



NOTE: This disposition is nonprecedential.

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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June 9, 2016

IBLA 2015-206)	DOI-BLM-ID-B010-2014-0036-EA
)	
WILDLANDS DEFENSE)	Oil and Gas Lease Sale
)	
)	Motion to Dismiss Granted;
)	Appeal Dismissed

ORDER

Wildlands Defense (WLD) has appealed from a June 9, 2015, decision of the Idaho State Office, Bureau of Land Management (BLM), denying WLD's protest of BLM's sale of five parcels (Parcels) of Federal mineral estate. Because we conclude that WLD has not shown that it is adversely affected by BLM's decision, as required under 43 C.F.R. § 4.410, we dismiss its appeal for lack of standing.

PROCEDURAL BACKGROUND

On February 27, 2015, the Four Rivers (Idaho) Field Office, BLM, issued a Decision Record & Leasing Recommendation (Field Office DR) stating that its final decision and recommendation was to implement the actions described in Alternative B of Environmental Assessment (EA) DOI-BLM-ID-B010-2014-0036-EA, prepared pursuant to the National Environmental Policy Act of 1969 (NEPA).¹ In Alternative B, the Field Office recommended offering the five disputed Parcels for lease. The Parcels include 997 acres of BLM-administered lands (surface) and 5,352 acres of split estate lands (private surface with BLM-managed subsurface) within a 15,644-acre area in Payette County, Idaho.² The Leases would include no surface occupancy (NSO) and no subsurface occupancy (NSSO) stipulations that would prevent any development, above or below ground, on the Leases until BLM completes the Four Rivers Resource Management Plan (Four Rivers RMP).³

¹ 42 U.S.C. §§ 4321-4370h (2012); see 40 C.F.R. Parts 1500-1508 and 43 C.F.R. Part 46.

² Field Office DR at 1.

³ *Id.*; EA at 9.

On April 3, 2015, WLD appealed from and petitioned for a stay of the Field Office DR, which the Board docketed as IBLA 2015-129. We issued an order dated June 8, 2015, denying WLD's petition for stay and ordering WLD to show cause why its appeal should not be dismissed for lack of standing. WLD failed to respond to our order, and on September 28, 2015, we dismissed WLD's appeal in IBLA 2015-129 for lack of standing.

On February 27, 2015, the Idaho State Office, BLM, posted a Notice of Competitive Lease Sale, which advertised the Parcels as subject to the Lease Sale scheduled for May 28, 2015. Publication of the Notice initiated a 30-day protest period that concluded on March 30, 2015. On March 30, 2015, WLD filed a protest objecting to inclusion of the Parcels at the Lease Sale, alleging that oil and gas development from the Lease Sale will negatively impact air quality, water quality, and wildlife.

The Lease Sale took place as scheduled. By decision dated June 9, 2015, BLM denied WLD's protest. In denying WLD's protest, BLM relied on the fact that the Leases were offered with NSO and NSSO stipulations that will prevent any development, above or below ground, on the Leases until the Four Rivers RMP is finalized. As a result, BLM found that "no immediate impacts to natural resources will occur on the Federal lands."⁴

On June 10, 2015, the Idaho State Office issued its DR stating that it had decided to issue Leases for the five Parcels. In that DR, the State Office stated that on June 9, 2015, it had issued two separate decisions denying protests filed by WLD and WildEarth Guardians, respectively.

WLD timely appealed BLM's dismissal of its protest and sought a stay of the appealed decision. BLM filed a response and a motion to dismiss, arguing that WLD lacked standing. BLM argued that WLD had failed to establish that it is a "party to the case" as required by 43 C.F.R. § 4.410(a).⁵ BLM further claimed that WLD provides "nothing that contains the specificity required by case precedent," such as "specific references or discussions in the Petition concerning any of the specific parcels covered by WLD's appeal, or any attempt by WLD to establish that it (or its individual members) is a party to the case for each such parcel."⁶ BLM claimed that "the alleged harm is simply speculation regarding future harm," with "WLD go[ing]

⁴ Decision at 17.

⁵ Motion to Dismiss at 6.

