

NOTE: This disposition is nonprecedential.



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IBLA 2016-57)	DOI-BLM-MT-B050-2015-0011-EA
)	
NATIVE ECOSYSTEMS COUNCIL)	Centennial Watershed Assessment
)	
)	Motion to Dismiss Granted; Petition
)	for Stay Denied as Moot

ORDER

The Native Ecosystems Council (NEC) appeals from and petitions to stay the effect of a November 16, 2015, decision by the Field Manager, Dillon (Montana) Field Office, Bureau of Land Management (BLM). The decision authorized implementation of certain actions described in the Centennial Watershed Environmental Assessment, DOI-BLM- MT-B050-2015-0011-EA (EA), which was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4331-4370h (2012), and applicable implementing rules. NEC filed a combined notice of appeal and standing statement, statement of reasons, and stay petition with BLM on December 23, 2015 (Appeal). BLM responded by opposing a stay and moving to dismiss this appeal on January 5, 2016 (Response). For the reasons discussed below, we grant BLM's motion, dismiss NEC's appeal, and deny the stay petition as moot.

Background

The Centennial Watershed (CW) encompasses roughly 347,543 acres of Federal, State, and private lands on the eastern slope of the Rocky Mountains in Beaverhead County, Montana. *See* EA at 1. BLM administers 83,102 acres in the CW, which includes 36 grazing allotments that contain 74,610 acres of BLM land and 8,492 acres within the Centennial Mountains Wilderness Study Area (WSA). *Id.* BLM formed an interdisciplinary team of resource specialists to assess BLM-administered land in the CW under the Standards of Rangeland Health. They produced a report that was used to develop management alternatives for improving land health, including water quality, and for enhancing biodiversity within the CW. *Id.* at 2. BLM then prepared and solicited public comment on a draft EA on July 15,

2015, and issued a Proposed Decision and FONSI on September 25, 2015; NEC timely commented on the draft EA and protested the Proposed Decision.

By decision dated November 16, 2015 (Decision), BLM rejected NEC's protest and selected a series of management alternatives that had been studied in the EA, which included livestock management, timber harvesting, and vegetative treatments. *See* Decision at 3; *id.*, Appendix A (Protest Letter dated Oct. 14, 2015), Appendix B (Response to Protest on Proposed Decision). NEC timely challenged only two aspects of the Decision: (1) BLM's approval to use noncommercial mechanical and/or prescribed burn treatments on 8,850 acres of wildlife habitat in the CW; and (2) BLM's decision to treat 5.5 miles of riparian habitat. *See* Appeal at 1-2.¹ BLM moves to dismiss this appeal by contending that NEC has not shown it has standing under and as required by 43 C.F.R. § 4.410 (Who may appeal). *See* Response at 3-7. NEC did not respond to BLM's motion.

Discussion

To pursue an appeal to this Board an appellant must have standing under 43 C.F.R. § 4.410, which requires an appellant to demonstrate that it is both a "party to a case" and "adversely affected" by the decision on appeal. 43 C.F.R. § 4.410(a); *Native Ecosystems Council*, 185 IBLA 268, 273 (2015); *The Coalition of Concerned*

¹ NEC broadly and summarily claims that BLM violated NEPA, the Administrative Procedure Act, and the Endangered Species Act by (1) "misleading the public on the purpose and need for the [CW] noncommercial treatments"; (2) "reducing the boundaries of Preliminary Priority Management Areas for Greater Sage-Grouse"; (3) "falsely claiming that burning priority sage grouse habitat will benefit this species"; (4) "falsely claiming that burning of sagebrush and conifer encroachment . . . is needed to restore natural fire cycles"; (5) "falsely claiming that burning of sagebrush and conifers in elk calving and deer fawning habitats will be beneficial"; (6) claiming prescribed burns will have "beneficial ecosystem effects"; (7) failing to identify "how whitebark pine/limber pine areas will be treated [or] the significant risks that can be triggered by burning the[m]"; (8) "falsely claiming that aspen viability will be enhanced"; (9) "claiming that proposed treatments are needed to protect forests from high-severity fire"; (10) "misleading the public as to the needs for human intervention in wilderness study areas" (e.g., controlled burn treatment); (11) "failing to provide valid analyses of potential adverse impacts" to treatment areas; and (12) "falsely claiming that the proposed treatments will have no adverse impact on the threatened grizzly bear or threatened Canada lynx." Appeal (Statement of Reasons) at 3, 6, 7, 8, 9, 10, 11, 12, 15.

