

Energy, Environmental, and Natural Resources Law Clinic 2017-2018

Katie Barlow
Melinda Frazier
Austin Huff
Bobbi Owen


University of Wyoming
College of Law
Laramie, Wyoming 82071

Max Rerucha
Megan Romano
David Strait
Casey Terrell

September 18, 2017

MEMORANDUM

TO: EENR Law Clinic interns

FROM: Jay Jerde 
Special Assistant Attorney General

RE: Research Assignment — How to Review an Administrative Record

Please provide your responses in a separate memorandum, addressed to me, on Clinic letterhead using the Clinic memorandum format. Please submit the completed assignment via WyoCourses no later than 5 pm on Sunday, September 24, 2017.

1. Find a published decision from the Tenth Circuit Court of Appeals in which the court explained what constitutes the administrative record in a case involving a challenge to a final agency action.
 - A. Give the Bluebook citation for the decision.
 - B. What source did you use to find the rule in question? (e.g. Lexis, a website, or a particular printed source)

- C. **Briefly** summarize how the court defined what constitutes the administrative record.
2. Find a published court decision from the District of Columbia Circuit (either district court or court of appeals) in which the court addressed whether deliberative documents should be included in an administrative record.
- A. What source did you use to find the court decision (e.g. Lexis, a website, or a particular printed source)?
- B. Give the Bluebook citation for the court decision.
- C. **Briefly** summarize what the court said about whether deliberative documents should be included in an administrative record.
3. Find a case from the federal district court in Wyoming that addresses whether documents withheld under the deliberative process privilege must be identified in a privilege log.
- A. What source did you use to find the court decision (e.g. Lexis, a website, or a particular printed source)?
- B. Give the Bluebook citation for the court decision.
- C. **Briefly** summarize what the court said about whether such documents must be disclosed in a privilege log.
- D. Do courts in other circuits disagree with the position of the Wyoming federal district court? If so, Give the Bluebook citation for a case where the court disagrees and **briefly** summarize that court's view on the issue.
4. Find a primer published by the Rocky Mountain Mineral Law Institute which addresses the compilation of the administrative record in public land cases.
- A. What source did you use to find the primer (e.g. Westlaw, Lexis, a website, or a particular printed source)?
- B. Give the Bluebook citation for the primer.

- C. **Briefly** summarize what the author of the primer said about whether deliberative materials should be included in an administrative record.
5. Find a document created by the United States Department of the Interior that provides tips or guidance on what a federal agency should include in an administrative record that will be filed with a federal court.
- A. What source did you use to find the guidance document (e.g. Lexis, a website, or a particular printed source)?
 - B. What date was the guidance document authored or published?
 - C. According to the guidance document, what documents should the agency not include in an administrative record?