

*Total Estimated Burden Hours:*  
186,750.

*Status:* Reinstatement without changes.

*Contact:* James A. Beavers, HUD, (202) 708-2121; Joseph F. Lackey, Jr., OMB, (202) 395-7316.

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## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### Reopening Certain Escheated Estates

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice.

**SUMMARY:** The Secretary of the Interior is granting a petition filed by the Deputy Commissioner of Indian Affairs with the Office of Hearings and Appeals (OHA) to reopen estates in which property escheated to an Indian tribe under the escheat provision of the Indian Land Consolidation Act. The petition is granted to give full effect to the 1997 decision of the U.S. Supreme Court in *Babbitt v. Youpee*, 519 U.S. 234 (1997), which found the escheat provision unconstitutional, and to prevent manifest injustice.

**EFFECTIVE DATE:** February 19, 1999.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Baum, Director, Office of Hearings and Appeals, United States Department of the Interior, 4015 Wilson Boulevard, Mail Stop 1103 BT-3, Arlington, Virginia 22203; telephone: (703) 235-3810.

#### SUPPLEMENTARY INFORMATION:

##### Background

The U.S. Supreme Court issued a decision in *Babbitt v. Youpee*, 519 U.S. 234 (1997), holding that the escheat provision of the Indian Land Consolidation Act, 25 U.S.C. 2206(a), was unconstitutional. The Deputy Commissioner for Indian Affairs filed a Petition for Reopening All Estates in Which Property Escheated to an Indian Tribe Pursuant to 25 U.S.C. 2206 (the Petition) with the OHA.

On October 2, 1998, the Secretary of the Interior assumed jurisdiction over the Petition pursuant to 43 CFR 4.5(a), and issued a proposed order reopening the escheated estates in question. The proposed reopening of the estates gave the Department of the Interior (Department) the opportunity to redistribute the escheated interests to the rightful distributees without regard to the unconstitutional provision. The proposed order provided that all prior

Departmental probate determinations wherein land interests were ordered escheated to Indian tribes under 25 U.S.C. 2206 would be reopened and modified "to the extent that the appropriate Bureau of Indian Affairs official having jurisdiction over the affected land titles shall distribute any such escheated interests to the rightful heirs and beneficiaries without regard to the provisions of 25 U.S.C. 2206, except that prior determinations where an Indian tribe has paid fair market value for any escheated interest under 25 U.S.C. 2206 will not be reopened or modified." Recognizing that some cases would fall outside the parameters of the proposed order, the Secretary delegated authority to the Department's Administrative Law Judges to adjudicate such cases on an ad hoc basis pursuant to existing law.

On October 7, 1998, the Office of the Secretary published a "Notice of the Secretary's Assumption of Jurisdiction Over Probate of Estates in Which Property Escheated to an Indian Tribe Pursuant to 25 U.S.C. 2206 and Opportunity to Comment" in the **Federal Register**. The Notice gave interested parties until November 2, 1998, to submit comments to the Director of OHA.

##### Discussion of Interested Party Comments

The OHA Director received seven timely comments in response to the published Notice. One additional comment was received after November 2, 1998. None of the comments received objected to the proposed reopening of the escheated estates or suggested any changes to the language in the Secretary's proposed order. The comments are summarized below and responses follow.

*Comment:* Four comments expressed concern about the administrative burdens and costs associated with the complicated task of reopening the case, and suggested that the tribes should not bear the burden and expense of correcting a problem they did not create.

*Response:* The Department expects that the Bureau of Indian Affairs (BIA) will bear the majority of administrative burdens and costs associated with the reopening of these estates. Direct cost to the tribes should be minimal. The Department will request a supplemental appropriation for the costs incurred by the BIA in reopening the estates.

*Comment:* Four comments suggested that no tribe should be held liable for reimbursing lease income and interest that BIA sent the tribe from the escheated interests.

*Response:* The heirs and beneficiaries are entitled to the money that they lost while the tribes held their interests under the escheat provision. The Supreme Court's decision makes it clear that the tribes were not entitled to that money. Furthermore, many tribes escrowed this money in anticipation of a reopening of the escheated estates.

*Comment:* One Tribe requested that the option of government purchase of escheated interests on the Quinault Reservation not be considered.

*Response:* This comment is outside the scope of the current issue and does not affect this decision.

*Comment:* One Tribe suggested that Congress should appropriate funds for the process of reopening the estates as well as for the tribes to buy the fractionated interests from any heirs who may not want to keep their interest, but seek a fair market value for them.

*Response:* The Department will be requesting supplemental appropriations for costs incurred by the BIA in reopening the escheated interests. Congress has provided a \$5 million appropriation for a pilot project to enable tribes to purchase fractional interests from willing sellers. However, there is no program at present that would apply nationally.

*Comment:* One Tribe commented that it was incorrectly listed in the **Federal Register** Notice of October 7, 1998, as the "Stockbridge-Munsee Community of Minnesota" and their correct name is the "Stockbridge-Munsee Community of Wisconsin." The Tribe also said it had no record of land escheating to it under 25 U.S.C. 2206, and asked to be told if the BIA or the Department is aware of any property that escheated to this Tribe under Act.

*Response:* BIA is looking into this matter and will advise the Tribe.

*Comment:* One Tribe expressed concerns about time delays or reallocation of resources affecting ongoing fee-to-trust conveyances by tribal governments or tribal members, and funding to participate in the Indian Land Consolidation Project proposed by BIA. The Tribe has applied to participate in this pilot project and seeks funding at the earliest possible date for tribes with escheated lands that have already applied for the pilot to carry out their proposed projects.

*Response:* This comment is outside the scope of the current issue and does not affect this decision.

##### Department's Determination

The Secretary of the Interior has determined the following:

1. The Supreme Court of the United States has found the escheat provision

of the Indian Land Consolidation Act to be unconstitutional.

2. Reopening all estates in which property escheated to an Indian tribe under the escheat provision of the Indian Land Consolidation Act:

- a. Allows correction of the prior distribution of assets;
- b. Is in the public interest;
- c. Furthers the Department's trust responsibility; and
- d. Prevents manifest injustice.

3. For the reasons given above, all estates in which property escheated to an Indian tribe under the escheat provision of the Indian Land Consolidation Act are reopened. The Secretary will distribute interests in these estates to the rightful distributees in accordance with *Babbitt v. Youpee*, 519 U.S. 234 (1997).

4. The Bureau of Indian Affairs will bear the majority of administrative costs associated with this action.

5. The Department will ask Congress for a supplemental appropriation for this project.

#### Text of the Secretary's Order

The text of the Order signed by the Secretary on February 19, 1999, reads as follows:

#### United States Department of the Interior

Office of the Secretary, Washington, D.C. 20240

In the matter of all estates in which property escheated to an Indian Tribe pursuant to 25 U.S.C. 2206.

#### Order

On January 21, 1997, the United States Supreme Court issued a decision in *Babbitt v. Youpee*, 519 U.S. 234 (1997), in which it essentially held that the "escheat provision" of the Indian Land Consolidation Act, 25 U.S.C. 2206, as amended, is unconstitutional. On October 2, 1998, the Deputy Commissioner for Indian Affairs filed a Petition for Reopening All Estates in Which Property Escheated to an Indian Tribe Pursuant to 25 U.S.C. 2206 (the "Petition") with the Office of Hearings and Appeals. By Order the same day, I took jurisdiction of the Petition and solicited comments on it and a Proposed Order for Reopening Escheated Estates. Both the Petition and Proposed Order were served upon the affected tribes.

To give full effect to the Supreme Court's holding in *Youpee* and to further the Department of the Interior's trust responsibility to the Indian people, I find that the public interest would be furthered by applying the *Youpee* decision retroactively to prior Departmental probate determinations

consistent with the procedures set forth more fully below. I further determine that reopening these estates will prevent manifest injustice and that a reasonable possibility exists for correction of prior distribution of assets which occurred in reliance on the unconstitutional statute.

In furtherance of my Order dated October 2, 1998 in which I assumed jurisdiction to decide the Petition pursuant to 43 CFR § 4.5(a), and further by virtue of the power and authority vested in me by Section 1 of the Act of June 25, 1910, as amended, 25 U.S.C. 372 (1970), and other applicable statutes, *it is hereby ordered:*

The Petition for Reopening All Estates in Which Property Escheated to an Indian Tribe Pursuant to 25 U.S.C. 2206 is hereby granted. All prior Departmental probate determinations wherein land interests were Ordered to be escheated to Indian tribes pursuant to 25 U.S.C. 2206 are hereby reopened. The determinations made therein are modified to the extent that the appropriate Bureau of Indian Affairs official having jurisdiction over the affected land titles shall distribute any such escheated interests to the rightful heirs and beneficiaries without regard to the provisions of 25 U.S.C. 2206, except that prior determinations where an Indian tribe has paid fair market value for any escheated interest under 25 U.S.C. 2206 will not be reopened or modified.

It is recognized that there will be cases that do not fall within the parameters of this Order and which will need to be treated on an *ad hoc* basis, such as cases where there was no determination of heirs, cases of will construction, and any other type of miscellaneous case where Bureau of Indian Affairs personnel are uncertain as to how to proceed. The Bureau of Indian Affairs shall refer such cases to the respective Administrative Law Judge for adjudication. To the extent not already delegated, I hereby delegate authority to the Administrative Law Judges to assume jurisdiction over, and enter determinations in, those cases pursuant to existing law.

The Director, Office of Hearings and Appeals, or his delegate will have jurisdiction to decide any objection to the implementation of this Order. Any objection to implementation of this Order shall be made in writing to: Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Room 1111/BT-3, Arlington, VA 22203.

Dated the 19th day of February, 1999.

**Bruce Babbitt**,  
Secretary of the Interior.

**Edward B. Cohen**,  
Deputy Solicitor.

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BILLING CODE 4310-79-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

*Applicant:* Audubon Zoological Garden, New Orleans, LA, PRT-008168. The applicant requests a permit to import one male and one female captive-born, captive-held jaguars (*Panthera onca*) from Zoologico de Guadalajara, Mexico, for the purpose of enhancement of the survival of the species through conservation education, propagation, and scientific research.

*Applicant:* Carl W. Strawberry, Annapolis, MD, PRT-008186. The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Hawthorn Corporation, Grayslake, IL, PRT-673366. The applicant requests a permit to re-export and re-import captive-born Tigers (*Panthera tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

*Applicant:* Rare Feline Breeding Center, Inc., Center Hill, FL, PRT-004337. The applicant requests a permit to re-export and re-import captive-born Tigers (*Panthera tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities