



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20245



IN REPLY REFER TO:

Tribal Government Services - TR

JUL 15 1991

THROUGH: PHOENIX AREA DIRECTOR

WS 7/14/91

Mr. Dee C. Wilcox
Field Representative
Southern Paiute Field Station
Box 996
Cedar City, Utah 84720



Dear Mr. Wilcox:

We have received the results of the election held on June 11, 1991, by the qualified voters of the Paiute Indian Tribe of Utah. The election was called in accordance with an order issued on March 15, 1991, by the Director, Office of Tribal Services which permitted the qualified voters of the Paiute Indian Tribe to vote on the adoption or rejection of a proposed revised constitution.

As evidenced by the completed Certificate of Results of Election, the Constitution of the Paiute Indian Tribe of Utah was duly adopted by a vote of 32 for and 14 against in an election in which at least thirty percent (30%) of the 136 members registered and entitled to vote cast their ballots.

The Constitution of the Paiute Indian Tribe of Utah is hereby approved pursuant to the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me by 230 D.M. 2.4. Please deliver the enclosed original document to the tribe.

Sincerely,

Director, Office of Tribal Services

Enclosure

PHOENIX AREA DIRECTOR
JUL 18 1991
BUREAU OF INDIAN AFFAIRS

CONSTITUTION
OF THE
PAIUTE INDIAN TRIBE OF UTAH



PREAMBLE

We, the members of the Paiute Indian Tribe of Utah, comprised of the five bands of Southern Paiute Indians; the Shivwits, Indian Peaks, Cedar City, Koosharem, and Kanosh Bands, in order to establish a tribal government for ourselves, to better exercise the privileges and powers of self-government, to conserve our tribal and band property, to develop our resources, to preserve Paiute language and culture, to promote the welfare of ourselves and our descendants, and to secure our rights and privileges as members, hereby establish this constitution pursuant to the Act of June 18, 1934, as amended, 48 Stat. 984, and the Act of April 3, 1980, 94 Stat. 317. The Constitution and Bylaws of the Kanosh Band of Paiute Indians approved by the Secretary of the Interior on December 2, 1942, the Constitution and Bylaws of the Shivwits Band of Paiute Indians approved by the Secretary of the Interior on March 21, 1940, and the Constitution of the Paiute Indian Tribe of Utah approved by the Secretary of the Interior on October 8, 1981, are hereby superseded by this constitution which shall govern the Paiute Indian Tribe of Utah and its constituent bands from its effective date.

ARTICLE I - TERRITORY AND JURISDICTION

Section 1. Territory. Pursuant to the Act of April 3, 1980, 94 Stat. 317, the territory of the tribe shall extend to the exterior boundaries of all reservation lands held in trust for the tribe or any of its constituent bands and any other lands heretofore or hereafter acquired by the United States in trust for the tribe or its constituent bands.

Section 2. Jurisdiction. The governmental powers of the Paiute Indian Tribe of Utah, a federally recognized sovereign Indian tribe, shall, consistent with applicable Federal law and this constitution, extend to all persons, subjects, and property, including natural resources, within the exterior boundaries of reservation lands held in trust for the tribe or any of its constituent bands and to any other lands hereafter acquired by the United States in trust for the tribe or its constituent bands.

ARTICLE II - TRIBAL MEMBERSHIP

Section 1. Tribal membership shall include:

- (a) Those persons whose names appear on the official revised membership roll compiled pursuant to Sections 4 and 6(a) of the Paiute Indian Tribe of Utah Restoration Act, P.L. 96-227, 94 Stat. 317, and adopted by the Interim Tribal Council on the 13th day of July, 1981, Resolution No. 81-27, Enrollment.
- (b) Those who are of at least one-fourth (1/4) degree Paiute Indian blood and who are lineal descendants of those in (a) above.
- (c) Those who are adopted by a tribal member if the person adopted meets and verifies the fulfillment of all of the following requirements:
 - (1) The adoption was granted by a court of competent jurisdiction; and
 - (2) The applicant is four-fourths (4/4) degree Indian blood from a federally recognized Indian tribe; and
 - (3) The applicant has resided within the Counties of Millard, Sevier, Iron, Beaver or Washington at least five (5) years prior to applying for membership; and
 - (4) The applicant's name has been submitted to and successfully passed a referendum vote of the tribal membership pursuant to Article XI, Section 2(c) of this constitution.
- (d) The lineal descendants of a person who becomes a member by virtue of adoption may become tribal members if said descendants are at least one-fourth (1/4) degree Paiute Indian blood. The adopted children of an adopted member may become members if the adopted child meets the requirements of Section 1(c) of Article II.
- (e) For the purposes of this Section "Paiute Indian Blood" is defined as Indian blood derived from any of the five (5) constituent bands.

Section 2. Band Affiliation. An applicant for tribal enrollment shall be affiliated with the same band as the applicant's parents. Where the parents of an applicant are of different bands, the applicant shall at the time of enrollment in the tribe select affiliation with the band of either parent. No person shall be affiliated with more than one band and transfers from one band to another shall not be permitted.

