INTERIOR BOARD OF INDIAN APPEALS

Robert Edwards v. Pacific Regional Director, Bureau of Indian Affairs

45 IBIA 42 (05/17/2007)

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United States Department of the Interior

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INTERIOR BOARD OF INDIAN APPEALS
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ROBERT EDWARDS, Appellant,	)	Order Affirming Decision
v.	)	Docket No. IBIA 05-44-A
PACIFIC REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	May 17, 2007

Appellant Robert Edwards, appearing *pro se* as "Chairman" of the "Indians of Enterprise No. 1," seeks review of a January 3, 2005, decision (Decision) of the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director upheld the decision of the Central California Agency Superintendent (Agency; Superintendent) that rejected Appellant's assertion that two tribal entities were recognized by the United States at Enterprise, Butte County, California. The Board of Indian Appeals (Board) affirms the Regional Director's denial of Appellant's claim because — as Appellant himself acknowledges — since 1979, the United States has expressly recognized only one tribe for the Indians of Enterprise, the Enterprise Rancheria of Maidu Indians of California (Tribe), and because the evidence prior to and after 1979 clearly establishes that the single tribal entity is derived from Indians who settled on a single reservation, albeit a reservation comprised of two parcels. Since at least 1935, the Department of the Interior (Department) has recognized the collective group at Enterprise as a single tribe.

History

The following background, while not directly relevant for purposes of deciding this appeal, nevertheless is provided to give some of the factual and historical context in which this appeal arises. The context, in turn, may aid in understanding the nature of Appellant's arguments and why the present case developed as it did, notwithstanding our relatively straightforward response to Appellant's contentions.

Appellant's theory in this case is founded on the existence (originally) of two parcels of trust property ("rancherias"), denominated Enterprise Rancheria No. 1 (E.R. No. 1) and Enterprise Rancheria No. 2 (E.R. No. 2), and on the descendants of two Indian women, Emma Walters and Nancy Martin, who resided on the two parcels with their respective

families. Emma Walters resided on E.R. No. 1; Nancy Martin resided on E.R. No. 2. The parcels were both purchased in December 1915 pursuant to acts of Congress that authorized the Secretary of the Interior (Secretary) to purchase land for Indians "now residing on reservations which do not contain land suitable for cultivation, and for Indians who are not now upon reservations in [California]." *See* Act of June 21, 1906, Pub. L. No. 59-258, 34 Stat. 325, 333, *renewed by* the Act of April 30, 1908, Pub. L. No. 60-104, 30 Stat. 70, 76; Act of August 1, 1914, 38 Stat. 582, 589, as supplemented by a joint resolution of March 4, 1915, 38 Stat. 1228 (authorizing the Department to purchase lands for "homeless Indians" in California).

The purchase of the two parcels resulted from the 1915 visit to the community of Enterprise by J.J. Terrell, an Indian special agent. There, he found 51 Indians that he listed by name, family relationship, and age on a census of "Indians in and near Enterprise in Butte County, California" (1915 Census). Emma Walters and her extended family are listed on the census along with Nancy Martin and her extended family.

Terrell summarized his visit to Enterprise in a letter dated July 15, 1915, to the Commissioner of Indian Affairs, in which he recommended the purchase of the first 40 acres in Butte County, California. He related the following:

> George Martin and family with his old mother [Nancy Martin], 8 in number, live about ¼ to ½ mile northwest from the little town of Enterprise.
>
> . . . .
>
> The two Andrews "boys," Eunoch and Clarence, related to Geo. Martin, desire to homestead 80 acres just to [the] east and adjoining the land George desires, on which they now have their little shack cabin . . . .[1]
>
> . . . .
>
> Old Henry Clay and his wife . . . are extremely old, both are blind, though apparently very healthy. They live alone, though close to the cabins of George Walters and the Andrews boys, who look after these two old blind

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[1] Enoch Andrews eventually obtained an individual Indian land allotment of 80 acres. Letter from Acting Superintendent to Iris Borene, Oct. 7, 1983. One other Indian listed on the 1915 Census, John Pinkey, received an individual Indian land allotment of 160 acres. *Id.*

> people. . . . Their cabin is situated on the same ¼ section on which is located the old ancient Indian home of George Walters, a white man who . . . married [Emma,] the . . . wife of John Parker, deceased . . . . Old Mrs Walters . . . [was] able to make the entire rounds with us — her husband, Geo. Martin, the two Andrews and myself — of several miles traveling by foot over lands.

