

# NEVADA HISTORICAL SOCIETY QUARTERLY



Volume XXV

Fall 1982

Number 3

# NEVADA HISTORICAL SOCIETY QUARTERLY

Gary K. Roberts, *Editor*

## EDITORIAL BOARD

Mary Ellen Glass, *Chairman*  
*Oral History Project, University of Nevada, Reno*

Jerome E. Edwards, *Secretary*  
*University of Nevada, Reno*

Sheilagh Brooks  
*University of Nevada, Las Vegas*

Robert Davenport  
*University of Nevada, Las Vegas*

Donald Hardesty  
*University of Nevada, Reno*

James Hulse  
*University of Nevada, Reno*

Eugene Moehring  
*University of Nevada, Las Vegas*

Mary Rusco  
*Nevada State Museum*

Wilbur S. Shepperson  
*University of Nevada, Reno*

The *Quarterly* solicits contributions of scholarly or popular interest dealing with the following subjects: the general (e.g., the political, social, economic, constitutional) or the natural history of Nevada and the Great Basin; the literature, languages, anthropology, and archaeology of these areas; reprints of historic documents (concerning people, flora, fauna, historical or archaeological sites); reviews and essays concerning the historical literature of Nevada, the Great Basin, and the West.

Prospective authors should send their work to The Editor, *Nevada Historical Society Quarterly*, 1555 E. Flamingo, #238, Las Vegas, Nevada, 89109. Papers should be typed double-spaced and sent in duplicate. All manuscripts, whether articles, edited documents, or essays, should conform with the most recent edition of the University of Chicago Press *Manual of Style*. Footnotes should be typed double-spaced on separate pages and numbered consecutively. Correspondence concerning articles and essays is welcomed, and should be addressed to The Editor. © Copyright Nevada Historical Society, 1982.

The *Nevada Historical Society Quarterly* (ISSN 0047-9462) is published quarterly by the Nevada Historical Society at 1555 E. Flamingo, Las Vegas, Nevada 89109. The *Quarterly* is sent to all members of the Society. Membership dues are: Student, \$5; Regular Annual, \$15; Annual Sustaining, \$50; Life, \$500; Corporate Patron, \$100. Membership applications and dues should be sent to the Director, Nevada Historical Society, 1650 N. Virginia, Reno, Nevada 89503. Second-class postage paid at Las Vegas, Nevada. POSTMASTER: Send address changes to *Nevada Historical Society Quarterly*, 1650 N. Virginia, Reno, Nevada 89503.

# *The Organization of the Te-Moak Bands of Western Shoshone*

ELMER R. RUSCO

THE CONSTITUTION AND BY-LAWS of the Te-Moak Bands of Western Shoshone Indians of Nevada<sup>\*</sup> was approved by the Secretary of the Interior on August 24, 1938, and remains the governing document of this group. This article describes the process by which the constitution was developed and approved.\*

This case study is important for two major reasons. First, the research which led to it grew out of a wider concern for ethnic-cultural pluralism in the United States. Assuming that the survival of separate groups with cultures different from that of the dominant society is desirable, the question I have been concerned with is: what are the conditions and circumstances which will determine whether Native American (or Indian) survival will continue into the future? Clearly, one of the most important factors is the character and strength of Native American governments. Yet, curiously, there has been little study of how present Indian governments came into being and function today. A case study of the origins of one of Nevada's Native American governments can help to fill a scholarly gap.

Second, the Council created by approval of the Te-Moak Bands Constitution has played a crucial role in an important controversy over

---

\* Research was conducted chiefly at the National Archives Building in Washington, D.C., in the fall of 1978 and the spring of 1979. I am grateful to the University of Nevada, Reno, for a sabbatical leave which made this research possible. An earlier version was delivered at the 1980 meeting of the Great Basin Anthropological Conference.

ownership of several million acres in central Nevada.<sup>1</sup> It has been assumed by most Nevadans for some time that most of the lands in Nevada (and almost all of them in the area once occupied by Western Shoshones) are in federal ownership as public domain or reserved lands -- although the state government has recently asserted that title belongs to the state. Traditional Western Shoshones believe that *they* are still the owners of the lands in question; specifically, they assert that their aboriginal title has never been extinguished. The U.S. Ninth Circuit Court of Appeals has ruled that, despite extensive legal controversy for thirty years, the contentions of the Western Shoshones have never been litigated. While a decision in April, 1980 by U.S. District Court Judge Bruce Thompson holds that Western Shoshone title was extinguished in December, 1979, this opinion has been appealed and does not constitute a final determination of the issue; but it does represent a judicial finding that the presumed extinguishment of aboriginal title in the nineteenth century (which has been widely assumed) never took place.<sup>2</sup>

At most times during the last several decades while the land issue has been considered by the Indian Claims Commission and the courts, the Council created by the Te-Moak Bands Constitution has played an important role in the controversy. The Council has been held to be the sole representative of the Western Shoshones before the Claims Commission, although it has never in fact represented more than a minority of all Western Shoshones.<sup>3</sup> The decision of the Council for many years to press for money compensation for the loss of the lands in question, rather than to continue to assert their title claim, was decisive for a long time in preventing judicial consideration of the issue. For this reason too, an examination of the assumptions leading to adoption of the constitution by the Te-Moak Bands and its approval by the Secretary of the Interior is important.

The chief data for the study are the documents surviving in the National Archives; these necessarily give more fully the views of federal

---

<sup>1</sup> See Richard O. Clemmer, *Directed Resistance to Acculturation: A Comparative Study of the Effects of Non-Indian Jurisdiction of Hopi and Western Shoshone Communities*, Ph.D. dissertation in anthropology, University of Illinois, Urbana-Champaign, 1972, and "Channels of Political Expression Among the Western Shoshone-Goshutes of Nevada", in Ruth M. Houghton, editor, *Native American Politics: Power Relationships in the Western Great Basin Today* (Reno: Bureau of Governmental Research, University of Nevada, 1973), and the paper by Rusco cited in footnote 2.

<sup>2</sup> See Elmer R. Rusco, "The MX Missile and Western Shoshone Land Claims", unpublished paper, 1980.

<sup>3</sup> Clemmer, *Directed Resistance . . .*, *op. cit.*, p. 428, estimates that the Te-Moak Bands include only about one-quarter of all Western Shoshones. In 1979 litigation, it was estimated that the Te-Moak Bands include only 700 of approximately 4,000 Western Shoshones. Complaint, *Te-Moak Bands of Western Shoshone Indians v. Andrus and Bergland*, supplied to me by Dean K. Dunsmore, Attorney, Pollution Control Section, U.S. Department of Justice.



government officials than of Western Shoshones, since they are records created by the Bureau of Indian Affairs, but they do provide a basis for describing Indian views as well.

