

JOE TROW

IBLA 89-483

Decided July 3, 1991

Appeal from a letter sent from the Montana State Office, Bureau of Land Management, describing prior BLM actions taken to establish boundaries for the Upper Missouri Wild and Scenic River. MTM 12534.

Appeal dismissed.

1. Appeals--Board of Land Appeals--Rules of Practice:  
Appeals: Dismissal--Rules of Practice: Appeals:  
Standing

The existence of a BLM decision, adverse to a party to a case, is necessary to provide standing to appeal to the Board of Land Appeals under 43 CFR 4.410(a). An appealable decision takes or prohibits some action. A letter restating and summarizing Departmental policy that was put into effect by prior planning documents is not an appealable decision. An appeal from such a letter will be dismissed.

2. Administrative Procedure: Administrative Review--  
Appeals: Jurisdiction--Board of Land Appeals

The Board of Land Appeals lacks jurisdiction to review appeals from decisions establishing resource management plans. The Board does, however, have authority to review action taken to implement such plans. If it is not alleged and the record does not show that there has been a decision implementing such a plan, an appeal challenging the plan will be dismissed.

APPEARANCES: Joe Trow, Lewiston, Montana, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Joe Trow has appealed from a letter that issued May 26, 1989, from the Montana State Office, Bureau of Land Management (BLM). The letter explained how management actions taken between 1975 and 1989 to establish boundaries for the Upper Missouri Wild and Scenic River affected current management planning in effect in 1989.

The Wild and Scenic Rivers Act became law on October 2, 1968. As adopted, section 3(a) of the Act, 82 Stat. 907, 16 U.S.C. § 1274(a) (1970), designated eight rivers and adjacent lands to be components of the national

wild and scenic rivers system. No portion of the Missouri River was originally included in the system. Nonetheless, part of the Missouri River discussed by the letter of May 26, 1989, was identified for further study to determine if it had potential for inclusion in the wild and scenic rivers system by section 5(a)(13) of the 1968 Act, 82 Stat. 910, 16 U.S.C. § 1276(a)(13) (1970).

Subsequently, the Act of October 12, 1976, 90 Stat. 2327, amended section 3(a) of the Wild and Scenic Rivers Act, inter alia, to include within the wild and scenic system: "(14) Missouri, Montana. -- The segment from Fort Benton one hundred and forty-nine miles downstream to Robinson Bridge, as generally depicted on the boundary map entitled 'Missouri Breaks Freeflowing River Proposal', dated October 1975, to be administered by the Secretary of the Interior." The 1976 Act further provided that:

Sec. 202. After consultation with the State and local governments and the interested public, the Secretary shall, pursuant to section 3(b) of the Wild and Scenic Rivers Act and within one year of enactment of this Act--

(1) establish detailed boundaries of the river segment designated as a component of the National Wild and Scenic Rivers System \* \* \*.

(2) determine, in accordance with the guidelines in section 2(b) of the Wild and Scenic Rivers Act, which of the three classes--wild river, scenic river, or recreation river-- best fit portions of the river segment, designate such portions in such classes, and prepare a management plan for the river area in accordance with such designation.

Section 203(a) of the 1976 Act provides that the Secretary of the Interior shall manage the river area pursuant to provisions of the 1976 Act and the Wild and Scenic Rivers Act, and in accordance with the provisions of the Taylor Grazing Act and other appropriate authorities available to him. Section 203(b)(1)(D) of the 1976 Act authorizes the Secretary to acquire land and interests in land subject to the limitation "in that portion of the river area downstream from Coal Banks Landing so as to provide, wherever practicable and necessary for the purposes of this Act and the Wild and Scenic Rivers Act, rim-to-rim protection for such portion."

Section 3(b) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1274(b) (1988), referred to in section 202 of the Act of October 12, 1976, provides for establishment of management boundaries once a river has been designated as part of the wild and scenic rivers system:

The agency charged with the administration of each [designated] component of the national wild and scenic rivers system \* \* \* shall \* \* \* establish detailed boundaries therefor (which boundaries shall include an average of not more than three

hundred and twenty acres per mile on both sides of the river); determine which of the classes [wild, scenic or recreational] best fit the river or its various segments; and prepare a plan for necessary developments in connection with its administration in accordance with such classification. Said boundaries, classification, and development plans shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives.

