



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

ALASKA REGION

3601 C Street, Suite 1100

Anchorage, Alaska 99503



JUL 11 2013

Dear Gentilepersons:

Members of the Newtok Village (Newtok), a federally recognized tribe, have made multiple efforts to resolve the conflict over which individuals compose the authorized governing body and members of Newtok Traditional Council (Traditional Council), the governing body established under the "Traditional Constitution of the Newtok Traditional Council Newtok, Alaska", dated December 31, 1999 (Constitution). There are two groups that have made the assertion of being the duly constituted Traditional Council and shall hereinafter be referred to as "Old Council" and "New Council". The Old Council members and their respective positions are listed on the "Agenda Public Meeting June 14, 2013" as President Moses Carl, Vice President Walter Kassaiuli, Treasurer Louie Patrick, Secretary Andy Patrick, Member Joseph John Sr., Member Joseph Inakak, and Member George Tom. In his letter of June 24, 2013, Michael J. Walleri, attorney for the New Council, identified the following individuals and their respective positions of the New Council: President Paul Charles, Vice President George Carl, Member Simeon Fairbanks, Jr., Member Louie Andy, and Member Katherine Charles.

Members of Newtok and representatives of the Old Council and New Council have communicated with the Bureau of Indian Affairs (BIA) on several occasions about their respective positions and have sought assistance from BIA on the governance issues facing Newtok. BIA met with individuals representing themselves to be the New Council and members of Newtok during the Annual BIA Providers Conference in November 2012. These individuals advised BIA that both the Old Council and New Council claimed to represent Newtok and both had held elections ostensibly in accordance with the Constitution in October and November 2012. Prior to that, no election had purportedly been held for more than seven years prior to the election in October 2012.

In 2005, BIA commenced negotiations with Newtok under the Indian Self-Determination Act (ISDA) which resulted in BIA and the Traditional Council entering into several P.L. 93-638 contracts (Contracts). In connection with the Contracts, BIA received resolutions from the Traditional Council and authorizations signed by members of the Old Council. Because no questions were previously raised, BIA recognized the authority of the Old Council on subsequent modifications and authorizations relating to the Contracts.

BIA received various documents, letters, emails and telephone calls regarding the Contracts and assertions of the representatives of the Old Council and New Council. BIA has also received various emails and documents relating to the conflict. BIA maintains records on Newtok

including copies of governing documents received prior to the conflict.

On March 15, 2013, BIA sent a letter to the Old Council and New Council advising that BIA has a duty to determine the authorized representatives of the governing body of Newtok, and requested information that would support the positions of the respective groups asserting their authorization to govern the tribe. Further, on June 10, 2013, BIA sent a letter to the members of Newtok informing them that due to emergent circumstances BIA would be making the decision as to which group, if either, to recognize as the Traditional Council if the dispute was not resolved internally.

While BIA's policy is to allow the tribe, its members and leaders, to resolve internal tribal conflicts, BIA did make some recommendations relating to the resolution of the conflict, at the request of the members of Newtok. One recommendation was that the Old Council and New Council cooperate in authorizing payment to a subcontractor under the Contracts. The two groups did so and BIA was able to authorize the distribution of the monies. Another recommendation was to hold another election. However, it appears that this recommendation was misconstrued by some individuals as a requirement imposed by BIA to resolve the internal tribal conflicts. That is not the case. As with many tribal internal conflicts, the members of Newtok have the authority to act on their own to resolve these issues. As stated in a letter from the New Council to BIA dated April 2, 2013, "The heart of self-determination is the choice of the tribal community to freely determine themselves, the composition of their leadership." BIA supports the tribe in its resolution of this problem. However, to carry out the ISDA contracting relationship, BIA makes the following determination as to the governing body which BIA will recognize for contracting purposes.

Issue: BIA shall determine the individuals who are authorized representatives of the governing body of Newtok for the limited purposes of taking ISDA contract-related actions such as authorizing P.L. 638 contracts for services to Newtok and its members. The action is necessitated by 1) BIA's duty to determine which individuals are authorized representatives of the governing body and 2) BIA's need to ensure that federal functions are performed, including the provision of services to members of Newtok when the prior year ISDA contracts have expired.

