



INTERIOR BOARD OF INDIAN APPEALS

Cloverdale Rancheria of Pomo Indians of California, Cloverdale Rancheria Tribal Council, and Tribal Chairperson Patricia Hermosillo v. Pacific Regional Director, Bureau of Indian Affairs

48 IBIA 308 (02/27/2009)

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United States Department of the Interior

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CLOVERDALE RANCHERIA)	Order Vacating Decision and
OF POMO INDIANS OF)	Dismissing Appeal
CALIFORNIA, CLOVERDALE)	
RANCHERIA TRIBAL COUNCIL,)	
AND TRIBAL CHAIRPERSON)	
PATRICIA HERMOSILLO,)	
Appellants,)	Docket No. IBIA 08-151-A
)	
v.)	
)	
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	February 27, 2009

The Cloverdale Rancheria of Pomo Indians of California (Tribe), its Tribal Council, and its Tribal Chairperson Patricia Hermosillo (collectively Appellants), appealed to the Board of Indian Appeals (Board) from an August 8, 2008, decision (Decision) of the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), which authorized a Secretarial election to be held on a “proposed” constitution for the Tribe. The Decision acted upon a petition that was submitted by a group called the “Committee to Organize the Cloverdale Rancheria Government” (Committee). Appellants challenged the Decision on the grounds that the Regional Director erred in authorizing a Secretarial election because the Tribe already has a constitution, which was adopted on December 1, 2007 (2007 Constitution); the Tribe has had an organized government, recognized by BIA, since 1996; the Committee’s petition was not a valid Tribal request for a Secretarial election; and even if BIA was authorized to consider the petition, BIA failed to consider the Tribe’s current membership in determining that the petition had been signed by the requisite percentage of Tribal members.¹ During the course of this appeal, the Committee

¹ The Regional Director considered the Committee’s petition under 25 C.F.R. Part 81, which Appellants contend does not apply because the Tribe already has a constitution and is organized. *Compare* 25 C.F.R. § 81.2(a)(1) (holding Secretarial elections for voting on proposed constitutions when tribes wish to organize) *with* 25 C.F.R. Part 82, § 82.3 (for organized tribes, petitions are allowed if authorized by a tribe’s constitution). Appellants argue that even if Part 81 applies, the Regional Director failed to consider the Tribe’s

(continued...)

withdrew its request for a Secretarial election and asked that the Decision be rescinded, and the Regional Director requested a remand or, in the alternative, dismissal.

We dismiss this appeal because the Committee has withdrawn its request for a Secretarial election, thus rendering the Regional Director's decision, and this appeal, moot. Although the appeal from the Decision is moot, the Regional Director's request for a remand is premised on anticipated additional proceedings that implicate the issues raised by Appellants in this appeal concerning the Decision, and therefore in the interest of clarity, we vacate the Regional Director's decision in addition to dismissing the appeal.

Background and Discussion

During preliminary proceedings in this appeal, it became clear that in accepting the Committee's petition and authorizing the Secretarial election, the Regional Director had failed to consider, or develop an administrative record for, the issues and arguments raised by Appellants in this appeal.² Instead, the Decision simply assumed, without explanation, that the Tribe is not organized, that the Tribe does not have a constitution, and that only members of the *Tillie Hardwick*³ Cloverdale class are eligible to organize the Tribe.⁴

¹(...continued)

current membership in determining that the requisite 60 percent of the members had signed the petition. *See* 25 C.F.R. § 81.5(b). Finally, Appellants contend that the regulatory petitioning process has been superseded in part by Pub. L. No. 100-581, § 101, *see* 25 U.S.C. § 476(c)(1) (2006) (Secretary shall call election after receipt of a "tribal request"), and § 102 (defining "appropriate tribal request"), *see* 25 U.S.C. § 476 note.

² In a letter to the Tribe's Chairperson dated March 12, 2008, the Superintendent of the Central California Agency, BIA, did specifically decide one issue when he declined to recognize the 2007 Constitution as valid. However, the Superintendent failed to advise the Tribe of its appeal rights, as required by 25 C.F.R. § 2.7(c). Thus, that issue — while necessarily integral to a review of whether the Committee's petition was valid — was not formally before the Regional Director nor was it considered or actually decided by him.

³ *See* Order Approving Entry of Final Judgment in Action and Stipulation for Entry of Judgment, *Tillie Hardwick v. United States*, No. C 79-1710SW (N.D. Cal. Dec. 22, 1983).

⁴ Appellants contend that in 2003, the membership of the Tribe, at the time consisting of the *Tillie Hardwick* class members, voted to enlarge the membership of the Tribe, and that the enlarged membership was entitled to, and did, adopt the 2007 Constitution.

