



INTERIOR BOARD OF INDIAN APPEALS

Estate of John Crow, Jr.

52 IBIA 337 (12/13/2010)



# 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

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| ESTATE OF JOHN CROW, JR. | ) | Order Vacating Decision and Vacating Order |
|                          | ) | Denying Rehearing, and Remanding to        |
|                          | ) | the Probate Hearings Division (IBIA        |
|                          | ) | 09-047); Order Dismissing Appeal (IBIA     |
|                          | ) | 09-048)                                    |
|                          | ) |  |
|                          | ) | Docket Nos. IBIA 09-047                    |
|                          | ) | IBIA 09-048                                |
|                          | ) |  |
|                          | ) | December 13, 2010                          |

Under the American Indian Probate Reform Act of 2004 (AIPRA), any person 18 years of age or older is entitled to renounce his or her inherited or devised interest in an Indian decedent's estate in favor of eligible individuals that he or she designates. *See* 25 U.S.C. § 2206(j)(8).<sup>1</sup> Today, we hold that this provision of AIPRA — § 2206(j)(8) — became effective and applicable on June 20, 2006, regardless of the date of a decedent's death, and superceded 43 C.F.R. § 4.208, on which the probate judge erroneously relied. Prior to June 20, 2006, and pursuant to § 4.208, an heir or devisee could renounce his or her interest, but was not entitled to designate the recipient: The interest passed as though the person renouncing had predeceased the decedent. Because the probate judge failed to apply § 2206(j)(8), and incorrectly informed the heirs that their renunciations were governed by § 4.208 and that they could not designate to whom their renounced interests might go, we reverse and remand IBIA 09-047; we dismiss IBIA 09-048 as moot because the claim asserted therein is dependent upon and derivative of that asserted in IBIA 09-047.

Appellants Thomas A. Crow (Thomas) (Docket No. IBIA 09-047) and Sherwood Crow (Sherwood) (Docket No. IBIA 09-048) appealed to the Board of Indian Appeals (Board) from an Order Denying Petition for Rehearing entered on January 22, 2009, by Administrative Law Judge Thomas F. Gordon (ALJ) in the estate of Appellants' father,

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<sup>1</sup> A renunciation may also be in favor of the tribe with jurisdiction over the property interest.

John Crow, Jr. (Decedent), deceased Seneca-Cayuga Indian, Probate No. P000063731IP. In his underlying decision of September 18, 2008 (September 18 Decision), the ALJ accepted a renunciation from Decedent's non-Indian surviving spouse, Sonja, but did not provide her an opportunity to renounce her interest in favor of her two sons who are Indian (Daniel and Sherwood), which would keep the property in trust, and omit her non-Indian son (Thomas), who was adopted by Decedent. Instead, the ALJ concluded that § 2206(j)(8) did not apply to proceedings to probate Decedent's estate because Decedent died in 2005 before § 2206(j)(8) became effective. He then applied 43 C.F.R. § 4.208 to divide Sonja's interest equally among all three sons as if she had predeceased Decedent. *See* Decision, Sept. 18, 2008, at 2 (citing Okla. Stat. Tit. 84, § 213(B)(2)(a)). After he received the September 18 Decision, Thomas sought to renounce in favor of his two brothers, including Sherwood. The ALJ construed Thomas' written request as a petition for rehearing, and denied Thomas' petition because, according to the ALJ, a renunciation by Thomas would not have the intended effect, i.e., to pass his interest to his brothers, but would go instead to Thomas' children.

Thus, in this appeal, we confront the question of whether the renunciation provisions of § 2206(j)(8) apply in probate proceedings pending on or commenced after June 20, 2006, for decedents who died prior to June 20, 2006. Because the right of renunciation is a right afforded to the heirs and surviving devisees, and because AIPRA does not limit the applicability of § 2206(j)(8) to estates of decedents who died on or after June 20, 2006, we hold that AIPRA's right of renunciation applies in the present case, we vacate the ALJ's September 18 Decision and his denial of rehearing, and we remand for application of AIPRA's renunciation provisions, 25 U.S.C. § 2206(j)(8). *See also* 43 C.F.R. pt. 30, subpt. H.<sup>2</sup>

