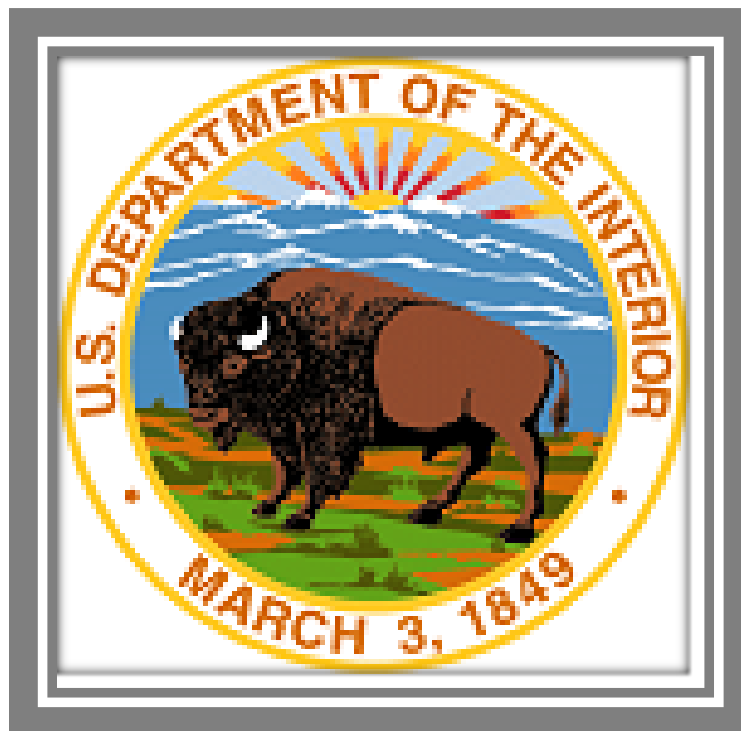


# Annual Report

**U.S. Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals**



**Fiscal Year 2016**

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## **Introduction and Executive Summary**

Welcome to the Interior Board of Land Appeals second annual report. The Board remains committed to timely resolving disputes, providing transparency, and providing a forum for the exercise of due process and substantive concerns relative to the use of public lands. In an effort to provide information to the public, this report includes many hyperlinks to applicable websites.

The also report includes an overview of Board structure and operations, and statistics illustrating the progress we made in fiscal year 2016 (FY16), running between October 1, 2015, and September 30, 2016. We also articulate the goals for the Board for the upcoming fiscal year.

Eileen Jones

Chief Administrative Judge

Interior Board of Land Appeals

March 1, 2017

## Table of Contents

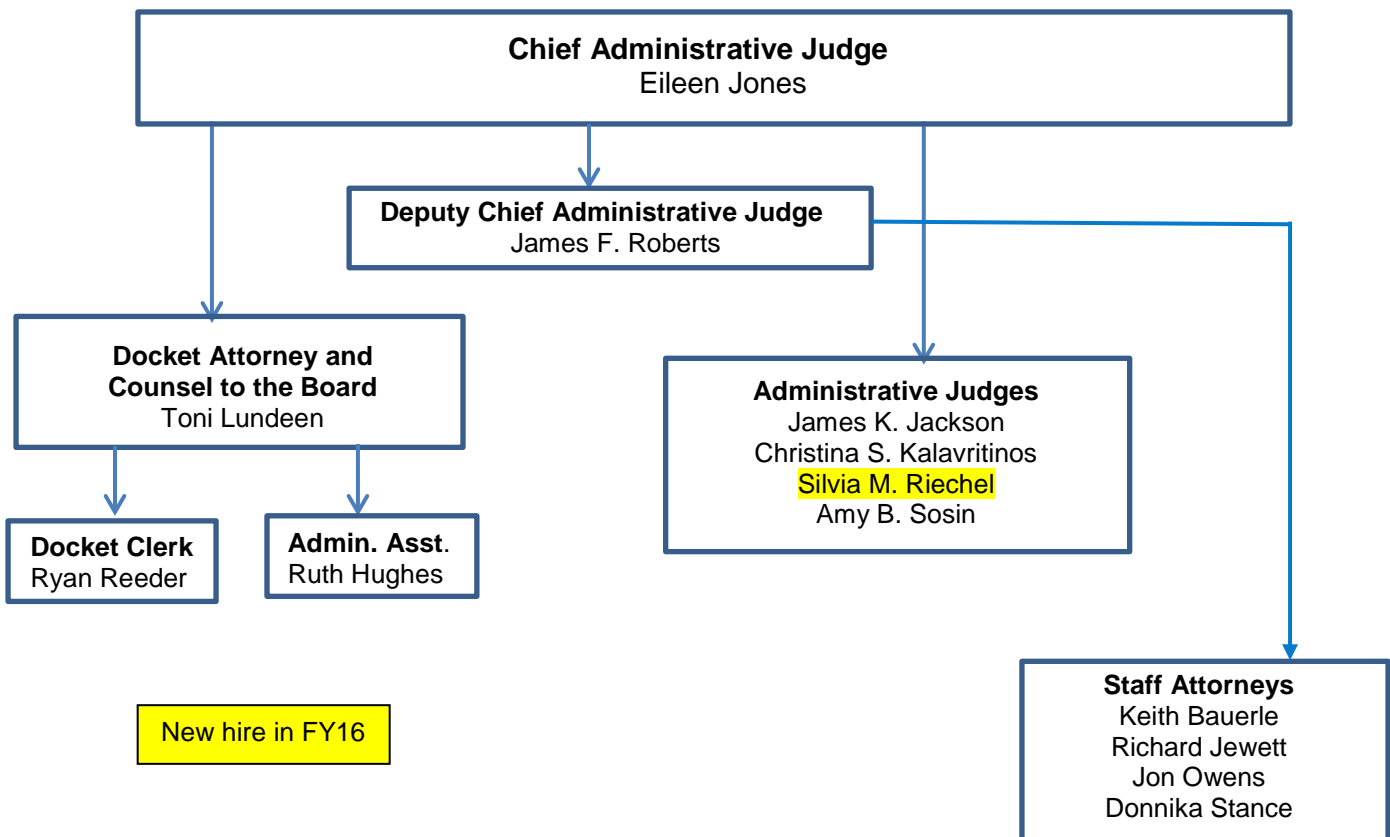
Introduction and Executive Summary	1
Organizational Structure and Staffing	2
Board Organizational Chart	2
Function of the Board	3
Bureaus and Offices Whose Decisions We Review	3
Bureau of Land Management (BLM)	3
Bureau of Ocean Energy Management (BOEM)	4
Bureau of Safety and Environmental Enforcement (BSEE)	4
Office of Natural Resources Revenue (ONRR)	4
Office of Surface Mining Reclamation and Enforcement (OSM)	4
OHA's Departmental Cases Hearings Division (DCHD)	4
The Life of an IBLA Appeal	5
FY16 Summary Snapshot of the Board's Caseload	6
FY16 Averages	7
Board Incoming, Outgoing, and Pending Appeals	8
The Active Docket	9
Types of Incoming, Outgoing, and Pending Cases for Disposition	9
A Breakdown of Dispositions by Outcome	10
Expedited Cases in FY16	13
Motions for Reconsideration	14
Note on Appeal Disposition Times at IBLA	14
The Procedural Docket	15
Petitions for Stay Pending Appeal	15
Procedural Motions and Requests	16
The Inactive Docket: Cases in Suspended Status	17
Representation Before the Board	18
Goals for FY15 and the Results	19
FY17 Goals	20
Appendix	21

## **Organizational Structure and Staffing**

The Board is a division of a larger entity, the Office of Hearings and Appeals, within the Department of the Interior. The Office of Hearings and Appeals is headed by a Director; that position is held by Shayla Freeman Simmons. The Office of Hearing and Appeals is under the Deputy Assistant Secretary for Technology, Information & Business Services, part of the organization under the leadership of the Assistant Secretary for Policy, Management and Budget.

By regulation, the Board is composed of Administrative Judges who serve as its members. Also by regulation, the Board is managed by a Chief Administrative Judge. That position is held by Eileen Jones. James F. Roberts serves as Deputy Chief Administrative Judge. Biographical sketches of our judges are available on our website at: [https://www.doi.gov/sites/doi.gov/files/uploads/ibla-orgchart\\_0.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/ibla-orgchart_0.pdf). In FY16, we hired one new administrative judge.

