

Mishewal Wappos of Alexander Valley tribal recognition and land acquisition demands

Napa County Position: We support tribal recognition only through Congress; we oppose Las Vegas casino-style gaming in Napa Valley.

TRIBAL RECOGNITION

Q: How do tribes typically get recognition?

Congress has the authority to grant federal recognition to an Indian tribe, but Congress delegated that power in 1950 to the Secretary of the Interior to adopt regulations setting forth criteria for federal recognition.¹

In 1978, the Secretary adopted the current administrative process managed by the Bureau of Indian Affairs (BIA) to recognize Indian tribes.² The BIA's administrative process imposes seven criteria that groups of Native Americans must meet if they are to be treated as a federally-recognized Indian tribe. Further, under that process, counties and other interested parties have substantial opportunity to participate in the proceedings.³

The federal Court system does not have power to restore tribal status.

Q: Why and when did Congress terminate the Wappos⁴ tribal status?

In 1958, Congress passed the California Rancheria Act⁵ providing for the termination of federal supervision over a number of Rancherias, including the Alexander Valley Rancheria, which a group of local Indians had occasionally occupied starting in the early 1900's, when the Rancheria was established for their benefit. The Indians in Alexander Valley were of mixed Pomo and Wappo ancestry and had no land of their own. These Pomo/Wappo Indians largely abandoned the Rancheria by the 1940s. The Secretary of Interior proposed a distribution plan for the land in the Alexander Valley Rancheria on July 6, 1959, and the few Indians then residing on the Rancheria unanimously voted to accept the distribution plan on September 25, 1959. The federal trust lands of the Alexander Valley Rancheria were thus distributed to the few Pomo/Wappos living on the Rancheria, and the relationship of the Alexander Valley Indians with the federal government was officially terminated by Congress in 1961.

In 1979, a group of Native Americans claiming to be related to the Pomo/Wappo Indians who resided on the Alexander Valley Rancheria sued the United States government for restoration of their tribal status as part of the Tillie Hardwick class action lawsuit. They

¹ 25 U.S.C. § 2

² 25 C.F.R. § 83.7

³ See, e.g., 25 C.F.R. § 83.10(i) (opportunity for interested parties to submit evidence and arguments to support or rebut petition); id. § 83.10(j)(2) (opportunity to request and participate in formal meeting); and id. § 83.11 (right to request reconsideration).

⁴ The stated official name of the group bringing the current lawsuit is "the Mishewal Wappo Tribe of Alexander Valley".

⁵ Pub. L. No. 85-671, 72 Stat. 619, amended by Pub. L. No. 88-419, 78 Stat. 390

asserted that the federal government had unlawfully distributed the Rancheria land and otherwise violated the requirements of the Rancheria Act. The claims of the Pomo/Wappos were dismissed.

Q: Why are the Wappos seeking re-recognition through the Court?

A group of Native Americans using the name “Mishewal Wappo Tribe of Alexander Valley” has recently claimed to be the descendants of the historic group of Pomo/Wappo Indians who occasionally resided on Alexander Valley Rancheria. This modern tribal entity has asked Congress to set aside the 1961 termination of federal supervision over the Alexander Valley Rancheria and its Indians, and restore the modern entity as a federally recognized tribe. Various efforts to obtain that relief through Congress have failed. This group also petitioned the BIA for restoration but the BIA says that its rules prevent it from restoring tribal status if terminated by Congress. Specifically, Assistant Secretary of Interior Larry Echo Hawk stated in a June 22, 2009 letter: “Because the Rancheria Termination Act is still in full force and effect, the Department of Interior does not have authority to restore [the Wappos] Tribe administratively.”

TAKING LAND INTO TRUST

Q: How do Native Americans acquire land in trust?

The BIA has established a process, whereby specific lands can be taken into trust by the BIA, and held for Native Americans. Once taken into trust, such lands are largely removed from the taxing and regulatory authority of the state, counties and local governments. The land-into-trust administrative process accords local jurisdictional governments (e.g., Napa County) the right to be heard with respect to these jurisdictional impacts.

With its lawsuit, however, the Mishewal Wappo Tribe of Alexander Valley seeks to have a judge order the Secretary of the Interior to take unidentified lands into trust that lie within the alleged historic aboriginal territory in Alexander Valley (not limited to the former Rancheria) and thereby evade the administrative process and public comment for such land acquisitions.⁶

Q: What uses could the Wappos have on trust land?

Once land is taken into trust for the benefit of the Mishewal Wappo Tribe of Alexander Valley, the Tribe exercises governmental jurisdiction over it. The Tribe can use the land for any purposes permitted under its tribal laws (as tolerated by the federal government), even if local land use law prohibits such use. Examples include a hazardous waste dump, an illegal pay-day lender operation, or more mainstream uses such as a big box store like Walmart, a mega-winery, a housing subdivision, or a myriad of uses not otherwise allowed under local land use law without a vote of the people. There are special rules that enable casino-style gaming; see below.

⁶ See 25 C.F.R. part 151

Q: How do Native Americans acquire land in California for gaming?

Congress passed the Indian Gaming Regulatory Act (IGRA) on October 17, 1988 to provide for gaming to occur only on "Indian lands," which generally means trust lands over which the tribal government exercises jurisdiction.⁷ IGRA further restricts gaming to lands acquired by a tribe prior to IGRA's 1988 enactment. However, a number of exceptions to the post-1988 land acquisition gaming bar exist and are the source of particular controversy in California.

These exceptions include: initial reservations of newly recognized or acknowledged tribes,⁸ lands obtained as "the restoration of lands for an Indian tribe that is restored to federal recognition" (so-called "restored lands"),⁹ and a "two-part test" whereby the Secretary of Interior and the State governor can concur that gaming would be in the tribe's best interest and not detrimental to the surrounding community.¹⁰

The Mishewal Wappo Tribe of Alexander Valley in its lawsuit also seeks a court order to compel the Secretary to deem lands taken into trust for them to qualify as "restored lands." Such action by the Secretary would make all lands immediately available to be developed for casino-style gaming purposes, under one of the exceptions described above.¹¹ In other words, if the Tribe is successful with its lawsuit, it could sidestep the required two-part test and avoid local community input altogether.

Q: Have the Wappos said they want gaming?

Yes. In their lawsuit, the Tribe seeks a court order to compel the Secretary to take unidentified lands in Napa and Sonoma into trust for them and to deem such lands qualify as "restored lands," which is the specific land status they need to build and operate a casino. This indicates a clear intent on their part to engage in large-scale gaming.

In addition, as reported by the Press Democrat newspaper on February 18, 2012, the Wappos' lawsuit is being funded by an unnamed investor who would share any profits from future tribal enterprises.

⁷ See 25 U.S.C. § 2703(4)

⁸ 25 U.S.C. § 2719(b)(1)(B)(ii)

⁹ 25 U.S.C. § 2719(b)(1)(B)(iii)

¹⁰ 25 U.S.C. § 2719(b)(1)(A)

¹¹ 25 U.S.C. § 2719(a).