

CONSTITUTION
of the
ELK VALLEY RANCHERIA
CALIFORNIA

Approved December 27, 1994
by

Hilda A. Manuel
Acting Deputy Commissioner of Indian Affairs

CONSTITUTION
OF THE
ELK VALLEY RANCHERIA
CALIFORNIA

PREAMBLE

We, the Indians of the Elk Valley Rancheria, located near the town of Crescent City, Del Norte County, California, in order to form a recognized representative organization to manage all tribal affairs; to preserve and make secure our tribal homeland, heritage and identity; to safeguard our interests and general welfare; to improve the economic conditions of ourselves and our Rancheria; do hereby approve and adopt this Constitution pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended.

ARTICLE I - PURPOSE

The Indians of the Elk Valley Rancheria, hereinafter referred to as the "Tribe," pursuant to the Act of June 18, 1934, and the judgment entered in Hardwick v. United States of America, U.S. District Court for the Northern District of California, No. C-79-1710-SW, do hereby adopt this Constitution which shall henceforth constitute the governing document of the Tribe, for the purpose of governing ourselves, to promote and protect the interests of the Tribe, and to enhance peaceful and cooperative relations with other tribal, Federal, State, and local government(s) and other entities.

ARTICLE II - TERRITORY

The jurisdiction of the Elk Valley Rancheria shall extend to the territory within the boundaries of the Elk Valley Rancheria, as established in the judgment entered in Hardwick v. United States of America, U.S. District Court for the Northern District of California, No. C-79-1710-SW, and to such other lands as may be hereafter acquired by or for the Tribe, whether within or without said boundary lines. The jurisdiction of the Elk Valley Rancheria shall also extend to affiliated Indian country which is located contiguous to the Elk Valley Rancheria or other lands acquired by or for the Tribe.

ARTICLE III - MEMBERSHIP

Section 1. Membership. The membership of the Elk Valley Rancheria shall consist of the following:

- (a) All persons whose names are listed as distributee on the Plan for the Distribution of Assets of the Elk Valley Rancheria approved by the Secretary of the Interior on January 15, 1960, pursuant to the California Rancheria Act of August 18, 1958, as amended. The list of distributees contained in the Distribution Plan shall constitute the base membership roll of the Rancheria.
- (b) Descendants of persons whose names are listed on the base membership roll, Provided That he/she possesses at least one-eighth degree or more Indian blood.
- (c) All children born after the adoption of this constitution to any member who are one-eighth degree or more Indian blood.

Section 2. Dual Membership Prohibited. No person shall be eligible to be a member of the Elk Valley Rancheria if that person is enrolled in another federally recognized Indian tribe. Any member of the Elk Valley Rancheria who applies to be and is accepted as a member of another federally recognized tribe shall be subject to disenrollment and the forfeiture of all rights and benefits to which Elk Valley Rancheria tribal members are entitled by virtue of their membership.

Section 3. Regulation of Membership. The Tribal Council shall have the power to enact ordinances, consistent with this constitution and applicable Federal law, governing future membership, including application and appeal procedures, loss of membership, and adoption of members. Said ordinance shall provide for preparation and maintenance of an official membership roll and an enrollment committee.

Section 4. Relinquishment of Membership. Any person who wishes to relinquish membership in the Elk Valley Rancheria must submit such relinquishment in writing to the Tribal Council Chairperson who shall cause tribal enrollment records to be adjusted accordingly. However, any member who voluntarily relinquishes membership shall not again be eligible to enroll as a member of the Elk Valley Rancheria.

ARTICLE IV - GOVERNING BODY

Section 1. The governing body of the Tribe shall be the Elk Valley Tribal Council. It shall be the duty of the Tribal Council to govern all the people, resources, land, and water reserved to the Tribe in accordance with this Constitution, and under such laws as may hereinafter be adopted by the Tribal Council.