In response to inquiries from Joe Trow questioning BLM's establishment of management boundaries, BLM provided the letter of May 26, 1989. The letter stated that after consultations were had as required by section 202 of the 1976 Act, a preliminary management plan was completed by BLM staff in Montana. On September 15, 1977, the plan was recommended to BLM headquarters in Washington, D.C. The letter explained that the boundaries between Coal Banks Landing and the Charles M. Russell National Wildlife Range identified in the plan were nearly identical to the boundaries depicted on the 1975 map referred to by Congress in the 1976 Act and that management of the area has proceeded using those boundaries ever since.

The May 26 letter also explained that there is no documentary evidence that the plan was submitted to Congress before 1989 and that the plan was published in the Federal Register in 1980. See 45 FR 4474 (Jan. 22, 1980). The May 26 letter explained that the management boundaries have been accepted by the state and local governments, as well as the general public since 1977 and that BLM management of the area has been consistent with the concept announced by the plan since 1977. The letter concluded that any defects in procedures used to establish the management area were cured when the plan was incorporated into a proposed resource management plan (RMP) that brought the area administered under both the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701-1784 (1988), and the Wild and Scenic Rivers Act, supra. The May 26 letter further explained that Congress has recognized the designated management area boundaries through appropriations to the Land and Water Conservation Fund for acquisition of lands and interests in lands within the river area.

Finally, BLM stated it had reviewed a public notice that was published in a Lewiston newspaper and in the Federal Register on April 19, 1989 (54 FR 15816-18), and did not find that any corrections to that notice were warranted. By that notice BLM proposed to withdraw approximately 94,023 acres of public land to protect resource values within the Upper Missouri Wild and Scenic River management area. The letter stated that publication of the notice in the Federal Register had the effect of segregating the public lands described from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. BLM asserted that the lands will remain segregated for a period of 2 years unless the withdrawal application is denied or canceled or the withdrawal is formally approved prior to that date.

Trow argues that BLM failed to follow the procedure required by statute when it established the management boundaries of the Upper Missouri

Wild and Scenic River. He asserts that there is no evidence that the boundary description or the river classification and management plan were ever submitted to the President of the Senate and Speaker of the House of Representatives through the Secretary of the Interior and published in the Federal Register as required by section 3(b) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1274(b) (1988). He also contends that BLM exceeded a maximum acreage allowed by section 3(b) for the management area. These defects, Trow concludes, have invalidated the management area boundaries sought to be established by BLM. In his statement of reasons (SOR), he contends that BLM "is adversely using these protested legal boundaries against Joe Trow" (SOR at 64) and that his appeal is important to him "and my Montana neighbors" as well as "the total general public" (SOR at 68). Trow refers to the Freedom of Information Act, 5 U.S.C. § 552 (1988), for the proposition that a person may not be adversely affected by a matter required to be published in the Federal Register and not so published unless the person has actual knowledge of the terms thereof (SOR at 3, 23). He argues that since the boundaries, classifications, and management plans were not timely published in the Federal Register, they cannot be used "to restrict any person of the general uses of those lands" (SOR at 38).

Trow concludes that, since the boundaries are ineffective, Federal funds appropriated for lands within authorized boundaries under the Wild and Scenic Rivers Act have been spent "in a very improper manner" (SOR at 7). He urges that the general public needs to know the facts surrounding the establishment of the boundaries and that the records should be "open to public view" (SOR at 13, 18). He asserts that he has not been provided with various documents he has requested nor has he been provided "a view" of the public record (SOR at 18, 63). Finally, he states that if BLM does not have a copy of the documents required by statute to have been prepared, the boundaries lack legal effect and cannot be used to restrict the "general use of our public lands from the general public" (SOR at 62).

In answer, BLM has moved to dismiss Trow's appeal on the ground that the letter of May 26, 1989, is not a decision that adversely affects Trow. BLM contends that Trow was not adversely affected by the recitation in the May 26 letter of BLM's position concerning establishment of the boundaries of the Upper Missouri Wild and Scenic River. In reply, Trow reiterates that he and all the citizens of the United States are adversely affected by the failure to comply with the law in establishing management boundaries for the river area and by BLM expenditure of tax money for management of an area whose boundaries do not meet the requirements of law.

[1] The letter of May 26, 1989, was not a decision that can be appealed to this Board. The letter is a narration of management actions taken from 1975 until 1989 to establish management boundaries, sent in response to a request that such information be supplied. This letter announces no decision and proposes none, but instead describes the historical development of BLM's policy concerning management of the river system boundaries. The letter makes no determination regarding Trow's individual rights and neither takes nor prevents action. Consequently, no decision

adverse to Trow subject to appeal to this Board under 43 CFR 4.410(a) was made by this correspondence. See Cities of Colorado Springs & Aurora, 77 IBLA 395 (1983).

