



Interior Board of Land Appeals

Procedures and Practices Manual



Revised April 2023

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INTRODUCTION AND PURPOSE OF THIS MANUAL

The Interior Board of Land Appeals (IBLA or Board) is one of the principal components of the Office of Hearings and Appeals (OHA). The Board decides finally for the Department of the Interior appeals from decisions rendered by Departmental officials relating to the use and disposition of public lands and their resources, mineral resources in certain acquired lands, mineral and energy resources on the Outer Continental Shelf, and the conduct of surface coal mining under the Surface Mining Control and Reclamation Act (SMCRA). The Board's mission is to provide an impartial forum within the Department of the Interior for the fair resolution of disputes involving public lands and natural resources under the Department's jurisdiction.

This Manual sets forth the procedures and practices the Board follows in managing its adjudication of appeals to ensure objectivity, consistency, and transparency. The procedures and practices are intended to be consistent with the provisions of applicable statutes, regulations, and the OHA manual. If there is an inconsistency between the procedures in this Manual and those authorities, the provisions in those authorities govern. If circumstances warrant, a procedure or practice in this Manual may be varied at the direction of or with the approval of the Chief Administrative Judge.

The Board adjudicates appeals from decisions by the Bureau of Land Management, Bureau of Ocean Energy Management, Bureau of Safety and Environmental Enforcement, Office of Natural Resources Revenue, Office of Surface Mining Reclamation and Enforcement, and the Departmental Cases Hearings Division. In this Manual, we will refer to any of these bureaus and offices as an "agency."

This Manual is made publicly available pursuant to 5 U.S.C. § 552(a)(2)(C) (2018). This is an administrative staff manual. It is not a regulation or final agency action. Nothing in this Manual is intended to conflict with or amend current statutes or regulations governing the Board and practice before the Board. This Manual does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person.

The Chief Administrative Judge may revise or amend this Manual by memorandum or by issuing a revised Manual.

I. DOCKETING APPEALS

A. DOCKETING PROCEDURES

1. A person may appeal certain decisions by the Bureau of Land Management, Bureau of Ocean Energy Management, Bureau of Safety and Environmental Enforcement, Office of Natural Resources Revenue, Office of Surface Mining Reclamation and Enforcement, or any successor organization, as appropriate, or a decision of an administrative law judge under the procedures set forth in 43 C.F.R. Part 4, subparts A, B, E, F, J, and L. An appeal, including any petition for a stay filed together with a notice of appeal, must be filed in the office of the officer who made the decision (not the Board). An appeal that includes a petition for a stay must be served on the Board. An agency that timely receives a notice of appeal is expected to forward the notice of appeal and any other attendant filings, the decision being appealed, and the accompanying agency record to IBLA promptly.
2. The Board docket an appeal when it receives a notice of appeal and a copy of the decision being appealed. When an appellant sends a notice of appeal and a copy of the decision being appealed to the Board at the same time it files a notice of appeal with the appropriate office, the Board will docket the appeal at that time; it need not wait for the agency to forward that documentation. If an appellant does not send the decision being appealed to the Board, then the Board will ask the agency to email a copy of it to the Board so that the matter can be accurately docketed.
3. Once the Board receives an appeal, the docket staff enters the appeal in the Docket Management System (DMS) and assigns a docket number to the appeal. Docket numbers are assigned in the order the appeals are received and docketed. A new number cycle begins at the beginning of each fiscal year, e.g., IBLA 2023-0001 for the first appeal received on or after October 1, 2022.
4. After a docket number has been assigned to an appeal and DMS has been updated with all relevant data, the docket staff will prepare a docketing notice that includes the docket number, the date the appeal is docketed, the appeal's title, the agency that issued the decision being appealed, the underlying case number, the appeal subject, directions on how to file documents with the Board, information on the Board's alternative dispute resolution program, and a link to the Board's website. The docket staff will email the docketing notice to all known parties or, if the Solicitor's Office attorney is not yet known, the general Office of the Solicitor email address specifically established for receiving Board docketing notices. If appellant's email address is not provided on a filing or in the agency record, the

docket staff will mail the docketing notice to the appellant's last known mailing address.

B. MAINTAINING THE DOCKET SHEET AND APPEAL FILE

1. Every filed and issued document and the submission of the agency record is recorded on an appeal's docket sheet in DMS. The docket sheet functions as an index of all filed, issued, and submitted documents in an appeal.
2. An appeal file contains all materials the Board receives and generates during an appeal, including a courtesy copy of the notice of appeal, the decision being appealed, briefs, interim Board orders, the agency's record, the final order or decision, and post-judgment motions and orders, if any. Depending on when the appeal was filed, the appeal file may be paper, electronic, or both.
3. The appeal file for any appeal docketed before Fiscal Year 2020 is in paper form and is stored in the Board's docket room. Each paper appeal file contains filed documents in reverse chronological order, with the most recent document on top. It also contains the agency record, which may be in paper or electronic (compact disc or thumb drive) form.
4. For all appeals filed in Fiscal Year 2020 and later, the Board maintains an electronic appeal file. The Board does not maintain paper filings that have also been filed electronically. Any documents that are not filed electronically, except agency records and attachments that are too large to scan, are scanned (i.e., converted to a digital format) and added to the electronic appeal file.
5. Scanned paper filings that were not also filed electronically, along with any other paper documents that are too large to scan, are added to a paper appeal file and stored in the Board's docket room. Docket staff ensure that the docket sheet indicates when a paper appeal file exists.

C. AGENCY RECORDS

1. The Board encourages agencies to submit their records to the Board electronically using the Board's SharePoint site created to receive agency records. If an agency record is submitted via an alternative method, i.e., OneDrive, compact disc, or flash drive, the docket staff will copy it into the electronic appeal file. The docket staff will uncompress any compressed (zipped) folders before copying the contents to the electronic appeal file. Once the files from a compact disc or a flash drive have been successfully

copied to the electronic appeal file, the disc or drive will be maintained in the appropriate paper appeal file.