Section 2. Composition. The Tribal Council shall consist of a Chairperson, Vice-Chairperson, Secretary, Treasurer and five (5) additional Council persons elected by secret ballot of the eligible voters of the Rancheria. Except as provided in Article IX herein, each Tribal Council member shall serve for a term of four (4) years. Selection of Council officers shall occur pursuant to an election ordinance which may authorize at large election of officers. In the absence of such an ordinance, officers shall be selected by the Council from its membership, following each election.

Section 3. Bonding. The Tribal Council shall require all fiscally responsible tribal officials and employees to be bonded.

ARTICLE V - POWERS OF THE TRIBAL COUNCIL

Section 1. Enumerated Powers. The Tribal Council shall exercise all the powers and responsibilities provided under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended, and such powers and responsibilities hereinafter provided subject to any limitations imposed by Federal law and this Constitution.

- (a) To consult, negotiate, contract, or conclude agreements with Federal, State, local and tribal governments and with private persons and organizations;
- (b) To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior so long as such approval is required by Federal law;
- (c) To make recommendations to the Secretary of the Interior, or to his authorized representative, with regard to all appropriation estimates for all projects which are for the benefit of the members of the Tribe, prior to the submission of such estimates to the Office of Management and Budget and Congress;
- (d) To borrow money from public and private sources and to pledge, mortgage or assign tribal assets other than real property and tribal assets from which income is derived and which is held in trust by the United States of America;

- (e) To set aside and to expend tribal funds for tribal purposes;
- (f) To impose taxes, fees and assessments on all persons, property and any business activities located or conducted within tribal jurisdiction; Provided, no tax shall be imposed on real property held in trust by the United States of America;
- (g) To charter and regulate corporations, cooperatives, associations, special districts, housing authorities; educational and charitable institutions, political subdivisions and other entities;
- (h) To license and regulate the conduct of all business activities within tribal jurisdiction;
- (i) To establish enterprises as branches or agencies of the tribal government, and otherwise to engage in business activities and projects which promote the economic well-being of the Tribe and its members;
- (j) To purchase and to acquire in other ways land and other property;
- (k) To manage, develop, protect and regulate the use of water, minerals, and all other natural resources within tribal jurisdiction;
- (l) To enact laws and codes governing the conduct of individuals and prescribing disciplinary action for offenses against the Tribe; to maintain order; to protect the safety and welfare of all persons within tribal jurisdiction; and to provide for the enforcement of the laws and codes of the Tribe;
- (m) To establish tribal courts and administrative bodies, and to provide for the courts' jurisdiction, procedures, and a method for the selection of judges; to seek retrocession of jurisdiction from the State of California;
- (n) To assert as a defense to lawsuits against the Tribe the sovereign immunity of the Tribe;
- (o) To regulate domestic relations; to provide services for the health, education and welfare of all persons within tribal jurisdiction; to reassume jurisdiction and regulate child welfare proceedings as provided in the Indian Child Welfare Act of 1978 (P.L. 95-608);

- (p) To appoint, direct and set the compensation of all tribal Business Administrators or Managers and other tribal employees and to establish policies and procedures for the employment of tribal personnel;
- (q) Subject to any limitations contained in this Constitution, to delegate any of the foregoing powers vested in the Tribal Council to subordinate boards or committees, tribal officers, or tribal agents; and
- (r) To take all actions which are necessary and proper for the exercise of the powers delegated to the Tribal Council or to any person or committee under the supervision of the Tribal Council.

Section 2. All rights, powers and authorities expressed, implied, or otherwise vested in the Tribe not expressly referred to in these articles, shall not be hereby abridged but shall be exercised by the Tribal Council through the adoption of appropriate amendments to this Constitution.