Basis for Decision: In reaching this decision, BIA has looked to the following information and documents:

1. Newtok, through its Traditional Council, is the legally recognized entity that enters into any and all agreements with the Federal government and more specifically the Contracts.
2. The Traditional Council confirms Newtok's willingness to commit to the terms of the Contracts through formal written resolutions.
3. The Traditional Council also designates the authorized point of contact for the Contracts. BIA's records contain a series of signed "Authorized Signature Form for Payment Requests P.L. 93-638" which appear to include only those names of the members of the Old Council. BIA relied upon these forms until the New Council and members of Newtok disputed the authority of the members of the Old Council to contract on behalf of the Traditional Council.

4. BIA has open and closed P.L. 93-638 Contracts. In connection with Contract No. 3701-P3, a document on Newtok Traditional Council stationary, dated March 22, 2005 and entitled "Newtok Traditional Council Members" lists the following individuals and remaining terms:
"Moses Carl, President, Elected 2 yrs ago, 1 more yr.
Joseph Patrick, V. President: Elected 2 yrs. ago, 1 more yr.
George Tom, Secretary: Elected 1 yr. ago, 2 more yrs.
Mary George, Treasurer: Elected 1 yrs. ago, 2 more year
Joseph Inakak, Member: Elected 1 yrs. ago, 2 more year
Walter Kassaiuli, Member 1 yr. ago, 2 more years."
BIA's records show that some of the above named individuals continued to sign authorizations, resolutions and amendments to the Contracts after the terms stated in the document.
5. BIA met with individuals representing themselves to be the New Council and members of the community during the BIA Annual Providers Conference in November 2012. These individuals advised BIA that two separate tribal councils claimed to represent Newtok and both had held elections ostensibly conducted in accordance with the Constitution on October 12 and November 4, 2012. Prior to that, no elections had purportedly been held for more than seven years.
6. Representatives of the Old Council and New Council have asserted their respective positions that they are the legitimate governing body and do not recognize the other; and therefore each group and members of Newtok have requested that BIA only conduct business with the one and not the other group.
7. On February 15, 2013, BIA received the following documents.
 - f. Document entitled "Support letter", dated January 29, 2013, referencing a list of signatures by 105 individuals, asserting to be eligible voters.
 - f. Document entitled "Assist the Council elected October 12, 2012 to regain oversight and control of the economic and financial resources of the Council. The election was authorized by the Newtok Constitution, adopted July 1999 and restored to the new Council the sovereign government status of NTC through the Indian Reorganization Act of 1934 (25 USCA Sections 476)," with signatures of 104 individuals.
 - f. Document entitled "Newtok Traditional Members Resolution Number 01/03 Date 2-13-13" which includes a resolution that "Bureau of Indian Affairs is directed to stop all funding to the person or group of persons not recognized as a duly elected council members of the Newtok Tribal government...."
 - f. Additional signature pages containing of 58 individuals with dates commencing February 5, 2013 and ending February 13, 2013.
8. On March 15, 2013, BIA sent a letter to the Old Council and New Council informing the two groups of BIA's policies relating to internal tribal dispute, requesting additional documentation, if available, and providing recommendations as requested by members of Newtok.
9. On April 8, 2013, BIA received a letter dated April 2, 2013 from the New Council which provided copies of the following:
 - a. Signed "Traditional Constitution of the Newtok Traditional Council Newtok,

