



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

Governor's Office of Planning & Research

JUN 03 2019

STATE CLEARINGHOUSE

VIEJAS BAND OF KUMEYAAY)	Pre-Docketing Notice, Order
INDIANS and SYCUAN BAND OF)	Concerning Service List, Order
THE KUMEYAAY NATION; AND)	Consolidating Appeals, and Order for
COUNTY OF SAN DIEGO,)	the Administrative Record
CALIFORNIA;)	
Appellants,)	
)	Docket Nos. IBIA _____
v.)	_____
)	
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	May 30, 2019

On May 24, 2019, the Board of Indian Appeals (Board) received a joint notice of appeal from the Viejas Band of Kumeyaay Indians (Viejas Band), through Tuari N. Bigknife, Esq., and from the Sycuan Band of the Kumeyaay Nation (Sycuan Band), through Mark A. Radoff, Esq. On May 28, 2019, the Board received a notice of appeal from the County of San Diego (County), through Thomas D. Bunton, Esq. The Viejas Band, Sycuan Band, and County (collectively, Appellants) seek review of the same April 23, 2019, decision (Decision) of the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to approve the acceptance into trust by the United States for the Ewiiapaayp Band of Kumeyaay Indians of approximately 16.69 acres of land. The property is located in an unincorporated area of the County of San Diego, California.¹ The Regional Director's decision was issued after the Board granted BIA's request to vacate and remand its prior December 23, 2016, decision to accept the property into trust.² See *County of San Diego, California; Viejas Band of Kumeyaay Indians; and Sycuan Band of the Kumeyaay Nation v. Acting Pacific Regional Director*, 65 IBIA 188 (2018).

¹ The property is referred to as the Walker Site and is identified as Assessor's Parcel Number 404-080-26. The legal description of the property is included in the Decision.

² The December 23, 2016, decision was issued after the Board vacated the Regional Director's initial May 31, 2011, decision to accept the property into trust and remanded the matter for further consideration. See *County of San Diego, California v. Pacific Regional Director*, 58 IBIA 11 (2013).

Procedural regulations governing administrative appeals to the Board are found in 43 Code of Federal Regulations (C.F.R.) Part 4. A copy of these regulations is enclosed for non-Federal parties.

Order Concerning Service List

The Board is distributing this order to the complete list of individuals and entities identified by the Regional Director as potentially interested parties. The Board notes, however, that the Regional Director's decision was served on numerous individuals and entities, sometimes including multiple officials or apparent sub-units within the same government or entity, and not all of whom appear to be "interested parties," or distinct and separate interested parties, within the meaning of the regulations. In addition, two Congressional offices are on the service list. Although the Board will, upon request, provide copies of orders and decisions to congressional offices, Members of Congress generally are not considered "interested parties," such that the parties are required to serve copies of pleadings on them. Further, the distribution list includes a substantial number of Indian tribes, but it is unclear whether some or all of those tribes are "interested parties."

In order to avoid placing an unnecessary service burden on the parties, the individuals and entities identified with an asterisk (*) on the attached distribution list will be dropped from the Board's future distribution list, and need not be served by the parties, unless they specifically enter an appearance in this matter. An entry of appearance should state the nature of the claimed legally protected interest that could be affected by these proceedings, *see* 25 C.F.R. § 2.2, or otherwise state grounds for participation by intervention or as amicus curiae, *see* 43 C.F.R. § 4.313. Any such entry of appearance shall be made on or before June 21, 2019, and served on all individuals and entities included on the original list.

Order Consolidating Appeals

Because the two appeals are from the same Decision, the Board consolidates the appeals.

Order for the Administrative Record

The Regional Director is requested to take the following steps in accordance with the procedural regulations in 43 C.F.R. § 4.335. Within 20 days after receipt of a copy of the notice of appeal or after receipt of this notice from the Board:

1. Assemble and transmit the administrative record to the Board. The administrative record shall include, but not be limited to, a copy of the

decision being appealed; all documents that were considered by the deciding official when he or she issued the decision; all documents, petitions, or applications by which the proceeding was initiated or which set forth claims, arguments, or evidence presented by interested parties; and copies of any transcripts of testimony taken;

2. Prepare a table of contents to serve as an index to the record; and
3. Include as part of the record a written confirmation that it contains all information and documents utilized by the deciding official in rendering the decision appealed.

If the Regional Director is unable to transmit the record within 20 days, the Regional Director should inform the Board and the parties when the record will be sent.

Further Proceedings

In accordance with 43 C.F.R. § 4.336, this case will be assigned a docket number 20 days after the date of receipt noted above unless the Board has been properly notified before that date that the Assistant Secretary - Indian Affairs has assumed jurisdiction over the appeal. Upon receipt of the record, a Notice of Docketing, setting forth a briefing schedule or other procedures, will be sent to all interested parties as shown by the administrative record. If the Assistant Secretary - Indian Affairs properly notifies the Board of an assumption of jurisdiction under 25 C.F.R. § 2.20(c) and 43 C.F.R. § 4.332(b), the parties will be so informed, and the appeal will be transmitted to her.

