

ML 61-33



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

APR 15 2004

IN REPLY REFER TO:

NOTICE OF DECISION

CERTIFIED MAIL – RETURN RECEIPT REQUESTED – 7002 3150 0005 2285 4930

Maurice Lyons, Chairperson
Moronogo Band of Mission Indians
11581 Potrero Road
Banning, CA 92220

Dear Mr. Lyons:

This is notice of our decision upon the Morongo Band's (Tribe) application to have the below described real property accepted by the United States in trust for the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California.

The land referred to herein is situated in the State of California, County of Riverside, being more particularly described as follows:

Parcel 1:

The South half of Section 1, Township 3 South, Range 1 East, San Bernardino Meridian, in the City of Banning, County of Riverside, State of California, according to the official plat thereof.

Excepting therefrom the Easterly 20.00 feet thereof as described in Book 2552, Page 528, accepted by the Riverside County Board of Supervisors on September 28, 1959. Also excepting that portion conveyed to Lloyd L. Fields by Deed recorded September 26, 1994 as Instrument No. 368502, official records, described as follows:

Beginning on the North line of South half of Section 1 at a point 20.00 feet West of the Northeast corner of said South half; said point also being the East right-of-way of Fields Road deeded to the County of Riverside County Board of Supervisors on September 28, 1959;

Thence South 00°12'50" West 1694.62 feet, more or less, along said West right-of-way parallel with and 20.00 feet West of the East line of said Section 1 to a point on the Northeast margin of an electric transmission easement as described in the Grant of easement recorded August 18, 1945 in Book 696, pages 175 through 177 of official records;



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Thence North 50°46'00" West along the Northeast margin in said electric transmission easement 2696.92 feet, more or less, to a point on the North line of the South half of said Section 1; Thence South 89°41'27" East along said North line 2115.31 feet, more or less, to the point of beginning.

Excepting therefrom that portion thereof conveyed to the State of California by deed from James W. McGarry recorded June 26, 1940 in Book 468 page 353, official records, described as follows: Beginning at a point in the South line of said Section 1, distant thereon South 89°24'12" West 1,520.68 feet from a 1 ½ inch iron pipe with a brass cap, marking the Southeast corner of said Section; thence South 89°24'12" West, 761.12 feet on said South line; Thence North 58°53'30" West 1,951.03 feet; Thence North 31°06'30" East 400 feet; Thence South 58°53'30" East 2,598.55 feet to the point of beginning.

Also excepting therefrom that portion thereof described as follows:

A strip of land 300 feet wide, the Southerly and Northerly boundary lines of which are parallel with, and respectively, 100 feet Southerly and 200 feet Northerly from a line described as follows:

Beginning at a point in the East line of Section 1; distant 620 Northerly, measured along said East line from the Southeast corner of said Section 1; thence from said point of beginning, Northwesterly in a straight line 2,880 feet, more or less, to appoint in a line parallel with and 200 feet Southerly, measured at right angles, from the North line of said South half of said Section 1; thence Westerly parallel with and 200 feet Southerly, measured at right angles from said North line 3,010 feet, more or less, to a point in the West line of said Section 1. The side lines of said strip of land to be shortened or extended so as to terminate in the East and West line of said South half of Section 1.

Also excepting therefrom that portion described as follows: That portion of Section 1, Township 3 South, Range 1 East, San Bernardino Meridian, according to official plat thereof, within a strip of land 16.50 feet in width lying 8.25 feet on each side of the following described center line: Beginning at a point in the Easterly line of said Section 1, distant thereon Northerly 54.15 feet from the Southeast corner of said Section 1; thence Westerly in a direct line to a point in the Westerly line of said Section 1, distant thereon Northerly 60.00 feet from the Southwest corner of said Section 1.

Parcel 2:

That portion of the South half of Section 1, Township 3 South, Range 1 East, San Bernardino Meridian, according to the official plat thereof, described as follows:

Beginning at a point in the South line of said Section 1, distant thereon South 89°24'12" West 1,520.68 feet from 1 ½ inch iron pipe, with a brass cap, marking the Southeast corner of said Section 1; thence South 89°24'12" West 761.12 feet along said South line; thence

North 58°53'30" West 1,951.03 feet; thence North 31°06'30" East, 400 feet; thence South 58°53'30" East 2,598.55 feet to the point of beginning.

