

## MEMORANDUM

TO: Modoc Tribal Council  
FROM: Modoc Elected Council  
DATE: May 3, 2022  
RE: Tribal Council Petitions

The Elected Council was presented with two petitions from a group of Tribal Council members. The first petition, signed by ten individuals, requests a Special Meeting of the Tribal Council to conduct a recall election of Chief Bill G. Follis (“Petition No. 1”). The second petition, signed by the same 10 individuals plus two more, requests a Special Meeting of the Tribal Council to remove the Assistant to Chief Follis and to discuss legal matters pending before the Elected Council (“Petition No. 2”). We respond to each petition in turn.

### **Petition No. 1.**

Recall is the power of the Tribal Council to remove an elected official before their term expires. It is a fundamental part of our Constitution, but is an extraordinary measure to be used by the Tribal Council members to remove an elected official for acts which are contrary to the well-being of the Tribe. Elected officials represent all voters and must sometimes frustrate the short-term objectives of a few voters to achieve long-term prosperity for the entire Tribe.

Article XIII, Section 1, of our Constitution makes any Elected Council member subject to recall. The process to initiate a recall election requires that a petition, signed by at least ten members of the Tribal Council, be filed with the Chief. Our Election Ordinance, which supplements the Constitution, provides that the Tribal Council may vote to recall a sitting Elected Council member after a petition signed by at least ten verified members of the Tribal Council is filed with the Chief or Second Chief.

The term “verified members” is not defined in the Election Code, but plainly means that the person’s temporary enrollment by the Tribal Registrar was verified by the Enrollment Committee. As we recently notified the Tribal Council, the Elected Council was made aware that the temporary enrollment decisions of the Tribal Registrar over the past several years contain irregularities, including numerous instances where the Tribal Registrar did not correctly make a record of the person’s qualifying lineal descent. Those temporary enrollments have not been verified by the Enrollment Committee. We contracted with the independent certified public accounting firm of Wipfli LLP to audit the enrollment records in accordance with generally accepted government auditing standards and to prepare a Final Enrollment Audit Report. We directed the accounting firm to audit all enrollments so that no person feels unfairly targeted.

At this time, the Elected Council cannot verify the membership of any of the ten individuals that signed the petition. Nearly all of the signatures belong to individuals that are

temporarily enrolled, and the Enrollment Committee cannot verify the Tribal Registrar's enrollment decisions until the Final Enrollment Audit Report is completed. Upon receipt of the Final Enrollment Audit Report, we will schedule a meeting of the Enrollment Committee, which will approve or disapprove the enrollment of each individual temporary member. The enrollment audit is necessary to ensure that only verified members may initiate the extraordinary effort to recall an elected official.

To be clear, neither the Elected Council nor the Enrollment Committee intends to interfere in the members' constitutional right to recall an elected official. Once enrollment is verified for the ten members of the Tribal Council having signed a recall petition, a Special Meeting of the Tribal Council to vote on recall will be called within 20 days.

The Elected Council does caution the membership, however, that the political discord and extraordinary expense of potentially recalling Chief Follis is unnecessary. Chief Follis has announced his retirement from the Elected Council at the end of his term, and elections for a new Chief will occur within the next few months. The Elected Council takes seriously the grievances stated in the recall petition and will internally review its policies and procedures to ensure that the issues of dual enrollment and secret ballot elections are properly addressed.

If you have any questions regarding the enrollment audit process, please feel free to contact Chief Follis or Second Chief Robert Burkybile.

#### **Petition No. 2.**

The second petition demands that the Chief call a Special Meeting of the Tribal Council to discuss the following matters:

- (1) The removal of Charles Cheek from his employment with the Modoc Nation;
- (2) The alleged unjust enrichment of Elected Council members and Modoc Nation employees;
- (3) The status of *Dearry v. Follis, et al.*, a legal case against the Modoc Nation;
- (4) The employment of Jodi Thompson Hayes;
- (5) An explanation of how Payroll Protection Program funds were expended by Modoc Nation business entities; and
- (6) "other business that may be presented."

Article X, Section 2, of our Constitution enables ten members of the Tribal Council to demand that the Chief call a Special Meeting. The scope and purpose of such a Special Meeting is not defined in the Constitution. After conferring with the Tribe's legal counsel, we have determined that some issues are beyond the scope of that authority.

First, the Tribal Council does not have any reserved authority to make employment decisions relating to Tribal government staff. All tribal employees serve at the pleasure of the Chief as the executive officer of the Modoc Nation (Art. VI, Sec. 1). For this reason, the

petitioners' requests (1) and (4), above, are not within their power to petition for a Special Meeting.

Second, it is inappropriate for the Elected Council or the Chief to comment on the details and strategy relating to ongoing legal matters. Such disclosure could have a severely detrimental effect on the litigating or settlement position of the Modoc Nation. Our determination on this issue is consistent with other governments. For this reason, the petitioners' request to discuss (3), above, is not within their power to petition for a Special Meeting. However, the Elected Council may provide a brief update on the procedural position of the case.

Third, the power to petition for a Special Election is limited to issues that are stated in the petition. The Elected Council acknowledges that when the Chief calls the Special Meeting, he may open the meeting to unspecified business that may be presented at the Special Meeting (Art. X, Sec. 5). However, that power rests exclusively with the Chief. For this reason, the petitioners' request (6), above, is not within their power to petition for a Special Meeting.

The Elected Council has recommended to the Chief that he call a Special Meeting of the Tribal Council to follow an upcoming regularly scheduled Elected Council meeting. The Special Meeting agenda will include (1) a brief update regarding the procedural status of *Dearry v. Follis, et al.*, (2) an opportunity for the Tribal Council to discuss the petitioners' allegation of unjust enrichment of Elected Council members and Modoc Nation employees, and (3) a brief presentation by the Chief or his designee about how Payroll Protection Program funds were expended by tribal business entities, and an opportunity for the Tribal Council to discuss that matter.

### **Conclusion.**

We appreciate the involvement of our community in the governance of the Tribe and endeavor to ensure that our elected government has integrity and operates for the benefit of all Tribal members. We look forward to settling the outstanding concerns about enrollment and proceeding quickly, but responsibly, to elections for our representatives. Please continue to bring your concerns forward and we will address them as expeditiously as possible.

If you have any questions, concerns or comments please send to: [info.mec@modocnation.com](mailto:info.mec@modocnation.com)