*The Federal Government and Western Shoshones  
Before the 1930s*

Although the federal government did not formally recognize the Te-Moak Bands before 1938, the history of prior federal actions toward Western Shoshones is important. Unfortunately, no really thorough study of this history has been made. The Ruby Valley Treaty was negotiated in the 1860s as one of several treaties desired by the United States government in order to assure the safety of travelers through the territory of the Shoshone Nation, which stretched from Wyoming through the north-central Great Basin into California.<sup>4</sup> The chief government negotiator, James Duane Doty, found it convenient to negotiate several treaties with different groups of Shoshones. Evidently the Western Shoshones were at that time organized in a series of bands, each comprising several villages. According to Doty, the signers of the Ruby Valley Treaty were representatives of two bands, the White Knives and Te-Moak's band, although he obviously intended that the treaty should bind all the groups designated by him as Western Shoshones. The map which he drew includes essentially the northern half of what has been recognized by anthropologists and the Indian Claims Commission as the full extent of Western Shoshone territory. Apparently the Ruby Valley Treaty in effect created a Western Shoshone entity, whereas previously only bands had existed.

For several decades after the signing of the treaty, a "traditional council" consisting of members from several bands represented a kind of governing structure for many Western Shoshones. Te-Moak had been leader of a band centered on Ruby Valley, but came to be more widely acknowledged as a leader of several bands, and his descendants have also been considered leaders of this wider grouping.<sup>5</sup> Although this traditional council sometimes included members from Goshute territory (for which a separate treaty had been negotiated by Doty) and Duck

---

<sup>4</sup> See Rusco, *op. cit.*, p. 38, and Inter-Tribal Council of Nevada, *Newe: A Western Shoshone History* (Salt Lake City: University of Utah Printing Service, 1976), pp. 46-54.

<sup>5</sup> Julian H. Steward, *Basin-Plateau Aboriginal Sociopolitical Groups* (Washington: U.S. Government Printing Office, 1938) is still the standard source on the state of Western Shoshone political organization at the time of White contact, although the data for the study were gathered largely in the 1930s. Chief Te-Moak is discussed, though not very adequately, on pp. 149-150. See also Julian H. Steward, *Theory of Culture Change* (Urbana: University of Illinois Press, 1963), pp. 101-121. Omer C. Stewart in his "Temoke Band and the Oasis Concept," *Nevada Historical Society Quarterly* XXIII (Winter 1980), 246-261, provides a great deal of historical information on the Ruby Valley Western Shoshone in the nineteenth and early twentieth centuries.

Valley, most of the time it included members from south of Duck Valley (thus excluding the White Knives) to roughly the area of Austin, and thus the Western Shoshones who lived in the southern part of their area were also excluded. The council insisted over several decades that the provisions of the Ruby Valley Treaty had not been carried out by the United States, and that Western Shoshone title to the bulk of the lands within the treaty territory had not been lost. Apparently it was this council which signed a contract with Elko attorney Milton B. Badt in 1932 to seek redress from the federal government, in the form of a reservation and monetary compensation.<sup>6</sup> Probably the same council was the one which took the steps leading to the Te-Moak Bands Constitution.

The Ruby Valley Treaty contained a provision by which the Western Shoshones agreed that they would move to a reservation within the treaty territory when the President so decided. However, the government has not kept this portion of the treaty, and until the present time there are insufficient reservation lands within the area covered by the treaty for all Western Shoshones. For a few years in the 1870s, some Western Shoshones lived on a reservation called Carlin Farms, but this reservation was abandoned when some Whites claimed ownership of it.<sup>7</sup>

In 1877, Duck Valley Reservation was created in northern Nevada and southern Idaho. Although federal officials at the time apparently assumed it was within the treaty area, in fact it was north of the line on Doty's map. In 1879, with the closing of Carlin Farms, some Western Shoshones, almost entirely members of the White Knives band, moved to Duck Valley. However, the Western Shoshones represented by members of the traditional council refused to move to Duck Valley, on the ground that it was outside their territory.<sup>8</sup>

From the abandonment of Carlin Farms until the Indian New Deal, no reservations were created for Western Shoshone except sites for several "colonies," urban locations which provide house sites but no economic resources. The Battle Mountain Indian Colony was established by Executive Order in 1917,<sup>9</sup> and the Elko Colony in 1918. In the case of Elko, the Indians had been pushed out of several earlier sites within Elko, although several Western Shoshone families still live in the Walnut and 5th Street area. In 1931, the Elko Indians were moved again, when a new colony site was purchased for them.<sup>10</sup> Ely Colony was established

<sup>6</sup> U.S. Senate Committee on Indian Affairs, *Survey of Conditions of Indians in the United States, Hearings, Part 28, Nevada* (Washington: U.S. Government Printing Office, 1934), pp. 14807-14893.

<sup>7</sup> Inter-Tribal Council, *Newe, op. cit.*, pp. 59-68.

<sup>8</sup> U.S. Senate Committee on Indian Affairs, *op. cit.*, pp. 14825, 14842-14847.

<sup>9</sup> Inter-Tribal Council, *Newe*, pp. 82-85.

<sup>10</sup> *Ibid.*, pp. 85-88.

by executive order in 1930.<sup>11</sup> In addition to these areas with trust status, Western Shoshones continued to live at various locations within the treaty territory which had been their traditional homes. Anthropologist Omer C. Stewart noted in 1974 that "Strong and often repeated attempts to wean Western Shoshone away from their emotional attachment to their own natal valleys have failed."<sup>12</sup> He and anthropologist Richard O. Clemmer have noted that a list of areas inhabited by Western Shoshones in 1873 is essentially the same as a list compiled by Julian Steward in the 1930s and settlement patterns in the 1970s.<sup>13</sup>

### *The Indian New Deal and Tribal Government*

For several decades prior to the Indian New Deal the official policy of the Bureau of Indian Affairs in Washington was to refuse to recognize tribal governments. Instead it dealt directly with individual Indians, as part of the general intent to destroy tribal existence. However, in various ways the Bureau of Indian Affairs was forced to recognize Native American governments to some degree. While the history of federal government actions toward the Western Shoshone traditional council has not yet been written, apparently before the Indian New Deal it was not formally recognized.

The coming of the Indian New Deal, inaugurated by Commissioner of Indian Affairs John Collier, reversed this policy. It was Collier's aim to recognize existing Native American governments, organize such governments where they had lapsed, and give Indian governments the legal powers of modern corporations.<sup>14</sup> The Indian Reorganization Act (or Wheeler-Howard Act, after its chief congressional sponsors) embodied this point of view. The legal theory behind the IRA was clearly stated to be the notion that the law recognized legal rights to self-government already possessed by Native Americans and repeatedly stated by the courts.<sup>15</sup> However, Sections 16 and 17 of the IRA provided a mechanism

---

<sup>11</sup> *Ibid.*, pp. 88-89.