Parcel 3:

That portion of the South half of Section 1, Township 3 South, Range 1 East, San Bernardino meridian, according to the official plat thereof, described as follows:

A strip of land 300 feet wide, the Southerly and Northerly boundary lines of which are parallel with, and respectively, 100 feet Southerly and 200 feet Northerly from a line described as follows:

Beginning at a point in the East line of said Section 1, distant 620 feet Northerly, measure along said East line from the Southeast corner of said Section 1; thence from said point of beginning, Northwesterly in a straight line 2,880 feet, more or less, to a point in a line parallel with an 200 feet Southerly, measured at right angles, from the North line of said South half of said Section 1; thence Westerly parallel with and 200 feet Southerly, measured at right angles from said North line, 3,010 feet, more or less, to a point in the West line of said Section 1. The sidelines of said strip of land to be shortened or extended so as to terminate in the East and West line of said South half of Section 1.

Excepting therefrom the Easterly 20.00 feet thereof as described in Book 2552, page 528, accepted by the Riverside County Board of Supervisors on September 28, 1959.

The above-described parcels contain approximately 277 acres, more or less, and are commonly referred to as Riverside County Assessor's Parcel Numbers 532-080-004, 532-080-005 and 532-080-001.

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title on behalf of the United States of America for the benefit of tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the exterior boundaries of the tribe's reservation, or adjacent thereto, or within a tribal consolidation area, or (2) when the tribe already owns an interest in the land, or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. In this particular instance, the authorizing Act of Congress is the Indian Land Consolidation Act of 1983 (25 U.S.C. §2202, et seq). The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended.

On April 13, 2001, by certified mail, return receipt requested, we issued notice of, and sought comments, regarding the land acquisition application from: Honorable Barbara Boxer; Honorable Gray Davis; Honorable Dianne Feinstein; Riverside County Board of Supervisors; Riverside Building Services; Riverside County Planning Department; Riverside County Sheriff's Department; Riverside Treasurer & Tax Collector; Riverside County Office of the Assessor; California State Clearinghouse, Office of Planning & Research; Sara Drake, California Department of Justice; Deputy Legal Affairs, Office of the Governor; Honorable Mary Bono; Augustine Band of Mission Indians; Cabazon Band of Mission Indians; Ramona Band of

Mission Indians; Cahuilla Band of Mission Indians; Pechanga Band of Mission Indians; Soboba Band of Mission Indians; Torres-Martinez Desert Cahuilla Indians; Santa Rosa Band of Mission Indians; Twenty-Nine Palms of Mission Indians; Mr. Patrick D. Webb, Webb & Carey.

The April 13, 2001 notice stated that the subject parcels were located within the exterior boundaries of the Morongo Reservation. However, a subsequent review by the Office of the Solicitor concluded that the parcels are contiguous to the existing reservation.

In response to our notification, we received a letter dated April 25, 2001 from the Riverside County Sheriff's Department supporting the proposed acquisition.

Additionally, we received a letter dated May 29, 2001 from the State of California, Department of Transportation. They state, "It is anticipated that this land will be used for future development and that Interstate 10 will be impacted with higher traffic volumes. We are asking that this office be provided a Master General Plan of all future proposed development by the Morongo Band of Mission Indians so that we can determine mitigation needs for potential impacts to Interstate 10."

The Tribe responded to the State by letter dated August 30, 2001, summarized as follows:

The Tribe understands that Caltrans is not opposing the Tribe acquiring the above-referenced lands within its reservation boundaries in trust status, and the Tribe also understands and appreciates Caltrans' desire to plan mitigation, as necessary, for Interstate 10. In fact, the Tribe and Caltrans enjoy a positive and productive working relationship, and the Tribe will continue to make itself available for consultation and coordination with Caltrans.