Section 3. Dual Enrollment. Despite the provisions of Section 1, no person who is or becomes enrolled as a member of another tribe may be a member of this tribe.

Section 4. Appeal of Refusal of Membership. Any person denied tribal membership may appeal the denial in accordance with applicable tribal ordinances.

Section 5. Ordinances. The tribal council shall enact ordinances governing adoption, loss or surrender of membership, and future membership; Provided, That such ordinances are in compliance with this constitution.

Section 6. Membership Roll. The tribal council shall maintain a current membership roll of the tribe which reflects band affiliation, adding the names of persons found eligible for enrollment and deleting the names of deceased enrollees for whom appropriate proof of death has been submitted.

Section 7. Corrections in Roll. Corrections may be made in the official revised membership roll by the tribal council for the purposes of correcting misspellings of names and incorrect listings of blood quantum; Provided, However, That the tribal council may not remove the name of any person listed on the official revised membership roll without the approval of the Secretary of the Interior.

ARTICLE III - CONSTITUENT BANDS

The Cedar City, Kanosh, Koosharem, Indian Peaks, and Shivwits Bands shall constitute the constituent bands of the tribe.

ARTICLE IV - TRIBAL COUNCIL

Section 1. Tribal Council Membership.

- (a) The tribal council shall consist of six (6) members, one (1) elected from and by each constituent band at a band election, and the sixth elected as chairperson as set forth below.
- (b) The council member from each constituent band shall be elected from among and by the membership of the band eligible to vote and casting ballots in an election called for that purpose. The candidate who receives the highest number of votes in said election shall be a council member and also serve as the chairperson of the band council. The candidate who receives the second highest number of votes in the band election shall serve as band vice-chairperson.
- (c) A subsequent election for tribal chairperson shall be held from among those elected to the tribal council. The tribal chairperson shall be elected by the membership of the tribe eligible to vote and casting ballots in a tribal election. The chairperson shall be the representative who receives the highest number of votes in the tribal election for chairperson. The representative receiving the next highest number of votes in a tribal election for chairperson

shall be the vice-chairperson. The council member elected as tribal chairperson shall vacate his or her position as chairperson of the band and serve only as tribal chairperson. The vice-chairman of the affected band shall then serve as band chairperson and shall become the band's representative to the council and exercise all powers attendant thereto. In order to assume the office of band chairperson, the vice-chairperson must meet the qualifications for office set forth in Article XIV, Section 6, of this constitution.

- (d) The tribal council may select either from within its membership or outside of its membership a secretary and treasurer. In the event the secretary or treasurer are selected from outside the tribal council, the officers selected from the outside shall have no power to vote in council proceedings.
- (e) The term of office for tribal council members shall be four (4) years. The chairperson shall serve four (4) years. The vice-chairperson for the affected band shall serve the same term as a council member elected as tribal chairperson. The tribal chairperson shall vote only in the event of a tie.
- (f) In the event a council member is unable to attend a council meeting, the vice-chairperson of the affected band may attend, be counted for purposes of forming a quorum and voting, Provided, That the band chairperson has designated in advance in writing that the vice-chairperson is acting as his or her representative at said meeting. This resolution shall not constitute an exception to Article XII - Recall, Removal and Forfeiture as found in this constitution.

ARTICLE V - POWERS OF THE TRIBAL COUNCIL

Section 1. The tribal council, as established in Article IV hereof, shall be vested with all executive and legislative powers of the tribe, including the power to make and implement laws, and including such powers as may in the future be restored or granted to the tribe by any law of the United States, or other authority. In addition to all powers vested in any Indian tribe or tribal council by existing law, the powers of the tribal council shall include the following rights and powers: to employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrances of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State and local governments.

Section 2. The tribal council may impose an annual assessment upon a constituent band or bands to be paid to the tribal government for the operation of tribal services and programs and the maintenance of tribal lands and improvements; Provided, That an annual assessment shall not exceed an amount equivalent to fifteen percent (15%) of a band's gross income derived from the use of its lands held in trust by the United States for such band. Tribal council ordinances enacted pursuant to this section shall not be subject to initiative elections.

Section 3. This constitution and the ordinances of the tribal council shall be the supreme law of the tribe and all persons subject to its jurisdiction. The tribal council shall exercise its powers consistent with the limitations imposed by this constitution and Federal law.

ARTICLE VI - JUDICIAL BRANCH OF GOVERNMENT

Section 1. Powers of Court. All judicial powers of the tribe shall be vested in a tribal judiciary, including such powers as may in the future be granted or restored to the tribe by any law of the United States, or other authority, except as limited by this constitution.

Section 2. Jurisdiction. The judicial power of the court shall extend to all suits in law or equity arising under this constitution or tribal ordinances. Decisions of the tribal judiciary shall be binding upon all persons within the jurisdiction of the tribe. The appellate court of the tribe shall be the final and supreme interpreter of this constitution and tribal ordinances.