### **Board Organizational Chart**



## **Function of the Board**

The Board is an appellate review body that exercises the delegated authority of the Secretary of the Interior to issue final decisions for the Department of the Interior. The Chief Administrative Judge leads the Board and manages day-to-day operations. At the same time, the Chief resolves appeals and otherwise functions as an Administrative Judge by acting as the second judge on two-judge decisions and orders.

The Administrative Judges focus on reviewing pleadings and administrative records and finalizing draft orders and decisions to resolve matters on appeal. In the process, Administrative Judges are mentors to the staff attorneys with whom they work.

For more information about the Office of Hearings and Appeals, please go to <https://www.doi.gov/oha>. The website also contains information about the Board, including copies of our decisions and orders.

## **Bureaus and Offices Whose Decisions We Review**

The Board is separate and independent from the Bureaus and Offices whose decisions we review. The Board decides finally for the Department appeals from decisions rendered by Departmental officials, as provided by regulation codified at 43 C.F.R. § 4.1 and available on our website at <https://www.doi.gov/oha/organization/ibla/Procedural-Regulations-for-Cases>.

The Board hears appeals from decisions issued by:

### ***Bureau of Land Management (BLM)***

***Approximately  
73% of the  
cases we  
concluded in  
FY16 came  
from BLM.***

BLM has jurisdiction over 248 million acres of public lands, which are primarily located in the western part of the United States, including Alaska. BLM also administers approximately 700 million acres of mineral-estate underlying both Federal and non-Federal lands.

The majority of the Board's FY16 caseload consisted of appeals from BLM decisions. These decisions relate to a variety of actions, including mining, grazing, energy development, timber harvesting, wildfire management, special use and recreation permitting, wild horse and burro management, cadastral surveys, Alaska land conveyances, rights of way, land exchanges, and trespass actions. Departmental regulations provide for most of BLM's decisions to be appealed directly to the Board. Other appeals come to the Board after a second level of agency review, such as State Director Review or after review by an Administrative Law Judge.

*Approximately 16% of the cases we concluded in FY16 came from BOEM and BSEE.*

***Bureau of Ocean Energy Management (BOEM)***

BOEM manages the development of Outer Continental Shelf (OCS) energy and mineral resources in an environmentally and economically responsible way. Incidents of non-compliance, supplemental bonding orders, and civil penalty assessments issued by BOEM are among the decisions that are appealable to the Board.

***Bureau of Safety and Environmental Enforcement (BSEE)***

BSEE exercises the safety and environmental oversight and enforcement functions over offshore energy development on the U.S. Outer Continental Shelf (OCS). This bureau's decisions typically relate to offshore lease decommissioning liability determinations and noncompliance and civil penalty matters for offshore oil and gas operations.

***Office of Natural Resources Revenue (ONRR)***

ONRR collects, accounts for, and verifies natural resource and energy royalties due the United States, American Indians, and the States from mineral extraction taking place on the U.S.'s mineral estate. Any orders to pay royalties are appealable to the Board.

*Approximately 4% of the cases concluded in FY16 came from ONRR.*

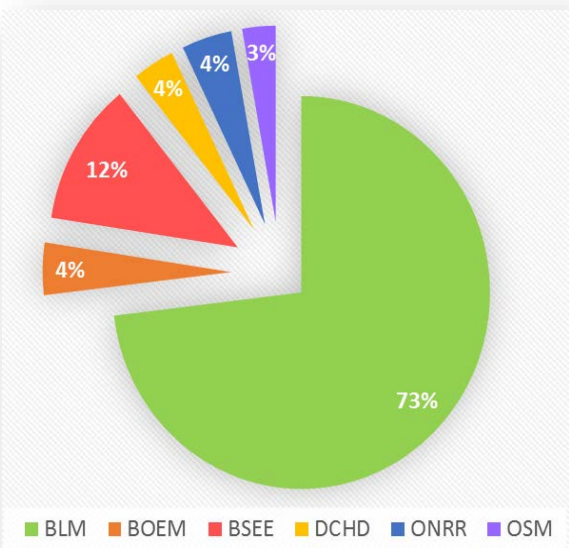
***Office of Surface Mining Reclamation and Enforcement (OSM)***

OSM focuses on overseeing state programs that protect the environment from the adverse effects of surface coal mining operations. OSM decisions relating to ten-day notices, reclamation bonding, citizens' complaints, and other matters are appealable to the Board.

*Approximately 3% of the cases concluded in FY16 came from OSM and 4% came from DCHD.*

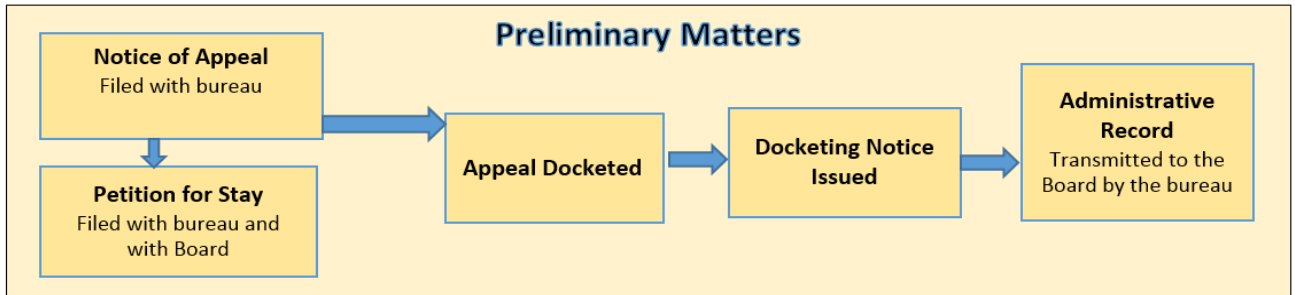
***OHA's Departmental Cases Hearings Division (DCHD)***

These appeals are from decisions of Administrative Law Judges relating to grazing matters, private and government mining claim contests, surface coal mining matters, and penalties for royalty collection cases.