### **Background**

Decedent died intestate in 2005, possessed of a 1/3 interest in Allotment No. 109-G, which consists of 3.54 acres and is located on the Seneca-Cayuga Indian Reservation. Decedent was survived by his non-Indian wife of 51 years, Sonja; his three sons, Thomas, Sherwood, and Daniel; and several grandchildren. Thomas, who is Sonja's biological son,

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<sup>2</sup> Because any interest or potential interest that Sherwood would have that could be adversely affected by the ALJ's decisions, *see* 43 C.F.R. § 4.320, would be derivative of Sonja's renunciation and from Thomas' possible renunciation, and because we vacate the ALJ's decisions and remand for consideration of the matter under AIPRA, we dismiss Sherwood's appeal as moot.

was adopted by Decedent. Thomas is non-Indian.<sup>3</sup> Sherwood and Daniel were born to Decedent and Sonja; both are Indian and members of the Tribe.

A hearing was held in Decedent's estate on April 10, 2008.<sup>4</sup> Daniel and Sherwood were present; Thomas did not participate. The transcript reflects considerable colloquy between Daniel, Sherwood, and the ALJ concerning the effect of possible renunciations by Sonja and Thomas of any interest either might inherit in Decedent's trust estate. The ALJ explained that Sonja and Thomas could renounce, but he advised any renounced interest would pass as if Sonja and Thomas had predeceased the Decedent. *Id.* at 5. The ALJ stated that if Sonja renounced and if adoption papers were provided for Thomas, Sonja's interest would be divided among Daniel, Thomas, and Sherwood. *Id.* at 14. If Thomas then renounced, the ALJ explained further that his share would be divided among Thomas' children, and would not go to Daniel and Sherwood. *Id.* at 5. In order for Daniel and Sherwood to succeed to Thomas' interest(s) in Decedent's property, the ALJ stated that he would need renunciations from Thomas' children and grandchildren (or their guardians). *Id.* at 14. The ALJ provided Daniel with a renunciation form for Sonja's signature. The hearing concluded with Daniel stating that he would need a "couple more" renunciation forms for Thomas, and the ALJ stating that he would like to hear further from the parties concerning their intentions. *Id.* at 18-19.

On April 14, 2008, Sonja executed the renunciation of her right to inherit Decedent's real trust property. The renunciation form stated in pertinent part, that it is Sonja's intent for Decedent's trust real property to "remain in trust, and not become private property subject to taxation." Renunciation, Administrative Record (AR) at Tab 23B. She further stated that "WHEREAS, our children are members of a federally recognized Indian Tribe, . . . I desire that the decedent's trust real property pass to and become vested in our children." *Id.*<sup>5</sup> In his letter transmitting Sonja's renunciation to the ALJ, Daniel again requested that the ALJ send three renunciation forms to Thomas, and provided Thomas'

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<sup>3</sup> Apparently, Thomas once was enrolled with the Seneca-Cayuga Tribe of Oklahoma (Tribe), then disenrolled when the Tribe determined that he did not have Indian blood.

<sup>4</sup> The cover page of the transcript incorrectly identifies the date of the hearing as April 19, 2008; the certification of the transcriber identifies the date of the hearing as April 10, 2008, which is consistent with the Notice of Hearing and the Summary of Hearing.

<sup>5</sup> The quoted language apparently is standard language on a renunciation form used by the Probate Hearings Division of the Office of Hearings and Appeals. According to the hearing transcript, the form was "filled out" for Sonja. Tr. at 13, 17-18. Thus, it appears that much of the language on the renunciation form was not drafted by Sonja.

address. The record does not reflect that the requested renunciation forms were provided. The record also does not reflect that the ALJ gave formal notice of Sonja's renunciation to the recipients of her renounced interest.

On September 15, 2008, the ALJ received a copy of Thomas' adoption papers from Thomas.<sup>6</sup> In his cover letter, Thomas does not mention renouncing any interest but asks the judge to “[p]lease proceed with the processing of [Decedent's] estate.” Letter from Thomas to ALJ, Sept. 11, 2008 (AR at Tab 23C). The record contains no other evidence of contact between Thomas and the ALJ or his staff prior to the issuance of the September 18 Decision. In particular, the record does not contain a renunciation from Thomas.