Letter from Terrell to Commissioner, Indian Affairs, July 15, 1915, at 1-2.

After the first parcel was purchased on October 8, 1915, the Special Commissioner of Indian Services notified Emma Walters that the 40-acre parcel had been purchased so that she "and other Indians related to you may have a permanent home on this land." Appellant is Emma Walters's great-grandson. This parcel is known as "Enterprise Rancheria No. 1."

The second parcel, purchased a few months later, was the 40.64-acre parcel on which Nancy Martin and her family had been living. This parcel is known as "Enterprise Rancheria No. 2."

There is no information in the record concerning the Enterprise community of Indians over the next 20 years. However, with the enactment of the Indian Reorganization Act (IRA), 25 U.S.C. §§ 461 *et seq*., BIA again visited Enterprise to establish a list of voters and to conduct an election for the Indians, to determine whether the provisions of the IRA would apply to their reservation.[2] On May 27, 1935, BIA compiled a single "approved list of voters for the [IRA] on Enterprise Rancheria." It is undisputed that this list included the descendants of both Emma Walters and Nancy Martin as well as other Indians in Enterprise. *See* Appellant's Statement of Reasons before the Regional Director at 2-3. On June 16, 1935, BIA conducted the election for the Enterprise Rancheria. A majority of voters rejected the application of the IRA. *See* Tribal Relations Pamphlet 1A, "Indian Tribes, Bands and Communities Which Voted to Accept or Reject the Terms of the Indian Reorganization Act, the Dates When Elections Were Held, and The Votes Cast," Sept. 1946, at 3.

In 1958, Congress passed the California Rancheria Act of August 18, 1958, Pub. L. No. 85-671, 72 Stat. 619 (Rancheria Act), which purported to terminate the Government's

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[2] IRA elections were held on each "reservation." 25 U.S.C. § 478 ("[The IRA] shall not apply to any reservation wherein a majority of the adult Indians . . . shall vote against its application").

relationship with a number of California rancherias and their members. Neither E.R. No. 1 nor E.R. No. 2 nor "Enterprise Rancheria" was identified for termination in the Rancheria Act. On August 20, 1964, Congress authorized the sale of E.R. No. 2 in preparation for the construction of the Oroville Dam and Reservoir. Pub. L. No. 88-453, 78 Stat. 534 (Aug. 20, 1964). Under the terms of this latter act, the Secretary sold E.R. No. 2 to the State of California and distributed the proceeds to four of Nancy Martin's grandchildren. The act itself did not purport to terminate the status of Nancy Martin's descendants as Native Americans entitled to services from BIA, although a Report to Congress by both the House and Senate Committees on Interior and Insular Affairs stated that "[w]hen [E.R. No. 2] has been sold and the proceeds distributed, the Bureau of Indian Affairs will have terminated its supervisory responsibilities over Enterprise Rancheria No. 2 and its inhabitants." S. Rep. No. 88-1357, at 2 (1964); H.R. Rep. No. 88-1569, at 2 (1964). A deed conveying E.R. No. 2 to the State of California was signed by the Sacramento Area Director[3] on January 22, 1965. Subsequently, E.R. No. 2 was entirely flooded by the reservoir.[4]

In 1979, the first comprehensive list of Federally- recognized tribes was published in the Federal Register. The Tribe is the only tribe from Enterprise appearing on this first Federal Register list as a "tribal entit[y] that ha[s] a government-to-government relationship with the United States." *See* 44 Fed. Reg. 7235 (Feb. 6, 1979). The Tribe has been listed on each such list published since that date. *See, e.g.,* 44 Fed. Reg. 7235 (Feb. 6, 1979); 53 Fed. Reg. 52,829, 52,830 (Dec. 29, 1988); 65 Fed. Reg. 13,298, 13,299 (Mar. 13, 2000); 72 Fed. Reg. 13,648, 13,649 (Mar. 22, 2007). No other tribal entity from Enterprise, California, has been included in any of these lists.

During the 28-year period covered by the Tribe's inclusion on the Federal Register list of Federally recognized tribes, BIA has recognized different members of the Tribe as holding positions of leadership within the Tribe. In 1979, BIA acknowledged Glen Watson, a descendant of Emma Walters (E.R. No. 1), as a spokesperson for the Tribe. In 1994, Arthur Angle, a descendant of Nancy Martin (E.R. No. 2), met with the Superintendent and his staff to discuss the formal organization of the Tribe. Angle

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[3] The Sacramento Area Director is now referred to as the Pacific Regional Director.

[4] In 1968, the Acting Area Tribal Operations Officer informed Henry Martin, one of the grandchildren who received funds from the sale of E.R. No. 2, that "[t]he sale of [E.R. No. 2] was not by authority of the Rancheria Act, so the status of the individuals affiliated with the Enterprise Rancheria is that they have not been terminated." Letter from BIA to Henry Martin, Mar. 12, 1968.

apparently spearheaded the organization of the Tribe in which all persons listed on, or descended from persons listed on, the 1915 Census were invited to participate. It appears that the descendants of Emma Walters declined to participate.[5] Notwithstanding, on September 11, 1994, a tribal election was held and, in April 1995, the election results were recognized by the Regional Director. In subsequent years, descendants of both Emma Walters and Nancy Martin were elected to tribal office. Appellant himself apparently was elected as an official of the tribal government, serving with one or more officials who are descended from Martin.[6]

In late 2003, Appellant contacted the Agency to inquire about "Enterprise Rancheria No. 1." By telefax to the Agency dated October 22, 2003, Appellant raised several questions for the Superintendent and also asserted that:

> Our interest is to update and restore our "Federal Recognition" rights and privileges by the following procedures:
>
> 1. Establish a current "roll of members"
> 2. Establish a[n] "interim government" with a spokesperson or headperson.
> 3. Put a "Tribal Constitution" in place until an election can take place.
> 4. Make Tribe eligible for 12/07/2000 Federal services and benefits for Federally Recognized Tribes.

Letter from Appellant to Superintendent, Oct. 22, 2003.[7] Appellant asserted that the Department had recognized the Indians residing on E.R. No. 1 and on E.R. No. 2 as two separate and distinct bands of Indians. On November 7, 2003, Appellant and a "small group representing Enterprise No. 1" met with the Superintendent and other Agency employees to reassert his arguments. *See* Letter from Appellant to Superintendent, Jan. 6,

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[5] Appellant maintains that three of Emma Walters's descendants appeared at the meeting to protest the organization of the Tribe and then left the meeting.

[6] In correspondence from Appellant during late 2003, Appellant represented himself as "Vice-Chair" of the Tribe and he referred to Harvey Angle, a descendant of Nancy Martin, as "Chairman" of the Tribe. *See, e.g.*, Letter from Appellant to BIA, Nov. 9, 2003.

[7] Appellant's October 22, 2003, letter has not been included in the administrative record before the Board. However, the Superintendent's response, dated November 7, 2003, purports to quote from Appellant's letter.

2004, at 1. That same day, the Superintendent sent a letter to Appellant in which he rejected Appellant's argument that there were two separate and distinct bands of Indians at Enterprise, and rejected his proposal to form a separate government for E.R. No. 1. The Superintendent noted that the present Tribal government consisted of individuals who were direct lineal descendants of the individuals listed on the 1915 Census. The Superintendent also noted that the Tribe's laws provided a means for resolving matters of enrollment and governance at the Tribal level. The Superintendent went on to say,

> If in fact the Enterprise Rancheria No. 1 and Enterprise Rancheria No. 2 were acquired by the Federal Government for two separate and distinct Indian groups, the approach you are proposing to establish a separate tribe for parcel No. 1 would certainly be in order.
>
> However, there is no documentation on file that indicates conclusively that the landless California [Indians] of Enterprise No. 1 and the [l]andless California Indians residing on Enterprise No. 2 were []ever considered by the [F]ederal government as two separate and distinct groups. Both groups were included on the 1915 Indian Census, and their direct lineal descendants participated in organizing the Enterprise Rancheria.