Departmental regulation 43 CFR 4.410(a) confers standing to appeal from "a decision of an officer of the Bureau of Land Management." While standards governing questions of standing to appeal administrative decisions are generally less restrictive than those applied to determinations of judicial authority to review agency action, the requirement that there be "a decision of an officer" before there can be an appeal is essential. The "decision" referred to by the regulation has been interpreted to mean that some action affecting individuals having interests in the public lands is either announced or prohibited. (See generally California Association of Four Wheel Drive Clubs, 30 IBLA 383 (1977), finding that past users of the California desert had standing to appeal closure of BLM lands to vehicular use; and compare Colorado Open Space Council, 109 IBLA 274, (1989), holding that organizations of recreational users protesting suspension of an oil and gas well drilling requirement lacked standing to appeal because the effect of BLM's suspension order on their rights as users of the public lands was too speculative.) Consistent with this approach, general policy papers issued by BLM are not appealable to this Board. Headwaters, Inc., 101 IBLA 234, 239 (1988). Nor can appeals be taken from letters used by BLM to make "statements of policy," rather than to announce a specific action. James C. Mackey, 114 IBLA 308, 315 (1990).

We may take official notice that Trow has a mining claim situated on land inside the management boundary of the Upper Missouri Wild and Scenic River corridor. 1/ Nonetheless, he has failed to show how or whether his mining interests near the river are affected in any way by BLM's letter. 2/ In fact, he does not discuss his mining claim. Rather, he makes assertions that he, as a citizen, has been adversely affected by BLM's past failure to comply with various statutes that require land planning but does not relate his grievance to any action taken, proposed, or forbidden by BLM that affects his individual rights. 3/ Trow asserts that he and the

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1/ The decision in John R. Lynn, 106 IBLA 317 (1989), reversed a BLM decision dated February 25, 1988, declaring Trow's Spitoon #3 mining claim null and void, ab initio, in its entirety, because the claim was located on lands not open to mineral entry.

2/ By way of contrast with the instant appeal, BLM points out that Trow has another appeal pending before the Board (IBLA 89-361) from a BLM decision requiring Trow to submit a plan of operations prior to commencing mining related activities located within the management corridor of the Upper Missouri National Wild and Scenic River. BLM submits that Trow would have standing to appeal that decision (BLM Answer at 2-3). Whether that contention is correct cannot be considered in the context of this appeal, since this appeal was directed exclusively against the letter of May 26, 1989.

3/ A similar approach was taken by the appellant in Mark S. Altman, 93 IBLA 265, 266 (1986), when he argued that issuance of a permit to drill an exploratory oil or gas well threatened "the quality of life of the

general public were restricted when the present boundaries were established, but does not argue that the May 26, 1989, letter established those boundaries. Such allegations do not establish that he has standing to appeal from the letter of May 26, 1989, under 43 CFR 4.410.

[2] If, however, Trow intends by this appeal to challenge an amendment of the RMP described by the May 26 letter, it is also well established that this Board does not have jurisdiction to review decisions to approve or amend an RMP. Such plans "are designed to guide and control future management actions" rather than implement decisions that affect specific parcels of land or the rights of individuals to use Federal lands. 43 CFR 1601.0-2, 1601.0-5(k); The Wilderness Society, 109 IBLA 175, 178 (1989).

Because an RMP establishes management policy, it is subject only to protest to the Director, BLM, whose decision is final for the Department. 43 CFR 1610.5-1 and 1610.5-2. On the other hand, decisions that implement a management plan or amendment are appealable to the Board. See 43 CFR 1610.5-3(b); The Wilderness Society, *supra* at 178. No implementing decision was made, however, by the letter of May 26, 1989, from which this appeal was taken. Although the May 26 letter did mention that the RMP had been amended in the previous month, it did not directly apply the amendment to any action affecting Trow, nor does he allege that it did. While it is clear that Trow is in general disagreement with the planning conducted by BLM in the vicinity of the Upper Missouri Wild and Scenic River, it is also apparent that he does not claim in his appeal now before us that the plan was implemented by the May 26 letter so as to affect him adversely in any way.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

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Franklin D. Arness  
Administrative Judge

I concur:

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Wm. Philip Horton  
Chief Administrative Judge

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fn. 3 (continued)

citizens of Wilson, Wyoming and myself" and that "the general public and myself, has [sic] much at stake in this dispute." In dismissing Altman's appeal, we observed that "[w]hile we do not question the sincerity of appellant's concerns, these statements do not identify an individual interest that is adversely affected." *Id.* In Altman, unlike this case, there was a decision that allowed an action on the public lands challenged by Altman.