In the September 18 Decision, the ALJ accepted the renunciation submitted by Sonja. The ALJ determined that, pursuant to Oklahoma law, Okla. Stat. tit. 84, § 213(B)(2)(a), Decedent's heirs at law — in the wake of Sonja's renunciation — were Decedent's three sons, who would share equally in the estate.<sup>7</sup> The ALJ also acknowledged that Thomas may have wanted to execute a renunciation of his inheritance in favor of his brothers but because he had children and at least one grandchild, “the execution of renunciations would not be feasible.” September 18 Decision at 2. The ALJ also advised the parties that they could contact the Bureau of Indian Affairs (BIA) to determine how Thomas might transfer his inherited interest to Daniel and Sherwood, if he wished to do so.

Thomas timely petitioned for rehearing, stating that, as suggested by the ALJ in his order, he had contacted BIA and was told that it would be “a long and complicated process” for Thomas to convey his interest to his brothers and for them to have it taken back into trust once Thomas' interest lost its trust or restricted status. Pet. for Reh'g, Oct. 6, 2008, at 2 (unnumbered) (AR at Tab 28A). As a result, Thomas informed the ALJ that he wanted to renounce his interest in favor of his two brothers, that he had not previously been afforded the opportunity to do so, and that the ALJ should reconsider his September 18 Decision.

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<sup>6</sup> The need for Thomas to produce his adoption papers, or other evidence of adoption, was discussed at some length in the hearing. Unless Thomas produced evidence that he had been legally adopted by Decedent, he could not be one of Decedent's legal heirs.

<sup>7</sup> The ALJ did not determine who Decedent's legal heirs would have been in the absence of Sonja's renunciation. *See* 43 C.F.R. § 4.240(a)(1) (2008); *Cf.* 43 C.F.R. § 30.235(c).

On January 22, 2009, the ALJ denied Thomas' petition for rehearing on the grounds that if Thomas were to renounce his interest, it would not pass to his brothers, as was his intent, but to his children. He explained that while the law had been amended to permit renunciations in favor of specific individuals or entities, *see* 25 U.S.C. § 2206(j)(8), the amended law was inapplicable to the estates of decedents who died prior to the June 20, 2006, effective date of the new provisions.

Thomas and Sherwood both appealed to the Board from the ALJ's denial of rehearing. In addition to briefing any issues that the parties might deem relevant to these appeals, the Board requested briefing from the parties and from the Solicitor's Office on the issue of whether the law of renunciation set forth in 43 C.F.R. § 4.208 properly is applied in proceedings to probate Decedent's estate or whether the new provisions in AIPRA, 25 U.S.C. § 2206(j)(8), are applicable.<sup>8</sup> Briefs were received from Thomas, Sherwood, and the Field Solicitor, Tulsa, Oklahoma (Field Solicitor).

### Discussion

We conclude that the renunciation provisions in AIPRA became effective as of June 20, 2006, and their applicability is not limited to the estates of decedents who died on or after AIPRA's effective date. And we hold that the new statutory right of renunciation superceded the regulatory provision that previously governed renunciations. Therefore, Decedent's heirs were entitled to renounce any or all of their inherited interests in Decedent's trust estate in favor of certain specific persons prior to entry of the final probate order. Because the ALJ erred in concluding that AIPRA's renunciation provisions did not apply to Sonja and Thomas and because he erred in his advice to the parties concerning the effect of possible renunciations, advice on which they may have relied to their detriment, we vacate both the ALJ's decision denying rehearing and his September 18 Decision, and remand this matter for further proceedings.

#### A. Standard of Review

We review legal questions *de novo*. *Estate of Mary Josephine (Mosho) Estep*, 48 IBIA 176, 183 (2008), *aff'd sub nom., Edmo v. Salazar*, Civ. No. 09-0178-E-BLW, 2010 WL 1410580 (D. Idaho Mar. 31, 2010).

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<sup>8</sup> The Board also requested the parties to brief a second issue: Assuming that AIPRA applies, whether Thomas is an "eligible heir" within the meaning of 25 U.S.C. § 2206(j)(8) and, if so, whether his inherited interest could remain in trust through application of 25 U.S.C. §§ 2201(9) and 2206(j)(2)(B)(ii). Given our disposition of this appeal, we do not find it necessary to reach these latter issues in our decision.