Letter from Superintendent to Appellant, Nov. 7, 2003, at 3.

Appellant apparently understood the Superintendent's letter as an invitation to convince the Superintendent that the United States had in fact recognized "two separate and distinct groups [of Indians]" at Enterprise. On January 6, 2004, Appellant provided the Superintendent with "documents prov[ing] that Enterprise No. 1 and Enterprise No. 2 were indeed recognized as two separate bands of Indians by the Department of the Interior." Letter from Appellant to Superintendent, Jan. 6, 2004, at 1. The documents included correspondence between government officials and Emma Walters and Nancy Martin relating to the original purchases of E.R. No. 1 and E.R. No. 2. Appellant also included the sign-in sheet from the September 11, 1994, General Council Meeting to show that Emma Walters's descendants had not participated in the 1994 meeting to organize thetribal government.[8] Appellant stated that E.R. No. 1 "has been Federally recognized all these years," and that "we are entitled to form our own Rancheria." *Id.* at 2. Appellant

[8] With his appeal, Appellant provided a copy of the agenda for the September 11 meeting, which set forth voter qualifications: The voter must be over the age of 18, not a member of any other Federally recognized tribe and a direct lineal descendant of one or more of the "51 people on the base roll." According to Appellant, the "base roll" is the 1915 Census.

asserted that E.R. No. 1 was "in the process of meeting on [its] Constitution and Interim Tribal Council," and requested the Superintendent to advise him of the "appropriate forms required for funding." *Id.* at 3.

On March 31, 2004, the Superintendent issued a decision (Superintendent's decision) rejecting Appellant's assertion that there were two Federally recognized Indian entities at Enterprise.[9] The Superintendent reasoned that BIA held only one IRA election in 1935 at Enterprise and that descendants of both Nancy Martin and Emma Walters were included on the list of voters. The Superintendent found that the existence of two, noncontiguous land bases was not dispositive of the issue of whether two separate tribes were recognized, as BIA has recognized other rancherias comprised of more than one land base, several miles apart.[10] The Superintendent also noted that in the time since the Regional Director's 1995 decision recognizing the 1994 tribal election as valid, the Tribe has proceeded to govern its affairs.

Appellant appealed to the Regional Director, asserting that Walters and her family and Martin and her family were "two unique and separate Bands of Indians," living on two "separate parcels with no common line located some distance from each other." Appellant's Notice of Appeal to the Regional Director at 4. Appellant again relied on the documents he had provided to the Superintendent with his January 2004 letter. Appellant asserted that the 1915 Census merely listed the Indians that lived in the Enterprise area, rather than recorded a tribal census. Appellant also argued that, although the 1935 IRA voters list had been styled "Approved list of voters for Indian Reorganization Act on Enterprise Rancheria," nevertheless "there was no Enterprise Rancheria, only Enterprise No. 1 and Enterprise No. 2." *Id.* at 4. Appellant asserted that "[t]his [IRA] Election was called and

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[9] The Superintendent noted that on January 9, 2004, an individual named Steven Mills also wrote to him, and made assertions similar to Appellant's. A copy of Mills's letter is not included in the record. The Superintendent stated that, by letter dated February 19, 2004, he had notified Mills that his response to Appellant's January 6, 2004, letter would address Mills's concerns. A copy of the Superintendent's March 31, 2004, decision was sent to Mills.

