



INTERIOR BOARD OF INDIAN APPEALS

Estate of Lena Cultee Hillaire

42 IBIA 174 (01/25/2006)



## 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 LENA CULTEE HILLAIRE : Order Affirming Decision in Part  
: and Reversing in Part  
:  
: Docket No. IBIA 04-101  
:  
: January 25, 2006

Appellant Crystal A. (Lemieux Jackson) Bonga, pro se, seeks review of an Order Granting Instanter Informal Petition for Rehearing and Order Reaffirming Distribution, entered in the Estate of Lena Cultee Hillaire (Decedent), deceased Quinault Indian, Probate No. IP SA 223 N 90, by Administrative Law Judge William E. Hammett on March 31, 2004. That order granted rehearing for and reversed a July 3, 2003 Order Granting Instanter Petition for Rehearing and Directing Distribution of Trust or Restricted Property with respect to Decedent's disposition of her interests in Quinault Allotment No. 1045, also referred to as Allotment 117-1045. Appellant is Decedent's granddaughter. For the reasons stated below, the Board of Indian Appeals (Board) affirms the March 31, 2004 order in part and reverses in part.

### Background

Decedent died April 24, 1988 at Poulsbo, Washington. Decedent had executed a will on June 1, 1971, which was accompanied by a self-proving affidavit. The will devised particular portions of specified property to individuals identified in the will. The only portions of the will that are pertinent here relate to Allotment 1045.

The second paragraph of the will devised to Appellant the "portion of my original trust allotment, Quinault No. 1045, described as: The West 880 ft. of the S1/2 SW1/4 sec. 13, T. 22 N., R. 12 W., [Willamette Meridian, Washington]." The third paragraph of the will devised the "East 880 ft. of the West 1760 ft." of the same allotment to Decedent's grandson, Kenneth Lemieux. The fourth paragraph devised "the East 880 ft." of the same allotment to Cheryl J. Mabe, Decedent's great-granddaughter. Thus, the will was intended to devise a one-third divided interest in Allotment 1045 to each of the three named individuals.

However, several years after executing her will, on January 6, 1975, Decedent signed a gift deed conveying Allotment 1045 to the United States in trust for Richard Drosman, Decedent's grandson. The deed, numbered 117-5730, conveyed:

the following-described real estate and premises situated in Grays Harbor County, State of Washington on the Quinault Indian Reservation to wit: S1/2 SW1/4, section 13, Township 22 North, Range 12 West, Willamette Meridian, containing eighty (80) acres, more or less, Reserving unto grantor 100% interest in & to the timber situated thereon.

Deed 117-5730 at 1. The deed also provided that the conveyance is “[s]ubject to the Timber Contract documented and on file with the Chief, Titles & Record Section, Portland Area Office; Nos. 117-4977 and 117-4889.” Id. The deed was approved by the Superintendent of the Olympic Peninsula Agency, Bureau of Indian Affairs (Superintendent; BIA) on January 24, 1975.

After Decedent's death, BIA prepared an inventory of Decedent's trust or restricted assets. The BIA inventory did not identify Allotment 1045 or any interests therein as part of Decedent's estate.

The probate case was initially assigned to Administrative Law Judge Keith L. Burrowes. Judge Burrowes held a hearing on July 11, 1990 at Montesano, Washington. <sup>1/</sup> Following the hearing, Appellant requested from BIA a copy of Deed 117-5730, which BIA provided to her by letter dated August, 1, 1990. By letter dated September 19, 1990, Appellant wrote to Judge Burrowes stating that she had obtained a copy of the January 6, 1975 deed and that, based on its reservation of timber rights, she had a right under Decedent's will to the timber on Allotment 1045.

By letter of February 5, 1991, Judge Burrowes wrote the Superintendent stating that he needed to know if Decedent still owned the timber rights on Allotment 1045 and requesting an amended inventory on the property. On February 19, 1991, the Superintendent responded that, with respect to Decedent's conveyance of Allotment 1045, “[t]he intent of the reservation of the timber was for the life of the Grantor only,” and that

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<sup>1/</sup> No transcript of the hearing is available, but no party suggests that the proceedings are material to this appeal. Judge Burrowes held a subsequent hearing on August 9, 1991. The subject matter of that hearing is not stated in the record, but the hearing notice directs that only scheduled witnesses are to testify and directs family members not to attend. This hearing also appears to be irrelevant to this appeal.

“[t]he Grantor’s express intent was to Gift Deed the entire allotment to her grandson.” The letter enclosed a “documentation” — a memorandum to the file by a BIA employee identified by the initials “ggg” — describing a personal visit made by Decedent to BIA. The Superintendent characterized the memorandum as indicating that Decedent wished to retain the income from an existing timber contract on the property. The documentation was dated January 6, 1974 and stated in its entirety:

Mrs. Hillaire was in to inquire about her gift deed to her grandson. She was impatient with our regulations. I called regarding the appraisal and Title Status Report. Mr. Swanson said it would be awhile before they could get the appraisal out. I told him about Mrs. Hillaire’s feelings about getting an appraisal, etc. He said since it was a gift deed, the Supt. could waive the appraisal so long as she had some idea of what she was giving away. He said the land would be about \$100.00 an acre after logging. The land is still a part of the Taholah logging unit and she wished to retain the income from the timber contract. He said it would be difficult to appraise it on that basis. I told her what the value was and she said she didn’t care if it was a thousand dollars an acre, she was still going to give it to him, her grandson. She said she could’ve bought the place (Quinault) for a dollar an acre a few years back. I told her I would keep her informed and got her telephone [number omitted]. She also signed a deed while talking to Messr’s Parot and Strong.

January 6, 1974 BIA Documentation at 1.

On December 6, 1991, Judge Burrowes issued an Order Approving Will and Decree of Partial Distribution. The order found that the will was properly executed and distributed the estate in accordance with its terms. 2/ As pertinent here, the order declared:

PLEASE NOTICE: Paragraph Second, Third and Fourth, which devised property in Allotment 1045 to Crystal Lemieux Jackson, Kenneth Lemieux and Cheryl J. Mabe, were deeded out and no longer a part of this decedent’s estate at the time of her death. Devise fails.

December 6, 1991 Order at 4. The order distributed to Appellant “all of the rest and residue, real personal or mixed, wherever situate” to Appellant. Id.

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2/ Interests that were potentially escheatable pursuant to federal statute were not distributed at that time but were addressed later in the probate proceedings. Those interests are not at issue in this appeal.

Appellant filed a timely petition for rehearing. Appellant argued that the December 6, 1991 order did not account for Decedent's reservation of the timber rights on Allotment 1045. Appellant argued that the plain language of the January 6, 1975 deed reserved the timber to Decedent and thus the timber had not conveyed to Richard Drosman. She did not dispute that the devise of Allotment 1045 in paragraphs two through four of Decedent's will failed, but argued instead that the timber rights, which were not specifically addressed in the will, formed part of the "rest or residue" of the estate and thus conveyed solely to her. 3/

By letter of February 4, 1992, Judge Burrowes repeated his February 5, 1991 request to BIA for an amended inventory pertaining to Allotment 1045, or a title status report showing its disposition. He noted that he had ruled on the estate without the amended inventory and that it was now required for him to address the petition for rehearing. After repeated requests by Judge Burrowes, BIA in April 1995 provided a title status report showing no reserved interests remaining in Allotment 1045. Accordingly, BIA did not amend the inventory. 4/

From 1996 to late 2001 the case was in hiatus. In 1996, the Billings field office of the Office of Hearings and Appeals, which was handling the case, was closed and the case was transferred to the Salt Lake City field office, which took no action on the case. On

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3/ Appellant also argued that she had a legal claim on monies to be received as a result of the Quinault Allottee's Committee lawsuit for the mismanagement of timber logging for individual allottees on the Quinault Reservation, which were not mentioned or known to exist at the time of the July 11, 1990 hearing and are unspecified in the will. Appellant further asked if there were monies in Decedent's Individual Indian Money Account and, if so, who would receive it. These matters are not involved in the appeal before the Board and are not discussed further in this order.

4/ It appears from the record that an earlier version of the title status report, but one that postdated Decedent's death, stated under the "Nature of Encumbrance" section: "Reserving unto grantor 100% interest in and to the timber situated thereon." It appears that this language was deleted from the title status report in response to concerns expressed in an April 13, 1995 memorandum from the Real Estate Services Branch of the Olympic Peninsula Agency to the Portland Area Director, which argued that the reservation expired upon Decedent's death. Appellant argues that, given the apparent alteration of the title status report, it should not be considered as a factor in the appeal. The title status report plays no role in the rulings of Judge Hammett or the Board.

August 7, 2001, the case was transferred to Judge Hammett in the Sacramento field office of the Office of Hearings and Appeals.

On July 3, 2003, Judge Hammett issued an order on Appellant's 1992 petition for rehearing, entitled Order Granting Instanter Petition for Rehearing and Directing Distribution of Trust or Restricted Property. The order noted that the Individual Indian Money (IIM) Accounting Technician making a report on the sources of income to Decedent's IIM account had reached the conclusion that Decedent retained only a life estate in the timber interests she reserved in the January 6, 1975 gift deed. Judge Hammett found, however, that "the deed does not contain any words of limitation on the reservation of the timber rights." July 3, 2003 Order at 2. Judge Hammett further found that "[t]he deed is certain in its language and parole evidence cannot be allowed to reform the deed to fit the view of the BIA that the decedent possessed only a life estate which terminated upon her death." *Id.* Thus, Judge Hammett ruled that the devisees in the second, third, and fourth paragraphs of the will, which include Appellant, were each entitled to a one-third interest in the timber rights pertinent to Allotment 1045.

The order noted that Appellant's petition for rehearing apparently was never circulated to the other interested parties. Thus, the order provided any party in interest with the opportunity to file a petition for rehearing.

By letter dated August 21, 2003 and signed by Trust Officer Neil F. Eldridge, the Taholah Field Office of BIA informed Judge Hammett that "we believe that the distribution order is not in accordance with Mrs. Hillaire's wishes." The letter explained that Decedent had stated that she wished to reserve the timber rights to Allotment 1045 only after being shown the timber contract that expired on April 1, 1979 and that "[s]ince Mrs. Hillaire only reserved the rights to the timber because of the existing contract, when that contract expired, her rights should have also expired." It further argued that the most valuable asset on the land was the timber and that, because Decedent meant to give her grandson something of value, she meant to give him the timber as well as the land itself. It further stated that "it was obvious" that Decedent's intent was to reserve the timber rights as a life estate, which would extinguish upon her death. Based on this explanation, the Taholah Field Office stated that "a grave injustice" would occur if the July 3, 2003 order was implemented because "it would leave Richard Drosman with nothing."

On August 29, 2003, Judge Hammett issued a Notice and Order Staying Distribution. The order stated that the Taholah Field Office letter did not meet the requirements of 43 C.F.R. § 4.240 for a petition for rehearing but that Judge Hammett was treating the letter as an informal petition for rehearing. The order determined that the

petition was timely filed and directed BIA to stay distribution of Decedent's trust or restricted property.

On March 31, 2004, Judge Hammett issued an Order Granting Instanter Informal Petition for Rehearing and Order Reaffirming Distribution. The order reversed the determination in the July 3, 2003 order that the timber rights to Allotment 1045 were part of Decedent's estate. The order states in relevant part:

While this forum cannot permit a collateral attack on or reform the deed, it certainly has the authority to interpret any conditions imposed in the conveyance which might affect distribution of the decedent's trust assets pursuant to her approved will.

Upon further review of the language in the deed, it appears that this forum did err in its findings and ruling as to the status of ownership of the decedent's allotment, 117-1045. \* \* \* The language in the deed implicates that the decedent did not intend that the proceeds from any future timber sales from 117-1045 would inure to the three devisees/beneficiaries \* \* \* . The condition inferred in the deed appears to be that Richard Drosman's ownership would be impacted only to the extent that any proceeds from the timber contract then in place on the date of the conveyance would be shared by the said three devisees/beneficiaries. Thereafter, Richard Drosman would be entitled to the proceeds from all future timber sales from such allotment interest.

March 31, 2004 Order at 1. The order held that any proceeds from the timber contract referred to in Deed 117-5730 that remained in Decedent's IIM account at the time of her death should be distributed to the three devisees of Allotment 1045 identified in the second, third, and fourth paragraphs of the will. The order provided that proceeds from sales of timber after that contract expired would accrue to the benefit of Richard Drosman. However, in a seemingly conflicting ruling, the order provided that Appellant is entitled to all funds that were in Decedent's IIM account at the time of Decedent's death.

Appellant filed a timely notice of appeal including a statement of reasons. Appellant also filed an opening brief. No other parties filed briefs.

## Discussion

Appellant challenges the March 31, 2004 order first by making the threshold argument that the Tahola Field Office letter was not a valid petition for rehearing that could be considered by Judge Hammett. On the substance of the appeal, Appellant argues that (1) the author of the Tahola Field Office letter was not personally aware of Decedent's wishes, and the letter provided no substantiation for its opinion as to what those wishes were; (2) the language in the deed reserving "100% of timber interests" controls and must be read to mean that Decedent retained the timber interests forever; and (3) if intent overrides the language of the deed, Decedent should be deemed to have intended to retain the timber interests and make only a low-value conveyance to Richard Drosman because in exchange for the interests she granted him in Allotment 1045 he gave her only a used car.

Appellant has done an excellent job of representing herself in the appeal and makes a number of arguments that seem reasonable on their face. However, given the nature of the proceedings and special features of the law regarding conveyance and reservation of timber interests, Appellant's arguments ultimately fail.

Without deciding whether the Tahola Field Office's letter could otherwise have been properly accepted by Judge Hammett as a "petition for rehearing," we conclude, under the facts of this case, that it could properly be considered by Judge Hammett under the procedures established by the Board in Estate of Douglas Duchenezux, 13 IBIA 169 (1985). In Ducheneaux, in order to streamline the procedures for challenging a BIA inventory in probate proceedings, the Board established a procedure under which alleged errors in BIA's estate inventory are to be considered during a probate proceeding. In a Ducheneaux proceeding, a judge in a probate proceeding is permitted to take evidence concerning the trust estate inventory and issue a recommended decision for the Board on disputed issues concerning the inventory. 13 IBIA at 177-178; see also Estate of Joseph Baumann, 38 IBIA 150, 153 (2002). Objections to the ALJ's recommended decision are to be made in the same manner as other objections to probate proceedings and, if no objections are made, the recommended decision constitutes the final decision of the Board. Id. at 177-78. In this way, an ALJ may address both probate matters and estate inventory matters in a unified proceeding, subject to the parties' right of appeal to the Board.

The BIA is an interested party in Ducheneaux proceedings and is to be afforded an opportunity to participate in them. Ducheneaux, 13 IBIA at 177. BIA's interest is particularly strong where, as here, a party seeks to add trust property to a decedent's estate inventory and BIA believes that beneficial title is held by another individual.

The probate proceedings in this case were not conducted as Ducheneaux proceedings. However, the probate proceedings incorporated all of the elements required for such a proceeding. While neither Judge Burrowes nor Judge Hammett formally recognized BIA as an interested party or afforded it an opportunity to participate in a hearing, both judges allowed BIA to provide letters and other documentary material supporting its position that Decedent reserved the timber interests only for a limited time. The Board has previously ruled that it is not essential to hold a hearing in a Ducheneaux proceeding if an appropriate opportunity is provided for BIA to present evidence. See Estate of George Levi, 26 IBIA 50, 55 (1994).

The Board finds that the probate proceedings effectively complied with the Ducheneaux procedure, and we treat Judge Hammett's March 31, 2004 decision as a recommended decision to the Board. Under these circumstances, we conclude that it was proper for Judge Hammett to consider Eldridge's August 21, 2003 letter regardless of whether it would otherwise constitute a proper petition for rehearing. 5/

Turning to the question of the effect of Decedent's reservation of timber rights, Appellant's argument that the timber rights should convey to her rests on her contention that the deed's reservation of "100% interest in and to the timber situated on [Allotment 1045]" permanently severed the timber interests from the land transferred to Richard Drosman. While Appellant's argument may seem plausible on its face, the law treats timber conveyances or reservations in a specialized manner. In the majority of the states, including Washington State, where Allotment 1045 is located, a conveyance or reservation of timber rights is presumed not to be perpetual, unless the deed contains language that clearly manifests an intention to make a permanent, perpetual conveyance or reservation, language that is not present in this deed.

First, a deed's conveyance or reservation of "timber," without further definition or clarification, is generally deemed to convey or reserve only "trees of a size suitable for manufacture into lumber for use in building and allied purposes" as of the date of the deed. Arbogast v. Pilot Rock Lumber Co., 336 P.2d 329, 332 (Ore. 1959) (citing numerous cases); see also Walter v. Potlatch Forests, Inc., 497 P.2d 1039, 1040 (Idaho 1972); M&I Timber Co. v. Hope Silver-Lead Mines, Inc., 428 P.2d 955, 959 (Idaho 1967). The term "timber" does not include saplings or undergrowth that may eventually become large

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5/ Because we base our ruling on the nature and extent of Decedent's reserved timber interest purely on the language of the deed, we do not address Appellant's arguments regarding the evidentiary validity of Eldridge's characterization of Decedent's intent or Appellant's own suggestions as to the nature of Decedent's intent.

enough for removal, or other future growth. See Arbogast, 336 P.2d at 332; 54 C.J.S. Logs and Logging § 7 (1987). Indeed, a reservation of “all timber” has been deemed to mean only the timber that was convertible to lumber on the date of a deed. See Emerson v. Hood River County, 354, P.2d 74, 75 (Ore. 1960) (emphasis added); cf. Arbogast, 336 P.2d at 332 (reaching similar result with respect to deed conveying, rather than reserving, timber rights).

A deed is deemed to create a perpetual interest in the present and future timber on the property only if that intention is clearly manifested. A perpetual right to present and future timber on property has been found to exist where the deed reserved “timber now growing or being or which may hereafter be grown,” Carlson v. Reservation Ranch, 848 P.2d 616, 618 (Ore. App. 1993); or where it reserved “all timber growing, grown, or to be grown thereon,” Franke v. Welch, 458 P.2d 441, 443 (Ore. 1969) (en banc), or where it granted a right to “all of the timber of all species upon the following described land \* \* \* together with all timber that may grow in the future thereon and together with the perpetual right to remove and use the same.” Hoglund v. Omak Wood Products, Inc., 914 P.2d 1197, 1201 (Wash. App. 1996). In contrast, a grant of “all [timber] growing or situated” on the land with a “perpetual right to enter” the property to remove the timber has been held only to allow removal of the timber that existed at the time of the grant. Bross v. Peyton, 450 P.2d 760, 762 (Ore. 1969). As the Washington Supreme Court has explained, the effect of a perpetual conveyance “has severe consequences for the ability of the land owner to use and enjoy his land.” Layman v. Ledgett, 577 P.2d 970, 971 (Wash. 1978) (en banc); see also Hendrickson v. Lyons, 209 P. 1095, 1096 (Wash. 1922). “Thus, the law will not presume this to be the intent of the parties unless the contract of sale clearly requires such a conclusion.” Id.

Applying this rule of construction, Decedent’s deed must be read to reserve a right to cut only the merchantable timber that existed on Allotment 1045 in 1975 when the deed was approved, not timber that might result from future growth. The deed reserves a “100 percent” interest in the timber that is “situated on the land.” This language is equivalent to the reservations of “all timber” held in prior cases to reserve only existing merchantable timber. We thus conclude that the deed thus reserves only the merchantable timber that existed on the property at the time of its conveyance in January 1975, not potential future timber.

In addition, the deed must be read as allowing only a limited time for removal of that timber. The general rule is that, if a deed does not specify a period of time during which the timber must be removed, the deed is deemed to allow only a reasonable period for removal. See Franke, 458 P.2d at 443; Leuthold v. Davis, 355 P.2d 6, 7 (Wash. 1960); Kalnoski v. Carlisle Lumber Co., 137 P.2d 109, 111 (Wash. 1943); see also 54 C.J.S. Logs

and Logging § 17. Language that has been found adequate to express an intention to convey the timber in perpetuity includes a description of the cutting rights as enduring “forever,” as being “irrevocable, or as “existing at any time.” Layman, 577 P.2d at 971 (internal quotations and citations omitted). However, even a deed that conveyed timber rights and contained a habendum clause reading, “To have and to hold unto the said [grantee], its successors and assigns, forever,” was found to allow only a reasonable time for removal of timber. See Hay v. Chehalis Mill Co., 19 P.2d 397, 398-99 (Wash. 1933) (emphasis added). The reservation in Decedent’s deed of Allotment 1045 does not specify a period for removal and thus must be deemed to allow only a reasonable time for the removal of that timber, not a perpetual right.

We therefore conclude that Deed 117-5730, in which Decedent gift deeded Allotment 1045 to Richard Drosman, reserved to Decedent only the right to log, within a reasonable period of time, the merchantable timber that existed on the property at the time of the conveyance. In so ruling, we reject Judge Hammett’s conclusion that Decedent specifically reserved only the timber encompassed by the timber contract that covered Allotment 1045 at the time of its conveyance. The reservation contains no such language. Indeed, the deed contains language, in addition to the reservation language, expressly making the conveyance “subject to” the existing timber contracts. Reading the reservation language to encompass only the existing timber contracts would render this additional language redundant and, as a general rule of interpretation, provisions should be interpreted to avoid a redundancy. BIA itself appears to have understood the reservation to have continued beyond the life of the timber contracts that existed in 1975, as evidenced by its deposit into Decedent’s IIM account of proceeds from a 1984 salvage permit on Allotment 1045.

We also reject BIA’s argument, in its petition for rehearing, that Decedent reserved a life estate in the timber interests. The deed contains no language limiting the right to the timber on Allotment 1045 to the lifetime of Decedent. BIA in the past has relied on the January 6, 1974 “documentation” to support its position that a life estate was created. That memorandum does state that Decedent wished to retain the income from the timber contract, suggesting that she did not intend the reservation to extend beyond her lifetime. Assuming the memorandum is correctly dated, however, it records events that occurred a year before Decedent signed the gift deed conveying Allotment 1045, which she signed on January 6, 1975, and cannot be deemed to demonstrate her intent one year later. It appears, however, that the memorandum is incorrectly dated with the year 1974, and should instead be dated January 6, 1975, the same date that Decedent signed the gift

deed. 6/ Otherwise the description of Decedent's desire to move quickly on the gift deed, BIA's efforts to fulfill that desire, and the statement that Decedent signed the deed on that date seem nonsensical. Nevertheless, we do not deem the memorandum to be sufficiently reliable to provide evidence of Decedent's particular intent with respect to the scope or duration of the reservation. The scope of the reservation was not the subject of the memorandum, and there was no particular reason for the BIA employee who drafted it to ensure that he or she accurately understood or reported Decedent's wishes on this matter.

Thus, we look only to the language of the deed, and conclude that Decedent reserved the right to log the timber on Allotment 1045 for a "reasonable time," whether that time ended before or extended beyond her death.

The remaining question, then, is what constituted a "reasonable time" for the exercise of the timber rights reserved by Decedent? 7/ The question of what period of time constitutes a "reasonable" period is generally a mixed question of fact and law. See Nelson v. McKinney, 1 P.2d 876, 879 (Wash. 1931); Henrickson, 209 P. at 1097. What is a reasonable time generally depends on the facts and circumstances of the case, and may include considerations such as the kind, character, and quantity of timber; the location of the land and obstacles to the timber's removal; and facilities for marketing. See West v. Mooney, 351 P.2d 446, 447 (Ore. 1960); Hendrickson, 209 P. at 1097.

Here, more than 13 years elapsed between the time of Decedent's reservation of the timber interest and her death. An additional 18 years has elapsed since the time of Decedent's death, but since the ownership of the timber rights on Allotment 1045 was in question during this time, we will not count those years in determining whether the "reasonable time" for logging encompassed in Decedent's reservation has lapsed. See Clyde v. Walker, 348 P.2d 1104, 1107 (Ore. 1960) (litigation can constitute interference with

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6/ We note that it is not uncommon during the early days of a new year for individuals to mistakenly date documents using the previous year. In fact, the record in this case contains one such document, the date of which is corrected by subsequent notation.

7/ Of course, if the record showed that there is no timber remaining on Allotment 1045 that would have been merchantable timber in January 1975, there would be no interest remaining in the reservation that could pass to Appellant, and we could end the analysis here. Because the record does not contain this information, we assume that there may be such timber remaining and proceed to determining whether the "reasonable time" for removing it has elapsed.

ability to remove timber in reasonable time). Nevertheless, we hold that 13 years constituted more than a reasonable time for Decedent to exercise her reserved timber rights.

Courts in the Pacific Northwest have held that timber cutting occurred within a reasonable time where logging was completed within three and a half years, *see West*, 351 P.2d at 447-48, and — where no information other than the passage of time was provided to demonstrate unreasonableness — where logging was completed within eight years. *See Hendrickson*, 209 P. at 1097. On the other hand, courts have found that a reasonable period had elapsed where a property was not logged after 12 years, *see Morgan v. Veness*, 185 P. 607, 608 (Wash. 1919); after 18 years, *see Kalnoski*, 137 P.2d at 112 (affirming trial court finding that “more than reasonable time” had elapsed); and after 22 years. *See Nelson*, 1 P.2d at 879.

The latter three cases provide guidance for our decision here. In *Morgan*, the court affirmed a trial court determination that a reasonable time for cutting timber had lapsed after 12 years. In that case, a jury had found, among other things, that it would have been reasonably convenient for the property to have been logged, that there was a market for timber in the vicinity, and that it would only take several months for the timber to be removed. 185 P. at 608. In *Kalnoski*, a court found that logging that occurred 18 years after the timber’s conveyance occurred after a reasonable time had lapsed. The court concluded that the timber could have been removed some 16 years earlier, when the holder of the timber rights had logged other timber on a neighboring tract. The court recognized that the timber was of poor quality and that the owner did not find it advantageous to remove it at that time but did not consider the owner’s convenience to be a sufficient reason for extending what constituted a reasonable time. 137 P.2d at 112. Finally, in *Nelson*, the court concluded that a reasonable time had lapsed “long prior” to the 22 years that had lapsed before the litigation was brought because it had been physically practicable and commercially possible to log the timber long before that time. The court deemed it immaterial whether the timber could have been removed more profitably later, especially given that the holder of the timber interests had paid only \$100 for the timber. 1 P.2d at 879.

Applying the reasoning of these cases, we conclude that, at the time of Decedent’s death, a reasonable time for exercising her timber rights had elapsed. The record demonstrates that the timber on Allotment 1045 was accessible, physically capable of being cut, and marketable long before her death in 1988. At the time Decedent reserved the timber rights, Allotment 1045 was the subject of an ongoing timber contract. Timber Contract 117-4889 applied to the Tahola Logging Unit of the Quinault Reservation as a whole, and Timber Contract 117-4977 brought Allotment 1045 under the general terms of that contract, and repeated or set forth certain specific terms as well. Together, the

contracts, signed by BIA on behalf of the Decedent, sold “all the merchantable dead timber, standing or fallen, and all the merchantable live timber \* \* \* comprising trees approximately fourteen inches and larger” on Allotment 1045 — and these contracts were subsequently amended to encompass an even broader scope of timber on the logging unit. Timber contract 117-4889 further provided that the purchaser agreed to “cut all timber covered by this contract” prior to April 1, 1979.

BIA data set forth in the record show that timber was harvested on Allotment 1045 approximately in the years 1952, 1964, 1969, and 1975 and that the Allotment was also logged under a salvage permit issued in 1984. Given this logging activity, and the logging contracts that existed on Allotment 1045 at the time of Decedent’s conveyance and reservation, which provided for the harvesting of all merchantable timber on the property by 1979, it is clear that, by the time of Decedent’s death, a reasonable time for the harvest of the remaining timber on the allotment had lapsed, and no timber rights remained in her estate. We thus affirm Judge Hammett’s order to the extent he found that Allotment 1045 was properly excluded from the estate inventory. 8/

However, with respect to any proceeds from Allotment 1045 that may have been in Decedent’s IIM account on the date of her death, we reverse Judge Hammett’s determination that such proceeds are to be distributed to the three individuals named as devisees of Allotment 1045 in the will or to Richard Drosman, depending on when the funds accrued to the account. With respect to the three devisees, any interest in Allotment 1045 would pass to them pursuant to paragraphs 2, 3, and 4 of the will only if Decedent’s timber reservation in Allotment 1045 had not lapsed by the time of her death — *i.e.*, if the reasonable time for exercising the timber reservation had not lapsed. The devises in paragraphs 2, 3, and 4, of the will did not include income that Decedent had received from Allotment 1045 during her lifetime, and therefore Judge Hammett erred in ordering that it be divided among the three beneficiaries named in those provisions. As to Richard Drosman, while he may have been a proper recipient of certain timber income that accrued from the Property prior to Decedent’s death if Decedent’s timber reservation lapsed prior to her death, Richard Drosman made no claim against the estate for any such monies due, and

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8/ Appellant argued that, assuming she was correct that the timber interest is still severed from Allotment 1045, it should be treated not as property encompassed in paragraphs 2, 3, and 4 of the will, which is divided among three individuals, but as “rest and residue” of the estate, all of which is devised to her. Because we rule that no interests in Allotment 1045 are part of the inventory of Decedent’s estate, we need not and do not reach this question.

the time for doing so has long since expired. <sup>9/</sup> Accordingly, we conclude that any proceeds from Allotment 1045 accruing before Decedent's death and which remained in her IIM account at death are part of the "rest and residue" of the estate, to which Appellant is entitled.

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 Hammett's March 31, 2004 order in part and reverses in part.

I concur:

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Katherine J. Barton  
Acting Administrative Judge

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Steven K. Linscheid  
Chief Administrative Judge

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<sup>9/</sup> Accordingly, we need not and do not determine whether the reservation lapsed prior to Decedent's death.