



IN REPLY REFER TO:

## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825

APR 9 2010

**CERTIFIED MAIL-RECEIPT REQUESTED 7006 3450 0002 4647 5285**  
**RETURN RECEIPT REQUESTED**

Ms. Wanda A. Quitiquit  
P.O. Box 1153  
Nice, California 95464

Dear Ms. Quitiquit:

The purpose of this correspondence is to inform you of my decision regarding your Notice of Appeal dated December 22, 2008, from the Robinson Rancheria Citizens Business Council's (Business Council) decision, pursuant to Tribal Resolution No. 12-05-08-KKL dated December 10, 2008, to disenroll you from the Robinson Rancheria of Pomo Indians. Your appeal was filed in accordance with the Robinson Rancheria Enrollment Ordinance Number 1 (Ordinance No. 1) Section 18, which provides for an appeal to the Secretary (now the Regional Director)<sup>1</sup> within thirty (30) days of receiving the decision of disenrollment. Your Notice of Appeal letter and supporting documents were received by the Bureau of Indian Affairs (BIA), Superintendent, Central California Agency (Superintendent) on December 29, 2008, and forwarded to the BIA, Pacific Regional Office on March 4, 2009 for final determination. Your Notice of Appeal letter was timely filed.

Because Ordinance No. 1 provides for an appeal to the Regional Director, my review and a final determination will be conducted in accordance with the BIA Regulations at 25 Code of Federal Regulations (CFR)<sup>2</sup>.

Tribal law has delegated authority to the Regional Director to determine whether or not the Business Council's actions that resulted in your disenrollment from the Tribe were in accordance with established applicable laws. Based on the information provided, I have decided to affirm the Business Council's decision that you are not eligible to be a member of the Robinson Rancheria of Pomo Indians. Please be advised that my decision regarding this matter does not

<sup>1</sup> Re-delegation of authority from the Director, Bureau of Indian Affairs to Regional Directors dated September 8, 2006 and pursuant to 25 CFR Part 62.10(a) provides in part; ... "when an appeal is from an adverse action taken by a Superintendent or tribal committee ..."

<sup>2</sup> 25 CFR § 62.1(b) (2) provides, "An appeal to the Secretary is provided for in the tribal governing document." A "Tribal governing document" is defined by the regulations as "the written organizational statement governing a tribe, band or group of Indians and/or any valid document, enrollment ordinances or resolution enacted there under."

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challenge the tribal right to deal with membership issues but rather the premise by which the disenrollment took place. I based my analysis on the following:

### **BACKGROUND**

The Robinson Indian Rancheria ("Tribe") is a federally recognized Indian tribe organized under the provisions of the Indian Reorganization Act of June 18, 1934 (Stat. 984), as amended by the Act of June 15, 1935 (49 Stat 378) (the "IRA"). The Tribe was terminated pursuant to the California Rancheria Act, PL No. 85-671, 72 Stat. 619 (1958), and restored as a federally recognized tribe in 1979 pursuant to *Tillie Hardwick, et al. v. United States, et al.*, No.-79-1710 (N.D).

The Tribe is governed by the Constitution of the Robinson Rancheria ("Constitution"), which was approved by the Commissioner of Indian Affairs on October 21, 1980. The Constitution was further amended and approved by the Area Director on June 22, 1995. The Robinson Rancheria Enrollment Ordinance No.1 was adopted by the Business Committee on June 5, 1982 and approved by the Bureau of Indian Affairs, Acting Area Director, Sacramento Area Office on July 21, 1982.

### **Applicable Tribal Law**

The Constitution sets forth the following provisions which are crucial to our analysis of these disputes:

**Article III - Membership Section 1** provides as follows:

**Section 1. Membership in the Robinson Rancheria shall consist of the following categories:**

- a) All persons whose name appears on the *Revocation of Termination Proclamation and Restoration of Federal Status Notice for Robinson Rancheria* as published in the Federal Register on June 29, 1977 (42 F. R. 33099).
- b) All persons living on the effective date of this constitution who were listed as distributees and dependent members of their immediate families in the Plan for the Distribution of the Assets of the Robinson Rancheria as approved by the Under Secretary of the Interior on August 30, 1965, and published in the Federal Register on September 3, 1965 (30 F. R. 11330).
- c) Spouses of individuals listed in (a) above who have at least one-fourth (1/4) degree of California Indian blood.
- (d) Persons who are lineal descendants of individuals eligible for membership under (a) above, regardless of whether the ancestor through whom eligibility is claimed is living or deceased, provided such descendants possess at least one-fourth (1/4) degree California Indian blood.

