

Law Offices Of

RAPPORT AND MARSTON

An Association of Sole Practitioners

405 W. Perkins Street
P.O. Box 488
Ukiah, California 95482
e-mail: drapport@pacbell.net

David J. Rapport
Lester J. Marston
Scott Johnson
Mary Jane Sheppard

(707) 462-6846
FAX 462-4235

November 13, 2001

Mr. Dale Risling, Sr., Superintendent
Central California Agency
Bureau of Indian Affairs
United States Department of Interior
1824 Tribute Road, Suite 1
Sacramento, CA. 95815-4308

Re: California Valley Miwork Tribe

Dear Mr. Risling:

Chairperson Silvia F. Burley has asked me, as the Tribe's attorney, to respond to your letter to the Chairperson, dated October 31, 2001.

Your letter was apparently prompted by the Tribe's having sent a copy of its constitution, adopted on March 6, 2000, to your office.

In your letter you note that the Tribe withdrew a previous request for a Secretarial election on its constitution under the Indian Reorganization Act. ("IRA," Act of June 18, 1933, 48 Stat. 987, as amended. See 25 U.S.C. §476.) The Tribe withdrew its request over a year after it was originally submitted. Your office had not called or conducted that election despite the 180 day time limit in 25 U.S.C. §476(c)(1)(A).

You urge the Tribal Council to abide by the Tribe's 1935 vote to accept the IRA, by taking the necessary steps to complete the Secretarial election process. You state that until the Tribe takes those steps the Agency will continue to recognize the Tribe as an "unorganized" Tribe and its elected officials as an "interim" Tribal Council.

The Tribe is uncertain what effect your letter has on the status of the Tribe or its Tribal Council. In addition, the Tribe does not understand the legal basis for your position that the Tribe is unorganized and its Tribal Council is an interim Tribal Council.

Letter to Risling
Subject: California Valley Miwok
Date: November 13, 2001

Page 2

When I called to discuss these issues with Raymond Fry, as instructed in the letter, he stated that the Agency would continue to recognize the Tribal Council as the federally recognized governing body of the Tribe, but that the Agency may limit the Tribe to federal funding directed to organizing the tribal government. He further stated that the Agency's decision to treat the Tribe as unorganized is based on the legal position that a Tribe which voted to accept the IRA in the 1930's may only organize under the IRA and may not organize exclusively under tribal law and inherent tribal sovereignty.

The Tribe has organized under its inherent sovereignty by adopting the March 6, 2000, constitution. It previously has supplied the Agency with the documents relating to the election on the constitution, including the notices of the meeting at which the constitution was approved. Prior to that election the Agency had recognized that the Tribe's membership had been legitimately determined by the Tribe.

If the Agency's decision to treat the Tribe as "unorganized" and the Tribal Council as an "interim" Tribal Council is based on the interpretation of the IRA described by Raymond Fry, the Tribe believes that legal position to be incorrect and hereby requests the Agency to reconsider or clarify that position.

No provision of the IRA expressly requires a Tribe that voted to accept the IRA to adopt a constitution under the procedure contained in the IRA. No provision of the IRA expressly or implicitly divests tribes of their inherent right to exercise powers of self-government. On the contrary, the express provisions of the IRA indicate just the opposite. Such an interpretation of the IRA also would conflict with the applicable rule of statutory interpretation that statutes past for the benefit of Indian tribes should be liberally interpreted in favor of the tribes.

Moreover, imposing this requirement on the California Valley Miwok Tribe would subject it to less favorable treatment than other similarly situated tribes within the agency's jurisdiction. The Agency has recognized other tribes in its jurisdiction that voted to accept the IRA as organized tribes and does not consider their governing bodies as interim, even though they have adopted constitutions under their inherent sovereignty rather pursuant to a Secretarial election. This includes the Hopland Band of Pomo Indians, Susanville Indian Rancheria, and Guideville Rancheria.

25 U.S.C. Section 476(a) states that any Indian tribe "... shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws ..." The express wording of this section gives a tribe the right to organize under the IRA. It does not impose an obligation to do so. The express wording says that the tribe may adopt an appropriate constitution. It does not require a tribe to do so.

Subsection (e) identifies powers a tribal council shall exercise "[i]n addition to all powers vested in any Indian tribe or tribal council by existing law ..." Existing law in 1934, when the IRA was adopted, recognized that Indian tribes exercised inherent powers of self-government. Accordingly, in the express wording of the IRA Congress recognized that tribes possess these powers independently of the IRA.

Subsection (f) prohibits any BIA official from making any decision or determination pursuant to the IRA with respect to any federally recognized Indian tribe that classifies, enhances or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes. Under this section, the BIA is required to treat all federally recognized tribes as exercising the same inherent powers of self-government, regardless of the history or size of the tribe. As a result, the BIA cannot take the position that some tribes must organize under the IRA and others need not.

Letter to Risling
Subject: California Valley Miwok
Date: November 13, 2001

Page 3

These subsections clearly recognize that the California Valley Miwok Tribe has the option of organizing under the IRA, but that right does not diminish its inherent right to organize under its own tribal law and the Agency must recognize the tribal government organized and elected by the Tribe, regardless of whether it chooses to request a Secretarial election under the IRA.

The Tribe would appreciate a prompt reply to this letter. The undefined significance of being considered "unorganized" and governed by an "interim" Tribal Council places a cloud over the Tribe which could impede its efforts to acquire a land base and promote the welfare of its members.

Thank you for your consideration.

Very truly yours,



David J. Rapport

cc: Silvia F. Burley, Chairperson
Raymond Fry