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MEMORANDUM

April 6, 2015

BY ELECTRONIC MAIL

TO: Lee Brannan
General Manager
Lower Brule Sioux Tribe

FROM: David Durkin 

RE: Succession Under Lower Brule Sioux Tribe Constitution and Bylaws

Pursuant to your request, this memorandum summarizes how succession on the Tribal Council is addressed under the Constitution and Bylaws of the Lower Brule Sioux Tribe. This memorandum has been reviewed by Tara Adamski, the General Counsel of the Tribe and Marshall Matz, who asked me to take the lead as Counsel on Governance.

The Tribal Constitution and Bylaws, unlike the U.S. Constitution, do not name an automatic successor in the event of the death of the Chairman, but rather provides that “the Tribal Council shall declare the position vacant and shall appoint a qualified individual to fill the unexpired term.” Art. V, Sec. 1. This formal action by the Tribal Council should be by resolution pursuant to Bylaws Article IV, Section 4, and would require a two-thirds majority of the full tribal counsel, *i.e.*, at least four votes, under that Bylaws provision.



With respect to who may be a “qualified individual to fill the unexpired term,” the Constitution provides as follows:

No person shall be a candidate for membership in the Tribal Council unless he shall be a member of the Lower Brule Sioux Tribe, at least twenty-one (21) years of age, shall not have been convicted of a felony . . . shall not have been involved in an action as defined by the Code of Ethics . . . and shall have resided on the Lower Brule Reservation for a period of one year next preceding the election.

Art. IV, Sec. 8. Under Article V, Section 1, the “qualified individual” does not need to be a Tribal Council member prior to their appointment.

Article I of the Bylaws, “Duties of Officers,” provides that the Chairman “shall preside over all meetings of the Tribal Council.” Art. I, Sec. 1. The Vice Chairman, “in the absence of the Chairman[,] shall preside.” Art. I, Sec. 2. Under these provisions and the provisions of the Constitution quoted above, the appropriate course of action would be, under Article V, Section 1, to have a majority of the Tribal Council call for a special meeting -- or wait until the next regularly scheduled Tribal Council (currently set for Wednesday, May 6) -- to declare the Chairmanship vacant and appoint a Chairman for the remainder of the unexpired term.

Again, the appointed interim Chairman need not be named from the present membership of the Tribal Council. In the event, however, that any of the present officers (Vice Chairman, Treasurer) or the other three Council members is appointed Chairman, the Constitution and Bylaws do not provide that an individual may occupy two positions on the Council, e.g., both a non-officer Council member and the Chairmanship, or the Chairmanship and another officer position, simultaneously. In order to accept the Chairmanship, the appointee would necessarily have to resign from their present position. Upon that appointment as Chairman and resignation from their prior post, the Tribal Council may then appoint a successor for the position from which the new Chairman resigned, again pursuant to Article V, Section 1.

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I trust you find this analysis useful, and I would be pleased to discuss these matters further with you, as you deem appropriate.

DLD:lav

cc: Tara Adamski
General Counsel
Lower Brule Sioux Tribe