June 10, 2025

VIA EMAIL AND CERTIFIED MAIL

The Honorable Representative Bruce Westerman
202 Cannon House Office Building
Washington, DC 20515

Re: **Responses to Follow-Up Questions Regarding H.R. 3073**

Dear Honorable Representative Westerman,

As Chairwoman of the Shivwits Band of Paiutes ("Shivwits Band"), I write to you on behalf of the Shivwits Band to provide responses to your follow-up questions regarding H.R. 3073, the Shivwits Band of Paiutes Jurisdictional Clarity Act. The Shivwits Band appreciates the opportunity to provide additional information regarding the need for H.R. 3073.

1. As discussed in the hearing, the Shivwits Band was impacted by the *Lawrence* Case ruling. Prior to the ruling in *Lawrence*, how did the Shivwits Band operate with outside investors?

Between the passage of the Paiute Restoration Act in 1980 up until issuance of the *Lawrence* decision in January 2022, the Shivwits Band has remained dedicated to the pursuit of economic development opportunities that meet several criteria, including (a) involvement of established investors or third-party developers that view the relationship with the Shivwits Band as one between long-term development partners with a strategic alliance, rather than as a marriage of necessity or a means to a development end; (b) proposed uses that are likely to remain viable over a prolonged period of time; (c) ideas that would put the Shivwits Band's 28,000-acre Reservation to its highest and best use; and (d) projects that coincide with the Shivwits Band's values and long-term goals for success. The Shivwits Band was often approached by disreputable or inexperienced devisers of short-term projects, with terms that failed to deliver real, sustainable economic opportunity to the Shivwits Band and its membership. In the lead-up to the *Lawrence* decision, there were admittedly few opportunities that fulfilled the Shivwits Band's standards, given the remote location of the Shivwits Band Reservation and the historically limited surrounding development opportunities in the area.

However, in a remarkable turnaround over the last few years, southern Utah has experienced growth at unprecedented rates, which has brought inventive and exciting commercial development opportunities to the area, led by reputable and established developers. Unfortunately, while this development boom has resulted in an economic upswing in the surrounding area, the *Lawrence* decision has made outside investors and developers reticent to engage the Shivwits Band for similar projects on Shivwits Band lands.

The Shivwits Band wishes to engage legitimate third-party developer-investors with a proven track record of successful projects and relationships, so that the Shivwits Band may participate in the ongoing

economic expansion of the surrounding area, while those opportunities remain available. Understandably, developer-investors of this caliber require certainty that a judicial forum is available to resolve any disputes that may arise out of a transactional relationship with the Shivwits Band. Without that certainty, developer-investors are unable to obtain project financing and cannot enter into enforceable agreements with the Shivwits Band, and therefore cannot engage the Shivwits Band as a long-term development partner. H.R. 3073 is intended to level the playing field, and place the Shivwits Band on equal footing with surrounding landowners, so that the Shivwits Band may also engage in meaningful development and capitalize on the area's economic growth.

2. As the law currently stands, the only way for the Shivwits Band to consent to state court jurisdiction is if the tribe holds a special election and adopts a universal consent to that end.

a. How does this process harm the tribe's sovereign immunity?

A special election to adopt universal consent to state court jurisdiction would not impact the Shivwits Band's sovereign immunity from unconsented suit. A waiver of the Shivwits Band's sovereign immunity would still be required in order to effectuate a lawsuit against the Shivwits Band, as tribal sovereign immunity waivers must be expressly given. *See Three Affiliated Tribes of the Ft. Berthold Reservation v. Wold Engineering, P.C.*, 476 U.S. 877, 892 (1986).

However, although the *Lawrence* decision does suggest that a Secretarial election under 25 U.S.C. § 1326 would ensure that state courts can exercise jurisdiction over civil causes of action to which the Shivwits Band is a party, in reality, it remains an open question whether a Secretarial election could actually secure this result. One of the more perplexing aspects of the *Lawrence* decision is the lack of acknowledgement that the civil jurisdiction provision of P.L. 280 allows states to hear "civil causes of action between ***Indians*** or to which ***Indians*** are parties." 28 U.S.C. § 1360(a) (emphasis added); *see also* 25 U.S.C. § 1322. This language refers to suits involving individual Indians only, and does not mention suits against tribes. *See Bryan v. Itasca County*, 426 U.S. 373, 389 (1976) (observing that "there is notably absent" from P.L. 280 "any conferral of state jurisdiction over tribes themselves"); *Parker Drilling Co. v. Metlakatla Indian Comm.*, 451 F. Supp. 1127, 1139 (quoting *Bryan*); *Meier v. Sac & Fox Indian Tribe of Mississippi*, 476 N.W.2d 61, 63 (Iowa 1991) (providing that "the language of Public Law 280 . . . clearly confers narrow civil jurisdiction over individual Native Americans, and not the Tribe per se"); *Long v. Chemehuevi Indian Reservation*, 115 Cal.App.3d 853 (Cal.App.4th Dist. 1981) ("No case has been cited to us, and we have found none, which concludes or even suggests, that [28 U.S.C. § 1360] conferred on California jurisdiction over the Indian tribes, as contrasted with individual Indian members of the tribes.").

Because the provisions of P.L. 280 are intended to confer state court jurisdiction over civil causes of action involving individual Indians, that is the type of jurisdiction that could be invoked following a Secretarial election under 25 U.S.C. § 1326. As a result, even if the Shivwits Band did hold a Secretarial election consenting to state court jurisdiction under P.L. 280, it remains a question whether a state court could permissibly exercise jurisdiction over civil causes of action involving the Shivwits Band as a tribe. As any third-party developer or investor would be engaging with the Shivwits Band in regards to any development project, those developers require certainty as to the availability of a forum in which to resolve disputes that arise during the course of the development project. Although the *Lawrence* decision suggests that a Secretarial election is the method to secure such certainty, it remains doubtful whether a Secretarial election under P.L. 280 would actually deliver this result, given that P.L. 280 confers jurisdiction on states in "civil causes of action between ***Indians*** or to which ***Indians*** are parties," 28 U.S.C. § 1360(a) (emphasis added), and does not relate to state court subject matter jurisdiction over cases to which the tribe itself is a party.

However, despite the above, one clear takeaway from the *Lawrence* decision is that *some form* of Congressional authorization is required before state courts may permissibly exercise jurisdiction over civil causes of action involving the Shivwits Band. *Lawrence* suggests that P.L. 280's Secretarial election provisions could be the source of that Congressional authorization. But, given the limitations on P.L. 280's applicability (i.e., its application only to suits involving individual Indians), the Secretarial election provisions of P.L. 280 actually do not definitively supply the needed Congressional authorization for state court exercise of jurisdiction over suits involving the Shivwits Band as required under *Lawrence*. H.R. 3073 is intended to supply that certain and clear Congressional authorization, as required under *Lawrence*, for state courts' exercise of jurisdiction over civil causes of action involving the Shivwits Band, where the Shivwits Band consents to such jurisdiction by contract or agreement and provides a valid waiver of its sovereign immunity from unconsented suit.

b. How does H.R. 3073 circumvent that?

As mentioned above, the *Lawrence* decision's key takeaway is that some form of Congressional authorization is required before a state court can exercise subject matter jurisdiction over civil causes of action involving an Indian tribe. The *Lawrence* court held that P.L. 280 *could* be the source of such Congressional authorization, where the tribe has held a Secretarial election under 25 U.S.C. § 1326 and voted to approve global consent to state court jurisdiction. However, as mentioned above, *Lawrence* does not address the fact that P.L. 280 applies only to "civil causes of action between *Indians* or to which *Indians* are parties," 28 U.S.C. § 1360(a), rather than to tribal governments.

H.R. 3073 therefore does not circumvent the *Lawrence* decision, but instead carries out *Lawrence*'s holding that some form of Congressional authorization is required before a state court can exercise subject matter jurisdiction over civil causes of action involving the Shivwits Band, where the Shivwits Band has agreed by contract to subject itself to state court jurisdiction. H.R. 3073 supplies the Congressional authorization of state court subject matter jurisdiction over civil causes of action involving the Shivwits Band, as required by *Lawrence*.