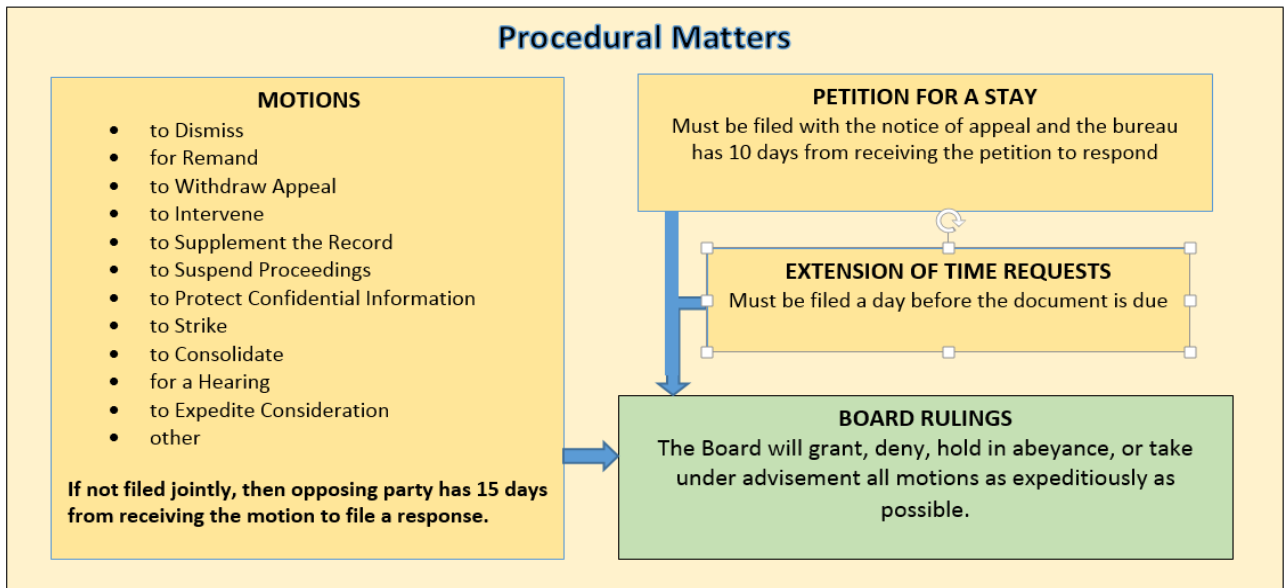


# The Life of an IBLA Appeal

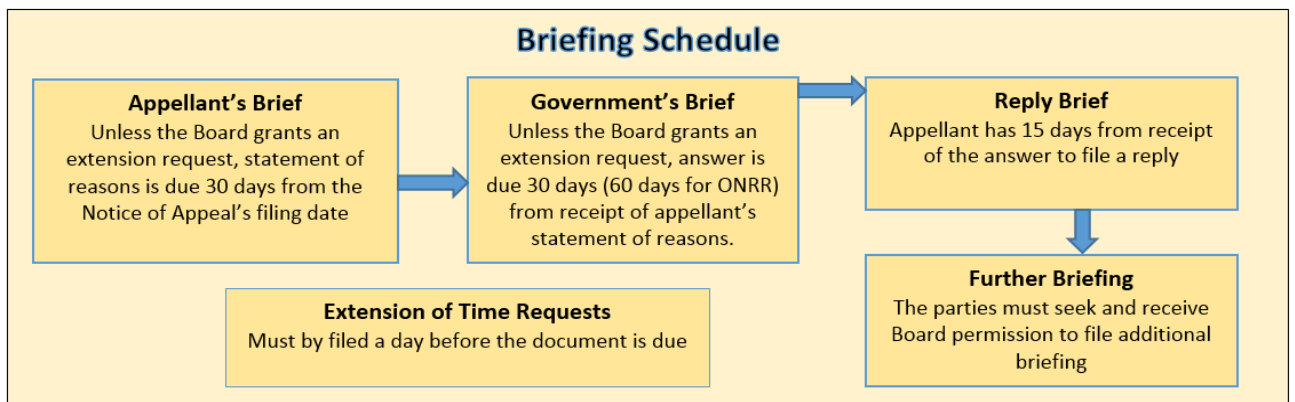
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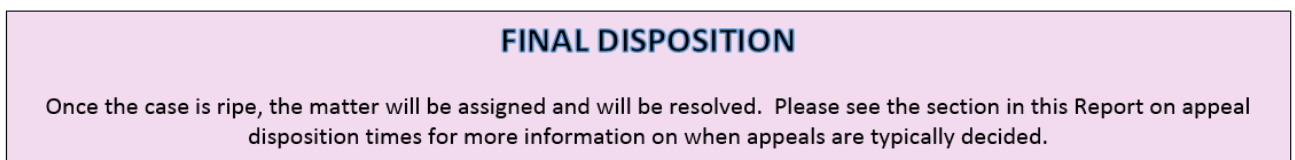
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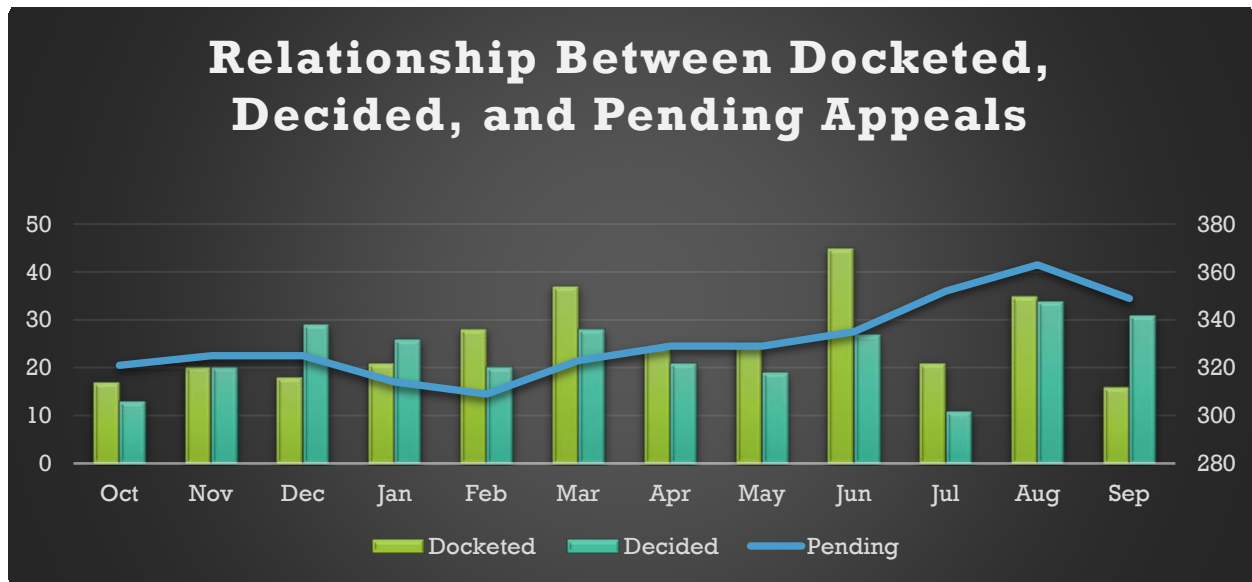




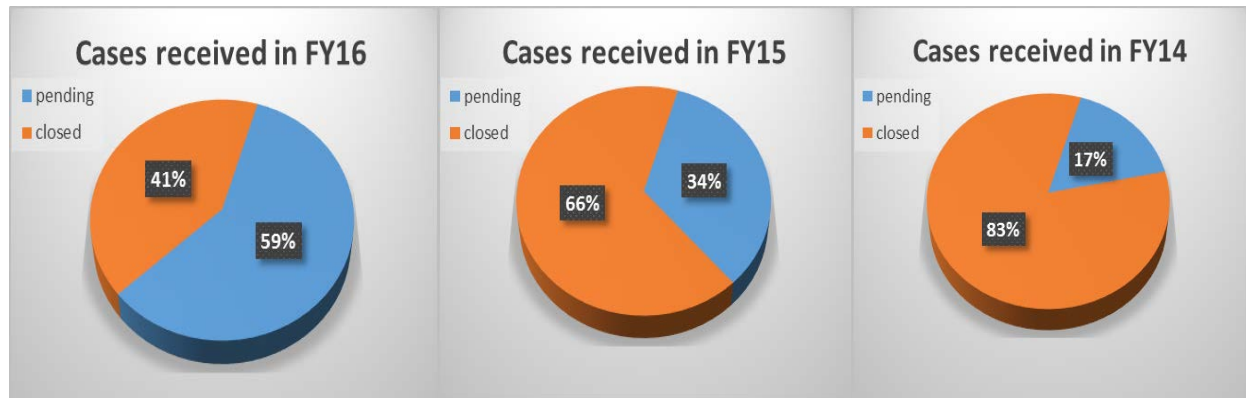
## FY16 Summary Snapshot of the Board's Caseload

On the first day of FY16, the Board had **321** pending cases. During FY16, we received (docketed) **307** new cases. We decided **279** cases. On the last day of FY16, **349** cases remained. The chart below illustrates how these numbers compare to each other.

