIA Decision are moot given that the tribal leadership dispute is resolved for federal purposes.
- (3) The RD did not err in withdrawing jurisdiction from the Tribal Court and empowering the C.F.R. Court to exercise civil and criminal jurisdiction on behalf of the Tribe.

I. Factual Background

⁹ Complaint, *Holley v. Dep’t of Interior*, No. 2:24-cv-01629 (D. Nev., Sept. 4, 2024).

¹⁰ Federal Defendants’ Combined Opposition to Plaintiff’s Emergency Motion to Stay and Emergency Motion for Preliminary Injunction, and Motion to Stay the Instant Proceedings, *Holley v. Dep’t of Interior*, No. 2:24-cv-01629 (D. Nev., Sept. 30, 2024).

¹¹ Order Denying Preliminary Injunction and Stay of BIA Decision, *Holley v. Dep’t of Interior*, No. 2:24-cv-01629 (D. Nev., Oct. 7, 2024).

The Decision sufficiently lays out the relevant history of the Tribe’s October 2021 election, the February 2022 election held by the currently-unrecognized Holley Group, and the RD’s October 17, 2023 Decision which recognized Danena Ike as an interim tribal representative authorized to execute contracts and agreements with the federal government.¹² For purposes of this decision, it is unnecessary to recite a full factual and historical background preceding the DBIA Decision and I accordingly incorporate by reference the background from the Decision unless otherwise indicated below. I will summarize only a limited procedural history as necessary to my decision.

1. DBIA’s July 18, 2024 Decision.

Following the RD’s October 17, 2023, Decision recognizing Danena Ike as a “person of authority” for the Tribe, three parties filed appeals with DBIA: (1) Vince Garcia and Danena Ike (“Ike Council”),¹³ who challenged the RD’s recognition solely of Ike as an individual, as opposed to the Ike Council as a collective body; (2) Samuel Biers, a purported judge of the Tribal Supreme Court who objected to the RD’s disregard of Mr. Biers’ alleged recognition of the Ike Council under Tribal law; and (3) the Te-Moak Housing Authority (“TMHA”), which challenged Danena Ike’s authority and sought recognition of the Holley Group as the purported last validly elected Council.¹⁴ Joseph Holley and the purported members of the unrecognized Holley Group did not appeal the RD Decision to the DBIA. The RD submitted a Response Brief to the three Appellants on January 8, 2024, which noted the impossibility of relying on a Tribal court to resolve the intra-Tribal dispute when the two competing governing councils, Ike and Holley, were each supported by two competing Tribal courts.¹⁵

DBIA’s Decision (1) concurred with the RD Decision in rejecting the Holley Group and TMHA’s arguments that DBIA must recognize the Holley Group as the last undisputed tribal government, and; (2) reversed the RD’s recognition of Danena Ike as a sole Tribal representative, and instead recognized the Ike Council as the Tribal governing body empowered to call and conduct the 2024 Tribal elections. Specifically, DBIA first concluded that action and inaction by the then-recognized Holley Council was largely responsible for the failure of the October 2021 election to put a new Tribal government in place, which directly resulted in the present leadership dispute.¹⁶ DBIA found “[a]mple, uncontradicted evidence in the record shows that the Joseph Holley-led tribal Council . . . failed to adequately prepare the Tribe and Bands for the 2021 elections.”¹⁷ Accordingly, DBIA declined to recognize the Holley Group on the basis of its “last recognized status,” noting that that type of recognition is an appropriate BIA action under relevant authorities in *some* circumstances, but “not invariably required.”¹⁸

Second, DBIA affirmed the RD’s rejection of various claims by certain Appellants that purported Tribal judges, Wendell Hayes and Samuel Biers, had already settled the leadership dispute under

¹² See Decision at 4-9.

¹³ During the pendency of Vince Garcia’s appeal, Mr. Garcia passed away, and was replaced by Danena Ike as leader of the Ike Council.

¹⁴ See Decision at 9-12.

¹⁵ *Id.* at 13 (discussing RD’s Jan. 8, 2024, Response Brief).

¹⁶ *Id.* at 19-20.

¹⁷ *Id.* at 20.

¹⁸ *Id.* at 19 (citing *Alturas Indian Rancheria v. Salazar*, No. 2:10-cv-1997, 2010 WL 4069455, at *6 (E.D. Cal. Oct. 18, 2010)).

tribal law.¹⁹ Judge Biers asserted he was validly appointed to the Tribal Supreme Court by the Holley Council in February 2021 and urged the BIA to recognize the Ike Council, whom he swore into office after its purported election in 2021.²⁰ Judge Hayes, allied to the Holley Group, rendered several opinions declaring Joseph Holley to be the valid Chairman.²¹ However, DBIA rejected both claims of judicial legitimacy, noting an amended decision by C.F.R. Court Judge Marsha Harlan which found that the Tribal Council headed by Joseph Holley was not valid under the Tribe's Constitution, because it comprised twelve members instead of nine. DBIA applied Judge Harlan's finding to conclude that the Holley Group's appointment of Judge Biers was invalid.²² DBIA found that evidence in the record indicated that Judge Hayes had also been appointed by the constitutionally invalid Holley Council.²³ DBIA therefore concurred with the RD's determination that the Department was not required to defer to either Hayes or Biers concerning the dispute, as all decisions of Judge Hayes and Judge Biers were de facto invalid given their appointment by an invalid council.²⁴

Third, DBIA examined the RD's conclusion that the Tribal Election Ordinance provision related to election disputes, which states "[t]he decision of the Band Election Committee/Te-Moak Election Board shall be final," was silent as to further judicial review of Committee and Board decisions.²⁵ DBIA found there were no provisions of Tribal law identified by Appellants or the RD that "speak unambiguously to the question of judicial review of Election Committee decisions."²⁶ DBIA further noted that finality is not defined in the Election Ordinance, and that just as administrative decisions of a federal agency may be "final" as to agency review, but reviewable by a court, so too decisions of the Election Committee may be reviewable by a Tribal judiciary.²⁷ DBIA noted issues that are beyond the Election Committee's scope of jurisdiction under Tribal law may be particularly appropriate for a Tribal judiciary to review.²⁸ Ultimately, DBIA concluded if the Tribe had an undisputed Tribal judiciary—which DBIA found not to be the case—a Tribal Judge could proceed to interpret the Tribal Election Ordinance and make a determination on reviewability of Election Committee decisions.²⁹

Finally, DBIA vacated the RD's recognition of Danena Ike as the sole tribal representative authorized to continue government-to-government relations between the Tribe and the United States. Instead, DBIA recognized the Ike Council, as then led by Danena Ike, as the interim tribal government "through which the BIA can fulfill its own obligations."³⁰ DBIA noted that given the four-Band structure of the Tribal government, "recognition of a single person as Tribal representative [is] less appropriate than would be the case for a Tribe with a single governing body over all members."³¹ Because DBIA found recognizing the Holley Group would violate

¹⁹ *Id.* at 21-22.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 22.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 24 (citing RD's Decision at 8 (quoting Te-Moak Election Ordinance § 13-10-1)).

²⁶ *Id.* at 25.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 31.

³¹ *Id.*

DBIA's trust responsibility "to promote the Tribe's political integrity" given the Holley Group's failure to properly conduct elections, DBIA recognized the Ike Council for purposes of conducting business with the federal government and "preparing for the next election cycle" despite the Ike Council's failure to meet the Constitutional requirement for a Tribal Council comprised of nine individuals representative of all four bands.³² DBIA emphasized the Decision was "pending the Tribe's ultimate resolution of its internal disputes via tribal mechanisms."³³

2. The RD's July 10, 2024 C.F.R. Decision.

On July 10, 2024, following the initial issuance³⁴ of the DBIA Decision, the RD issued the C.F.R. Decision revoking portions of her letters from February 9, March 2, and March 17, 2022 related to the jurisdiction of the Tribal Court. The RD found the letters were based on a false premise that the Tribe properly adopted and re-established a Tribal Court and returned jurisdiction over criminal and civil cases on behalf of the Tribe to the C.F.R. Court for the Western Region until the Tribe could validly re-establish a tribal court.³⁵

Prior to June 12, 2017, the Tribe maintained an Indian Self-Determination and Educational Assistance Act ("ISDEAA"), P.L. 93-638 judicial services contract that funded a tribal prosecutor, public defender, and court clerk, while maintaining Tribal court jurisdiction with a C.F.R. Court pursuant to 25 C.F.R. § 11.100.³⁶ On June 12, 2017, BIA reassumed this contract on an emergency basis after an intratribal dispute led the C.F.R. Court to cease operations.³⁷ The Tribe appealed the emergency reassumption to the IBIA. While the appeal was pending, the Tribe conducted its 2018 elections resulting in the election of a Tribal Council led by Joseph Holley.³⁸

While the Tribe and the BIA were in mediation regarding the Tribe's appeal of BIA's emergency reassumption of the judicial services contract, the Holley Council submitted a request by letter dated November 24, 2020 to withdraw from the C.F.R. Court under 25 C.F.R. § 11.104(b).³⁹ The letter stated that the Tribe had established its own Tribal justice system with Samuel Biers as Chief Judge of the Tribal Court.⁴⁰ In response to the Holley Council's request to withdraw C.F.R. Court jurisdiction, the RD issued a decision on December 17, 2020, advising the Tribe that the C.F.R. Court would continue to provide judicial services until resolution of the IBIA appeal regarding BIA's reassumption of the judicial services contract because the mediation "potentially implicated the administration of tribal justice."⁴¹

³² *Id.* The Decision included the requisite 25 C.F.R. § 2.714 Appeal Rights notice that it was immediately effective, but not final for the Department and that any challenges to the Decision may be brought in either the IBIA or a federal court.

