



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Northern California Agency
1900 Churn Creek Road, Suite 300
Redding, CA 96002



In Reply Refer To:

Tribal Operations

JUN-6 2009

Phillip Del Rosa, Chairman
Alturas Rancheria
715 Aspen Way
Medford, OR 97501

Darren Rose, Vice Chairman
Alturas Rancheria
4809 Kimberly Farms Drive
Anderson, CA 96007

Dear Mr. Del Rosa and Mr. Rose:

This is in response to the letters and supporting documentation received from Phillip Del Rosa, Chairman, and Darren Rose, Vice Chairman, responding to this Agency's April 14, 2009, April 23, 2009, and May 8, 2009, requests for further clarification concerning the Alturas Rancheria Enrollment. It is understood, by this Agency, that the Tribe was unable to bring resolution to this dispute through the mediation on May 27 and 28, 2009, mediated by Indian Dispute Resolutions. The Agency regrets that the Tribe continues to experience this dispute internally.

DECISION

Based on all the documents submitted and meetings held with Mr. Del Rosa, Mr. Rose, and other interested parties concerning this internal dispute, the Bureau of Indian Affairs, Northern California Agency continues to affirm its May 30, 2008, letter, signed by Robert Eben, Acting Superintendent, acknowledging the Tribe's April 7, 2008, election results. As previously stated any activity requiring action by this Agency, will be handled on a case by case basis, with this additional stipulation:

The Agency will now require a resolution passed by the Alturas Rancheria General Council for any request requiring Agency action. Each request will be reviewed by this Agency to ensure all seven (7) members of the Alturas Rancheria have been notified and provided the opportunity to attend and to vote on the said request. As stated in the Alturas Rancheria Constitution resolutions passed by the General Council require a vote of 51 percent of those eligible to vote; therefore, it appears that a vote will require four (4) of the seven (7) members of the Alturas Rancheria to vote before any action can be taken by this Agency, until further notice, or sufficient evidence is submitted showing changes in the Alturas Rancheria enrollment.

Any local, state, or tribal government, federal agency, or private business, conducting negotiations/business with the Alturas Rancheria must determine, for themselves, who they recognize as the governing body of the Tribe. Any entity may choose to follow suit with the Bureau of Indian Affairs, Northern California Agency; however, it is not a requirement. Each entity is responsible for its actions taken based on its determination.

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BACKGROUND

Enclosed is a copy of Mr. Del Rosa's response to this Agency's May 8, 2009, letter, outlining the following allegations raised in Mr. Rose' April 30, 2009, letter of clarification:

- All documents submitted by Phillip Del Rosa and Wendy Del Rosa concerning the alleged adoption of Don Packingham and Calvin Phelps, including Resolution Number 09-001, were falsified.
- The Tribe did vote to give Don Packingham and Calvin Phelps *Honorary* Membership with limitations.
- The limitations set for Don Packingham and Calvin Phelps were: No voting on any Tribal matters with the exception of tobacco, tobacco manufacturing, or tobacco distribution, no distributions of Casino RAP or RSTF nor can they sit on the council.
- The Enrollment Ordinance was not followed in the adoption of Don Packingham or Calvin Phelps:

The Constitution of the Alturas Rancheria, Article III – Membership, Section 4, states "Except for persons already adopted, admission to membership through adoption shall be in accordance with an ordinance enacted by the governing body, such ordinance to become effective upon approval of the Secretary of the Interior." The Enrollment Ordinance of the Alturas Rancheria, Section 1 – Persons entitled to membership, 1.3 Adoption, 1.3.1; states "... If the membership is confirmed by a simple majority vote [of the General Council], the Enrollment Committee shall formally revise the Official Membership Roll...". Section 1, 1.3.3, states "... *Adoptees become members of the Tribe in every respect [emphasis added], except that children to heirs of Adoptees shall have no right to become members of the Tribe based on their relationship with the Adoptee.*"

According to Creig Marcus', Former Tribal Administrator, Alturas Rancheria, statement, submitted with Del Rosa's response: "The primary purpose of this meeting (February 28, 2009, General Membership Meeting) was to enroll Calvin Phelps and Don Packingham as members of the Tribe...I informed all the members at the meeting that while the Constitution, Article III, Section 4 and the Enrollment Ordinance, Section 1.3, allows for the Adoption of any individual the Tribe may wish to adopt, once they adopt Calvin and Don they would have full rights as a member, including the right to per-capita payments under the tribes Revenue Allocation Plan since it was established by Federal Law under IGRA and *they would have all voting rights in tribal matters [emphasis added].*" Mr. Marcus further states "I clarified that if he [Joseph Burrell] was referring to some sort of "special" or "honorary" class of membership that could be created, that neither of these documents [Alturas Rancheria Constitution or Enrollment Ordinance] contain any provision for "special" or "honorary" membership and that *if the Tribe granted them membership it would be with full rights [emphasis added].*"

As indicated in this Agency's previous correspondence documents forwarded to this Agency indicate there may be 5, 6, 7, or 8 members of Alturas Rancheria. The Agency has met with and received conflicting documents from all parties concerning the Tribe's enrollment. *It appears on February 28, 2009, at the Alturas Rancheria General Council Meeting, the Alturas Rancheria, in accordance with Alturas Rancheria Enrollment Ordinance, adopted two new members into the Tribe, by a unanimous vote of the General Council.* Further, it appears the General Council unanimously voted to waive the six (6) month waiting period, as required by the Enrollment Ordinance of the Alturas Rancheria, Section 1 – Persons entitled to membership, 1.3 – Adoption, 1.3.2, (if so desired). *It further appears in the documents submitted by all parties, the rights extended to Mr. Phelps and Mr. Packingham did not come into*

question until the quorum requirements to remove the Chairman from office were not met. Calvin A. Phelps indicated in his undated letter received by this Agency April 17, 2009, he and Don Packingham are under the impression they are full members and were granted all rights, to include voting, as members of the Alturas Rancheria.