<sup>12</sup> Omer C. Stewart, "The Western Shoshone of Nevada and the U.S. Government, 1863-1950", paper delivered at the 1974 Great Basin Anthropological Conference, p. 3.

<sup>13</sup> *Ibid.*, pp. 4-5.

<sup>14</sup> Much of the material for this article concerning the attitude of the Collier administration toward tribal self-government is based on as yet unpublished research conducted in the National Archives. But see also Kenneth R. Philp, *John Collier's Crusade for Indian Reform, 1920-1954* (Tucson: University of Arizona Press, 1977), and Graham D. Taylor, *The New Deal and American Indian Tribalism* (Lincoln: University of Nebraska Press, 1980).

<sup>15</sup> Felix Cohen stated the legal theory of the Collier administration in the presentation to Congress when the bill which became the Indian Reorganization Act was introduced, in a Solicitor's opinion in 1934 after passage of the IRA, and in his *Handbook of Federal Indian Law* (Washington: U.S. Government Printing Office, 1942). The core of the theory is this statement from the *Handbook*, at p. 122: "Perhaps the most basic principle of all Indian law, supported by a host of decisions . . . is the principle that *those powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished.*" (Italics in original).

by which any tribe could adopt a written constitution and a written charter, which upon approval by the Secretary of the Interior would constitute governing documents recognized by the federal government. Given this fundamental theory, the federal government could have simply recognized the existing traditional council of the Western Shoshone without drafting a formal constitution. Why this was not done is not clear, but one possibility is that field personnel incorrectly interpreted Section 16 as a mandate to draw up constitutions.

One of the major thrusts of the Indian New Deal was to increase the Indian land base by consolidation of lands which had not been allotted but still were in trust status, and by purchase of lands to be put in trust status. Within the Ruby Valley Treaty area, there was no necessity to consolidate allotted lands; since there had been no reservations with agricultural lands, there had been no allotments. However, three small reservations were created by purchase of lands during the 1930s and 1940s within the Western Shoshone territory: South Fork Reservation was created by land purchases from 1937 to 1951, Yomba Reservation was created in the Reese River Valley by land purchases from 1937 to 1941, and Duckwater Reservation was created by land purchases from 1940 to 1944. The plans to purchase the South Fork and Yomba Reservations were underway as the Te-Moak Bands Constitution was being developed, and figured in the protracted process of drawing up the document and securing its approval from the Office.<sup>16</sup>

Several aspects of the process of drawing up IRA constitutions in the 1930s have to be understood before a specific case history is presented.<sup>17</sup> First, from the standpoint of Washington, the process was one by which Indians at several hundred locations around the country drew up constitutions which embodied what they wanted, with assistance from Bureau personnel in the field. At least at the Washington level, there was no thought of imposing a constitution written in Washington on the tribes. For example, while the Office considered drawing up a model constitution which could then be modified by various tribes, it did not do so. An outline of the topics which might be covered in constitutions was drawn up centrally, but this did not suggest actual language and constitutions were not required to include provisions dealing with all of the topics covered in the outline. Second, however, constitutions had to be approved by the Secretary of the Interior. This came to mean in

---

<sup>16</sup> Inter-Tribal Council of Nevada, *Newe*, pp. 89-100. The terms "Office" or "Indian Office" for the national headquarters of the Bureau of Indian Affairs were still widely used in the 1930s.

<sup>17</sup> Much of this information comes from unpublished studies. Available accounts of the actual process of the drawing up of constitutions are scarce and often inaccurate in terms of the factors cited here.



practice that the draft by the tribe, drawn up with local assistance, had to be approved by the Office before it became final. The attorneys in Washington introduced a great deal of uniformity in the wording of constitutional provisions at this stage, and also attempted to delete or change provisions which they believed contravened existing law. Third, tribes were assisted by local BIA officials -- superintendents and their staffs, and also by a network of special agents organized directly from Washington. These special agents had first been appointed, on a regional basis, to supervise the conduct of elections by which the tribes decided whether or not to accept the Indian Reorganization Act itself. In spite of the fact that constitution-making was voluntary on the part of the tribes, Congress had added the requirement that an election be held on each reservation to determine acceptance or rejection of the IRA itself. It was decided in Washington to appoint special agents to conduct these elections; they then continued in the field in order to help tribes organize constitutions and charters, under the general supervision of the Organization Division in Washington.

It is not clear when the first organizational efforts among the Western Shoshones began, but in 1934 the elections to determine acceptance of the IRA were held on several Western Shoshone reservations. The official records of these elections show the following:<sup>18</sup>

Place	Population	Voting		Total		Date
		Population	Yes	No	Total	
Duck Valley	516	383	191	12	27	October
Duckwater	273	89	73	2	17	November
Battle Mountain	28	14	9	0	14	June
Elko	73	40	34	0	14	June
Ely	64	35	8	6	17	June
Totals	954	561	315	20		

The most striking thing about these elections is that the places at which elections were held did not include more than a fraction of the Western Shoshone population, particularly when it is remembered that perhaps half of the Duck Valley residents were Northern Paiutes.<sup>19</sup> This

<sup>18</sup> Theodore H. Haas, *Ten Years of Tribal Government under I.R.A.* (Chicago: United States Indian Service, 1947), p. 17.

<sup>19</sup> B.I.A. reports on the total number of Indians living on the Duck Valley Reservation vary widely, as collected by Omer C. Stewart, "The Western Shoshone of Nevada . . .," Table 11. According to these figures, in 1932 the total population was 690, of which 273, or 39.6 percent, were Western Shoshones; however, in 1939 the total population was reported to be 552, of which 453, or 82.1 percent, were Western Shoshones.

result was due to the small number of reservations for Western Shoshones. (Surprisingly, an election was held at Duckwater, even though this traditional home of Western Shoshones was not yet a reservation.) Consequently, while the votes in favor of the IRA totaled 56.1 percent of the voting population at these five locations, they were a very small proportion of all Western Shoshones.

