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#13473



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

JUL 30 2013

IN REPLY REFER TO:

Real Estate Services
Pit River NOD .33 acre

NOTICE OF DECISION

CERTIFIED MAIL – RETURN RECEIPT REQUESTED – 7012 1640 0001 2248 7386

Honorable Dolores Raglin, Chairperson
Pit River Tribe
36970 Park Avenue
Burney, California 96013

Dear Chairperson Raglin:

This is notice of our decision upon the Pit River Tribe’s application to have the below-described real property accepted by the United States of America in trust for the Pit River Tribe:

Parcel 2 of Parcel Map No. 339-75 in the Southwest Quarter of Section 36, Township 35 North, Range 1 West, M.D.M., filed December 31, 1975 in Book 7 of the Parcel Maps at Page 142, Shasta County Records.

The above-described parcel contains approximately 0.33 acre, more or less, and is referred to as Shasta County Assessor’s Parcel Number 027-330-006.

The applicable regulations are set forth in the Code of Federal Regulations, Title 25, INDIANS, Part 151, as amended. The regulations specify that it is the Secretary’s policy to accept lands “in trust” 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). The proposed land acquisition of 0.33 acre contains land within one mile from the Tribe’s existing 72-acre trust land in Montgomery Creek, within the Tribe’s ancestral territories. This acquisition, therefore, falls within the land acquisition policy as set forth by the Secretary of Interior.

On November 19, 2010, by certified mail, return receipt requested, we issued notice of, and sought comments regarding the proposed fee-to-trust application from the California State Clearinghouse, Office of Planning & Research; Sara J. Drake, Deputy Attorney General, State of California; Andrea Lynn Hoch, Legal Affairs Secretary, Office of the Governor of California; James Peterson, District Director, Office of the Honorable Dianne Feinstein; Board of Supervisors, County of Shasta; Shasta County Treasurer and Tax Collector; Planning Director, Planning Department, County of Shasta; Shasta County Dept. of Public

Works; John Bulinski, District Director, California Department of Transportation. On November 19, 2010, by regular mail, the same notice was sent to Delia Parr, Directing Attorney, California Indian Legal Services and Juan Venegas, Chairperson, Pit River Tribe.

In response to the November 19, 2010 notice, we received the following comments:

- Letter dated December 20, 2010 from Mr. Marcello Gonzalez, Office of Community Planning, California Department of Transportation, stating in relevant part, "Caltrans encroachment permits are non-transferable. The Tribe must obtain a Caltrans encroachment permit to recognize the current change in ownership and for any change in use." and "Caltrans supports the acquisition into trust if the record of decision to approve the acquisition into trust for non-gaming land specifically addresses provisions to assess potential environmental impacts from any new development and it commits the Tribe to identify and mitigate off-reservation impacts."

By letter dated June 11, 2012, California Indian Legal Services, responded on behalf of the Tribe, to Mr. Gonzalez's comment stating *"the Tribe does not anticipate any changes in use to the property"* and *"the Tribe has had land use and environmental regulations in place for some time, and the Tribe's interest in enforcing those regulations to ensure safe and proper use of lands under its jurisdiction is just as strong as the County's."*

- We also received a letter dated December 15, 2010 from the Shasta County Department of Resource Management stating they "cannot support at this time the acquisition of this property into lands in trust. This property currently resides on one of two main Shasta County highways in the middle of the Montgomery Creek town center. Montgomery Creek and the existing businesses and public facilities are governed by the Shasta County General Plan and Zone Code. As such, the future development of the community and its overall effect on other properties is integral to the efficient provision of services in Shasta County. Shasta County provides law enforcement, fire, health, social service and a plethora of regulatory programs not limited to building inspection, environmental health oversight, and land use approvals."

By letter dated June 11, 2012, we received response from California Indian Legal Services on behalf of the Tribe, stating, *"The property taxes for the subject parcel are only about \$1,000 per year, which will be more than offset by other factors (e.g., the Tribe providing some of the services that the County now provides; an increase in tax revenues from nearby properties and businesses once the Tribe gets the store up and running; and, an increase in sales tax received by the County as a result of jobs being created at the store and people having new income to make purchases with)."*

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 Pit River Tribe is a federally-recognized Indian tribe made up of eleven autonomous bands, including the Ajumawi, Aporige, Astarawi, Atsugewi, Atwamsini, Hammawi, Hewisedawi,

Illmawi, Itsatawi, Kosealekte, and Madesi. The Tribe's ancestral territories were officially recognized by the Indian Claims Commission on July 29, 1959. (Pit River Docket No. 347, 7 ICC 815 at 845-847.)

The Tribe's current land holdings encompass an area of approximately 9,567.32 acres, most of which is held in trust. Of these 9,567.32 acres, 5026.41 acres are tribally-owned and the remaining 4540.91 acres are individual allotments. Tribal land is widely scattered across Shasta and Modoc Counties within seven different Rancherias, each located in one of the eleven bands' ancestral territories as follows:

Likely: 1.32 acres (Hammawi) Lookout: 40 acres (Atwamsini)
XL Ranch: 8463.62 acres (Kosealekte)
XL Ranch (Goose Lake): 790.38 acres (Kosealekte) Big Bend: 40 acres (Madesi)
Burney: 79 acres (Itsatawi) Montgomery Creek: 72 acres (Madesi) Roaring Creek: 80 acres (Madesi)

These lands have been occupied by the Tribe since long before the first western intrusion into Pit River territory, and remained under tribal control until various battles and gradual encroachment by incoming settlers forced most tribal members out of their ancestral villages and into homelessness. Most of the above acreage was purchased for "landless California Indians" by Congressional appropriation Acts and/or executive orders during the early part of the 20th century, after a 1904 report indicated the deplorable state of California Indians during the late 1800's, with many having been left homeless and starving on the fringes of society.

The Tribe is currently composed of approximately 1800 members, a majority of whom remain within the Tribe's territory. Unemployment rates in both Shasta and Modoc Counties are very high in comparison with other counties in California, and residents of Modoc County maintain the lowest median household income of any county in California. Since environmental factors and land theft have all but removed the traditional subsistence way of life from tribal members living within Pit River territory, and since the rural nature of the area offers few employment opportunities, the economic needs of tribal members who remain within the Tribe's territory are great and are highly dependent on the economic opportunities developed by the Tribe itself.

The depressed state of the economies of both Shasta and Modoc Counties are due in large part to a lack of economic development. Although the current acreage held by the Tribe may seem large when compared to other California tribes, the extremely rural nature of the Tribe's lands and surrounding lands greatly limits the economic opportunities available. Much of the Tribe's current revenue is generated from a very small casino boasting only 100 slot machines, 3 game tables and a 100-seat bingo hall; some additional revenues arise from grazing permits on portions of the XL Ranch. The Tribe wishes to expand these economic opportunities and therefore wishes to increase tribal land holdings in strategic areas that offer the greatest chance for economic development. As discussed below, this property's location and existing features distinguish it from the Tribe's other properties and offer a practical opportunity for such economic development.

Factor 2 - Proposed land Use

The subject of this fee-to-trust application is a small parcel of one-third (1/3) of an acre, located directly on Highway 299 in the town of Montgomery Creek, Shasta County, California (Assessor's Parcel No. 027-330-006-000). The parcel lies within the Tribe's ancestral territories and is very close to the Tribe's existing 72-acre trust land in Montgomery Creek - less than one mile away. This parcel was originally acquired in fee in December 2000 through a donation to the Tribe.

As stated above, the property will be used for economic development purposes. Because of its location directly on Highway 299 and its current use, the property attracts many visitors daily. The property currently houses the Montgomery Creek Post Office as well as a grocery store and a small shop. The Post Office is currently occupied by the United States Postal Service, while the store and shop are both vacant. The grocery store still contains a walk-in freezer, a cold storage area, and shelving and displays which could be put back into use rather easily. Tribal income will be generated through a long-term lease with the Postal Service and through the development and operation of a tribally-owned and -operated store or stores in the vacant portions of the building. Thus, the property is unique in that it already contains a building that is suitable for commercial purposes which would not require a large investment of resources by the Tribe to become economically viable.

Because the land is currently held in fee status, the Tribe has been hesitant to develop the parcel further. The Tribe wishes to strategically invest its limited resources in a manner where additional improvements on the property would not impose a greater tax burden upon the Tribe. Were the property to be held in trust, the Tribe and tribal members could expect greater economic benefit due to the absence of state taxation. Finally, a tribally-owned and -operated store could provide tribal members with both employment opportunities and the option of supporting a tribal business, thus helping to improve tribal members' economic situations and to generate increased tribal revenue.