- Alaska” (herein referred to as “Constitution”). The document was dated December 31, 1999 and signed by President Moses Carl; Vice President Joseph Patrick; Secretary George Tom; Treasurer Mary George; Member George J. Earviak; Member Margie Kassaiuli; and Member Mark Tom. It recites that it was ratified by a tribal membership vote.
- b. Petition entitled “Petition We Undersigned Want an Election for Newtok Traditional Council on October 2012 as required by the Constitutional By-Laws Article VII Section III,” bearing 122 signatures.
 - c. Document entitled “Freedom of Speech Public Meeting of Tribal Members,” dated September 28, 2012, referring to discussion of attendees about rights of members under by-laws, resignation of Mary George and other matters. The sign-in sheet listed 38 attendees.
 - d. Document entitled “Nov (Oct) 2012 Election Sign-up Sheet” having two columns entitled “Two (2) Year Term” and “Three (3) Year Term” with handwritten names of five listed under each column.
 - e. Document entitled “Public Meeting: Election of Tribal Members” dated October 12, 2012. This document provides information regarding the October 12, 2012 election, including the following:
 - i. Notification of public election was posted in public places more than one week before the election.
 - ii. The former Newtok Traditional Council did not participate in the election at the public meeting. There were 45 tribal members involved in the election who were qualified eligible voters, including some teenagers who were not eligible voters.
 - iii. Candidates’ names were written on a blackboard and voting results listed as to each candidate and position.
 - iv. Votes were counted by Philip Carl in front of the community members.
 - f. Document entitled “Newtok Traditional Council, Newtok, Alaska”, dated February 18, 2013, addressed to BIA, which describes a petition from the Newtok tribal members. The Petition is entitled “A Petition from the Newtok Tribal Members Directing the Bureau of Indian Affairs to Acknowledge and Accept the October 12, 2012 Tribal Council Election Results and to Record on the BIA Directory the Following Elected Council Members: Paul Charles, President; George Carl; Vice President, David Albert, Simeon Fairbanks Jr., John R. Johns, Louie Andy, Francis Tom,” and signed by 101 individuals.
10. On June 10, 2013, BIA sent a letter to the members of Newtok Village confirming BIA’s policy and advising the tribe that in the absence of a new FY2013 ISDA contract BIA was proceeding with contracting with Association of Village Council Presidents (AVCP) or other such entity to provide services to the tribe. If unsuccessful in doing so, BIA would proceed with making a determination based upon government documents and other information furnished to BIA.
11. On or about June 24, 2013, BIA received a letter from Michael J. Walleri, who represented himself as attorney for Newtok Traditional Council, composed of the New Council. Mr. Walleri requested that BIA recognize the Newtok Traditional Council as the governing body of the Village of Newtok and specifically the New Council elected on

October 12, 2012. He identifies the individual members of that council to be: President, Mr. George Carl; Vice President, Mr. Simeon Fairbanks, Jr., and Mrs. Katherine Charles and Mr. Louie Andy, David Albert and John R. John. The letter provides a description and documentation of the June 14, 2013 council meeting for which the Old Council prepared an agenda and general membership meeting of the same date at which the Old Council and New Council attended. Mr. Myron Naneng of AVCP provided information on BIA's proposal to contract with AVCP for services to Newtok. At the public meeting, Stanley Tom, the tribal administrator, made a motion that the members confirm which election [October 12, 2012 or November 4, 2012] the members supported. The general membership in attendance voted with the results being 52 members confirming the October 12, 2012 election and 30, the November 4, 2012 election results. Reference is made to a video taken of the voting process. The letter contains the following:

- a. Document entitled "Agenda Joint Meeting June 14, 2013" which describes meeting of the Old Council and New Council.
- b. Document entitled "Agenda Public Meeting June 14, 2013" which describes the general membership meeting.
- c. Document entitled "June 14, 2013 Ballot" showing two dates "October 2012" and "November 2012" with boxes for each. In the box next to October 2012, "52" is written and in the box next to November 2012, "30" is written. The document has two signatures naming Paul Charles (New Council) and Walter Kassaiuli (Old Council).
- d. Document entitled "June 14, 2013 Newtok Dispute Translation" which describes comments by John Andy, Phillip Carl, Joseph John Sr.
- e. Document entitled "Newtok Traditional Council June 14, 2013", listing the name and signatures of 38 individuals.
- f. Document entitled "Public Meeting June 14, 2012" with three columns [(not distinguishable) "Print" "Sign"]. It appears to be a list of 79 individuals who have printed their respective names and/or signed. One name and signature are crossed out.

BIA viewed the video which appears to confirm the voting process as outlined in the letter and supporting documents.

