



WILDLANDS DEFENSE and
DEEP GREEN RESISTANCE

187 IBLA 233

Decided March 18, 2016



United States Department of the Interior
Office of Hearings and Appeals

Interior Board of Land Appeals
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WILDLANDS DEFENSE and
DEEP GREEN RESISTANCE

IBLA 2016-55

Decided March 18, 2016

Appeal from an October 13, 2015, decision of the Bureau of Land Management to add chaining and mastication as a fire management treatment option within the “Upper Spruce Spring Treatment Area” of the Spruce Mountain Restoration Project Area. DOI-BLM-NV-E030-2015-0020-DNA.

Motion to Dismiss the appeal denied; dismissal of appellant Deep Green Resistance from the appeal due to lack of standing granted.

1. Administrative Procedure: Standing -- Appeals: Standing -- Rules of Practice: Standing to Appeal

A “party to a case” is one who has taken action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal.

2. Administrative Procedure: Standing -- Appeals: Standing -- Rules of Practice: Standing to Appeal

In order to establish standing to appeal, an appellant carries its burden to show that it has a legally cognizable interest that is or is likely to be adversely affected by the decision on appeal, when it makes colorable allegations, supported by facts, of a causal relationship between the approved action and alleged injury to the specific natural resources, which appellant repeatedly, recreationally used at the time of the decision.

3. Rules of Practice: Appeals: Timely Filing
In order to timely file an appeal, a person served with the decision must transmit the notice of appeal in time for it to be received in the appropriate office no later than 30 days after the date of service of the decision. In cases in which the office issuing a

decision has not served its decision on a person who was a party to the case, the date of service is established by the date when such person, or a person's authorized representative, received "actual notice" of the decision.

APPEARANCES: Katie Fite, Boise Idaho, for Wildlands Defense; Max Wilbert, Eugene, Oregon, for Deep Green Resistance,; Janell M. Bogue, Esq., Office of the Regional Solicitor, Pacific Southwest Region, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Wildlands Defense (WLD) and Deep Green Resistance (DGR) (appellants) appeal from an October 13, 2015, Decision Record (2015 DR) issued by the Wells Field Office (Nevada), Bureau of Land Management (BLM). In its 2015 DR, BLM decided to implement the Proposed Action described in a Determination of NEPA¹ Adequacy (DNA) (DOI-BLM-NV-E030-2015-0020-DNA), "to add chaining and mastication to the list of viable treatment methods available for use within" the "Upper Spruce Spring Treatment Area" (Upper Spruce) of the Spruce Mountain Restoration Project Area (Spruce Mountain). 2015 DR at 1-2.

I. BACKGROUND

BLM originally evaluated environmental impacts of fire management treatment options in the Upper Spruce area in the Spruce Mountain Environmental Assessment (EA) (DOI-BLM-NV-E000-2011-05010-EA). 2015 DR at 1. On June 12, 2012, BLM issued the final EA. *Western Watersheds Project (WWP)*, IBLA 2012-268, Order at 2, dated Apr. 18, 2013. In the EA, BLM analyzed chaining and mastication treatments and ultimately selected such treatments for the following units adjacent to Upper Spruce Spring: Lower Spruce Spring, Coyote East, and Basco Chaining Maintenance. DNA at 2. On July 20, 2012, BLM issued a DR/Finding of No Significant Impact (2012 DR), approving the Spruce Mountain Restoration Project. *WWP*, IBLA 2012-268, Order at 1. The Board affirmed the 2012 DR by Order dated April 18, 2013.

On October 13, 2015, BLM finalized a DNA for Upper Spruce, wherein it addressed the addition of chaining and mastication to the list of treatment options in Upper Spruce. See DNA at 5 (signature of Field Manager). In the DNA BLM stated, "the Upper Spruce . . . Area is at high risk of a large-scale, stand replacing wildfire that would negatively impact the entire watershed," and "[a]fter further investigation of site conditions, [BLM proposed] chaining and mastication within the Upper Spruce . . .

¹ National Environmental Policy Act, 42 U.S.C. § 4321-4370h (2012).

Area.” DNA at 1. BLM explained that chaining and mastication was a feature of and substantially similar to the mastication and chaining treatments analyzed in the June 12, 2012, EA, and selected, in the 2012 DR, for implementation in adjacent units (Lower Spruce Spring, Coyote East, and Basco Chaining Maintenance areas). DNA at 2.