Section 3. Tribal Judiciary. The tribal judiciary shall consist of a trial court of general jurisdiction and an appellate court.

Section 4. Term of Office and Qualifications. The tribal council shall set forth qualifications for tribal court chief judge, associate judge and appellate judge(s) by ordinance. The tribal council shall appoint persons to fill said positions for a term of four (4) years for chief judge, and two (2) years for associate judge and appellate judge(s) and may renew said appointments at the expiration of the term.

Section 5. Removal. No judge shall be removed except for good cause as defined by tribal ordinance. Prior to removal, the judge who is the subject of a removal action shall receive written notice of the charges against him or her five (5) business days prior to a hearing before the tribal council called to consider his or her removal. At the removal hearing, said judge shall have the right to examine witnesses against him or her, shall have the right to call witnesses in his or her own behalf and shall have the right to be represented at his or her own expense, by an individual of his or her choice. An affirmative vote of three (3) members of the council shall be required to remove any judge.

Section 6. Rules of Procedure. The tribal court chief judge shall issue rules of pleading, practice, and procedure applicable to any and all proceedings of the tribal court and appellate court, consistent with the provisions of this constitution. In the event the chief judge fails to establish said rules, the tribal council shall have the authority to establish them.

ARTICLE VII - SOVEREIGN IMMUNITY

Section 1. Suits Against the Tribe in Tribal Courts. The tribe shall be subject to suit for declaratory and injunctive relief in tribal courts by persons subject to tribal jurisdiction for the purpose of enforcing rights and duties established by this constitution, by the ordinances of the tribe, and by the Indian Civil Rights Act, 25 U.S.C. Sections 1301 and 1302.

Section 2. Immunity of Tribal Council Members and Employees. The members of the tribal council and employees acting within the scope of their authority or employment shall be personally immune from suit, and said personal immunity shall extend beyond their term of office for actions occurring during said term.

Section 3. Immunity of Tribe from Suit. Except as provided above, the tribe does not waive any right which it has to immunity from suit in the courts of the tribe, the United States or of any state, unless the waiver is expressly authorized by a majority of the tribal council in writing.

ARTICLE VIII - BAND COUNCILS

Section 1. Band Council Organization. Each constituent band shall establish by the adoption of by-laws its own rules of procedure and organizational structure.

Section 2. The powers of the bands as set forth herein 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.

- (a) To consult with representatives of Federal, State or local governments, businesses, and all others on matters of band interest;
- (b) To make contracts, except between it and the Federal, State or local governments, under its own name concerning matters that relate solely to the band;
- (c) To conduct business affairs concerning all matters that relate solely to the band;

- (d) To manage band enterprises and own and operate businesses;
- (e) Subject to applicable Federal laws and regulations, to lease and assign band lands, interests in band lands including water rights, to exchange band lands for lands of equal value, to apply for Federal grazing permits and to permit or prohibit hunting and fishing on band lands;
- (f) To recommend to the tribal council any changes in the constitution;
- (g) To elect and recall its representative to the tribal council as provided for in this constitution;
- (h) To spend band funds in accordance with a budget approved by the band council after review and comment by the tribal council;
- (i) To recommend to the tribal council the disposition of, lease, assignment of tribal lands, or other tribal assets;
- (j) To exercise such further powers as may be delegated by the tribal council or this constitution; and
- (k) Except for the election and recall of its representatives, to delegate to the tribal council any of the above enumerated powers.

Section 3. Actions of Band Councils. The band councils shall take no action which is inconsistent with this constitution, or ordinances or resolutions of the tribe. The band councils may take action only by resolution or motion.

Section 4. Audit of Financial Records. Each band council shall cause an audit of the band accounts to be conducted annually and shall submit the audit to the tribal council for review. The tribal council shall establish by ordinance the time and manner for receipt of band audits by the tribal council.

Section 5. Band Lands. The phrase "Band lands" as used herein means those lands held in trust for a constituent band by the United States.

ARTICLE IX - DUTIES OF OFFICERS

Section 1. The Tribal Chairperson:

- (a) Shall be the primary representative of the tribe;
- (b) Shall call and preside over meetings of the tribal council;
- (c) Shall sign all negotiable instruments, contracts, applications for Federal or other funds, as authorized by the tribal council;

- (d) Shall have the right to vote only in the case of a tie, shall be counted for purposes of forming a quorum, and shall have the right to debate;
- (e) Shall make written and oral reports at all tribal council meetings of all of his or her activities;
- (f) Shall not obligate the tribe in any manner without the prior written authorization of the tribal council; and
- (g) Shall have such other duties, powers and restrictions as designated by the tribal council.

Section 2. The Tribal Vice-Chairperson:

- (a) Shall assist the chairperson;
- (b) Shall, in the absence of the chairperson at council meetings, assume the duties and powers of the chairperson. Absence as used in this section shall mean absence only from a council meeting. The chairperson shall not be absent solely because he or she is not present at the tribal office.

Section 3. The Tribal Secretary:

- (a) Shall preserve all ordinances, resolutions, and minutes of the tribal council and make the same available to all tribal members during regular business hours.