After the problems with the Decision became apparent, the Regional Director filed a motion for a remand (to allow the Superintendent to issue a decision with appeal rights), coupled with a motion in the alternative for dismissal (because the Committee withdrew its request for a Secretarial election). Appellants oppose the motion for a remand or dismissal because even though the Regional Director has acquiesced in having the Decision rescinded and the Committee has withdrawn its request for a Secretarial election, the underlying issues raised by Appellants in this appeal remain unresolved, and may resurface in a new context in which the government-to-government relationship may require a BIA decision. Appellants contend that their appeal is based upon questions of law, that they continue to challenge conclusions of law that were implicit in the Regional Director's decision, and that the Board therefore should deny the Regional Director's motion.⁵

Appellants misconstrue the mootness doctrine.⁶ Mootness has been described as "the doctrine of standing set in a time frame: the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 68 n.22 (1997), *quoted in Cheyenne River Sioux Tribe v. Acting Great Plains Regional Director*, 41 IBIA 308, 312 (2005). Both doctrines require the existence of an actual case or controversy arising from an action or decision alleged to have caused injury. In this case, the Decision, prompted by the Committee's petition, would have been (if upheld by the Board) the source of the alleged injury to Appellants. The Committee's withdrawal of its petition, with the acquiescence of the Regional Director, removes that source of injury, and with it the actual case or controversy. It may well be that what Appellants view as the "key" issues in their challenge to the Decision may arise again in a different context than a petition for a Secretarial election. However, the likelihood of that occurring does not mean that the Decision, and this appeal, are not moot. *Cf. Pueblo of Tesuque*, 40 IBIA at 274-76 (the

⁵ Appellants also argue that the Committee did not have authority to withdraw its request for a Secretarial election. But in this case, the relief sought by Appellants was to *preclude* BIA from holding a Secretarial election as requested by the Committee, and thus Appellants lack standing to object now to an action that effectively grants the specific relief they sought. Thus, we have no occasion to consider whether a petition for a Secretarial election, once submitted, can be withdrawn, or who *would* have standing to challenge such a withdrawal.

⁶ Although not bound by the same constitutional constraints as a court, the Board has consistently followed the same principle of declining to consider moot cases, in the interest of administrative economy. *Parker v. Southern Plains Regional Director*, 45 IBIA 310, 318 (2007); *Pueblo of Tesuque v. Acting Southwest Regional Director*, 40 IBIA 273, 274 (2005).

possibility that issues could re-emerge in a new controversy does not mean that the original controversy is not moot).

Moreover, for purposes of determining whether an appeal is moot — whether the case or controversy has gone away — we accept an appellant’s legal arguments as true. *See David v. Acting Great Plains Regional Director*, 47 IBIA 129, 134 (2008). In this case, if we accept Appellants’ arguments as true, the relief that we could grant would be to set aside the Decision, thus relieving Appellants from the threat of what they contend would be an unlawful Secretarial election. But that threat has dissolved.⁷

We recognize that various disputed issues implicated by the Decision — some legal, but others possibly factual — may resurface in a new context, and that Appellants are concerned that, when faced with the same issues in another context, BIA will simply explicitly reach the same conclusions that were implicit, but unexplained, in the Decision. Even assuming, for purposes of this decision, that those concerns are well-founded, we nevertheless are not convinced that they provide grounds for the Board to retain jurisdiction over this appeal. The Board does not exercise general supervisory authority over BIA. *See Stone v. Blackfeet Agency Superintendent*, 44 IBIA 111, 112 (2007). In the event that in a future decision necessary for government-to-government relations, BIA must address one or more of the issues that Appellants raised in this appeal, the Board expects BIA to fully consider the arguments raised by Appellants, as well as the various interim orders that the Board issued during this appeal, and afford proper appeal rights to interested parties. *See Pre-Docketing Notice and Order to Show Cause Why Stay Should Not be Confirmed or Request for Stay Granted*, Sept. 11, 2008; *Notice of Docketing, Order Staying Further Action by the Bureau of Indian Affairs Except as Authorized by the Board, and Order Setting Briefing Schedule*, Oct. 16, 2008; *Order Granting Tribe’s Motion for Clarification of BIA’s Lack of Jurisdiction*, Nov. 17, 2008.

Conclusion

We conclude that the Committee’s withdrawal of its request for a Secretarial election, and the Regional Director’s acquiescence in that request, rendered the Decision and this appeal moot. Because the case is moot, a remand is not appropriate, but the effect

⁷ Appellants do not argue, and there is no suggestion, that the Committee might resubmit a petition for a Secretarial election, but even if it did, the Regional Director would have to specifically consider and decide the various issues raised by Appellants, in order to determine whether the new petition could be accepted as valid, and the Board expects that the Regional Director would provide appeal rights.

of our dismissal is to return jurisdiction to BIA. Nevertheless, because it is apparent that some additional proceedings are anticipated that may give rise to one or more of the issues raised in this appeal, the Board will, in the interest of clarity, vacate the Regional Director's decision, in addition to dismissing the appeal. *Cf. Pueblo of Tesuque*, 40 IBIA at 275.

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 vacates the Regional Director's decision and dismisses this appeal as moot.⁸

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁸ On November 18, 2008, the Board received a motion to intervene from Jefferey Alan Wilson, Sr., who was involved in earlier proceedings concerning the Tribe. *See, e.g., Jefferey Alan-Wilson v. Acting Sacramento Area Director*, 33 IBIA 55 (1998). Wilson's motion sought to address the merits of the tribal dispute. He did not respond to the Regional Director's motion for remand or dismissal. Because we dismiss this appeal as moot, we conclude that Wilson's motion to intervene in the appeal is also moot.