



September 26, 2016

Via electronic mail and
Certified mail, return receipt requested

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Joe Pizarchik
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**Re: Coal Leases Approved by Unauthorized Bureau of Land Management Employees
and the Implications for Subsequent Leasing and Mining Approvals**

Dear Secretary Jewell, Assistant Secretary Schneider, Director Kornze, and Director Pizarchik:

We are writing to urge you to take immediate action to address the implications of coal leases that have been illegally approved by unauthorized Bureau of Land Management (“BLM”) employees.

In recent rulings from the Interior Board of Land Appeals (“IBLA”), three leases—including a lease by application and two lease modifications—have been set aside on the basis that employees without delegated authority issued the approvals.¹ As the IBLA has now made consistently and explicitly clear, where unauthorized BLM employees approve coal leases, the

¹ See *WildEarth Guardians*, 187 IBLA 349, 353 (May 6, 2016) (overturning Spruce Stomp coal lease by application in western Colorado on basis that it was approved by a BLM Field Manager without delegated authority); Order in IBLA 2016-79 (Aug. 25, 2016) (overturning lease modification for Jim Bridger mine in southern Wyoming on basis that it was approved by a BLM Field Manager without delegated authority); and Order in IBLA 2016-80 (Aug. 25, 2016) (overturning lease modification for Twentymile mine in northwestern Colorado on basis that it was approved by a BLM Field Manager without delegated authority). Further, the IBLA recently issued a show cause order calling on the BLM to provide documentation that a District Manager had delegated authority to approve a lease modification for the Antelope mine in northeastern Wyoming. See Order in IBLA 2016-263 (Sept. 12, 2016).

decisions “are not properly considered [decisions] of the BLM [and] [have] no legal effect.” *WildEarth Guardians*, 187 IBLA 349, 353 (May 6, 2016).

The effects of these rulings are far-reaching and warrant immediate action from your respective offices. Over the years, unauthorized BLM employees have regularly approved coal leases. BLM has not only sold and issued many of these leases, but also approved their development. Further, the Office of Surface Mining Reclamation and Enforcement (“OSMRE”) has recommended approval of mining plans for many of these leases and the Assistant Secretary for Land and Minerals Management has approved these plans. Based on the IBLA’s holdings, however, where an unauthorized employee approves the sale and issuance of a coal lease, that decision is invalid and has no legal effect. Any further decisions made by the BLM, OSMRE, and/or the Secretary’s Office pursuant to any such lease would be similarly invalid. This situation demands you ensure any actions undertaken pursuant to an invalid coal lease approval are canceled, withdrawn, or otherwise undone.

The need to take such action could not be more urgent. In addition to the three leases that have been overturned by the IBLA so far, unauthorized BLM employees, (namely Field Managers and District Managers) have approved numerous additional coal leases over the years. In the states of Colorado, Montana, Utah, and Wyoming, we estimate 18 additional leases have been illegally approved since 2006. *See* Table below. Many more likely have been approved in this timeframe in these and other states.² As is now clear, these approvals are not valid, meaning the decisions are null and void.

² Our list is based on documents made publicly available by the BLM online. However, because BLM has not made all coal leasing documents available online, there are likely additional illegal coal leasing decisions that have been made in these and other states.