ARTICLE VI - TRIBAL COUNCIL OPERATIONS

Section 1. Tribal Council Meetings. All meetings of the Tribal Council shall be open to all tribal members, Provided, However, That the Council may recess to discuss any matter involving litigation or the privacy of an individual member in a closed or executive session if the general subject matter to be discussed is expressed in the motion calling for such session and no final action is taken in the closed or executive session. Except as provided by this Constitution or other laws of the Elk Valley Rancheria, all meetings of the Tribal Council shall be conducted in accordance with Robert's Rules of Order. Meetings shall be held in accordance with the following provisions:

- (a) Frequency. Regular monthly meetings of the Tribal Council shall be held on the Elk Valley Rancheria as designated by a resolution. The Tribal Council may set more frequent regular meetings as are necessary.
- (b) Quorum. The Tribal Council quorum is hereby established as five (5) Council members.
- (c) Voting. Each member of the Tribal Council shall have one (1) vote; the Chairperson may vote only in case of a tie on all matters.

- (d) Special Meetings. Special meetings of the Tribal Council may be called by the Chairperson, and shall be called when requested by a majority of the Tribal Council, or upon written request of a majority of eligible voting members of the tribe. Reasonable notice shall be given in regard to any special meetings, and shall specify the purpose of the meeting. Emergency meetings may be provided for in a Tribal Council resolution.
- (e) Misconduct. Any Tribal Council member or persons of the General Council displaying actions of misconduct at any meetings shall, upon majority vote of the Tribal Council, be ejected from the meeting.

Section 2: Retention of Tribal Enactments and Other Records. Copies of all statutes, codes, resolutions and ordinances adopted by the Tribal Council, its committees and sub-committees shall be maintained at the tribal office, and shall be available for inspection upon reasonable notice during regular business hours to all enrolled members of the Tribe.

Master copies of all records and other papers relating to the conduct of tribal business shall be maintained at all times at the tribal office and shall not be removed except pursuant to an ordinance governing the maintenance and archiving of tribal records. Additional copies shall be made as necessary for distribution to council members or as needed for the regular conduct of business by the Tribe, its officers, agents and employees.

ARTICLE VII - DUTIES OF THE OFFICERS

Section 1. Chairperson. The Chairperson shall exercise the following powers as the chief executive officer of the tribe:

- (a) To preside over and vote in cases of a tie vote at all meetings of the Tribal Council and General Council.
- (b) Subject to the approval of the Tribal Council, to establish such boards, committees, or subcommittees as the business of the Tribal Council may require, and to serve as an ex-officio member of all such committees and boards;
- (c) Subject to the approval of all contracts by the Tribal Council, to serve as a contracting officer or agent for the Tribe including authority to retain legal counsel;
- (d) Subject to such regulations and procedures as may be prescribed by enactment by the Tribal Council, and subject to approval by the Tribal Council, to grant pardons or restore tribal members to eligibility for elective office in tribal government or to eligibility for other tribal benefits;

- (e) The Chairperson shall not hold other tribal offices or engage in private remunerative employment which may pose a conflict of interest with the tribe's enterprises or business activities during his/her term of office.

Section 2. Vice-Chairperson. The Vice-Chairperson shall, in the absence or incapacity of the Chairperson, perform all duties and assume all the responsibilities vested in the Chairperson. The Vice-Chairperson shall, upon request of the Council, assist in carrying out the duties of the Chairperson. The Vice-Chairperson shall perform any other duties as the Council may direct.

Section 3. Secretary. The Secretary shall call the roll; handle all official correspondence of the Tribal Council; keep the minutes of all regular and special meetings of the Tribal Council and General Council; certify to the Superintendent of the Bureau of Indian Affairs the duly elected officers of the Tribal Council within fifteen (15) days from the date of any election; and attest to all resolutions and ordinances.

Section 4. Treasurer. The Treasurer shall accept, receipt for, keep and safeguard all funds under the exclusive control of the Tribe by depositing them in a bank insured by an agency of the Federal Government, or an appropriate account or tribal trust account with the Bureau of Indian Affairs, as directed by the Tribal Council, and shall keep or cause to be kept an accurate record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in the custody of the Tribal Council except as directed by the Tribal Council.