As to Caltrans' request for a master general plan, no such plan can be provided to Caltrans at this time because none exists. In allocating limited resources and staff time, the Tribe has not found it necessary to create a master general plan. However, with respect to the specific trust applications now under review and the parcels to which the applications pertain, the following information is provided:

- 1. The Tribe is acquiring ... the parcels in trust status for land consolidation purposes. A very significant historical and current problem for the Tribe...is the relatively limited amount of tribal trust land within reservation boundaries and the jurisdictional and land use planning problems created by the "checkerboard" portion of the Reservation. The Tribe believes that a concentrated trust land base is important to its ability to self-govern and, as such, for the future well-being of the Tribe.*
- 2. For the...parcels under review, there are no existing plans for development. As such, there are no current or foreseeable impacts for Caltrans to mitigate with respect to Interstate 10.*

No further comments were received from the Department of Transportation subsequent to the Tribe's response.

Pursuant to 25 CFR 151.10, the following factors were considered in formulating our decision: (1) need of the tribe for additional land; (2) the purpose for which the land will be used; (3)

impact on the State and its political subdivisions resulting from removal of the land from the tax rolls; (4) jurisdictional problems and potential conflict of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; (6) whether or not contaminants or hazardous substances may be present on the property. Accordingly, the following analysis of the application is provided.

Factor 1- Need for Additional Land

The Morongo Indian Reservation is comprised of a checkerboard of land parcels with a complex mixture of title interests due to various factors. From the later part of 1800's through 1900's, the United States Government set aside land for the Tribe through various transactions. In some instances, the set aside precluded from the reservation, tract or tracts, the title to which had previously passed out of the United States Government. During the same period, the federal government issued Executive Orders and Presidential Proclamations revoking lands previously set aside for the Tribe.

The Tribe purchased the subject parcel as part of its ongoing effort to consolidate reservation lands. It is the goal of the Morongo Band of Mission Indians to assume governmental jurisdiction over all their lands in order to exercise tribal sovereignty. It is our determination that the Tribe has an established need for the additional land in order to facilitate tribal self-determination.

Factor 2 - Proposed land Use

The subject property is vacant and in a natural or naturalized state. The principal use of the subject land will be for land consolidation with no existing plans for future development. The Tribe believes that a concentrated land base is important to its ability to self govern and for the future well being of the Tribe.

Factor 3 – Impact on State and Local Government's Tax Base

The acceptance of the subject property into trust will not impact the State and/or Local Government's tax base as no taxes were assessed against the subject property by Riverside County in 2003/4.

However, the Morongo Band of Mission Indians recently commissioned an independent economic study to assess the economic impact of its activities on the region. The analysis was conducted by a prominent regional economist, who estimated that the Tribe's combined enterprises would generate more than \$2.8 billion in new jobs and economic benefits to the Riverside and surrounding counties economy for the next five-year period. The estimated jobs directly or indirectly attributable to all of the Tribe's economic operations will increase from 726 jobs in 2002 to approximately 5,800 by 2008.

According to the State's Economic Development Department, the tribal governments are the only segment of the California economy that achieved double-digit employment growth in the

past year. At a time when California's overall economy is static, tribal enterprises generated more than a 12 percent increase in jobs. By contrast, the civilian labor force statewide for 2002 grew only .7 percent.

In addition to the recent unveiling of plans and ground breaking for the new \$250 million Morongo Casino and Resort & Spa, the Morongo Band of Mission Indians has diversified its economy over the past decade to include: Hadley Fruit Orchards, both retail and direct mail; Morongo Travel Center; A&W Restaurant; Coco's Restaurant; and a partnership with Arrowhead Mountain Spring Water to operate a water bottling facility on Morongo's Reservation land, using Morongo's own water.

Lastly, as a result of these enterprises, Morongo is generating millions in new taxes to the state, not only from income taxes on wages and salaries to non-Indian employees and to tribal members living off the reservation, but from sales revenues from the off-reservation expenditure of those wages and salaries.

Factor 4 - Jurisdictional Problems/Potential Conflicts

Tribal jurisdiction in California is subject to P.L. 83-280; therefore, there will be no change in criminal jurisdiction. The Tribe will assert civil/regulatory jurisdiction. There are no known jurisdictional problems. With no proposed change in land use, it does not appear that transfer to trust status would result in jurisdictional conflict.