On October 13, 2015, BLM signed the 2015 DR, by which it decided to implement the Proposed Action described in the DNA. 2015 DR at 1-2. BLM’s ePlanning internet site indicates the 2015 DR’s “release date” was as early as October 19, 2015.²

On January 4, 2016, appellants filed with the Board a document entitled, “Notice of Appeal [NOA], Statement of Reasons [SOR], Appeal, Standing, Petition for Stay of the DNA.”³ On January 7, 2016, the Board issued an Order rejecting appellants’ pleadings and provided appellants additional time to re-file pleadings that conformed with Board regulations. Because it was not apparent whether appellants were a party to the decision on appeal or whether their appeal was timely filed with the agency, the Board also directed appellants to show cause why the appeal should not be dismissed for lack of standing and/or for not filing a timely appeal. *See* Order to Show Cause at 2.

On January 8, 2016, 4 days after appellants filed their NOA/SOR, BLM signed a letter providing notice of the 2015 DR, which it addressed to “Interested Public,” and mailed to a long list of persons, including WLD.

On February 1, 2016, appellants re-filed their pleadings in support of their appeal. On that same date, appellants filed a Response to Order to Show Cause.⁴

On February 8, 2016, BLM filed a Motion to Dismiss on the grounds that (1) the appellants lack standing to appeal and (2) the appeal is untimely. On February 17, 2016, appellants filed a Response to BLM’s Motion to Dismiss.

² *See* <https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=53507> (last visited Mar. 2, 2016).

³ We note that the petition for stay requests a stay of the decision on appeal, and, therefore, it is more properly referred to as a petition to stay the effect of the 2015 DR. On February 23, 2016, the Board denied appellants’ petition for stay.

⁴ On Feb. 4, 2016, appellants submitted corrections to their Response to Order to Show Cause, and filed a corrected Response.

II. ANALYSIS

The Board now addresses whether (1) appellants have standing to appeal the 2015 DR and (2) whether the appeal was timely filed.

A. *Standing to Appeal the 2015 DR*

BLM moves to dismiss the appeal for lack of standing. As the Board has previously explained: “In order to pursue an appeal from and seek a stay of a BLM decision, an appellant is required to have standing under 43 C.F.R. § 4.410 to appeal from the decision. 43 C.F.R. § 4.410(a) requires that an appellant demonstrate it is both a ‘party to a case’ and ‘adversely affected’ by the decision” *WWP*, 185 IBLA 293, 298 (2015). “An appeal must be dismissed if either element is lacking.” *Id.* “It is the appellant’s responsibility to demonstrate the requisite elements of standing.” *Id.* When an organization alleges representational standing, *i.e.* standing based on the standing of its members, “it must demonstrate that one or more of its members has a legally cognizable interest in the subject matter of the appeal, coinciding with the organization’s purposes, that is or may be negatively affected by the decision.” *Id.* at 298-99 (citing *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA 79, 86-87 (2005)); accord *Native Ecosystems Council*, 185 IBLA 268, 273 (2015).

In our Show Cause Order, we explained that appellants must demonstrate that they are parties to BLM’s decision they seek to appeal in order to establish they were entitled to receive notice of a BLM decision and appeal it to the Board within the 30-day timeframe set forth by regulation. This Board has held that it is only when BLM fails to serve a decision on a *party*, that the party has 30 days from the receipt of actual notice of the decision in which to file an appeal. See *St. James Village, Inc.*, 154 IBLA 150, 153 (2001); *St. James Village, Inc.*, 139 IBLA 1, 3-4 (1997); *Minchumina Homeowners Association*, 93 IBLA 169, 173 (1986); *Utah Wilderness Association*, 91 IBLA 124 (1986). Because appellants’ NOA can be timely only if they are a party to the decision on appeal, we must determine whether appellants satisfy the requirements of a party.

1. *WLD Has Shown It is a Party to the Case*

[1] A “party to a case” is “one who has taken action that is the subject of the decision on appeal, is the object of that decision, *or has otherwise participated in the process leading to the decision under appeal*, *e.g.*, by filing a mining claim or application for use of public lands, by commenting on an environmental document, or by filing a protest to a proposed action.” 43 C.F.R. § 4.410(b) (emphasis added). For instance, the Board has held the “party to a case” requirement satisfied where an appellant

commented on a draft EA that is the subject of the decision being appealed. *Native Ecosystems Council*, 185 IBLA at 273.

