



INTERIOR BOARD OF INDIAN APPEALS

Estate of Celestine S. White

47 IBIA 73 (05/23/2008)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

ESTATE OF CELESTINE S. WHITE ) Order Affirming Decision  
)  
) Docket No. IBIA 05-102  
)  
) May 23, 2008

Delores W. Penney (Appellant), a daughter of Celestine S. White, deceased Nez Perce Indian (Decedent),<sup>1</sup> challenges the Department of the Interior’s (Department) application of the Inheritance Ordinance (Ordinance) of the Confederated Tribes of the Umatilla Reservation (Tribe) to Decedent’s trust real property located on the Tribe’s reservation. The Ordinance was enacted by the Tribe pursuant to authority granted in section 206 of the Indian Land Consolidation Act, as amended in 1984 (ILCA 1984), Pub. L. No. 98-608, 98 Stat. 3172 (Section 206), and prevents the descent or devise of trust property on the Tribe’s reservation to nonmembers of the Tribe, except for allowing a life estate to pass to certain eligible devisees or heirs.

Administrative Law Judge William E. Hammett applied the Ordinance to Decedent’s trust property located on the Tribe’s reservation. Appellant is eligible for and elected to inherit a life estate interest in that property, but because she is not a member of the Tribe, she is not eligible under the Ordinance to inherit the remainder interest. Furthermore, because Decedent had no other potential heirs who are members of the Tribe (who would have been eligible to receive the remainder interest), the remainder will escheat to the Tribe pursuant to the Ordinance. Indian Probate Judge M. J. Stancampiano denied a petition for reopening filed by the Superintendent of the Umatilla Agency, Bureau of Indian Affairs (Superintendent; Agency; BIA), in which the Superintendent raised the constitutionality of the Ordinance in light of the Supreme Court’s decision in *Babbitt v. Youpee*, 519 U.S. 234 (1997). In *Youpee*, the Supreme Court struck down as unconstitutional section 207 of ILCA 1984, which provided for the escheat to Indian tribes of certain small fractional interests in Indian trust land without compensation. Judge Stancampiano concluded that *Youpee* was not controlling and he declined to reopen the estate.

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<sup>1</sup> Probate No. SA-214-N-04 (BIA No. NW-182-0524).

Appellant appealed to the Board, and on appeal argues that (1) the Supreme Court's decision in *Youpee* compels a finding that escheat of the remainder interest of Decedent's Umatilla trust property to the Tribe, without compensation to the heirs, is unconstitutional; (2) applying the Ordinance violates the Department's trust responsibility; and (3) Decedent's heirs were entitled to fair compensation, as supported by an appraisal report, pursuant to 43 C.F.R. §§ 4.300 - 4.308 (Tribal Purchase of Interests Under Special Statutes) and 25 C.F.R. § 179.5 (Value of life estates and remainders).

We are not persuaded by Appellant's arguments. First, contrary to what Appellant contends, the Supreme Court in *Youpee* did not hold that the escheat of property to tribes without compensation was, by itself, unconstitutional, or that the government could not limit by regulation the descent of property. As noted above, *Youpee* invalidated section 207 of ILCA 1984. In contrast, the authority under which the Ordinance was enacted and the Federal law that it tracks is a different section of ILCA 1984 — Section 206<sup>2</sup> — and Section 206 has not been the subject of judicial review. Sections 206 and 207 of ILCA 1984 are distinct and independent from one another. Appellant does not contend that the Ordinance is inconsistent with Section 206 — only that the Ordinance (and perhaps Section 206) is unconstitutional. We do not have authority to review the constitutionality of Section 206. Thus, our determination in this case that the Ordinance was passed pursuant to the authority granted by Congress through Section 206 begins and ends our inquiry regarding the validity of the Ordinance. Second, Appellant's trust responsibility argument fails because it is based on a mischaracterization of the Ordinance and because it simply restates Appellant's constitutional objections to the Ordinance. Third, we reject Appellant's argument that she is entitled to compensation under 43 C.F.R. §§ 4.300 - 4.308 and 25 C.F.R. § 179.5. Sections 4.300 - 4.308 have no applicability to the Umatilla Tribe, and section 179.5 provides life estate and remainder valuation tables, but no substantive right of compensation.