National Park [Service] Retirees, 165 IBLA 79, 81-86 (2005), and cases cited. We must dismiss an appeal if either element is lacking. *Native Ecosystems Council*, 185 IBLA at 273, and cases cited.

In the present appeal, NEC is a “party to a case” under 43 C.F.R. § 4.410(b) because it commented on the draft EA and protested BLM’s Proposed Decision. The issue raised by BLM’s Response is whether NEC is “adversely affected” by the agency’s Decision. Response at 5-7. 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. *See, e.g., Native Ecosystems Council*, 185 IBLA at 273; *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA at 81-82; *Center for Native Ecosystems*, 163 IBLA 86, 90 (2004). To establish that it would be adversely affected, an appellant must make colorable allegations of adverse effect, supported by specific facts set forth in an affidavit, declaration, or other statement, sufficient to establish a causal relationship between the approved action and alleged injury. *Native Ecosystems Council*, 185 IBLA at 273, and cases cited. An appellant need not prove an adverse effect will occur, but must show that the threat of injury and its effect on the appellant are more than hypothetical. *Id.*; *see also Colorado Open Space Council*, 109 IBLA 274, 280 (1989) (“[M]ere speculation that an injury might occur in the future will not suffice”). When an organization is an appellant, to establish standing it must demonstrate that one or more of its members has a legally cognizable interest that is substantially likely to be negatively affected by the decision on appeal. *Native Ecosystems Council*, 185 IBLA at 273; *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA at 86-87.

The NEC Appeal includes a statement of standing, wherein its Director, Sara Johnson, states she has “been in the Centennial Watershed landscape several times in the past, although the specific dates of these visits could not be recalled,” and that at “least 2 visits involved viewing wildlife at the Red Rock [Lakes National Wildlife] Refuge and surrounding landscape, with one trip resulting in travel completely across the watershed from east to west.” Appeal at 2. Johnson adds that she “fully intend[s] to revisit this area during the summer of 2016, for more wildlife viewing and to review habitat conditions in the Winslow Fire and upper-elevation sagebrush savanna areas.” *Id.* at 3. BLM contends NEC has not demonstrated standing because Johnson does not assert she ever visited the locations where BLM plans to treat forest, woodlands, and riparian areas. Response at 6; *see id.* (“Merely claiming that a member has visited land in the same general vicinity as the land subject to agency action is not sufficient to establish standing.”).

The Board has long held that a cognizable legal interest sufficient to establish standing may be proven by past use of the land at issue. *See, e.g., Wyoming Outdoor Council*, 153 IBLA 379, 382-83 (2000). However, we do not find that Johnson’s

statements of standing establish that she recreated in or traveled through the 8,850 acres of forest and woodlands and 5.5 miles of riparian areas to be treated under the Decision on appeal.² See, e.g., *Theodore Roosevelt Conservation Partnership*, 178 IBLA 201, 208 (2009) (appeal dismissed for lack of standing because appellant did not establish that any of its members used the protested lease parcels).

While “evidence of use” is the most direct way to show a legally cognizable interest and an injury to that interest, an appellant “may also establish he or she is adversely affected by setting forth interests in resources or in other land or its resources affected by a decision and showing how the decision has caused or is substantially likely to cause injury to those interests.” *Coalition of Concerned National Park [Service] Retirees*, 165 IBLA at 84 (quoting *Wyoming Outdoor Council*, 153 IBLA at 384); see also *Theodore Roosevelt Conservation Partnership*, 178 IBLA at 206-07. Johnson states she visited the Centennial Watershed “several times in the past” and that she intends to “revisit this area during the summer of 2016.” Appeal at 2, 3. Although Johnson sets forth an interest in viewing wildlife and NEC claims the Decision will injure certain wildlife species, her statements do not establish that she viewed or plans to view these species in any treatment areas likely to be affected by that decision. In the absence of a more definitive statement of what wildlife she viewed and where she viewed them and plans to view that wildlife in the future, NEC has not shown “how the decision has caused or is substantially likely to cause injury to [its] interests” in wildlife viewing. *Coalition of Concerned National Park [Service] Retirees*, 165 IBLA at 84 (citations omitted); see also *Theodore Roosevelt Conservation Partnership*, 178 IBLA at 206-07.

For the reasons discussed above, we conclude that NEC has failed to show that it has standing to pursue this appeal.

² For example, her earlier visit to the Red Rock Lakes National Wildlife Refuge managed by the Fish and Wildlife Service (not BLM) is irrelevant to the lands at issue in the decision here appealed.

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 grant BLM's motion, dismiss NEC's appeal for lack of standing, and deny its stay petition as moot.

_____/s/_____
James K. Jackson
Administrative Judge

I concur:

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