The Treasurer shall be required to give a surety bond satisfactory to the Tribal Council, and the Tribal Council shall be responsible for the costs.

All checks drawn on tribal funds shall be signed and all vouchers shall be approved for payment by the Treasurer, or at least one officer, or the designated check signers of the Tribe, in accordance with a written fiscal manual setting forth a procedure approved and adopted by the Tribal Council by resolution.

ARTICLE VIII - RIGHTS OF MEMBERS

Section 1. All members of the Tribe shall be accorded by the governing body equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe, and no member shall be denied any of the rights or guarantees set forth in the Indian Civil Rights Act of April 1, 1968 (82 Stat. 77) including but not limited to freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law.

Section 2. Annual General Membership Meeting. The general membership of the Tribe shall meet at least once every year on or near the Elk Valley Rancheria, the time, date and location to be established by the Tribal Council.

- a. Notice: At least thirty (30) days prior to the date of the annual meeting, written notice of the meeting and the agenda for the meeting shall be posted at the tribal office setting forth the date, time, and place that the annual meeting will be held.
- b. Tribal Council Attendance. All members of the Tribal Council shall attend all general membership meetings and report on those items on the agenda. Failure of any council member to attend a general membership meeting, Except for travel on tribal business, illness, the death or illness of a member of the council member's immediate family, shall be grounds for removal. (Immediate family shall mean father, mother, brother, sister, spouse, child, grandparent or grandchild.)
- c: Duties of the Tribal Council. The Chairperson shall preside over the meeting of the general membership. The Council shall prepare at least thirty (30) days before the general membership meeting an agenda for the meeting. The items on the agenda shall include but not be limited to a written report by the Treasurer on the finances of the tribal government; the names of persons enrolled, disenrolled or who relinquished membership during the fiscal year immediately preceding the meeting; status of litigation to which the Tribe is a party; a written report by the Chairperson on all enactments of the Tribal Council during the year immediately preceding the meeting with a short summary explaining each law.

ARTICLE IX - ELECTIONS

Section 1. Tribal Council Election. The first election under this Constitution shall be held within ninety (90) days of the effective date of this Constitution at which time a system of staggered terms shall be established pursuant to the requirements of this Constitution. Elections shall be held by secret ballot. The five (5) members receiving the highest number of votes in the first election shall hold office for a period of four (4) years and the four (4) remaining members shall hold office for a period of two (2) years. Thereafter, all the terms of office shall be for a period of four (4) years. Council members shall hold office until their successors are duly elected and installed. Installation of newly elected officers shall occur at the next regularly scheduled council meeting following the election.

Section 2. Qualifications. Any enrolled member eighteen (18) years or more of age shall be eligible to vote in tribal elections. Any enrolled member eighteen (18) years or more of age shall be eligible for election to the Tribal Council, Provided, That any person who has been convicted of a crime involving moral turpitude or an offense against the Tribe or its agents or employees while serving in their official capacities, and who has completed any sentence/probation or parole within the five years preceding the election shall be ineligible to hold office on the Tribal Council; Provided, Further That any person against whom the Tribe has obtained a civil judgment and the judgment is outstanding or was paid in full within the five years preceding the election shall be ineligible to hold office on the Tribal Council.

Section 3. Vacancies and Removal From Office. If a Council member or official shall die, resign, be removed or recalled from office, be found guilty of a felony or a misdemeanor involving moral turpitude, the Tribal Council shall declare the position vacant and shall appoint a qualified member of the Tribe to fill the unexpired term.

The Tribal Council may by a majority vote expel any member for neglect of duty or gross misconduct. Neglect of duty shall include, but not be limited to unexcused absence from three consecutive regularly scheduled council meetings. Before any vote for expulsion is taken, such member or official shall be given a written statement of the charges against him or her at least five (5) days before the meeting of the Tribal Council at which the matter of expulsion is to be decided, and the accused shall be given an opportunity to answer any and all charges at the Tribal Council meeting.

Section 4. Election Day. Elections shall be held as designated by an election ordinance as provided in Section 5 of this Article.

Section 5. Election Ordinance. The Tribal Council shall adopt an election ordinance consistent with this Constitution within six (6) months of the effective date of this Constitution which shall set forth the procedures to be followed in conducting elections called for in this Constitution. The ordinance shall include provisions for conducting all tribal elections by secret ballot, rules for calling elections, absentee balloting procedures, procedures for nominations, voter registration, maintenance of an eligible voter's list, the form of ballot, establishment of polling places, selection of election officials, validation of petitions and the resolution of election disputes.

ARTICLE X - POPULAR PARTICIPATION IN GOVERNMENT

Section 1. Referendum. The Tribal Council shall, upon receipt of a petition signed by thirty percent (30%) of the qualified voters, submit any enacted or proposed tribal legislation to a referendum of the eligible voters. The decision of a majority (51%) of the voters voting in the referendum shall be final, Provided, That thirty percent (30%) of the qualified voters voted. The Tribal Council shall call the referendum within thirty (30) days from the date of the receipt of a valid petition.

Section 2. Initiative. The qualified voters of the Tribe reserve the power to independently propose tribal legislation. Any proposed initiative measure shall be presented to the Tribal Council accompanied by a petition signed by not less than thirty percent (30%) of the qualified voters. Upon receipt of such a petition, the Tribal Council shall call a special election for the purpose of allowing the members of the Tribe to vote on the initiative measure. The election shall be held within thirty (30) days from the date a valid petition is presented. The decision of a majority (51%) of the voters voting in the initiative shall be final, Provided, That thirty percent (30%) of the qualified voters voted.

Section 3. Recall. Upon receipt of a petition signed by at least thirty percent (30%) of the qualified voters of the Tribe demanding a recall of any member of the Tribal Council, it shall be the duty of the Tribal Council to call a special election on the question of the recall. The election shall be held in a manner prescribed in a duly adopted election ordinance. The decision of a majority (51%) of the voters voting in the recall shall be final, Provided, That at least thirty percent (30%) of the qualified voters voted.

ARTICLE XI - SEVERABILITY

If any provision of this constitution shall in the future be declared invalid by a court of competent jurisdiction, the invalid provision/provisions shall be severed and the remaining provisions shall continue in full force and effect.

ARTICLE XII - INTERIM TRIBAL COUNCIL

Section 1. Council Operation. Until such time as this Constitution is approved by the Secretary of the Interior as set forth in Article XIV, Tribal Council elected by majority vote of the qualified voters of the Elk Valley Rancheria voting at an election called for that purpose shall govern in accordance with provisions of this Constitution.

Section 2. Savings Clause. All enactments of the Interim Tribal Council made prior to approval of this Constitution by the Secretary of the Interior, and not inconsistent with this Constitution or Federal law, shall be ratified upon adoption of this Constitution.

ARTICLE XIII - AMENDMENTS

This Constitution may be amended by a majority vote of the qualified voters of the Elk Valley Rancheria voting at an election called for that purpose by the Secretary of the Interior, Provided, That at least thirty percent (30%) of those entitled to vote shall vote in such election. No amendment shall become effective until approved by the Secretary of the Interior or his authorized representative.

It shall be the duty of the Secretary of the Interior to call for such an election or referendum on any proposed amendment at the request of a majority of the Tribal Council, or upon presentation of a petition proposing an amendment signed by at least thirty percent (30%) of the qualified voters of the Elk Valley Rancheria.

ARTICLE XIV - APPROVAL

This Constitution, when adopted by a majority vote of the qualified voters of the Elk Valley Rancheria voting at an election called for that purpose by the Secretary of the Interior in which at least thirty percent (30%) of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his/her approval, and shall be effective from the date of his or her approval.