A handwritten signature in black ink, appearing to read 'T.A. Blaser', written over a horizontal line.

Thomas A. Blaser
Chief Administrative Judge

Enclosure (for non-Federal parties)
Distribution: See attached list.

Distribution:

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*Deputy Chief Administrative Officer
County of San Diego, Land Use and
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*County of San Diego
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*San Diego Treasurer & Tax Collector
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San Diego, CA 92101-2474

*County of San Diego
Office of Chief Administrative Officer
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*San Diego County Sheriff's Department
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San Diego, CA 92193-9062

Distribution: Continued – page 2

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*Chairperson
Campo Band of Mission Indians
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Campo, CA 91906

*Chairperson
Jamul Indian Village
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Jamul, CA 91935

*Chairperson
La Jolla Band of Luiseno Indians
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Pauma Valley, CA 92061

*Chairperson
La Posta Band of Mission Indians
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*Chairperson
Los Coyotes Band of Chauilla
& Cupeno Indians
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Warner Springs, CA 92086

*Chairperson
Manzanita Band of Mission Indians
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Boulevard, CA 91905

*Chairperson
Mesa Grande Band of Mission Indians
P.O. Box 270
Santa Ysabel, CA 92070

*Chairperson
Pauma Band of Mission Indians
P.O. Box 369
Pauma Valley, CA 92061

*Chairperson
Pala Band of Mission Indians
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Pala, CA 92059

*Chairperson
Pechanga Band of Mission Indians
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Temecula, CA 92593

*Chairperson
Rincon Band of Mission Indians
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*Chairperson
San Pasqual Band of Mission Indians
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*Chairperson
Santa Ysabel Band of Mission Indians
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Distribution: Continued – page 3

*Chairperson

Inaja-Cosmit Band of Mission Indians
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Superintendent
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Pacific Southwest Regional Solicitor
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U.S. Department of the Interior
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Assistant Secretary - Indian Affairs
U.S. Department of the Interior
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Associate Solicitor - Indian Affairs
Office of the Solicitor
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U.S. Dept. of the Interior
1849 C Street, N.W.
Washington, DC 20240

Office of the Secretary, Interior

Pt. 4

contrary to the act and this part, may be seized wherever found and at any time, by the proper field officer or by any person duly authorized by the Secretary having jurisdiction, and disposed of as the Secretary shall determine, by deposit in the proper national depository or otherwise.

§ 3.17 Preservation of collection.

Every collection made under the authority of the act and of this part shall be preserved in the public museum designated in the permit and shall be accessible to the public. No such collection shall be removed from such public museum without the written authority of the Secretary of the Smithsonian Institution, and then only to another public museum, where it shall be accessible to the public; and when any public museum, which is a depository of any collection made under the provisions of the act and this part, shall cease to exist, every such collection in such public museum shall thereupon revert to the national collections and be placed in the proper national depository.

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

Subpart A—General; Office of Hearings and Appeals

Sec.

- 4.1 Scope of authority; applicable regulations.
- 4.2 Membership of appeals boards; decisions, functions of Chief Judges.
- 4.3 Representation before appeals boards.
- 4.4 Public records; locations of field offices.
- 4.5 Power of the Secretary and Director.

Subpart B—General Rules Relating to Procedures and Practice

- 4.20 Purpose.
- 4.21 General provisions.
- 4.22 Documents.
- 4.23 Transcript of hearings.
- 4.24 Basis of decision.
- 4.25 Oral argument.
- 4.26 Subpoena power and witness provisions generally.
- 4.27 Standards of conduct.
- 4.28 Interlocutory appeals.
- 4.29 Remands from courts.
- 4.30 Information required by forms.
- 4.31 Request for limiting disclosure of confidential information.

Subpart C [Reserved]

Subpart D—Rules Applicable in Indian Affairs Hearings and Appeals

SCOPE OF SUBPART; DEFINITIONS

- 4.200 How to use this subpart.
- 4.201 Definitions.
- 4.202–4.308 [Reserved]

GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

- 4.310 Documents.
- 4.311 Briefs on appeal.
- 4.312 Board decisions.
- 4.313 Amicus Curiae; intervention; joinder motions.
- 4.314 Exhaustion of administrative remedies.
- 4.315 Reconsideration of a Board decision.
- 4.316 Remands from courts.
- 4.317 Standards of conduct.
- 4.318 Scope of review.

APPEALS TO THE BOARD OF INDIAN APPEALS IN PROBATE MATTERS

- 4.320 Who may appeal a judge's decision or order?
- 4.321 How do I appeal a judge's decision or order?
- 4.322 What must an appeal contain?
- 4.323 Who receives service of the notice of appeal?
- 4.324 How is the record on appeal prepared?
- 4.325 How will the appeal be docketed?
- 4.326 What happens to the record after disposition?