⁶ *Id.*

as far as to state that the decision is ‘irreparable in that it will permit future extreme risk of irreversible degradation of public resources.’”⁷ BLM argued that WLD has not demonstrated that one of its members would be harmed by BLM’s decision, that the alleged harm would occur regardless of BLM’s decision, and that the alleged harm is speculative in nature.⁸

By Order dated July 28, 2015, we took BLM’s Motion to Dismiss under advisement, denied WLD’s Petition for Stay, and directed WLD to show cause, on or before August 4, 2015, why its appeal should not be dismissed for lack of standing. On July 29, 2015, WLD submitted a Response to BLM’s Motion to Dismiss, which includes the Declaration of Kathleen Fite, Secretary and Public Lands Director of WLD, for purposes of establishing WLD’s standing to appeal.

On August 17, 2015, BLM filed with the Board its “Notice of Appellant’s Failure to Show Cause” in which it argued that WLD “failed to timely show cause why its appeal should not be dismissed” and, therefore, that the Board should grant its Motion to Dismiss.⁹ In a filing submitted on August 18, 2015, WLD indicated that it intended for its July 29, 2015, Response to provide the demonstration of standing we required in our July 28, 2015, Order. Upon review of WLD’s Response and the accompanying Fite Declaration, we reject BLM’s Motion to Dismiss.

BLM filed a “Reply in Support of its Motion to Dismiss” on August 21, 2015. BLM argues that WLD has not demonstrated that its members would be adversely affected by BLM’s decision to lease the Parcels because “WLD’s alleged harm is not the result of action or inaction taken by the BLM.”¹⁰ In support, BLM argues that the NSO and NSSO stipulations will prevent any surface or subsurface disturbance on the Parcels, and that WLD’s allegations of harm that will occur as a result of oil and gas drilling and production activities on the Leases therefore have no basis in fact.¹¹ BLM adds that oil and gas will be produced from the leaseholds whether BLM issues the Leases or not because the hydrocarbons will be extracted via wells on nearby State trust and private lands.¹²

⁷ *Id.* at 7 (quoting Petition at 18).

⁸ *Id.*

⁹ BLM’s Notice at 1.

¹⁰ Reply at 7.

¹¹ *Id.*

¹² *Id.* at 7-8.

*WLD DOES NOT MEET THE REQUIREMENTS FOR STANDING**A. The Legal Standard*

To pursue an appeal to this Board, an appellant must have standing under 43 C.F.R. § 4.410. An appellant must demonstrate it is both a “party to a case” and “adversely affected” by the decision on appeal, within the meaning of 43 C.F.R. § 4.410(b) and (d), respectively.¹³ It is the responsibility of the appellant to demonstrate the requisite elements of standing.¹⁴ If either element is lacking, the appeal must be dismissed.¹⁵

WLD is a party to the case, having commented on the EA and protested BLM’s lease sale.¹⁶ The issue is whether WLD is “adversely affected” by BLM’s decision.¹⁷ A party is adversely affected by a decision when the decision has caused or is substantially likely to cause injury to a legally cognizable interest held by that party.¹⁸ The Board has long recognized that recreational or other use of lands and/or resources may be a legally cognizable interest, and that an agency’s decision must have caused or be substantially likely to cause injury to that interest for standing to be demonstrated.¹⁹

The burden falls upon an appellant seeking to establish standing to appeal to make colorable allegations of an adverse effect, supported by specific facts, sufficient to establish a causal relationship between the approved action and the injury alleged.²⁰ The appellant need not prove that an adverse effect will, in fact, occur as a result of the action, but the threat of injury and its effect on the appellant must be more than hypothetical.²¹

When an organization appeals a BLM decision, it must demonstrate either that the organization itself has a legally cognizable interest or that one or more of its

¹³ See *Western Watersheds Project*, 185 IBLA 293, 298 (2015).

¹⁴ *Id.*; *Colorado Open Space Council*, 109 IBLA 274, 280 (1989).

¹⁵ *WildEarth Guardians*, 183 IBLA 165, 170 (2013).

¹⁶ 43 C.F.R. § 4.410(b).

¹⁷ 43 C.F.R. § 4.410(d).

¹⁸ *Id.*; see also, e.g., *Western Watersheds Project*, 185 IBLA at 298; *Native Ecosystems Council*, 185 IBLA 268, 273 (2015).

¹⁹ See, e.g., *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA 79, 83-88 (2005).