### *Drafting of the Constitution*

Several of the top officials in the Washington office in mid-1934, at the beginning of the organization effort, wrote that most superintendents did not approve of the new policies, and they were undoubtedly correct; the administration clearly could not immediately find sufficient numbers of persons with administrative capability who differed fundamentally, as Collier did, with the policy which had been followed at the top for several decades.<sup>20</sup> One of the factors of importance in formation of the Western Shoshone constitution is that the Superintendent involved was one of the relatively small number of local administrators clearly both in sympathy with and knowledgeable about the basic policy of the Collier administration. The group organized under the Te-Moak Bands was under the jurisdiction of the Superintendent of the Carson Agency, Alida C. Bowler. Miss Bowler (who was described by the BIA as the first woman Indian Superintendent in history),<sup>21</sup> had most recently been with the federal Children's Bureau; she had once been an employee of the San Francisco office of the American Indian Defense Association when John Collier was its Director. She had attended an important meeting of the "friends of the Indian" in early 1933 in Washington and had long been identified with efforts on behalf of the Indians in collaboration with Collier. She had directly asked Collier for an appointment in the Indian Service, and was a personal friend.<sup>22</sup>

Another factor in the situation was that the chief field agent assigned to work with the Carson Agency (plus various Northwestern and Great

---

<sup>20</sup> Walter V. Woehlke, "Reorganization Echoes," October 13, 1934, and Walter Shepard, letter to Collier, October 13, 1934, both in Regional Organization folder, Collier Office File, in Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building. Since all subsequent references in this paper to B.I.A. records are to materials in the National Archives Building, they will be limited to the citation RG 75 and the broad category and file number.

<sup>21</sup> "Memorandum for the Press, Department of the Interior," for release November 3, 1935, in File "Alida C. Bowler (Miss) 1934-1937 Supt. Carson Agency" in Collier Office File, RG 75.

<sup>22</sup> The letterhead of the San Francisco office of the AIDA listed her as Executive Secretary in 1927. See File "California Claims Bill-JC Personal-1925-6-7-From AIDA Files" in Collier Office File, Reference File of John Collier 1939-45, in RG 75. The letter from Miss Bowler to Collier requesting "to become a part of the Indian service under your leadership" is dated January 12, 1934 and is in File "Alida C. Bowler (Miss) 1934-1937 Supt. Carson Agency" in Collier Office File, RG 75.

Basin groups outside this agency) was George P. LaVatta, a Shoshone Indian from Fort Hall Reservation. LaVatta was clearly one of the more energetic and conscientious of such representatives. In 1943 he was appointed Superintendent of a reservation in Washington.<sup>23</sup> In addition, a Western Shoshone from Battle Mountain was employed on a part-time basis by the BIA during the period when the Te-Moak Bands constitution was being developed. Probably the fact that the persons working directly with the Bands on organization were Shoshones had some effect on the acceptance of the process by Western Shoshones.

The first organizational efforts within the Carson Agency were with those groups which already had reservations. A letter from Field Agent John H. Holst to Walter Woehlke of the Washington office dated August 26, 1935 reports that, as of that date, four constitutions from that agency had been drawn up.<sup>24</sup> He said that these four "represent all of the groups that can be organized at this time" and that Superintendent Bowler "agrees with this idea." Presumably, these were the constitutions for the Duck Valley and Pyramid Lake Reservations, the Reno-Sparks Colony, and the Washoe Tribe, since these were the first constitutions approved for the Carson Agency. Holst indicated that the "landless Indians of Nevada and California," who were to be organized next, "are just now widely scattered at work" so that they could be dealt with more effectively after the summer.

Organizational efforts did not begin among the Western Shoshone until 1936. Both a draft constitution and a "temporary council" of Western Shoshones emerged from a meeting in Elko on May 16 and 17, 1936, but meetings among the Indians themselves and contacts between the Indians and the BIA preceded this meeting, perhaps for several months. A meeting of Western Shoshones held before the Elko meeting (at which "no one from the Agency and no one with a clear understanding of the Reorganization Act was present," according to Superintendent Bowler<sup>25</sup>) produced a letter signed by Muchach Temoak and eighty-seven others. Apparently it was drafted on May 1.<sup>26</sup> This letter, to Commissioner Collier, was written in non-standard English by someone for whom English was a second language. Clearly, the Ruby Valley

---

<sup>23</sup> Correspondence with Officials, 1934-46, Organization Division, RG 75, contains files by agent detailing the interchanges between the Office and each agent. Those on LaVatta are probably the most voluminous and detailed. On his appointment as Superintendent of the Taholah Indian Agency, effective July 1, 1943, see a newspaper clipping from the *Aberdeen Daily World*, August 9, 1943, in File "G.P. LaVatta 1943" in this collection.

<sup>24</sup> File "Holst, John H.," in *ibid.*

<sup>25</sup> Letter, Alida C. Bowler to Commissioner of Indian Affairs May 28, 1936, in File 9571A-1936-Carson-068-Te-Moak in Organization Division files by agency, RG 75.

<sup>26</sup> Letter, Matchuck [sic] Temoak to John Collier, *ibid.*

Treaty was referred to; for example, the letter asserted that "our great policy is treaty which roll for 50 years from the date and still rolling now today." It also clearly asked for land; for example, there was the question: "Why dont government make settlement for us the reservation under consideration?" It also asked for allotted lands, presumably because its author did not know that the IRA had ended the allotment policy. It also expressed opposition to "self government" in these words: "Indians dont like be self government. Dont know how to handle self government. . . ." Apparently a major reason for this conclusion was that "self government" was equated with paying taxes on land, for the letter asked: "Whenever taxation appear before their face what shall they do?"

In a letter to Commissioner Collier from Superintendent Bowler dated May 28, 1936, she asserted that the letter had been written after a "meeting of Shoshones from Ruby Valley and vicinity" held some time before May 16.<sup>27</sup> She said that Tom Pabowena had prepared the letter, and asserted that he did not know enough English to translate accurately, although he had apparently persuaded some Indians that he could translate. She asserted that "questioning revealed that Muchach [Temoak] did not know exactly what the letter contained. It is highly probable that none of the other reputed signers knew its exact contents." She then went on to say that the IRA and the organization plans were explained adequately at a May 16 meeting in Elko, and that after this meeting Temoak had "a much clearer understanding of the Act, of self-government opportunities, and of the advantages in organization."

There had been BIA contacts with Western Shoshones for some time before the May meeting, perhaps for a considerable period. The Shoshone Field Agent who attended the Elko meeting, George P. LaVatta, did not like to push Indians into action, especially when they had some doubts. In a memorandum of January 7, 1939, explaining his viewpoint toward organizational work, LaVatta indicated his belief that "help or assistance cannot be given any group of people unless that help or assistance is desired by them." He reported that his usual procedure was to meet with Indians

in tribal meetings and in groups where careful explanation of the Act was given and sufficient time allowed in which they might discuss these interpretations among themselves, and for them to ask any and all questions which they desired. This procedure needed to be repeated many times before a request was generally forthcoming from the Indians for assistance in the preparation of a constitution or a charter.<sup>28</sup>

<sup>27</sup> Letter cited in footnote 25.

<sup>28</sup> File "G.P. LaVatta 1939" in Correspondence with Officials, 1934-46, Organization Division, RC 75.