APPEALS TO THE BOARD OF INDIAN APPEALS FROM ADMINISTRATIVE ACTIONS OF OFFICIALS OF THE BUREAU OF INDIAN AFFAIRS; ADMINISTRATIVE REVIEW IN OTHER INDIAN MATTERS NOT RELATING TO PROBATE PROCEEDINGS

- 4.330 Scope.
- 4.331 Who may appeal.
- 4.332 Appeal to the Board; how taken; mandatory time for filing; preparation assistance; requirement for bond.
- 4.333 Service of notice of appeal.
- 4.334 Extensions of time.
- 4.335 Preparation and transmittal of record by official of the Bureau of Indian Affairs.
- 4.336 Docketing.
- 4.337 Action by the Board.
- 4.338 Submission by administrative law judge of proposed findings, conclusions and recommended decision.
- 4.339 Exceptions or comments regarding recommended decision by administrative law judge.
- 4.340 Disposition of the record.

Pt. 4

43 CFR Subtitle A (10-1-15 Edition)

WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985; AUTHORITY OF ADMINISTRATIVE JUDGES; DETERMINATIONS OF THE HEIRS OF PERSONS WHO DIED ENTITLED TO COMPENSATION

- 4.350 Authority and scope.
- 4.351 Commencement of the determination process.
- 4.352 Determination of administrative judge and notice thereof.
- 4.353 Record.
- 4.354 Reconsideration or rehearing.
- 4.355 Omitted compensation.
- 4.356 Appeals.
- 4.357 Guardians for minors and incompetents.

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

APPEALS PROCEDURES

Appeals Procedures; General

- 4.400 Definitions.
- 4.401 Documents.
- 4.402 Summary dismissal.
- 4.403 Finality of decision; reconsideration.
- 4.404 Consolidation.
- 4.405 Extensions of time.
- 4.406 Intervention; amicus curiae.
- 4.407 Motions.

APPEALS TO THE BOARD OF LAND APPEALS

- 4.410 Who may appeal.
- 4.411 Appeal; how taken, mandatory time limit.
- 4.412 Statement of reasons; statement of standing; reply briefs.
- 4.413 Service of notice of appeal.
- 4.414 Answers.

ACTIONS BY BOARD OF LAND APPEALS

- 4.415 Motion for a hearing on an appeal involving questions of fact.
- 4.416 Appeals of wildfire management decisions.

HEARINGS PROCEDURES

Hearings Procedures; General

- 4.420 Applicability of general rules.
- 4.421 Definitions.
- 4.422 Documents.
- 4.423 Subpoena power and witness provisions.

HEARINGS ON APPEALS INVOLVING QUESTIONS OF FACT

- 4.430 Prehearing conferences.
- 4.431 Fixing of place and date for hearing; notice.
- 4.432 Postponements.
- 4.433 Authority of the administrative law judge.
- 4.434 Conduct of hearing.

- 4.435 Evidence.
- 4.436 Reporter's fees.
- 4.437 Copies of transcript.
- 4.438 Action by administrative law judge.

CONTEST AND PROTEST PROCEEDINGS

- 4.450 Private contests and protests.
- 4.450-1 By whom private contest may be initiated.
- 4.450-2 Protests.
- 4.450-3 Initiation of contest.
- 4.450-4 Complaints.
- 4.450-5 Service.
- 4.450-6 Answer to complaint.
- 4.450-7 Action by manager.
- 4.450-8 Amendment of answer.
- 4.451 Government contests.
- 4.451-1 How initiated.
- 4.451-2 Proceedings in Government contests.
- 4.452 Proceedings before the administrative law judge.
- 4.452-1 Prehearing conferences.
- 4.452-2 Notice of hearing.
- 4.452-3 Postponements.
- 4.452-4 Authority of administrative law judge.
- 4.452-5 Conduct of hearing.
- 4.452-6 Evidence.
- 4.452-7 Reporter's fees.
- 4.452-8 Findings and conclusions; decision by administrative law judge.
- 4.452-9 Appeal to Board.

GRAZING PROCEDURES (INSIDE AND OUTSIDE GRAZING DISTRICTS)

- 4.470 How to appeal a final BLM grazing decision to an administrative law judge.
- 4.471 How to petition for a stay of a final BLM grazing decision.
- 4.472 Action on an appeal and petition for a stay.
- 4.473 Time and place of hearing; notice; intervenors.
- 4.474 Authority of administrative law judge.
- 4.475 Service.
- 4.476 Conduct of hearing; reporter's fees; transcript.
- 4.477 Findings and conclusions; decision by administrative law judge.
- 4.478 Appeals to the Board of Land Appeals; judicial review.
- 4.479 Effectiveness of decision during appeal.
- 4.480 Conditions of decision action.

Subpart F—Implementation of the Equal Access to Justice Act in Agency Proceedings

GENERAL PROVISIONS

- 4.601 What is the purpose of this subpart?
- 4.602 What definitions apply to this subpart?
- 4.603 What proceedings are covered by this subpart?

Subpart D—Rules Applicable in Indian Affairs Hearings and Appeals

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 372-74, 410; Pub. L. 99-264, 100 Stat. 61, as amended.

CROSS REFERENCE: For regulations pertaining to the processing of Indian probate matters within the Bureau of Indian Affairs, see 25 CFR part 15. For regulations pertaining to the probate of Indian trust estates within the Probate Hearings Division, Office of Hearings and Appeals, see 43 CFR part 30. For regulations pertaining to the authority, jurisdiction, and membership of the Board of Indian Appeals, Office of Hearings and Appeals, see subpart A of this part. For regulations generally applicable to proceedings before the Hearings Divisions and Appeal Boards of the Office of Hearings and Appeals, see subpart B of this part.

SCOPE OF SUBPART; DEFINITIONS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§ 4.200 How to use this subpart.

(a) The following table is a guide to the relevant contents of this subpart by subject matter.

For provisions relating to . . .	Consult . . .
(1) Appeals to the Board of Indian Appeals generally.	§§ 4.310 through 4.318.
(2) Appeals to the Board of Indian Appeals from decisions of the Probate Hearings Division in Indian probate matters.	§§ 4.201 and 4.320 through 4.326.
(3) Appeals to the Board of Indian Appeals from actions or decisions of BIA.	§§ 4.201 and 4.330 through 4.340.
(4) Review by the Board of Indian Appeals of other matters referred to it by the Secretary, Assistant Secretary-Indian Affairs, or Director-Office of Hearings and Appeals.	§§ 4.201 and 4.330 through 4.340.
(5) Determinations under the White Earth Reservation Land Settlement Act of 1985.	§§ 4.350 through 4.357.

(b) Except as limited by the provisions of this part, the regulations in subparts A and B of this part apply to these proceedings.

[73 FR 67287, Nov. 13, 2008]

§ 4.201 Definitions.

Administrative law judge (ALJ) means an administrative law judge with OHA appointed under the Administrative Procedure Act, 5 U.S.C. 3105.

Agency means:

(1) The Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land and trust personalty; and

(2) Any office of a tribe that has entered into a contract or compact to fulfill the probate function under 25 U.S.C. 450f or 458cc.

BIA means the Bureau of Indian Affairs within the Department of the Interior.

Board means the Interior Board of Indian Appeals within OHA.

Day means a calendar day.

Decedent means a person who is deceased.

Decision or order (or decision and order) means:

(1) A written document issued by a judge making determinations as to heirs, wills, devisees, and the claims of creditors, and ordering distribution of trust or restricted land or trust personalty;

(2) The decision issued by an attorney decision maker in a summary probate proceeding; or

(3) A decision issued by a judge finding that the evidence is insufficient to determine that a person is deceased by reason of unexplained absence.

Devise means a gift of property by will. Also, to give property by will.

Devisee means a person or entity that receives property under a will.

Estate means the trust or restricted land and trust personalty owned by the decedent at the time of death.

Formal probate proceeding means a proceeding, conducted by a judge, in which evidence is obtained through the testimony of witnesses and the receipt of relevant documents.

Heir means any individual or entity eligible to receive property from a decedent in an intestate proceeding.

Individual Indian Money (IIM) account means an interest-bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary.

Indian probate judge (IPJ) means an attorney with OHA, other than an ALJ, to whom the Secretary has delegated

§§ 4.202-4.308

the authority to hear and decide Indian probate cases.

Interested party means any of the following:

- (1) Any potential or actual heir;
- (2) Any devisee under a will;
- (3) Any person or entity asserting a claim against a decedent's estate;
- (4) Any tribe having a statutory option to purchase the trust or restricted property interest of a decedent; or
- (5) Any co-owner exercising a purchase option.

Intestate means that the decedent died without a valid will as determined in the probate proceeding.

Judge, except as used in the term "administrative judge," means an ALJ or IPJ.

LTRO means the Land Titles and Records Office within BIA.

Probate means the legal process by which applicable tribal, Federal, or State law that affects the distribution of a decedent's estate is applied in order to:

- (1) Determine the heirs;
- (2) Determine the validity of wills and determine devisees;
- (3) Determine whether claims against the estate will be paid from trust personalty; and
- (4) Order the transfer of any trust or restricted land or trust personalty to the heirs, devisees, or other persons or entities entitled by law to receive them.

Restricted property means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary's consent. For the purposes of probate proceedings, restricted property is treated as if it were trust property. Except as the law may provide otherwise, the term "restricted property" as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

Secretary means the Secretary of the Interior or an authorized representative.

Trust personalty means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

43 CFR Subtitle A (10-1-15 Edition)

Trust property means real or personal property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

Will means a written testamentary document that was executed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent's trust or restricted property.

[73 FR 67287, Nov. 13, 2008]

§§ 4.202-4.308 [Reserved]

GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

SOURCE: 70 FR 11825, Mar. 9, 2005, unless otherwise noted.

§ 4.310 Documents.

(a) *Filing*. The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is:

- (1) For most documents, the date of mailing or the date of personal delivery; or
- (2) For a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e), the date that the Board receives the motion.

(b) *Serving notices of appeal and pleadings*. Any party filing a notice of appeal or pleading before the Board must serve copies on all interested parties in the proceeding. Service must be accomplished by personal delivery or mailing.

(1) Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party.

(2) Where a party is represented by more than one attorney, service on any one attorney is sufficient.

(3) The certificate of service on an attorney or representative must include the name of the party whom the attorney or representative represents and indicate that service was made on the attorney or representative.