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to a Secretarial election authorized by the Deputy Commissioner of Indian Affairs on August 26, 1994, the foregoing Constitution of the Elk Valley Rancheria, California, was submitted to the registered voters of the Elk Valley Rancheria and on November 23, 1994, was duly adopted/rejected by a vote of 16 for, and 0 against, and 2 cast ballots found spoiled or mutilated, in an election in which at least thirty percent (30%) of the 23 members registered to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended.


Chairman, Election Board


Election Board Member


Election Board Member


Election Board Member

Date: NOV 28 1994

memorandum

DATE: JAN 13 1995

REPLY TO ATTN OF: Superintendent, Northern California Agency

SUBJECT: Elk Valley Rancheria Constitution

TO: Area Director, Sacramento Area Office
Attention: Tribal Operations

AREA DIRECTOR	_____
DEPUTY DIRECTOR	_____
ASST. AD. ADMIN.	_____
ROUTE	<u>105</u>
RESPONSE REQUIRED	<u>no</u>
DUE DATE	_____
MEMO	_____ LTR _____
TELE	_____ OTHER _____

Ch. Smith
File
dy

Attached is a copy of the newly approved Constitution of the Elk Valley Rancheria, California, which was approved on December 27, 1994, by Hilda A. Manuel, Acting Deputy Commissioner of Indian Affairs, pursuant to the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended.

The election which permitted the qualified voters of the Elk Valley Rancheria to vote on the adoption or rejection of the proposed Constitution was called in accordance with an order issued on August 26, 1994, by the Acting Deputy Commissioner of Indian Affairs, and was held on November 23, 1994.

Election results reveal that the Constitution was duly adopted by a vote of 16 for and 0 against, in an election in which seventy-eight percent (78%) of the 23 members registered and were entitled to vote.

The original of this document has been sent to the Elk Valley Rancheria on this date.

U. Chin

Attachment

2001KIRWT 052

JAN 13 1995

RECEIVED

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240



IN REPLY REFER TO:

Tribal Government Services -TR
2611 MS/MIB

DEC 27 1994

THROUGH: SACRAMENTO AREA OFFICE

AREA DIRECTOR	_____
DEPUTY DIRECTOR	_____
ASST. AD. ADMIN.	_____
ROUTE	<i>Ops</i>
RESPONSE REQUIRED	<i>to</i>
DUE DATE	_____
MEMO	_____ LTR _____
TELE	_____ OTHER _____
_____	_____
_____	_____

Dr. Virgil Akins
Superintendent, Northern California Agency
Bureau of Indian Affairs
P. O. Box 494879
Redding, California 96049-4879

Dear Dr. Akins:

We have received the results of the election held on November 23, 1994, by the qualified voters of the Elk Valley Rancheria. The election was called in accordance with an order issued on August 26, 1994, by the Acting Deputy Commissioner of Indian Affairs, which permitted the qualified voters of the Elk Valley Rancheria to vote on the adoption or rejection of the proposed constitution.

As evidenced by the completed Certificate of Results of Election, the Constitution of the Elk Valley Rancheria, California, was duly adopted by a vote of 16 for and 0 against in an election in which seventy-eight percent (78%) of the 23 members registered and entitled to vote cast their ballots.

The Constitution of the Elk Valley Rancheria is hereby approved pursuant to the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me by 230 D.M. 2.4. Please deliver the enclosed original document to the Rancheria.

Sincerely,

/S/ HILDA MANUEL

~~Acting~~ Deputy Commissioner of Indian Affairs

Enclosure

cc: Area Director, Sacramento
Superintendent, Northern California Agency
Assistant Solicitor, Tribal Government & Alaska, MIB6456
Chief, Branch of Tribal Enrollment
Regional Solicitor, Sacramento

RECEIVED
JAN - 4 1995
SAO-TRIBAL OPS