The May 16 meeting was the first formal step toward the adoption of a constitution, but it had been preceded by at least the May meeting of Western Shoshones and by some contacts between Indians and Bureau personnel. Field Agent O.H. Lipps, a long-time Bureau employee who had been Superintendent of the Sacramento Agency before assuming his organization post, evidently had some contacts with Western Shoshones before this meeting, as had George LaVatta. In a letter to Superintendent Bowler written April 27, 1936, Lipps, who was then on duty in Wisconsin, indicated that he could not attend the May 16 meeting but said that "I do not think they will be greatly disappointed because of my absence as the person they really seemed to want present to assist them with their Constitution was Mr. LaVatta."<sup>29</sup> He reported that he had already told LaVatta that he and Milton Badt, "their attorney in whom they seem to have great confidence, will have no difficulty in drawing up a suitable and workable Constitution and By-Laws."

In reporting the May 16 Elko meeting to Washington, LaVatta indicated that he and Superintendent Bowler had "met with the delegates representing the various Indian groups located at Ely, Ruby Valley, Battle Mountain, Beowawe, Austin and Elko. . . ."<sup>30</sup> He called these delegates a "Constitutional Committee," but did not indicate how they had been selected. He did report that the Indians had requested the name "Te-Moak Western Shoshone" for the constitution and their council. He said: "This was. . .the wish of the Indians as they stated that most of these Indians belong to the old Te-Moak Bands and they desired to retain this name." The members of the "temporary council of the Western Shoshones of Northeastern Nevada" which came out of the Elko meeting were: Jack Temoke (Nixon), Jimmie James (Lee), John Couchum (Elko), Bill Gibson (Elko), Charlie Malotte (Elko), Muchach Temoke (Ruby Valley), Willie Woods (Battle Mountain), and Harry Johnny (Ely).<sup>31</sup>

The draft constitution which emerged from this meeting identified the group involved as "the Te-Moak Western Shoshone Bands, sometimes known as the 'Western Bands of the Shoshone Nation in Nevada' " and identified the territory of the Bands as that described in the Ruby Valley Treaty. The "jurisdiction" of the Bands was to be all lands "that the United States or any other agency has or may set aside for the use of the Te-Moak Western Shoshone Bands within the confines of the territory"

---

<sup>29</sup> File "Lipps, Oscar H." in *ibid.*

<sup>30</sup> Letter, George P. LaVatta to Commissioner of Indian Affairs July 27, 1936, in File 9571A-1936-Carson-068-Te-Moak in Organization Division files by agency, RG 75.

<sup>31</sup> Letter to the Council from Superintendent Bowler May 28, 1936, in *ibid.*

described in the Treaty. The same territory was used as the basis for determining membership in the Bands.

The governing body of the Bands, according to this draft constitution, was to be a Te-Moak Western Shoshone Council elected for two year terms. There was no set number of members of the Council, but each "community" was to have at least one representative, with representatives assigned to communities in proportion to population. The communities specifically named in the document were: Elko New Colony, Elko Old Colony, Ruby Valley, Ely, Austin, Beowawe and Battle Mountain.<sup>32</sup> The Council was to elect a "tribal chief," a "tribal sub-chief," and at least a secretary and a treasurer. Thus the draft constitution provided for a representative structure including Western Shoshone bands between those on the Duck Valley Reservation and those south of Austin; this group corresponds basically with the membership of the Western Shoshone "traditional council" as described by anthropologist Richard O. Clemmer in the early 1970s.<sup>33</sup>

Copies of the draft constitution were made and sent to members of the temporary council and other Shoshones. The letter from Superintendent Bowler to members of the temporary council enclosing the draft told them that it "is not finished" and that she wanted the document seen and discussed by "as many different Shoshones as possible."<sup>34</sup> She indicated that meetings would be held soon throughout Western Shoshone territory "to answer questions or consider changes." She planned to get George LaVatta to return to Nevada for this purpose, and then "after these meetings we will have to have another meeting of the Shoshone Council to take a vote of the Council members about whether they want to forward the constitution to Washington to be approved by the Secretary and sent back to be voted on in the various Shoshone communities."<sup>35</sup>

<sup>32</sup> As noted in the text, the Indian Colony in Elko had been moved several times by 1938. Which of the older areas was referred to as "Elko Old Colony" is not known.

<sup>33</sup> Clemmer, *Directed Resistance*, p. 380, says that the Western Shoshone Traditional Council "consists of representatives of the Battle Mountain Colony, the Goshute Executive Order Reservation community and Ruby Valley Reservation, and individuals from Duck Valley, South Fork, Carlin and Elko." In "Channels of Political Expression," p. 10, he says that the Council consists of "members and constituents from Ruby Valley, Duck Valley, Elko, Wells, South Fork, Beowawe, Battle Mountain, Carlin and Goshute . . ."

<sup>34</sup> Letter, Alida C. Bowler to members of "temporary council of the Western Shoshones of Northeastern Nevada" May 28, 1936, in File 9571A-1936-Carson-068-Te-Moak in Organization Division files by Agency, RG 75.

<sup>35</sup> Field Agent O.H. Lipps complimented Superintendent Bowler for her "splendid idea in making a tentative draft of a Constitution and By-laws and circulating it among the Indians for their information, study and criticism preparatory to putting it in final form for submission to the Office." He suggested that "This procedure will serve to prevent the criticism we are continually hearing that none but the members of the Constitutional Committee know what the Constitution and By-Laws contain until the election is called for voting upon its adoption." Letter, Lipps to Bowler June 5, 1936, in File "Lipps, Oscar H." in Correspondence with Officials, 1934-46, Organization Division, RG 75.

Then, beginning in the summer of 1936, the constitution was held up for more than a year by the Washington office, in part because they had a basic objection which will be discussed below. However, Superintendent Bowler went ahead with efforts to explain the constitution and to seek support for it. In transmitting the proposed constitution and by-laws to Washington on July 27, 1936, George LaVatta reported that he had visited Western Shoshones from June 18th through the 20th, at Ely, Elko and Ruby Valley, in company with Frank Parcher of the Carson Agency, immediately after the Elko meeting.<sup>36</sup> He indicated also that "since then, Superintendent Bowler, through her various employees, has contacted the Indians at Battle Mountain, Beowawe and Austin." He reported that from these various meetings, it had been learned that "it is the wishes of not only the Constitutional Committee representing the various Western Shoshone Bands, but some of the individual Indians, that the proposed Constitution contains the wishes and desires of these Indians, and which they desire an opportunity to ratify."