The Board has previously explained the purpose of the “party to a case” requirement as follows:

The purpose of the requirement that an individual be a “party to a case” before a notice of appeal to this Board will lie is not to limit the rights of those who disagree with Bureau actions, but to afford a framework by which decisionmaking at the departmental and State Office level may be intelligently made.

If an individual has been a “party to a case” and seeks review of the Bureau’s actions, it is presumed that the Bureau had the benefit of that individual’s input when the original decision was made; thus the BLM was fully aware of the adverse consequences that might be visited upon such an individual as a result of its action.

Committee for Idaho’s High Desert, 159 IBLA 370, 372 (2003) (quoting *California Association of Four Wheel Drive Clubs*, 30 IBLA 383, 385 (1977)).

With respect to decisions based on EAs, the Board has held that an appellant satisfied the “party to the case” requirement when it had expressly requested leave to participate in that process, but BLM foreclosed the opportunity to do so. *Predator Project*, 127 IBLA 50, 53 (1993). If an appellant is not a party to the underlying matter, then the Board will dismiss the appeal for lack of standing. See 43 C.F.R. § 4.410(b); *WWP*, 185 IBLA at 298.

We are satisfied WLD meets the “party to a case” requirement, having taken into account the following circumstances. WLD states it did not exist at the time of the public comment period on the 2012 EA.⁵ WLD states that, in early 2015, not long after WLD was formed, WLD requested to be considered a member of the “interested public” with respect to the Spruce allotment and other Elko District livestock grazing allotment decisions, and to receive other “Interested Public Mailings” concerning these

⁵ WLD states that Fite has a very long history of involvement and participation in the “Spruce landscape,” and that, prior to joining WLD, Fite, then a member of another organization (WWP), participated in the 2011-2012 process for developing the Spruce Mountain EA, which addressed areas including Upper Spruce, and that WWP filed an appeal of the decision, which relied upon that EA. Response to Order to Show Cause at 3 (citing *WWP*, IBLA 2012-268, Order (Apr. 18, 2013)).

resources. Response to Order to Show Cause at 4. BLM does not dispute this claim. No public notice was given that BLM was in the process of considering a wildfire management decision for the specific lands at issue here. No EA was prepared for these specific units on which WLD could comment. Moreover, BLM provided no notice of availability of a draft or final DNA prior to providing notice of the DR.⁶ However, when, in the summer of 2015, the opportunity arose to comment to BLM on a “proposed BLM trespass action,” which WLD describes as bulldozing public resources “in the very same area as the 2015 chaining DNA,” WLD provided comments. Response to Order to Show Cause at 2-3.

Given WLD’s documented interest in issues pertaining to the public lands and resources in the Project area, WLD’s undisputed notification that it wished to be considered a member of the Interested Public in early 2015, and the absence of opportunities to participate in that capacity in the process leading to the 2015 DR, we conclude WLD qualifies as a party to the case for purposes of standing to appeal the 2015 DR.

2. DGR Has Not Shown It is a Party to the Case

BLM asks the Board to dismiss the appeal with respect to DGR because DGR has not demonstrated it is a party to the case. Motion to Dismiss at 7-8. The Board has reviewed the Response to Order to Show Cause, the Response to Motion to Dismiss, and DGR’s declarations. DGR has made no assertions nor proffered any evidence as to how it has “participated” “in the process leading to the decision under appeal” (*see* 43 C.F.R. § 4.410(b)). Accordingly, we find DGR lacks standing to participate in this appeal.

3. WLD Has Shown It Is Likely to Be Adversely Affected by the 2015 DR

We now consider whether WLD has satisfied the second prong of the standing requirement by demonstrating that it has a legally cognizable interest that is likely to be adversely affected by the decision on appeal.

[2] Under Departmental regulations, “[a] party to a case is adversely affected . . . when that party has a legally cognizable interest, and the decision on appeal has

⁶ The Board is not suggesting that BLM was required to provide public notice that BLM was in the process of considering this wildfire management decision or public notice of the availability of a draft or final DNA prior to providing notice of the DR. Nor do we suggest that BLM was required to prepare an EA. We take note of these facts for the purpose of addressing the issue of WLD’s status as a party to the case.

caused or is substantially likely to cause injury to that interest.” 43 C.F.R. § 4.410(d). Our cases have held that “[t]he legally cognizable interest must be shown to have been held by the appellant at the time of the decision that it seeks to appeal.” *WWP*, 185 IBLA at 298 (citing cases).

“[T]he burden falls upon the appellant to make colorable allegations of an adverse effect, supported by specific facts, set forth in an affidavit, declaration, or other statement of an affected individual that are sufficient to establish a causal relationship between the approved action and the injury alleged.” *WWP*, 185 IBLA at 299. “The appellant need not prove that an adverse effect will, in fact, occur as a result of the BLM action, but we have long held that the threat of injury and its effect on the appellant must be more than hypothetical.” *Id.* (citations omitted). “Standing will only be recognized where the threat of injury is real and immediate.” *Id.* (citations omitted). “[M]ere speculation that an injury might occur in the future will not suffice.” *Id.* (quoting *Colorado Open Space Council*, 109 IBLA 274, 280 (1989)).

The Board has held that an organization fails to establish its causal relationship between the decision on appeal and the alleged injury to its legally cognizable interests, where its members or officers allege they have visited a general project area, but do not allege that they have visited the “specific areas” or “specific portions” of the project area where the alleged harmful actions will take place. *WWP*, 185 IBLA at 299-300; *Native Ecosystems Council*, 185 IBLA at 273-74; *but see Roseburg Resources Co.*, 186 IBLA 325, 331-32 (2015) (held that a landowner, in areas which had experienced wildfires, was adversely affected by BLM’s decision to not reduce fuels in medium and high damage areas, as that decision presented a clear and present risk of injury to the landowner’s adjacent lands; a causal relationship between the decision and alleged injury to the landowner was established); *see also WWP v. BLM*, 182 IBLA 1, 10 (2012) (adverse impact was established based on repeated visits to watersheds downstream from a grazing allotment which were affected by BLM’s management of the allotment).

As the Board has previously explained, “[a] single visit in the past with only a vague intention to return does not establish use sufficient to provide a basis for finding injury.” *Native Ecosystems Council*, 185 IBLA at 274 (quoting *WWP v. BLM*, 182 IBLA at 8-9, citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563-64 (1992)). “However, ‘[r]epeated recreational use itself, accompanied by a credible allegation of desired future use, can be sufficient, even if relatively infrequent, to demonstrate that environmental degradation of the area is injurious to that person.’” *Id.* (quoting *WWP v. BLM*, 182 IBLA at 8-9). Applying these standards, we recently held that when a person made two visits 20 years ago and planned to return sometime in the indefinite future, this was insufficient to show a legally cognizable interest in the area that was the subject of the appeal at the time BLM issued the final decision. *Id.* at 275.

In sum, under Board precedent, we have held that, in order to establish standing to appeal, an appellant carries its burden to show that it has a legally cognizable interest that is or is likely to be adversely affected by the decision on appeal, when it makes colorable allegations, supported by facts, of a causal relationship between the approved action and alleged injury to the specific natural resources, which appellant repeatedly, recreationally used at the time of the decision. We turn now to the case at hand.

BLM asks the Board to dismiss the appeal for failure of appellants to demonstrate a legally cognizable interest at the time of the decision. Motion to Dismiss at 5-6. Prior to the filing of BLM's Motion to Dismiss, WLD claimed only one visit to the general area by one member (Fite's visit just before Thanksgiving 2015), which *post-dated* BLM's 2015 DR on appeal. This claim was insufficient to establish standing to appeal. However, in WLD's subsequent pleading, Fite attests to a long pattern of prior, recreational usage of the specific lands at issue. See Response to Motion to Dismiss at 10 and attachment: Declaration of Fite, dated Feb. 9, 2016. Fite alleges, *inter alia*, she "regularly camp[s], hike[s] and enjoy[s] recreational outings on BLM lands in northeastern Nevada, including BLM's Elko District and the Spruce Mountain Project area. I have repeatedly visited *the lands of the DNA forest destruction site* over the years. I have looked for migratory birds and other wildlife to view, enjoy and try to photograph." Declaration of Fite, Feb. 9, 2016, at 1 (emphasis added). Furthermore, Fite states she "has visited the *specific Spruce Spring area* many times in the past, has participated in BLM tours for the Spruce EA project, has camped, hike[d] and photographed, observed wildlife within the [S]pruce EA project area, and hiked and photographed over the years in the Spruce Spring area." Response to Motion to Dismiss at 10 (emphasis added). She also indicates her intent to return. Declaration of Fite, Feb. 9, 2016, at 5. We find Fite's repeated recreational usage of the specific lands at issue in the DR ("DNA forest destruction site" and the "specific Spruce Spring area") sufficient to show WLD's legally cognizable interest in the Upper Spruce area of the Spruce Mountain project.