## B. Thomas' Appeal

Thomas sought rehearing from the ALJ and appeals the resulting decision to the Board, arguing in both fora that he was entitled to renounce his inherited interest and to designate those in whom his renounced interest should vest. We agree with Thomas. We conclude that it was error for the ALJ to apply 43 C.F.R. § 4.208 instead of 25 U.S.C. § 2206(j)(8), and we reverse.

### 1. Effect of Thomas' Failure to File a Renunciation with the ALJ

The Field Solicitor argues that we need not reach the merits of Thomas' appeal because Thomas has never filed a renunciation with the ALJ. Renunciations (and a recipient's refusal of a renounced interest in his favor) must be filed with the probate judge "prior to entry of a final probate order." 25 U.S.C. § 2206(j)(8)(A); *see also id.* 43 C.F.R. § 30.181 (renunciations must be filed with the ALJ or Indian probate judge before issuance of the final order in a probate case). Regardless of what constitutes a "final probate order" under AIPRA and under the probate regulations for purposes of filing a renunciation, *see* 43 C.F.R. § 30.181, we conclude that — given Thomas' timely petition for rehearing, timely appeal to the Board, Thomas' expressed interest in renouncing his share in Decedent's trust estate during the pendency of proceedings before the ALJ, and the ALJ's erroneous explanation of the consequences of a renunciation by Thomas, on which Thomas may have relied — Thomas' failure to file a renunciation is not a bar to his right of appeal and to have the appeal addressed on the merits. And, since we vacate both the ALJ's order denying rehearing and his September 18 Decision, *see infra*, our decision returns matters to the status quo ante with respect to Thomas' request to renounce.

### 2. Effective Date of AIPRA's Renunciation Provisions

Congress enacted § 2206(j)(8) in 2004 as part of AIPRA. *See* Pub. L. No. 108-374, § 3, 118 Stat. 1786 (Oct. 27, 2004).<sup>9</sup> For the first 18 months following AIPRA's enactment, the effective date of the statutory renunciation provisions was governed by an uncodified provision of AIPRA, § 8(b). *See* 118 Stat. 1810. With certain exceptions not relevant here, § 8(b) made AIPRA inapplicable "to the *estate* of an individual *who dies before* the date that is 1 year after the date on which the Secretary [of the Interior (Secretary)]

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<sup>9</sup> Section 2206(j)(8) originally was designated § 2206(k)(8) when it was enacted as part of AIPRA in 2004. It was redesignated in 2005. *See* Pub. L. No. 109-157, § 4(a)(1), 119 Stat. 2950 (Dec. 30, 2005).

makes the certification required under subsection (a)(4).” Emphasis added.<sup>10</sup> The Secretary made the requisite certification on June 20, 2005, 70 Fed. Reg. 37,107 (June 28, 2005), which would have rendered the renunciation provisions of AIPRA initially applicable to the estates of those individuals who died on or after June 20, 2006.

But, in May 2006, Congress amended certain provisions of AIPRA and, in particular, struck § 8(b) in its entirety. Act of May 12, 2006, Pub. L. No. 109-221, § 501(a)(3), 120 Stat. 344. In its place and again with certain exceptions not here relevant, Congress made AIPRA effective “on and after the date that is 1 year after the date on which the Secretary makes the certification required under subsection (a)(4).” *Id.* at § 501(b)(1); *see also id.* § 501(c) (the amendments made in § 501(b) “shall take effect as if included in the enactment of [AIPRA 2004] (Public Law 108-374; 118 Stat. 1773)”). Section 501(b)(1) does not limit its applicability to certain “estates,” e.g., to the estates of decedents who died on or after June 20, 2006; indeed, § 501(b)(1) contains no reference to the date of death of the decedent. Therefore and without reference to any particular estates or to the date of death of the decedent whose estate is being probated, the renunciation provisions of AIPRA became effective and applicable on June 20, 2006, to any Indian trust probate proceedings then pending or initiated thereafter.

Given our determination that § 2206(j)(8) became immediately applicable on the effective date of June 20, 2006, we further conclude that § 2206(j)(8) superceded the existing renunciation provision found at 43 C.F.R. § 4.208. Although we ordinarily do not determine the validity of regulations promulgated by the Department of the Interior, “the Board has held that where there are discrepancies between a BIA regulation and a later-enacted statute, the statute controls.” *Bernard v. Acting Great Plains Regional Director*, 46 IBIA 28, 42 (2007), and cases cited therein, *app. pending sub nom., Bernard v. U.S. Department of the Interior*, No. CV 08-1019 (D.S.D.).

