## Appeal of Decision Record/FONSI

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained at 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 FR 4.21 (58 FR 4939, January 19, 1993) or 43 CFR 2804.1 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal.

A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with This office. If you request a stay, you have the burden of proof to demonstrate the stay should be granted.

### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied,

(2) The likelihood of the appellant's success on the merits,

(3) The likelihood of immediate and irreparable harm if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

Form 1842–1
(February 1985)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

# INFORMATION ON TAKING APPEALS TO THE BOARD OF LAND APPEALS

*DO NOT APPEAL UNLESS*

1. This decision is adverse to you,

*AND*

2. You believe it is incorrect

*IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED*

**1. NOTICE OF APPEAL** . Within 30 days file a *Notice of Appeal* in the office which issued this decision (see 43 CFR Secs. 4.411 and 4.413). You may state your reasons for appealing, if you desire.

**2. WHERE TO FILE NOTICE OF APPEAL** .

Field Manager
Taos Field Office
226 Cruz Alta Rd.
Taos, NM 87571-5983

SOLICITOR ALSO COPY TO

**3. STATEMENT OF REASONS** Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior. Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203 (see 43 CFR Sec. 4.412 and 4.413). If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary.

SOLICITOR ALSO COPY TO

DOI Field Solicitor
P.O. Box 1042
Santa Fe, NM 87504

**4. ADVERSE PARTIES** Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (see 43 CFR Sec. 4.413). Service will be made upon the Associate Solicitor, Division of Energy and Resources, Washington, D.C. 20240, instead of the Field or Regional Solicitor when appeals are taken from decisions of the Director (WO–100).

**PROOF OF SERVICE** Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of the Secretary, Board of Land Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (see 43 CFR Sec. 4.401(c)(2)).

*Unless these procedures are followed your appeal will be subject to dismissal (see 43 CFR Sec. 4.402). Be certain that all communications are identified by serial number of the case being appealed.*

NOTE: *A document is not filed until it is actually received in the proper office (see 43 CFR Sec. 4.401(a))*

**§ 4.21 General provisions.**

(a) *Effect of decision pending appeal.* Except as otherwise provided by law or other pertinent regulation:

(1) A decision will not be effective during the time in which a person adversely affected may file a notice of appeal; when the public interest requires, however, the Director or an Appeals Board may provide that a decision, or any part of a decision, shall be in full force and effective immediately;

(2) A decision will become effective on the day after the expiration of the time during which a person adversely affected may file a notice of appeal unless a petition for a stay pending appeal is filed together with a timely notice of appeal; a petition for a stay may be filed only by a party who may properly maintain an appeal;

(3) A decision, or that portion of a decision, for which a stay is not granted will become effective immediately after the Director or an Appeals Board denies or partially denies the petition for a stay, or fails to act on the petition within the time specified in paragraph (b)(4) of this section.

(b) *Standards and procedures for obtaining a stay.* Except as otherwise provided by law or other pertinent regulation:

(1) A petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

(i) The relative harm to the parties if the stay is granted or denied,

(ii) The likelihood of the appellant's success on the merits,

(iii) The likelihood of immediate and irreparable harm if the stay is not granted, and

(iv) Whether the public interest favors granting the stay;

(2) The appellant requesting the stay bears the burden of proof to demonstrate that a stay should be granted;

(3) The appellant shall serve a copy of its notice of appeal and petition for a stay on each party named in the decision from which the appeal is taken, and on the Director or the Appeals Board to which the appeal is taken, at the same time such documents are served on the appropriate officer of the Department; any party, including the officer who made the decision being appealed, may file a response to the stay petition within 10 days after service; failure to file a response shall not result in a default on the question of whether a stay should be granted; service shall be made by delivering copies personally or by sending them by registered or certified mail, return receipt requested;

(4) The Director or an Appeals Board shall grant or deny a petition for a stay pending appeal, either in whole or in part, on the basis of the factors listed in paragraph (b)(1) of this section, within 45 calendar days of the expiration of the time for filing a notice of appeal;

(c) *Exhaustion of administrative remedies.* No decision which at the time of its rendition is subject to appeal to the Director or an Appeals Board shall be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704, unless a petition for a stay of decision has been timely filed and the decision being appealed has been made effective in the manner provided in paragraphs (a)(3) or (b)(4) of this section or a decision has been made effective pending appeal pursuant to paragraph (a)(1) of this section or pursuant to other pertinent regulation.

(d) * * *

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

AUTHORITY: §§ 4.470 to 4.478 of this Subpart E also issued under authority of sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.[1]

CROSS REFERENCE: See Subpart A for the authority, jurisdiction and membership of the Board of Land Appeals within the Office of Hearings and Appeals. For general rules applicable to proceedings before the Board of Land Appeals as well as the other Appeals Boards of the Office of Hearings and Appeals, see Subpart B.

