



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
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August 25, 2016

IBLA 2016-79	)	WYW-154595
	)	
WILDEARTH GUARDIANS	)	Coal Lease
	)	
	)	Motion to Supplement
	)	Administrative Record Denied;
	)	Set Aside and Remanded

ORDER

Appellant has appealed from a December 29, 2015, decision record (DR) issued by the field manager for the Rock Springs Field Office (Wyoming) Bureau of Land Management (BLM). The field manager approved Bridger Coal Company's application to modify Federal coal lease WYW-154595 to include 120.02 acres of unleased contiguous Federal coal lands.

Appellant filed a statement of reasons in support of its appeal. Appellant's main argument is that the bureau violated the National Environmental Policy Act (NEPA)<sup>1</sup> by failing to prepare an environmental impact statement. Bridger Coal Company and the State of Wyoming are intervenors in this appeal.<sup>2</sup> The intervenors and BLM have filed respective answers and the matter is ripe for final disposition.

*BLM's Motion for Leave to Submit Ratification*

BLM has filed with the Board a Motion for Leave to Submit Ratification (Motion). BLM moves the Board to accept documentation into the administrative record, which shows that on May 25, 2016 -- after WildEarth Guardians appealed the field manager's DR -- BLM Wyoming's Acting Deputy State Director for Minerals and Lands ratified the DR. BLM asks to supplement the administrative record with the ratification document in response to *WildEarth Guardians*.<sup>3</sup> In that case, appellant appealed from a BLM Colorado field manager's decision to approve a coal lease. We

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<sup>1</sup> 42 U.S.C. §§ 4321-4370h (2012).

<sup>2</sup> See Order dated Feb. 29, 2016.

<sup>3</sup> 187 IBLA 349 (2016).

found that the field manager was not authorized to approve the coal lease, and therefore we set aside the DR and remanded the matter back to BLM.

Although BLM states that, in this case, the field manager did not actually approve the coal lease modification, which has not yet been issued or signed by the Deputy State Director, BLM considers it appropriate to submit the ratification for acceptance into the administrative record to alleviate the need to address any issues that may be raised by *WildEarth Guardians*.<sup>4</sup> BLM states that record supplementation is appropriate since the ratification “in no way changes the substance of the decision on appeal.”<sup>5</sup>

#### *BLM Did Not Have Jurisdiction to Ratify the DR*

BLM’s ratification document purports to ratify a decision that was on appeal to the Board and therefore over which BLM had lost jurisdiction.<sup>6</sup> We reject BLM’s argument that it could ratify a decision that was no longer before it. The validity of a decision goes directly to the “substance of the decision on appeal.” Because BLM did not have jurisdiction to ratify or otherwise modify a decision on appeal, we find that the ratification document has no legal effect, and we deny BLM’s Motion.

#### *The DR is Set Aside and Remanded*

BLM states in its Motion that the field manager was “authorized to sign decision records and findings of no significant impact for NEPA analyses, and the Deputy State Director is authorized to sign the lease modification itself.”<sup>7</sup> BLM’s position implies that a DR is part of the bureau’s NEPA compliance process. This characterization is incorrect. The purpose of the NEPA process is to gather and analyze information to support decision making. A decision occurs at the end of the NEPA process; it is not part of it. As the Council on Environmental Quality stated in its regulations implementing NEPA, “NEPA procedures must insure that environmental information is available to public officials and citizens *before decisions are made* and before actions are taken.”<sup>8</sup>

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<sup>4</sup> Motion at 2.

<sup>5</sup> *See id.*

<sup>6</sup> *See Chipmunk Grazing Association, Inc.*, 188 IBLA 35, 43 (2016); *McMurry Oil Co.*, 153 IBLA 391, 393 (2000).

<sup>7</sup> Motion at 2.

<sup>8</sup> 40 C.F.R. § 1500.1(b) (emphasis added).


BLM's NEPA Handbook recognizes this distinction between NEPA documents and decisions and explains that a DR is the document that authorizes an action.<sup>9</sup> In fact, the field manager expressly authorized Bridger Coal Company's coal lease modification in the DR, stating, "[I]t is my decision to approve the Proposed Action to modify the existing federal coal lease WYW-154595 . . . ." <sup>10</sup> Once the decision is made, execution of the approved document becomes ministerial.

But BLM has not demonstrated that the field manager possessed the requisite authority to authorize coal lease modifications. If a decision is not issued by an employee with delegated authority to issue it, then the action does not bind the Department and is not properly considered a decision of the BLM.<sup>11</sup> Because the DR is not a BLM decision, it cannot be appealed to the Board.<sup>12</sup>

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,<sup>13</sup> we set aside and remand BLM's DR.

  
 Eileen Jones  
 Chief Administrative Judge

I concur:

  
 Silvia M. Riechel  
 Administrative Judge

<sup>9</sup> BLM NEPA Handbook H-1790-1 at 83 (Jan. 2008).

<sup>10</sup> DR at 1; *WildEarth Guardians*, 187 IBLA at 353

<sup>11</sup> *WildEarth Guardians*, 187 IBLA at 353; *Gateway Coal Co. v. Office of Surface Mining Reclamation and Enforcement*, 84 IBLA 371, 374-75 (1985).

<sup>12</sup> 43 C.F.R. §§ 4.1(b)(2), 4.410(a).

<sup>13</sup> 43 C.F.R. § 4.1.

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