Coal Leases Approved by Unauthorized BLM Employees

Lease Number	Type of Lease	Date Approved	Decision Signed By	Status of Lease/Mining
COC-068590	Lease by Application	1-Aug-06	John Husband, Little Snake Field Office Manager	Lease Issued, Mining Plan Under Review
MTM-094378	Lease by Application	3-Feb-07	James A. Albano, Acting Miles City Field Office Manager	Lease Issued, Mining Plan Under Review
WYW-155132	Lease by Application	11-Oct-07	Sarah A. Bucklin, Asst. Field Manager, Casper Field Office	Lease Issued, Mining Approved
MTM-069782	Lease Modification	12-Apr-10	Deborah K. Johnson, Miles City Field Office Manager	Lease Issued, Mining Plan Under Review
WYW-02727	Lease Modification	28-Jul-10	Lance Porter, Rock Springs Field Office Manager	Lease Issued, Mining Plan Under Review
WYW-174596	Lease by Application	1-Mar-11	Stephanie Connolly, Wyoming High Plains District Manager	Lease Issued, Mining Approved
WYW-176095	Lease by Application	10-Aug-11	Stephanie Connolly, Wyoming High Plains District Manager	Lease Issued, Mining Approved
WYW-173408	Lease by Application	17-Oct-11	Stephanie Connolly, Wyoming High Plains District Manager	Lease Issued, Mining Approved
UTU-067939	Lease Modification	15-Dec-11	Patricia Clabaugh, Price Field Office Manager	Lease Issued, Mining Approved
WYW-164812	Lease by Application	1-Feb-12	Stephanie Connolly, Wyoming High Plains District Manager	Record of Decision Issued, Lease Not Sold
WYW-172413	Lease Modification	1-Mar-12	Stephanie Connolly, Wyoming High Plains District Manager	Lease Issued, Mining Approved
COC-074219	Lease by Application	19-Apr-12	Timothy J Wilson for Wendy Reynolds, Little Snake Field Office Manager	Lease Issued, Mining Approved
COC-037210	Lease Modification	14-Aug-12	Barb Sharrow, Uncompahgre Field Office Manager	Lease Issued, Mining Approved
COC-061209	Lease Modification	14-Aug-12	Barb Sharrow, Uncompahgre Field Office Manager	Lease Issued, Mining Approved
WYW-154595	Lease Modification	28-Feb-13	Rock Springs Field Office Acting Field Manager	Lease Issued, Mining Plan Under Review
WYW-173360	Lease by Application	5-Apr-13	Stephanie Connolly, Wyoming High Plains District Manager	Record of Decision Issued, Lease Not Sold
WYW-172684	Lease by Application	1-May-13	Stephanie Connolly, Wyoming High Plains District Manager	Record of Decision Issued, Lease Not Sold
COC-0123475	Lease Modification	27-Jun-16	Joseph Meyer, BLM Northwest District Manager	Lease Issued, Mining Plan Under Review

Unfortunately, since the purported approval of these leases, numerous actions have been undertaken in reliance upon the unauthorized decisions. For example, with regards to coal lease COC-074219, the lease was purportedly sold and issued in 2012 by the BLM and mining of the lease has been approved by OSMRE and the Secretary's Office. Similarly, with regards to the modification of coal lease MTM-094378, the lease was purportedly sold and issued in 2007 and OSMRE has recommended approval of mining of the lease.

Where there is no valid decision to lease federal coal, the BLM lacks any authority to sell and issue a lease, or to approve development of that coal, pursuant to its coal management regulations at 43 C.F.R. § 3400. Further, pursuant to regulations at 30 C.F.R. § 746, if there is

no validly leased federal coal, OSMRE and the Assistant Secretary of the Interior for Land and Minerals Management lack any authority to make recommendations regarding the mining of that coal or ultimately to approve mining. Accordingly, any action taken by BLM, OSMRE, and/or the Assistant Secretary pursuant to an invalid leasing decision would also be invalid.

This reality demands that you take steps to confront any and all illegal coal leasing decisions and to undo any and all actions undertaken in reliance upon these illegal decisions. To this end, we call on you to take the following steps to rectify this situation:

- Declare null and void any and all coal leases, including leases by application and lease modifications, which have been sold and issued pursuant to a decision by a BLM employee without delegated authority to approve coal leases. Any and all payments made by the lessee related to the lease shall be refunded. The BLM must also direct the lessee to cease any and all development of the lease and to restore all disturbed lands.
- Rescind any and all mining plans and mining plan modifications approved by the Assistant Secretary pursuant to a leasing decision made by a BLM employee without delegated authority to approve coal leases.
- Where a coal lease has been approved by a BLM employee without delegated authority to approve coal leases, but has not yet been sold, immediately rescind the approval.
- Where OSMRE is reviewing whether to recommend approval of a mining plan or mining plan modification pursuant to a leasing decision made by a BLM employee without delegated authority to approve coal leases, immediately halt the review.

Undertaking these remedial actions is not only necessary, but also reasonable and fully within the authority of your agencies. The purported leasing decisions “have no legal effect” according to IBLA precedent, meaning BLM is not required to initiate cancellation proceedings pursuant to 43 C.F.R. § 3452.2 to cancel any issued lease. For decisions where leases have not been issued, the BLM has full authority to rescind or modify any such decisions. Furthermore, under 30 C.F.R. § 746, OSMRE and the Assistant Secretary have full authority to cancel or withdraw mining plan approvals, as well as to halt any mining plan review.

Importantly, undertaking the aforementioned actions is necessary to protect the public interest. Since 2006, we estimate 18 leases containing nearly 2.5 billion tons of coal spanning 24,000 acres have been improperly authorized. *See* Table below. This is a significant amount of public resource. To put this into perspective, overall federal coal production amounts to approximately 400 million tons annually. Far from a technicality, the fact that unauthorized employees have signed decisions means the Department of the Interior cannot ensure the integrity, objectivity, and necessity of the disposition of this resource. This is a major failing of the American public trust and runs squarely contrary to the Mineral Leasing Act’s requirement that coal leasing be undertaken only where it is “appropriate and in the public interest.” 30 U.S.C. § 201(a)(1).