### APPEALS PROCEDURES

#### APPEALS PROCEDURES; GENERAL

**§ 4.400 Definitions.**

As used in this subpart:

(a) "Secretary" means the Secretary of the Interior or his authorized representatives.

(b) "Bureau" means Bureau of Land Management.

(c) "Board" means the Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary. The terms "office" or "officer" as used in this subpart include "Board" where the context requires.

(d) "Administrative law judge" means an administrative law judge in the Office of Hearings and Appeals, Office of the Secretary, appointed under section 3105 of Title 5 of the United States Code.

**§ 4.401 Documents.**

(a) *Grace period for filing.* Whenever a document is required under this subpart to be filed within a certain time and it is not received in the proper office during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal in connection with which the document is required to be filed.

(b) *Transferees and encumbrancers.* Transferees and encumbrancers of land the title to which is claimed or is in the process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the proper land office, become entitled to receive and be given the same notice of any appeal, or other proceeding thereafter initiated affecting such interest which is required to be given to a party to the proceeding. Every such notice of a transfer or encumbrance will be noted upon the records of the land office. Thereafter such transferee or encumbrancer must be made a party to any proceedings thereafter initiated adverse to the entry.

(c) *Service of documents.* (1) Wherever the regulations in this subpart require that a copy of a document be served upon a person, service may be made by delivering the copy personally to him or by sending the document by registered or certified mail, return receipt requested, to his address of record in the Bureau.

(2) In any case service may be proved by an acknowledgment of service signed by the person to be served. Personal service may be proved by a written statement of the person who made such service. Service by registered or certified mail may be proved by a post-office return receipt showing that the document was delivered at the person's record address or showing that the document could not be delivered to such person at his record address because he had moved therefrom without leaving a forwarding address or because delivery was refused at that address or because no such address exists. Proof of service of a copy of a document should be filed in the same office in which the document is filed except that proof of service of a notice of appeal should be filed in the office of the officer to whom the appeal is made, if the proof of service is filed later than the notice of appeal.

(3) A document will be considered to have been served at the time of personal service, of delivery of a registered or certified letter, or of the return by post office of an undelivered registered or certified letter.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 15117, Aug. 13, 1971]

**§ 4.402 Summary dismissal.**

An appeal to the Board will be subject to summary dismissal by the Board for any of the following causes:

(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;

(b) If the notice of appeal is not served upon adverse parties within the time required; and

(c) If the statement of reasons, if not contained in the notice of appeal, is not served upon adverse parties within the time required.

(d) If the statement of standing required by § 4.412(b) is not filed with the Board or is not served upon adverse parties within the time required.

[36 FR 7186, Apr. 15, 1971, as amended at 47 FR 26392, June 18, 1982]

#### APPEALS TO THE BOARD OF LAND APPEALS

**§ 4.410 Who may appeal.**

(a) Any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management or of an administrative law judge shall have a right to appeal to the Board, except—

(1) As otherwise provided in Group 2400 of Chapter II of this title,

(2) To the extent that decisions of Bureau of Land Management officers must first be appealed to an administrative law judge under § 4.470 and Part 4100 of this title,

(3) Where a decision has been approved by the Secretary, and

(4) As provided in paragraph (b) of this section.

(b) For decisions rendered by Departmental officials relating to land selections under the Alaska Native Claims Settlement Act, as amended, any party who claims a property interest in land affected by the decision, an agency of the Federal Government or a regional corporation shall have a right to appeal to the Board.

[47 FR 26392, June 18, 1982]

**§ 4.411 Appeal; how taken, mandatory time limit.**

(a) A person who wishes to appeal to the Board must file in the office of the officer who made the decision (not the Board) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the notice of appeal in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a notice of appeal in time for it to be filed within 30 days after the date of publication.

(b) The notice of appeal must give the serial number or other identification of the case and may include a statement of reasons for the appeal, a statement of standing if required by § 4.412(b), and any arguments the appellant wishes to make.

(c) No extension of time will be granted for filing the notice of appeal. If a notice of appeal is filed after the grace period provided in § 4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the notice of appeal is filed during the grace period provided in § 4.401(a) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the appeal will be dismissed by the Board.

(R.S. 2478, as amended, 43 U.S.C. 1201; sec. 25, Alaska Native Claims Settlement Act, as amended, 43 U.S.C. 1601-1628; and the Administrative Procedure Act, 5 U.S.C. 551, et seq.)

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 15117, Aug. 13, 1971; 49 FR 6373, Feb. 21, 1984]

**§ 4.412 Statement of reasons, statement of standing, written arguments, briefs.**

(a) If the notice of appeal did not include a statement of the reasons for

[1] 36 FR 15116, Aug. 13, 1971

the appeal, the appellant shall file such a statement with the Board (address: Board of Land Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203) within 30 days after the notice of appeal was filed. In any case, the Board will permit the appellant to file additional statements of reasons and written arguments or briefs within the 30-day period after the notice of appeal was filed.