In addition to these efforts, Superintendent Bowler secured the services of William Joaquin, Jr., a Western Shoshone from Battle Mountain, to work with the Western Shoshones for a period of ten months beginning September 1, 1936.<sup>37</sup> In reporting on Joaquin's appointment, Superintendent Bowler reported that he was a "well trained" young man and is "very well thought of by some of the civil engineers in the state for whom, I believe, he has worked." He had evidently already "made one or two trips with Mr. Parcher and Mr. LaVatta on Indian Organization work among his own people, the Te-Moak Bands. . . ."<sup>38</sup> Joaquin spoke Shoshone "fluently" and thus could talk with the many Shoshones who did not know English well.<sup>39</sup> In March, 1937, Superintendent Bowler reported that Joaquin had "spent all of his time [since September] in Shoshone country, canvassing the individual families, talking to families, and to larger groups, about organization and its meaning, its opportunities for self-help."<sup>40</sup>

For several months after submission of the constitution, there was no response from Washington. On October 13, 1936, Superintendent Bow-

---

<sup>36</sup> Letter, George P. LaVatta to Commissioner of Indian Affairs, July 27, 1936, in File 9571A-1936-Carson-068-Te-Moak in Organization Division files by agency, RG 75.

<sup>37</sup> Originally, he was employed for six months beginning September 1, 1936; however, he later obtained an extension through June 30, 1937. See various materials in File 9532D-1936-Carson-057 in Organization Division files by agency, RG 75.

<sup>38</sup> Letter, Alida C. Bowler to Commissioner of Indian Affairs August 26, 1936, in *ibid*.

<sup>39</sup> Note on back of weekly report for week ending February 25, 1939 in File "G.P. LaVatta 1939" in Correspondence with Officials, 1934-46, Organization Division, RG 75.

<sup>40</sup> Memorandum, Superintendent Bowler to Commissioner Collier, March 7, 1937, in File 9571A-1936-Carson-068-Te-Moak in Organization Division files by agency, RG 75.

ler sent the Washington office a letter asking the deletion of the Austin group from the constitution (although she indicated that she had not discussed this with the temporary council).<sup>41</sup> Her grounds were that this group

is right on the border line between these Western Shoshones and the Shoshone people who live in the southern part of Nevada and who feel themselves quite distinct from the Te-Moak Bands. They apparently rendered allegiance not to Te-Moak, but to an Indian chief who was called 'Kawich'. At least he was the one who is said to have made a treaty with Government representatives on their behalf at about the same time that Te-Moak made the one for the northern bands.

She suggested that when the constitution was approved the Austin group be allowed to vote on whether they wished to join the Te-Moak Bands. Someone in the Office wrote across this letter, with a date of October 25: "No action taken on this until the legal basis of organization is worked out."

Precisely when the question over the legal basis of organization arose is not clear, but it may have been raised by J.M. Stewart, Director of Lands. In an undated "Memorandum for Indian Organization," he noted that the Ruby Valley Treaty had been made with the Western Shoshones and that they had agreed to move to a reservation when the President so decided.<sup>42</sup> He stated that the Duck Valley Reservation had been "set aside [as] a reservation for the Western Shoshone Indians. . . within the country described in the treaty, apparently in compliance therewith although there is no mention of same in the order." He also noted that while the Ruby Valley Treaty "does not carry a formal or specific cession to the United States. . . Nevertheless, the United States regarded it as an implied cession and took possession of the land for disposal under the public land laws (see Royce's Indian Land Cessions. . .)" Finally, he noted that "as only a part of the scattered bands of Shoshone Indians moved to and occupied the Duck Valley Reservation, several small tracts were set aside for some of the scattered bands of Western Shoshone Indians." (One of these "tracts" he mentioned was the Winnemucca Colony, which is not in Western Shoshone territory.) In short, Mr. Stewart apparently believed that there was a Western Shoshone division of the Shoshone Tribe or Nation which was divided between Duck Valley Reservation, several small reservations, and "scattered bands."

---

<sup>41</sup> In *ibid.*

<sup>42</sup> In *ibid.*



On October 23, 1936, Assistant Commissioner William Zimmerman, Jr., sent Superintendent Bowler a letter reporting that the Office did not believe the Western Shoshones could be organized on the basis provided in the draft constitution.<sup>43</sup> This letter said that the IRA appeared to provide for two bases of organization: a tribe or several tribes living on the same reservation; and a tribe living on several reservations. He said that "the situation presented by the Western Bands of Shoshone Indians, however, appears to differ from either of these two authorized forms of organization." The basic problem, he thought, was that the "members scattered over several communities" appeared not to be a "recognized tribe." "In view of these facts, the proposed form of organization does not seem to be authorized."

Zimmerman suggested that these doubts "should not be regarded as foreclosing the matter." He indicated that "if you have any information which would show that these Indians have been recognized as a distinct tribe or band, the Office will welcome it." He also asked for specific information on the "land status" of the various groups; the information in the Office, he said, was that

the groups at Elko, Battle Mountain, and Ruby Valley, either have land set aside for them by the United States or have been provided for in this respect by Congressional authorization. The group at Ely appears to occupy a tract of land purchased and held outright by the United States. . . . The other two groups, those at Austin and Beowawe, do not appear to have any land.

The Zimmerman letter indicated that "it would seem" that the proposed basis of organization "cannot legally be carried out" but that "each group would have to organize separately as residents of a particular reservation or colony." However, he said, it appeared that the groups with no land could not organize "until land is purchased for them and declared a reservation." Zimmerman then went on to suggest that the separately organized groups occupying reservations could somehow "form a loose confederation, with such powers delegated to the same as might be appropriate, with which the other communities could affiliate as soon as they are organized."

Superintendent Bowler reacted to this objection by trying to persuade the Washington office that they were incorrect in refusing to regard the Te-Moak Bands as a recognized tribe. She asked Frank M. Parcher, an Agency employee who had done work with the Western Shoshones, to review the situation. In a memorandum to her written on November 20, Parcher asserted that

<sup>43</sup> File 9571A-1936-Carson-068-Te-Moak in Organization Division files by agency, RG 75.

these Indians were recognized as a tribe of Indians when the treaty at Ruby Valley was signed in 1863. This treaty, as you know, definitely established the boundaries of the territory of this group of Indians and the present proposed constitution defines the territory of the Te-Moak Bands exactly as the original treaty did. There is no question in my mind but what the Indians within the territory bounded by the boundaries as set forth in the treaty and in this constitution are a recognized tribe by the Government, by the white settlers, and by the Indians themselves.<sup>44</sup>

The Parcher memorandum indicated that part of the confusion came from regarding the Duck Valley Reservation, and the Western Shoshones living there, as part of the Te-Moak Bands. He said that

We feel that there is considerable distinction between the Te-Moak Bands and other Shoshone groups. As we see it, the TeOmoak [sic] Bands are those bands whose members are descendants of the people who considered old Chief Te-Moak their leader and who were considered as being parties to the treaty of peace and friendship made at Ruby Valley. . . . As you know, this group of Shoshones are still living within the boundaries of their territory as set forth in the above treaty and as you know the Duck Valley Reservation is not within the boundaries of that territory.