Factor 5 - Whether the BIA is equipped to discharge the additional responsibilities

The subject property is located at the north of Interstate 10 and is surrounded on three sides by the Morongo Indian Reservation. The site is vacant and in a natural or naturalized state. The site is bisected by the San Gorgoino River (2 channels) flowing from the northwest to the southwest portion of the property. The River is an intermittent stream and usually has no water flowing in its course except during floods or heavy rains. Other than the river channel, the site is generally level, sloping from north to south.

The California Department of Forestry and Fire Protection (CDF) currently, and will continue to, provide wildfire protection. Reimbursement of any fire protection services would be in accordance with the CDF/BIA Cooperative Fire Protection Agreement. Therefore, conveyance to trust status will not impose any significant additional responsibilities or burdens on the BIA beyond those already inherent in the federal trusteeship over the existing reservation.

This acquisition anticipates no change in land use. With no leases, rights of ways or any other trust transactions forthcoming, any additional responsibilities resulting from this transaction will be minimal. As a result, it is our determination that the BIA is equipped to administer any additional responsibilities resulting from this acquisition.

Factor 6 – Whether or not contaminants or hazardous substances are present

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential of, and extent of liability for, hazardous substances or other environmental remediation or injury. The record includes a negative Phase 1 "Contaminant Survey Checklist" dated August 8, 2003 reflecting that there were no hazardous materials or contaminants.

National Environmental Policy Act Compliance

An additional requirement, which has to be met when considering land acquisition proposals, is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA's guidelines for NEPA compliance are set forth in Part 30 of the Bureau of Indian Affairs Manual (30 BIAM), Supplement 1. Within 30 BIAM Supplement 1, reference is made to actions qualifying as "Categorical Exclusions," which are listed in Part 516 of (Interior) Department Manual (516 DM 6, Appendix 4). The actions listed therein have been determined not to individually or cumulatively affect the quality of the human environment, and therefore, do not require the preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). A categorical exclusion requires a qualifying action, in this case, 516 DM 6, Appendix 4, Part 4.4.I., Land Conveyance and Other Transfers of interests in land where no immediate change in land use is planned. This acquisition is for 277 acres, and no change in land use is anticipated. As a result, a categorical exclusion was approved on January 24, 2003.

Conclusion

Based on the foregoing, we at this time issue notice of our intent to accept the subject real property into trust. The subject acquisition will vest title in the United States of America in trust for the Morongo Band of Cahuilla Mission Indians in accordance with the Indian Land Consolidation Act of January 12, 1983 (25 U.S.C. §2202).

Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340 (copy enclosed).

Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within 30 days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed. If possible, a copy of this decision should be attached.

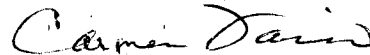
Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior 1849 C Street, N.W., MS-4140-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties.

If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures.

If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b).

If any party receiving the enclosed notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward a copy of the notice to said party or timely provide our office with the name and address of said party.

Sincerely,



Acting Regional Director

Enclosure

cc: Distribution List

DISTRIBUTION LIST

cc: BY CERTIFIED MAIL – RETURN RECIEPTS REQUESTED TO:

California State Clearinghouse (10 copies) – 7002 3150 0005 2285 4756
Office of Planning and Research
P.O. Box 3044
Sacramento, California 95812-3044

Honorable Barbara Boxer – 7002 3150 0005 2285 4763
District Office
600 B Street, Suite 2240
San Diego, CA 92101

Ms. Sara J. Drake, Deputy Attorney General – 7002 3150 0005 2285 4770
State of California
Department of Justice
P.O. Box 944255
Sacramento, California 94244-2550

Mr. D. Robert Shuman – 7002 3150 0005 2285 4787
Deputy Legal Affairs Secretary
Office of the Governor of California
State Capitol Building
Sacramento, California 95814

Riverside County Board of Supervisors – 7002 3150 0005 2285 4794
P.O. Box 1527
Riverside, CA 92407-4199

James Peterson, District Director – 7002 3150 0005 2285 4800
Office of the Honorable Dianne Feinstein
750 B Street, Suite 1030
San Diego, CA 92101

Riverside County Planning Department – 7002 3150 0005 2285 4817
4080 Lemon Street, 9th Floor
Riverside, CA 92501