The Bureau of Indian Affairs, Northern California Agency, has no authority to question the Alturas Rancheria General Council's unanimous decision to adopt Don Packingham and Calvin Phelps and to waive the six (6) month waiting period. The Agency can only review the documents submitted to determine the requirements of conducting business through its government-to-government relationship with the Alturas Rancheria. The United States 8th Circuit Court of Appeals, in its denial to hear *Smith v. Babbitt*, 100 F.3d 556, 559 (8th Cir. 1996), *denied*, 522 U.S. 807 (1997), stated, in reference to *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978): a tribe's ability to determine its membership "lies at the very core of tribal self-determination; indeed, there is perhaps no greater intrusion upon tribal sovereignty than for a federal court to interfere with a sovereign tribe's membership determinations."

Consequently, until further notice, this Agency will now require a resolution passed by the Alturas Rancheria General Council for this Agency to act on any tribal request. Therefore, the Agency must turn to the tribe's governing documents to determine what constitutes a quorum of the General Council. According to the Alturas Rancheria Constitution, Article IV - Governing Body, Section 1, defines governing body as "the general council which shall consist of all members who hold assignments on the rancheria and all other members who are eighteen (18) years of age and older." Section 3, states "Fifty-one percent (51%) of the general council shall constitute a quorum, and no election or business shall be conducted in the absence of a quorum." Therefore, in reviewing the resolutions of the General Council, the Agency will certify the quorum consists of a minimum of four (4) out of the seven (7) enrolled members of the Alturas Rancheria, to include the members adopted February 28, 2009, that all members were notified and provided the opportunity to attend and to vote, and all other requirements have been met, as spelled out in the Tribe's constitution.

This Agency is also in receipt of documents indicating there have been meetings held by members of the General Council to remove officers from the Alturas Rancheria Business Committee. The Alturas Rancheria Constitution, Article VI - Vacancies and Removals, Section 2, states "Not more than ten (10) days after the receipt of a petition requesting the removal from office of an elected official, which petition shall set forth the specific reasons for which the removal is sought and shall be signed by not less than fifty-one percent (51%) of the voters [emphasis added], the business committee shall call a general council meeting to hear the charges against the official. It shall at the same time notify the accused in writing of the charges against him and the date, hour, and place of the general council meeting at which time he may appear and answer those charges.... The decision of the majority of those present and voting shall govern, provided that at least fifty-one percent (51%) of those eligible to vote shall vote [emphasis added]."

It appears that the movements on February 28, 2009, to remove the Chairman of the Alturas Rancheria Business Committee and the March 27, 2009, adoption of Erik Rose into the membership of the Alturas Rancheria were not in compliance with the Tribe's governing documents. According to all the documents received, the motion to adopt Calvin Phelps and Don Packingham was made, voted upon, and approved, prior to the submission of the petition for a hearing to remove the Chairman and the adoption of Mr. Erik Rose. Consequently, due to Mr. Packingham's and Mr. Phelps' February 28, 2009, adoption, the signature requirements for the submission of a petition to remove an officer have changed from three (3) out of five (5) members signatures to four (4) out of seven (7) members signatures. Therefore, until further notice, before this Agency can acknowledge any changes to the Alturas Rancheria General Council quorum, it must be able to certify all seven (7) members have been notified and provided the opportunity to vote.

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CONCLUSION

The Agency continues to affirm its May 30, 2008, letter, signed by Robert Eben, Acting Superintendent, acknowledging the Tribe's April 7, 2008, election results. As of February 28, 2009, it appears the constitution's required fifty-one percent (51%) now consists of four (4) out of seven (7) members, to include Don Packingham and Calvin A. Phelps, whose adoption was confirmed by the General Council on February 28, 2009. Actions of the General Council, including enrollment/adoption into membership, must meet the quorum requirements set forth in the Constitution of the Alturas Indian Rancheria. Requests of the Alturas Rancheria General Council requiring action by this Agency will be reviewed to certify the quorum requirements of the Tribe's Constitution have been met, and *all seven (7) members have received notice of the requested action, and provided the opportunity to participate in the vote.*

Also, please be reminded, it is critical for the Alturas Rancheria to reschedule the meeting, cancelled by the Tribe on several occasions, with the Agency's Branch of Self-Determination, to complete a Management Systems Review.

APPEAL RIGHTS

The decision contained in this letter may be appealed to the Regional Director, Bureau of Indian Affairs, Pacific Region, 2800 Cottage Way, Sacramento, California, 95825, in accordance with the regulations in 25 CFR Part 2, a copy of which is enclosed. Your notice of appeal must be filed in *this* office within 30 days of the date you receive the decision. The date of filing your appeal is the date it is postmarked or the date it is personally delivered to this office. Your notice of appeal must include your name, address, and telephone number. It should clearly identify the decision being appealed. If possible, attach a copy of the decision. The notice and the envelope in which it is mailed should be clearly labeled "Notice of Appeal." Your notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice. You must also send a copy of your notice of appeal to the Regional Director, Pacific Region, at the address given above.

If you are not represented by an attorney, you may request assistance from this office in preparation of your appeal.

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

Sincerely,


Dr. Virgil Akkin
Superintendent

Enclosure

cc: See Attached List

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