The Field Solicitor contends that Congress did not intend to alter the effective date of AIPRA’s amendments when it struck former § 8(b) in the Act of May 12, 2006. The Field Solicitor notes that there is no legislative history accompanying this particular change, and speculates that inasmuch as the effective date of June 20, 2006, was near at hand when the amendments were enacted in May 2006, “Congress believed that the result would be the same.” Field Solicitor’s Brief at 5 (unnumbered). We cannot surmise what Congress may

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<sup>10</sup> In subsection (a)(1)-(3), Congress imposed a duty on the Secretary to give notice to tribes and to the owners of trust or restricted lands of AIPRA’s provisions; subsection (a)(4) required the Secretary to certify, by publishing notice in the Federal Register, that the notice requirements had been met. *See* 118 Stat. 1809-10.

have “believed”, but regardless we are bound by the words of the statute. Not only did Congress expressly strike § 8(b) in its entirety, it substituted a new provision to which we must give effect. And we do so by determining that § 2206(j)(8) is one of the provisions whose effective date, pursuant to § 501(b)(1), is “the date that is 1 year after the date on which the Secretary makes the certification required under subsection (a)(4).”

The Field Solicitor further contends that an interpretation that renders AIPRA’s provisions effective without regard to the date of the decedent would render AIPRA impermissibly retroactive to the estates of decedents who died prior to AIPRA’s enactment. Field Solicitor’s Brief at 5 (unnumbered) (citing *Landgraf v. USI Film Products*, 511 U.S. 244, 269-70 (1994), in which the Court held that in the absence of clear Congressional intent, retroactive application of new legislation is not favored). He argues that if AIPRA’s provisions become effective without regard to the date of the decedent’s death, “[a] decedent and his family would not have the ability to make rational decisions about an estate because they could not anticipate what law would apply.” *Id.* The Field Solicitor thus suggests that applying § 2206(j)(8) in Decedent’s estate somehow deprives *Decedent* of the right to dispose of his property. *Id.* (“Decedent could have, had he so desired, written a will in which he made the disposition now requested [by renunciation]. He did not do so.”). Finally, the Field Solicitor argues that “a sweeping rule of retroactivity,” applied to all of AIPRA’s provisions, “risks creating great confusion on the part of individuals and tribes.” *Id.* at 6 (unnumbered).

The Field Solicitor misses the point of renunciations: The right of renunciations and disclaimer belong to the *heirs* and is a present right during probate proceedings to reject an inheritance, whether received by will or through intestacy, and, under AIPRA, to do so in favor of certain other eligible heirs and tribes. In effect, as with any renunciation, the result of an heir’s disclaimer may or may not be what the decedent desired.

With respect to the Field Solicitor’s concern about a “sweeping rule of retroactivity,” we make no such “sweeping rule.” We hold today only that the renunciation provisions of § 2206(j) apply to proceedings to probate Indian trust estates pending on or after June 20, 2006, precisely because there is no retroactive effect in doing so. The right of renunciation is granted to and made by a decedent’s heirs or surviving devisees. In the present case, the proceedings to probate Decedent’s estate — in which the heirs’ right to renounce becomes applicable — commenced after § 2206(j)(8) became effective. Thus, there is no retroactive effect. And whether § 501(b)(1) may be applied to *other* provisions of AIPRA and whether doing so would have a retroactive effect are issues we do not now decide.

As is evident from our discussion, *supra*, we hold that § 2206(j)(8) was applicable to the proceedings to probate Decedent's trust estate. Thomas' interest in renouncing was made clear by his siblings at the hearing held in Decedent's estate and again when Thomas wrote to protest the ALJ's September 18 Decision. Therefore, we conclude as a matter of law that the ALJ erred in applying § 4.208 to deny Thomas his right to renounce his share of Decedent's estate and to renounce in favor of Sherwood and Daniel (or any other eligible heir or recipient).