In order to provide context to Appellant's challenge to the Ordinance in this case, we begin by discussing Congress's enactment of former sections 206 and 207 of ILCA, and the

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<sup>2</sup> Unless otherwise specified, all references in this decision to Section 206 are to the 1984 version.

subsequent judicial review of former section 207.<sup>3</sup> We then address each of Appellant's arguments in turn.

## Background

### I. Indian Land Consolidation Act

In 1983, Congress enacted ILCA, Pub. L. No. 97-459, 96 Stat. 2517 (ILCA 1983). One of the purposes of ILCA was to address the severe problem of highly fractionated ownership of Indian lands. Section 207 of ILCA prohibited the descent or devise of certain small fractional interests in Indian allotments, and instead ordered that such fractional interests would escheat to tribes, thereby consolidating ownership of Indian lands.<sup>4</sup> Section 207 did not require that compensation be paid for interests that escheated under its provisions. In 1987, in *Hodel v. Irving*, 481 U.S. 704, the Supreme Court held that section 207 of ILCA, as enacted in 1983, effected a taking of private property without just compensation in violation of the Fifth Amendment to the United States Constitution. 481 U.S. at 717-18. The Court held that Congress went too far by virtually abrogating the right to pass on a certain type of property — the small undivided interest — to one's heirs. *Id.* at 716.

In 1984, while *Irving* was still pending in the Federal courts, Congress amended section 207 to redefine the small fractional interests that would be subject to escheat,<sup>5</sup> and also to permit the devise of an otherwise escheatable interest to any other owner of an

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<sup>3</sup> Former sections 206 and 207, as enacted in 1983 and amended in ILCA 1984, were repealed and replaced in 2000 by Pub. L. No. 106-462, Title I, § 103(3) & (4), 114 Stat. 1995. Section 206 was further revised in 2004 and 2005. *See* Pub. L. No. 108-374, § 6(a)(3), 118 Stat. 1799 (Oct. 27, 2004); Pub. L. No. 109-157, § 3, 119 Stat. 2950 (Dec. 30, 2005). None of these revisions purported to affect tribal ordinances, such as the Ordinance at issue here, that had previously been adopted and approved.

<sup>4</sup> In ILCA 1983, Congress defined a class of small fractional interests that were subject to escheat as including any interest that constituted 2 percent or less of the total acreage in an allotted tract and had earned less than \$100 in the preceding year. ILCA 1983, § 207.

<sup>5</sup> Under ILCA 1984, the class of fractional interests subject to escheat was redefined to include those interests that constituted 2 percent or less of the total acreage of the parcel and were incapable of earning \$100 in any one of the five years following the decedent's death. ILCA 1984, § 207(a).

undivided fractional interest in the parcel at issue. Section 207 of ILCA 1984 also permitted tribes to establish their own codes to govern the distribution of those small fractional interests that fell within the scope of section 207.

In Section 206, Congress separately authorized Indian tribes to adopt their own laws governing descent and distribution of trust or restricted lands within the tribe's reservation. Section 206 does not implicate the size of a property interest in a decedent's estate. Rather, in Section 206 Congress authorized tribes to restrict the class of eligible heirs and devisees to members of the tribe (member-heirs), for the descent or devise of property located on the tribe's reservation or otherwise subject to the tribe's jurisdiction. In the case of decedents who died intestate — i.e., without a valid will — if no such eligible member-heir existed, tribes were authorized to allow the escheat of the decedent's interest to the tribe, subject to a life estate in nonmember spouses or children in certain circumstances. ILCA 1984, § 206(a).<sup>6</sup> Where a decedent died testate — i.e., with a valid will — a devise to a nonmember devisee could be defeated, but only if the tribe paid full market value for the interests subject to the devise. *Id.* § 206(a)(3).