BLM next argues that appellants have not shown the 2015 DR is likely to cause injury to appellants' interests, since the 2015 DR merely added chaining and mastication to the vegetation treatment options already available for Upper Spruce. Motion to Dismiss at 6-7 (citing 2015 DR at 1). Under the 2012 EA, "[T]he original treatment types proposed for the Upper Spruce . . . Area included: broadcast burning, pile burning, management of wildland fire, hand thinning, herbicide, seeding, vegetation treatment protection, firewood cutting, and maintenance." 2015 DR at 1. However, "[u]pon further investigation of site conditions," BLM proposed to "add chaining and mastication to the list of viable treatment methods available for use within this treatment area [Upper Spruce]." *Id.* In the 2015 DR, BLM chose to

implement that proposed action of adding chaining and mastication as vegetation treatment options for Upper Spruce. *Id.* at 2. According to BLM, since the 2015 DR merely authorizes BLM's use of *additional* treatment methods in the Upper Spruce, the DR on appeal was not the cause of any harm to appellants' interests. Motion to Dismiss at 7.

WLD disagrees. It avers that the specific actions authorized in the 2015 DR (bulldozer chaining and clearing actions and use of other heavy equipment) will cause indiscriminate damage, destroy forested wildlife habitat and rare biota populations, and harm the very wildlife and rare biota species and habitats that BLM seeks to protect and WLD's membership has enjoyed. Response to Motion to Dismiss at 8-9 (citing attached declarations and compact disc (CD) accompanying the Response, which WLD explains includes "chaining destruction photos" taken elsewhere within Spruce Mountain, e-mailed Dec. 14, 2015).

Additionally, WLD alleges the severe soil and forest disturbance activities included in the 2015 DR will also harm cultural materials, by crushing and displacing soils, destroying ground-based cultural materials, and leaving a "bleak, battered wasteland in their wake." Response to Motion to Dismiss at 9. WLD contends that, by contrast, BLM's originally authorized Upper Spruce action allowed for more selective disturbance, with use of hand cutting and other less intrusive "treatment," than "bulldozers ripping cross-country." *Id.*

In light of WLD's declarations attesting to its members' repeated recreational use of the land at issue prior to and at the time of the 2015 DR, its colorable allegations of a causative link between the approved action and alleged harm to its legally cognizable interest, we find WLD has carried its burden to show it has standing to appeal BLM's 2015 DR.

B. WLD Has Shown Its Appeal was Timely Filed

We next must decide whether WLD timely filed its notice of appeal.

[3] The Department's regulation concerning the time period for filing an appeal before the Board, 43 C.F.R. § 4.411(a)(2), provides:

(i) A person served with the decision being appealed must transmit the notice of appeal in time for it to be received in the appropriate office no later than 30 days after the date of service of the decision; and

(ii) If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit the notice of appeal in time

for it to be received in the appropriate office no later than 30 days after the date of publication.

As stated above, in cases in which the office issuing a decision has not served its decision on the appellant, or published it in the *Federal Register*, the Board has held that the date of service, for purposes of 43 C.F.R. § 4.411(a), is established by the date when such appellant, or appellant's authorized representative, received "actual notice" of the decision. *Saint James Village, Inc.*, 154 IBLA 150, 153 (2001) (citing cases).

BLM signed the 2015 DR on October 13, 2015, and BLM asserts the DR was posted on BLM's public ePlanning internet site on October 20, 2015. See Motion to Dismiss at 3. WLD avers it was actually aware of the 2015 DR on December 13, 2015. Response to Order to Show Cause at 2. On December 29, 2015, appellants mailed their notice of appeal, which was filed on January 4, 2016. On January 8, 2016, BLM served its 2015 DR on WLD (and other persons not a party to this appeal).