³³ *Id.* at 1-2.

³⁴ As discussed *supra* note 1, DBIA reissued the Decision on July 18, but the RD reviewed the Decision and released the C.F.R. Decision prior to the reissue.

³⁵ C.F.R. Decision at 2.

³⁶ Letter from RD Jessie Durham to Te-Moak Tribe re: Transfer of Jurisdiction (Feb. 9, 2022).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* The Holley Council subsequently purported to remove Biers from office and appoint Wendell Hayes as Judge.

⁴¹ *Id.* at 1.

The Tribe appealed this decision to the IBIA in March 2021.⁴² The Tribe and BIA reached a Settlement Agreement whereby BIA would reconsider the Tribe's November 24, 2020 request to withdraw from C.F.R. Court jurisdiction. The IBIA subsequently dismissed the reassumption appeal and, pursuant to the Settlement, the RD directed the C.F.R. Court to transfer jurisdiction to the Tribal Court in a February 9, 2022 letter.⁴³

On March 2, 2022 the RD recognized on an interim basis the last-recognized Tribal Council for the limited purpose of identifying tribal court personnel to enable the transfer of jurisdiction under the Settlement Agreement.⁴⁴ In her March 2022 letter, the RD considered correspondence pre-dating the intratribal dispute that named Wendell Hayes as Tribal Court Judge. The RD clarified her interim decision was for the limited purpose of implementing the BIA's responsibilities under the Settlement Agreement and the RD refrained from extending her decision to the intratribal dispute over the composition of the Tribal government. The RD's decision did not address the validity of the Tribal Court or a Tribal Judge, which the RD deemed "a matter for a tribal forum."⁴⁵

Through the remainder of 2022 and until October 2023, the RD continued to refrain from issuing a government recognition decision, even though the intratribal dispute as to the composition of the Tribal Council and Tribal Court persisted.⁴⁶ The RD issued a tribal government recognition decision on October 17, 2023 to "fulfill government-to-government actions."⁴⁷ The RD's decision recognized Danena Ike as an interim tribal representative authorized to execute contracts and agreements for the Te-Moak Tribe with the federal government, which several parties appealed to DBIA, as discussed above. In review of the RD's October 2023 recognition decision, DBIA rejected both purported Tribal Court Judges appointed by the Holley Council (Biers and Hayes), effectively creating a Tribal judicial void.⁴⁸ Noting the exigent need for a Tribal judiciary, the RD issued the C.F.R. Decision on July 10, 2024.⁴⁹

In the C.F.R. Decision, the RD noted the above-discussed events in which the Tribe previously withdrew from the C.F.R. Court by transmitting to AS-IA a Law and Order Code and letter noting a newly established tribal justice system on November 24, 2020, and that the RD subsequently sent notice to the C.F.R. Court on February 9, 2022 to transfer jurisdiction to the Tribal Court pursuant to the Settlement Agreement.⁵⁰ After the transfer, "it became apparent" to the RD there was a dispute as to the identity of the Tribe's Council and Court, which resulted in the disputes concerning Judge Biers and Judge Hayes, as described in DBIA's Decision.⁵¹ After

⁴² *Id.*; see *Te Moak Tribe of W. Shoshone Indians of Nev. v. W. Reg'l Dir.*, BIA, No. IBIA 21-027 (A settlement agreement was reached on July 27, 2021, and Order of Dismissal entered September 2, 2021 by Joint Motion of the Parties).

⁴³ Letter from RD Jessie Durham to Te-Moak Tribe re: Transfer of Jurisdiction (Feb. 9, 2022).

⁴⁴ See Letter from RD Jessie Durham to Joseph Holley re: Modification to March 2, 2022 Letter Recognizing Holley Council (March 17, 2022).

⁴⁵ *Id.*

⁴⁶ See Letter from RD Jessie Durham to Vince Garcia and Joseph Holley re: Interim Recognition of Tribal Government (October 17, 2023).

⁴⁷ *Id.*

⁴⁸ Decision at 21-22.

⁴⁹ C.F.R. Decision at 2

⁵⁰ *Id.* at 1.

⁵¹ *Id.*

reviewing the factors in the Decision concerning lack of an undisputed tribal judiciary, as well as Tribal Council Resolution 20-TM-129, adopting the Law and Order Code submitted to AS-IA, the RD concluded the Resolution was “also passed by the same Tribal Council” (Holley Council) that DBIA ultimately concluded was invalid. Necessarily, the RD found the Resolution withdrawing the Tribe from C.F.R. Court jurisdiction was also invalid.⁵² For “continued provision of law and order on the Reservation,” the RD returned jurisdiction to the C.F.R. Court “unless and until” a valid Tribal judiciary could be established.⁵³

3. IBIA Appeals of the Decision and C.F.R. Decision.

A. Appeals of the Decision.

Five entities appealed the DBIA Decision. The IBIA received appeals from the unrecognized Holley Group on July 26, and from the Te-Moak Housing Authority and the South Fork Band on July 29, 2024.⁵⁴ On August 1, 2024, the IBIA entered an order consolidating those three appeals.⁵⁵

The IBIA then received an appeal from Steven McDade on August 26, 2024. On August 28, 2024, the IBIA issued an order consolidating the McDade appeal with the other three appeals.⁵⁶ On September 4, 2024, AS-IA timely assumed jurisdiction over the appeals pursuant to 25 C.F.R. § 2.508 and 43 C.F.R. § 4.332(b).⁵⁷ On September 5, 2024, Order, the IBIA confirmed AS-IA’s assumption of jurisdiction over the first four appeals and vacated two pending orders related to the McDade appeal (an Order to Complete Service, and an Order for Information from [McDade] and DBIA on Timeliness of Appeal).⁵⁸ Also on September 5, the Board received an appeal from Danena Ike challenging certain aspects of the DBIA Decision.⁵⁹ In its order of

⁵² *Id.* at 2.

⁵³ *Id.*

⁵⁴ See Notice of Appeal of Undated Decision of the Office of the Director for the Bureau of Indian Affairs; Statement of Reason for Appeal and Relief Sought, Te-Moak Tribe of Western Shoshone Indians of Nevada (Joseph Holley) (July 25, 2024, received by IBIA July 26, 2024); Notice of Appeal of Decision of the Office of the Director for the Bureau of Indian Affairs Delivered July 22, 2024, and Statement of Reason for Appeal and Relief Sought, Te-Moak Housing Authority (July 26, 2024, received by the IBIA July 29, 2024); Notice of Appeal of Decision of the Office of the Director for the Bureau of Indian Affairs Delivered July 22, 2024, and Statement of Reason for Appeal and Relief Sought, South Fork Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada (July 26, 2024, received by the IBIA July 29, 2024). In light of my conclusion, that a valid subsequent tribal election has mooted all challenges to DBIA’s Decision, I find it unnecessary to expound upon the various arguments raised in each of the IBIA appeals now referred to me, unless specifically identified in the Discussion below.

⁵⁵ See Pre-Docketing Notice for Steven McDade Appeal, Order Consolidating Appeals, Order to Complete Service, and Order for Information from Appellant and Director on Timeliness of Appeal, *Holley et al. v. Dir., Bureau of Indian Affairs*, IBIA (Aug. 28, 2024) (Noting August 1, 2024 Order Consolidating Appeals of Joseph Holley, the Te-Moak Housing Authority, and the South Fork Band.).

⁵⁶ *Id.*

⁵⁷ See Notice of Assumption of Jurisdiction Over the Appeals by the Assistant Secretary – Indian Affairs and Order Vacating Board’s Order to Complete Service and Order for Information, at 2, IBIA (Sept. 5, 2024).

⁵⁸ *Id.*

⁵⁹ Notice of Appeal of Decision of the Office of the Director for the Bureau of Indian Affairs; Statement of Reason for Appeal and Relief Sought: Notice of Appeal to Portions of Decision of Director BIA, Te-Moak Tribal Council (July 18, 2024); Concerning the Governing Body of the Te-Moak Tribe of Western Shoshone Indians of Nevada. Te-Moak Tribal Council, Danena Ike, Vice-Chairwoman (August 18, 2024, received by IBIA September 5, 2024).

September 9, 2024, *infra*, the Board consolidated Ike’s appeal with others referred to the AS-IA.⁶⁰

B. Appeals of the R.D. Decision.

Four parties appealed the R.D. Decision to the IBIA:⁶¹

- August 12, 2024 – Holley Group appeal.⁶²
- August 12, 2024 – South Fork Band and TMHA joint appeal.⁶³
- August 12, 2024 – Ike Council appeal.⁶⁴
- August 16, 2024 – Battle Mountain Band appeal.⁶⁵

Additionally, the RD filed a motion with the IBIA to place the C.F.R. Decision into immediate effect under 25 C.F.R. § 2.300(c).⁶⁶ The Battle Mountain band filed an additional request with the IBIA to consolidate the appeals of DBIA’s Decision with the C.F.R. Decision appeals.⁶⁷

C. Consolidation of IBIA Appeals and Referral to AS-IA.

In a September 9, 2024 Order Consolidating and Referring Appeals to AS-IA, the IBIA construed the Ike Council’s September 5, 2024 appeal as a supplemental statement of reasons in support of the Ike Council’s prior appeal of the C.F.R. Decision and a new appeal from the DBIA Decision, and consolidated all appeals from the C.F.R. Decision and referred them to AS-IA.⁶⁸ In response to the RD’s motion to place the C.F.R. Decision into immediate effect, the IBIA concluded “the Board’s review and ruling on that motion could conflict with or be limited in scope due to [AS-IA’s] separate review of the Director’s related decision.”⁶⁹ In the IBIA’s estimation, the C.F.R. Decision “is an extension of BIA’s intervention in the intra-tribal dispute that was addressed” in the Decision, and accordingly, the IBIA consolidated the four appeals of

⁶⁰ Order Consolidating and Referring Appeals to the Assistant Secretary-Indian Affairs, *Holley v. W. Reg’l Dir., Holley, et al. v. Dir., Bureau of Indian Affairs*, IBIA (Sept. 9, 2024).

⁶¹ Points of error in the C.F.R. Decision alleged by the four Appellants are detailed below, Sec. III(3).

⁶² Notice of Appeal of July 10, 2024, Decision of the Office of the Regional Director of Western Region for the Bureau of Indian Affairs; Statement of Reasons for Appeal and Relief Sought, Holley Group (Aug. 8, 2024).

⁶³ Notice of Appeal of the South Fork Band and Te-Moak Housing Authority of the July 10, 2024 Decision of the Office of the Regional Director of the Western Region for the Bureau of Indian Affairs; Statement of Reasons for Appeal and Relief Sought, South Fork Band and TMHA (Aug. 8, 2024).

⁶⁴ Notice of Appeal of the July 10, 2024 Decision of the Western Region Director to Have the Court of Indian Offenses for the Western Region Exercise Jurisdiction Over Criminal and Civil Cases on Behalf of the Te-Moak Tribe, Danena Ike (Aug. 6, 2024).

⁶⁵ Notice of Appeal and Statement of Reasons, Battle Mountain Band (Aug. 9, 2024).

⁶⁶ Under § 2.300(c), agency decisions “that are subject to further administrative appeal and for which an appeal is timely filed may be made immediately effective by the reviewing official based on public safety, Indian education safety, protection of trust resources, or other public exigency.” See Order Consolidating and Referring Appeals to the Assistant Secretary-Indian Affairs, *Holley v. W. Reg’l Dir., Holley, et al. v. Dir., Bureau of Indian Affairs*, 3 IBIA (Sept. 9, 2024).

⁶⁷ *Id.*

⁶⁸ *Id.* at 2.

⁶⁹ *Id.* at 4.

the C.F.R. Decision,⁷⁰ additionally consolidated the Ike Council's September 5 appeal with the four prior consolidated appeals of the DBIA Decision, and referred all of the consolidated appeals to AS-IA for consideration.⁷¹

4. *Holley v. United States Department of the Interior.*

After filing an appeal of the Decision with the IBIA, the unrecognized Holley Group filed a Complaint in the District Court on September 3, 2024, seeking review and reversal of the Decision.⁷² The Holley Group additionally filed an Emergency Motion to Stay Undated Decision from Director of the Bureau of Indian Affairs, or alternatively, Emergency Motion for Preliminary Injunction.⁷³ On September 16, 2024, AS-IA issued a notice informing parties to the consolidated appeal of the DBIA and R.D. Decisions that, pursuant to regulations at 25 C.F.R. §§ 2,300, 2.714, which govern when a Tribal government recognition decision may be appealed and when such a decision is effective, AS-IA could not administratively adjudicate the consolidated appeals until either a judicial adjudication or a stay of the District Court proceedings.⁷⁴

The Federal Defendants filed an Opposition to Holley's various motions on September 30, 2024, asking the Court to stay the case pending either dismissal of Holley from the administrative appeals, or completion of the administrative proceedings before AS-IA.⁷⁵ Plaintiff Holley Group filed a reply, and two parties filed motions to intervene: Steven McDade and the TMHA.⁷⁶

The District Court heard oral argument on the pending motions on October 4, 2024. On October 7, 2024, the Court issued an Order Denying Preliminary Injunction and Stay of BIA Decision, which granted both Motions to Intervene, denied Plaintiff Holley Group's emergency motions, and granted the Federal Defendants' Motion to Stay federal court proceedings pending AS-IA's resolution of the consolidated appeals of the Decision and C.F.R. Decision.⁷⁷ In its Order, the Court considered Plaintiffs' argument for emergency relief, specifically that Plaintiffs would be unable to properly file election disputes in Tribal Court for the forthcoming October 12, 2024 Ike Council election absent an injunction of the DBIA Decision.⁷⁸ In response, the Court stated "[w]hile the status of the two court systems is a point of confusion for the Tribe while the [C.F.R.] Decision is pending [AS-IA's] review, if matters concerning the adequacy of the

⁷⁰ Hereinafter, "Appellants" for purposes of my discussion of appeals of the C.F.R. Decision shall refer to those Appellants named in the four consolidated appeals of the C.F.R. Decision.

⁷¹ *Id.* at 5. Hereinafter, "Appellants" for purposes of my discussion of appeals of the Decision shall refer to those Appellants named in the five consolidated appeals of the Decision.

⁷² Complaint, *Holley v. Dep't of Interior*, No. 2:24-cv-01629 (D. Nev., Sept. 4, 2024).

⁷³ ECF Nos. 10 and 13, *Holley v. Dep't of Interior*, No. 2:24-cv-01629 (D. Nev., Sept. 24, 2024). Holley filed a combined motion, with ECF Nos. 10 and 13 being identical to one another.

⁷⁴ Status of Appeals of Director's Decision, Ex. C. to Federal Defendants' Combined Opposition to Plaintiff's Emergency Motion to Stay and Emergency Motion for Preliminary Injunction, and Motion to Stay the Instant Proceedings, *Holley v. Dep't of Interior*, No. 2:24-cv-01629 (D. Nev., Sept. 30, 2024).

⁷⁵ *Id.* at 2.

⁷⁶ Order Denying Preliminary Injunction and Stay of BIA Decision, *Holley v. Dep't of Interior*, No. 2:24-cv-01629, 1-2 (D. Nev., Oct. 7, 2024).

⁷⁷ *Id.* at 21.

⁷⁸ *Id.* at 17.

election arose, the Tribal Court or C.F.R. Court could address them.”⁷⁹ Further, the Court found persuasive Defendants’ argument that it was in the public interest for the Court to allow the DBIA Decision recognizing the Ike Council to remain in effect in order to facilitate the October 2024 election, though the Court declined “to involve itself with deciding which faction should be recognized as the government” under Tribal law.⁸⁰

5. October and November 2024 Elections.

A. October 8, 2024, Holley Group Band Elections.

The unrecognized Holley Group purported to hold Tribal elections on October 8, 2024. Prior to the election, the Holley Group purported to pass a scheduling resolution on July 17, 2024, scheduling Band elections for the second Tuesday in October.⁸¹ A purported South Fork Band Council, through Tribal Administrator Cheryl Mose-Temoke, submitted documentation to BIA that a South Fork Band Council Election was conducted on October 8, 2024, and a South Fork Band Council was sworn in following certification on October 11, 2024.⁸² The purported Battle Mountain Band Election Committee additionally submitted a notice of its election on Tuesday, October 8 electing seven individuals to the Battle Mountain Band Council who were sworn in on October 11, 2024.⁸³ The purported Elko Band Council tally sheets show a total of 215 cast ballots, with certifications by a purported Elko Band Election Committee Chairman Cheryl Garcia on October 9, 2024.⁸⁴ Finally, a purported Wells Band Election Committee submitted tally sheets showing a total of 15 votes cast.⁸⁵

Altogether, a total of 321 voters participated in the October 8, 2024 Holley Group election across the four Bands, with 215 at Elko, 37 at South Fork, 54 at Battle Mountain, and 15 at Wells, respectively. BIA received no documentation demonstrating any election disputes were filed in the purported October 8 elections, and the Holley Group subsequently purported to install and swear in those elected.