In 1997, in *Youpee*, the Supreme Court held that section 207, as amended by ILCA 1984, was still unconstitutional. Notwithstanding the revised definition of the class of small fractional interests subject to escheat and Congress's allowance of the devise of such fractional interests, the Court held that amended section 207 still resulted in taking private property without just compensation, in violation of the Fifth Amendment, because it impermissibly restricted "the right of an individual to direct the descent of his property." 519 U.S. at 244-45. The Court did not address Section 206, which was not at issue in the case, nor has any other Federal court reviewed the validity of Section 206.

## II. The Umatilla Ordinance

On December 16, 1998, the Tribe adopted the Ordinance through Tribal Resolution No. 98-62 and pursuant to ILCA, and on March 5, 1999, the Superintendent approved the Ordinance. The adopting resolution recited that Congress through ILCA had authorized tribes to enact inheritance ordinances to halt the loss of allotted trust lands to nonmembers of the Tribe. Tribal Resolution No. 98-62, at 1. Section 7 of the Ordinance expressly states that "[p]ursuant to the authority granted in [ILCA 1984, § 206], this Code

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<sup>6</sup> Section 206 limited the right to receive a life estate to a spouse or children who, if they had been eligible, would have inherited an ownership interest of 10 percent or more in the tract of land, or who occupied the tract as a home at the time of the decedent's death. ILCA 1984, § 206(b).

shall be applied in probates involving trust or restricted land located on the [Tribe's] Reservation.” Ordinance, § 7. The Ordinance declared it the policy of the Tribe “to prevent the transfer of trust lands within the Umatilla Indian Reservation to non-members of the Tribe by devise or distribution as permitted by this Ordinance and federal law.” Ordinance, § 4.A. The Ordinance provides that, if a decedent dies intestate, nonmember heirs at law are not entitled to receive interests on the Umatilla Reservation, except that a nonmember spouse or child may elect to receive a life estate, in certain circumstances. *Id.* § 4.E.3. The remainder interest then passes to eligible tribal member-heirs, defined as those tribal members who would have been heirs in the absence of someone taking a life estate. *Id.* If no such member-heir — i.e., no eligible heir — exists, the remainder interest passes by escheat to the Tribe. *Id.* Section 4.E.3. of the Ordinance provides that in cases of intestacy, when the remainder escheats to the Tribe, the Tribe is under no obligation to pay compensation. *Id.* § 4.E.3. By contrast, when a decedent has devised interests on the Umatilla Reservation to a nonmember or non-Indian devisee, the Ordinance provides that the Tribe can only defeat the devise if it pays full market value for the devised interests, minus the value of any life estate retained by an eligible spouse or child. *Id.* §§ 4.E.2, 4.E.5, 4.E.8.

### III. Proceedings in Decedent's Estate

Appellant died intestate on September 1, 2003, a resident of Idaho. Decedent was survived by three children: Appellant, Leroy L. Seth, and Del T. White. None of Decedent's children is an enrolled member of the Tribe. At the time of her death, Decedent owned an interest in trust or restricted property located on the Nez Perce Reservation in the State of Idaho, and a one-half undivided interest in each of three allotments located on the Tribe's reservation in the State of Oregon.

Judge Hammett held a hearing to probate Decedent's estate on July 13, 2004. Appellant, Seth, and White, attended and testified at the hearing. On August 5, 2004, Judge Hammett issued an Order Determining Heirs, which distributed Decedent's real property located on the Nez Perce Reservation and the funds in Decedent's Individual Indian Money (IIM) account.