**Article III, Membership, Section 3**, provides:

The official membership roll shall be prepared in accordance with an ordinance adopted by the governing body and approved by the Secretary of the Interior or his authorized representative. Such ordinance shall contain provisions for enrollment procedures, enrollment committees, application form, approval or disapproval of application, rejection notice, appeals, corrections and provisions for keeping the roll on a current basis.

**Article IV, Governing Body, Section 1** provides in part as follows:

The governing body of the Robinson Rancheria shall be the Robinson Rancheria Citizen Business Council. (emphasis added) The citizens business council shall consist of six (6) members elected at-large from the Robinson Rancheria. The citizens business council shall be composed of a chairperson, vice-chairperson, secretary-treasurer and three (3) members ...etc.

**Article VIII, Powers of the Robinson Rancheria Citizens Business Council, Section 1** provides:

The Robinson Rancheria Citizens Business Council shall have powers and responsibilities hereinafter provided under the Indian Reorganization Act . . . subject to any limitations imposed upon such powers by the laws of the United States.

(h) To prescribe rules and regulations governing future membership, loss of membership and the adoption of members.

**Article IX, Tribal Enactments, Section 2, Resolutions and Motions**, provides, in part:

All final decisions on matters of short term or one time interest where a formal expression is needed shall be embodied in resolutions.

**Article IX, Tribal Enactments, Section 5, Approval of Tribal Enactments**, provides in part that:

Any resolution or ordinance which by the terms of the constitution or Federal law requires approval of the Secretary of the Interior must be received by the local Bureau Superintendent no later than ten (10) days following its enactment in order to be considered for approval. ... etc. If timely filed, that enactment shall not become effective until it is approved by the Secretary's authorized representative, provided that if such enactment is not disapproved within ninety (90) days from the date it is timely received by the Secretary's local representative, it shall on the ninety-first (91st) day automatically become effective. (emphasis added)

**Article XI, Bill of Rights, Section 5** provides in part:

In accordance with Title II of the Indian Civil Rights Act of 1968 (82 Stat. 77), the Robinson Rancheria in exercising its power to self government shall not:

(h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of laws.

(i) Pass any bill of attainder or ex post facto law;

**The Tribe's Enrollment Ordinance Number 1** sets forth the following provisions which are crucial to our analysis of these disputes:

**Section 8, Adoption,** provides:

Individuals who possess one-fourth (1/4) or more degree of California Indian blood and meet the following criteria may be adopted into membership by the Citizens Business Council.

(A.) Spouses of members not provided for under Section 3(c) of this ordinance.

(B.) Individuals whose name appears on the Robinson Rancheria Census Roll of November 16, 1940, or their lineal descendants.

Individuals who wish to be adopted into membership with the Robinson Rancheria shall file an application in accordance with the procedures for applying for regular enrollment. The decision of the Citizens Business Council on the applications for adoption shall be final.

**Section 18, Disenrollment,** provides in part:

The following shall be grounds for the disenrollment of any member.

(A.) The Person obtained enrollment by error, fraud, deceit, or misrepresentation.

Written notice by certified mail-return receipt requested shall be given to the person being disenrolled. The notice should inform the person of the right to explain in a hearing on a date of his or her choice why he or she should not be disenrolled. If, after the hearing, it is the decision of the Citizens Business Council to disenroll a member, the Citizens Business Council shall pass a resolution of the official disenrollment. The person shall be notified by certified mail-return receipt requested of the action taken and of the right to appeal the decision within thirty (30) days to the Secretary of the Interior [now the Regional Director].