Riverside County Treasurer & Tax Collector – 7002 3150 0005 228 4824
4080 Lemon Street, 4th Floor
Riverside, CA 92501

Riverside County Sheriff's Department -7002 3150 0005 2285 4831
P.O. Box 512
Riverside, CA 92502

Honorable John Benoit - 7002 3150 0005 2285 4947
1223 University Ave. #230
Riverside, CA 92507

Chairperson - 7002 3150 0005 2285 4848
Augustine Band of Mission Indians
P.O. Box 846
Coachella, CA 92236

Chairperson - 7002 3150 0005 2285 4855
Cabazon Tribal Business Committee
84-245 Indio Springs Drive
Indio, CA 92201

Chairperson - 7002 3150 0005 2285 4862
Cahuilla Band of Mission Indians
P.O. Box 391760
Anza, CA 92539-1760

Chairperson - 7002 3150 0005 2285 4879
Soboba Band of Luiseno Indians
P.O. Box 487
San Jacinto, CA 92581

Chairperson - 7002 3150 0005 2285 44886
Pechanga Band of Mission Indians
P.O. Box 1477
Temecula, CA 92593

Chairperson - 7002 3150 0005 2285 4893
Ramona Band of Mission Indians
P.O. Box 391372
Anza, CA 92539

Chairperson - 7002 3150 0005 2285 4909
Santa Rosa Band of Mission Indians
P.O. Box 390611
Anza, CA 92539

Chairperson – 7002 3150 0005 2285 4916
Twenty-Nine Palms of Mission Indians
46-200 Harrison Place
Coachella, CA 92236

Chairperson – 7002 3150 0005 2285 4923
Torres-Martinez Desert Cahuilla Indians
P.O. Box 1160
Thermal, CA 92274

Regular Mail:

Superintendent
Bureau of Indian Affairs
Southern California Agency
2083 Iowa Ave., Suite 101
Riverside, CA 92507-0001

Title 43, Code of Federal Regulations, Administrative
Appeals to the Interior Board
of Indian Appeals
§4.306

43 CFR Subtitle A (10-1-94 Edition)

tate in one-half of the interests. The decision shall specify the right of appeal to the Board of Indian Appeals within 60 days from the date of the decision in accordance with §§4.310 through 4.323. The administrative law judge shall lodge the complete record relating to the demand for hearing with the title plant as provided in §4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

(36 FR 7186, Apr. 15, 1971, as amended at 55 FR 43133, Oct. 28, 1990)

§4.306 Time for payment.

A tribe shall pay the full fair market value of the interests purchased, as set forth in the appraisal report or as determined after hearing in accordance with §4.305, whichever is applicable, within 2 years from the date of decedent's death or within 1 year from the date of notice of purchase, whichever comes later.

§4.307 Title.

Upon payment by the tribe of the interests purchased, the Superintendent shall issue a certificate to the administrative law judge that this has been done and file therewith such documents in support thereof as the administrative law judge may require. The administrative law judge shall then issue an order that the United States holds title to such interests in trust for the tribe, lodge the complete record, including the decision, with the title plant as provided in §4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

§4.308 Disposition of income.

During the pendency of the probate and up to the date of transfer of title to the United States in trust for the tribe in accordance with §4.307, all income received or accrued from the land interests purchased by the tribe shall be credited to the estate.

CROSS REFERENCE: See 25 CFR part 2 for procedures for appeals to Area Directors and to the Commissioner of the Bureau of Indian Affairs.

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

SOURCE: Sections 4.310 through 4.318 appear at 54 FR 6485, Feb. 10, 1989, 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 the date of mailing or the date of personal delivery, except that a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e) shall be effective the date it is received by the Board.

(b) Service. Notices of appeal and pleadings shall be served on all parties in interest in any proceeding before the Interior Board of Indian Appeals by the party filing the notice or pleading with the Board. Service shall be accomplished upon personal delivery or mailing. 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. Where a party is represented by more than one attorney, service on any one attorney is sufficient. The certificate of service on an attorney or representative shall 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, 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. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays, and other

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nonbusiness days shall be excluded in the computation.

