

This report provides answers to questions posed to the BIA at the Inter Tribal Council of Nevada meeting held on November 17, 2011.

Please be advised that the previous final payment date of December 31, 2011 was stated only as a target date by the Western Region. Unfortunately, that final payment target date has been extended to June 5, 2012 to ensure an accurate “final payment judgment roll”. In order to ensure an accurate roll, we have been conducting quality assurance (QA) reviews on all applications to ensure that only those folks that are eligible to receive the payment are included on the final roll. This QA process is time consuming and has been stepped up since the partial payments (March – April, 2011). Also, only after decisions on all appeals have been made by the Assistant Secretary can the roll be finalized. The Western Shoshone Project staff in Phoenix, Arizona is providing the required documentation to the BIA Central Office to process the appeals for the Assistant Secretary’s decisions which are final for the Department of the Interior.

Q1: What is the total number of applications that have been submitted for the Western Shoshone Judgment?

A1: 9602

Q2: What is total number of applications approved?

A2: 5304

Q3: What is the total number of applications denied?

A3: 3576

Q4: What is the total number of appeals submitted?

A4: 674

Q5: What is the total number of appeals approved?

A5: 5

Q6: What is the total number of appeals denied?

A6: 168

Q7: What is the total number of appeals pending?

A7: 501

Q8: How many applicants received a partial payment?

A8: 3187

Q9: What is the amount of judgment funds expended as the partial payment?

A9: \$70,155,431

Q10: What is the amount of judgment funds still held in trust?

A10: \$118,000,000

Q11: What legal action will be taken against persons that illegally cashed checks due to double dipping?

A11: If a person received the partial payment but should not have because they shared in another aboriginal land claim (double dipping), the process under Answer 14a, Scenario 2 would be followed.

Q12: What legal action will be taken against persons that illegally cashed the checks of deceased individuals?

A12: See Answer 14a, Scenario 2

Q13: What legal recourse does a minor have (who was unaware of BIA's prepayment error and failure to establish an IIM account) after that minor reaches the age of majority and questions what happened to the account (some cases have been reported to BIA)?

A13: A review has been completed on the payment roll for the partial payment and the BIA did not find any minors on the payment list. The partial payment list was established by age category only (19 to 100+). Without a name provided we are unable to research the case.

Questions pertaining to mistaken BIA "partial payment" to deceased individuals (prior to probate) AND minors:

Q14: What procedure will BIA implement to recover the funds belonging to the estate of the deceased or minor sent out in "error"?

A14a: For Deceased Individuals

Scenario 1 – If a check was issued *before* the individual passed away and that individual cashed the check before they passed away:

- There is no claim to pursue. Any remaining balance of these funds will be probated based on the State Law where the deceased resided.

Scenario 2 – If the check was issued *after* the individual passed away:

- The check should be returned to Treasury by the recipient.
- If the check is not returned, BIA will notify OST to place a claim on the check.

- OST will file a claim with the United States Treasury Department on behalf of the deceased individual and provide back-up documentation to Treasury, such as the death certificate.
- Treasury will place a stop payment on the check.
 - Note: Not all Treasury stop payments are the same. Only an E-Stop payment will prevent a financial institution from cashing a Treasury check. All other Treasury stop payment types will not. The type of stop payment placed on the check will be determined by the information Treasury receives in the claim submitted by OST.
- If the check *has not* been cashed, the funds will be returned by Treasury to the Judgment Award account. Upon receipt of instructions from BIA, OST will establish an IIM estate account and move the funds with interest from the Judgment Award account to the estate account.
- If the check *has* been cashed, Treasury will consider this fraud.
 - When a check is issued to a deceased person after they have passed away and the check is cashed, it is clear that the deceased did not cash the check. Therefore, the act of cashing the check is fraud in and of itself. There is no need for a Secret Service investigation.
 - The BIA sent letters to all individuals who received checks addressed "in care of" someone else, and asked that the checks be returned to Treasury to avoid this problem.
 - Treasury will take the funds from the financial institution that cashed the check and return them to the Judgment Award Account.
 - The financial institution that cashed the check will seek repayment from the person who cashed the check.
 - When OST receives the reclaimed funds from Treasury into the Judgment Award account, OST will, upon instruction from the BIA, open an estate account and transfer the funds with interest from the Judgment Award account to the estate account.
- The estate account will be probated by the Office of Hearings and Appeals following normal probate regulations and processing timelines.

A14b: For Minors

- If a check was erroneously issued to a minor (defined under the Act as under the age of 19) and someone else cashed the check on behalf of the minor, then generally the same claim procedure as outlined above will be followed with Treasury. We wouldn't know about these situations unless they are brought to our attention. If that occurs, we would contact the individual for whom the check was issued, obtain the factual circumstances and then determine how best to proceed.

Q15: What will the BIA do to compensate the estate's heirs or minor for the lost interest during the monetary recovery period and prior to the establishment of an IIM account for probate or that minor's first of four year's disbursement?

A15: This issue is currently undergoing legal review.

Q16: What procedures will be implemented to recover funds belonging to the Western Shoshones?

A16: See Answer 14a, Scenario 2

Q17: What method will be used to report the successful recovery and payment of these funds to the Western Shoshone people?

A17: Once the process stated under Answer 14a, Scenario 2 has run its course, the applicant will be notified in writing or if the applicant is deceased, the individual's legal heirs will be notified in writing.

Q18: A letter of eligibility was followed by a letter of disapproval to an individual; why would this occur?

A18: In response to some questions asked by applicants and also during our "quality assurance reviews" we found errors in some eligibility determinations. If the QA review revealed that a previously eligible applicant was incorrectly counted as eligible, the applicant's status was then changed to not eligible and a notification letter sent.

Q19: Full siblings, some but not all approved, why would this occur?

A19: The reviews were based on the documentation contained within the applications. In some cases siblings of the same genealogical situation provided different information whereby some of the siblings provided correct information and some did not. In another situation, one sibling may have provided additional information to establish eligibility and the other sibling(s) did not. Also, if the information provided in an application did not link to the same ancestor as that of a sibling, a different determination would be made. This is why an appeal period is provided. If an applicant was denied, notified of the decision and chose not to appeal during the 30 day appeal period, that applicant would remain as denied.

Q20: Has the BIA set aside in a reserve account an appellant's per capita distribution in estimating all receipts and potential recipients share?

A20: See A 21 below. The Western Shoshone Judgment Act, Section 3 (c)(1) provides as follows: IN GENERAL, On the establishment of the judgment roll, the Secretary shall make a per capita distribution of 100 % of the Western Shoshone judgment funds, in shares as equal as practicable, to each person listed on the judgment roll." Where this or similar language occurred in previous judgment awards, the BIA policy has held it to mean that upon completion of all reviews and appeal actions at the administrative level—within the Department of the Interior-- the final distribution of 100% of the judgment funds to only those applicants approved to receive the judgment was to be made. At this time

this policy and the procedures set forth in it are being followed in the distribution of the Western Shoshone funds.

Q21: Has the BIA made provisions to continue to hold an appellant's share giving the appellant time to go to federal court should the BIA issue a negative "final" decision?

A21: No provisions have been made at this point, however, discussions are being held concerning this scenario. There needs to be a finality of determination both for the benefit of all the eligible recipients of the judgment award, and as well for the BIA. In the event there are appeals of the BIA's eligibility decisions to the Federal courts, and distribution of the award is deferred until all final appeals are exhausted, the delay in distribution could be significant. Alternatively, if some amount of the award were set aside to cover possible payment to successful appellants, and some percentage of the appellants were ultimately unsuccessful, then that withheld amount for unsuccessful appellants would need to be distributed yet again by the BIA in prorated amounts to all the award recipients on the final judgment roll. Neither of these alternatives is feasible, especially in light of the fact that the most likely scenario for appeals as legal actions against the United States would be heard by the U.S. Court of Federal Claims where litigants, if successful in their lawsuits against the United States, are typically paid from the Judgment Fund.

Q22: How long does an appellant have to file in federal court should the BIA issue a negative "final" decision (once disapproved, a person had 30 days in which to appeal)?

A22: We are currently seeking legal advice on this issue.

Q23: Will an appellant's share continue to be invested to draw interest?

A23: The funds for an appellant will remain part of the Judgment fund (which continually accrues interest) until the appeal process has run its course and the appellant loses their appeal. Once we have a final figure of approved individuals with no pending appeals then the funds will be disbursed in sums as equal as practicable. All funds at this time are invested and earning interest as part of the whole fund until the time of distribution.

Q24: We are requesting the reinstatement of the monthly report.

A24: The BIA has committed to reinstate the Monthly Western Shoshone report, which will be posted on the Western Shoshone website.

Q25: Education Administrative Committee: 1) The person selected and appointed at large should be a person of knowledge in the areas of finance, law and administration; (2) A member of EAC from the Duck Valley tribes has submitted a request to host the Education Committee initial meeting. Will the BIA Western Region (Phoenix) approve this request?

A25: The Education Committee as a whole will be provided this request. The actions taken in this area will be handled by the Education Committee and not the Western Region. Once the committee is up and

running and information on the Committee is available we will post it on the Western Shoshone website.

Q26: Is it possible that there could be another partial payment for those that didn't get payment in March 2011?

A26: While this may be possible, it would not be a good idea. This would delay the process of reviewing for the final payment to prepare a list of approved applicants to receive another partial payment. This will push back our June 5, 2012 payment date to accommodate another partial payment.

Q27: How many more BIA personnel are working at the Western Shoshone Project office?

A27: In December 2011, a request will be made to BIA Central Office for additional staffing to meet the June 2012 target. Currently, there are 7 specialized individuals that conduct application reviews, 3 data entry and 2 administrative support personnel on location.

Q28: Can we add to that number to meet the June target date?

A28: We have the support from our Central Office in Washington, however, the problem with staffing the project is that the BIA has a shortage of tribal government expertise nationally and is faced with a continuing resolution regarding the budget which creates small budget allocations to our programs, which includes the Western Shoshone project. The BIA will strive to meet the June target date.

Q29: How will the BIA deal with rudeness or treatment received when calls are made into the Western Regional Office?

A29: The staff in the Western Shoshone Project Office, have been working diligently to handle incoming calls in a polite manner. At times we experience individuals calling in using abusive language and we advise the caller to stop the abusive language or we will have no alternative than to end the call. If there is rudeness or you feel a staff member was rude you can email Mr. Matt Crain, Deputy Regional Director, Indian Services at matt.crain@bia.gov with your complaint. Again if there was rudeness we sincerely apologize, our goal is to assist the callers with their requests in a polite manner.

Q30: The BIA website needs to be updated on a continued basis.

A30: The BIA has committed starting with this Question and Answer update to provide you with updates on a monthly basis on the BIA website. We apologize for the lateness in posting this update.

Q31: What is the BIA policy with regard to the Education Committee and the release of the Western Shoshone Judgment roll to the Education Committee?

A31: We are reviewing this process and will provide you with a response at a later date. Once the Education Committee has developed their processes and requirements we will have a better idea on what information will be required from the Judgment roll to determine an individual eligible for a scholarship.

Q32: Can BIA guarantee that the June 5, 2012 target date will not be extended?

A32: The BIA cannot guarantee that an extension of the June 5, 2012 date will not be made. This will be based on the reviews and appeals being completed and whether there are any appeals to federal court for resolution.

Q33: Will the payment roll be released?

A33: The BIA has never released a judgment roll for public review, Under the Privacy Act certain information is privileged. We understand that the Education committee will need access to certain information to make scholarship award determinations. This will require further legal review.

Q34: If it known that a person is not eligible, what is the recourse?

A34: See Answer 14a, Scenario 2. At this time we are receiving calls alleging that applicants received other land claims as well as the partial payment. In some instances we have looked up the name and found no documents on file indicating the individual received another land claim. In other instances insufficient information was provided to us to check the name(s) against our records.