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

The removal of the property from the Shasta County tax rolls will have a very minor impact on the County tax base. In 2007-2008, the property's total tax assessment was \$1,002.54. (In 2008-2009, the assessment increased to \$1,071.65- see tax roll inquiries attached hereto as Attachment 2.) In 2007-2008, according to the State of California's Fiscal Year Property Tax Collection Statistical Report, Shasta County assessed a total of \$164,901,099 in property taxes. (See Attachment 3.) Thus, having this land placed into trust will only result in a loss of approximately 0.0006% of the County's property tax income.

The slight negative impacts to the State or County will be more than offset by the increased economic self-sufficiency of tribal members and other local residents who may work on the property. Further, the County will receive additional revenue generated from increases in private property values and private business development as a result of tribal development and use of the parcel. The spillover effect of tribal enterprises will be enjoyed by local non-Indian businesses and vendors doing business with the Tribe, which in turn will generate income and tax revenue to the State and County governments.

Factor 4 - Jurisdictional Problems/Potential Conflicts

The Tribe does not anticipate any significant problems or conflicts as a result of the intended land use and removal from state and local jurisdiction. Until the land is taken into trust, state and local laws will continue to apply. The Tribe recognizes that all Indian Country within California is subject to Public Law 83-280 ("P.L. 280"), and that the State of California will continue to have criminal jurisdiction over the parcel.

Once the land is taken into trust, current County zoning will no longer apply; however, the use of the land will remain the same, and therefore will still fit precisely into the permitted uses described in Shasta County Ordinance Code Chapter 17.44 (Community Commercial). Civil/regulatory jurisdiction over the parcel would fall to the Pit River Tribal Council, who would ensure compliance with applicable federal law and the Tribe's existing laws and policies regarding land use, protection of natural resources, and protection of the environment, which contain clear guidelines for responsible and respectful land use and

development. The Tribe's Constitution calls for non-sale of tribal lands, ensuring that such lands remain in Indian hands.

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

The Tribe does not expect to request any significant services from the BIA relative to the property once the trust transfer is completed (such as technical and engineering assistance, road construction and maintenance, or any other services to which the Tribe would be entitled as a beneficiary of the trust relationship). The Tribe is a mature contracting tribe and presently manages and administers the vast majority of BIA services itself through self-determination grants. The Tribe does not anticipate that the monies it presently receives via these grants will increase or decrease as a result of this trust transfer. The Tribe's ability to optimize its use of these various funds will only improve once it begins to realize the potential economic gains of this property.

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 Level 1 "Contaminant Survey Checklist" dated March 24, 2010 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 0.33 acre, and no change in land use is anticipated. As a result, a categorical exclusion was approved on March 31, 2010.

Conclusion

Based on the foregoing, we at this time issue notice of our intent to accept the proposed acquisition into trust. Subject acquisition will vest title in the United States of America in trust for the Pit River Tribe 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).

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.

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).

Sincerely,

Acting 
Regional Director

Enclosure

cc: Distribution List

DISTRIBUTION LIST

cc: BY CERTIFIED MAIL – RETURN RECIEPTS REQUESTED TO:

California State Clearinghouse (10 copies) – 7012 1640 0001 2248 7300
Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

Ms. Sara J. Drake, Deputy Attorney General – 7012 1640 0001 2248 7317
State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Mr. Jacob Appelsmith – 7012 1640 0001 2248 7324
Deputy Legal Affairs Secretary
Office of the Governor of California
State Capitol Building
Sacramento, CA 95814

Devin Rhinerson – 7012 1640 0001 2248 7331
U.S. Senator Dianne Feinstein
331 Hart
Senate Office Building
Washington, DC 20510

Board of Supervisors – 7012 1640 0001 2248 7348
County of Shasta
1500 Court St.
Redding, CA 96001

Shasta County Treasurer and Tax Collector – 7012 1640 0001 2248 7355
1500 Court St.
Redding, CA 96001

Planning Director – 7012 1640 0001 2248 7362
Planning Department
County of Shasta
1500 Court St.
Redding, CA 96001

Shasta County Dept. of Public Works – 7012 1640 0001 2248 7379
Shasta County
1855 Placer St.
Redding, CA 96001

John Bulinski, District Director – 7012 1640 0001 2248 7638
California Department of Transportation
P.O. Box 496073
Redding, CA 96049

Jason Hart, Chairperson - 7012 1640 0001 2248 7621
Redding Rancheria
2000 Redding Rancheria Rd.
Redding, CA 96001

Regular Mail:

Superintendent
Bureau of Indian Affairs
Northern California Agency
364 Knollcrest Dr., Ste. 105
Redding, CA 96002

Delia Parr, Directing Attorney
California Indian Legal Services
324 F Street
Eureka, CA 95501

Office of the Secretary, Interior

§4.310

state specifically and concisely the grounds upon which it is based.

(b) *Notice; burden of proof.* The OHA deciding official will, upon receipt of a demand for hearing, set a time and place therefor and must mail notice thereof to all parties in interest not less than 30 days in advance; provided, however, that such date must be set after the expiration of the 60-day period fixed for the filing of the demand for hearing as provided in §4.305(a). At the hearing, each party challenging the tribe's claim to purchase the interests in question or the valuation of the interests as set forth in the valuation report will have the burden of proving his or her position.

(c) *Decision after hearing; appeal.* Upon conclusion of the hearing, the OHA deciding official will issue a decision which determines all of the issues including, but not limited to, a judgment establishing the fair market value of the interests purchased by the tribe, including any adjustment thereof made necessary by the surviving spouse's decision to reserve a life estate in one-half of the interests. The decision must 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 OHA deciding official must 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.

§4.306 Time for payment.

A tribe must pay the full fair market value of the interests purchased, as set forth in the valuation 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 must issue a certificate to the OHA deciding official that this has been done and file therewith such documents in

support thereof as the OHA deciding official may require. The OHA deciding official will 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 will 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: 66 FR 67656, Dec. 31, 2001, 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) will be effective the date it is received by the Board.

(b) *Service.* Notices of appeal and pleadings must 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 must 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 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, 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 nonbusiness days are 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 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 receipt of appellant's brief

to file answer briefs, copies of which must 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 must 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 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) The BIA is considered an interested party in any proceeding before the Board. The Board may request that the 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 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 a BIA official or an OHA deciding 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 or to join other parties or 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. 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 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 Exhaustion of administrative remedies.

(a) No decision of an OHA deciding official or a BIA official, which 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 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.

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

§4.315 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 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 either remand the matter to an OHA deciding official or to the BIA, or to the extent the court's directive and time limitations will 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 with respect to any matter pending before the Board must 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 Hearings and Appeals will determine the matter of disqualification.

§4.318 Scope of review.

An appeal will be limited to those issues which were before the OHA deciding official 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: 68 FR 67656, Dec. 31, 2001, unless otherwise noted.

§4.320 Who may appeal.

(a) A party in interest has a right to appeal to the Board from an order of an OHA deciding official on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate.

(b) Notice of appeal. Within 60 days from the date of the decision, an appellant must 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, 801 North Quincy Street, Arlington, Virginia 22203. A

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statement of the errors of fact and law upon which the appeal is based must be included in either the notice of appeal or in any brief filed. The notice of appeal must include the names and addresses of parties served. A notice of appeal not timely filed will be dismissed for lack of jurisdiction.

(c) Service of copies of notice of appeal. The appellant must personally deliver or mail the original notice of appeal to the Board of Indian Appeals. A copy must be served upon the OHA deciding official whose decision is appealed as well as all interested parties. The notice of appeal filed with the Board must include a certification that service was made as required by this section.

(d) Action by the OHA deciding official; record inspection. The OHA deciding official, upon receiving a copy of the notice of appeal, must notify the Superintendent 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 must be conformed to the original by the Land Titles and Records Office and will thereafter 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 OHA deciding official will have a transcript prepared which must be forwarded to the Board within 30 days from receipt of a copy of the notice of appeal.

[66 FR 67656, Dec. 31, 2001, as amended at 67 FR 4368, Jan. 30, 2002]

§ 4.321 Notice of transmittal of record on appeal.

The original record on appeal must be forwarded by the Land Titles and Records Office to the Board by certified mail. Any objection to the record as constituted must be filed with the Board within 15 days of receipt of the notice of docketing issued under § 4.332 of this part.

§ 4.322 Docketing.

The appeal will be docketed by the Board upon receipt of the administrative record from the Land Titles and

43 CFR Subtitle A (10-1-03 Edition)

Records Office. All interested parties as shown by the record on appeal must be notified of the docketing. The docketing notice must specify the time within which briefs may be filed and must 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 because of the appeal and the Board's decision, must 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 must be conformed to the original and forwarded to the Superintendent concerned.

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;

Office of the Secretary, Interior

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(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 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, 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.

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(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

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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 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

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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 administrative 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:

