JEFFEREY ALAN-WILSON,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 98-53-A
ACTING SACRAMENTO AREA	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	October 14, 1998

This is an appeal from a December 23, 1997, decision issued by the Acting Sacramento Area Director, Bureau of Indian Affairs (Area Director; BIA). The Area Director's decision recognized the Tribal Council elected on June 1, 1996 (June 1 Council), as the rightful governing body of the Cloverdale Rancheria, a rancheria restored to Federal recognition under Hardwick v. United States, Civil No. C-79-1710 SW (N.D.Cal. Dec. 22, 1983). For the reasons discussed below, the Board affirms that decision.

The Area Director issued his December 23, 1997, decision following the Board's remand in Appellant's earlier appeal, Alan-Wilson v. Sacramento Area Director (Alan-Wilson I), 30 IBIA 241, recon. denied, 31 IBIA 4 (1997). In Alan-Wilson I, the Board vacated a February 10, 1992, decision of the Superintendent, Central California Agency, BIA, which recognized a government formed by Appellant, and an April 4, 1995, decision of the Area Director, which recognized a government formed by John Santana. The Board found reasonable the Area Director's conclusion that, under Hardwick, those individuals entitled to participate in the reorganization of a government for the Cloverdale Rancheria were distributees, dependent members, and lineal descendants of distributees or dependent members. 30 IBIA at 254-55. However, the Board found no evidence in the record that BIA had followed a consistent interpretation of Hardwick in connection with the reorganization of other Hardwick rancherias. Id. at 257. In remanding the matter to the Area Director, the Board stated:

> The Board believes that this matter can and should be resolved among the parties. Therefore, on remand, the Area Director shall act as a facilitator for discussions intended to resolve this dispute. If the Area Director can demonstrate that a consistent interpretation of Hardwick has been followed concerning the reorganization of other Hardwick rancherias, all of the individuals recognized as eligible to reorganize the Cloverdale Rancheria's tribal government under that interpretation shall be allowed to participate in the discussions. If the Area

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Director is not able to demonstrate the alleged consistent interpretation, the discussions shall include all of the individuals who have the same status in regard to the Cloverdale Rancheria as persons who have been allowed to reorganize the tribal governments of any other Hardwick rancheria. This remand should not be construed to require unanimous agreement by the parties; rather a decision reached by the majority of the participants, or other percentage agreed upon by them, should be accepted. */

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*/ Although the Board in no way requires such a resolution, it notes that the parties might, for example, agree to abide by the results of the June 1, 1996, election.

Id. at 261-62.

In his December 23, 1997, decision, the Area Director states:

On remand from IBIA, the Area Director instructed Mr. Dorson Zunie, Sacramento Area Tribal Operations Officer, to commence an investigation to determine whether the Bureau had been consistent in its interpretation of Hardwick when organizing the seventeen Tribes subject to that decision. Mr. Zunie's report affirmed the consistent utilization of Hardwick in the organization of all the Rancherias with the exception of the Cloverdale Rancheria. With the results of Mr. Zunie's research in hand, this office made the determination that the Bureau has been consistent in following the Hardwick Decision when recognizing all but the Cloverdale Rancheria Tribal Council. The Area Director then determined that the proper parties to organize the Cloverdale Rancheria are the distributees, dependant members and lineal descendants thereof who were listed on the distribution plan for the Cloverdale Rancheria. Upon making this decision the Area [Director] instructed Mr. Zunie to comply with the instructions of IBIA by establishing a meeting with those individuals who met the Hardwick criteria in order to allow them to determine how they desired to organize the Cloverdale Rancheria.

Mr. Zunie, on October 21, 1997, sent notices to the qualified individuals inviting them to a November 8, 1997, meeting regarding the organization of the Tribe. The eligible participants were the same 127 individuals who were previously determined to be eligible to vote at the June 1, 1996, election. On November 8, 1997, at the Citrus Fairgrounds, Cloverdale, California, a meeting was held with those individuals who responded to the notice. During that meeting the attendees caucused, without BIA officials present, to discuss whether to support the June 1 Council or hold a new election. The attendees then passed a resolution to support the June 1 Council as their interim governing body.

RECOGNITION DECISION

Based upon the above, it is my decision to recognize the June 1 Council as the rightful governing body of the Cloverdale Rancheria, such recognition to be

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> implemented upon approval by the Court in Cloverdale Rancheria [v. United States, No. C 96-01037 CW (N.D. Cal.)].

Area Director's Decision at 2.

