



EMAILED

NOTE: This disposition is nonprecedential.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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January 5, 2016

IBLA 2015-249)	NDM 103935, <i>et al.</i>
)	
SOAR LAND GROUP)	Right of Way
)	
)	BLM's Motion to Dismiss Denied;
)	Intervenor's Motion to Dismiss
)	Granted; BLM's Motion to Strike
)	Denied as Moot; Appeal Dismissed

ORDER

On September 14, 2015, Soar Land Group (appellant) appealed from a July 23, 2015, Decision Record (DR) issued by the North Dakota Field Office, Bureau of Land Management (BLM). In the DR, BLM approved Hess Corporation's right-of-way (ROW) application to construct, operate, and maintain, *inter alia*, oil and gas pipelines and two 24-strand fiber optic cables in North Dakota. In its notice of appeal (NOA), appellant set forth four enumerated reasons for appealing the DR to this Board. *See* NOA at 1-2. Appellant also stated it would "submit a full statement of reasons [SOR] after the appeal is docketed." NOA at 1.

By Order dated October 16, 2015, the Board granted appellant's request for an extension of time until November 13, 2015, to file an SOR. The Board also granted Hess Corporation's motion to intervene in the matter. On November 27, 2015, outside of the grace period set forth in 43 C.F.R. § 4.401(a), appellant filed with the Board a pleading titled Supplemental Authority. In that pleading, appellant stated it would rely on the arguments set forth in its NOA. BLM has since moved the Board to strike the pleading because it was untimely filed.

Both BLM and the intervenor have filed respective motions to dismiss this appeal. For the reasons that follow, we deny BLM's motion to dismiss, grant intervenor's motion to dismiss, and deny BLM's motion to strike as moot.

BLM's Motion to Dismiss

On November 30, 2015, the Board received BLM's motion to dismiss. Therein, BLM claims appellant failed to file a statement of reasons within the timeframe

allotted by the Board in its October 16, 2015, Order and therefore, pursuant to 43 C.F.R. § 4.412(c), BLM moves for the appeal's summary dismissal. Appellant did not respond to BLM's motion. 43 C.F.R. § 4.407(b).

The Board has the discretion to summarily dismiss an appeal when an appellant fails to file an SOR. See 43 C.F.R. §§ 4.402, 4.412(c); *Southern Utah Wilderness Alliance*, 164 IBLA 118, 119 (2004). We will not, however, exercise our discretionary authority to dismiss this appeal since appellant's NOA contains reasons for appealing BLM's DR. See 43 C.F.R. § 4.411(b) ("The notice of appeal may contain a statement of reasons for appeal."). BLM's motion to dismiss is therefore denied. 43 C.F.R. § 4.407(c).

Intervenor's Motion to Dismiss

On December 14, 2015, intervenor filed with the Board its own motion to dismiss the appeal. Intervenor argues that appellant lacks standing to appeal the DR because appellant is not adversely affected by the decision. Appellant did not respond to intervenor's motion. 43 C.F.R. § 4.407(b).

In order to having standing, an appellant must show that it is adversely affected by the decision on appeal. 43 C.F.R. § 4.410(a). An appellant has the burden 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. *Board of County Commissioners of Pitkin County, Colorado*, 186 IBLA 288, 297 (2015), and cases cited. While an appellant need not prove that an adverse effect in fact will occur as a result of the BLM action, the threat of injury and its effect on the appellant must be more than hypothetical. *Id.* When an appellant alleges adverse impacts that are contingent and hypothetical, the Board will dismiss the appellant, and the appeal, for lack of standing. *Id.*

Appellant is an organization whose members live near the project area. NOA at 1. Appellant claims BLM has authorized intervenor to reuse a 59-year-old pipe, which increases the likelihood that the pipeline will rupture and spill oil or gas on or near lands upon which appellant's members live, worship, and recreate. *Id.* According to appellant, a spill would severely impact surrounding lands, air, water, and wildlife. *Id.*

While appellant alleges BLM's DR will expose people and the environment to possible harm in the future, appellant has not shown with any specificity how or why constructing, operating, and maintaining the oil and gas pipelines at issue poses a real and immediate threat of injury. It is entirely speculative at this point in time to anticipate that the pipes will rupture, causing a spill and subsequent environmental

harm. Such speculation is insufficient to support an allegation of adverse effect, as required by 43 C.F.R. § 4.410. Because appellant has not carried its burden to demonstrate that it is adversely affected by BLM's DR, it does not have standing to appeal and its appeal must be dismissed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R § 4.1, we deny BLM's motion to dismiss for failure to file a statement of reasons, grant intervenor's motion to dismiss for lack of standing, deny BLM's motion to strike as moot, and dismiss the appeal.

/s/
Eileen G. Jones
Chief Administrative Judge

I concur:

/s/
Amy B. Sosin
Administrative Judge