Section 4. The Tribal Treasurer:

- (a) Shall be responsible for the funds of the tribe;
- (b) Shall accept, receive, receipt for, preserve, and safeguard all funds for which the tribal council is acting as trustee or custodian;
- (c) Shall deposit all tribal funds in a bank or elsewhere, as directed by the tribal council;
- (d) Shall report all receipts and expenditures and accounts, and the nature of all funds in his or her custody once every six (6) months to the tribal council in writing, or at any time requested to do so by the tribal council; and
- (e) Shall be bonded as required by law or by the tribal council;
- (f) With respect to (b) through (d) above, the treasurer may delegate said duties upon approval by the tribal council.

ARTICLE X - CONDUCT OF BUSINESS

Section 1. Meetings of the Tribal Council.

(a) Procedures. The tribal council shall hold meetings and take actions in accordance with the following procedures, which it may augment by its own rules of procedure so long as such rules are consistent with the provisions of this constitution.

- (1) The tribal council shall provide in its rules of procedure for the manner and recording of council members votes, for those circumstances in which a council member is prohibited from voting, for the order of business at tribal council meetings, and for the keeping of a journal of its proceedings.
- (2) In order to conduct the business of the tribe, council members shall be paid for mileage and per diem expenses if funds are available.
- (3) A majority of the members of the tribal council may by vote compel the attendance of any of its members at any meeting of the council. Any member of the council who, when receiving notice of his or her required attendance at a meeting, fails to attend such meeting for reasons other than confining illness or absence from the council because of attendance at a meeting as a representative of the council, shall be deemed guilty of misconduct in office unless excused by the majority of the council. The tribal chairperson, or if absent, the vice-chairperson, shall enforce orderly conduct at meetings and any member of the council who fails to conduct himself in an orderly manner at any meeting shall be deemed guilty of misconduct.

(b) Regular Meetings.

- (1) Regular meetings of the tribal council shall be held each month at a time and place to be set by the tribal council in its rules of procedure.
- (2) All regular meetings of the tribal council shall be open to the membership of the tribe; However, the tribal council may recess under the terms and conditions provided for in its rules of procedure in closed or executive session.
- (3) No regular meeting shall commence until a quorum is present and in person. A quorum shall consist of a majority of the membership of the council. All decisions shall be made by a majority vote of the quorum.

(c) Special Meetings.

- (1) Special and emergency meetings of the tribal council may be called as provided for in the rules of procedure of the tribal council.
- (2) A council member or members shall be present for purposes of an emergency meeting if said member or members are in communication by telephone with the tribal council at the time the decision and vote are taken. All decisions made during an emergency meeting shall be made by a majority vote of the quorum.

Section 2. Action by the Tribal Council.

- (a) The tribal council shall act only by ordinance, resolution or motion. All legislative enactments of a permanent nature or of general applicability shall be by ordinances; all other actions, unless otherwise provided herein, may be in the form of resolutions or motions.
- (b) In addition to such acts of the tribal council as are required by other provisions of this constitution to be by ordinance, every act levying a tax or fee, establishing any rule or regulation for the violation of which a civil or criminal penalty is imposed, or placing any burden upon or limiting the use of property shall be by ordinance.
- (c) Every act of the council which is of a temporary nature or relating to a specific action (such as petitions to public officials or to support grant applications) shall be made by resolution.
- (d) The ordinary business of the council may be transacted by motions recorded in the minutes.
- (e) The tribal council shall cause its ordinances to be codified and thereafter maintained in current form and available for inspection by the tribal membership. Each council shall periodically review the ordinances and examine them for current need. The council may by ordinance prescribe the procedures by which other individuals or entities may obtain access to tribal records or documents.
- (f) The tribal council may, by ordinance, prescribe the procedures for enactment, public notice, repeal or amendment, authentication and disposition of ordinances.

Section 3. Tribal Meetings.

- (a) The tribal council shall hold an annual meeting of the entire tribal membership and such other tribal membership meetings as are necessary.

- (b) Time and procedure for the tribal meetings shall be determined by the tribal council by ordinance and timely notice of the meetings made to the tribal membership.

Section 4. Financial Control. All appropriations by the tribal council of tribal funds shall be in accordance with an annual budget established by ordinance. The tribal council shall cause an audit of the tribal accounts to be conducted annually and shall establish a fiscal year for the tribal government. The results of the audit shall be made available to tribal members upon their request.

ARTICLE XI - INITIATIVE AND REFERENDUM

Section 1. Initiative.

- (a) The eligible voters of the tribe shall have the power to propose any ordinance to the tribal council or to repeal or amend any ordinance in accordance with the provisions of this Article, Except ordinances concerning budget, capital generating programs, appropriation of revenues, the levy of fees or taxes, or salaries of employees or officials.
- (b) The procedure for initiatives shall be as follows:
- (1) Initiative petitions must be signed by at least twenty percent (20%) of the eligible voters of the tribe and shall be presented to the tribal council.
 - (2) In the event the tribal council fails to adopt the initiative, the initiative shall be submitted to the eligible voters at a special election for their acceptance or rejection.
 - (3) The vote of a majority of those actually voting shall be conclusive and binding upon the tribal council; Provided, That at least thirty-five percent (35%) of the eligible voters of the tribe cast ballots in said special election.
 - (4) The election on the initiative shall be held not less than thirty (30) days and not later than sixty (60) days from the date the initiative and a valid petition are filed with the tribal council.