Parcher pointed out that Muchach Te-Moak, a "direct descendant of old Chief Te-Moak", was living within a few miles of where the treaty was signed and "declared at every opportunity that the Duck Valley Reservation is outside the boundaries of his tribe and that the Shoshones who are living there have moved away from their traditional home." He said that in general the members of the Te-Moak Bands "are living in this territory . . . because they consider it their home and they feel that the other Shoshones living in the territory are part of their same people and belong to the same tribe. This is the feeling that you get from talking to any of the Indians in eastern Nevada."

Superintendent Bowler transmitted this memorandum to Washington and added her strong defense of the draft constitution.<sup>45</sup> Asserting that "they certainly feel like a 'tribe', even if nobody else will recognize that fact," she argued that "the organization of the little groups on the few homesite colonies under separate constitutions will really be utterly unintelligent and foolish," although "if we have to do that we want to know as soon as possible so we can get at it." She reminded the Office that "this constitution was worked over very carefully indeed by a constitutional committee of elected representatives from the various districts" and that "this constitution. . . is their preference." Replying to

<sup>44</sup> Ibid.

<sup>45</sup> Letter, Alida C. Bowler to Commissioner of Indian Affairs December 16, 1936 in *ibid.*

Zimmerman's suggestion for a "loose confederation," she said that she did not know what this meant, but that "they want a tribal organization for self-government and for incorporating for the purpose of obtaining credit so that the Tribal Council may in turn through this credit system help various units in proper ways." She reported that a "loose confederation" would not make it possible for the "new reservation being created by purchase in the South Fork area [to] come under any organized group . . . If these Bands are not organized as a tribe and cannot get credit as a tribe where are we going to get funds to help them establish themselves on this new tract?" She ended her letter by asserting that "we would be awfully grateful for an early response."

On February 15, Assistant Commissioner Zimmerman replied that the Office had given careful consideration to her letter and the Parcher memorandum.<sup>46</sup> While he admitted that "there are some grounds for considering the scattered groups of Western Shoshone Indians in Northern Nevada as a separate group distinct from those Western Shoshone Indians who moved on to the Duck Valley Reservation," still "it is believed that in order that their organization may be on a sound legal basis it should await legislation amendatory to the Indian Reorganization Act." He reported that such legislation was being drafted and would be introduced as soon as agreement could be secured on it within the Office. "One of the most important amendments under consideration is one which would permit such groups as the Te-Moak Bands of Western Shoshone Indians to organize regardless of whether or not they have heretofore been recognized as a tribe or band." Thus, the Office was still convinced that the Te-Moak Bands were not a "recognized tribe." Again, Zimmerman indicated that they would hear further arguments from her, but that "You should understand . . . that it seems highly improbable that they do constitute such a group."

Superintendent Bowler continued her efforts to get the proposed constitution accepted, and enlisted John Collier's personal help. Apparently the occasion for Collier's involvement was a "Report on Shoshonean Tribes (Utah, Idaho, Nevada, Eastern California)" done by Julian Steward as a consultant for the Bureau in 1936.<sup>47</sup> In correspondence with Collier over this report (which does not seem to be in the National Archives, but which was discussed in detail by Superintendent

---

<sup>46</sup> Ibid.

<sup>47</sup> There is no space here to report on the details of Superintendent Bowler's critique of the Steward report, but her letter is six and one-half pages in length, single-spaced. Memorandum, Bowler to Collier March 7, 1937, in File 9571A-1936-Carson-068-Te-Moak in Organization Division files by agency, RG 75. Apparently Collier agreed in not holding Dr. Steward in high regard. Letter, Collier to Alida C. Bowler ("A.C.B.") in File "Alida C. Bowler (Miss) 1934-1937 Supt. Carson Agency" in Collier Office File, RG 75.

Bowler), she made her case again that the constitution was the one wanted by the Indians and that it was necessary to organize on the basis of the Te-Moak Bands. She began by asserting that the various bands in Nevada seemed to be united under Chief Te-Moak.

The first signer for the Shoshone was Te-Moak, whose name has always stood out in stories of those early days in such a way as to lead us to believe that he was, in fact, the principal chief to whom a considerable number of 'bands' or groups looked for help in negotiating with the strange white man.

She asserted that these "bands" were "primitive self-help association(s)" though "probably without any political organization." Her main assertion was that the basis of organization proposed in the constitution was essentially recognition of the group of bands which had signed the Ruby Valley Treaty. She wrote:

In a way the proposed organization of a sort of Federated Council with elected members from the several scattered Shoshone communities, with local self-government, is patterned after that old loose affiliation. The primary purpose of the general council of Shoshone would be to negotiate with the white man's Government, local, State, and Federal, on behalf of the Shoshone people, and through such negotiations to obtain for them land, credit, and other implements with which to help their people to a better life. . . . We see no valid reason why the fact that their old form of union was without any political organization should keep them forever from seeking the strength that comes from political organization in a present-day world. We are strongly of the opinion that there was in the old days enough of a feeling of inter-dependence for mutual help to warrant organization now for these same purposes.

Superintendent Bowler also indicated that another objection to organization on the basis of the "colony" reservations was that these "certainly have no traditional significance. Those home-site tracts were purchased under the law for the use of 'the homeless Indians of Nevada.'" Finally, she indicated that organizing as a tribe would provide a basis for getting credit for Indians to develop the new lands which were being purchased for them; if it were necessary to wait for groups living on the new lands to become organized separately before becoming eligible for credit, there would be unnecessary delays in the efforts of the Indians to make a living on the new lands.

Undoubtedly at least partly in response to this letter, Commissioner Collier, on March 16, wrote Solicitor Margold asking him if he could find time to discuss the question with Superintendent Bowler while she was in Washington that week.<sup>48</sup> He said that "it is important that a way

---

<sup>48</sup> Memorandum, John Collier to Nathan Margold, March 16, 1937, in File 9571A-1936-Carson-068-Te-Moak in Organization Division files by agency, RG 75.

be found to help the Shoshone people of Northeastern Nevada to organize in order to obtain the help promised by that Act." He enclosed a copy of Bowler's letter and pointed out that the problem was to get an organization which could be used to borrow money for "homes and . . . stock and implements" for the lands being purchased for them.

Pointing out that the constitution drawn up by the Indians with help from LaVatta and officials of the Carson Agency had not been approved, Collier wrote that "all of those privileged to vote on the Act accepted it by large majorities (unanimously in two of the three groups). They have expressed, individually and through their committeemen, a desire to organize." Coming to the heart of the question, he wrote that

They wish to organize as a Tribe. They recognize the meaningless character of the present 'colony' groupings, which are more or less accidental in character the Shoshone having to live wherever he could find a means of subsistence, regardless of pre-white-occupation groupings. They feel strongly the same old mutual-aid impulsions which brought together their principal men for negotiations with the Federal Government that resulted in the Treaty of 1863 in Ruby Valley. Can we find a way to allow them to organize as a complete group? If not what can we suggest to them, bearing in mind that the present town colony groupings have no traditional significance?