(c) *Computation of time for filing and service*. Except as otherwise provided by law, in computing any period of time

prescribed for filing and serving a document:

(1) The day upon which the decision or document to be appealed or answered was served or the day of any other event after which a designated period of time begins to run is not to be included;

(2) The last day of the period is to be included, unless it is a nonbusiness day (e.g., Saturday, Sunday, or Federal holiday), in which event the period runs until the end of the next business day; and

(3) When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal holidays, and other nonbusiness days are excluded from the computation.

(d) *Extensions of time.* (1) The Board may extend the time for filing or serving any document except a notice of appeal.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the Board may grant an extension of time on its own initiative.

(e) *Retention of documents.* All documents received in evidence at a hearing or submitted for the record in any proceeding before the Board will be retained with the official record of the proceeding. The Board, in its discretion, may permit the withdrawal of original documents while a case is pending or after a decision becomes final upon conditions as required by the Board.

§ 4.311 Briefs on appeal.

(a) The appellant may file an opening brief within 30 days after receiving the notice of docketing. The appellant must serve copies of the opening brief upon all interested parties or counsel and file a certificate with the Board showing service upon the named parties. Opposing parties or counsel will have 30 days from receiving the appellant's brief to file answer briefs, copies of which must be served upon the appellant or counsel and all other interested parties. A certificate showing service of the answer brief upon all parties or counsel must be attached to the answer filed with the Board.

(b) The appellant may reply to an answering brief within 15 days from its receipt. A certificate showing service of the reply brief upon all parties or counsel must be attached to the reply filed with the Board. Except by special permission of the Board, no other briefs will be allowed on appeal.

(c) BIA is considered an interested party in any proceeding before the Board. The Board may request that BIA submit a brief in any case before the Board.

(d) An original only of each document should be filed with the Board. Documents should not be bound along the side.

(e) The Board may also specify a date on or before which a brief is due. Unless expedited briefing has been granted, such date may not be less than the appropriate period of time established in this section.

§ 4.312 Board decisions.

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse, or set aside any proposed finding, conclusion, or order of an administrative law judge, Indian probate judge, or BIA official. Distribution of decisions must be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board are final for the Department and must be given immediate effect.

§ 4.313 Amicus curiae; intervention; joinder motions.

(a) Any interested person or Indian tribe desiring to intervene, to join other parties, to appear as amicus curiae, or to obtain an order in an appeal before the Board must apply in writing to the Board stating the grounds for the action sought. The Board may grant the permission or relief requested for specified purposes and subject to limitations it established. This section will be liberally construed.

(b) Motions to intervene, to appear as amicus curiae, to join additional parties, or to obtain an order in an appeal pending before the Board must be served in the same manner as appeal briefs.

§4.314

§4.314 Exhaustion of administrative remedies.

(a) No decision of an administrative law judge, Indian probate judge, or BIA official that at the time of its rendition is subject to appeal to the Board, will be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. 704, unless it has been made effective pending a decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

§4.315 Reconsideration of a Board decision.

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and must contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition will not stay the effect of any decision or order and will not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

§4.316 Remands from courts.

Whenever any matter is remanded from any Federal court to the Board for further proceedings, the Board will remand the matter to an administrative law judge, an Indian probate judge, or BIA. In the alternative, to the extent the court's directive and time limitations permit, the parties will be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

§4.317 Standards of conduct.

(a) *Inquiries about cases.* All inquiries about any matter pending before the Board must be made to the Chief Administrative Judge of the Board or the

43 CFR Subtitle A (10-1-15 Edition)

administrative judge assigned the matter.

(b) *Disqualification.* An administrative judge may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the judge deems this action appropriate. If, before a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the OHA Director will determine the matter of disqualification.

§4.318 Scope of review.

An appeal will be limited to those issues that were before the administrative law judge or Indian probate judge upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the BIA official on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board will not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

APPEALS TO THE BOARD OF INDIAN APPEALS IN PROBATE MATTERS

SOURCE: 70 FR 11826, Mar. 9, 2005, unless otherwise noted.

§4.320 Who may appeal a judge's decision or order?

Any interested party has a right to appeal to the Board if he or she is adversely affected by a decision or order of a judge under part 30 of this subtitle:

(a) On a petition for rehearing;

(b) On a petition for reopening;

(c) Regarding purchase of interests in a deceased Indian's estate; or

(d) Regarding modification of the inventory of an estate.

[76 FR 7505, Feb. 10, 2011]

§4.321 How do I appeal a judge's decision or order?

(a) A person wishing to appeal a decision or order within the scope of §4.320 must file a written notice of appeal within 30 days after we have mailed the judge's decision or order and accurate

Office of the Secretary, Interior

§ 4.325

appeal instructions. We will dismiss any appeal not filed by this deadline.

(b) The notice of appeal must be signed by the appellant, the appellant's attorney, or other qualified representative as provided in § 1.3 of this subtitle, and must be filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

[73 FR 67288, Nov. 13, 2008]

§ 4.322 What must an appeal contain?

(a) Each appeal must contain a written statement of the errors of fact and law upon which the appeal is based. This statement may be included in either the notice of appeal filed under § 4.321(a) or an opening brief filed under § 4.311(a).