Section 2. Referendum.

- (a) The tribal council shall upon the vote of three (3) council members submit any proposed or previously enacted ordinance to a vote of the eligible voters, Except ordinances proposed or existing concerning budget, capital general programs, appropriations of revenues, the levy of fees or taxes, or salaries of employees or officials.

- (b) The procedure for a referendum election shall be as follows:
- (1) The vote of a majority of those eligible voters actually voting shall be conclusive and binding upon the tribal council, Provided, That at least thirty-five percent (35%) of the eligible voters of the tribe cast ballots in a referendum election.
 - (2) Referendum elections shall be held not less than thirty (30) days and not later than sixty (60) days from the date the proposed or existing ordinance is referred to the voters by the vote of the tribal council as provided for in this subsection.
- (c) For the purposes of implementing the adoption provisions of Article II, Section 1(c), the vote of a majority of those eligible voters actually voting shall be necessary to approve the adoption of an applicant into the tribe; Provided, That at least thirty-five percent (35%) of the eligible voters of the tribe cast ballots in said special election.

ARTICLE XII - RECALL, REMOVAL AND FORFEITURE

Section 1. Recall from Office by Petition of Membership.

- (a) At any time after an official election and after holding office for three (3) months, any elected representative to the tribal council may be recalled from office for neglect of duty or willful misconduct in office by the eligible voters of the tribe, consistent with the provisions hereof.
- (b) The procedure to effect the recall of a tribal council member by the band which he or she represents shall be as follows:
 - (1) Upon receipt by the tribal council of a written request from an eligible voter requesting a petition to recall his or her elected band representative to the tribal council, the tribal council shall issue within five (5) business days a petition, with the date of issuance stated thereon, for recall of the voter's tribal council member named in the request. Said petition must be filed with the tribal council within thirty (30) days of the issuance thereof and must contain the required number of signatures in order to be a valid petition.
 - (2) The recall petition shall contain a detailed statement, not to exceed two hundred (200) words, of the charges and accusations against said representative which the petitioner(s) believe constitute(s) willful misconduct or neglect of duties.

- (3) Upon the filing of a valid petition with the tribal council signed by thirty percent (30%) of the eligible voters of the band which the council member represents, the tribal council member named therein shall be subject to a recall election.

Recall elections shall be held within thirty (30) days of the filing of a valid recall petition; Provided, That if the petition is submitted within three (3) months of a special election, the tribal council may direct that the matter be placed on the ballot for that election.

- (4) In order to recall a tribal council member, fifty percent (50%) of the eligible voters of the council member's respective band must cast ballots in the recall election and a majority of those voting must vote in favor of the recall.
 - (5) The election board shall certify the results of a recall election within five (5) business days of the election. If the requisite number of voters cast ballots in favor of the recall of a council member, the office shall be deemed vacant.
 - (6) In the event a council member is recalled, an election of the eligible voters of the band the recalled member represented shall be held to fill the vacancy within thirty (30) days thereafter.
- (c) The procedure to effect the recall of a tribal council member from the position of chairperson or vice-chairperson shall be as follows:
- (1) Upon receipt by the tribal council of a written request from an eligible voter of the tribe requesting a petition to recall a tribal council member from the position of tribal chairperson or vice-chairperson, the tribal council shall issue within five (5) business days a petition, with the date of issuance stated thereon, for the recall of the named tribal council member from their position as tribal chairperson or vice-chairperson. Said petition must be filed with the tribal council within twenty (20) days of the issuance thereof and must contain the required number of signatures in order to have a valid petition.
 - (2) Upon the filing of a valid petition signed by thirty percent (30%) of the eligible voters of the tribe with the tribal council, a chairperson or vice-chairperson shall be subject to a recall election. The election shall be held within thirty (30) days of the filing of said petition; Provided, That if the petition is submitted within three (3) months of a special election, the tribal council may direct that the matter be placed on the ballot for that election.

- (3) In order to recall the tribal chairperson or vice-chairperson, thirty-three percent (33%) of the eligible voters of the tribe must cast ballots in the recall election and seventy-five percent (75%) of those voting must vote in favor of the recall.
- (4) The election board shall certify the results of a tribal election within five (5) business days of the election. If the requisite number of voters voted in favor of recall of the chairperson or vice-chairperson, the office shall be deemed vacant. Within thirty (30) days of the vacancy in the office of the tribal chairperson, an election shall be held of the eligible voters of the tribe to fill the vacancy from within the membership of the tribal council. The vacancy created after the election shall be filled consistent with the provisions of Article IV, Section 1(b).
- (5) Although the vice-chairperson may be recalled from his or her position, he or she will remain a council member representing the band which elected him or her.
- (6) If the band membership recalls its council member and said member is the vice-chairperson, the council member who received the third highest number of votes in the preceding election for chairperson shall succeed as vice-chairperson. Filling of the recalled band representative's seat shall be in accordance with Section 1(b)(6) of this Article.