²⁰ *Native Ecosystems Council*, 185 IBLA at 273; *The Fund for Animals, Inc.*, 163 IBLA 172, 176 (2004); *Colorado Open Space Council*, 109 IBLA at 280.

²¹ *Native Ecosystems Council*, 185 IBLA at 273; see also *The Fund for Animals, Inc.*, 163 IBLA at 176.

members or staff persons has a legally cognizable interest in the subject matter of the appeal coinciding with the organization's purposes that is or may be injured by the approved action.²² When, as here, an organization appealing a BLM decision seeks to demonstrate standing through its members, it may do so by submitting an affidavit, declaration, or other statement by a member or members attesting to the fact that they use the lands and/or resources at issue, or otherwise have a legally cognizable interest, and that such interest is substantially likely to be injured by the approved action.²³

In *The Coalition of Concerned National Park [Service] Retirees*, the Board stated that “[i]n the oil and gas lease sale context, if one can show a connection between a legally cognizable interest that would likely be injured by leasing one or more of the parcels, then one has established that he or she is or may be adversely affected as to those parcels.”²⁴ And in *Theodore Roosevelt Conservation Partnership*, we held that an appellant organization lacked standing because it did “not establish that it or any of its members . . . has used or in the future will use any of the protested [lease] parcels.”²⁵ In its Reply, BLM notes that “[i]n the context of a competitive oil and gas lease sale, ‘each individual parcel has its own characteristics and is offered separate from every other parcel’ and as such, standing for one parcel in a sale ‘does not establish that the [appellant] has standing to appeal as to all the parcels.’”²⁶ As discussed below, WLD does not establish that it has a legally cognizable interest under this standard.

B. WLD Has Not Shown It Has a Legally Cognizable Interest

In the Declaration included with WLD's Response, Fite states that she has “long visited the lands of the Payette and Little Willow watersheds . . . and the area of Paddock Reservoir, where [she has] worked, camped, hiked and looked for leaf

²² See *Western Watersheds Project*, 185 IBLA at 298-99; *Board of County Commissioners of Pitkin County, Colorado [Pitkin County]*, 186 IBLA 288, 308-10 (2015).

²³ *WildEarth Guardians*, 183 IBLA at 170.

²⁴ 165 IBLA at 84.

²⁵ 178 IBLA 201, 208 (2009).

²⁶ Reply at 5 (quoting *Coalition of Concerned National Park [Service] Retirees*, 165 IBLA at 81, and citing *Wyoming Outdoor Council*, 153 IBLA 379, 384 (2000)); see also *Wyoming Outdoor Council*, 153 IBLA at 384 (appellants had standing to challenge 3 of 49 oil and gas lease parcels); *Center for Native Ecosystems*, 163 IBLA 86, 90-91 (2004) (two appellant groups had standing to challenge 7 and 1 of 36 oil and gas lease parcels, respectively).

and other fossils.”²⁷ She adds that she would be affected by air pollution resulting from BLM’s decision, stating that “[a]s a resident of [the] region, [she] must breathe air in the already gravely polluted Treasure valley airshed” and that the pollutants “from oil and gas activity that BLM authorizes in the Little Willow EA will cumulatively add to the pollution.”²⁸ She states that she and other WLD members “are faced with living with the consequences of climate change” that would be exacerbated by BLM’s decision.²⁹ She further states that she uses the “waters of the Payette River system (into which Little Willow and Big Willow Creek waters drain) and downstream Snake River . . . for recreational and aesthetic purposes . . . includ[ing] wading, or other contact with the water, as well as contact by pets such as dogs.”³⁰ She alleges that these activities “are jeopardized by increased pollution and decreased water flows that will be caused by Oil and Gas exploitation.”³¹ In addition, Fite avers that she views, photographs, and studies wildlife that may be affected by BLM’s actions.³² She further states that she “plan[s] to continue visiting and viewing wildlife, living in southern Idaho and thus breathing the air, and using the downstream waters of the Payette-Snake [River] system indefinitely into the future—including in the summer-fall of 2015.”³³

As noted, recreational and other use of lands may serve as a legally cognizable interest for purposes of standing.³⁴ However, Fite does not identify which Parcel or Parcels subject to the lease sale she uses for recreational or aesthetic purposes. Instead, she very broadly situates her use of lands in “southern Idaho,” and her use of “the downstream waters of the Payette-Snake River system.”³⁵ Her generalized assertions regarding negative impacts to air quality in the Treasure Valley airshed, and to water quality in the Little Willow watershed, are far too general to establish a legally cognizable interest that is likely to be negatively affected by BLM’s decision to deny WLD’s protest and issue the Leases. As BLM states, “[t]here is no specific reference or discussion concerning any of the five parcels covered by WLD’s appeal.”³⁶ We therefore find that WLD has not met its burden to identify a legally cognizable interest that could be adversely affected by BLM’s decision.