(b) The notice of appeal must include the names and addresses of the parties served.

[73 FR 67288, Nov. 13, 2008]

§ 4.323 Who receives service of the notice of appeal?

(a) The appellant must deliver or mail the original notice of appeal to the Board.

(b) A copy of the notice of appeal must be served on the judge whose decision is being appealed, as well as on every other interested party.

(c) The notice of appeal filed with the Board must include a certification that service was made as required by this section.

[73 FR 67288, Nov. 13, 2008]

§ 4.324 How is the record on appeal prepared?

(a) On receiving a copy of the notice of appeal, the judge whose decision is being appealed must notify:

(1) The agency concerned; and

(2) The LTRO where the original record was filed under § 30.233 of this subtitle.

(b) If a transcript of the hearing was not prepared, the judge must have a transcript prepared and forwarded to the LTRO within 30 days after receiving a copy of the notice of appeal. The LTRO must include the original transcript in the record.

(c) Within 30 days of the receipt of the transcript, the LTRO must do the following:

(1) Prepare a table of contents for the record;

(2) Make two complete copies of the original record, including the transcript and table of contents;

(3) Certify that the record is complete;

(4) Forward the certified original record, together with the table of contents, to the Board by certified mail or other service with delivery confirmation; and

(5) Send one copy of the complete record to the agency.

(d) While the appeal is pending, the copies of the record will be available for inspection at the LTRO and the agency.

(e) Any party may file an objection to the record. The party must file his or her objection with the Board within 15 days after receiving the notice of docketing under § 4.325.

(f) For any of the following appeals, the judge must prepare an administrative record for the decision and a table of contents for the record and must forward them to the Board:

(1) An interlocutory appeal under § 4.28;

(2) An appeal from a decision under §§ 30.126 or 30.127 regarding modification of an inventory of an estate; or

(3) An appeal from a decision under § 30.124 determining that a person for whom a probate proceeding is sought to be opened is not deceased.

[76 FR 7505, Feb. 10, 2011]

§ 4.325 How will the appeal be docketed?

The Board will docket the appeal on receiving the probate record from the LTRO or the administrative record from the judge, and will provide a notice of the docketing and the table of contents for the record to all interested parties as shown by the record on appeal. The docketing notice will specify the deadline for filing briefs and will cite the procedural regulations governing the appeal.

[73 FR 67288, Nov. 13, 2008]

§ 4.326

§ 4.326 What happens to the record after disposition?

(a) After the Board makes a decision other than a remand, it must forward to the designated LTRO:

(1) The record filed with the Board under § 4.324(d) or (f); and

(2) All documents added during the appeal proceedings, including any transcripts and the Board's decision.

(b) The LTRO must conform the duplicate record retained under § 4.324(b) to the original sent under paragraph (a) of this section and forward the duplicate record to the agency concerned.

[73 FR 67288, Nov. 13, 2008]

APPEALS TO THE BOARD OF INDIAN APPEALS FROM ADMINISTRATIVE ACTIONS OF OFFICIALS OF THE BUREAU OF INDIAN AFFAIRS: ADMINISTRATIVE REVIEW IN OTHER INDIAN MATTERS NOT RELATING TO PROBATE PROCEEDINGS

SOURCE: 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

§ 4.330 Scope.

(a) The definitions set forth in 25 CFR 2.2 apply also to these special rules. These regulations apply to the practice and procedure for: (1) Appeals to the Board of Indian Appeals from administrative actions or decisions of officials of the Bureau of Indian Affairs issued under regulations in 25 CFR chapter 1, and (2) administrative review by the Board of Indian Appeals of other matters pertaining to Indians which are referred to it for exercise of review authority of the Secretary or the Assistant Secretary—Indian Affairs.

(b) Except as otherwise permitted by the Secretary or the Assistant Secretary—Indian Affairs by special delegation or request, the Board shall not adjudicate:

(1) Tribal enrollment disputes;

(2) Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority; or

(3) Appeals from decisions pertaining to final recommendations or actions by officials of the Minerals Management Service, unless the decision is based on an interpretation of Federal Indian law (decisions not so based which arise from determinations of the Minerals

43 CFR Subtitle A (10–1–15 Edition)

Management Service, are appealable to the Interior Board of Land Appeals in accordance with 43 CFR 4.410).

§ 4.331 Who may appeal.

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in title 25 of the Code of Federal Regulations may appeal to the Board of Indian Appeals, except—

(a) To the extent that decisions which are subject to appeal to a higher official within the Bureau of Indian Affairs must first be appealed to that official;

(b) Where the decision has been approved in writing by the Secretary or Assistant Secretary—Indian Affairs prior to promulgation; or

(c) Where otherwise provided by law or regulation.

§ 4.332 Appeal to the Board; how taken; mandatory time for filing; preparation assistance; requirement for bond.