On December 20, 2004, after being notified by BIA that Decedent had also owned interests in three allotments on the Tribe's reservation, Judge Hammett issued a Supplemental Order Determining Heirs, in which he applied the Ordinance to Decedent's

trust property on the Tribe's Reservation.<sup>7</sup> Judge Hammett, determined that, pursuant to the Ordinance, Appellant, Seth, and White, were each entitled to elect to inherit a one-third life estate in Decedent's Umatilla interests. Assuming that each of the three heirs elected to receive a life estate interest, Judge Hammett ordered the remainder interest to pass to the Tribe because Decedent had no other heirs (i.e., next in line after Decedent's nonmember children) who were members of the Tribe, and therefore had no eligible heirs under the Ordinance to inherit the remainder interest.<sup>8</sup> Judge Hammett advised the parties that the decision would be final for the Department unless a petition for rehearing was timely filed in accordance with 43 C.F.R. § 4.241. Appellant was mailed a copy of the Supplemental Order. No petitions for rehearing were filed.

In June of 2005, Appellant notified the Agency that she had recently submitted her life estate request form for the property in Decedent's estate located on the Tribe's reservation, but "under protest of the [Ordinance]." Letter from Appellant to Agency, June 27, 2005. Appellant asserted that she believed that the Ordinance, under which the Tribe would take the remainder interest by escheat, was unconstitutional. In response, on July 18, 2005, the Superintendent signed and submitted a memorandum to the Sacramento office of the Department's Office of Hearings and Appeals. Although the Superintendent stated that he was "forwarding" Appellant's letter, his memorandum separately and independently appeared to express his view that the Ordinance should not be enforced in this case, based on the Supreme Court's decisions in *Irving* and *Youpee*.<sup>9</sup> The

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<sup>7</sup> Prior to issuing the Supplemental Order, Judge Hammett determined that none of Decedent's children, or their children or grandchildren, were members of the Tribe.

In the Supplemental Order, Judge Hammett noted that the funds in Decedent's IIM account covered by the original Order Determining Heirs did not derive from Decedent's Umatilla allotments. Thus, the final August 5, 2004, Order Determining Heirs was not affected by the Supplemental Order.

<sup>8</sup> Judge Hammett also ordered that the funds in Decedent's IIM account associated with Decedent's Umatilla allotment interests, which apparently were deposited after the original Order Determining Heirs, be distributed equally to Decedent's heirs in accordance with the intestate laws of the state of Decedent's residence, Idaho.

<sup>9</sup> The Superintendent also referred to the Federal district court's decision in *DuMarce v. Norton*, 277 F. Supp. 2d 1046 (D.S.D. 2003), *rev'd in part on other grounds*, 446 F.3d 1294 (Fed. Cir. 2006), which held unconstitutional a provision of the Sisseton-Wahpeton Sioux Act of 1984 providing for the escheat to the United States, in trust for the tribe, of certain fractional interests on the Sisseton-Wahpeton Reservation.

Superintendent suggested that reopening should be granted on the judge's own motion to correct any manifest error. *See* 43 C.F.R. § 4.242(e).

On July 29, 2005, Judge Stancampiano denied reopening of Decedent's estate. Judge Stancampiano noted that in another, earlier probate case involving the Ordinance, Judge Hammett had concluded that the escheat provisions of the Ordinance were unenforceable as applied to the facts of that case.<sup>10</sup> Judge Stancampiano concluded that the present case was distinguishable because each of Decedent's heirs is entitled to a life estate.<sup>11</sup> Judge Stancampiano determined that no Federal court has held that the application of the Ordinance under the circumstances of the present case is unconstitutional. He therefore declined to address the constitutionality of the application of the Ordinance to the present case, and concluded that there was no basis for reopening Decedent's estate.

Appellant appealed to the Board, and filed an opening brief. After reviewing the record, the Board ordered additional briefing for the purpose of clarifying the position of BIA in this case. The Board noted that the Superintendent had approved the Ordinance *after* the *Youpee* decision. Nevertheless, in 2005, relying on both *Youpee* and the even earlier *Irving* decision, the same Superintendent supported reopening Decedent's estate. BIA, the Tribe, and Appellant submitted briefs in response to the Board's order. BIA clarified that, in its view, the Ordinance's escheat provision at issue is enforceable in this case.

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<sup>10</sup> *See* Order Determining Heirs, *Estate of Moffitt A. Johnson*, Probate No. IP SA-192-N-01 (Dec. 23, 2003). In *Estate of Johnson*, the decedent owned a one-half interest in an allotment on the Tribe's reservation. One-half of that interest immediately passed by escheat to the Tribe because only one of his immediate heirs — his spouse — qualified for a life estate. The spouse was entitled to inherit one-half of decedent's interest, resulting in a 25% undivided ownership interest in the tract. The decedent's eleven children, however, would have shared the other one-half of decedent's interest, but because each would have taken less than a 10 percent ownership interest, they were disqualified under the Ordinance from taking a life estate.

<sup>11</sup> Consistent with Section 206(b), *see supra* note 6, subsection 4.E.8 of the Ordinance limits the right to receive a life estate to: (1) spouses and children who would have taken at least a 10 percent ownership interest in the tract of land at issue and (2) spouses and children who occupied the tract as a home at the time of decedent's death. Because Appellant (and her siblings) each would have taken more than a 10 percent ownership interest in Decedent's Umatilla property, each was entitled to receive a life estate. Therefore, the limitation in subsection 4.E.8 is not at issue in this case.

## Discussion

The only issues in this case are those of law, which the Board reviews de novo. *Hardy v. Midwest Regional Director*, 46 IBIA 47, 52-53 (2007).

On appeal to the Board, Appellant argues that (1) the Ordinance is invalid under *Youpee*, (2) application of the Ordinance violates the Department's trust responsibility, and (3) she is entitled to compensation under 43 C.F.R. §§ 4.300 - 4.308 and 25 C.F.R. § 179.5, which address tribal purchase options and life estate and remainder values. We discuss each argument in turn, but are not convinced by any of them.

### I. Validity of the Ordinance

Appellant first contends that the application of the Ordinance in this case results in title to the property, although subject to Decedent's children's life estates, ultimately passing to the Tribe by escheat and without compensation, "which was ruled unconstitutional" in *Youpee*. Notice of Appeal at 2.

We reject this argument. Appellant reads *Youpee* too broadly, first in characterizing its holding, and second in contending that it controls the Board's disposition of this appeal.

We begin by addressing Appellant's characterization of *Youpee*. Appellant argues that the Supreme Court in *Youpee* broadly prohibited the escheat of property without some payment of compensation. In neither *Irving* nor *Youpee* did the Supreme Court hold that the escheat of property to tribes was, by itself, either unconstitutional or improper. Escheat for failure of heirs has long been part of the American legal system. See 27A Am. Jur. 2d *Escheat* § 13; 30A C.J.S. *Escheat* § 2 (1992); see also 25 U.S.C. § 373a (interest in trust or restricted property will escheat to tribe when the Secretary of the Interior determines that an Indian has died intestate without heirs as determined under the applicable law). In fact, the Court confirmed the principle that the government may regulate the descent of property. See *Irving*, 481 U.S. at 717 ("In holding that complete abolition of both descent and devise of a particular class of property may be a taking, we reaffirm the continuing vitality of the long line of cases recognizing . . . the United States' broad authority to adjust the rules governing the descent and devise of property without implicating the guarantees of the Just Compensation Clause."). Rather than sweeping as broadly as Appellant suggests, the Court's decisions in *Irving* and *Youpee* were limited to holding original and amended section 207 unconstitutional: The Court found that section 207 impermissibly restricted the right of an individual to direct the descent of a particular class of his or her property. *Irving*, 481 U.S. at 716; *Youpee*, 519 U.S. at 244.

We next address Appellant's contention that *Youpee* nevertheless controls our disposition of this appeal and requires us to find that it was impermissible for the ALJ to apply the Ordinance to Decedent's estate. The Ordinance was adopted pursuant to the authority granted in Section 206, and not pursuant to section 207, which was the subject of *Irving* and *Youpee*.<sup>12</sup> Section 206 is distinct and independent from section 207 as originally enacted in 1983 and as subsequently amended in 1984, and the circumstances under which escheat may occur or be authorized under the two provisions is different. Section 207 ordered the escheat of a class of small fractional interests, as determined by size and earnings capacity. Unlike section 207, Section 206 does not attempt to regulate or authorize tribes to regulate the descent or devise or property based on the size of the fractional interest in a decedent's estate. Instead, Section 206 authorizes tribes to enact probate codes defining the class of individuals who are eligible to inherit (or receive a devise of) trust property that is subject to the tribe's jurisdiction.

Only section 207 was struck down as unconstitutional in *Irving* and *Youpee*. Section 206 has not been reviewed by any Federal court and has not been determined to be unconstitutional. The Board, of course, cannot declare an act of Congress unconstitutional. *Estate of Millie White Romero*, 41 IBIA 262, 266 (2005); *Shawano County v. Midwest Regional Director*, 40 IBIA 241, 247 (2005). Thus, unless the Ordinance is outside the scope of what Congress authorized under Section 206, we have no basis to determine that it was impermissible to apply it to Decedent's estate in this case.

Appellant does not contend that the escheat provision she is challenging falls outside the scope of, or is inconsistent with, Section 206. In the Ordinance, the Tribe made a choice to limit the class of eligible heirs to Tribal members and to have the remainder interest vest in the Tribe, without compensation, if a decedent died intestate and without eligible member-heirs. Unlike section 207 of ILCA 1984, the Ordinance does not prohibit the devise or descent of property based on the size of the fractional interest in a decedent's

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<sup>12</sup> We recognize that the Tribe's Resolution adopting the Ordinance does not expressly recite Section 206 as the source of authority, but the Tribe's intent is unmistakably clear. First, the Resolution's recitation of ILCA's authorization refers only to the subject matter of Section 206 — halting the loss of allotted trust lands to nonmembers of the Tribe. Second, section 7 of the Ordinance does specifically state that it shall be applied “[p]ursuant to the authority granted in [ILCA], 25 U.S.C. § 2205,” which at the time codified Section 206 of ILCA 1984. Third, the subject matter of the Ordinance is limited to the subject matter of Section 206 — determining the eligible class of *heirs* for trust property located on the Tribe's reservation — and does not purport to limit devise or descent based on the size of a fractional interest in a decedent's estate, which was the subject matter of section 207.

estate. Instead, it identifies and defines the class of potential heirs, choosing tribal members over nonmembers (whether Indian or non-Indian). Appellant contests the Tribe's choice on constitutional grounds, but does not argue that it was not within the scope of authority granted to the Tribe by Congress in Section 206.<sup>13</sup>

Because Appellant does not contend that the challenged provisions of the Ordinance are outside the authority that Congress allowed tribes to exercise, and which Congress contemplated, under Section 206, that is the end of our inquiry. Appellant does not suggest any additional grounds on which we could review the Ordinance,<sup>14</sup> nor does she contend, except possibly as discussed below in Section III, that Judge Hammett's Supplemental Order Determining Heirs did not correctly apply the terms of the Ordinance. We therefore conclude that Appellant has failed to show error in Judge Stancampiano's decision to uphold application of the Ordinance to the facts of the present case.