2. If an agency submits its record in paper form, the docket staff will place it in a paper appeal file. If the agency record is too voluminous to be included in the paper file, the docket staff will place it in a separate box bearing the appeal's docket number and an appropriate note indicating its location will be made on the docket sheet in DMS.
3. Under 43 C.F.R. § 4.411(d)(3), the agency's record is "compiled during the officer's consideration of the matter leading to the decision being appealed." While the parties may supplement the record to correct an inadvertent omission, they cannot supplement the record with materials that the agency did not consider when it made the decision on appeal. Nevertheless, the Board may accept newly submitted information and, to the extent it is deemed reliable and relevant to the issue presented on appeal, consider that information during the Board's review of the appeal.
4. If an agency does not submit its record, the Board will issue an order setting forth a briefing schedule, including a date by which the agency must submit the record.

II. INITIAL APPEAL REVIEW AND ASSIGNMENTS

A. EARLY IDENTIFICATION OF JURISDICTIONAL ISSUES, PETITIONS FOR STAY, AND MOTIONS

1. The Board strives to resolve jurisdictional issues, petitions for stay, and motions as soon as possible.
2. The docket staff will review all incoming appeals to check for jurisdictional issues (e.g., timeliness, standing, ripeness, etc.), petitions for stay, and motions (e.g., motions for extensions of time, consolidation, protection of confidential information, etc.).
3. Appeals with petitions for stay are generally assigned to an attorney and the Deputy Chief Administrative Judge for resolution of the petition and any jurisdictional issues that may arise or motions that may be filed while the petition is being adjudicated. Mining claim forfeiture appeals with petitions for stay are generally assigned to a two-judge panel because those appeals can often be resolved on the merits without having to adjudicate the accompanying petition for stay.

4. Jurisdictional issues and motions filed in appeals without petitions for stay will generally be assigned to an attorney and a single judge for resolution.

B. ASSIGNMENT OF APPEALS

The Chief Administrative Judge's role is set out in the Department's regulations, which provide as follows: "The Chief Administrative Judge of an Appeals Board may direct that an appeal may be decided by a panel of any two Administrative Judges of the Board, but if they are unable to agree upon a decision . . . may assign one or more additional Administrative Judges . . . to consider the appeal." 43 C.F.R. § 4.2(a).

1. In accordance with the direction of the Chief Administrative Judge, the docket staff assigns appeals to panels consisting of two administrative judges, generally on a rotational basis (designating the lead judge and the panel judge), taking into consideration statutory, regulatory, or internal deadlines, OHA priorities, recusals, and management considerations. When an appeal is assigned to a panel, it may also be assigned to an attorney for preparation of a draft order or decision.
2. Normally, the docket staff will assign motions for reconsideration, applications and petitions for attorneys' fees, and director/judicial remands to the same panel that decided the appeal.
3. The Chief Administrative Judge may reassign the lead or panel judge in the interest of efficiency or any other relevant consideration.

C. EXPEDITED APPEALS

1. The Board prioritizes the oldest appeals for adjudication. However, the Board expedites some appeals to meet timeframes established by statute or regulation. For example, under 43 C.F.R. § 4.416, the Board must decide wildfire management appeals within 60 days after all briefs are filed or within 180 days after the appeal was filed, whichever is earlier. Under 43 C.F.R. § 4.478, the Board must decide appeals concerning orders granting or denying a stay in grazing appeals "promptly." SMCRA appeals regarding orders of cessation must be decided in 30 days under 43 C.F.R. § 4.1187(g), and SMCRA appeals concerning permit suspension or revocation must be decided in 60 days under 43 C.F.R. § 4.1197. The Board expedites other appeals as a matter of policy: for example, interlocutory appeals from the Departmental Cases Hearings Division, mining claim forfeiture appeals, and appeals on remand.

2. When a judge is assigned as lead on an appeal that is designated for expedited review, the lead judge will prioritize its disposition ahead of other assignments, unless otherwise directed by or with the approval of the Chief Administrative Judge.
3. The Board may expedite other appeals, either in response to a motion from a party or on its own initiative, when the Board determines that circumstances warrant expedited consideration. For example, the Board may consider an appeal ahead of when it would normally be adjudicated if the Board's ruling might impact other pending appeals or establish a precedent that would be helpful or if a party demonstrates that exigent circumstances warrant expedited consideration.
4. The Board strives to resolve all other active pending appeals promptly after the parties have completed briefing.

D. ALTERNATIVE DISPUTE RESOLUTION

The Board is committed to providing parties with the opportunity to resolve appeals through an Alternative Dispute Resolution (ADR) process. The use of ADR provides a framework that gives the parties to an appeal the flexibility to craft more durable and creative solutions to disputes. Using ADR can also save time and money associated with appeals and increase satisfaction with the appeal process and outcome of the appeal. Any party may request information about the ADR process. The ADR process is entirely voluntary.

1. An ADR process may be initiated at any time during the pendency of an appeal, at the parties' initiative. If the Board identifies an appeal that may be appropriate for an ADR process, the Board may formally invite the parties to consider ADR.
2. Where the parties agree to an ADR process, the Board will provide information and assistance so that the parties can understand and effectively participate in the process. Assistance may be provided directly, by an attorney or judge, or the parties may choose a neutral third-party mediator to facilitate the process.
3. Upon notice from the parties that they have agreed to pursue ADR, the Board will issue an order suspending the appeal and will notify the Board's ADR Coordinator. At any time, after consultation with the other parties, a party may move to return the appeal to the Board's active docket for adjudication.

4. After the Board issues an order suspending the appeal, the Board's ADR Coordinator will contact the parties to schedule an initial phone conference to discuss the ADR options available to the parties, identify which ADR process, if any, the parties wish to pursue, and establish timeframes for completing the process.
5. If the ADR process is successful, the parties will typically file a joint motion to dismiss the appeal or a joint motion to set aside and remand the decision on appeal.
6. If the ADR process is unsuccessful, the appeal will return to the active docket for adjudication.

E. RECUSAL

1. It is the responsibility of each judge or attorney to decide whether to be recused from an appeal. A judge or an attorney must be recused from participation in an appeal when required by 18 U.S.C. § 208 (2018) (Acts affecting a personal financial interest), 5 C.F.R. § 2635.402 (Disqualifying financial interests), 5 C.F.R. § 2635.502 (Personal and business relationships), and 5 C.F.R. § 2635.702 (Use of public office for private gain). Each judge or attorney should also consult the relevant state bar rules for applicable requirements.
 - a. Examples of situations in which recusal is required include when the judge or attorney: (i) has personal knowledge of disputed evidentiary facts relating to the appeal; (ii) has participated as counsel, adviser, or material witness in proceedings related to the appeal; (iii) has expressed an opinion relating to the merits of the appeal; or (iv) knows that they, their spouse, or their minor children has a financial interest in the subject matter in controversy or in a party to the appeal, or any other interest that could be substantially affected by the outcome of the appeal.
 - b. There may be exceptions to these recusal requirements. To invoke an exception, the judge or attorney must consult with the Departmental Ethics Office and receive its approval to participate in a particular appeal.
 - c. If a judge or attorney has any questions about applying this standard to a particular appeal, the judge should contact the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or (202) 208-7960.

2. The judge or attorney must report each recusal to the Chief Administrative Judge, Deputy Chief Administrative Judge, and the docket attorney. The docket attorney will record the recusal on the docket sheet for the appeal in DMS. The judge or attorney will then be excluded from participating in any aspect of the appeal, including deliberation as a lead or panel judge, review and comment during circulation of any draft orders and decisions, and any Board meetings concerning the appeal.
3. When the Chief Administrative Judge is recused from an appeal, the Deputy Chief Administrative Judge will assume the responsibilities of the Chief Administrative Judge for that appeal, unless the Deputy Chief Administrative Judge is also recused. In such circumstances, the docket attorney will assign the responsibilities to another judge.
4. The Board will identify any judge who is recused in a footnote contained within the order or decision resolving the appeal. The footnote will identify the recused judge and state that the judge “took no part in the consideration of this appeal.”

III. CONSOLIDATING APPEALS AND NOTING RELATED APPEALS

When issues of fact or law in different appeals are the same or similar and it would be more efficient to consider those issues together, the Board may consolidate the appeals at any time upon motion of a party or on the Board’s initiative. *See* 43 C.F.R. § 4.404. The Board may also unconsolidate appeals at any time if it would promote the clear or efficient resolution of the appeals.

The docket staff should note in DMS when an appeal is related to a previously filed appeal so that the appeals can be considered together. Related appeals concern the same decision being appealed or the same legal or factual issues but have not been consolidated.

IV. PETITIONS FOR STAY

When an appellant files a petition for stay with its notice of appeal, the Board should grant or deny the petition within 45 days of expiration of the time for filing a notice of appeal. 43 C.F.R. § 4.21(b)(4). If the Board does not rule on a petition for stay within the 45-day period, the appellant may seek judicial review of the underlying decision.

When an appellant files a petition for stay after it files a notice of appeal, the Board may resolve the stay but is not bound by the 45-day period. *Burton*, 11 OHA 117, 125 (1994).

The regulations specify four criteria that are to be considered in ruling on a stay: (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 a stay. 43 C.F.R. § 4.21(b)(1).

A. ASSIGNMENT

The docket staff reviews all incoming appeals to determine if the appeal includes a petition for stay. If it does, the appeal is generally assigned to an attorney and the Deputy Chief Administrative Judge or another judge as directed by the Chief Administrative Judge. The docket staff will inform the assigned attorney and judge of the date by which the petition must be adjudicated and enter the assignment and due date on the stay petition spreadsheet, which is maintained in a shared folder on the Board's SharePoint site. Mining claim forfeiture appeals with petitions for stay are generally assigned to a two-judge panel because those appeals can often be resolved on the merits without having to adjudicate the accompanying petition for stay.

B. TIMEFRAME AND CRITERIA FOR RESOLVING A PETITION FOR STAY

1. If a petition for stay is "filed together" with the notice of appeal the 45-day period for resolving the petition applies. 43 C.F.R. § 4.21(a)(2), (b)(4); see *Simpson*, 197 IBLA 241, 244-45 (2021).

If a petition for stay is not "filed together" with a notice of appeal, the 45-day period does not apply. See *Simpson*, 197 IBLA at 244-45. Nevertheless, the Board strives to adjudicate such petitions within 45 days of the filing of the petition.

2. If the agency opposes a stay, the stay criteria set forth at 43 C.F.R. § 4.21(b)(1)(i)-(iv) will be applied. If one criterion is not satisfied, the petition will be denied. *Simpson*, 197 IBLA at 246.
3. If the agency consents to a stay or affirmatively states it does not oppose the stay, the stay will be granted without considering the stay criteria.

C. HOLDING A PETITION FOR STAY IN ABEYANCE

When a party has petitioned for a stay but it is not clear that the Board has jurisdiction over the appeal, the Deputy Chief Administrative Judge or assigned judge will try to resolve both the jurisdictional issue and the petition within the 45-day period. If that is not possible, the Deputy Chief Administrative Judge or assigned judge may issue an order holding the petition in abeyance until the jurisdictional issue is resolved. Under these circumstances, the Deputy Chief

Administrative Judge or assigned judge will still endeavor to resolve both the jurisdictional issue and the petition as soon as possible.

V. MOTIONS

A. TYPES OF MOTIONS

A variety of motions may be filed during the pendency of an appeal. *See, e.g.*, 43 C.F.R. § 4.25 (oral argument); *id.* § 4.31 (motions for limiting disclosure of confidential information); *id.* § 4.402 (motion for summary dismissal); *id.* § 4.404 (motion to consolidate appeals); *id.* § 4.405 (motions for extensions of time); *id.* § 4.406 (motions to intervene); *id.* § 4.407(a) (motions generally); *id.* §§ 4.412, 4.414 (motion to exceed page limits); *id.* § 4.415 (motions for hearings).

B. RESPONSES

Generally, parties have 15 days after service of a motion to file a response. 43 C.F.R. § 4.407(b).

C. REPLIES

Because replies are disfavored, the Board requires a party wishing to file a reply that is not provided for in the regulations to move for leave to file a reply. If the Board grants a party's motion to file a reply, the Board may impose restrictions, including limiting the reply's page length.

D. TIMING

The Board will strive to resolve all motions "expeditiously," 43 C.F.R. § 4.407(c), especially motions to dismiss and motions for reconsideration.

The Board may elect not to wait until the 15-day response period has run before ruling on procedural motions, such as motions for an extension of time.

E. UNADJUDICATED MOTIONS

When the Board resolves an appeal without ruling on a motion, the caption for the order or decision will reflect the resolution of the appeal (e.g., Affirmed), but will not specify that the motion is denied as moot. Instead, in the text of the order or decision (generally in the "CONCLUSION"), the Board will state that because it is resolving the appeal, there is no need to rule on the motion.

VI. ORDERS TO SHOW CAUSE AND ORDERS FOR SUPPLEMENTAL BRIEFING

The Board may issue orders to show cause and orders for supplemental briefing when necessary to resolve outstanding issues. The Board will strive to resolve the issue that prompted the order as expeditiously as possible.

VII. STATUS CONFERENCES AND ORAL ARGUMENT

A. ORDERING STATUS CONFERENCES

The Board may order parties to appear at telephonic or video status conferences when appropriate to expedite resolution of the appeal. Telephonic conferences will not be recorded or transcribed absent a prior request by one of the parties. All video conferences will be conducted on Microsoft Teams and recorded. The recording will be added to the appeal file and the Board may issue an order memorializing what transpired during the conference.

B. GRANTING ORAL ARGUMENT

The Board may grant oral argument either at the request of a party or on its own initiative. The Chief Administrative Judge must approve all orders granting oral argument. Oral arguments will be conducted via Microsoft Teams, will be recorded and transcribed, and the recording added to the appeal file. If the Board decides to hold an in-person oral argument, the Board will issue an order to the parties in advance of the argument stating the time and place of the argument.

VIII. DRAFTING FINAL ORDERS AND DECISIONS

A. GENERAL PROCEDURES

1. Judges and attorneys will prepare orders and decisions in accordance with the Board's Style Manual.
2. The Board may dispose of an appeal by an order or a decision. Dispositive orders resolve an appeal and are binding on the parties, but they are not precedential, and the Board is not obligated to follow or distinguish them in orders or decisions issued in other appeals. Non-precedential orders may be cited for the purpose of establishing *res judicata*, estoppel, or the law of the case. Decisions are precedential. Unless superseded or overruled, decisions may be cited as binding precedent in other appeals.
3. Appeals are generally disposed of through issuance of orders. A panel may choose to issue a decision based upon the following criteria:

- a. Whether disposition of the appeal requires resolution of an issue of first impression for the Board.
 - b. Whether disposition of the appeal requires resolution of an issue the Board has not recently addressed (i.e., within the last five years).
 - c. Whether disposition of the appeal requires harmonizing previous precedential decisions.
 - d. Whether disposition of the appeal requires clarifying, modifying, or overruling an earlier precedential decision.
4. Orders and decisions must accurately state the material facts, legal issues, and applicable law, and contain a clear analysis that is understandable by a wide audience.
 5. Orders and decisions must be written in a professional and neutral manner and be respectful in tone.
 6. Orders and decisions should generally not exceed 20 single-spaced pages.
 7. Orders and decisions may, as appropriate, adopt and incorporate by reference, in whole or in part, a previous order or decision by the Board or an administrative law judge in the OHA Departmental Cases Hearings Division.
- B. PREVENTING THE DISCLOSURE OF CONFIDENTIAL AND PROTECTED INFORMATION
1. When the Board issues an order identifying and protecting confidential information, the docket staff places a “Confidential” sticker on the paper appeal file or adds the word “Confidential” to the name of the electronic appeal file. This practice alerts the attorneys and judges that there is a protective order in place.
 2. It is the attorneys’ and judges’ responsibility to review the docket sheet for each assigned appeal and follow any protective orders that may have been issued in that appeal.
 3. If there is no protective order in place, but an attorney or judge determines that there is material in the record that might be confidential (e.g., personally identifiable information, trade secrets, proprietary information, etc.), then the attorney or judge should instruct the docket staff to place a

“Confidential” sticker on the appeal file or add the word “Confidential” to the name of the electronic appeal file.

4. When drafting an order or decision in an appeal in which confidential information is part of the file, the attorney and judge should reference the confidential information only when necessary.
5. Before circulating a draft order or decision containing confidential information, the attorney or judge must insert a footer in the document that states: “Not for Public Disclosure.”
6. After the order or decision that may reference confidential information goes through circulation and the panel agrees on a final draft, the lead judge must issue an order (with the unredacted copy of the unsigned order or decision attached) asking the parties to suggest specific redactions of confidential information by a date certain. The final order or decision will not be issued until the parties respond and the panel determines what information, if any, will be redacted from the final order or decision.
7. The assigned attorney or the docket staff must redact anything from the final order or decision that the panel deems confidential by converting the Word document into an Adobe PDF and using the redaction tool and include in the footer of the document the following message: “Certain information in this [Order or Decision] has been withheld from public disclosure in accordance with the Freedom of Information Act.”
8. It is the lead judge’s responsibility to review the redactions and then give the docket staff a redacted version of the order or decision for issuance.

C. CIRCULATING DRAFT ORDERS AND DECISIONS FOR COMMENT

1. The lead judge submits a draft for circulation by sending an electronic version of the draft to the docket staff, which then places the draft in a designated shared file and notifies the Board via an electronic calendar notice that the draft is in circulation and identifies the deadline for comments.
2. The circulation period begins the day after a draft has been submitted for circulation, and the circulation period ends on the final day at the close of business (5 p.m.). The lead judge must submit a draft order or decision for circulation no later than 4 p.m. for the following business day to be counted as the first day of circulation.

3. For draft dispositive orders consisting of up to 15 pages of text, the circulation period is 3 working days. For draft dispositive orders consisting of 16 to 30 pages of text, and draft dispositive decisions up to 30 pages of text, the circulation period is 4 working days. For draft dispositive orders and decisions consisting of 31 to 50 pages of text, the circulation period is 5 working days. For draft dispositive orders and decisions consisting of more than 50 pages of text, the circulation period is 7 working days.
4. For draft orders resolving petitions for stay and denying motions to dismiss, the circulation period is 2 working days. For draft stay decisions, the circulation period is 3 working days. The Chief Administrative Judge may identify other procedural orders that must circulate and the length of circulation for those orders.
5. The Chief Administrative Judge may determine that a shorter circulation period is necessary to meet a deadline, or a longer circulation period is necessary for a particularly complex draft order or decision. Also, if a panel has substantially revised a draft that has already circulated, the Chief Administrative Judge may require recirculation for a period to be determined on a case-by-case basis.
6. Judges not assigned to the panel will review and provide comments on the drafts before the close of the circulation period. Judges may review the appeal file to assist in their review of the circulating draft. Judges will provide comments by track changes.
7. If a reviewing judge needs more time to review a circulating draft, the judge should request an extension by emailing the lead judge and copying the panel judge and the Chief Administrative Judge before the original deadline. If a judge submits comments after the close of the circulation period without an extension, the panel is not required to consider them.

D. COMMENTING ON DRAFTS AND RESPONDING TO COMMENTS

1. Reviewing judges who comment on a circulating draft should focus their comments on whether they agree with the outcome and analysis. Reviewing judges who provide a comment relating to the outcome or analysis of a draft must provide analysis and support for their comments, including appropriate legal and record citations. Reviewing judges may include suggestions for language and organization when deemed necessary for improving the clarity of the draft but should avoid proposing stylistic edits.

2. The lead judge will confer with the panel judge about all comments received.
 - a. The panel may accept, reject, or modify any comments about grammar and usage, spelling, punctuation, etc., without any response to the commenter.
 - b. The panel must provide a response to all substantive comments, indicating what changes to the draft, if any, the panel proposes to make to satisfy the comments and explaining the reasons for its response.
 - c. The panel must place a track changes version of the document showing all changes in the designated shared file. The lead judge must notify all the judges by email of the revised document. If there were substantive comments, judges will have one full working day after notification to review the revisions and responses to comments and notify the panel whether they have any remaining concerns. For orders and decisions involving petitions for stay, the recirculation period may be shortened at the discretion of the lead judge to ensure the order or decision is timely issued.
3. If all reviewing judges are satisfied, or if the panel receives no timely replies, the panel may issue the order or decision.
4. If a reviewing judge finds that their comments were not resolved, the judge may notify the panel and the Chief Administrative Judge by the end of the 24-hour review period and request a Board meeting.

E. RESOLVING DISAGREEMENTS

1. Upon receipt of a request for a Board meeting, the Chief Administrative Judge may call a meeting of all the judges on the Board to discuss the draft or may first meet with the requesting judge(s) and panel to see if a proposed resolution may be reached without a Board meeting.
2. If the Chief Administrative Judge calls a Board meeting, the Chief will provide all judges an opportunity to express their views. The Chief may require Board members to provide their views in writing to the other Board members in advance of the meeting. The outcome of an appeal will be determined by a majority of the judges on the Board.
3. If a majority of the judges agree that the panel draft should be issued without further revision, the Chief Administrative Judge will authorize the opinion to be issued. If a majority of the judges believe further revisions

should be considered, the Chief Administrative Judge will determine whether the appeal can most effectively be disposed of (1) by the current panel, (2) by assigning an additional judge to consider the appeal, or (3) by assigning all administrative judges attending the meeting to consider the appeal (en banc).

4. If a revised draft or dissent is prepared, it will be circulated for comment by all judges upon a schedule established by the Chief Administrative Judge.

IX. FINALIZING FINAL ORDERS AND DECISIONS

A. PROOFING AND CITE-CHECKING

1. The lead judge is responsible for sending the final order or decision for proofing and cite-checking. When the lead judge sends the order or decision for proofing and cite-checking, the judge will also provide any paper appeal file. The lead judge is encouraged to also provide copies of documents and research frequently cited or relied upon in the final order or decision.
2. Typically, the paralegal or attorney who drafted the order or decision will proof it. If the paralegal or attorney who drafted the order or decision is unavailable, or if no attorney was assigned to the appeal, then the lead judge should ask the docket staff to assign a staff member (i.e., attorney, paralegal, legal assistant, or intern) to proof the order or decision, which the docket staff will do on a rotational basis.
3. A judge should expect that a final order or decision will be proofed within three working days for any draft containing up to 25 pages (1.5 spaced) and 5 working days if the draft is longer than 25 pages (1.5 spaced) once the attorney has been provided all necessary documents and files. The lead judge, in consultation with the Chief Administrative Judge, may approve adjustments to these timeframes on a case-by-case basis, depending on priorities and workload.
4. An attorney must proof and cite-check any order or decision in accordance with the Board's Style Manual and any instructions received from the lead judge. Cite-checking should also include checking the subsequent history table the Board maintains on its SharePoint site.
5. The attorney should then email the proofed order or decision, in track changes, to the lead judge. A copy of the proofed document should be saved to the designated folder on the shared drive or SharePoint. The attorney will also return any paper appeal file to the lead judge.

B. SANITIZING AND SIGNING

1. For orders, the lead judge prepares the final draft for signature. For decisions, the lead judge sends the final draft to the docket staff, who inserts volume and page numbers and provides the final version to the lead and panel judges for signature.
2. The lead judge is responsible for converting the final draft into a PDF and ensuring that the final draft has been “sanitized,” i.e., all metadata and embedded personal information has been removed, through use of the tools provided in Adobe.
3. The lead judge and panel judge will sign the final version of the order or decision. Both signatures will be made electronically to the PDF on the date of issuance.
4. The lead judge must submit the final signed version of an order or decision to the docket staff no later than 4:00 pm for issuance that day. If a lead judge submits a final order or decision after 4:00 pm, it will have to be resubmitted the next day with new electronic signatures.

C. ISSUING FINAL ORDERS AND DECISIONS

The docket staff will issue all final orders and decisions to the parties. The docket staff will email all final Board orders and decisions to the parties and others listed in DMS using the bcc line. Orders and decisions will be mailed to all parties who do not have an email address on file. The order or decision will also be placed in the proper appeal file.

D. OVERRULED DECISIONS

If the Board issues a decision overruling a previous decision, the docket staff will insert an editor’s note on the top of the overruled decision.

E. ERRATA PROCEDURES

The Board will issue an erratum order to correct inadvertent errors, such as incorrect dates, docket numbers, etc. in the initial order. If the Board issues a decision that subsequently requires a ministerial correction, an erratum order will accompany the final decision and will be paginated as the original citation with a letter designating each new erratum page, e.g., 195 IBLA 123A.

F. RECORD-KEEPING AND CERTIFYING THE RECORD

1. The docket staff is responsible for closing the appeal file and noting its closure in DMS.
2. If the appeal file is electronic, no steps need to be taken. If the appeal file is paper, then the docket staff must ensure that all filings are two-hole punched and placed on the right-hand side of the appeal file in reverse chronological order, with the most recent document on top, and the agency's record, if provided on a CD or thumb drive, is placed in an envelope on the metal fastener on the left-hand side of the appeal file. All documents that are not part of the appeal file or agency record (e.g., research, reference documents) must be removed.
3. Unless the parties stipulated to dismissal, the appeal file is retained for 70 calendar days to allow for the filing of a motion for reconsideration. If the parties stipulated to dismissal, the file may be returned immediately.
4. Unless the parties stipulated to dismissal, the Board will certify that the record is complete; the file will not be returned to the agency without a record certification. The docket attorney signs all record certifications. No certification is necessary if the parties stipulated to dismissal.
5. If the Secretary or Director exercises jurisdiction over an appeal in accordance with 43 C.F.R. § 4.5, and the appeal file is in the possession of the Board, the docket staff will ensure that the file is timely transmitted to the appropriate office and that evidence of receipt by that office is maintained by the Board.

X. POST-JUDGMENT ACTIONS

A. MOTIONS FOR RECONSIDERATION

A party may file a motion for reconsideration within 60 days of the date of a decision or order. 43 C.F.R. § 4.403. This post-judgment motion will be docketed under the original docket number. The regulation provides that any other party to the original appeal has 21 days from the date of service of the motion for reconsideration to file a response. Typically, the docket staff assigns a motion for reconsideration to the same attorney and panel who worked on the original appeal. The Board's policy is to expeditiously rule on motions for reconsideration as specified under section II.C.

B. APPLICATIONS AND PETITIONS FOR ATTORNEYS' FEES

A party may file an application for an award of fees and expenses under EAJA or a petition for award of costs and expenses under SMCRA, as implemented in 43 C.F.R. Part 4, subparts F and L, respectively. These post-judgment petitions will be docketed under the original docket number.

C. DIRECTOR/JUDICIAL REMANDS

OHA's Director or a Federal court may remand an appeal to the Board (i.e., not the agency) for further proceedings. These proceedings will be conducted under the original docket number.

XI. BOARD MEMBER RESPONSIBILITIES

A. LEAD JUDGE RESPONSIBILITIES

1. After an appeal has been assigned, the lead judge alone may resolve any motions that are filed, although consultation with the panel judge is encouraged. Rulings on matters that do not resolve the appeal require only one judge's signature. A dispositive order requires the signature of both judges. An order referring an appeal for hearing by an Administrative Law Judge is considered a dispositive order because the appeal will be closed out before referral; the Board will not retain the appeal on its docket after a hearing has been ordered.
2. The lead judge is responsible for ensuring that all timelines for processing the appeal are met, including ensuring that the panel judge has sufficient time to review the draft, other judges have a full circulation period to review the draft, and the Board meets any applicable regulatory or statutory deadlines.
3. The lead judge is responsible for drafting the order or decision, which may entail working with an attorney draft. The draft order or decision must be properly formatted, at 1.5 spacing, mostly free of typographical and grammatical errors, and generally consistent with the Board's Style Manual.
4. After the lead judge finalizes a draft order or decision, the judge will provide the draft to the panel judge and inform the panel judge where the appeal file is located. For newer appeals (e.g., appeals filed in 2020 and later), the appeal file will be located on the Board's SharePoint site. If the appeal file is in paper form, the lead judge will ensure that the file is provided to the panel judge. The lead judge is encouraged to also provide

the panel judge with documents and research frequently cited or relied upon in the draft.

5. After the lead and panel judges agree on a draft, the lead judge is responsible for forwarding the draft to the docket staff so that the draft can be placed in circulation. If the appeal file is in paper, the lead or panel judge should place the file in the docket room on the circulation shelf. All paper documents that are not part of the official appeal file (e.g., research, extra copies of filings) should be placed in a separate, colored folder in the appeal file and labeled “IBLA File.”
6. The lead judge is responsible for responding to comments received during circulation (in consultation with the panel judge) and recirculating the draft, if necessary. Once the lead judge receives the concurrence of the other judges, the lead judge should forward the draft to the assigned attorney for proofing and cite-checking. If no attorney has been assigned to the appeal, the lead judge should forward the draft to the docket staff so that it can be assigned to an attorney for proofing and cite-checking.

B. PANEL JUDGE RESPONSIBILITIES

1. The panel judge is responsible for reviewing the draft order or decision from the lead judge. If the panel judge is in general agreement with the draft, the panel judge should provide comments and suggestions (if any) for improving the draft, in writing, including any applicable research and analysis. The panel judge’s comments may also include suggestions and edits for organization, content, grammar and usage, spelling, and punctuation. The panel judge must provide any suggested change to the draft in track changes.
2. If the panel judge disagrees with the initial draft with respect to the outcome of the appeal or the legal analysis, the judges should attempt to resolve their differences before proceeding in accordance with section IX.E.
3. For draft orders or decisions consisting of up to 25 pages of text, the panel judge has up to 5 working days to respond. For draft orders or decisions consisting of 26 to 50 pages of text, the panel judge has up to 10 working days to respond. For draft orders or decisions consisting of more than 50 pages of text, the panel judge has up to 15 working days to respond.
4. The panel judge must strive to meet the deadline for providing the lead judge with comments on a draft order or decision. If the panel judge needs an extension of time, the panel judge must ask the lead judge for additional time and inform the Chief Administrative Judge of any extension

agreed upon. As a guideline, the panel judge should complete subsequent reviews and actions with respect to revised drafts within 5 working days of receipt from the lead judge.

C. DIVIDED PANEL

1. If the panel judge disagrees with the lead judge's analysis or outcome, the panel judge must provide, in writing, their reasoning with citations to the record and applicable authorities within the timeframes in section IX.D.3.
2. The lead judge and panel judge will make a good faith effort to resolve disagreements with respect to the analysis or outcome of an appeal. If, however, within 5 working days after the lead judge receives the initial response from the panel judge, the judges are unable to resolve their disagreements, the lead judge should notify the Chief Administrative Judge, who will assign an additional judge, consistent with section II.A.1, to the panel for resolution of the appeal. Notwithstanding the 5-day limit on efforts to resolve disagreements, at any time after the initial response of the panelist, either judge may request that the Chief Administrative Judge assign an additional judge to the panel. Before making such an assignment, the Chief Administrative Judge may meet with the judges to attempt to resolve their disagreement or call a Board meeting to discuss the appeal.
3. The additional judge will review the draft or drafts and the appeal record and provide their view of the appeal, in writing, to the panel within 10 working days.
4. When a majority decision is reached, either the original lead judge will remain the lead with the additional judge as panel, or the panel judge will become the lead judge with the additional judge as panel, as appropriate. The majority opinion must be completed as soon as possible and circulated no later than within 10 working days of reaching the majority decision.
5. Concurring and dissenting opinions are discouraged. However, on a case-by-case basis, the Chief Administrative Judge may allow the minority judge to issue a concurring or dissenting opinion. Only a member of the original panel may write a concurrence or dissent. A dissent must address only the area(s) of disagreement and include supporting law and analysis. The concurrence or dissent will circulate with the majority opinion.
6. If a minority judge does not write a concurrence or dissent, that judge may nonetheless share their views with the rest of the Board during circulation or at a Board meeting scheduled by the Chief Administrative Judge.

XII. STAFF RESPONSIBILITIES

A. DOCKET ATTORNEY AND COUNSEL TO THE BOARD RESPONSIBILITIES

1. The docket attorney supervises the Board's paralegals and legal assistants. The docket attorney assures that appeals are docketed, assigned, and processed in accordance with the Board's regulations and procedures. The docket attorney monitors appeal status and ensures that docket sheets are accurately maintained.
2. The docket attorney drafts procedural and substantive orders as time permits.
3. The Chief Administrative Judge may delegate to the docket attorney the authority to issue notices advising that the Board has granted certain unopposed procedural motions.
4. The docket attorney answers procedural questions from parties and the public and communicates with parties about filings and appeal status as appropriate.
5. The docket attorney drafts responses to inquiries from the press and members of Congress and responds to Freedom of Information Act requests.
6. The docket attorney also holds the position of Counsel to the Board. As Counsel to the Board, the docket attorney advises the Board about developments in the law, Departmental practice, and appeal status; recommends the appropriate disposition of pending motions and appeals; and completes special projects as assigned.

B. STAFF ATTORNEY RESPONSIBILITIES

1. An attorney is generally assigned to appeals for the purpose of drafting a dispositive order or decision. After being assigned to an appeal, the attorney is also responsible for drafting orders resolving any procedural motions that are filed. In carrying out these duties, the attorney will review the filings and the agency record and conduct the necessary legal research. The attorney should also frequently communicate with the lead judge to keep the judge apprised of any issues and ensure that the judge agrees with the attorney's analysis.

2. An attorney must provide drafts in a timely manner, allowing sufficient time for review, circulation, and issuance before any statutory, regulatory, or internal deadlines expire.
3. An attorney is responsible for making any necessary revisions to the draft and is also responsible for proofing and cite-checking final orders and decisions to ensure accuracy and consistency with the Board's Style Manual. Cite-checking includes examining the spreadsheet titled "Subsequent History of IBLA Decisions" to determine whether the Board decisions cited in the order or decision have been overruled or modified and ensure that the citation is complete.

XIII. EX PARTE COMMUNICATIONS

A. DEFINITION OF EX PARTE COMMUNICATIONS

1. 43 C.F.R. § 4.27(b) prohibits any communication concerning the merits of a proceeding between (1) any party to the proceeding, or any person interested in the proceeding, or any representative of a party or interested person and (2) any Office of Hearings and Appeals personnel involved or who may reasonably be expected to become involved in the decision-making process of that proceeding unless the communication is made in the presence of all other parties or their representatives (if it is an oral communication) or it is furnished to all other parties (if it is written).
2. "Proceedings," "interested person," and "person interested in the proceeding" are defined in 43 C.F.R. § 4.27(b). Proceedings include pending appeals, rulemakings that might affect a pending appeal, and requests for reconsideration or review by the Director.
3. 43 C.F.R. § 4.27(b) does not prohibit communications concerning appeal status or advice concerning compliance with procedural requirements unless the area of inquiry is an area of controversy in the proceeding.

B. PROCEDURES FOR HANDLING EX PARTE COMMUNICATIONS

1. When an oral ex parte communication occurs, it must be documented with a memorandum to the file written by the OHA staff member who made or received the communication. A copy of the memorandum must be included in the record and provided to all parties, who must be given an opportunity to respond.
2. Any written ex parte communication must be included in the record and a copy provided to all parties, who must be given an opportunity to respond.

Normally, an order (“Ex parte communication provided”) is prepared giving the parties time to respond to the memorandum or written communication if they wish to do so.

3. If it is not clear from a document that service was provided in accordance with 43 C.F.R. §§ 4.401(c) and 4.413, then the docket attorney may issue an order that includes a copy of the document or directs a party to serve it. Depending on the document that does not conform, the Board can set a briefing schedule giving the served parties an opportunity to respond.

XIV. EXTERNAL COMMUNICATION

A. RESPONDING TO PUBLIC REQUESTS TO REVIEW AN APPEAL FILE AND OTHER FOIA REQUESTS

Nonparties to an appeal must file a Freedom of Information Act (FOIA) request with the Board (foia@oha.doi.gov) if they wish to access documents filed in a pending appeal. The docket attorney responds to all FOIA requests in accordance with the Department’s implementing regulations at 43 C.F.R. Part 2. The docket attorney will coordinate responses with the Director’s Office as appropriate, consistent with the procedures in the OHA Manual.

B. RESPONDING TO MEDIA REQUESTS

1. Anyone on the Board who receives a request from the media about the Board or a pending appeal should send the request or, if the request was not in writing, a summary of the request to the docket attorney. The docket attorney will inform the requester that the Department’s Office of Communications will respond to the request.
2. The docket attorney will prepare a response to the request and forward it with the incoming request to the Chief Administrative Judge with a copy to the Deputy Chief.
3. The Chief Administrative Judge will forward the media request and draft response to the Director and Deputy Director of OHA, who will in turn forward the request and response to the Department’s Office of Communications.
4. The Office of Communications will respond directly to the requester on the Board’s behalf.

C. RESPONDING TO CONGRESSIONAL INQUIRIES

1. Any judge, attorney, or staff member who receives a request or other communication from Congress or a member of Congress about the Board or a pending appeal should send the request or, if the request was not in writing, a summary of the request to the docket attorney.
2. The docket attorney will prepare a response to the request and forward it with the incoming request to the Chief Administrative Judge with a copy to the Deputy Chief.
3. The Chief Administrative Judge will forward the request and draft response to the Director and Deputy Director of OHA for their review and approval. The Director or Deputy Director will determine who should sign the response and whether they or IBLA should consult with the Department's Office of Congressional and Legislative Affairs.

D. RESPONDING TO OTHER CORRESPONDENCE

Generally, the docket attorney drafts responses to correspondence for the Chief Administrative Judge's signature. The Chief Administrative Judge will forward the request and draft response to the Director and Deputy Director of OHA for their review and approval.

XV. INTERNAL MANAGEMENT

A. CHIEF'S AUTHORITY

1. "The Chief Administrative Judge . . . is responsible for the internal management and administration of the Board, and . . . is authorized to act on behalf of the Board in conducting correspondence and in carrying out such other duties as may be necessary in the conduct of routine business of the Board." 43 C.F.R. § 4.2(c). This includes the functions described in this Manual; judge and staff attorney assignments; approval of any office-related travel or training; approval of judges' leave and Quicktime; and responding to communications from the public, the Department, and members of Congress.
2. The Chief Administrative Judge may delegate any of their duties to the Deputy Chief Administrative Judge. The Chief Administrative Judge may refer inquiries concerning the status of appeals to the docket attorney.

3. The Chief Administrative Judge may hold periodic staff meetings to share news about OHA policies and procedures, management initiatives, and any other office developments.

B. APPEAL MANAGEMENT

Judges are expected to manage their docket, balance competing priorities, and meet all deadlines set by statute, regulation, or the Chief Administrative Judge. The Chief Administrative Judge may reassign appeals and impose deadlines to enhance the Board's productivity and efficiency.

C. PROFESSIONALISM

All Board staff must comply with the OHA Manual. All Board staff are expected to treat each other collegially and respectfully to ensure a positive and productive working environment.