²⁷ WLD Response at 4-5.

²⁸ *Id.* at 5.

²⁹ *Id.* at 6.

³⁰ *Id.* at 7.

³¹ *Id.* at 7-8.

³² *Id.* at 8-9.

³³ *Id.* at 9.

³⁴ See *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA at 83-54.

³⁵ WLD’s Response (Fite Declaration) at 7, 9.

³⁶ BLM Reply at 6.

C. *WLD Has Not Shown a Causal Connection Between the Claimed Injuries and the Approved Action*

Further, WLD has not made “colorable allegations of an adverse effect, supported by specific facts, sufficient to establish a causal relationship between the approved action and the injury alleged.”³⁷ In its Field Office DR, BLM selected Alternative B, under which the Leases would be issued subject to NSO and NSSO stipulations pending completion of the Four Rivers RMP,³⁸ based upon the need to “protect the Federal mineral resource from uncompensated drainage and surface resources from potential drainage.”³⁹ BLM states that because of the NSO and NSSO stipulations, “[t]here will be no surface or subsurface disturbance,” since “there will be no drilling on or below the five BLM parcels.”⁴⁰

BLM explains that if hydrocarbons underlying the Leases are extracted, they will be extracted by wells drilled and operated on neighboring private and/or State lands. BLM states that if it “did not lease the five parcels, its mineral estate would be drained and the alleged harms, to the extent they are valid, would still occur,” and “[d]rilling would occur on non-BLM land and any oil and gas recovered would still be processed and developed.”⁴¹ Further, the impacts of concern to “WLD will occur whether BLM leased the five parcels or not.”⁴² BLM makes the convincing argument that “it is not BLM’s decision to lease that is the cause of the alleged harm to WLD,” but “[i]nstead, it is the decision of the state of Idaho to allow drilling on non-BLM land that is the alleged cause of WLD’s harm,” and “BLM has no control over what the state of Idaho allows to occur on state trust land or private land.”⁴³ WLD has not shown a nexus between the effects of climate change and increased air pollution and BLM’s decision to issue the Leases. We agree with BLM that WLD has not established the necessary “causal relationship between the approved action and the alleged injury.”⁴⁴

WLD has offered no argument or facts to rebut BLM’s representation that any alleged harms created by the extraction and subsequent combustion of hydrocarbons

³⁷ *Native Ecosystems Council*, 185 IBLA at 273; see also *The Fund for Animals, Inc.*, 163 IBLA at 176; *Colorado Open Space Council*, 109 IBLA at 280.

³⁸ See Field Office DR (Ex. 3 to Motion to Dismiss) at 2.

³⁹ *Id.* at 3.

⁴⁰ BLM Reply at 7.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 8.

⁴⁴ *Id.* at 9 (quoting *Native Ecosystems Council*, 185 IBLA at 273).

underlying the Leases at issue will occur whether or not BLM issues the Leases. WLD has not met its burden to “establish a causal relationship between the approved action and the injury alleged.”⁴⁵

CONCLUSION

WLD’s asserted recreational use of southern Idaho and the area within the Payette-Snake River system is far too general to establish a legally cognizable interest that is or may be adversely affected by BLM’s decision to issue the Leases. Moreover, WLD has not shown a causal connection between the alleged injuries and BLM’s decision to deny WLD’s protest and issue the Leases.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,⁴⁶ BLM’s Motion to Dismiss WLD’s appeal for lack of standing is granted.

_____/s/
James F. Roberts
Deputy Chief Administrative Judge

I concur:

_____/s/
Amy B. Sosin
Administrative Judge

⁴⁵ *Native Ecosystems Council*, 185 IBLA at 273; *The Fund for Animals, Inc.*, 163 IBLA 172, 176 (2004); *Colorado Open Space Council*, 109 IBLA at 280.

⁴⁶ 43 C.F.R. § 4.1.