BLM argues the appeal is untimely. Motion to Dismiss at 3-4. BLM quotes a BLM policy document, by which BLM provides the following guidance:

Offices should maximize the use of the ePlanning application for NEPA and planning activities. The ePlanning application was specifically developed to provide increased accessibility and transparency in BLM planning and NEPA analysis efforts through use of the Internet to support paperless document development; ePlanning further provides an additional means for distributing electronic documents for both peer review and public comment.

Id. at 3 (quoting "Transitioning from Printing Hard Copies of [NEPA] and Planning Documents to Providing Documents in Electronic Formats," BLM Instruction Memorandum (IM) No. 2013-144 (June 21, 2013)).⁷ BLM states appellants easily could have availed themselves of the ePlanning website to review BLM's decision and supporting documents, but did not do so until months afterwards. Motion to Dismiss at 4. It argues, "In light of the easy accessibility of BLM's website and the amount of time that passed between the decision and the filing of the appeal, the Board should dismiss this appeal for failure to file [the appeal] in a timely manner." *Id.*

Considering these arguments, the Board concludes that neither 43 C.F.R. § 4.411 nor our case law supports dismissal of this appeal on the ground of

⁷ Available at: http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2013/IM_2013-144.html (last visited Mar. 2, 2016).

untimeliness. As we discussed *supra*, the Board's rule concerning the timeliness of an appeal provides that an appellant must file the notice of appeal "no later than 30 days after the date of service of the decision." 43 C.F.R. § 4.411(a)(2)(i) (emphasis added). When the Department has not served the decision on the appellant, we have held that the date of service, for purposes of 43 C.F.R. § 4.411(a), is established by the date when such appellant, or appellant's authorized representative, received "actual notice" of the decision. *Saint James Village, Inc.*, 154 IBLA at 153. If BLM provides notice of the decision in the *Federal Register*, and has not served the decision, then 43 C.F.R. § 4.411 explicitly provides the appeal must be received by the appropriate office within 30 days after publication in the *Federal Register*. 43 C.F.R. § 4.411(a)(2)(ii).

In the appeal before us, nothing in the record indicates BLM published the decision in the *Federal Register*, and BLM does not assert that it did so. BLM sent WLD and others the decision on appeal, but not until after the appeal was filed. WLD avers it was not actually aware of the 2015 DR until December 13, 2015.⁸ Response to Order to Show Cause at 2. Appellants filed the appeal within 30 days of that date. BLM essentially argues that constructive receipt of the DR should be imputed to appellants because BLM identified the DR on its "ePlanning" internet site. BLM cites no rule, statute, or Board precedent supporting its argument, and we know of none. Therefore, in accordance with the Department's duly-promulgated regulation (43 C.F.R. § 4.411(a)) and Board precedent (*see, e.g., Saint James Village, Inc.*, 154 IBLA at 153), we hold that WWP's appeal, filed within 30 days of WWP's actual knowledge of the decision, is timely, and deny the Motion to Dismiss on the grounds of untimeliness.^{9,10}

⁸ DGR does not specify when, in fact, it became aware of the 2015 DR. As discussed elsewhere in this Board decision, since DGR lacks standing to appeal, we here dismiss the appeal as to DGR, and, therefore, need not consider the timeliness issue with respect to DGR.

⁹ We note that BLM's policy encouraging internet posting, by way of permissive language ("Offices should maximize the use of the ePlanning application for NEPA and planning activities"), focuses generally on the public review of documents, and does not explicitly relate to the process and timeliness of appealing from BLM decisions. IM 2013-144.

¹⁰ Finally, appellants request clarification as to whether they must re-file the appeal, in light of BLM's service of the 2015 DR on WLD on Jan. 8, 2016. *See* Response to Order to Show Cause (filed Feb. 4, 2016) at 6-7. We consider this question moot and discuss it no further, since appellants already re-filed their notice of appeal, subsequent to BLM's service of the 2015 DR.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board denies BLM's motion to dismiss the appeal as to WLD, and grants BLM's motion to dismiss the appeal as to DGR.

_____/s/_____
Christina S. Kalavritinos
Administrative Judge

I concur:

_____/s/_____
Amy B. Sosin
Administrative Judge