(a) A notice of appeal shall be in writing, signed by the appellant or by his attorney of record or other qualified representative as provided by 43 CFR 1.3, and filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203, within 30 days after receipt by the appellant of the decision from which the appeal is taken. A copy of the notice of appeal shall simultaneously be filed with the Assistant Secretary—Indian Affairs. As required by § 4.333 of this part, the notice of appeal sent to the Board shall certify that a copy has been sent to the Assistant Secretary—Indian Affairs. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction. A notice of appeal shall include:

(1) A full identification of the case;

(2) A statement of the reasons for the appeal and of the relief sought; and

(3) The names and addresses of all additional interested parties, Indian tribes, tribal corporations, or groups having rights or privileges which may be affected by a change in the decision,

Office of the Secretary, Interior

§ 4.336

whether or not they participated as interested parties in the earlier proceedings.

(b) In accordance with 25 CFR 2.20(c) a notice of appeal shall not be effective for 20 days from receipt by the Board, during which time the Assistant Secretary—Indian Affairs may decide to review the appeal. If the Assistant Secretary—Indian Affairs properly notifies the Board that he has decided to review the appeal, any documents concerning the case filed with the Board shall be transmitted to the Assistant Secretary—Indian Affairs.

(c) When the appellant is an Indian or Indian tribe not represented by counsel, the official who issued the decision appealed shall, upon request of the appellant, render such assistance as is appropriate in the preparation of the appeal.

(d) At any time during the pendency of an appeal, an appropriate bond may be required to protect the interest of any Indian, Indian tribe, or other parties involved.

[54 FR 6487, Feb. 10, 1989, as amended at 67 FR 4368, Jan. 30, 2002]

§ 4.333 Service of notice of appeal.

(a) On or before the date of filing of the notice of appeal the appellant shall serve a copy of the notice upon each known interested party, upon the official of the Bureau of Indian Affairs from whose decision the appeal is taken, and upon the Assistant Secretary—Indian Affairs. The notice of appeal filed with the Board shall certify that service was made as required by this section and shall show the names and addresses of all parties served. If the appellant is an Indian or an Indian tribe not represented by counsel, the appellant may request the official of the Bureau whose decision is appealed to assist in service of copies of the notice of appeal and any supporting documents.

(b) The notice of appeal will be considered to have been served upon the date of personal service or mailing.

§ 4.334 Extensions of time.

Requests for extensions of time to file documents may be granted upon a showing of good cause, except for the time fixed for filing a notice of appeal

which, as specified in § 4.332 of this part, may not be extended.

§ 4.335 Preparation and transmittal of record by official of the Bureau of Indian Affairs.

(a) Within 20 days after receipt of a notice of appeal, or upon notice from the Board, the official of the Bureau of Indian Affairs whose decision is appealed shall assemble and transmit the record to the Board. The record on appeal shall include, without limitation, copies of transcripts of testimony taken; all original documents, petitions, or applications by which the proceeding was initiated; all supplemental documents which set forth claims of interested parties; and all documents upon which all previous decisions were based.

(b) The administrative record shall include a Table of Contents noting, at a minimum, inclusion of the following:

(1) The decision appealed from;

(2) The notice of appeal or copy thereof; and

(3) Certification that the record contains all information and documents utilized by the deciding official in rendering the decision appealed.

(c) If the deciding official receives notification that the Assistant Secretary—Indian Affairs has decided to review the appeal before the administrative record is transmitted to the Board, the administrative record shall be forwarded to the Assistant Secretary—Indian Affairs rather than to the Board.

§ 4.336 Docketing.

An appeal shall be assigned a docket number by the Board 20 days after receipt of the notice of appeal unless the Board has been properly notified that the Assistant Secretary—Indian Affairs has assumed jurisdiction over the appeal. A notice of docketing shall be sent to all interested parties as shown by the record on appeal upon receipt of the administrative record. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing. The docketing notice shall specify the time within which briefs shall be filed, cite the procedural regulations governing the appeal and include a copy of

§ 4.337

the Table of Contents furnished by the deciding official.

§ 4.337 Action by the Board.

(a) The Board may make a final decision, or where the record indicates a need for further inquiry to resolve a genuine issue of material fact, the Board may require a hearing. All hearings shall be conducted by an administrative law judge of the Office of Hearings and Appeals. The Board may, in its discretion, grant oral argument before the Board.

(b) Where the Board finds that one or more issues involved in an appeal or a matter referred to it were decided by the Bureau of Indian Affairs based upon the exercise of discretionary authority committed to the Bureau, and the Board has not otherwise been permitted to adjudicate the issue(s) pursuant to § 4.330(b) of this part, the Board shall dismiss the appeal as to the issue(s) or refer the issue(s) to the Assistant Secretary—Indian Affairs for further consideration.

§ 4.338 Submission by administrative law judge of proposed findings, conclusions and recommended decision.

(a) When an evidentiary hearing pursuant to § 4.337(a) of this part is concluded, the administrative law judge shall recommend findings of fact and conclusions of law, stating the reasons for such recommendations. A copy of the recommended decision shall be sent to each party to the proceeding, the Bureau official involved, and the Board. Simultaneously, the entire record of the proceedings, including the transcript of the hearing before the administrative law judge, shall be forwarded to the Board.

(b) The administrative law judge shall advise the parties at the conclusion of the recommended decision of their right to file exceptions or other comments regarding the recommended decision with the Board in accordance with § 4.339 of this part.