Appellant appealed the Area Director's decision to the Board. However, his notice of appeal was untimely. Accordingly, as required by its procedural regulations, 43 C.F.R. § 4.332(a), the Board dismissed the appeal. 32 IBIA 33, recon. denied, 32 IBIA 92 (1998). On March 16, 1998, the United States District Court for the Northern District of California issued an order in Cloverdale Rancheria, "remand[ing Appellant's] appeal to the Interior Board of Indian Appeals for a decision on the merits, to be issued as expeditiously as possible consistent with reasoned decision-making." Mar. 16, 1998, Order at 2. The order does not explain the reason for the remand.

Under its regulations, the Board lacks jurisdiction over an untimely appeal. 43 C.F.R. § 4.332(a). Accordingly, the Board addresses this appeal only under authority of the district court's remand. Because the Board decides this appeal outside the scope of its regulatory jurisdiction, the decision may not be cited as precedent in any other case.

Appellant is clearly dissatisfied with the Board's decision in Alan-Wilson I and continues to make arguments concerning issues that were decided in that case. The Board's earlier decision is final for the Department of the Interior. The only question to be decided in this appeal is whether the Area Director properly followed the remand instructions in Alan-Wilson I. 1/

As indicated above, the Area Director was given two tasks))to demonstrate, if possible, that a consistent practice had been followed concerning the reorganization of other Hardwick rancherias and to facilitate the resolution of this dispute among the individuals determined to be eligible to participate in the reorganization of the Cloverdale Rancheria in accordance with the most inclusive standard employed in other Hardwick reorganizations.

The Area Director contends:

> With only one exception, * * * the Zunie report found that the BIA was consistent in following the Hardwick interpretation. That exception was in the recognition of the Wilson Interim Council of the Cloverdale Rancheria. * * *

1/ Among the filings made by Appellant in this appeal is a "Request for Judicial Notice" of several documents. Appellant cites Rule 201 of the Federal Rules of Evidence as authority for the Board to take "judicial notice" of these documents.

The Federal Rules of Evidence apply to proceedings in the Federal courts, not proceedings before this Board. In any event, the Board finds that Appellant has failed to show that the documents he seeks to submit are relevant to the narrow issue in this appeal.

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> The record reflects that BIA established two variables in its interpretation of Hardwick when aiding in the organization or reorganization of the 17 terminated tribes. One variable was whether a rancheria had a pre-termination governing document, in which case the BIA recognized the membership criteria set forth in that document. The Bureau utilized the pre-termination governing document because paragraph 4 of the Hardwick decision restored each rancheria to the same status it had prior to termination by requiring the Secretary of the Interior to recognize them ". . . as Indian entities with the same status as they possessed prior to distributions of the assets of these Rancherias. . .". However, where there was no pre-termination governing document, the BIA used the distribution plans for the respective rancherias by instructing the Indians thereof that the rightful parties to organization of the rancheria were the distributees, dependant members and lineal descendants thereof.

Area Director's Brief at 5-6. The June 1 Council agrees that BIA's interpretation of Hardwick has been consistent.

The Board has reviewed the Zunie report and the 29 exhibits accompanying it. While the report reveals that BIA lacks complete information concerning some of the restored rancherias, it demonstrates that, in cases where BIA assisted in the reorganization of rancherias like Cloverdale (i.e., those lacking pre-termination constitutions), it took the position that the individuals eligible to participate were distributees and their lineal descendants. The report also shows that Mr. Zunie made a good faith effort to obtain information from the rancherias themselves in cases where BIA lacked complete information as to whether those rancherias actually applied the BIA interpretation of Hardwick in their elections. It seems unlikely that any further efforts to collect information from the rancherias would be productive.

The Board finds that the Zunie report, together with its exhibits, demonstrates a consistent position on the part of BIA. 2/ Accordingly, the Board further finds that it was proper for the Area Director to include in the discussions required by Alan-Wilson I only those individuals who were distributees, dependent members, or lineal descendants thereof.

Both the Area Director and the June 1 Council contend that Appellant lacks standing to challenge the remainder of the Area Director's decision, concerning the November 8, 1997, meeting called by the Area Director in his capacity as facilitator. The Board agrees. Appellant does not claim to be a distributee, a dependent member, or a lineal descendant of any individual listed on the distribution plan for the Cloverdale Rancheria. Accordingly, he was not entitled to participate in the meeting and lacks standing to challenge the proceedings at that meeting.

The Board finds that the Area Director properly carried out the instructions in the Board's decision in Alan-Wilson I.

2/ The Board held in Alan-Wilson I that Appellant had failed to demonstrate that BIA had not followed a consistent practice. 30 IBIA at 257. While he repeats his allegations here, Appellant again fails to support those allegations.

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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 Area Director's December 23, 1997, decision is affirmed.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

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