On remand, Thomas is entitled to choose to renounce his inherited interest(s) and to designate the eligible heirs or recipients<sup>11</sup> in which his interest(s) shall vest.<sup>12</sup> If he elects to renounce, formal notice of his renunciation must be provided to his designated recipient(s). 25 U.S.C. § 2206(j)(8)(C). The recipient(s) then may refuse to accept the interest. *Id.*

### C. Sonja's Renunciation

Although neither Thomas nor Sherwood have challenged the ALJ's decision concerning Sonja's renunciation, we conclude that it would be manifest error to leave that decision in place in light of our conclusion that the ALJ applied the incorrect law and advised the parties in accordance with law that had been superceded. Sonja was entitled to renounce her inheritance of Decedent's trust interests in favor of any eligible heirs or recipients<sup>13</sup> that she might designate. And because the renunciation form provided to and

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<sup>11</sup> "Eligible heirs" includes the decedent's children, grandchildren, and great-grandchildren, decedent's full and half siblings by blood, and decedent's parents *and* who are Indian, lineal descendants within 2 degrees of consanguinity of an Indian, or owners of a trust or restricted interest in a parcel of land for purposes of inheriting by, *inter alia*, renunciation another interest in the same parcel from decedent. 25 U.S.C. § 2201(9).

Other categories of eligible recipients of renunciations are identified in 25 U.S.C. § 2206(j)(8)(B)(i)(II) & (III).

<sup>12</sup> Regardless of whether Sonja intends her renunciation to include Thomas and regardless of whether Thomas would be an "eligible heir" for purposes of Sonja's renunciation, it appears that Thomas is an heir to Decedent's estate in his own right. *See* Okla. Stat. tit. 84, § 213(B)(1)(c), (B)(2)(a) (where an intestate decedent is survived by a spouse and children, the spouse is entitled to one half of the estate and the remaining half is divided equally among the decedent's children).

<sup>13</sup> *See* n.11.

executed by Sonja does not clearly indicate Sonja's intent, we remand the issue of Sonja's renunciation as well.

The renunciation form executed by Sonja stated that she was Decedent's widow, and recited that "*our* children are members of a federally recognized Indian Tribe, and I desire that the decedent's trust real property pass to and become vested in *our* children." Renunciation, AR at Tab 23B (emphasis added). She also states that it is her intent for Decedent's trust real property to "remain in trust, and not become private property subject to taxation." *Id.* These statements may well indicate an intent to designate only Sherwood and Daniel to receive Sonja's renounced interest, for which reason on remand Sonja should be afforded an opportunity to clarify her intentions. In addition and prior to entering a final order, the probate judge is required to give notice of the renunciation to Sonja's designated recipient(s), who may then refuse to accept the interest. *See* 25 U.S.C. § 2206(j)(8)(C).

#### D. Sherwood's Appeal

Sherwood supports Thomas' argument, and further suggests that the parties should have been permitted to consolidate their interests pursuant to 25 U.S.C. § 2206(j)(9). *See also id.* § 2206(e). We dismiss Sherwood's appeal to the Board as moot. Any right or claim that he may have is derivative of Sonja's renunciation and Thomas' potential renunciation. Given our disposition of Thomas' appeal, we need not reach the arguments raised by Sherwood or determine whether he has standing to appeal to the Board.<sup>14</sup>

### Conclusion

With respect to Thomas' appeal (Docket No. IBIA 09-047), we reverse the ALJ's decisions in which he concluded that 43 C.F.R. § 4.208 provided the law of renunciation that applied to Decedent's probate proceedings rather than 25 U.S.C. § 2206(j)(8). Therefore, we vacate both the ALJ's September 18 Decision and his denial of rehearing, and

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<sup>14</sup> Sherwood does not claim any injury from Sonja's renunciation, only from the ALJ's determination that Thomas cannot renounce in favor of Sherwood. Because Thomas has not submitted a renunciation, Sherwood's "injury" is speculative and, thus, his appeal is premature.

we remand this matter for further proceedings in accordance with our decision.<sup>15</sup> We dismiss Sherwood's appeal (Docket No. IBIA 09-048) as moot.

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 vacates the ALJ's January 22, 2009, Order Denying Petition for Rehearing and his September 18, 2008, Decision, and remands this matter to the Probate Hearings Division for further proceedings consistent with our decision.

I concur:

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// original signed  
Debora G. Luther  
Administrative Judge

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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<sup>15</sup> On remand, consideration may be given to Sherwood's suggestion that a consolidation agreement could be executed by the appropriate parties to achieve their desired outcome. *See* 25 U.S.C. § 2206(j)(9).