

**Statement for the Record  
U.S. Department of the Interior  
House Committee on Natural Resources  
Subcommittee on Energy and Mineral Resources**

**H.R. 10005, the Expedited Appeals Review Act**

**November 19, 2024**

Thank you for the opportunity to provide this Statement for the Record on H.R. 10005, the Expedited Appeals Review Act.

**Background**

The Office of Hearings and Appeals (OHA) exercises the delegated authority of the Secretary of the Interior to conduct hearings and decide appeals of decisions of the bureaus and offices within the Department of the Interior. The Interior Board of Land Appeals (the Board) is an appellate review body within OHA, which operates separately and independently from the bureaus and offices whose decisions it reviews.

The Board provides an impartial forum for the resolution of disputes involving public lands and natural resources under the Department of the Interior's jurisdiction. This includes the use and disposition of public lands and resources, the use and disposition of resources of the Outer Continental Shelf, the authorization of activities on the Outer Continental Shelf, the collection of energy and mineral revenue from the Outer Continental Shelf and onshore federal and Indian lands, and the conduct of surface coal mining under the Surface Mining Control and Reclamation Act. Parties with appeals before the Board, and Federal courts reviewing the Board's decisions, benefit from the subject matter expertise the Board provides on those issues.

Appeals before the Board vary greatly by subject matter and in complexity. The unique circumstances of each appeal determine when an appeal is ready for review and final resolution. For example, the Board may conclude an appeal quickly if it determines that it does not have jurisdiction to decide the appeal. Other appeals may require months to become ready for review as the parties file motions and briefs, seek extensions, or engage in settlement negotiations. Some appeals remain pending for a long time because they are suspended at the parties' request.

Once an appeal becomes ready for review, it is assigned to a panel of two administrative judges for adjudication. The panel, assisted by the Board's limited staff, reviews the briefs and the administrative record, conducts legal research, and prepares an order or decision resolving the appeal. After all the administrative judges have an opportunity to review the draft, the two-judge panel issues a final order or decision resolving the appeal.

Other factors may also affect how long some appeals remain pending. These factors include the large number of stay petitions filed before the Board. Many appeals filed with the Board are accompanied by stay petitions requesting that the Board stay the effect of a decision while an

appeal is pending. By regulation, the Board must rule on stay petitions within 45 days, which requires the Board to devote substantial time and resources to the resolution of those petitions. To resolve these and other expedited matters quickly, the Board must sometimes prioritize more recent appeals at the expense of those that have been pending longer.

Decisions issued by the Board are final for the Department and may be reviewed by the United States district courts.

### **H.R. 10005 – the Expedited Appeals Review Act**

H.R. 10005 would allow an appellant to file a notice of expedited review of an appeal and then require the Board to issue a final decision within 6 months of the notice or 18 months after the date of the appeal, whichever is later. If the Board does not issue a final decision by the deadline, the decision on appeal would be “deemed to be a final agency action for purposes of [the Administrative Procedure Act (APA), 5 U.S.C. § 704].” The bill further directs that judicial review of such decision will be de novo. H.R. 10005 specifies that the bill would apply to all appeals, including those pending before the Board as of the date of enactment.

The Department believes the bill is not necessary. The vast majority of appellants before the Board already have the option to go to Federal court after 45 days. If the Board stays the bureau or office decision being challenged, the appellant must wait for a final Board decision before going to Federal court (but gets relief from the bureau or office decision in the meantime). If the Board does not grant a stay within 45 days, the appellant may immediately seek relief in Federal court from the decision. Ninety-three percent of decisions on appeal to the Board are not stayed. Like other adjudicators, the Board considers and grants motions to expedite individual appeals if there is good cause to do so.

The Department notes that appellants who file a notice to expedite, as provided under H.R. 10005, may unknowingly cut off their most cost-effective opportunity for review, as proceedings before the Board generally cost less than litigation in Federal court and are easier for unrepresented litigants to navigate. Approximately twenty-three percent of appellants before the Board do not have legal counsel and may be impacted by this potentially unintended consequence. The Department also notes that appellants who file notices to expedite may move their appeals ahead of the oldest pending appeals, lengthening the time for other appellants awaiting decisions. In cases for appeals where an expedited resolution is requested, the Board would continue to decide appeals as expeditiously as possible using current resources, but may be unable to meet the deadlines.

In addition, H.R. 10005 conflicts with other statutes. H.R. 10005 provides for the Federal courts to review Departmental decisions de novo. In contrast, the Administrative Procedure Act, 5 U.S.C. §§ 704 and 706(2)(A), provides for judicial review to ensure that agency action is not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Finally, H.R. 10005 also conflicts with 30 U.S.C. § 1724(h)(2), which provides 33 months for the Department to issue a final decision in a royalty appeal, as well as 30 U.S.C. § 1275(b), which provides 30 days for the Department to issue a decision on an order for cessation of surface coal mining and reclamation operations.

### **Conclusion**

The Board is committed to addressing its appeal backlog as expeditiously as possible. OHA and the Board have worked diligently to strengthen the hearing and appeal processes and will continue to modernize and make improvements.

Thank you again for the opportunity to provide this statement for the record on H.R. 10005.