Whether Superintendent Bowler met with Solicitor Margold or not is not known, but in July 1937, the Office finally suggested a series of amendments to the constitution which they could approve, abandoning the notion that an amendment to the IRA was necessary.<sup>49</sup> The Office enclosed a "revised draft" which is essentially the present constitution of the Te-Moak Bands. The main change was necessitated by the contention that the Te-Moak Bands were not a "tribe." The letter said that

Revision was necessary due to the fact that since the Te-Moak Western Shoshone Indians do not, from a legal point of view, constitute a recognized tribe, their organization must be upon a residential basis. For this purpose it was necessary to select one of the several groups occupying land as the group to form the nucleus of a new organization. The Elko Colony has been selected for this purpose. Under the proposed constitution, this group would first organize itself and then take in the various other groups and scattered Indians which are eligible to come into the organization.

A number of other changes were made in the draft constitution, some of which appear to be inconsistent. For example, one change was to

---

<sup>49</sup> Letter, Assistant Commissioner William Zimmerman, Jr., to Alida C. Bowler July 23, 1937, in *ibid.*



refer to the Te-Moak Bands as a "tribe" because the IRA "clearly envisages the establishment and incorporation of tribal bodies." However, in line with the determination that the Bands were not a tribe, the constitution was changed to eliminate the power to tax, on the ground that only a tribe can have this power. Other changes required the bonding of the treasurer, a change in the quorum requirement for Council meetings, and other minor changes. This letter ended with a suggestion that the new draft be presented to the Indians for their consideration "and for such changes as they believe to be necessary," so that an election to accept or reject the constitution could be held as soon as possible.

Following this decision by the Washington office, apparently the matter was delayed for several months at the Agency. In October, 1937, George LaVatta returned to Nevada and visited various Western Shoshone groups on October 19 through 22.<sup>50</sup> Then, on October 23, "a general tribal meeting was held at Elko, Nevada, at which not only delegates from the various colonies and communities were present, but also the present members of the Council representing the Te-Moak Bands of Shoshone Indians." The result was the acceptance of the constitution without changes. A resolution by the Council dated October 23 stated that the "duly elected members of the present Council of the Temoak Bands of Shoshone Indians" had resolved that

the Secretary of the Interior be notified that the amendments to the proposed Constitution submitted by them last year have been studied discussed and accepted and that the Secretary be requested to call an election at as early date as possible so that the members of the Reservation known as the Elko Government Colony may ratify the attached Constitution and By-Laws.

This resolution contained the thumb mark of Muchach Te-Moak and the signatures of Charlie Malotte, John Couchum, Jimmie James, Sam Johnny, Bert Tybo, and Bill Gibson.

A minor legal question arose at the last minute, when the Acting Solicitor stated that a provision of the membership section excluding from membership persons with less than one-fourth degree of Indian blood might raise questions of voting rights or "privileges of occupancy" for members of the colony. On being assured by the Acting Superintendent of the Carson Agency that there were no Indians living on the Elko Colony with less than one-fourth Indian blood, the Office dropped this objection, and the Constitution and By-Laws were approved by a vote of forty-seven in favor to two opposed at an election

---

<sup>50</sup> Letter, George P. LaVatta to Commissioner of Indian Affairs November 2, 1937, in *ibid.*

held on the Elko Colony on May 31, 1938, more than two years after the first draft constitution was approved by the Indians. The Secretary of the Interior approved it on August 24, 1938.<sup>51</sup>

Drafting and approval of a charter occurred in a much shorter space of time. The charter was discussed and drawn up at meetings in Elko on May 29-31, 1938, at the same time as the revised constitution was being explained and voted on. It was transmitted to the Office by George LaVatta August 9, with a note pointing out that the Indians wished authority for the Council to loan money not only to members but also to community councils so that they could "re-lend to . . . members or associations of members within the community." The charter was accompanied by a petition asking for an election on it. The Office recommended approval of the charter to the Secretary of the Interior on October 22, and the election approving it was held on December 12. The vote approving it was thirty-seven to two, a smaller turnout than for the constitutional election.<sup>52</sup>

#### *Summary and Conclusions*

This study justifies some conclusions about the nature of the constitution-making process in the case of the Te-Moak Bands in the 1930s. Clearly, the Collier administration at the national level intended a process which would put into written form Indian desires regarding governmental structures. But just as clearly, on the key organizational issue of whether the group was to be a reservation, or the wider entity recognized by the Indians as meaningful, the Office refused to grant the Indians what they wanted. At the same time, the local representatives of the Bureau of Indian Affairs, particularly Superintendent Bowler, sided with the members of the Te-Moak Bands. The result was a compromise, the significance of which is difficult to assess precisely.

The resulting constitution did not include all communities represented on the traditional Council. On the other hand, a provision was included allowing additional groups (beyond Elko Colony) to join the Bands, if they were based on reservations. Today, there are three groups in addition to Elko Colony which belong to the Te-Moak Bands, but there are still groups outside the structure. The result of the constitution-making process was to split the Te-Moak Bands as it existed in 1936, with the traditional council continuing to represent the wider group but the Council created by the constitution functioning as a government for

---

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

part of the group. If the proposal of the Indians in 1936 had been accepted by the Office, apparently this split would not have developed.

The bifurcation of the Te-Moak Bands governing structures presumably had important consequences for the land controversy mentioned at the beginning of this article. Until recently, the Te-Moak Bands Council consistently sided with the attorneys in the claims litigation, who insisted that the land had been lost and that, therefore, the Bands could only press for monetary compensation, while the traditional council just as consistently asserted its contention that Western Shoshone aboriginal title had never been lost. If there had been one government representing all groups of the Te-Moak Bands, presumably the land claims would have been pushed earlier. Thus, the consequences of the refusal of the federal government to recognize the Te-Moak Bands as a "tribe" may have been very great in terms of its impact on the conflict over land ownership.<sup>53</sup>

---

<sup>53</sup> Other aspects of the process of developing the Te-Moak Bands Constitution will be left for further study. One of the areas to be investigated concerns the question whether the governmental structures and practices represented by the constitution reflected EuroAmerican patterns imposed on Native American ones or whether the constitution merely put into written form what the Indians desired at that point. Data bearing on this question are scarce; there is little information from presently available sources about actual governing practices among the members of the Te-Moak Bands both before and after the 1936-1938 period when the constitution was being developed. As in so many other areas connected with Native American governance, further research is necessary.