### **Discussion**

On November 7, 2008, the Business Council adopted Resolution No. 11-7-08-A, entitled "A Resolution to Remove Section 8 of Enrollment Ordinance 1." The "Therefore," provision of

Resolution No. 11-7-08-A provides: The Enrollment Ordinance of the Robinson Rancheria is hereby revised as follows: "Section 8: ADOPTION is stricken and membership claimed or established under this provision is no longer valid." (emphasis added) The Business Council determined that to resolve the conflict between Article III Membership provisions of the Constitution and Section 8 of the Enrollment Ordinance No. 1, Section 8 must be stricken.

Upon the adoption of Resolution No. 11-7-08-A, the Tribe's Enrollment Committee reviewed your enrollment applications to make a determination and recommendation to the Business Council as to whether or not you met the criteria for membership as established in the Tribe's Constitution, Article III, or needed to be provided notice that you no longer met the eligibility criteria for membership and must be disenrolled. The Enrollment Committee determined that you did not meet the criteria for membership as established in the Constitution and recommended to the Business Council that you be disenrolled.

On November 20, 2008, pursuant to the Enrollment Committee's recommendation, the Business Council sent a letter of notice to you advising you: (1) that Section 8 of the Enrollment Ordinance that refers to the adoption into membership of individuals whose names appear on the Indian Census Roll of the Robinson Rancheria dated November 16, 1940<sup>3</sup> (1940 Census Roll), was in conflict with the Robinson Rancheria's Constitution; (2) that the Business Council by resolution eliminated this conflict by deleting Section 8, entitled "Adoption," from the Enrollment Ordinance; (3) that as a result of the deletion of Section 8 from the Enrollment Ordinance, you are being considered for disenrollment; (4) that you have a right to a hearing before the Business Council within five days of receipt of the Notice, and (5) that at the time of the hearing, you have a right to bring any and all information, documents, and records that the Appellants felt was necessary in contesting their disenrollment.

On November 25, 2008, in response to the Business Council's Notice dated November 20, 2008, advising you that you were under consideration for disenrollment from the Tribe, you requested a hearing before the Business Council.

On December 1, 2008, as you requested, the Business Council conducted your disenrollment hearing. As evidenced by the transcripts of the hearing, you were in attendance and requested to reschedule your hearing to have legal representation. Your hearing was rescheduled for December 3, 2008, and as evidenced by the transcripts of the hearing on December 3rd, you were not present.

On December 10, 2008, after considering the evidence you provided at your disenrollment hearing on December 3, 2008, the Business Council issued you their decision by Tribal Resolution No. 12-05-08-KKL that you are not eligible for membership in the Tribe and that you were disenrolled from the Robinson Indian Rancheria. You were disenrolled because your membership with the Tribe was based on being a lineal descendant of Marie Boggs Quitiquit who is/was adopted under the now stricken Section 8 of Ordinance No. 1. Article III of the Tribe's Constitution, which addresses Tribal membership, does not include a provision for

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<sup>3</sup> Department of the Interior, Bureau of Indian Affairs, Indian Census Roll, of the Robinson Rancheria dated November 16, 1940 taken by Michael Harrison, Field Agent.

membership as a result of inclusion on the 1940 Census Rolls-this membership criteria was adopted pursuant to the now stricken Section 8 of Ordinance No.1.

On December 22, 2008, you filed your Notice of Appeal with the Superintendent, who forwarded your appeal to the Regional Director. In your appeal, you allege that the Business Council violated the Indian Civil Rights Act; the Constitution, Ordinance Number 1, and other tribal laws by, denying you due process and the equal protection of tribal and federal laws; subjecting you to an ex post facto law and targeting members, including yourself, in the enactment of a bill of attainder meant to strip you of your membership. Therefore, you have indicated that Resolution No. 12-05-08-KKL should be deemed invalid, ineffective and the decision to disenroll you should be overturned.

In support of your enrollment with the Tribe, you indicated that your enrollment with the Tribe was in accordance with Ordinance No. 1, Section 2, Eligibility, (E.), which provides that membership in the Robinson Rancheria shall consist of the following categories: "Persons duly adopted into membership in accordance with Section 8 of this ordinance." You further indicated that Resolution 12-7-94-C, dated December 1, 1994, approved by the Business Council on December 20, 1994, initially approved your inclusion on the Official Membership Roll of the Robinson Rancheria along with 301 other individuals who were either listed, or descended from an individual listed on the 1940 Census Rolls. Your name is listed on the approved Robinson Rancheria Approved Member List dated December 20, 1994, and your Roll Number appears as 17005.

Furthermore, in support of your enrollment with the Tribe, you indicated that again on December 12, 1997, at a special meeting of the Business Council, with a quorum present, the Business Council, among other things, decided to repeal Section 8 of Ordinance No. 1, which allowed for membership in the Tribe by means of adoption for individuals whose names appear on the Robinson Rancheria Census Roll of November 16, 1940, or their lineal descendants. However, the Business Council indicated that the repeal of Section 8 of Ordinance No. 1 would not affect the membership of any person recognized as a member as of the date of repeal, or the entitlement to membership of a lineal descendant of any such person. In the minutes of the December 12, 1997 Special Meeting, then Chairman, Curtis F. Anderson Jr. explains that "whoever is on the membership list 'from right now' are members and that any action to change the provisions of Enrollment Ordinance Number 1 would be effective after its ultimate approval and would not 'bother the people (members) that's already here'. Business Council member Tracy Avila further stated that "it was her understanding that the Business Council was not trying to take anyone off (disenroll) who was enrolled in accordance with the provisions of Section 8 of Ordinance No.1. Striking of Section 8 would only affect those applying for membership from the date of its approval (by the Secretary) forward. After thorough discussion of the issues Business Council member, Tracy Avila motioned to stop adoption by repeal of Section 8 of Ordinance No. 1, "said repeal to operate prospectively from December 12, 1997, and provided that said repeal shall not affect the membership of any person recognized as a member, as of the date of repeal, or the entitlement to membership of a lineal descendant of any such person." The motion was seconded by Business Council member Wilbur Augustine and the motion carried unanimously 5 for, 0 against, and 0 abstained. Therefore, again in support of your membership with the Tribe

you have claimed that Resolution 12-7-94-C dated December 12, 1994, indicates that the Business Council approved your membership along with the other 301 individuals in the Tribe.

Based on the above, you claim that Resolution 11-7-08-A is moot with regard to striking Section 8 from Ordinance No. 1, because, when it originally took action on Section 8 on December 12, 1997, the Business Council sought to preserve and protect the membership rights of those previously enrolled in accordance with Section 8.

You further claim that the Business Council's actions in striking Section 8 of the Enrollment Ordinance violated the Constitution and the Indian Civil Rights Act as follows: First, you were denied timely or adequate notice regarding your right to appeal the disenrollment action, you were never notified of your right to retain counsel, you were denied your right to due process, and you were denied the basic right of appearing before and having your enrollment determined by an impartial decision maker as the Business Council acted as prosecutor, judge and jury in the proceedings.

You additionally claim the Business Council's passage of Resolution No. 11-7-08-A and its retroactive application of its provisions created an ex post facto law, and that the passage of Resolution No. 11-7-08-A targeted individuals who had been previously enrolled under Section 8 and amounts to the passage of a bill of attainder, a legislative act that singles out an individual or group for punishment without a trial. Therefore, based on the numerous alleged violations of tribal governing documents and federal laws, you respectfully request that the Business Council's decision to disenroll you from the Tribe be deemed invalid.

The Business Council asserts that a provision in Section 8 of Ordinance No. 1 conflicts with the Tribal Constitution. Therefore, by Tribal Resolution No. 11-7-08-A, the Business Committee deleted the provision in Section 8 of Ordinance No. 1, which had allowed certain adopted individuals to become members of the Tribe. Pursuant to the same Tribal Resolution No. 11-7-08-A, the Business Committee determined that an individual who had been adopted into the Tribe was no longer eligible for membership due to the fact that Section 8 of Ordinance No. 1 had been stricken from Ordinance No. 1, on the grounds that it conflicted with the membership provisions of the Tribe's Constitution. Therefore, the Business Council felt that their action to remove Section 8 from the Enrollment Ordinance was appropriate.