The above information and documents support the following conclusions:

Analysis of Decision

I. The terms of all Traditional Council members holding office prior to October 2012 appear to have long since expired. No one has submitted information contradicting the report that no election was held for seven years prior to the election held on October 12, 2012. Article IV, Section VI of the Constitution provides a maximum term of office of three years. Confirmation of the acceptance of the three year terms by the Traditional Council is suggested by a Memo dated March 22, 2005, listing the names and terms of the then Traditional Council, which included members of the Old Council.

II. The membership petition calling for an election, circulated in October 2012, contains 122

signatures. While it is possible that a few of the signatures may not be those of adult tribal members, no one has made such an assertion. The exact total adult membership of Newtok Village eligible to vote has not been established. No information regarding tribal voter rolls compiled under Article III of the Constitution was submitted by any party. The most recent available census data from the US Federal 2010 Census and obtained from the State of Alaska website, indicates an approximate adult (18 and over) village population of 187. The American Indian and Native population is given as 96.05 % of the Newtok population. Thus the high end probable eligible voter count is approximately 179. Therefore, it appears that a clear majority of tribal voters petitioned for the conduct of a tribal election. Article VI, Section V allows for the holding of public meetings by a petition of 50 % of qualified voters.

III. The October 12, 2012 meeting and election appears to have been organized in response to the membership petition calling for an election. No clear grounds for questioning the conduct or fairness of the election held on that date have been presented. It appears that a majority of adult members called for an election and that the majority of those voting members at the meeting casted their ballots in favor of the New Council. It is reported that the members of the Old Council did not attend. The individuals elected to the Traditional Council at this meeting were President Paul Charles, Vice President George Carl, and Francis Tom, Simeon Fairbanks, Jr., John R. John and David Albert.

IV. Another election was reported conducted on November 4, 2012, under the auspices of the Old Council. Little information has been submitted regarding the procedure employed, or how many community members attended or voted. In the document entitled "Assist the Council elected October 12, 2012 to regain oversight and control of the economic and financial resources of the Council. The election was authorized by the Newtok Constitution, adopted July 1999 and restored to the new Council the sovereign government status of NTC through the Indian Reorganization Act of 1934 (25 USCA Sections 476)," this election is described as follows: "The Tribal Administrator utilized a flawed analysis by the Native American Rights Fund to only elect the President and a vacant seat to the council on November 4, 2012." Moreover, this "election" was apparently run by the members of the Old Council, whose terms and authority to act as other than ordinary citizens of the tribe appears to have expired years earlier with their constitutional terms of office.

VI. Following the conduct of the two competing elections, a clear majority of tribal voters appear to have again utilized petitions to signal their support for the New Council. A petition containing 104 signatures collected in January 2013 was submitted to the BIA, asking the Bureau to assist the council elected on October 12, 2012 in regaining oversight and control of the economic and financial resources of the Traditional Council. In February 2013, 58 individuals re-affirmed their support of the New Council by way of resolution. These petitions were apparently prompted by the actions of the Old Council, claiming reelection in a November 4, 2012 meeting, and therefore refusing to cede leadership, or recognize the October 12, 2012

election result.

VII. In response to the BIA's March 15, 2013 letter seeking additional information, the New Council made submissions dated April 2, 2013, including additional copies of materials first submitted in January and February, already mentioned. The Old Council has to date furnished no written submissions documenting the basis of its claim to continuing authority, or demonstrating why the Bureau should not recognize the New Council. The New Council refers to an opinion prepared by the Native American Rights Fund and/or private law firm for the Old Council about the October 12, 2012 election but BIA has not received any such analysis. The attorney or legal representative withdrew from representing the Old Council around the time of the November 4 process.

VIII. The continuing resistance of the Old Council to recognizing the results of the October 12, 2012 election, while their administration and employees continued to act on behalf of the tribe, led to a continuing impasse. The New Council hired legal counsel, who visited the community in May 2013.