Section 2. Removal from Office by Tribal Council Resolution.

- (a) The tribal council may by a majority vote of its members remove any tribal council member, including the chairperson and vice-chairperson, for neglect of duty or willful misconduct.
- (b) The procedure to effect the removal of any elected council member shall be as follows:
 - (1) No council member shall be removed from office Except after notice of the charges and a hearing before the tribal council. The council member who is the subject of a removal action may elect to have the hearing open or closed to the tribal membership.
 - (2) The council member who is the subject of a removal action shall be served written notice of the charges against him or her at least five (5) days before his or her removal hearing is held by the tribal council.

- (3) At the removal hearing at which charges will be heard, the council member shall have the right to examine all witnesses against him or her, shall be entitled to call witnesses in his or her own behalf and shall have the right to be represented, at his or her own expense, by an individual of his or her choice. No tribal council member being considered for removal shall preside over or vote in any removal proceedings brought against him or her.
- (4) The factual determinations of the tribal council and removal decisions of the tribal council shall be final; Except, that issues of the constitutionality of a tribal council member's removal may be reviewed by the tribal appellate court.
- (5) Within thirty (30) days after a council member is removed, a special election shall be held for the eligible voters of the band whose representative was removed. If the council member who is removed is the tribal chairperson, an election shall be held of the eligible voters of the tribe to elect a chairperson from among the five (5) council members. After the removal of the chairperson, the vice-chairperson shall serve as temporary chairperson pending the election of the new chairperson.
- (6) If the council member who is removed is also the vice-chairperson, the band affected shall consistent with this constitution fill said vacant seat. The council member who received the next highest number of votes in the preceding election for chairperson shall succeed as vice-chairperson.

Section 3. Automatic Forfeiture of Office.

- (a) In the event of death, resignation, conviction of a felony while in office, or failure to attend four (4) consecutive regular council meetings, a council member shall automatically forfeit his or her office and a vacancy shall be created.
- (b) The procedure to fill a vacancy created by automatic forfeiture shall be as follows:
 - (1) Except in the case of the tribal chairperson, an election shall be held within thirty (30) days of the eligible voters of the affected band to elect a council member to fill the vacant seat.
 - (2) In the event the tribal chairperson forfeits his or her seat on the council, within thirty (30) days of the vacancy, an election shall be held, consistent with this constitution, of the eligible voters of the tribe to elect a chairperson from among the five (5) council members. After the forfeiture of the chairperson, the vice-chairperson shall serve as temporary chairperson pending the election of a new chairperson.

- (3) If the vice-chairperson forfeits his or her seat on the tribal council, the council member who received the next highest number of votes in the preceding election for chairperson shall succeed as vice-chairperson.

Section 4. Ordinances. The tribal council shall enact ordinances to implement the foregoing provisions, Provided, That such ordinances are in compliance with this constitution.

Section 5. Vacancy.

- (a) A seat on the tribal council shall be deemed to be vacant as follows:
 - (1) For the purposes of recall of any council member, including the chairperson and vice-chairperson, a seat shall be deemed to be vacant upon receipt by the tribal council of written certification by the election board, acting consistent with the provisions of this constitution, that a council member has been recalled.
 - (2) For the purposes of removal of any council member, including the chairperson and vice-chairperson, a seat shall be deemed to be vacant on the date the tribal council votes to remove a member and the removal action is recorded in the minutes or journal maintained by the council, as required by this constitution.
 - (3) For purposes of automatic forfeiture, a seat shall be deemed to be vacant upon receipt of notice of the death of a council member; upon the date specified in a written notice of resignation by a council member received by the tribal council, and the council's acceptance thereof; upon receipt of written notice from the clerk of the pertinent court of the conviction of a felony by a council member; or upon written certification to the tribal council by a council designee that a council member has failed to attend four (4) consecutive regular council meetings.
- (b) In the event the seats held by the tribal chairperson and vice-chairperson are vacant simultaneously, the remaining council members shall select a temporary chairperson to serve until elections are held consistent with this constitution.
- (c) When the vice-chairperson is temporarily serving as chairperson to fill a vacancy, the position of vice-chairperson shall not be considered vacant.

ARTICLE XIII - BILL OF RIGHTS

Section 1. Definitions.

- (a) "Tribe" means the Paiute Indian Tribe of Utah.
- (b) "Powers of self-government" means and includes all governmental powers possessed by the tribe, executive, legislative, and judicial, and all offices, bodies and tribunals by and through which they are executed.

Section 2. Rights of Tribal Members.