Coal Leases Approved by Unauthorized BLM Employees and Related Information

Lease Number	Lease Name	Associated Mine	Location (State/County)	Acres in Lease	Tons of Coal in Lease
COC-068590	Collom Tract	Colowyo	Colorado/Moffat	1,406.71	92,000,000
COC-074219	Sage Creek	Sage Creek	Colorado/Routt	400	3,200,000
COC-061209		Bowie No. 2	Colorado/Delta	265.00	Not reported
COC-037210		Bowie No. 2	Colorado/Delta	237.43	Not reported
COC-0123475		Colowyo	Colorado/Moffat	27.84	Not reported
MTM-094378		Spring Creek	Montana/Big Horn	1,207	151,300,000
MTM-069782		Spring Creek	Montana/Big Horn	498.11	50,800,000
UTU-067939	Winter Quarters	Skyline	Utah/Carbon	770.52	6,900,000
WYW-02727		Jim Bridger	Wyoming/Sweetwater	560.00	Not reported
WYW-174596	South Hilight	Black Thunder	Wyoming/Campbell	1,976.69	213,600,000
WYW-176095	South Porcupine	North Antelope-Rochelle	Wyoming/Campbell	3,243.02	401,830,508
WYW-173408	North Porcupine	North Antelope-Rochelle	Wyoming/Campbell	6,364.28	721,154,828
WYW-164812	North Hilight	Black Thunder	Wyoming/Campbell	2,613.50	263,400,000
WYW-172413	School Creek	School Creek	Wyoming/Campbell	40.80	135,876
WYW-154595		Jim Bridger	Wyoming/Sweetwater	320.36	Not reported
WYW-173360	Maysdorf II North	Cordero Rojo	Wyoming/Campbell	1,338.37	167,000,000
WYW-172684	Hay Creek II	Buckskin	Wyoming/Campbell	1,253.27	167,001,577
WYW-155132	Eagle Butte West	Eagle Butte	Wyoming/Campbell	1,427.77	238,000,000
			TOTALS	23,950.67	2,476,322,789

Simply because resources and authorities may have been committed in relation to the aforementioned illegally approved coal leases does not justify inaction or maintenance of the status quo. Coal leasing itself is a discretionary act. *See* 30 U.S.C. § 201(a) (Secretary only “authorized” to lease federal coal). Mining plan approvals are similarly subject to complete discretion, with the Secretary required only to approve, disapprove, or modify such plans. *See* 30 U.S.C. § 208(c). BLM’s own regulations are instructive in this case as they make clear that the United States government is “not bound or estopped by the acts of its officers or agents when they enter into an arrangement to do or cause to be done what the law does not sanction or permit.” 43 C.F.R. § 1810.3(b). To this end, the authority of the United States to protect the public interest is “not vitiated or lost by acquiescence of its officers or agenda, or by their laches, neglect of duty, or delays in the performance of their duties.” 43 C.F.R. § 1810.3(a).

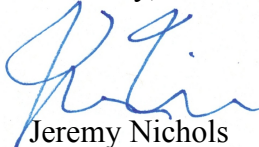
In fact, under her general managerial power over public lands, the Secretary has inherent authority to cancel illegally issued leases. *See Boesche v. Udall*, 373 U.S. 472 (1963). Pursuant to this authority, the IBLA has recognized that where lands described in a lease were not subject to leasing at the time of lease issuance, “the Department must cancel the lease to the extent that it embraces such lands, since, as to those lands, the lease is a legal nullity.” *Clayton W. Williams Jr.*, 103 IBLA 192, 202-203 (July 25, 1988). Here, because unauthorized employees approved

the coal leases, the lands included in the purported leases were not subject to leasing under a legally valid approval. Accordingly, any lease issued pursuant to an illegal approval must be canceled, as it is a “legal nullity.”

It is unfortunate that we are in this situation in the first place. However, it underscores that the Department of the Interior, BLM, and OSMRE are moving in the right direction in terms of reforming the federal coal program and ensuring that, going forward, the program is implemented consistent with law, the public interest, and with utmost integrity. Yet even as your offices may be progressing in the right direction, there remains a critical need to confront and rectify past missteps.

We appreciate your time and attention to this urgent matter and request that you respond as soon as possible to indicate what actions you plan to take to address the issue of coal leases approved by unauthorized BLM employees. Thank you.

Sincerely,



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