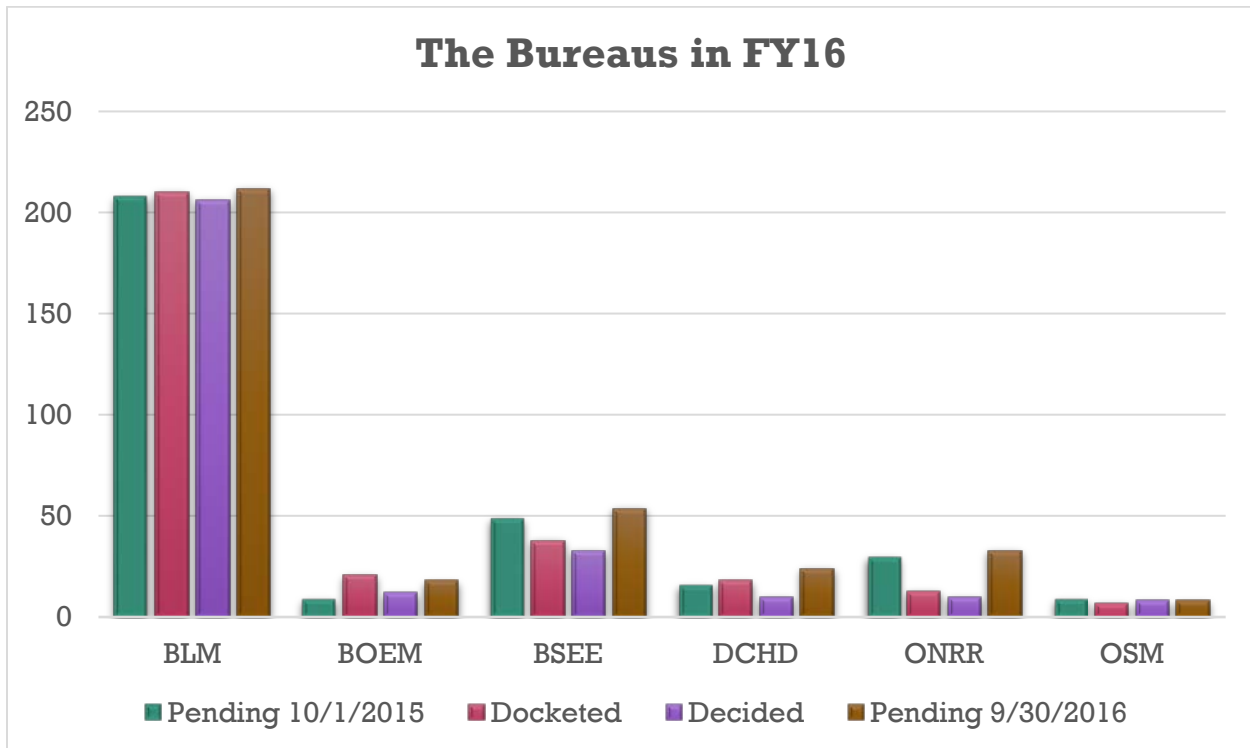
Our pending cases dipped marginally between December and February. After February, our incoming appeals overshadowed our production until September, when our pending appeals dropped to 349.



As the pie charts below illustrate, 59% of cases docketed in FY16, 34% of cases docketed in FY15, and 17% of cases docketed in FY14 remained at the end of September 2016.



The chart below summarizes the Board's docketed cases, decided cases, and pending cases by bureau for FY16. We receive most of our appeals from BLM.



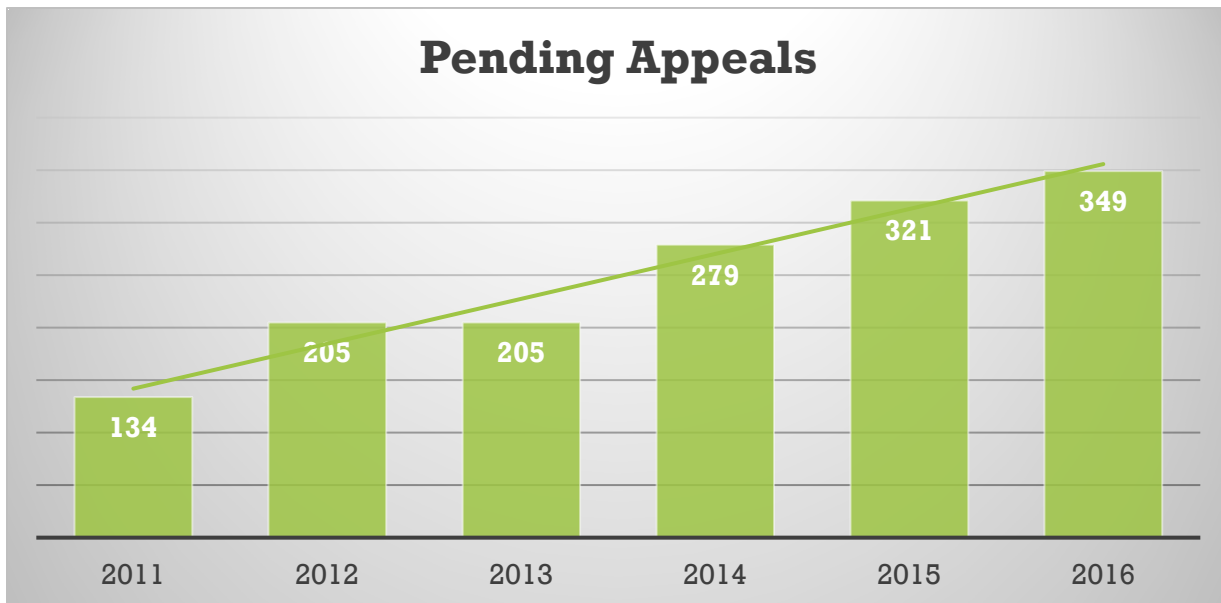
### FY16 Averages

- We **docketed** an average of **26 cases a month**.
- We **closed** an average of **23 cases a month**.
- The **average** length of **time to decide** a case was **7 months**.
- We **docketed** an average of **6.5 stay petitions a month**.
- We **issued** on a monthly average **6 orders granting or denying stay petitions**.
- We **issued** an average of **48 orders resolving procedural motions and requests each month**.

**Board Incoming, Outgoing, and Pending Appeals**  
**FY 2011-FY 2016: A Visual Comparison**

	Start Pending	Docketed	Decided	End Pending
2011	133	250	249	134
2012	134	300	229	205
2013	205	246	246	205
2014	205	299	225	279
2015	279	275	233	321
2016	321	307	279	349

From FY11 to FY16, the Board has received an average of 36 more cases per year than it finalizes. Thus, an incremental backlog of approximately 216 cases has occurred during this time span. This trend is illustrated below.



**The Active Docket**  
**Types of Incoming, Outgoing, and Pending Cases for Disposition**

Each appeal deals with subject matter over which IBLA has jurisdiction. The Appendix to this report lists the topics IBLA used to identify the subject matter of each case.

<b>Subject</b>	<b>Pending on 10/1/2015</b>	<b>Docketed</b>	<b>Decided</b>	<b>Pending on 9/30/2016</b>
<b>Alaska Matters</b>	2%	1%	1%	2%
<b>Coal</b>	7%	4%	8%	4%
<b>Grazing</b>	2%	6%	2%	5%
<b>Mining Claim Matters</b>	11%	23%	22%	13%
<b>On and Offshore Oil &amp; Gas Production Matters</b>	31%	31%	26%	36%
<b>Other</b>	23%	12%	20%	16%
<b>Rights-of-Way</b>	5%	9%	9%	5%
<b>Royalties</b>	11%	5%	4%	11%
<b>Special Use Permits</b>	4%	2%	2%	3%
<b>Timber Sales/Fire Management</b>	2%	5%	5%	2%
<b>Trespass</b>	2%	3%	2%	2%

Of the 321 cases pending at the beginning of the fiscal year, October 1, 2015, about 31% involved matters related to onshore and offshore oil and gas production. The Board gained 25 oil and gas cases by the end of the year, raising the percentage of oil and gas cases to 36% of our pending cases.

The next largest group of cases we started with was identified as “other,” which comprised about 23% of the pending case load. “Other” typically includes BLM land use decisions outside of the categories identified in the chart above, such as wild horse and burro gathers and adoptions, cadastral survey cases, land conveyance cases, and applications for attorneys’ fees made under the Equal Access to Justice Act. Only 16% of our pending cases fell into the “other” category by the end of the fiscal year.

## **A Breakdown of Dispositions by Outcome**

The Board disposes of cases in multiple ways. Below is a description of our common dispositions.

Affirm/Affirm as Modified: When the Board agrees with the decision below, we will affirm. We will affirm, as modified, when we agree with the decision's outcome or result, but we find that the basis for the decision was incorrect in whole or in part.

Set Aside and Remand: The Board sets aside and remands a matter back to the bureau when we cannot determine whether the decision below is correct. Typically, this occurs when the administrative record does not support the bureau's decision. We also set aside and remand an appeal back to the bureau when they seek to make a correction or a modification to the decision on appeal.

Vacate/Reverse: When the result of the bureau's decision is incorrect, we can vacate it and send it back to the bureau for further adjudication. The Board can also provide the correct result in a way that disposes of the case and a remand is unnecessary.

Dismiss: We can dismiss an appeal without discussing the merits when we do not have jurisdiction to hear the case or when the parties request to withdraw the appeal.