[10] The Superintendent identified Colusa Rancheria and Mooretown Rancheria as examples of tribes with noncontiguous land bases.

conducted by the [BIA] and was held in Enterprise[, b]ringing the Indians in the area together, as after all they were a community and it was convenient for [BIA]." *Id.*[11]

Finally, Appellant argued that, as a result of the 1964 act authorizing the sale of E.R. No. 2, "Enterprise [Rancheria] No. 2 and it[]s inhabitants were terminated and [BIA's] supervisory responsibilities were terminated." *Id.* at 5. Appellant relied on the virtually identical reports of the Senate and the House Committees on Interior and Insular Affairs, both of which stated that "[w]hen the land has been sold and the proceeds distributed, the Bureau of Indian Affairs will have terminated its supervisory responsibilities over Enterprise Rancheria No. 2 and its inhabitants." S. Rep. No. 88-1357, at 2; H.R. Rep. No. 88-1569, at 2. Appellant argued that, because E.R. No. 2 and its inhabitants were terminated, "[t]he only Enterprise Rancheria in existence in 1994 [when BIA recognized the results of the tribal election] was Enterprise No. 1." *Id.* at 6. Appellant asserted that BIA breached its fiduciary responsibilities to E.R. No. 1 when it "met with Arthur Angle of the terminated Enterprise No. 2 and allowed him to form Enterprise Rancheria . . . at Enterprise No. 1." *Id.* at 7-8.

The Tribe filed an answer brief on July 16, 2004, requesting the Regional Director to uphold the Superintendent's decision. The Tribe also asserted that it was a "unified tribe including 252 enrolled members who are descendants of residents of Enterprise No. 1 and 95 enrolled members who are descendants of residents of Enterprise No. 2." Tribe's Answer Brief, filed with the Regional Director, at 4. The Tribe argued: 1) The 1915 Census has always served, and continues to serve, as the basis for membership in a single tribe; 2) the purchase of two parcels of land was not equivalent to recognition of two separate Federally recognized tribes; 3) Federal recognition of one tribe at Enterprise clearly was established in 1935 when BIA allowed held one election under the IRA for the residents of both E.R. No. 1 and E.R. No. 2; 4) Pub. L. No. 88-453, authorizing the sale of E.R. No. 2, was not a termination act; and 5) it is too late to challenge the Bureau's determination that E.R. No. 2 was not terminated, first articulated in the March 12, 1968, letter from Acting Area Tribal Operations Officer to Henry Martin, because that decision has not been appealed.

On January 3, 2005, the Regional Director affirmed the Superintendent's decision. The Regional Director noted that both the 1915 Census and the list of voters for the 1935 IRA election included members of both E.R. No. 1 and E.R. No. 2. The Regional Director determined that when the government held one IRA election at Enterprise in

[11] Appellant has not submitted any documentation concerning the IRA election held at Enterprise, only his unsupported characterizations and conclusions.

1935, it showed that it considered "the Enterprise Rancheria a [F]ederally recognized political Indian entity empowered to conduct business with the Federal government." Decision at 3. The Regional Director stated that, since 1995, the Tribe has governed its own affairs and conducted business with BIA, and that "[t]he [current] [tribal] membership is comprised of individuals of lineal descent from the 1915 Census." *Id.*

Appellant appealed to the Board. Appellant relied on his notice of appeal and statement of reasons in lieu of submitting an opening brief. The Tribe filed an answer brief, and Appellant filed a reply brief. No brief was filed by or on behalf of BIA.[12]

Discussion

At the outset, we note that Appellant, who at one time participated in the Tribe along with descendants of Nancy Martin (E.R. No. 2), now seeks to have the Department resolve an internal tribal dispute by declaring that the tribe in Enterprise that is Federally recognized is one and the same as Appellant's group, which he represents is descended from Emma Walters (E.R. No. 1). To reach that result, Appellant contends that E.R. No. 1 and E.R. No. 2 originally were distinct "bands," that E.R. No. 2 was terminated in 1964, and therefore only E.R. No. 1 survives as the Federally recognized tribe in Enterprise. We are not persuaded.[13]

The insurmountable difficulty with Appellant's claim is, as BIA explained to him, that the United States has recognized only one tribe for the Indians of Enterprise since at least 1935, when the IRA election was held for a single collective group of Indians of the reservation, which was comprised of E.R. No. 1 and E.R. No. 2. Thereafter, in 1979 and

[12] On February 12, 2007, the Board received the Tribe's Request to Supplement the record. Although documents not considered by BIA are not part of BIA's administrative record, the Board may permit parties to supplement the record so long as opposing parties have the opportunity to respond. *Brown v. Navajo Regional Director*, 41 IBIA 314, 316 n.2 (2005). On March 19, 2007, Appellant submitted a response to the Tribe's supplementation. On April 2, 2007, the Tribe replied to Appellant's response. We have added the supplemental briefing of the parties to the record before the Board, but we consider none of these submissions as relevant to our disposition of this case.