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

(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 receipt of the notice of docketing. Appellant shall 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 shall have 30 days from receipt of appellant's brief to file answer briefs, copies of which shall be served upon the appellant or counsel and all other parties in interest. A certificate showing service of the answer brief upon all parties or counsel shall be attached to the answer filed with the Board.

(b) 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 shall 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) The Bureau of Indian Affairs shall be considered an interested party in any proceeding before the Board. The Board may request that the Bureau 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.

§4.314

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

§4.312 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 official of the Bureau of Indian Affairs or an administrative law judge. Distribution of decisions shall 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 shall be given immediate effect.

§4.313 Amicus Curiae; Intervention; Joinder motions.

(a) Any interested person or Indian tribe desiring to intervene or to join other parties or to appear as amicus curiae or to obtain an order in an appeal before the Board shall apply in writing to the Board stating the grounds for the action sought. Permission to intervene, to join parties, to appear, or for other relief, may be granted for purposes and subject to limitations established by the Board. This section shall 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 shall be served in the same manner as appeal briefs.

§4.314 Exhaustion of administrative remedies.

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

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

§4.315

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies. [54 FR 6485, Feb. 10, 1989; 54 FR 7504, Feb. 21, 1989]

§4.316 Reconsideration.

(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 shall 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 shall not stay the effect of any decision or order and shall 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 court to the Board for further proceedings, the Board will either remand the matter to an administrative law judge or to the Bureau of Indian Affairs, or to the extent the court's directive and time limitations will permit, the parties shall 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 with respect to any matter pending before the Board shall be made to the Chief Administrative Judge of the Board or the 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 such action appropriate. If, prior to 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 Director of the Office of

43 CFR Subtitle A (10-1-94 Edition)

Hearings and Appeals shall determine the matter of disqualification.

§4.318 Scope of review.

An appeal shall be limited to those issues which were before the administrative law judge upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the official of the Bureau of Indian Affairs on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board shall 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: Sections 4.320 through 4.323 appear at 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

§4.320 Who may appeal.

A party in interest shall have a right of appeal to the Board of Indian Appeals from an order of an administrative law judge on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate.

(a) *Notice of Appeal.* Within 60 days from the date of the decision, an appellant shall file a written notice of appeal signed by appellant, appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. A statement of the errors of fact and law upon which the appeal is based shall be included in either the notice of appeal or in any brief filed. The notice of appeal shall include the names and addresses of parties served. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction.

(b) *Service of copies of notice of appeal.* The appellant shall personally deliver or mail the original notice of appeal to the Board of Indian Appeals. A copy shall be served upon the administrative law judge whose decision is appealed as well as all interested parties. The notice of appeal filed with the Board shall

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**BOARD OF INDIAN
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(c) Action by administrative law judge:
Record inspection. The administrative
law judge, upon receiving a copy of the
notice of appeal, shall notify the Su-
perintendent concerned to return the
duplicate record filed under §§4.236(b)
and 4.241(d), or under §4.242(f) of this
part, to the Land Titles and Records
Office designated under §4.236(b) of this
part. The duplicate record shall be con-
formed to the original by the Land Ti-
tles and Records Office and shall there-
after be available for inspection either
at the Land Titles and Records Office
or at the office of the Superintendent.
In those cases in which a transcript of
the hearing was not prepared, the ad-
ministrative law judge shall have a
transcript prepared which shall be for-
warded to the Board within 30 days
from receipt of a copy of the notice of
appeal.

**§4.321 Notice of transmittal of record
on appeal.**

The original record on appeal shall be
forwarded by the Land Titles and
Records Office to the Board by cer-
tified mail. Any objection to the record
as constituted shall be filed with the
Board within 15 days of receipt of the
notice of docketing issued under §4.322
of this part.

§4.322 Docketing.

The appeal shall be docketed by the
Board upon receipt of the administra-
tive record from the Land Titles and
Records Office. All interested parties
as shown by the record on appeal shall
be notified of the docketing. The dock-
eting notice shall specify the time
within which briefs may be filed and
shall cite the procedural regulations
governing the appeal.

§4.323 Disposition of the record.