IX. On June 14, 2013, the Old Council held a council meeting which was followed by a general membership meeting at which both the Old Council and New Council were present. Mr. Myron Naneng, President of AVCP, a tribal consortium not presently representing Newtown, and Mike Walleri, counsel to the New Council, were also present. This general membership meeting was apparently called by a quorum of Old and New Council members who mutually agreed to hold a meeting of the members to vote on the issues relating to the internal tribal dispute. Over 80 tribal members eventually cast votes on questions presented in the meeting. There was discussion regarding BIA's proposal to contract with AVCP if the internal tribal conflict was not resolved and the need to quickly resolve the issue in light of decisions that needed to be made about the move of the village. The primary question presented for a vote was whether to confirm the results of the October 12, 2012 election, or those of the November 4, 2012 election. The vote on this question was proposed by a Mr. Stanley Tom, Tribal Administrator, who was an employee hired by the Old Council and former Traditional Council President, who resigned for the purpose of being a paid employee of the tribe. The vote was 52 in favor of confirming the election of the New Council, elected on October 12, 2012 and 30 in favor of confirming the election of the members of the Old Council, reportedly elected in the November 4, 2012 vote.

X. In spite of the outcome of the June 14, 2013 vote, which was proposed by Mr. Tom himself, he has since continued to maintain that the Old Council remains in office. The position of the members of the Old Council is less clear, since they have submitted nothing in writing. In contrast, the New Council, through its attorney, has submitted extensive documentation, including minutes and a videotape, concerning the June 14, 2013 events.

XI. It is apparent that the Bureau has only two choices before it. It can either recognize the New

Council as the duly elected and properly authorized governing body of Newtok, or it can decline to recognize the authority of either group. The choice of recognizing the Old Council would not appear to be justifiable, given the multiple expression of majority membership support for the New Council elected on October 12, 2012, and the failure of the Old Council to document in any detail the circumstances and means of continued authority and effect of the election on November 4, 2012. It also appears that the Old Council acknowledged that it is in the best interest of Newtok to accept the vote on June 14, 2013 in favor of the October 12, 2012 election of the New Council.

XII. The continuation of a leadership vacuum would be detrimental to the best interests of the tribe, particularly in the present circumstances, where the community is in the midst of trying to physically relocate to a new village site due to serious erosion occurring at the present site. Multiple outside funding agencies need to be able to do business with an authorized tribal governing body, including the U.S. Army Corps of Engineers, the State of Alaska, the Department of Housing and Urban Development, and others. Although this BIA determination is actually only for purposes of BIA administration of its own programs under the ISDA, it is known that other agencies will likely be influenced by the BIA's analysis and conclusions. In light of this unusual situation, BIA cannot allow a hiatus in tribal government by withholding recognition of the governmental authority of any tribal entity, especially where there is strong evidence of majority popular support for the New Council.

Determination:

Accordingly, BIA hereby accepts the assertion of the members of the New Council that they constitute the Traditional Council which has the authority to act as the governing body of Newtok Village, and therefore BIA will comply with the direction given, if any, regarding ISDA contracting by the New Council acting as the Traditional Council, pursuant to Section 102(a)(1) of the ISDA.


Notice of Appeal Rights:

Any members of the Old Council and members of the New Council ("parties affected by this decision"), may appeal this decision to the Interior Board of Appeals, 801 Quincy Street, Suite 300, Arlington, Virginia 22203 in accordance with the regulations at 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and must be filed within 30 days of the day you receive this decision. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your notice of appeal to: (1) the Assistant Secretary of the Interior – Indian Affairs, 4140, MIB, US Department of the Interior, 18th and C Streets, NW, Washington, DC 20240; (2) each interested party known to you; and (3) this office. Your notice of appeal sent to the Interior Board of Appeal must certify that you have sent copies to these parties. If you file a notice of appeal, the Board of Indian Appeals will notify you of further appeal procedures.

If no timely appeal is filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension may be granted for the filing of a notice of appeal.

If you have any questions or comments concerning this matter, you may call Cody Halterman at (907) 271-4124.

Sincerely,



Eufrona O'Neill
Acting Regional Director

Enclosures

Certified Copy to:

“Old Council”

Moses Carl,
George J. Tom
Joseph Patrick
Mary George

“New Council”

Paul Charles
George Carl
Simeon Fairbanks, Jr.
Louie Andy
Katherine Charles
Michael J. Walleri, Attorney

cc: Roger Hudson, SOL

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