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January 19, 2018

Stephanie Zehren-Thomas  
726 Front Street, Ste. B  
Louisville, CO 80027

Tamra Borchardt-Slayton, Chairperson  
Paiute Indian Tribe of Utah  
440 N. Paiute Dr.  
Cedar City, UT 84721

Charlotte Domingo and Ben Matthews, Special Election Board Co-Chairpersons  
Paiute Indian Tribe of Utah  
400 N. Paiute Dr.  
Cedar City, UT 84721

*Sent Via Email ([szehren@h-zlaw.com](mailto:szehren@h-zlaw.com); [tslayton@utahpaiutes.org](mailto:tslayton@utahpaiutes.org);  
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**Re: Cedar Band of Paiutes – Non-Recognition of Tribal “Special Election”**

Dear Stephanie, Chairwoman Borchardt-Slayton and Election Board Officers:

The Cedar Band Council does not recognize the results of the ‘special election’ conducted on Wednesday, January 17, 2018, and again states its objection to the survey vote conducted by the Tribe.

**No Constitutional Basis for Conducting a Survey Vote**

There is no Tribal Constitution provision that allows for the Tribal Council to conduct a survey vote of Band members. The survey vote of Cedar Band members is not an Initiative Election as defined by Article XI, Section 1 of the Constitution of the Paiute Indian Tribe of Utah (Constitution) because it is not an ordinance proposed by eligible voters. Constitution, Article XI, Section 1(a). It does not fit the definition of a referendum vote either because it is not addressing a previously enacted ordinance. Constitution, Article IX, Section 2(a). The procedures applicable to either a referendum or initiative vote were not followed. The survey vote was not a recall election or a Tribal Council election under Article XIV, Sections 4, 5. The only reference to ‘special election’ is in regard to carrying out a referendum, initiative, or recall election. Simply put, there was no Constitutional basis for the action of the Tribal Council. It is ironic that the

Tribal Council disregards the Constitution, in the name of carrying out the Constitution. Please identify the Constitutional basis for carrying out a survey vote of Band members.

### **Band Powers Limit Tribal Council Powers**

The Tribal Council is limited by this Constitutional imperative: “The powers of the bands as set forth [in the Constitution] shall limit the powers of the tribal council and the tribal council shall pass no ordinances nor adopt any resolutions infringing on the powers of the bands set forth herein.” Constitution, Article VIII, Section 2 (emphasis added). The Constitution recognizes that the Bands have exclusive authority to ‘establish by the adoption of by-laws its own rules of procedure and organizational structure.’ Your survey vote election violated this Constitutional standard.

### **No Election Ordinance Provision Authorizes Survey Votes**

There is no provision of the Amended Election Ordinance of the Paiute Indian Tribe of Utah that allows the Tribal Council to conduct a survey vote of Band members. There are no provisions allowing for survey votes of particular Band members.

### **Procedural Flaws with Survey Vote**

The survey vote was procedurally flawed, as follows:

- Notice for the survey election was not posted timely or properly under Band Bylaws;
- There were insufficient procedures in place to guarantee duplicate votes were not submitted;
- Improper verification of Band membership;
- Witnesses confirm some individuals voted twice;
- Witnesses confirm a PITU official was explaining what the ballot meant and how it should be understood;
- No procedures for tracking ballots; and,
- No Cedar Band representative was involved in the election.

### **Violation of Band Sovereignty**

The survey vote violated the inherent and Congressionally recognized sovereign status of the Cedar Band of Paiutes. The Cedar Band of Paiutes has been a sovereign Indian tribe since time immemorial, and was never terminated. The Cedar Band’s sovereign status was confirmed by Congress in 1980 by Public Law 96-227. “The Federal trust relationship is... restored or confirmed as to the Cedar City Band of Paiute Indian of Utah.” 94 Stat. 317, Section 3(a). In that Act, “the term ‘tribe’ means the Cedar City...Band of Paiute Indians of Utah.” *Id.*, Section 2(1). The federal trust relationship was confirmed as to the Cedar Band and other Bands. *No federal*

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*trust relationship was restored or established by Congress in the Restoration Act to the PITU Council or the Paiute Indian Tribe of Utah.* The Paiute Indian Tribe of Utah is an administrative entity which the Bands later created, and to which the Bands later chose to delegate limited powers.

The Tribal Council and PITU are an administrative organization that is exercising authority delegated by the Bands. There is no congressionally-recognized federal trust relationship directly to the Tribal Council and PITU in the Restoration Act.

The survey vote undermined the Cedar Band's sovereign authority over internal Band governance, and was contrary to Public Law 96-227, the Band's Bylaws (which were specifically authorized by Congress therein), and the Paiute Tribal Constitution (which as not specifically authorized by Congress).

Cedar Band records and information regarding Cedar Band members has been used against the Band's objection to conduct an unlawful survey vote.

Please send me a copy of all written protocols and procedures used in conjunction with the survey vote election. Will you also send me a description of the processes actually implemented regarding notice, ballot collection, and vote counting?

Finally, will you confirm whether there is a Tribal judicial trial and appellate forum available right now? I understand PITU has failed to establish a Tribal judiciary as required by Article VI of the Constitution. The Cedar Band will not stand by and have its sovereign authority offended and disregarded by the PITU Council. The Cedar Band will be seeking judicial relief.

For your information, I have enclosed written Resolutions of the Shivwits Band, Cedar Band, and Kanosh Band Councils calling for amendment to the Tribal Constitution, federal legislation, and a Secretarial rule confirming the sovereignty of Bands as expressly recognized by the Restoration Act. These Bands are committed to standing up for Band sovereignty. This 'survey vote' is one of multiple PITU encroachments on Band sovereignty.

I welcome the opportunity to meet and talk at your convenience. Thanks.

Sincerely,



Mark A. Echo Hawk

MAE/cs

Cc: Cedar Band Council  
Tribal Council, Paiute Indian Tribe of Utah