Subsequent to a decision of the
Board, other than remands, the record
filed with the Board and all documents
added during the appeal proceedings,
including any transcripts prepared be-
cause of the appeal and the Board's de-
cision, shall be forwarded by the Board
to the Land Titles and Records Office
designated under §4.236(b) of this part.
Upon receipt of the record by the Land

Titles and Records Office, the duplicate
record required by §4.320(c) of this part
shall be conformed to the original and
forwarded to the Superintendent con-
cerned.

**APPEALS TO THE BOARD OF INDIAN AP-
PEALS FROM ADMINISTRATIVE AC-
TIONS OF OFFICIALS OF THE BUREAU
OF INDIAN AFFAIRS: ADMINISTRATIVE
REVIEW IN OTHER INDIAN MATTERS
NOT RELATING TO PROBATE PRO-
CEEDINGS**

SOURCE: Sections 4.330 through 4.340 appear
at 64 FR 5487, Feb. 10, 1999, 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 ad-
ministrative actions or decisions of of-
ficials of the Bureau of Indian Affairs
issued under regulations in 25 CFR
chapter 1, and (2) administrative re-
view 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 Af-
fairs.

(b) Except as otherwise permitted by
the Secretary or the Assistant Sec-
retary—Indian Affairs by special dele-
gation 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
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

§4.332

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, 4015 Wilson Boulevard, 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, 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

43 CFR Subtitle A (10-1-94 Edition)

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.

§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

Office of the Secretary

taken; all original documents, or applications, or proceedings which were initiated by the interested parties upon which all proceedings are based.

(b) The administrative minimum, including:

(1) The decision;

(2) The notice thereof; and

(3) Certification

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(c) If the decision

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§4.336 Docketing

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§4.337 Action

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taken; all original documents, peti-
tions, or applications by which the pro-
ceeding was initiated; all supplemental
documents which set forth claims of in-
terested 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 con-
tains all information and documents
utilized by the deciding official in ren-
dering the decision appealed.

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

§ 4.336 Docketing.

An appeal shall be assigned a docket
number by the Board 20 days after re-
ceipt of the notice of appeal unless the
Board has been properly notified that
the Assistant Secretary—Indian Affairs
has assumed jurisdiction over the ap-
peal. 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 objec-
tion 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 govern-
ing the appeal and include a copy of
the Table of Contents furnished by the
deciding official.

§ 4.337 Action by the Board.

(a) The Board may make a final deci-
sion, 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 hear-
ings shall be conducted by an adminis-
trative law judge of the Office of Hear-
ings and Appeals. The Board may, in
its discretion, grant oral argument be-
fore 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 au-
thority committed to the Bureau, and
the Board has not otherwise been per-
mitted to adjudicate the issue(s) pursu-
ant 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 As-
sistant Secretary—Indian Affairs for
further consideration.

§ 4.338 Submission by administrative
law judge of proposed findings, con-
clusions and recommended deci-
sion.

(a) When an evidentiary hearing pur-
suant to § 4.337(a) of this part is con-
cluded, 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 ad-
ministrative law judge, shall be for-
warded to the Board.

(b) The administrative law judge
shall advise the parties at the conclu-
sion 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 re-
garding recommended decision by
administrative law judge.

Within 30 days after receipt of the
recommended decision of the adminis-
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 ap-
peal proceedings, including the Board's
decision, shall be forwarded to the offi-
cial of the Bureau of Indian Affairs
whose decision was appealed for proper
disposition in accordance with rules

§4.350

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, administrative judges shall determine such heirs by applying inheritance laws in accordance with the White Earth Reservation Land 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 officer in charge of the White Earth Reservation Land Settlement Branch of the Minneapolis Area Office, Bureau of Indian Affairs, at Cass Lake, Minnesota.

(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 of the

43 CFR Subtitle A (10-1-94 Edition)

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]

§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

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the decedent, as ordered by court other states, by bunals authori countries.

(4) A report of the decedent, culated to the ocedent, and an of such comp real property sion of the ce ceased, citing heirs at law, and the amou tributed to eac

(5) A certifie rector or his de es provided for wers furnished and diligent se:

[56 FR 61383, Dec 1991]

§4.352 Determ tive judge :

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(b) If there quiring deterr tive judge will termination of itance laws in Such preliminar be entered w when possible furnished and mentary the names, birth d decedent, and the fact that t heirs.

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