(b) Where the decision being appealed relates to land selections under the Alaska Native Claims Settlement Act, as amended, the appellant also shall file with the Board a statement of facts upon which the appellant relies for standing under § 4.410(b) within 30 days after filing of the notice of appeal. The statement may be included with the notice of appeal filed pursuant to § 4.411 or the statement of reasons filed pursuant to paragraph (a) of this section or may be filed as a separate document.

(c) Failure to file the statement of reasons and statement of standing within the time required will subject the appeal to summary dismissal as provided in § 4.402, unless the delay in filing is waived as provided in § 4.401(a).

[47 FR 26392, June 18, 1982]

### § 4.413 Service of notice of appeal and of other documents.

The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments, or briefs on the Regional or Field Solicitor having jurisdiction over the State in which the appeal arose, or upon the Associate Solicitor, Division of Energy and Resources, when the appeals are taken from decisions of the Director, U.S. Geological Survey, or the Director, Bureau of Land Management, or the subject matter of the appeal involves mineral activities on the Outer Continental Shelf,

*Address: Associate, Regional or Field Solicitor and States Served*

Associate Solicitor, Division of Energy and Resources, U.S. Dept. of the Interior, Washington, D.C. 20240—n/a

Regional Solicitor, Northeast Region, U.S. Dept. of the Interior, Suite 306, One Gateway Center, Newton Corner, MA 02158—Pennsylvania, Indiana, Michigan, Minnesota, Ohio, Illinois, West Virginia, Wisconsin, Delaware, New Jersey, New York, the New England States, Maryland and Virginia.

Regional Solicitor, Southeast Region, U.S. Dept. of the Interior, 75 Spring Street, S.W., Suite 1328, Atlanta, GA 30303—Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Puerto Rico and the Virgin Islands.

Regional Solicitor, Rocky Mountain Region, U.S. Dept. of the Interior, P.O. Box 25007, Denver Federal Center, Denver, CO 80225—Colorado, Wyoming, Nebraska, Kansas, Iowa and Missouri.

Field Solicitor, U.S. Dept. of the Interior, P.O. Box 1538, Billings, MT 59103—Montana, North Dakota and South Dakota.

Regional Solicitor, Intermountain Region, U.S. Dept. of the Interior, Suite 6201, Federal Bldg., 125 South State Street, Salt Lake City, UT 84138—Utah.

Regional Solicitor, Pacific Southwest Region, U.S. Dept. of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, CA 95825—California, Nevada, Arizona and Hawaii.

Regional Solicitor, Pacific Northwest Region, U.S. Dept. of the Interior, Lloyd 500 Bldg., Suite 607, 500 N.E. Multnomah Street, Portland, OR 97232—Oregon and Washington.

Field Solicitor, U.S. Dept. of the Interior, Box 020, Fed. Bldg. & Courthouse 550 West Fort St., Boise, ID 83724—Idaho.

Field Solicitor, U.S. Dept. of the Interior, P.O. Box 1042, Santa Fe, NM 87501—Oklahoma, Texas, New Mexico, Arkansas and Louisiana.

Regional Solicitor, Alaska Region, U.S. Dept. of the Interior, 701 C Street, Box 34, Anchorage, AK 99513—Alaska.

and each adverse party named in the decision appealed from, in the manner prescribed in § 4.401(c), not later than 15 days after filing the document.

Failure to serve within the time required will subject the appeal to summary dismissal as provided in § 4.402. Proof of such service as required by § 4.401(c) must be filed with the Board (address: Board of Land Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203), within 15 days after service unless filed with the notice of appeal.

(5 U.S.C. 301)

[45 FR 56347, Aug. 25, 1980, as amended at 49 FR 4077, Feb. 2, 1984; 49 FR 13353, Apr. 4, 1984]





### § 4.414 Answers.

If any party served with a notice of appeal wishes to participate in the proceedings on appeal, he must file an answer within 30 days after service on him of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal. If additional reasons, written arguments, or briefs are filed by the appellant, the adverse party shall have 30 days after service thereof on him within which to answer them. The answer must state the reasons why the answerer thinks the appeal should not be sustained. Answers must be filed with the Board (address: Board of Land Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203) and must be served on the appellant, in the manner prescribed in § 4.401(c), not later than 15 days thereafter. Proof of such service as required by § 4.401(c), must be filed with the Board (see address above) within 15 days after service. Failure to answer will not result in a default. If an answer is not filed and served within the time required, it may be disregarded in deciding the appeal, unless the delay in filing is waived as provided in § 4.401(a).