The tribe, in exercising powers of self-government, shall not:

- (a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
- (b) Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (c) Subject any person for the same offense to be twice put in jeopardy;
- (d) Compel any person in any criminal case to be a witness against himself;
- (e) Take any private property for a public use without just compensation;
- (f) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
- (g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishment, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six (6) months or a fine of \$500.00 or both;
- (h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law; Provided, That it shall not constitute a denial of equal protection of the laws to provide for one representative to the tribal council to be elected from each band;

- (i) Pass any bill of attainder or ex post facto law; or
- (j) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to trial by jury of not less than six (6) persons.

Section 3. Habeas Corpus. The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of the tribe.

Section 4. Indian Civil Rights Act. In the event the Indian Civil Rights Act (82 Stat. 77) is amended, the foregoing provisions shall reflect said amendments without requiring the amendment of this constitution.

ARTICLE XIV - ELECTIONS

Section 1. Voters. All duly enrolled members of the tribe who are eighteen (18) years of age or older shall have the right to vote in all tribal elections for the tribal chairperson and for the vice-chairperson, consistent with the provisions of this constitution, and shall have the right to vote for the band representative to the tribal council election of the band of which he or she is a member.

Section 2. Manner of Voting. All elections shall be by written secret ballot. Voting by absentee ballot shall be provided for by ordinance.

Section 3. Absentee Voting. The absentee balloting ordinance shall require that absentee ballots be made available in advance of any election to members who will be absent on the day of election and that ballots must be submitted by absentee voters to the tribal office prior to the scheduled date of the election. Absentee ballots so submitted shall be counted along with those ballots cast in person at the polls.

Section 4. Tribal Council Elections. The election of band representatives to the tribal council shall be held during the second week of March every fourth year, the specific time, place and date to be set by ordinance of the tribal council. Thirty (30) days prior to said election day, the eligible voters of each band shall nominate candidates for the office of tribal council member/band chairperson to represent their respective band on the tribal council. Tribal council members shall be sworn in and assume the duties of office on the third of April of an election year.

Section 5. Tribal Chairperson and Vice-Chairperson Elections. The tribal chairperson and vice-chairperson shall be elected by the eligible voters of the tribe from among the council members elected to office in an election year. The election for tribal chairperson and vice-chairperson shall be held within twenty (20) days after the third of April. The chairperson and

vice-chairperson shall take office on the next working day following certification of the election results by the election board. Prior to the election of the chairperson, the tribal council shall appoint from within its membership a temporary chairperson.

Section 6. Qualifications for Office. Candidates for membership on the tribal council must be duly enrolled members of the Paiute Indian Tribe of Utah who will be twenty-one (21) years of age or older on the date of their election and must be free of any felony conviction prior to running for and holding office as a council member. The qualifications of each person nominated by a particular band must be certified by the election board twenty-five (25) days prior to the council election.

Section 7. Appeal Rights. Any person who is certified as ineligible to seek elective office by the election board may petition the tribal council to certify the person as a candidate. The tribal council shall render a final decision at least ten (10) days before the election, unless a primary election is to be held, in which case the tribal council shall render a decision before the primary election.

Section 8. Primary Election. In the event there are more than five (5) candidates for office from a particular band, a primary election shall be held by that band and the two (2) candidates receiving the highest number of votes shall be the final candidates from that band for the office of council member. Said primary election shall be held twenty (20) days prior to the council election.

Section 9. Election Board. The tribal council shall appoint an election board of three (3) or more persons which shall follow all requirements for each election called for under this constitution and shall certify in writing to the tribal council within five (5) business days after an election the results of any election. The members of the election board shall serve for set terms of office and as further provided for by ordinance. No person who holds any elective tribal office shall be eligible to serve on the election board. The duties of said election board shall be established by ordinance, which shall require the election board to insure that all tribal elections are conducted fairly and objectively.

Section 10. First Election. Notwithstanding the above provisions, the election of the first tribal council under this constitution shall be in accordance with an election ordinance enacted by the interim council which accords as much as feasible with the above provisions and is in accordance with 94 Stat. 317.

Section 11. Election Ordinance. The tribal council shall enact an ordinance governing the conduct of elections. Such ordinance shall be consistent with this constitution and shall include, but not be limited to, the following provisions:

- (1) Nomination of candidates;
- (2) Secret Ballots;
- (3) Absentee Voting;
- (4) Settlement of Election Disputes;
- (4) A procedure for filing petitions and determining their validity; and
- (5) Conduct of: Referendum, Initiative and Recall Elections.

Section 12. Tie. In the event there is a tie for any elected position as certified by the election board, the winner shall be determined by the flip of a coin under the supervision of the election board.

ARTICLE XV - TRIBAL LANDS

Section 1. Definitions.

- (a) "Tribal lands" as used in this Article means those lands held in trust by the United States for the Paiute Indian Tribe of Utah.
- (b) "Band lands" as used in this Article means those lands held in trust by the United States for any constituent band(s).

Section 2. Land Use and Natural Resources Conservation Plan. The tribal council may by ordinance establish a comprehensive land use and natural resource conservation plan for lands and natural resources subject to tribal jurisdiction. Such plan shall include rules and procedures by which tribal members and non-members may use specified parcels of land within the tribe's jurisdiction for public, educational, recreational, residential, business, commercial, industrial, religious or agricultural purposes. With respect to any lands held in trust by the United States on behalf of any constituent band, said ordinance shall provide for the approval of said ordinance by the eligible voters of the affected band or bands by majority vote of those voting.

Section 3. Power of the Tribal Council. With respect to tribal land, the tribal council by majority vote of the council in favor may authorize:

- (a) Grants of permission to a band or bands and members of the tribe to use specified portions of tribal land as provided in Section 2 of this Article.
- (b) Leases to a band or bands, to members and non-members of the tribe of specified portions of tribal land for the purposes specified in Section 2 of this Article subject to applicable Federal law and regulations;

- (c) Grants of right-of-way over tribal land or interests therein; for the purpose of providing municipal services, to and for the benefit of tribal members, or the heirs and descendants of tribal members who hold a land use assignment;
- (d) Leases to the United States or its agencies for the purpose of meeting eligibility requirements for Federal housing programs; Provided, That the term of such a lease shall be for the minimal period of time required by the agency;
- (e) The exchange of tribal land for land of equal value subject to applicable Federal law and regulations and upon approval by the Secretary of the Interior;
- (f) The approval of purchase mortgages or deeds of trust to the extent provided for and permitted by applicable Federal law and regulations;
- (g) The foregoing shall not be construed as a limitation on the authority of the tribal council to utilize tribal lands for tribal purposes.

Section 4. Land Use Assignment - Tribal Members.

- (a) Permission to use tribal land for residential purposes shall be by land use assignment in accordance with the land use plan. Copies of such assignments shall be filed and recorded by the tribal administration and filed with the Superintendent.
- (b) Permission to use tribal land shall be a right granted only to the person designated in the land use assignment. Such permission shall not be transferable by the permittee during his or her lifetime, shall pass upon the death of the permittee in accordance with regulations and procedures established by the tribal council by ordinance. No tribal member may receive more than one residential assignment.

Section 5. Use of Tribal Lands by Bands. The tribal council may by majority vote of the council permit tribal lands to be used for any purpose specified in Section 2 of this Article by any constituent band. Permission to use tribal lands by a band or bands shall be by land use assignment or by lease agreement. The tribal council may impose a fee, tax, or rental in exchange for the use of said land in order to provide for the operation of the tribal government.

Section 6. Preferences for Use of Tribal Lands. Except as provided for in Section 4 above, in determining use first preference shall be given to the tribe or tribal enterprises; second preference to a band or band enterprises; third preference to tribal members; and fourth preference to non-members; Provided, That the preferred party can put said lands to a use determined comparable by the tribal council to that offered by a less preferred entity or party.

Section 7. Reassignment. Notwithstanding the provisions of Section 5 above, with respect to land use assignment, in the event land assigned to a constituent band is not put to use consistent with the land use plan within five (5) years of said assignment, the tribal council may reassign said land or portions thereof, withdraw said assignments, or otherwise alter the terms thereof consistent with this constitution and ordinances. Said assignments are not property rights but mere permits to use tribal lands.

ARTICLE XVI - AMENDMENTS TO CONSTITUTION

This constitution may be amended by a majority vote of the eligible voters of the Paiute Indian Tribe of Utah, voting at an election called for that purpose by the Secretary of the Interior. The election shall be conducted in accordance with rules and regulations set forth by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment at the request of four (4) members of the tribal council, or upon the presentation to the Secretary of the Interior of a valid petition signed by at least thirty-three percent (33%) of the eligible voters of the tribe. The Secretary of the Interior may not propose amendments to this constitution.

ARTICLE XVII - ADOPTION OF CONSTITUTION

This constitution, when adopted by a majority vote of the eligible voters of the Paiute Indian Tribe of Utah, voting at an election called for that purpose by the Secretary of the Interior, shall be submitted to the Secretary of the Interior for his or her approval, and shall be effective from the date of approval.

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to an order issued on March 15, 1991, by Ronal Eden, Director, Office of Tribal Services, the foregoing Constitution of the Paiute Indian Tribe of Utah, was submitted to the qualified registered voters of the tribe and was on June 11, 1991, duly adopted/rejected by a vote of 32 for and 14 against, in an election in which at least thirty percent (30%) of the 136 (number) entitled to vote, cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended.

Phillip H. Swain
Chairman, Election Board

Corrina Box
Election Board Member

Cyndi Gaspie
Election Board Member

Therese B. Carasco
Election Board Member

CERTIFICATE OF APPROVAL

I, /s/ Ronal Eden, Director, Office of Tribal Services, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me by 230 D.M. 2.4, do hereby approve the Constitution of the Paiute Indian Tribe of Utah, PROVIDED, THAT nothing contained in this approval shall be construed as authorizing any action under this constitution that would be contrary to Federal law.

A handwritten signature in cursive script that reads "Ronal Eden".

Director, Office of Tribal Services

Washington, D. C.

Date: JUL 15 1991