[13] Obviously, to the extent that Appellant suggests that the Board should declare that there are currently two Federally recognized tribes at Enterprise, we lack jurisdiction to do so. *See, e.g., Migisew-Asiniwiin Ojibwa Grand Council of Clans v. Director, Office of Self-Governance*, 41 IBIA 139, 140 (2005).

continuing to the present, only one tribe for the Enterprise Indian community has been listed on the list of Federally recognized tribes published regularly in the Federal Register. Finally, Appellant's claim is undermined by his own acceptance of — and participation as elected tribal official with — the descendants of Nancy Martin (E.R. No. 2) in governing the one Federally recognized "Enterprise Rancheria." For these reasons, the Superintendent and the Regional Director were both correct in rendering their decisions that only one tribe is and has been recognized for the Indians of Enterprise, including the descendants of the residents of E.R. No. 2. Therefore, we affirm.

We begin our discussion with the determinations that flowed from the IRA election in 1935. The IRA required the Secretary to call a "special election" at each "reservation" at which the adult Indians were to vote on whether the provisions of the IRA would apply to the Indians of the reservation, particularly the provisions of 25 U.S.C. §§ 476 and 477, which provide a framework for the formal organization of tribal governments. 25 U.S.C. § 478; *see United States v. Anderson*, 625 F.2d 910, 916 (9th Cir. 1980); *Morton v. Mancari*, 359 F. Supp. 585, 588 (D.N.M. 1973), *rev'd on other grounds*, 417 U.S. 535 (1974). Significantly, the IRA defines "tribe" as "any Indian tribe, organized band, pueblo, or *the Indians residing on one reservation*." 25 U.S.C. § 479 (emphasis added).

The Secretary prepared a single list of voters at Enterprise that included the Indian residents on and near both E.R. No. 1 and E.R. No. 2.[14] The roll was not based on membership in different tribes or in distinct "organized bands." Instead, the "tribe" consisted of the Indians residing on and near one reservation comprised of two parcels. Appellant's claim that the 1935 election was simply for Indians who "lived in the Enterprise area" is an oversimplification. Also wrong is Appellant's assertion that there was "no Enterprise Rancheria, only [E.R. No. 1] and [E.R. No. 2]." *See supra* at 48. Appellant's view is erroneous because the IRA election was necessarily premised on treating the two land bases in Enterprise as a single reservation — a single "Enterprise Rancheria." Moreover, in holding an election for one collective group of Indians residing on one reservation, the Department treated this group as a single tribe.[15]

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[14] The list also included Indians living near E.R. No. 1 and E.R. No. 2.

[15] Because we conclude that the IRA election is dispositive with respect to the determination that only one tribe has been recognized, we do not view the history concerning the purchase of the two parcels or the interrelatedness of the Martin and Walters families to be relevant. However, this history, albeit scant, appears to support the existence of a single, interrelated community of Indians that met to walk the land together with the Indian agent when he visited with them in 1915. Moreover, we note that the 1915 Census included at least one family — Joe Maxson and his family — that was living at the time of the 1915 Census in another County. The inclusion of an out-of-the-area family suggests

(continued...)

The sale of E.R. No. 2 in 1964 for the creation of the Oroville Reservoir did not, by its terms, terminate any tribe, and certainly not the Enterprise "tribe," for which the IRA election was conducted.[16] Nor does Appellant argue that the 1964 Act terminated the "tribe" for which the IRA election was held. Instead, Appellant's termination argument is based solely on a premise that two distinct Federally recognized tribal entities existed in 1964 which, as we have already concluded, was not the case.