B. October 12, 2024, Ike Council Band Elections.

The Ike Council held Band Elections on October 12, 2024. Prior to the elections, the Ike Council passed a Tribal Resolution indicating its intent to hold elections at certain designated polling locations at each of the four Bands.⁸⁶ The Ike Council vested authority for a Tribal Election Board in three individuals, chaired by Steven McDade, who served as Election Committee for

⁷⁹ *Id.*

⁸⁰ *Id.* at 20. There have been several subsequent filings before the District Court that I decline to summarize as they are not relevant to my adjudication of this dispute.

⁸¹ Resolution No. 24-TM-33 (Holley Group) (July 17, 2024) (on file with AS-IA).

⁸² Letter from Cheryl Mose-Temoke re: South Fork Band Council Election October 8, 2024 (Oct. 17, 2024) (on file with AS-IA).

⁸³ Letter from Claudette Ramos re: Battle Mountain Band General Election (Nov. 1, 2024) (on file with AS-IA).

⁸⁴ Elko Band Election Committee (Holley Group) Tally Sheets (Oct. 10, 2024) (on file with AS-IA).

⁸⁵ Wells Band Election Committee (Holley Group) Tally Sheets (Oct. 8, 2024) (on file with AS-IA).

⁸⁶ Te Moak Tribe Western Shoshone Indians of Nevada (Ike Council), Resolution No. 24-TM-40 (Oct. 7, 2024) (on file with AS-IA).

three of the Bands (South Fork, Wells, and Battle Mountain).⁸⁷ Pursuant to resolution of the Elko Band Council, Steven McDade and two Elko Band members served as the Elko Band Election Committee.⁸⁸

The Ike Council's October 12, 2024, elections were conducted and were free from significant civil unrest.⁸⁹ Several parties filed election disputes with the Ike Council Tribal Election Board, including individuals who had been listed as candidates in the unrecognized Holley Group's purported October 8, 2024 election.⁹⁰ Many of the disputes came from South Fork Band voters, and a significant portion of the dispute allegations concerned the Ike Council's alleged constitutional violations for maintaining a Tribal Election Board not comprised of one member from each of the several Band Committees, and establishing Band Committees for South Fork, Battle Mountain, and Wells without full Band consent.⁹¹ Other allegations concerned defects with the eligible voter roll and eligible candidate roll, and violations of the constitutional provision for public counting of ballots at the place of voting.⁹²

The Ike Council Tribal Election Board, chaired by Steven McDade, received the disputes and requisite dispute fees from 7:00 p.m. on October 12 until 7:00 p.m. on October 13 in accordance with the Tribal law requirement to hold a 24-hour dispute period.⁹³ Due to the number of disputes received, the Tribal Election Board set hearing times for October 16 and 17, 2024. No certifications were made for any of the Ike Council's Band elections prior to the dispute hearings.⁹⁴ The Tribal Election Board reviewed disputes and "following the protest period and hearings," in which no disputes were found to be valid, the Ike Council scheduled those who were elected to take Oaths of Office on October 17.⁹⁵ On October 17, 2024, the Ike Council Election Board submitted four election certifications to AS-IA, one for each of the four bands, demonstrating a total of 263 votes cast with 217 at Elko, seventeen at South Fork, fifteen at Battle Mountain, and fourteen at Wells, respectively.⁹⁶

C. Holley Group Chairperson Election.

In a purported November 1, 2024 Council resolution sent to RD Jessie Durham, the unrecognized Holley Group identified that a Te-Moak Tribal Chairman Election "was held on October 29, 2024."⁹⁷ The Holley Group stated Davis Gonzales was elected Chairman of the

⁸⁷ Email from Danena Ike, Vice-Chairwoman, to RD Jessie Durham re: Swearing in of Elko Band Council Members (Oct. 16, 2024) (on file with AS-IA).

⁸⁸ *Id.*

⁸⁹ Email from Steven McDade to AS-IA Bryan Newland re: 2024 Te Moak Band Elections (Oct. 17, 2024) (on file with AS-IA).

⁹⁰ *Id.*; see, e.g., Dispute Against Oct. 12, 2024 Election, Susan Zazueta (filed Oct. 13, 2024) (on file with AS-IA).

⁹¹ *Id.*; see also Dispute Against Oct. 12, 2024 Election, Harley Reynolds (filed Oct. 13, 2024) (on file with AS-IA).

⁹² Dispute Against Oct. 12, 2024 Election, Alice Tybo (filed Oct. 13, 2024) (on file with AS-IA).

⁹³ See Email from Steven McDade to RD Jessie Durham re: Election Dispute – October 13, 2024 (Oct. 14, 2024) (on file with AS-IA). The Ike Council Tribal Election Board received disputes for the South Fork, Battle Mountain, and Wells Bands. The self-established Elko Band Election Committee received disputes for Elko Band.

⁹⁴ *Id.*

⁹⁵ Email from Danena Ike, Vice-Chairwoman to RD Jessie Durham re: Swearing in of Elko Band Council Members (Oct. 16, 2024) (on file with AS-IA).

⁹⁶ *Id.*

⁹⁷ Tribal Resolution No. 24-TM-41 (Holley Group) (Nov. 1, 2024) (on file with AS-IA).

purported Tribal Council, with Doyle Tybo as Vice-Chairman.⁹⁸ As of the date of this decision, AS-IA is unaware of any tally sheets or certifications of this purported Chairman Election submitted by the Holley Group to BIA.

D. November 2, 2024, Ike Council Chairperson Election.

Following the Band elections on October 12, the Ike Council conducted a Chairperson Election on November 2, 2024.⁹⁹ Edith Smartt, who was elected Chairwoman of the South Fork Band on October 12, was elected in the Chairperson Election to Tribal Chairwoman, with Bennith Tinhorn as Vice-Chairwoman.¹⁰⁰ The newly elected Tribal Council submitted certification of the elections to BIA demonstrating 101 total ballots cast in the Chairperson Election, and urged in a letter to RD Jessie Durham for the necessity of establishing “a court of competent jurisdiction” at the Tribe.¹⁰¹

II. Applicable Law

1. Standard of Review.

AS-IA maintains plenary authority over his subordinates, including with respect to policy-based determinations.¹⁰² 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 appropriate to an agency official’s review of a subordinate’s decision. Any review by AS-IA of his or her subordinates, including DBIA, should be considered a *de novo* review.¹⁰³

2. Applicable Federal Indian Law.

a. Federal review of intratribal disputes is limited, and the Department must defer to dispute resolution by tribal mechanism.

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”¹⁰⁴ Likewise, “Indian tribes are ‘distinct, independent political communities, retaining their original natural rights’ in matters of local self-government.”¹⁰⁵ As former AS-IA Kevin Washburn stated, “[o]ne

⁹⁸ *Id.*

⁹⁹ Letter from Edith Smartt, Chairwoman, to RD Jessie Durham re: Tribal Chairperson Election (Nov. 6, 2024) (on file with AS-IA).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See, e.g., *Benewah County, Idaho v. Nw. Reg’l Dir.*, 55 IBIA 281, 294 (2012) (AS-IA must “ensure that [the RD] addressed the arguments that were presented to him and that he considered the requisite [legal] criteria. . .”).

¹⁰³ See, e.g., *State of South Dakota v. Great Plains Regional Director*, 69 IBIA 173, 190 (2023).

¹⁰⁴ *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.”).

¹⁰⁵ *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1986) (citing *Worcester v. Georgia*, 6 Pet. 515, 559 (1832)).

of the most profound lessons of the success of tribal self-governance is that the Federal Government should defer, whenever possible, to decisions made by tribal governments.”¹⁰⁶

This inherent tribal sovereignty establishes the presumption that intratribal disputes (whether concerning leadership or membership) are generally beyond the jurisdiction of federal review.¹⁰⁷ These principles further inform the general federal policy that tribal government disputes must be resolved by tribal procedures, not by the Department.¹⁰⁸ Courts have adhered to the principle that the Department must defer to that tribal resolution:

It is a well-established principle of Federal law that intra-tribal disputes should be resolved in tribal forums. This rule applies with particular force to intra-tribal disputes concerning the proper composition of a tribe’s governing body. Where an intra-tribal dispute of this nature has been resolved in a valid tribal forum, the results are binding on BIA and the Board. *Wheeler v. U.S. Department of the Interior*, 811 F.2d 549 (10th Cir. 1987); *Smalley v. Eastern Area Director*, 18 IBIA 459 (1990).¹⁰⁹

Where an intratribal dispute has been resolved via tribal processes, such as a valid tribal election, the Department must respect that resolution.¹¹⁰

When BIA makes a recognition determination in order to continue government-to-government relations with a Tribe, it must adhere to a fundamental principle of federal Indian law that tribes are the ultimate arbiters of their own laws, and BIA must accordingly defer to a Tribe’s *reasonable* interpretation of Tribal law.¹¹¹ BIA has not only the authority but also the “*responsibility* to interpret tribal law when necessary” to carry out government-to-government

¹⁰⁶ Decision affirming result of Secretarial Election for Timbisha Shoshone Tribe, at 3 (May 12, 2014).

