



## INTERIOR BOARD OF INDIAN APPEALS

Dean and Renie Oswalt, Craig and Michelle Oswalt, and Kirk and Stacie Oswalt v.  
Northwest Regional Director, Bureau of Indian Affairs

42 IBIA 90 (12/13/2005)

### Related Case:

*Oswalt v. United States*, No 97-733C (Ct. Cl. Oct. 17, 2000)

affirmed in part and remanded, 41 Fed. Appx. 471 (Fed. Cir. 2002)(per curiam)

On remand, *Oswalt v. United States*, 85 Fed. Cl. 153 (Fed. Cl. 2008)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
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SUITE 300  
ARLINGTON, VA 22203

DEAN AND RENIE OSWALT, CRAIG	:	Order Docketing and Dismissing
AND MICHELLE OSWALT, AND	:	Appeal
KIRK AND STACIE OSWALT,	:	
Appellants,	:	
	:	
v.	:	Docket No. IBIA 06-23-A
	:	
NORTHWEST REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee.	:	December 13, 2005

On December 6, 2005, the Board of Indian Appeals (Board) received a notice of appeal from Dean and Renie Oswald, Craig and Michelle Oswald, and Kirk and Stacie Oswald (Appellants). Appellants seek review of a November 1, 2005 decision of the Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), which denied Appellant’s complaint that BIA’s Wapato Irrigation Project (WIP) failed to deliver the proper amount of water to Appellants’ lands during the 1994 irrigation season. The Board dismisses this appeal for lack of jurisdiction.

Appellants allege that WIP failed to deliver irrigation water to their lands for a 45-day period in 1994 and that their crops yields were reduced as a result of such failure. Appellants “seek compensation for this loss.” Notice of Appeal, Ex. C at 2 (Statement of Reasons); see also id. at 6-7.

The sole relief sought by Appellants in their notice of appeal is for compensation. The Board does not have jurisdiction over damages claims against the Department. See Brurud v. Eastern Oklahoma Regional Director, 38 IBIA 51, 55 (2003) (Board lacks jurisdiction to award damages against BIA); Toyon Wintu Center, Inc. v. Sacramento Area Director, 29 IBIA 290, 295 (1996) (whether appellant’s theory is one of tort or breach of contract, the Board lacks jurisdiction if appellant seeks damages).

Even if Appellants’ notice of appeal could be construed as limited to seeking a declaratory judgment from the Board concerning the Regional Director’s decision, we would dismiss this appeal. First, the appeal would be moot because a favorable decision by

the Board would have no effect on Appellants' ability to obtain water for the 1994 irrigation season. See Brown v. Navajo Regional Director, 41 IBIA 314, 318 (2005) (“[m]ootness may occur when nothing turns on the outcome of an appeal”), and cases cited therein. Second, the Board does not issue advisory opinions. See Umpqua Watersheds, Inc. v. Northwest Regional Director, 38 IBIA 10, 11 (2002); Jackson v. Muskogee Area Director, 32 IBIA 45, 47 (1998).

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 docketed this appeal but dismisses it for lack of jurisdiction. 1/

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Katherine J. Barton  
Acting Administrative Judge

\_\_\_\_\_  
1/ Appellants' Statement of Reasons refers to “ten years [of] litigation [that] has been pending” regarding this dispute, Notice of Appeal, Ex. C at 6, and documents submitted by Appellants include a December 18, 1998 affidavit of Craig Oswald filed in Oswald, et al. v. United States, No. 97-733 C (Fed. Cl.) and a May 12, 1997 declaration of Dean Oswald filed in Oswald et al. v. United States, No. CY-96-3133-AAM (E.D. Wash.). Appellants do not otherwise describe or explain the status of their federal court litigation.