



TE-MOAK TRIBE OF WESTERN SHOSHONE

RESOLUTION OF THE GOVERNING BODY OF THE TE-MOAKTRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA

RESOLUTION NO: 11-TM-22

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
- WHEREAS,** on November 3, 2010 the Te-Moak Tribal Council received petitions recalling the South Fork Band Council and called a meeting for November 12, 2010 to review the petitions, and
- WHEREAS,** on November 12, 2010 the Te-Moak Tribal Council reviewed and validated the petitions of: Brandon Reynolds, Sim Malotte, William "Turk" Knight, Gilbert Temoke, Cheryl Mose-Temoke, and Edna Tybo, and
- WHEREAS,** after determining the petitions valid the Te-Moak Tribal Council called for a Special Election for November 22, 2010 to validate the recall petitions, and
- WHEREAS,** the South Fork Band Council then filed a petition in the Te-Moak CFR Court to set aside the decision of the Te-Moak Tribal Council, and
- WHEREAS,** said petition was filed in the Te-Moak Tribe's Tribal Court that consists of the Court of Indian Offenses or also known as a CFR Court, where William Kockenmeister, Magistrate, presided at the time of the filing of the petition; and
- WHEREAS,** Judge Kockenmeister signed, *ex parte*, a Temporary Restraining Order, enjoining and restraining the Tribe and Tribal Council from proceeding to conduct a recall election or to otherwise remove the South Fork Band Council members from their positions on the South Fork Band Council until further order of this Court; and

WHEREAS, Judge Kockenmeister resigned his position as magistrate of the CFR Court in Te-Moak and he was shortly thereafter replaced by Lisa B. Otipoby-Herbert who then presided over this matter; and

WHEREAS, the Tribe, through its legal counsel, Charles R. Zeh, Esq., the Law Offices of Charles R. Zeh, filed a motion to dismiss the petition filed by the South Fork Band Council members, on grounds that the CFR Court lacked jurisdiction over the dispute by reason of the Tribe's sovereign immunity from suit which had not been waived; and

WHEREAS, Judge Otipoby-Herbert accepted briefing from both parties on this issue, heard oral argument and in a decision filed March 4, 2011, granted the Tribe's motion to dismiss the dispute and accordingly dismissed the South Fork petition on the grounds the Court lacked jurisdiction due to the Tribe's sovereign immunity from suit; and

WHEREAS, the Tribal Council then conducted on April 16, 2011, the recall election, the result of which was the six (6) remaining Band Council members were recalled from office. The seventh Band Council member had previously resigned and was not a part of this election; and

WHEREAS, the petitioners then filed a Motion for Stay of Judgment before the CFR Trial Court, Judge Otipoby-Herbert presiding, who received briefing on the Motion for Stay of Judgment from both parties, heard oral argument, and in an order filed March 28, 2011, the Court denied the Motion for Stay of Judgment and reaffirmed the Court's decision to dismiss the case for the want of jurisdiction because of the Tribe's sovereign immunity from suit; and

WHEREAS, the South Fork petitioners, through their same legal counsel, then filed a notice of appeal to the Appellate Division of the Court of Indian Offenses. The South Fork petitioners also moved for a stay of the CFR Trial Court's decision; and

WHEREAS, the Tribe, through its legal counsel, filed an opposition to the motion for a stay of the lower court's decision; and

WHEREAS, this case was apparently assigned to Judges Stanley A. Read, and Allan R. Toledo, who, without waiting for the petitioners' legal counsel to file her reply to the opposition of the Tribe to the motion for a stay, and without requiring any briefing on the issue of sovereign immunity, the basis for the CFR Trial Court's decision below, oral arguments on the issue, or as far as the Tribe knows, even the transmittal of the record on appeal to the Appellate Division of the Court of Indian Offenses, took it upon themselves to decide the case on the merits, to determine that the Tribe had waived its sovereign immunity by virtue of Article 3, Section 8, of the Tribe's Constitution, and therefore, to overturn the decision of the Trial CFR Court; and

WHEREAS, as a result of this decision or order in this South Fork case, whose court numbers are Appellate Case No. CA-TM-02-2011, and Tribal Court No EC-CV-15-10, these two judges: (a) reinstated the Order of Judge Kockenmeister, which had been issued *ex parte*. (b) overturned the results of the recall election of April 16,

2011, and therefore, also interfered directly with a Tribal election; and (c) remanded the case back to the CFR Trial Court to exercise jurisdiction over the Tribe and require a tribal on the merits of the South Fork Band's recall petition; and

WHEREAS, the Tribe, through legal counsel, filed a motion before the Appellate Division for clarification to determine if these two judges really did take it upon themselves to decide a case of this magnitude and import to the Tribe, without giving the Tribe even the chance to brief the issue on the merits, and in addition, a motion to reconsider, in the event that these two judges had indeed, gone off and decided the case on the merits about the Tribe's Constitution without hearing from the Tribe in this case on this issue; and

WHEREAS, as of this date, these two judges have not even dignified the Tribe with a response to these two motions, which events have now rendered them moot in any event; and

WHEREAS, upon remand, Judge Otipoby-Herbert, felt she had no other recourse in light of the Appellate Division's apparent decision on the merits of the appeal, despite the absence of any briefing at the appellate level on the merits of the appeal, to set this matter for a trial on the merits, on October 24, 2011, thereby exposing the Tribe to the jurisdiction of the CFR Tribal Court, despite the Tribe's sovereign immunity from suit; and

WHEREAS, the Tribe has not waived sovereignty in its Constitution or at any other place in connection with the South Fork litigation; and

WHEREAS, the Tribe has exhausted all of its remedies to rectify this wrongful decision concerning the Tribe's sovereign immunity from suit, a decision by these two judges that holds the Tribe's economic survivability at issue; and

WHEREAS, the Tribe, having exhausted its apparent remedies, and given the magnitude and import of the issue of this sovereignty, has no other recourse but to proceed to Federal Court to seek protection there from the excesses taken by the Appellate Court of the Court of Indian Offenses with the Tribe's sovereignty,

NOW THEREFORE BE IT RESOLVED AS FOLLOWS, that the Te-MOak Tribal Council authorizes and directs the Tribe's legal counsel, Charles R. Zeh, Esq., the Law Offices of Charles R. Zeh, Esq., to file a complaint in the United States District Court in the Northern District of Nevada, to preserve the Tribe's sovereign immunity from suit by seeking declaratory, temporary, and permanent injunctive relief on the issue of whether the Tribe's Constitution preserves and protects its sovereign immunity from suit, the decision in the South Fork Matter, notwithstanding, and on the issue of whether the Tribe has waived its sovereign immunity from suit, and to, therefore, ask the United States District Court to declare that the Tribe has not waived its sovereign immunity from suit and that, therefore, absent a knowing and explicit waiver of its sovereignty, to declare that the Court of Indian Offenses has no jurisdiction over the Tribe and the Tribal Council, and the Tribe's agencies and, thus, to enjoin the Court of Indian Offenses from exercising such jurisdiction, and further, to seek declaratory and injunctive relief in favor of the Tribe under the Code of Federal Regulations which precludes the Court of Indian Offenses from exercising jurisdiction of the Tribe, especially in matters as here involving a Trial

Election, and therefore to enjoin the Court of Indian Offenses, from interfering in Tribal Election matters.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned, as Chairman of the Te-Moak Tribal Council, do hereby certify that the Tribal Council is composed of eight (8) members, of whom 5 were present at the meeting which constituted a quorum held **September 2, 2011**, and that the foregoing resolution was adopted at such meeting by a vote of 3 **FOR**, 1 **AGAINST** and 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.


Bryan Cassadore, Chairman
Te-Moak Tribe of Western Shoshone

ATTEST:


Fermina Stevens, Acting-Recording Secretary
Te-Moak Tribal Council

INVALID IF NO SEAL APPEARS BELOW:





TE-MOAK TRIBE OF WESTERN SHOSHONE

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

RESOLUTION NO: 11-TM-21

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

WHEREAS, the Te-Moak Administration is in need of an updated employment application, and

THEREFORE BE IT RESOLVED, this resolution approves the 2011 Employment Application for employment with the Te-Moak Tribe of Western Shoshone Indians of Nevada.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned, as Chairperson of the Te-Moak Tribal Council, do hereby certify that the Tribal Council is composed of seven (7) members of whom 6 were present at the meeting which constituted a quorum held **August 16, 2011** and the foregoing resolution was adopted at such meeting by a vote of 5 **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.

INVALID IF NO SEAL APPEARS BELOW:




Bryan Casadore, Chairman
Te-Moak Tribe of Western Shoshone

ATTEST:

Fermina Stevens, Recording Secretary
Te-Moak Tribal Council