§ 4.339 Exceptions or comments regarding recommended decision by administrative law judge.

Within 30 days after receipt of the recommended decision of the adminis-

43 CFR Subtitle A (10-1-15 Edition)

trative law judge, any party may file exceptions to or other comments on the decision with the Board.

§ 4.340 Disposition of the record.

Subsequent to a decision by the Board, the record filed with the Board and all documents added during the appeal proceedings, including the Board's decision, shall be forwarded to the official of the Bureau of Indian Affairs whose decision was appealed for proper disposition in accordance with rules and regulations concerning treatment of Federal records.

WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985; AUTHORITY OF ADMINISTRATIVE JUDGES; DETERMINATIONS OF THE HEIRS OF PERSONS WHO DIED ENTITLED TO COMPENSATION

SOURCE: 56 FR 61383, Dec. 3, 1991, unless otherwise noted.

§ 4.350 Authority and scope.

(a) The rules and procedures set forth in §§ 4.350 through 4.357 apply only to the determination through intestate succession of the heirs of persons who died entitled to receive compensation under the White Earth Reservation Land Settlement Act of 1985, Public Law 99-264 (100 Stat. 61), amended by Public Law 100-153 (101 Stat. 886) and Public Law 100-212 (101 Stat. 1433).

(b) Whenever requested to do so by the Project Director, an administrative judge shall determine such heirs by applying inheritance laws in accordance with the White Earth Reservation Settlement Act of 1985 as amended, notwithstanding the decedent may have died testate.

(c) As used herein, the following terms shall have the following meanings:

(1) The term *Act* means the White Earth Reservation Land Settlement Act of 1985 as amended.

(2) The term *Board* means the Board of Indian Appeals in the Office of Hearings and Appeals, Office of the Secretary.

(3) The term *Project Director* means the Superintendent of the Minnesota Agency, Bureau of Indian Affairs, or other Bureau of Indian Affairs official

with delegated authority from the Minneapolis Area Director to serve as the federal officer in charge of the White Earth Reservation Land Settlement Project.

(4) The term *party (parties) in interest* means the Project Director and any presumptive or actual heirs of the decedent, or of any issue of any subsequently deceased presumptive or actual heir of the decedent.

(5) The term *compensation* means a monetary sum, as determined by the Project Director, pursuant to section 8(c) of the Act.

(6) The term *administrative judge* means an administrative judge or an administrative law judge, attorney-advisor, or other appropriate official of the Office of Hearings and Appeals to whom the Director of the Office of Hearings and Appeals has redelegated his authority, as designee of the Secretary, for making heirship determinations as provided for in these regulations.

(7) The term *appellant* means a party aggrieved by a final order or final order upon reconsideration issued by an administrative judge who files an appeal with the Board.

[56 FR 61383, Dec. 3, 1991; 56 FR 65782, Dec. 18, 1991, as amended at 64 FR 13363, Mar. 18, 1999]

§4.351 Commencement of the determination process.

(a) Unless an heirship determination which is recognized by the Act already exists, the Project Director shall commence the determination of the heirs of those persons who died entitled to receive compensation by filing with the administrative judge all data, identifying the purpose for which they are being submitted, shown in the records relative to the family of the decedent.

(b) The data shall include but are not limited to:

(1) A copy of the death certificate if one exists. If there is no death certificate, then another form of official written evidence of the death such as a burial or transportation of remains permit, coroner's report, or church registry of death. Secondary forms of evidence of death such as an affidavit from someone with personal knowledge concerning the fact of death or an obituary or death notice from a newspaper

may be used only in the absence of any official proof or evidence of death.

(2) Data for heirship finding and family history, certified by the Project Director. Such data shall contain:

(i) The facts and alleged facts of the decedent's marriages, separations and divorces, with copies of necessary supporting documents;

(ii) The names and last known addresses of probable heirs at law and other known parties in interest;

(iii) Information on whether the relationships of the probable heirs at law to the decedent arose by marriage, blood, or adoption.

(3) Known heirship determinations, including those recognized by the Act determining the heirs of relatives of the decedent, and including those rendered by courts from Minnesota or other states, by tribal courts, or by tribunals authorized by the laws of other countries.

(4) A report of the compensation due the decedent, including interest calculated to the date of death of the decedent, and an outline of the derivation of such compensation, including its real property origins and the succession of the compensation to the deceased, citing all of the intervening heirs at law, their fractional shares, and the amount of compensation attributed to each of them.

(5) A certification by the Project Director or his designee that the addresses provided for the parties in interest were furnished after having made a due and diligent search.

[56 FR 61383, Dec. 3, 1991; 56 FR 65782, Dec. 18, 1991]

§4.352 Determination of administrative judge and notice thereof.

(a) Upon review of all data submitted by the Project Director, the administrative judge will determine whether or not there are any apparent issues of fact that need to be resolved.

(b) If there are no issues of fact requiring determination, the administrative judge will enter a preliminary determination of heirs based upon inheritance laws in accordance with the Act. Such preliminary determination will be entered without a hearing, and, when possible and based upon the data