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<sup>13</sup> Section 206 only requires compensation when a decedent attempts to *devise* an interest to an individual deemed to be ineligible to receive that interest by the applicable tribal inheritance code. ILCA 1984, § 206(a)(3). Congress did not similarly require compensation when a decedent dies intestate, requiring only that the surviving non-Indian or nonmember spouse or children (subject to certain conditions) may elect to receive a life estate and that the remainder be allowed to vest in the Indians or tribal members who would have been heirs in the absence of a qualified person taking a life estate. *Id.* § 206(a)(1) & (2) (providing for life estate and not requiring compensation for remainder interest on escheat to the tribe). The provisions of the Ordinance closely follow the language of Section 206.

<sup>14</sup> In her reply brief, Appellant argues for the first time that the escheat provision in the Ordinance violates the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302(5), which incorporates and applies to tribes the constitutional prohibition against taking private property without just compensation. The Board generally will not consider arguments raised for the first time in a reply brief. *See Aloha Lumber Corp. v. Alaska Regional Director*, 41 IBIA 147, 161 (2005). We see no reason to depart from that practice here, particularly where the ICRA argument, albeit under the guise of asking us to evaluate the Ordinance, is substantively no different from a constitutional argument against Section 206, which as we have said we lack authority to consider. We also note that Section 206 commences with the recitation, “[n]otwithstanding any other provision of law,” which raises the question of whether ICRA would even be relevant in this case.

## II. The Trust Responsibility

Appellant also contends that it violates the Department's "trust responsibility" to allow tribal probate codes to pay fair market value to non-Indian heirs, while denying such compensation to heirs who are Indian but not members of the Tribe. Appellant's Response to Board's Order for Clarification at 1. Appellant does not accurately characterize the Ordinance's provisions concerning payment. The Ordinance distinguishes between intestate and testate succession, not between non-Indians and non-Umatilla tribal members. Any non-Umatilla *devisee*, whether a non-Indian or member of another tribe, would be entitled to compensation for the remainder interest, whereas any non-Umatilla *heir*, whether a non-Indian or a member of another tribe (such as Appellant) would not be entitled to compensation under the Ordinance. Appellant is treated the same as a non-Indian heir, but differently than a devisee.

Moreover, Appellant's trust responsibility argument is essentially a restatement of her objection to the Department's application of the Ordinance, which, as we have concluded, was passed pursuant to the authority granted by Section 206. Appellant cites no separate source of authority, nor are we aware of any, for finding that the Department's approval or application of the Ordinance violates a "trust responsibility" owed to her. We therefore reject this argument.

## III. Entitlement to Compensation under Departmental Regulations

Appellant contends that 25 C.F.R. § 179.5 and 43 C.F.R. §§ 4.300 - 4.308 required that Decedent's heirs be provided with an appraisal report and that they be compensated for the remainder interest that escheated to the Tribe. Because the Tribe states an intent in the Ordinance to enter into an agreement with BIA to follow the regulations at 43 C.F.R. § 4.300 - 4.308, Appellant suggests that this means she is entitled to compensation under the Ordinance or under those regulatory provisions.

Appellant is mistaken. First, sections 4.300 through 4.308, titled "Tribal Purchase of Interests under Special Statutes," only apply to the Yakima, Warm Springs, and Nez Perce Indian Reservations. 43 C.F.R. § 4.300. Second, the provision within the Ordinance on which Appellant relies as purporting to incorporate sections 4.300 *et seq.* only applies to the Tribe's purchase of interests *devised* to a nonmember — i.e., cases in which a decedent dies with a valid will. The Ordinance specifically provides that the Tribe is not required to compensate for the interests it acquires when the decedent dies intestate. Ordinance § 4.E.3. Decedent died intestate in this case, and therefore the provisions in the Ordinance relating to devises (including the appraisal provisions) do not apply. Likewise, 25 U.S.C. § 179.5, which comprises a table of the value of life estates and remainders, has

no relevance because Appellant is not entitled to be compensated under the express terms of the Ordinance and because section 179.5 provides no substantive right of compensation. We therefore reject Appellant's arguments that she is entitled to be compensated under the Ordinance and the regulations.

### Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms Judge Stancampiano's denial of reopening.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge