

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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EMS TRANSMISSION 09/29/2014
Instruction Memorandum No. AZ-2014-041
Expires: 9/30/2015

To: District Managers and Field Managers

From: State Director

Subject: Preparing an Administrative Record for Submission to the Interior Board of Land Appeals

Purpose: This Instruction Memorandum (IM) establishes procedural guidance for preparing an administrative record for a decision appealed for submission to the Interior Board of Land Appeals (IBLA) and the Office of the Phoenix Field Solicitor (Solicitor's Office). See IM No. AZ-2013-002, Grazing and Wild Horse and Burro Program Appeal File and Transmittal Procedures, for appeals of decisions submitted to the U.S Department of the Interior's Office of Hearings and Appeals, Hearing Division.

Policy/Action: Upon receiving a Notice of Appeal, the Bureau of Land Management (BLM) Arizona Offices shall immediately notify the Solicitor's Office and the State Litigation Coordinator. This notification can be made through an email (Subject: "Notice of Appeal") or by telephone. The office of the deciding official for the decision appealed shall appoint a point of contact that will begin preparing the administrative record using the attached sample index. The State Litigation Coordinator can provide additional guidance on compiling an administrative record.

Under the U.S. Department of the Interior's regulations, an appeal of a BLM decision to the IBLA must be filed in the office of the deciding official [43 CFR 4.411(a)(1)]. The BLM-Arizona only accepts an appeal that is either delivered in person or mailed/postmarked on or before the last day of the appeal filing period. The BLM-Arizona does not accept appeals by email or fax. When an appeal of a final decision by the authorized officer is properly filed, the BLM must submit the complete, original administrative record supporting the decision to the IBLA. A Notice of Appeal must be in writing, but need not contain any specific language, not even the word "appeal," so long as the general content of the document challenges a final BLM decision.

The BLM must forward the administrative record to the IBLA promptly [43 CFR 4.411(d)] (within 10 business days of receiving a notice of appeal). Such records include all documents that support the decision including, but not limited to:

- Notice of Appeal, and Statement of Reasons, Petition for Stay, if received at the same time, including the envelope with the postmark date mailed and date received by the BLM;
- The BLM Notice of Decision sent, including proof of service;
- Plats, historical indices, patents, withdrawal order, etc., relevant to land status;
- Field reports, inventories, National Environmental Policy Act compliance documents, etc. associated with the decision;
- Any previous adjudications involving the same or similar lands, parties, or issues;
- Official correspondence, including memoranda memorializing meetings and telephone calls;
- Recommendations from other agencies, if any, and;
- Application materials.

If there are any questions about whether a document should be included in the administrative record, please contact the Solicitor's Office for guidance.

Procedures for Preparing an Administrative Record

Step 1:

Assembling the record. The administrative record consists of **original documents** (not photocopies). The first document to be placed in the folder is the one that initiated the process that led to the decision. In some cases, the process is initiated by an application. The rest of the documents are to be placed in reverse chronological order by date issued or date received with the most recent document on top. The last document to be placed in the folder is the Notice of Appeal with a Statement of Reasons and/or Statement of Reasons/Petition for Stay, if included. All documents should be dated and legible. The documents should be compiled in an 8½" x 11" file folder. Each document must be individually separated and tabbed with the number corresponding to the index.

Step 2:

Prepare an index consisting of four columns referencing the contents of the administrative record. Each document tab number in the folder must correspond to the number on the index. Enter the document date, the subject matter, and the number of pages of each document. Place this index on top of the documents in the administrative record. (See Attachment 1, Appeal File Index Example).

Step 3:

Send a paper copy (not electronic) of the administrative record with index to the Solicitor's Office for review/approval. After the administrative record is approved, prepare exact duplicates for the office's use as a working file while the matter is under appeal, and for the Solicitor's Office for use in handling the appeal. If any other office is involved, also prepare a duplicate for that office.

Step 4:

Prepare Form 1842-2 (Attachment 2), Transmittal to IBLA. This form must be completed and signed by the appropriate manager (District/Field Manger, Deputy State Director, etc.). The form transfers the administrative record from the BLM to the IBLA. Include the contact information and the office's address for the eventual return of the administrative record. Place the completed form on top of the administrative record and mail the original administrative record to the IBLA, either by Certified Mail or Federal Express, taking into consideration the requirement to provide the administrative record to the IBLA within 10 business days of receiving the appeal. The record must be received by the IBLA by the 10th business day.

Step 5:

Any additional pre-decisional documents discovered after the administrative record has been submitted to the IBLA should be immediately sent to the Solicitor's Office for possible supplementation of the Administrative record.

Step 6:

After the IBLA has disposed of the appeal and returned the administrative record to the responsible office, the administrative record must be kept exactly as returned and stored in Central Files. **No document shall be added or removed from the administrative record.** An appellant has up to 6 years to challenge an adverse IBLA decision in Federal Court. In such challenges, the Federal Court reviews the exact administrative record that the IBLA used to make its decision.

Electronic Files:

The IBLA does not accept administrative records in electronic format. The Solicitors Office also does not accept its copy of the administrative records in electronic format. A searchable compact disk for large documents, such as a Resource Management Plan or Environmental Impact Statement, may be provided as a convenience, but a paper copy must also be provided.

Timeframe: This guidance is effective immediately.

Budget Impact: None.

Background: The administrative record is the official record of all documents the BLM considered in making the decision being appealed and must be timely submitted to the IBLA. Providing an incomplete or inaccurate administrative record undercuts the BLM's ability to illustrate the rationality of its appealed decision and the IBLA's ability to make a completely informed ruling. To ensure that all administrative records submitted to the IBLA are complete and accurate, all BLM-Arizona offices must follow the procedures in this IM when an appeal is received.

Directives Affected: None.

Coordination: This guidance was reviewed and coordinated through the Office of the Phoenix Field Solicitor.

Contact: For additional questions contact Linda Garrison, State Litigation Coordinator, at 602-417-9542 (BLM) or 602-364-7896 (Solicitor's Office). For timely notification of an appeal by email, please use both emails: lgarriso@blm.gov, and linda.garrison@sol.doi.gov.

SIGNED BY
Gera Ashton
for State Director

AUTHENTICATED BY
Susan Williams
Staff Assistan

2 Attachments:

- 1 - [Index for Appeal File to IBLA](#) (1 p)
- 2 - [Form 1842-2](#) (1 p)