The Business Council, by letter dated November 20, 2008, notified you by certified mail, return receipt requested, that you were being considered for disenrollment from the Tribe and notified you of your rights to request a hearing and your right to bring any and all information, documents, and records that you felt necessary in contesting their disenrollment action.

The decision of the Business Council to disenroll you was accomplished by Tribal Resolution No. 12-05-08-KKL, as adopted by the Business Council, which officially disenrolled you from the Tribe. The Business Council notified you by certified mail, return receipt requested, that the Business Council had taken action to disenroll you and pursuant to Ordinance No. 1, Section 18, you have a right to appeal the decision within thirty days of receipt of the Notice to the Secretary of the Interior.

Historically, tribal membership has been considered a matter within the exclusive province of the tribes themselves. As was observed by the Supreme Court in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 n.32 (1978), "[a] tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community." Thus, the Federal courts have traditionally refrained from intruding into tribal membership decisions. See, e.g., *Smith v. Babbitt*, 100 F.3d 556, 559 (8th Cir. 1996), cert. denied, 522 U.S. 807 (1997), quoting from the district court decision it was reviewing: "[T]here is perhaps no greater intrusion upon tribal sovereignty than for a federal court to interfere with a sovereign tribe's membership determinations."

In support of the tribes' inherent rights to determine their membership and their right to self government, normally these matters are for the tribes' governing bodies to decide, particularly membership issues, as supported by several Interior Board of Indian Appeals (IBIA) decisions and in particular the Martinez case. 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."

In accordance with the well-established Federal policy of respect for tribal self-government, which recognizes the right of tribes to interpret their own laws, the Board has cautioned restraint on the part of BIA in undertaking to interpret tribal law. e. g., *Decorah v. Minneapolis Area Director*, 22 IBIA 98 (1992). In *Decorah*, the Board stated that "BIA should refrain from interpreting tribal law unless it must do so in order to make a decision which it is required to make in furtherance of its government-government relationship with a tribe." *Decorah v. Minneapolis Area Director*, 22 IBIA 98, 102 (1992), ("If, however, the government-to-government relationship does not require that the BIA render a particular decision, for which an interpretation of tribal law must be made, BIA officials should exercise restraint in undertaking to interpret tribal law, in order to avoid conflict with well-established Federal policy encouraging tribal self-determination and respecting the right of tribes to interpret their own laws.").

### **Conclusion**

The Tribe's Constitution at Article III, Section 3, provides that the official membership roll shall be prepared in accordance with an ordinance adopted by the governing body. The ordinance is to contain provisions for enrollment procedures and provisions for keeping the roll current. Section 3 includes ambiguous language concerning Secretarial approval of either the Tribal roll or the Enrollment Ordinance. Applying canons of Indian construction, the benefit of the ambiguous language would be given to the Tribal interpretation, which is that of the requirement for Secretarial approval applies to the membership roll. However, the issue of whether Secretarial approval must be provided with respect to either the Tribal roll or the Enrollment Ordinance in accordance with the Tribe's Constitution is not determinative with respect to the Business Committee's disenrollment actions. Rather, the plain language of the Enrollment Ordinance preamble (the "Now, Therefore, Be It Known" section) requires that the Secretary of the Interior approve the Tribe's Enrollment Ordinance. The Enrollment Ordinance Section 18 also provides that any disenrollment decision by the Tribe may be appealed to the Secretary of the Interior. Consequently, the BIA is required by the Tribe's Enrollment Ordinance both to



approve the Ordinance and make a decision regarding any disenrollment decision that is appealed. Because the Tribe's Ordinance requires action by the BIA, such action is consistent with and in furtherance of BIA's government-to-government relationship with the Tribe. The BIA is therefore authorized to review any amendment to the Enrollment Ordinance, and determine on appeal whether enrollment or disenrollment is consistent with the Ordinance and the Tribe's governing Constitution. The question at hand, then is whether the Business Council had authority to remove Section 8 from the Enrollment Ordinance, and whether removal of Section 8 was appropriate and can support the Business Council's decision to disenroll you.

Enrollment Ordinance No. 1 generally addresses Tribal membership consistent with Article III, Section 3 of the Constitution. As noted, Ordinance No. 1 also provides that disenrollment decisions may be appealed to the Secretary of the Interior. Because disenrollment decisions require Secretarial approval, any approval must be premised upon one of the basis for disenrollment set forth in the Enrollment Ordinance. One of the basis for disenrollment is error. As noted, Secretarial approval of the Enrollment Ordinance is required, so any amendment of the Enrollment Ordinance also requires Secretarial approval until such time as the requirement for Secretarial approval is removed. Hence, the issue is whether the Business Committee correctly determined that it was in error to include Section 8 in the Enrollment Ordinance on the grounds that it was contrary to the Tribe's Constitution, and whether the Secretary may accordingly approve both the action removing Section 8 from the Enrollment Ordinance and the disenrollment action on the grounds that enrollment pursuant to the provisions of Section 8 was in error.

According to Resolution No. 11-7-08-A, amendment of the Enrollment Ordinance was undertaken because Section 8 of the Enrollment Ordinance is inconsistent with the Constitution, which prescribes Tribal membership requirements in Article III, Section 1. The provisions of the Constitution were approved by the Tribal Council in a certified Secretarial election. Article III, Section 3 of the Constitution states that an official membership roll shall be prepared in accordance with an ordinance adopted by the Business Committee, the governing body, and approved by the Secretary. Such ordinance is to contain enrollment procedures and provisions for maintaining the roll. There is no grant of authority in the Constitution that would allow the Business Committee to promulgate an ordinance that would change Tribal membership requirements and affect the tribal membership roll, and any action to do so would be in error.

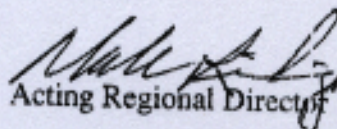
Since no authority was provided in the Tribal Constitution for the Enrollment Ordinance to address membership criteria, there was no Constitutional authority for the Tribe to include membership criteria in Section 8 of the Enrollment Ordinance and its inclusion in the Ordinance was in error. Removal of Section 8 from the Enrollment Ordinance was consistent with the Tribal Constitution because there is no authority in the Constitution for the Ordinance promulgated by the Business Committee to change Tribal membership requirements. It appears that the Resolution No. 11-7-08-A removing Section 8 appropriately brought the Enrollment Ordinance in line with the Tribal Constitution by limiting the provisions of the Enrollment Ordinance to enrollment procedures, rather than also addressing membership. The Enrollment Ordinance requires Secretarial approval, which was provided, and removal of Section 8 from the Enrollment Ordinance was appropriate. The Business Council<sup>4</sup> did not have the Constitutional

<sup>4</sup> The Business Council that signed the Certificate of Approval on December 12, 1994

authority pursuant to Article VIII to change membership criteria, and the addition of that Section to the Enrollment Ordinance was in error. In order to change membership requirements, a Constitutional amendment would be required, which would require a majority vote of the qualified voters of the Rancheria pursuant to Article XVI, Section 1. Consequently, enrollment in accordance with Section 8 was in error. Accordingly, support for your disenrollment is found under Section 18 of the Enrollment Ordinance, which provides grounds for disenrollment when a person obtained enrollment by error.

Based on the documents that the Parties have provided; I have determined that the Business Council's decision was within their authority and they did not violate either Federal or Tribal laws. Therefore, I am affirming the Business Council's decision to disenroll you from the Robinson Indian Rancheria and your disenrollment is effective December 10, 2008. Furthermore, pursuant to the delegated authority from the Director, Bureau of Indian Affairs and pursuant to 25 CFR § 62.10(a), my decision regarding this matter shall be final for the Department.

Sincerely,

  
Acting Regional Director

cc: See Distribution List:

Distribution List:

**CERTIFIED MAIL-RECEIPT REQUESTED 7009 3410 0000 1319 1638**  
**RETURN RECEIPT REQUESTED**

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