Therefore, Appellant's argument that the Enterprise tribe that appears on the Federal Register's list of Federally recognized tribes is the same as E.R. No. 1 is refuted not only by the history we have just analyzed, but also by a review of the actions that post-date the 1979 list of Federally recognized tribes.

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[15](...continued)
that the 1915 Census included at least certain individuals who were affiliated with the community of Indians at Enterprise and was not strictly limited to a census based on residency. Whether this was, in effect, a "tribal census" is an issue we need not decide.

[16] In contrast, the Rancheria Act contained the following specific language regarding the termination of the relationship between the United States and the rancherias identified in that Act:

> After the assets of a rancheria or reservation have been distributed pursuant to this Act, *the Indians who receive any part of such assets, and the dependent members of their immediate families, shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them*, and the laws of the several States shall apply to them in the same manner as they apply to other citizens. . . .

Pub. L. No. 85-671, 72 Stat. 619, at § 10(b) (emphasis added).

The Sacramento Area (now, Pacific Regional) Office has taken the position that Nancy Martin's descendants were not terminated by the 1964 land sale act. Letter from Acting Tribal Operations Officer to Henry Martin, Mar. 12, 1968. A more recent letter from the Superintendent states a contrary position, but without acknowledging the earlier Regional Office position. Letter from Superintendent to Rickie D. Wilson, Mar. 12, 2004.

First, in a letter provided to the Board by Appellant, BIA advised a descendant of Nancy Martin [E.R. No. 2] that E.R. No. 1 had been purchased "for the few remaining scattered homeless Indians of the Enterprise band" and that "[a]ll descendants of the 51 individuals named on the 1915 Census are eligible to utilize the land known as Enterprise Rancheria (No. 1)." Letter from BIA to Arthur Angle, Mar. 17, 1983, at 1-2. Thus, BIA continued to acknowledge that the Enterprise Indian community consisted of the original residents and their descendants who lived on and near both E.R. No. 1 and E.R. No. 2.

Second, Appellant appears to argue that by the objection to and nonparticipation in the organization of the Tribe in 1994 made by others in Appellant's family, BIA was aware that there were two separate bands at Enterprise, only one of which was entitled to Federal recognition. We fail to see how any objections made at the time of the 1994 meeting support Appellant's argument that the United States recognized two separate bands. At best, it shows only that three persons who attended, and then left, the meeting did not favor the formal organization of the Tribe.[17]

Third, we note that Appellant himself has actively participated in the tribe that appears on the Federally recognized tribes list. He has served as an elected tribal government official (Vice Chairman) along with elected officials who are the descendants of Nancy Martin (E.R. No. 2). Letter from Appellant to BIA, Nov. 9. Appellant's attempts to rewind the clock and reconstruct history — an unsuccessful effort in its own right — conflicts with Appellant's own participation as a member and official within the Tribe that he now seeks to reconstitute as composed solely of his group.

For the reasons set forth above, we conclude that the Superintendent and the Regional Director correctly determined that there is only one Federally recognized tribe for the Indians of Enterprise, California. This tribe is derived from the Indians on and near both E.R. No. 1 and E.R. No. 2, and had one reservation originally composed of two parcels known as E.R. No. 1 and E.R. No. 2.

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[17] We note that Appellant was not in attendance at the 1994 meeting and he states that former BIA official Harold Brafford, who apparently attended the meeting, might recall the objections that were raised. Therefore, the nature of any objections raised at the meeting appears to be speculative on Appellant's part. Also, we note that the record indicates that the 1994 organizational efforts were open to all descendants of those listed on the 1915 Census, regardless of whether they descended from the Indian residents of E. R. No. 1 or E. R. No. 2 or the general Enterprise community.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms the Regional Director's January 3, 2005, decision.[18]

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

[18] Appellant raises other questions for the first time on appeal, e.g., why no trust patents were issued for E.R. No. 1 and E.R. No. 2, whether the two parcels' "status [is] open for question." Appellant's Statement of Reasons filed with the Board, at 2. As a general rule, the Board will not consider issues raised for the first time on appeal and we see no reason to depart from that rule here. *Arizona State Land Dep't. v. Western Regional Director*, 43 IBIA 158, 165 (2006).