¹⁰⁷ 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).

¹⁰⁸ 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).

¹⁰⁹ *Wanatee v. Acting Minneapolis Area Dir.*, 31 IBIA 93, 95 (1997) (quoting *Bucktooth v. Acting E. Area Dir.*, 29 IBIA 144, 149 (1996)) (internal citations omitted).

¹¹⁰ See, e.g., Decision Letter, Larry Echo Hawk, Assistant Sec’y Indian Affairs, U.S. Dep’t of the Interior, at 3 (July 29, 2011) (“The Timbisha Shoshone people embraced a tribal government by means of an election compliant with their Constitution. The Federal Government may not ignore or reject the results of a tribal election that clearly states the will of a sovereign Indian nation.”); Decision Letter, Bruce Maytubby, E. Reg’l Dir., U.S. Bureau of Indian Affairs, at 14 (Dec. 15, 2016) (“Via [a tribal mechanism], a significant majority of the Cayuga citizens have stated their support for the Halftown Council. I cannot consider this outcome as anything other than resolution of a tribal dispute by a tribal mechanism. I consider myself obligated to recognize the result of that tribal process.”); *Aff’d, Cayuga Nation v. Bernhardt*, 374 F. Supp. 3d 1 (D.D.C. 2019).

¹¹¹ *Ransom v. Babbitt*, 69 F. Supp. 2d 141, 150 (D.D.C. 1999).

relations.¹¹² These “interpretative efforts must effect as little disruption as possible of tribal sovereignty and self-determination” and “adhere to the clear meaning of statutory language if such language is plainly stated.”¹¹³

b. The IBIA has established a test for determining if a later tribal election has mooted a challenge to an earlier tribal election.

The IBIA “has consistently held that a valid tribal election held during the pendency of an appeal from an earlier tribal election renders the earlier appeal moot.”¹¹⁴ “It is well-settled that a valid election held during the pendency of an appeal moots any questions concerning prior tribal leadership.”¹¹⁵ The IBIA explained that that rule is based on the fact that:

[T]he determination of tribal leadership is quintessentially an intra-tribal matter raising issues of tribal sovereignty, and therefore the Department should defer to tribal resolution of the matter through an appropriate tribal forum, including the normal electoral process.¹¹⁶

When a Tribe conducts an election while a challenge to a prior election is pending, and the later election is not successfully challenged, the challenge to the earlier election becomes moot.¹¹⁷

The Board has ruled that a person challenging a BIA finding that a subsequent election has mooted a challenge to an earlier election must show one of the following:

- (1) that the subsequent election has been determined invalid in a tribal forum;
- (2) that a challenge to the subsequent election is presently pending in a tribal forum;
- (3) that BIA has declined to recognize the results of the subsequent election; or
- (4) that BIA has recognized the results of the subsequent election, but an appeal from that recognition is presently pending.¹¹⁸

3. Applicable Tribal law.

The Te-Moak Constitution provides “executive and legislative powers of the Tribe shall be vested in a Tribal Council . . . and in Band Councils, one Band Council for each constituent Band of the Tribe.”¹¹⁹ Band Council elections are to be held the second week of October every three years, and elections for each Band are held on the same day as the other three Bands.¹²⁰ Band

¹¹² *United Keetoowah Band of Cherokee Indians in Okla. v. Muskogee Area Dir.*, 22 IBIA 75, 80 (1992) (emphasis added).

¹¹³ *Ransom*, 69 F. Supp. at 151 (citations and quotations omitted).

¹¹⁴ *Rosales v. Pac. Reg'l Dir.*, 34 IBIA 125, 126 (1999).

¹¹⁵ *Smith v. Acting Pac. Reg'l Dir.*, 42 IBIA 224 (2006).

¹¹⁶ *Rosales, supra.*, quoting *Hamilton v. Acting Sacramento Area Dir.*, 29 IBIA 122, 123 (1996).

¹¹⁷ *Rosales v. Pac. Reg'l Dir.*, 39 IBIA 12, 15-16 (2003).

¹¹⁸ *Elem Indian Colony v. Acting Pac. Reg'l Dir.*, 66 IBIA 248, 251 (2019) (quoting *Hamilton v. Acting Sacramento Area Dir.*, 29 IBIA 122, 123 (1996)).

¹¹⁹ Te-Moak Tribe Const. art. 4 § 1.

¹²⁰ *Id.* art. 7, § 1.

Councils are composed of seven elected members.¹²¹ The Tribal Council is composed of members, “selected from and by the membership of each of” the respective Band Councils.¹²² The Band Councils are to “select [their] representatives to the Tribal Council and certify their names to the Tribal Council within fourteen days after the Band Council elections.”¹²³ An election for Tribal Chairperson, voted on by registered voters of the Tribe who cast ballots in the tribal election, “must be held within 21 days after the band Council elections.”¹²⁴

The Constitution provides for an Election Ordinance which sets forth the procedures for Tribal and Band elections, including for the “establishment of Band Election Committees and a Tribal Election Board” who are charged with ensuring elections are conducted objectively and fairly.¹²⁵ Band Election Committees are composed of three or more persons appointed by the Band, who certify election results to the Band Council “within five (5) days after an election.”¹²⁶ The Tribal Election Board is composed of one member “[f]rom each of the several Band Election Committees.”¹²⁷ The Election Ordinance lists among the Tribal Election Board’s responsibilities that, “in the event that the band election committee dissolves or neglects their responsibilities, the Tribal Election Board will assume the Band Election Committees responsibilities.”¹²⁸

The Election Ordinance additionally provides a dispute resolution mechanism for challenges to Band or Tribal elections. Any registered voter of the Tribe may pay a \$35.00 filing fee and file a dispute concerning a Band or Tribal election with the Band Election Committee or Tribal Election Board within 24 hours of an election.¹²⁹ The respective Band Election Committee or Tribal Election Board will determine whether the challenge has merit, and the reviewing body’s decision “shall be final.”¹³⁰

III. Discussion.

It is essential to my review of the consolidated IBIA appeals of the Decision and C.F.R. Decision, specifically with respect to DBIA Decision, that I evaluate whether challenges to DBIA’s interim recognition of the Ike Council have been mooted by results of the October 2024 elections.¹³¹ As discussed below, I find sufficient support in the record to conclude the Ike Council was the recognized government of the Tribe at the time of the competing October elections, and that the Ike Council fulfilled its constitutional duties as the interim recognized Tribal government to prepare for and conduct an election and provide a dispute resolution process for election challenges. Consistent with my duties to respect the will of a Tribe concerning its elected leadership, I must recognize the results of the October 12 Ike Council

¹²¹ *Id.* art. 4, § 11(a).

¹²² The Tribe’s Constitution, enacted prior to the addition of the Wells Band to the Tribe, provides that the Council consist of eight members, art. 4, § 2(a). The Constitution also provides for adding Council members if and when Bands are added to the Tribe. With the addition of the Wells Band, the Tribal Council consists of nine members.

¹²³ Te-Moak Tribe Const. art. 11, § 2.

¹²⁴ *Id.* art. 7, § 3.

¹²⁵ *Id.* art. 7, § 8.

¹²⁶ *Id.* art. 7, § 9.

¹²⁷ *Id.* art. 7, § 10.

¹²⁸ Te-Moak Election Ordinance § 13-15-2(a)(5).

¹²⁹ *Id.* § 13-10-1.

¹³⁰ *Id.*

¹³¹ *See Elem Indian Colony*, 66 IBIA at 251.

Band elections and the November 2 Tribal Council Chairman election as the will of a sovereign Tribal nation regarding its leadership as expressed through a valid tribal mechanism.

Having found the Tribe put valid governing councils in place, I must conclude that the Tribe has resolved its internal dispute via Tribal mechanism and find the appeals of DBIA's Decision rendered moot. And as discussed below, Sec. III(3), I find the C.F.R. Court for the Western Region to be the authorized Tribal judiciary to determine justiciability of any further challenges to the October 12 and November 2, 2024 elections. To the extent that the C.F.R. Court's jurisdiction is limited by federal regulation in such a way that would preclude that Court from hearing challenges to those elections, and as discussed below, I hereby waive those regulations pursuant to my authority under 25 C.F.R. § 1.2.

I recognize the Te-Moak Tribal Council led by Chairwoman Edith Smartt as the Te-Moak Tribal government for all purposes.

1. The Ike Council validly held Band and Tribal elections on October 12, 2024, followed by a Chairperson Election on November 2, 2024.

A. The Holley Group was not recognized at the time of its purported October 8 elections, and therefore I will not consider the results of those elections to be valid.

As a threshold matter, the DBIA Decision recognized the Ike Council, not the Holley Group, “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*.”¹³² In its October 7 Order, the District Court deferred to the DBIA's decision to recognize the Ike Council “for the limited purposes of conducting the 2024 election” despite the Holley Group's briefing to the Court requesting the Court enjoin BIA from recognizing the Ike Council through the October elections.¹³³ By the District of Nevada rejecting the unrecognized Holley Group's request for emergency relief, pursuant to 25 C.F.R. § 2.714, the DBIA Decision recognizing the Ike Council “remain[e]d in effect and binding on the Department.”

The Department is charged with maintaining a government-to-government relationship with the Tribe, which required DBIA to identify a tribal faction with which to work on an interim basis amidst an intratribal dispute.¹³⁴ DBIA fulfilled this requirement by identifying the Ike Council as the interim Tribal government, including for purposes of conducting an election, which the District Court deferred to in issuing its stay and declining to grant emergency relief to the unrecognized Holley Group.

¹³² Decision at 31 (emphasis added).

¹³³ Order Denying Preliminary Injunction and Stay of BIA Decision, *Holley v. Dep't of Interior*, No. 2:24-cv-01629, 20 (D. Nev., Oct. 7, 2024).

¹³⁴ See *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)).

The government-to-government relationship between Tribal governments and the federal government is a bilateral commitment.¹³⁵ AS-IA may not unilaterally discharge its duties to the Tribe to maintain government-to-government relations and instead accept the Holley Group election results when the recognized Tribal government at the time of the elections was the Ike Council. The concomitant obligation on the federal government is to assess the Ike Council elections, and defer to its results, if valid.¹³⁶ Accordingly, I decline to evaluate or give merit to the Holley Group's elections because doing so would establish a new precedent, unsupported by federal law, that the Department will consider election results of an unrecognized group during the tenure of the Department's relationship with a legally-recognized Tribal government charged with conducting those same tribal elections.

B. I recognize the October 12 and November 2, 2024 election results as the will of the Tribal membership.

The Federal Government is without power to encroach on a Tribe's exercise of self-government when a Tribe has resolved an intratribal dispute via a tribal process, such as an election conducted by a recognized tribal government (interim or otherwise).¹³⁷ Pursuant to the DBIA Decision, 25 C.F.R. Part 2, and the District Court's ruling, the Ike Council was the recognized Tribal government empowered to prepare for and conduct an election in October 2024 in accordance with Tribal law.¹³⁸ The Ike Council prepared for the election by establishing a Tribal Election Board, chaired by Steven McDade, and passing Resolutions aimed at designating polling locations at each of the four Bands.¹³⁹ The Ike Council deferred to the Elko Band's establishment of a Band Election Committee and requested BIA presence at the election sites to ensure Tribal members could peacefully exercise the right to vote in the elections.¹⁴⁰ The Ike Council additionally provided a dispute resolution process, and conducted hearings and made determinations concerning election challenges.¹⁴¹ Finally, the Ike Council conducted a Chairperson election and certified all election results which were then transmitted to the BIA with the Council's request to continue government-to-government relations and work toward establishment of a Tribal court with jurisdiction over Tribal affairs.¹⁴² I find each of these steps

¹³⁵ See *Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1267 (D.C. Cir. 2008) ("Although the sovereign nature of Indian tribes cautions the Secretary not to exercise freestanding authority to interfere with a tribe's internal governance, the Secretary has the power to manage 'all Indian affairs and [] all matters arising out of Indian relations.' 25 U.S.C. § 2 (emphases added). We have previously held that this extensive grant of authority gives the Secretary broad power to carry out the federal government's unique responsibilities with respect to Indians.") (citing *Udall v. Littell*, 366 F.2d 668, 672 (D.C. Cir. 1966)).

¹³⁶ See *Wells, Shields, & Pease v. Acting Aberdeen Area Dir.*, 24 IBIA 142 (1993).

¹³⁷ *Id.* at 145.; accord *Attorney's Process and Investigation Services v. Sac and Fox Tribe of Miss. in Iowa*, 609 F.3d 927, 943 (8th Cir. 2010) ("While the BIA may at times be obliged to recognize one side in a dispute as part of 'its responsibility for carrying on government relations with the Tribe, such recognition is made only on an interim basis. Once the dispute is resolved through internal tribal mechanisms, the BIA must recognize the tribal leadership embraced by the tribe itself.") (citation and quotation omitted).

¹³⁸ Decision at 31.

¹³⁹ Te Moak Tribe Western Shoshone Indians of Nevada (Ike Council), Resolution No. 24-TM-40 (Oct. 7, 2024) (on file with AS-IA).

¹⁴⁰ *Id.*

¹⁴¹ See Email from Steven McDade to RD Jessie Durham re: Election Dispute – October 13, 2024 (Oct. 14, 2024) (on file with AS-IA).

¹⁴² Letter from Edith Smartt, Chairwoman, to RD Jessie Durham re: Tribal Chairperson Election (Nov. 6, 2024) (on file with AS-IA).

taken by the Ike Council leading up to and during the October 12 and November 2, 2024 elections, as outlined in the record, broadly demonstrate a “tribal resolution” of the leadership dispute “through an appropriate tribal forum . . . the normal electoral process.”¹⁴³

Unquestionably, the Department cannot continue government-to-government relations with a tribal government that is “faithless to their own people and without integrity.”¹⁴⁴ The United States Court of Appeals for the D.C. Circuit has stated the Government has a “distinctive obligation of trust” as identified by the United States Supreme Court “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.”¹⁴⁵

Based on the record before me of the Ike Council’s October 12 and November 2, 2024 elections, I find nothing to indicate the Ike Council operated in a “faithless” or “rogue” manner in conducting elections such that the Department would be required to reject the results. To be sure, the various challenges to the Ike Council’s elections detail a number of alleged violations of Tribal law, all of which were found to lack merit in the Tribal Election Board’s due process review following the election.¹⁴⁶ In accordance with the Election Ordinance, the Tribal Election Board’s decisions on the disputes are “final,” but I concur with the DBIA’s finding that a Tribal Judge may proceed to interpret the Tribal Election Ordinance and make a determination on reviewability of Election Board decisions regarding the particulars of these disputes.¹⁴⁷

The DBIA Decision rejected the validity of the two purported Tribal Court judges, the RD subsequent withdrew the delegation of C.F.R. Court authority to the Tribal Court, and as discussed below, the C.F.R. Court is empowered to evaluate and interpret Tribal law on this point. In the interim, I find insufficient evidence in the record to disrupt the Tribal democratic process pending any further evaluation of election disputes (which as discussed below may be adjudicated in the C.F.R. Court), and on this basis, must defer to the results of the Tribe’s own electoral process. Accordingly, I recognize the results of the Ike Council’s October 12 and November 2, 2024 elections which put Band Councils in place for all four Bands, and elected Edith Smartt as Chairwoman of the Tribal Council.

2. The October 12 and November 2, 2024, elections have mooted all pending appeals of DBIA’s recognition Decision.

As noted above, the IBIA has held that when a Tribe conducts an election while a challenge to a prior election is pending, the challenge to the earlier election becomes moot absent specific extenuating circumstances.¹⁴⁸ Five groups challenged the Decision with the IBIA, who consolidated the appeals and referred them to me.¹⁴⁹ On this basis, the IBIA test for mootness is applicable to whether the October 12 and November 2, 2024 elections have mooted all

¹⁴³ *Rosales, supra.*, quoting *Hamilton v. Acting Sacramento Area Director*, 29 IBIA 122, 123 (1996).

¹⁴⁴ *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942) (cleaned up).

¹⁴⁵ *Cal. Valley Miwok Tribe v. United States*, 515 F. 3d 1262, 1267 (D.C. Cir. 2008).

¹⁴⁶ See Email from Steven McDade to RD Jessie Durham re: Election Dispute – October 13, 2024 (Oct. 14, 2024) (on file with AS-IA).

¹⁴⁷ Decision at 25.

¹⁴⁸ *Rosales*, 39 IBIA at 15-16.

¹⁴⁹ *Supra* Sec. I(3)(A).

challenges to the Decision recognizing the Ike Council on an interim basis following challenges to earlier elections.

The IBIA has ruled that a person challenging a BIA finding that a subsequent election has mooted a challenge to an earlier election must show one of the following:

- (1) That the subsequent election has been determined invalid in a tribal forum;
- (2) that a challenge to the subsequent election is presently pending in a tribal forum;
- (3) that BIA has declined to recognize the results of the subsequent election; or
- (4) that BIA has recognized the results of the subsequent election, but an appeal from that recognition is presently pending.¹⁵⁰

I find that the Record does not demonstrate that any of these factors, as applicable here, are satisfied.

First, as to factors one and two, there is not at present an undisputed Tribal judiciary recognized as maintaining jurisdiction over civil and criminal matters on behalf of the Tribe that could constitute a “tribal forum” with a pending challenge or a decision as to the elections.¹⁵¹ In its Order granting a stay of proceedings pending my decision, the District Court acknowledged that if it were to grant the unrecognized Holley Group’s requested relief and stay the Decision, “the Tribe would thus be in appellate limbo pending the appeal of” the C.F.R. Decision.¹⁵² Despite documentation from the unrecognized Holley Group claiming that there is a purported Tribal Court authorized to hear disputes, throughout the entirety of the October-November 2024 electoral process at the Tribe there was not a Tribal judiciary recognized by the Department as having jurisdiction to hear civil and criminal Tribal matters.¹⁵³ Accordingly, Appellants cannot demonstrate “a challenge to the subsequent election is presently pending” or has been “determined invalid in a tribal forum.”¹⁵⁴

With respect to the third factor, I have pursuant to this Decision recognized the results of the October 12 and November 2, 2024 elections. On this basis, Appellants are unable to demonstrate that BIA “has declined to recognize the results” of the 2024 Ike Council elections, and thus

¹⁵⁰ *Elem Indian Colony*, 66 IBIA at 251 (quoting *Hamilton*, 29 IBIA at 123).

¹⁵¹ The IBIA has found a Tribe with “tribal court” to be an appropriate “tribal forum.” See *Wells v. Aberdeen Area Director, Bureau of Indian Affairs*, 24 IBIA 142, 146 (1993) (“ . . . appellants can hardly complain of delay when they themselves have caused substantial delay by taking their case to two inappropriate forums, first to Federal court and then to BIA and this Board, rather than to the tribal court.”).

¹⁵² Order Denying Preliminary Injunction and Stay of BIA Decision, *Holley v. Dep’t of Interior*, No. 2:24-cv-01629, 20 (D. Nev., Oct. 7, 2024).

¹⁵³ Appellants may seek to counter this finding by pointing to the District of Nevada’s statement in its Order that “[w]hile the status of the two court systems is a point of confusion for the Tribe while the [C.F.R.] Decision is pending [AS-IA’s] review, if matters concerning the adequacy of the election arose, the Tribal Court or C.F.R. Court could address them.” Order Denying Preliminary Injunction and Stay of BIA Decision at 17. This argument is unavailing. Any attempt to characterize the Court’s statement as an approval of the unrecognized Holley Group’s purported Tribal Court as a presently authorized Tribal judiciary cannot be squared with (1) the Court’s later deferral to DBIA’s Decision to recognize the Ike Council, not the Holley Group, for purposes of conducting the election and (2) the Court’s grant of a stay pending my resolution of the C.F.R. Decision.

¹⁵⁴ *Elem Indian Colony*, 66 IBIA at 251.

cannot satisfy factor (3) of the IBIA's test for opposing mootness.¹⁵⁵ Finally, under factor (4), Appellants cannot demonstrate an appeal from my recognition of the results of the Ike Council elections – resulting in the current Tribal Council led by Edith Smartt – is presently pending because this Decision constitutes the first time that the BIA has recognized the Smartt Council. There is not yet any appeal of this decision. Therefore factor (4) cannot apply to my review of whether challenges to the DBIA Decision are moot.¹⁵⁶

Appellants cannot satisfy any of the requirements set by the IBIA to establish the challenges to the DBIA's decision are not moot. As discussed below, following this decision, the C.F.R. Court is empowered to interpret Tribal law to determine if it may hear election disputes regarding the 2024 Ike Council election, but at present, Appellants cannot demonstrate any of the factors of the IBIA test for mootness are met. Thus, all appeals of the Decision are rendered moot by this Order.

3. The RD did not err in empowering the C.F.R. Court to exercise civil and criminal jurisdiction on behalf of the Tribe.

Many of the allegations raised by the Appellants in the consolidated appeal of the C.F.R. Decision state the RD's empowerment of the C.F.R. Court was an overreach of BIA authority and infringement on the Tribe's sovereignty. As detailed below, I find Appellants' concerns are without merit, and accordingly affirm the RD's C.R.F. Decision. I further exercise authority under 25 C.F.R. §1.2 to waive regulations under Title 25 of the C.F.R. that would otherwise prohibit the C.F.R. Court's exercise of jurisdiction over election disputes to the October-November 2024 elections under Tribal law. Specifically, as detailed in the attached waiver, I waive the requirement in 25 C.F.R. § 11.201(a) that a magistrate appointed by the Department be confirmed by the majority vote of a Tribal governing body, and the requirement in 25 C.F.R. § 11.118(b) that a C.F.R. Court may not adjudicate an internal tribal government dispute unless by resolution of the tribal governing body. The C.F.R. Court is empowered, upon the effective date of the attached 25 C.F.R. § 1.2 waiver, to exercise civil and criminal jurisdiction over Te-Moak Tribal matters.

In the Decision, DBIA concluded neither of the two purported Tribal Court judges, Wendell Hayes and Samuel Biers, had been validly appointed as a matter of Tribal law.¹⁵⁷ In the C.F.R. Decision, the RD noted the Tribal resolutions the RD previously relied on in conveying jurisdiction from the C.F.R. Court to the Tribal Court were enacted by the same invalid Tribal Council that appointed the judges that the DBIA found invalid in the Decision.¹⁵⁸ On that basis,

¹⁵⁵ *Id.*

¹⁵⁶ Appellants may seek to argue in finding factor (4) unsatisfied that my notation to this decision as the first Department recognition of the Ike Council's subsequent election does not comport with the intent of the IBIA's test established in *Hamilton* as cited in *Elem Indian Colony*, 66 IBIA at 251. This argument is unconvincing. A plain reading of the IBIA's test requires with respect to factor (4) that Appellants show the BIA has already recognized subsequent election results, and that a challenge is pending of that recognition. There is no pending appeal of the October-November 2024 Ike elections.

¹⁵⁷ Decision at 25.

¹⁵⁸ *Id.* at 2.

the RD concluded that the Tribal resolutions were likewise invalid.¹⁵⁹ The RD revoked the transfer of jurisdiction from the C.F.R. Court to Tribal Court.¹⁶⁰

Based on this revocation, there was no tribunal in which the BIA Office of Justice Services (“OJS”), which provides direct service law enforcement for three of the four Bands of the Tribe, could file criminal complaints. To fill this judicial void, the RD provided in the C.F.R. Decision for the re-establishment of a C.F.R. Court to exercise civil and criminal jurisdiction over cases on behalf of the Tribe as “necessary for the continued provision of law and order on the Reservation.”¹⁶¹

With respect to the consolidated appeals, first, Appellant Danena Ike, Vice-Chairwoman of the Ike Council, alleges in her Notice of Appeal and Statement of Reasons (“SOR”) a history of BIA decisions regarding the Tribe’s judiciary that she claims constituted assaults on Te-Moak Tribal sovereignty.¹⁶² Appellant Ike also disputes the validity of the RD’s appointment of C.F.R. Court magistrates subsequent to her C.F.R. Decision.¹⁶³ Importantly, neither of these allegations concern points of error with the RD’s July 10 decision itself. On this basis, I find all allegations raised by Appellant Ike are without merit.¹⁶⁴

Second, the unrecognized Holley Group filed an appeal of the C.F.R. Decision and alleged a number of points of error in an SOR dated August 8, 2024.¹⁶⁵ Holley’s SOR asserted that the C.F.R. Decision was an overstep of the RD’s authority, and that the RD breached the 2021 Settlement Agreement in which the BIA agreed to recognize a Tribal Court following a reassumption of the Tribe’s P.L. 93-638 judicial services contract and appeal by the Tribe.¹⁶⁶ Holley also asserts the C.F.R. Decision would undermine law and order at Te-Moak if left in place, and that DBIA’s Decision, on which the C.F.R. Decision was premised, was itself flawed for recognizing the Ike Council.¹⁶⁷

I find Appellant Holley Group’s allegations lack merit. It is without dispute that “[r]espect for tribal courts is a well-recognized aspect of the Federal Government’s commitment to tribal self-determination”¹⁶⁸ and that “[t]ribal courts play a vital role in tribal self-government.”¹⁶⁹ The Department is committed to respect for and deference to Tribal sovereignty, including the

¹⁵⁹ The Holley Group asserts that the Tribe has a Court established, and that the Tribal Court has issued rulings on the current Tribal election dispute in Holley’s favor.

¹⁶⁰ C.F.R. Decision at 2.

¹⁶¹ *Id.* .

¹⁶² Notice of Appeal of the July 10, 2024 Decision of the Western Region Director to Have the Court of Indian Offenses for the Western Region Exercise Jurisdiction Over Criminal and Civil Cases on Behalf of the Te-Moak Tribe, Danena Ike (Aug. 6, 2024).

¹⁶³ *Id.*

¹⁶⁴ I note that this Decision addresses the validity of the RD’s July 10 Decision as a matter of law. To the extent that Appellant Ike seeks to challenge subsequent events, such as the appointment of magistrates, Appellant Ike may do so in a separate cause of action if legally supported.

¹⁶⁵ Notice of Appeal of July 10, 2024, Decision of the Office of the Regional Director of Western Region for the Bureau of Indian Affairs; Statement of Reasons for Appeal and Relief Sought, Holley Group (Aug. 8, 2024).

¹⁶⁶ *Id.* at 4.

¹⁶⁷ *Id.* at 4-5.

¹⁶⁸ *Martin v. Billings Area Director*, 19 IBIA 279, 291 (1991).

¹⁶⁹ *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9, 14-15 (1987).

decisions of a valid Tribal judiciary, but that commitment does not permit deference to invalid actions taken by unrecognized Tribal factions.¹⁷⁰ The RD did not err in finding the actions taken by the unrecognized Holley Group through resolution to empower a Tribal judiciary were invalid. The RD rested her findings on the DBIA Decision, and DBIA provided legitimate reasons for concluding the Tribal Court which the unrecognized Holley Group urges AS-IA to defer to,¹⁷¹ overseen by Wendell Hayes, was invalidly appointed.¹⁷²

I find that the Department may not cause a judicial void in light of its “commitment to tribal self-determination,”¹⁷³ and the C.F.R. Court is recognized by federal statute as a tribunal by and through which governmental powers possessed by a tribe may be executed.¹⁷⁴ I find it well within the RD’s authority, and indeed her duty, to reestablish a C.F.R. Court, which may execute governmental powers possessed by the Tribe and rule on civil and criminal Tribal matters, in the absence of a valid Tribal judiciary. On this basis, I reject the arguments raised by the Holley Group in its appeal of the C.F.R. Decision.

Third, the South Fork Band (“SFB”) and the TMHA appealed the RD’s Decision.¹⁷⁵ SFB and TMHA state that they “join” the appeal filed by the Holley Group, but raise additional arguments. Appellants SFB and TMHA allege DBIA’s decision was in error, and that the Tribe had the ability, under its Constitution and through its Tribal Council and Courts, to resolve the problems that the RD sought to address by reinstating the C.F.R. Court.

SFB and TMHA point to a Holley Tribal court decision by Judge Wendell Hayes, *Carrera v. Band Election Committees*, in which Judge Hayes ruled that his court had jurisdiction over Tribal disputes.¹⁷⁶ Appellants allege *Carrera* is binding on the BIA because the BIA failed to challenge the decision.¹⁷⁷ I find this argument unpersuasive. Appellants rely on an IBIA decision, *Wadena, et al, v. Acting Minneapolis Area Director*, to justify their position that “BIA cannot simply ignore the *Carrera* decision.”¹⁷⁸ In *Wadena*, the IBIA ruled in the context of a tribal government dispute, BIA “should allow [a] Tribe the opportunity initially to interpret its own governing documents,”¹⁷⁹ not that BIA itself must appeal the decision of a Tribal Court. The BIA was not a party to *Carrera*, and had no need to appeal it. As noted, the RD comported with her duties to not side-step legitimate Tribal government branches, and the C.F.R. Court is

¹⁷⁰ See *Seminole Nation*, 316 U.S. at 296-97 (cleaned up).

¹⁷¹ See Holley Group SOR at 2 (“ . . . the Tribe’s judicial branch has been successfully operating for years under the Tribal Court overseen by Chief Judge Wendell Hayes.”).

¹⁷² See Decision at 25.

¹⁷³ *Martin*, 19 IBIA at 291.

¹⁷⁴ See 25 U.S.C. § 1301(2) (defining “powers of self-government” as “all governmental powers possessed by . . . tribunals by and through which they are executed, including courts of Indian offenses.”); 25 U.S.C. § 1301(3) (defining “Indian court” to include any “court of Indian offense.”); 25 U.S.C. § 1302(a) (applying to tribal courts and CFR courts alike).

¹⁷⁵ Notice of Appeal of the South Fork Band and Te-Moak Housing Authority of the July 10, 2024 Decision of the Office of the Regional Director of the Western Region for the Bureau of Indian Affairs; Statement of Reasons for Appeal and Relief Sought, South Fork Band and TMHA (Aug. 8, 2024).

¹⁷⁶ See *id.* at 5 (citing *Carrera v. Band Election Committees of Elko, Battle Mountain, South Fork and Wells Bands of the Te-Moak Tribe and the Te-Moak Tribal Election Board*, No. BM-CV-02-21, Te-Moak Tribal Court).

¹⁷⁷ *Id.* (“*Carrera* was never appealed. It remains the law of the land in Te-Moak.”).

¹⁷⁸ *Id.* (citing 30 IBIA 130, 143 (1996)).

¹⁷⁹ *Id.*

empowered to interpret Tribal governing documents as the judicial arm of the Tribe. And while the Department must defer to valid expressions of tribal law, the DBIA Decision invalidated the Tribal Court judges, and because the United States does not participate in tribal court adjudications and therefore it cannot be error for the United States to have not “appealed” *Carrera*.

Appellants SFB and TMHA further argue the Tribal Constitution and IBIA caselaw direct that, following the 2021 elections which were the subject of DBIA’s Decision, BIA was obligated to continue to recognize the hold-over Holley Group and its court system.¹⁸⁰ As discussed above, I decline to find error in DBIA’s Decision to recognize the Ike Council, not the Holley Group, for purposes of conducting a 2024 election, and that election mooted all challenges to the 2021 elections, including a challenge that DBIA should have recognized the Holley Group as holdover council. I find all points of error Appellants SFB and TMHA allege in the C.F.R. Decision to be without merit for the purposes articulated in the DBIA Decision.

Finally, the Battle Mountain Band (“BMB”) appealed the C.F.R. Decision.¹⁸¹ BMB does not, in fact, dispute the C.F.R. Decision; rather, BMB asserts that the DBIA Decision should have clarified that, upon determining that the Tribal judges were not validly appointed, the C.F.R. Court retained jurisdiction over Te-Moak disputes, and therefore it should have been the C.F.R. Court, not DBIA or AS-IA, who ruled on the Tribe’s internal governance dispute.¹⁸² Appellant BMB asked the IBIA to modify the RD’s Decision to clarify that all election disputes should be ruled on by the C.F.R. Court.¹⁸³

Prior to the RD’s C.F.R. Decision on July 10, 2024, there was no C.F.R. Court operating at Te-Moak. Further, the Department’s regulations governing C.F.R. courts provide that C.F.R. courts “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.”¹⁸⁴ Therefore, unless and until I exercise my authority to waive that regulation—which I do in the 25 C.F.R. § 1.2 waiver attached to this decision—the outcome sought by BMB is not possible. On this basis, I find Appellant BMB’s appeal lacks merit. And as noted, any subsequent challenges to the Ike Council’s elections may be adjudicated in the C.F.R. Court.

Having found none of the allegations raised by the four Appellants in the consolidated appeals of the C.F.R. Decision have merit, I find that, for the reasons set out in her July 10, 2024, C.F.R. Decision, the RD was correct in concluding that neither Biers nor Hayes had been validly appointed as Tribal judges, and therefore there was no valid Te-Moak Tribal Court. I further affirm the RD correctly identified an exigent need for the establishment of a tribunal with jurisdiction to hear criminal and civil cases and it was within the RD’s authority to order the re-establishment of the C.F.R. Court as the Tribal judiciary. This exigent need requires establishment of the C.F.R. Court as the Tribal judiciary and provides a strong basis on which to

¹⁸⁰ *Id.* at 7.

¹⁸¹ Notice of Appeal and Statement of Reasons, Battle Mountain Band (Aug. 9, 2024).

¹⁸² *Id.* at 4-5.

¹⁸³ *Id.* at 5.

¹⁸⁴ 25 C.F.R. § 11.118(b).

waive regulations that would otherwise prevent the C.F.R. Court from fulfilling such a role. By my execution of the attached 25 C.F.R. § 1.2 waiver of 25 C.F.R. § 11.118(b) (requirements for adjudication of election disputes) and 25 C.F.R. § 11.201(a) (requirement for tribal governing body confirmation of magistrate), the C.F.R. Court for the Western Region is henceforth empowered to hear criminal and civil cases, including, but not limited to, any challenges brought under Tribal law to the Smartt Council's election.

IV. Conclusion.

Based on the foregoing analysis, I conclude DBIA's Decision recognizing the Ike Council on an interim basis, effective when issued, properly vested the Ike Council with authority to conduct Tribal elections. I further find the Ike Council did so in a Band election on October 12, 2024 followed by a Chairperson Election on November 2, 2024 which validly elected Edith Smartt as Chairwoman and the Smartt Council as the valid Te-Moak Tribal government for all purposes. Based on these findings, all challenges to DBIA's Decision recognizing the Ike Council on an interim basis are rendered moot. Finally, I affirm the RD's C.F.R. Decision which empowered the C.F.R. Court to exercise civil and criminal jurisdiction on behalf of the Tribe and note the attached 25 C.F.R. § 1.2 waiver empowering the C.F.R. Court for the Western Region to exercise jurisdiction. This decision is final in accordance with 25 C.F.R. § 2.301 and not subject to further administrative review.

Date: November 27, 2024



Bryan Newland
Assistant Secretary – Indian Affairs

CERTIFICATE OF SERVICE

I certify that on the 27th day of November 2024, I delivered a true copy of the foregoing Decision to each of the persons named on the attached list, either by depositing an appropriately-addressed copy in the United States mail, or by hand-delivery.

Lawrence Williams

Lawrence Williams
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