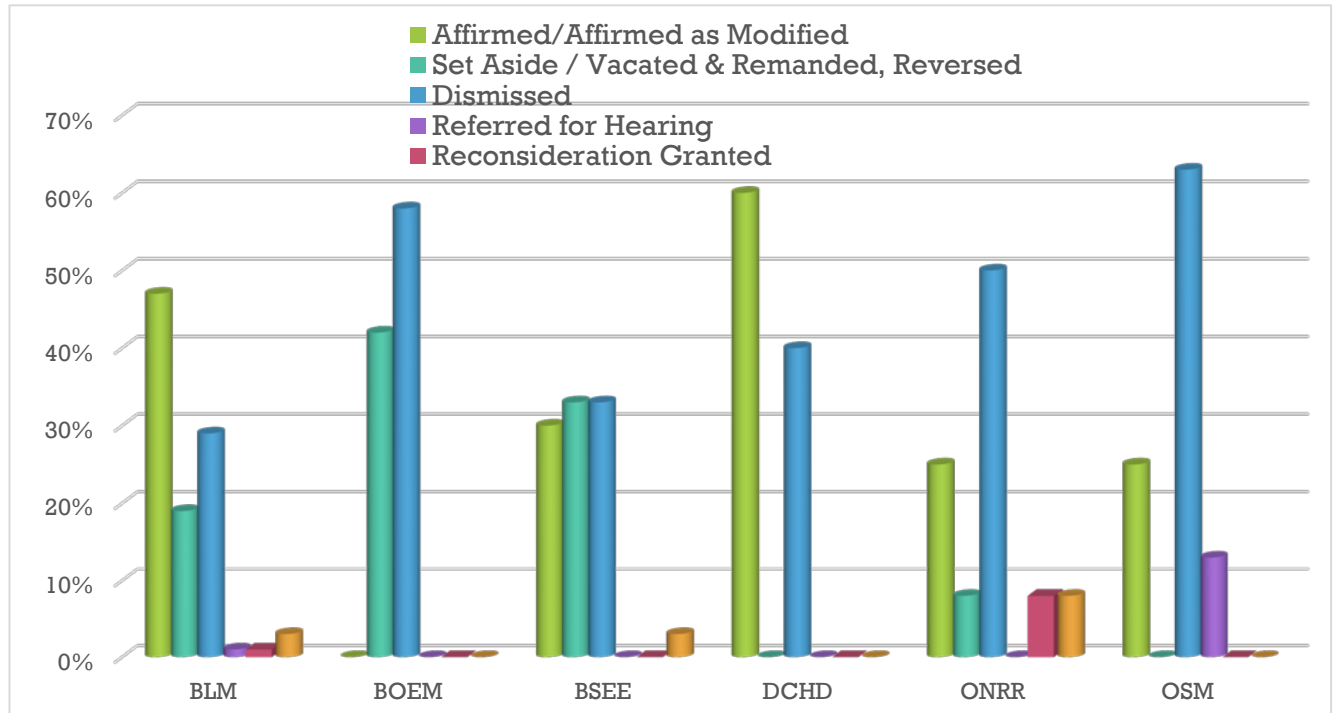
Refer for Hearing: We can refer an appeal to DCHD for a hearing on an issue of fact.

Granting or Denying a Motion for Reconsideration: When an appellant moves the Board to reconsider its final decision, we will either grant that motion or deny it. If we grant the motion, we will vacate the original decision and re-decide the case anew

The following table breaks down case dispositions in FY16 by bureau:

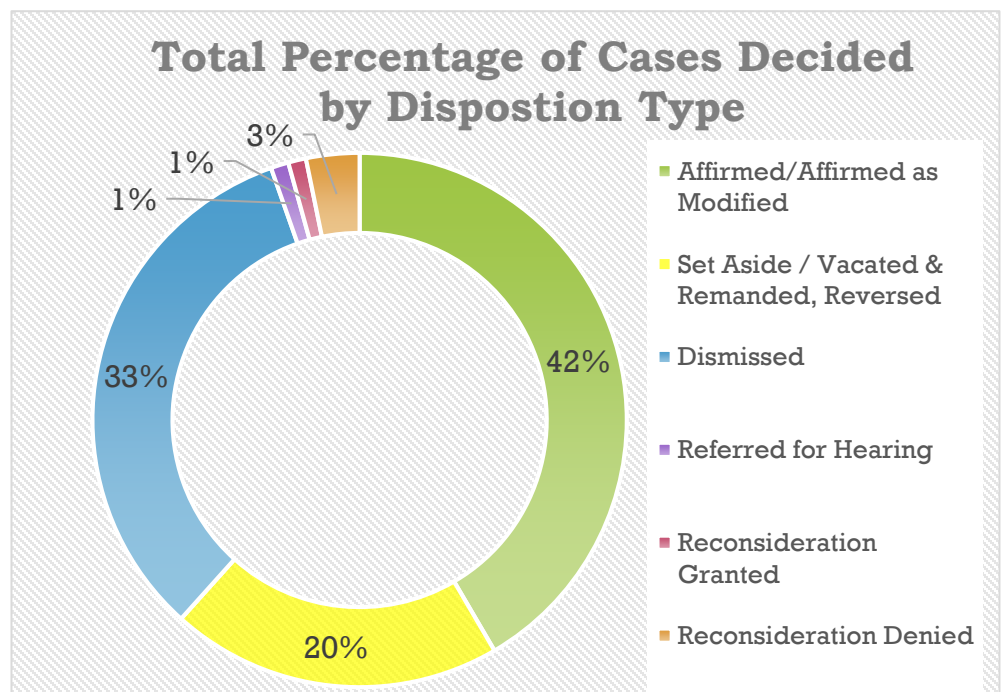
<b>Disposition Type</b>	<b>BLM</b>	<b>BOEM</b>	<b>BSEE</b>	<b>DCHD</b>	<b>ONRR</b>	<b>OSM</b>	<b>AVERAGE</b>
Affirmed/Affirmed as Modified	47%	0%	30%	60%	25%	25%	<b>42%</b>
Set Aside / Vacated & Remanded, Reversed	19%	42%	33%	0%	8%	0%	<b>20%</b>
Dismissed	29%	58%	33%	40%	50%	63%	<b>33%</b>
Referred for Hearing	1%	0%	0%	0%	0%	13%	<b>1%</b>
Reconsideration Granted	1%	0%	0%	0%	8%	0%	<b>1%</b>
Reconsideration Denied	3%	0%	3%	0%	8%	0%	<b>3%</b>

A majority of our affirmances were decisions appealed from the DCHD, which we affirmed 60% of the time. Of the 204 appeals that came from BLM, we affirmed that bureau 47% of the time. The parties settled 50% of ONRR appeals in FY16 and we dismissed those cases.

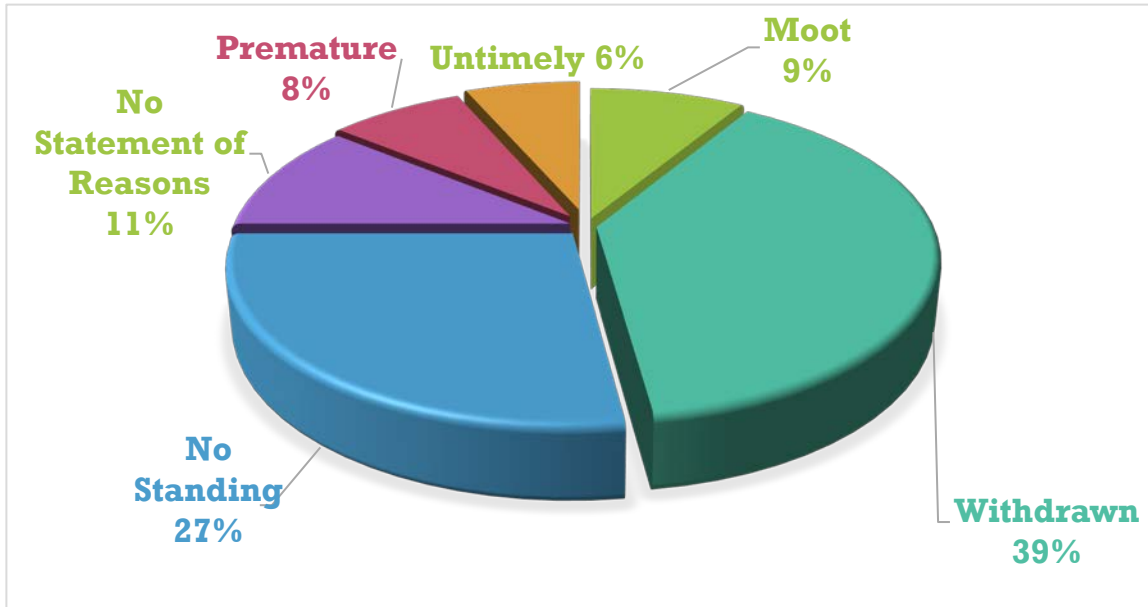


Appeals originating from BOEM also settled or the bureau sought a remand for further action.

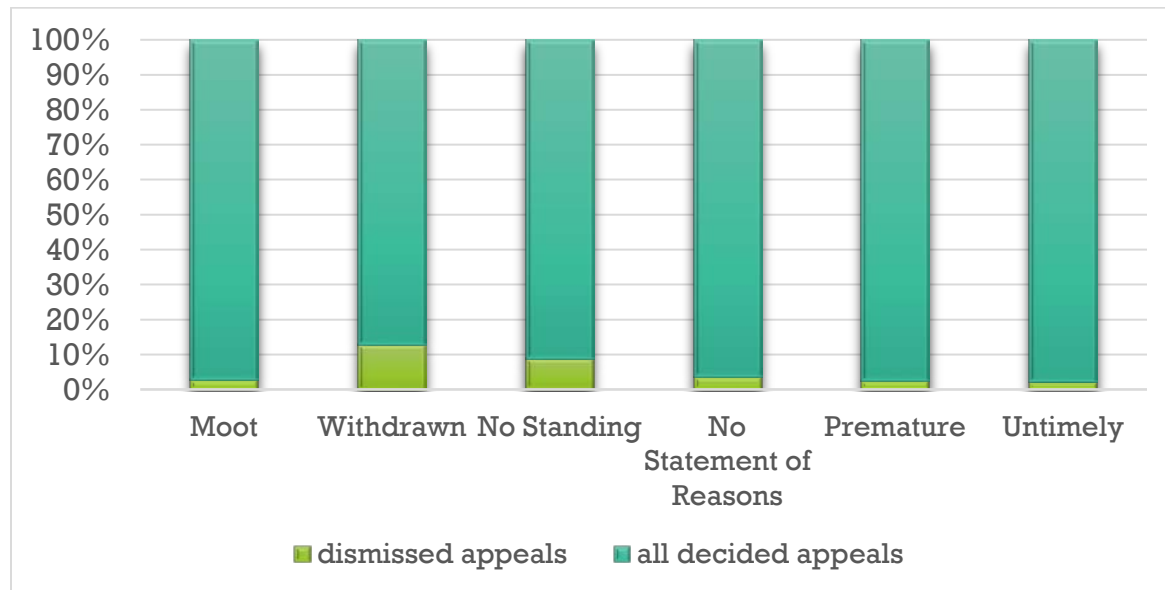
Overall, the Board affirmed on average approximately 42% of all the appeals we decided in FY16. Of the 279 cases the Board concluded in FY16, 20% were returned to the respective bureau for further consideration and 33% of them were dismissed.



This chart below breaks down the type of dismissals the Board issued in FY16. A majority of the appeals we dismissed in FY16 were either withdrawn or we found that the appellants did not have standing to bring an appeal.



Overall, appellants withdrew 13% of the appeals we closed in FY16. Of the remaining 21% of the cases we dismissed in FY16, 9% were from lack of standing, 4% were dismissed for failing to file a statement of reasons, and 3% were premature, 3% were moot, and 2% were untimely-filed appeals.



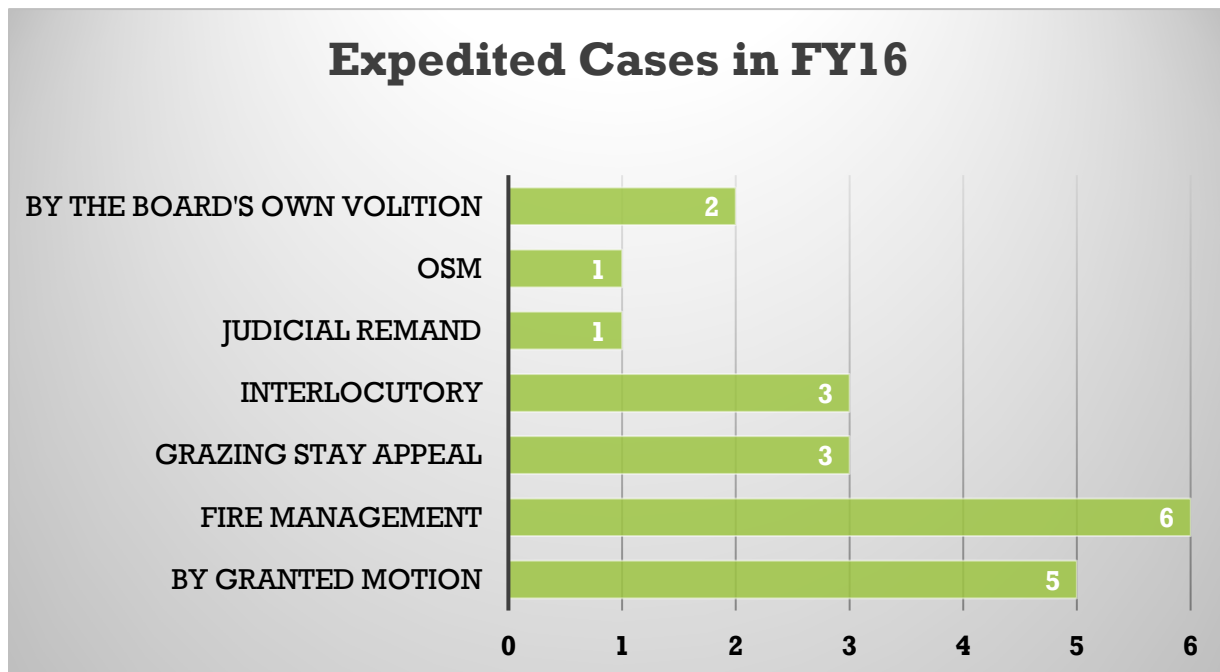
## Expedited Cases in FY16

Typically, the Board decides cases in the order they are received. However, there are times when we decide cases out of turn.

There are several regulations that require the Board to schedule for consideration certain appeals ahead of other previously filed appeals. Our regulations provide that appeals relating to fire management, certain surface coal mining matters, interlocutory questions of law, grazing stays, or judicial or director remands are reviewed before other appeals.

We may also expedite an appeal at our sole discretion when urgent review is necessary, or when a party requests expedited review and shows compelling circumstances for advancing an appeal ahead of other pending cases.

As shown on the chart below, not including mining claim cases, we expedited 21 appeals in FY16.



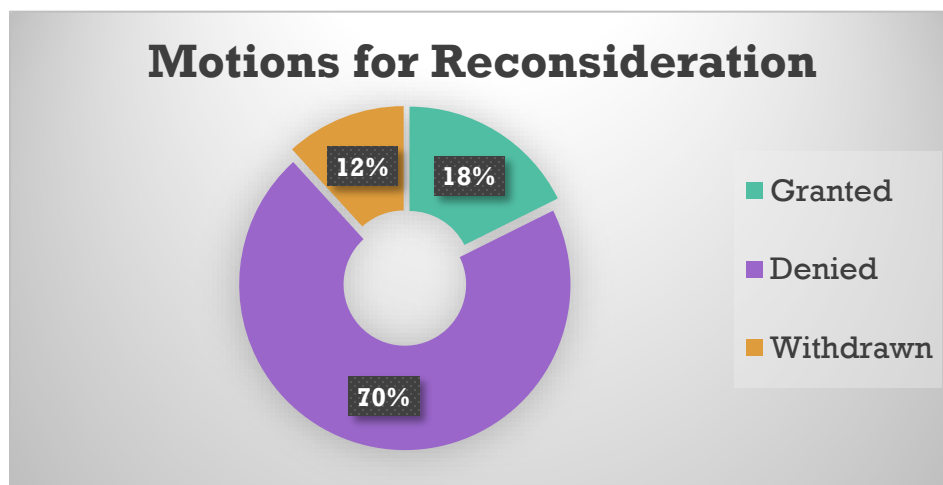


## **Motions for Reconsideration**

In FY16, the Board docketed 16 motions for reconsideration, which means that parties sought reconsideration of a final decision about 5% of the time. These cases are docketed as new appeals and represented 5% of our incoming cases. They also represented 5% of our concluded cases.

As the chart to the right indicates, we granted 18% of them, thereby vacating the final decision and adjudicating the appeal anew. We denied 70% of the motions for reconsideration we received in FY16.

Appellants in two cases withdrew their petitions for reconsideration before we could adjudicate them.



## **Note on Appeal Disposition Times at IBLA**

Our caseload is very diverse in terms of issues presented, subject matter, and complexity. Each case is unique and ready for review and resolution based on the unique circumstances presented. Some cases can be closed in as little as a few weeks, particularly those that involve only procedural, non-merits issues. For example, cases involve only procedural issues when an appellant wishes to withdraw its appeal, an appellant files its appeal after the regulatory deadline, an appellant is not the proper party to bring an appeal, or a bureau asks for a remand to change its decision.

Other cases take months just to become ready for review, as the parties file documents, seek extensions, or engage in settlement negotiations. The Board review process of a ripe appeal can then take months of legal work before the case is ready for final disposition.

In FY16, the average length of time to decide a case was 7 months. Since the average processing time to resolve a ripe appeal takes into account each case's disposition time, not every appeal was decided within that average. Some appeals took longer than the average time to finalize, sometimes up to two or more years.

# The Procedural Docket

## Petitions for Stay Pending Appeal

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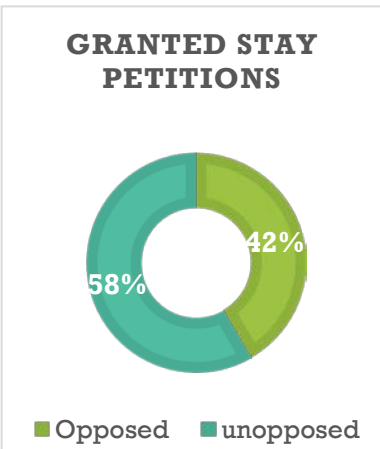
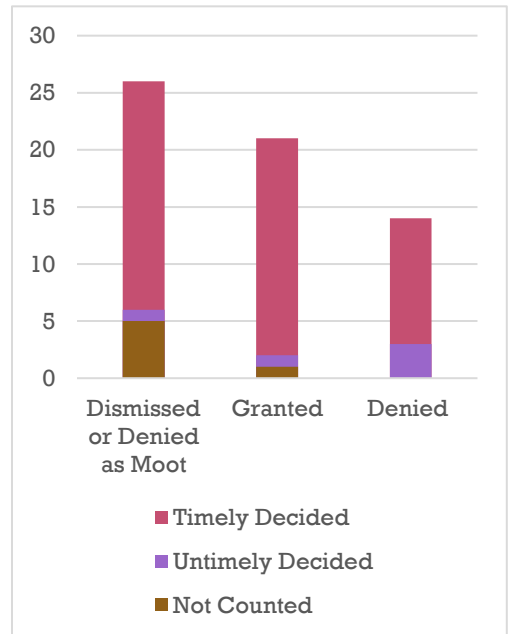
THE BOARD DECIDED STAY PETITIONS WITHIN THE REGULATORY TIMEFRAME 84% OF THE TIME.

An appellant may petition to stay the effect of bureau decisions during the pendency of the appeal before the Board. The Board is required to grant or deny a petition for a stay within 45 calendar days of the end of the period for filing a notice of appeal. A considerable number of appeals are accompanied by a petition for a stay, requiring the Board to devote substantial time and resources in meeting the 45-day deadline imposed by our regulations.

In FY16, the Board received 79 stay petitions. Not counting the mining cases docketed in FY16, 33%, or 1 in 3 of all appeals received in FY16 contained a petition for a stay.

We dismissed or denied as moot 37 of those petitions because we either determined that we did not have jurisdiction over the appeal, or we decided the appeal on the merits.

Of the remaining stay petitions, we adjudicated 27 based on the regulatory criteria, which accounted for about 34% of all stay petitions filed with the Board in FY16. In so doing, we denied 17 and granted 10. We also granted another 14 petitions when counsel for the Government affirmatively did not oppose them.

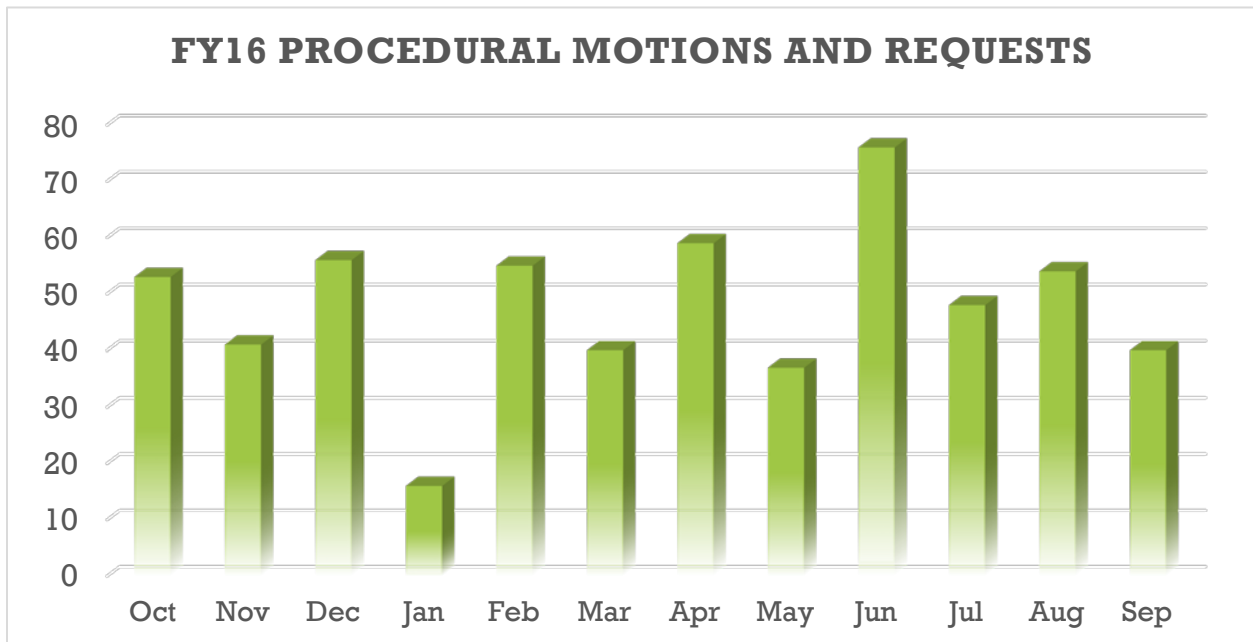


We timely disposed of the petitions within our regulatory timeframe 84% of the time. Of the 79 stay petitions we received, 7 stay petitions were filed after the deadline set forth by regulation, and therefore the 45-day deadline in those cases did not apply to those petitions. They were therefore not counted in our statistical analysis. The Board ran into timing constraints when we received stay petitions from petitioners who were not clearly parties or adversely affected by the decisions they sought to stay. Because a stay petitioner must have standing to file a stay petition, we adjudicated whether the petitioner had standing before we decided the stay petition.

## **Procedural Motions and Requests**

The Board received, and ruled on, approximately 48 procedural motions and requests each month during FY16. Our regulations permit parties to file a variety of motions and requests. The most common requests are from parties seeking additional time to file pleadings and from parties requesting to limit disclosure of confidential information. We also receive motions to, for example:

- consolidate appeals
- intervene
- strike a pleading or evidence
- expedite
- supplement the record
- place an appeal on our inactive docket



## The Inactive Docket: Cases in Suspended Status

In FY16, we lifted 39 appeals from our suspended docket. Thus, while we were adding appeals to our inactive docket, we were also taking them away.

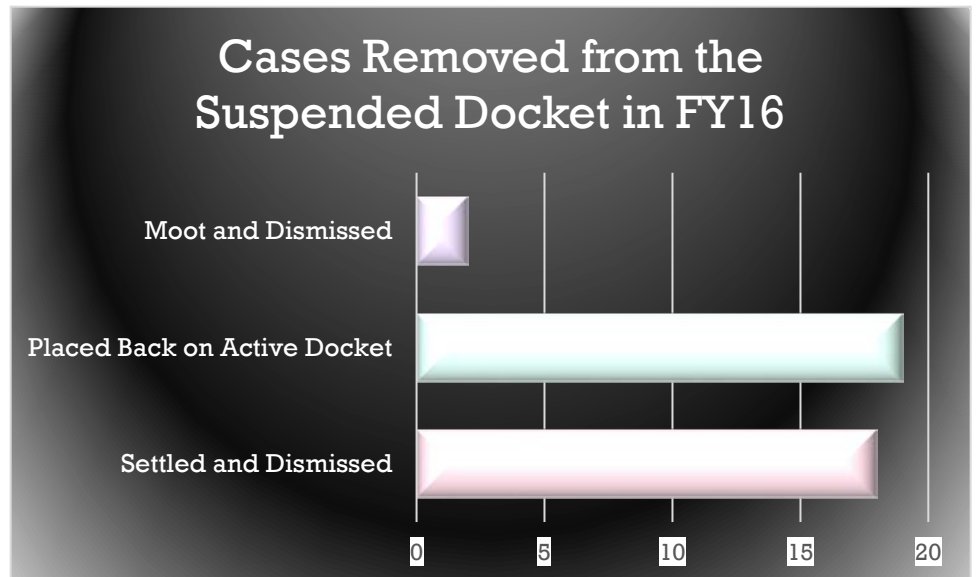
At the beginning of FY16, 20% of all pending appeals were on our suspended, i.e., inactive docket. That means that the case was not being actively adjudicated and any filing deadlines were tolled.

Sixty four of the 321 cases on our docket, or 20% of the pending appeals, were on our suspended, i.e., inactive, docket. There are various reasons why a case is in suspended status. Typically, a case is suspended at the request of a party or parties. Frequently, a case is suspended while the parties engage in settlement negotiations. Other reasons for suspending a case include active Federal litigation such as bankruptcy proceedings that may affect the outcome of a pending case.

We continued to take a more active approach to our suspended cases. Parties who were granted suspended status were required to actively work to resolve their disputes and to keep the Board apprised of those efforts. The

Board ordered regular status reports, and where appropriate, issued orders to show cause for possible return to the active docket. No case was placed in suspension for more than a year. Once a year passed, the parties had to sufficiently justify why the appeal should remain in inactive status.

Despite our active management practices, our docket of suspended cases grew during FY16. We ended FY16 with 74 suspended cases. Of those 74 appeals, 40 were carried over from previous fiscal years. At the end of FY16, our inactive docket had edged up 1% to 21% of all pending cases.



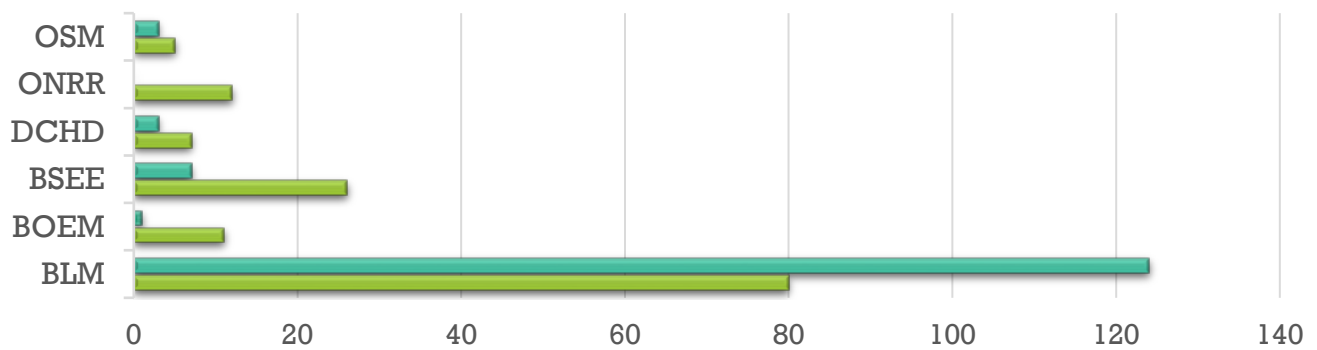
## Representation Before the Board

Anyone who is affected by and does not agree with a bureau's final decision can appeal to the Board. An appellant may proceed pro se, i.e., represent her or himself without an attorney, or may hire an attorney to represent her or himself.

	Represented by Counsel	pro se
BLM	39%	61%
BOEM	92%	8%
BSEE	79%	21%
DCHD	70%	30%
ONRR	100%	0%
OSM	63%	37%

Approximately 51% of the appeals decided in FY16 had attorneys representing the appellant. Appellants filing appeals from ONRR decisions were represented by counsel 100% of the time while appellants appealing from BLM decisions represented themselves 61% of the time.

Decided Appeals in FY16 Based on Appellant's Representation



	BLM	BOEM	BSEE	DCHD	ONRR	OSM
pro se	124	1	7	3	0	3
attorney	80	11	26	7	12	5

pro se attorney

## Goals for FY15 and the Results

In FY15, we set multiple goals. Below are those goals and our results we achieved in FY16.

Goal 1:  
Conclude 250 or more cases.

We concluded 279.

Goal 2:  
Resolve 100% of cases docketed in FY13

We resolved about 30% of our remaining FY13 cases. At the end of FY16, 15 remained in suspended status and 3 were under active review.

Goal 3:  
Reduce by 50% all cases docketed in FY14.

We started the FY with 123 and ended the FY with 51, reducing the FY14 caseload by 59%.

Goal 4:  
Reduce by 10% or more the average processing time for concluding adjudicated cases.

It took an estimated 197 days, about 6.5 months to decide an appeal in FY15. In FY16, disposition time increased by 20 days, and took an average of about 7 months to dispose of an appeal.

Goal 5:  
Resolve all mining claim fee and recordation cases within 180 days of ripe date, *i.e.*, the administrative record has been received and pleadings have been filed.

We achieved this goal 74% of the time.

Goal 6:  
Develop a tracking system for all stay petitions

We achieved this goal by streamlining how we track every stay petition that is filed with us.

Goal 7:  
Decide 75% or more stay petitions within the regulatory timeframe.

We met our deadline 84% of the time.

## **FY17 Goals**

- Further transparency to the public by
  - Publishing dispositive orders issued from 1990 to 2015
  - Making public presentations on Board operations and substantive law
  - Publish statistical reports on web
- Generate clearer, more concise decisions
- Leverage electronic resources such as email to enhance efficiency
  - Update the docketing notice to request the parties' email addresses for email service and inform parties of our website tools
- Close no less than 250 appeals
- Resolve 85% of stay petitions within regulatory deadlines
- Transfer non-active suspended cases to active docket when parties cannot show compelling circumstances for not doing so
- Resolve all of FY13 and FY14 cases
- Reduce the Board's processing time for cases by 10% compared to FY16

## Appendix

LANDS		MINERALS	
Sub-Category	Type	Sub-Category	Type
Alaska	Selections – ANILCA	EAJA	Attorney Fees - Minerals
	Town sites, T&M sites, etc.		
	Native Allotment	Mining	Rental/Maintenance Fees
	Selections – ANCSA		Recordation
	Other Mining Occupancy		
	Patent Applications		
EAJA	Attorney Fees - Lands		Contests
FLMPA	Disclaimers	MLA - Non O&G	Other MLA Applications
	Patent Correction		Leases/Licenses/Permits
	FLMPA 203 & 302 Sales		
Grazing	Other (including capacity)	Oil & Gas (Onshore)	Applications
	Lease/Permit Applications		Lease
	Tresspass, Violations		Misc.
	Stays		Reinstatement
Land Conveyance	Desert Land Entry	SMCRA	Unitization
	Land Entry - General		APA
	Indian Allotments		Applicant/Violator System
	State Selection		Attorney Fees
	State Indemnity Adjudication	Non-APA	
Land Exchanges		Other	Material Sales
			Tresspass - Minerals
Recreation	Rec & Public Purpose		FLPMA Retained Int.
	Special Use Permit		
Right-of-Way	Bond/Rent/Stipulation	Royalty	Indian Royalty
	Other ROW		Royalty Fairness Act
			Royalty - Other (e.g.
Timber	Other Sales/Mgmt.		Noncompliance and Civil
	Wildfire Management	Offshore	leases/Unitization/ROW
	Sourcing Area Application		Safety & Environmental
Trespass	Trespass - Land		
	Trespass - Fire		
Other Lands	Cadastral Survey		
	Color-of-Title		
	Land Use - Misc.		
	Wild Horses/Burro		
	Payments in Lieu of Taxes		