

**CERTIFIED**

**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NOTE: This disposition is nonprecedential.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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April 20, 2016

|                                   |   |                                  |
|-----------------------------------|---|----------------------------------|
| IBLA 2016-119                     | ) | DOI-BLM-060-2015-0002-EA         |
|                                   | ) |                                  |
| CASCADIA WILDLANDS, <i>ET AL.</i> | ) | Timber Sale                      |
|                                   | ) |                                  |
|                                   | ) | Appeal Dismissed;                |
|                                   | ) | Petition for Stay Denied as Moot |

ORDER

Cascadia Wildlands and others (collectively, Appellants)<sup>1</sup> have appealed from and petitioned for a stay of the effect of a March 1, 2016, decision of the Field Manager, Upper Willamette (Oregon) Field Office, Eugene District, Bureau of Land Management (BLM), denying their joint December 3, 2015, protest (Decision).

In their protest, Appellants challenged separate November 17, 2015, Decision Records (DRs) of the Field Manager, approving the John's Last Stand (JLS) (ORE06-TS16-693) and Anthony Access (AA) (ORE06-TS16-688) Timber Sales (TSs). The DRs were based on the September 2015 Lost Creek Environmental Assessment (EA) (DOI-BLM-060-2015-0002-EA) and Finding of No Significant Impact (FONSI), which were prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4370h (2012), and its implementing regulations, 40 C.F.R. Chapter V (Council on Environmental Quality) and 43 C.F.R. Part 46 (Department).<sup>2</sup>

<sup>1</sup> The appeal was filed jointly by Cascadia Wildlands (formerly, Cascadia Wildlands Project), Oregon Wild (formerly, Oregon Natural Resources Council), and the Many Rivers Group, Oregon Chapter, Sierra Club.

<sup>2</sup> The EA is available at [https://eplanning.blm.gov/epl-front-office/projects/nepa/54343/65143/70635/2015\\_09\\_23\\_Lost\\_Creek\\_EA.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/54343/65143/70635/2015_09_23_Lost_Creek_EA.pdf) (last visited Mar. 31, 2016).

Because Appellants have failed to demonstrate that any of the appellant organizations is adversely affected by the Field Manager's March 2016 decision, we will dismiss their appeal for lack of standing, and deny their stay request as moot.

### BACKGROUND

The TSs are part of a larger Project, which would involve the harvesting of a total of 818 acres of Federal land south of Lowell, Oregon, by means of commercial thinning (CT) (378 acres), regeneration harvest (RH) (141 acres), and density management (299 acres), within a 1,210-acre Project area.<sup>3</sup> See EA at 1, 6-7. The lands are situated in the Lost Creek and Dexter Reservoir-Middle Fork Willamette River Sub-basins of the Lookout Point Reservoir-Middle Fork Willamette River 5th Field Watershed and the Dorena Lake-Row River Sub-basin of the Row River 5th Field Watershed. *Id.* at 1.

Under the approved TSs, BLM authorized the commercial cutting, yarding, and removal of a total of approximately 23,800 merchantable coniferous trees, totaling 5,947 million board feet of timber, from a total of 205 acres of Federal land situated in sec. 29, T. 20 S., R. 1 E. (JLS); and sec. 31, T. 19 S., R. 1 W., sec. 25, T. 19 S., R. 2 W., and sec. 1, T. 20 S., R. 2 W. (AA), Willamette Meridian, Lane County, Oregon.<sup>4</sup> More specifically, the TSs will involve 49 acres of RH (JLS); and 52 acres of RH, 102 acres of CT, and 2 acres of clearcutting (for a road) (AA).<sup>5</sup> Prospectus (JLS)

<sup>3</sup> The Federal lands, which are situated in Ts. 19 and 20 S., Rs. 1 and 2 W., and T. 20 S., R. 1 E., Willamette Meridian, Lane County, Oregon, are revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands. EA at 1. Such lands are governed by section 1 of the Act of Aug. 28, 1937, 43 U.S.C. § 1181a (2012), which generally provides, in pertinent part, that such lands “shall be managed . . . for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the princip[le] of sustained yield[.]”

<sup>4</sup> Timber harvesting in the case of each TS would occur within a Contract Area of 200 (JLS) and 573.32 (AA) acres. Of the Contract Area, 151 (JLS) and 417.32 (AA) acres are reserved from harvesting. See Prospectus (JLS), dated Nov. 18, 2015; Prospectus at Exhibit A, Sheet 1 (AA), dated Nov. 18, 2015. The prospectuses are available at <http://www.blm.gov/or/districts/eugene/timbersales/> (last visited Apr. 11, 2016).

<sup>5</sup> Appellants indicate that the approved timber harvesting involves “clearcutting forests more than 100 years old” in “roadless area[s]” that “ha[ve] never been

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at Exhibit A; Prospectus (AA) at Exhibit A, Sheet 1. In the case of RH, the TSs would remove trees greater than 8 inches in diameter at breast height, and retain a total of 6-8 green trees per acre, focusing on the larger and more vigorous trees, and a sufficient number of trees so as to create an average of 3.4 snags and 240 linear feet of coarse woody debris per acre, within 5 years after harvesting. *See* DR (AA) at 2; DR (JLS) at 1-2. Further, following harvesting, the RH areas would be replanted to a density of approximately 400 trees per acre. EA at 9. The felled trees will be yarded by means of helicopter (JLS) and skyline cable and ground methods (AA). *Id.* at 7. In addition, a total of 0.28 miles of permanent new road would be constructed (AA), and a total of 19.2 miles of existing road would be renovated (JLS and AA). *See id.* App. C-1 – C-3.

Timber sales in the Federal lands at issue are governed by the “Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl,”<sup>6</sup> known as the Northwest Forest Plan (NFP), which was adopted by the Secretaries of Interior and Agriculture in an April 13, 1994, Record of Decision (ROD).<sup>7</sup> It is undisputed that all of the trees at issue will be felled in areas designated under the NFP as Matrix

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previously logged[.]” Notice of Appeal, Statement of Reasons, and Request for Stay (NA/Request) at 5, 7, 8. Neither RH nor CT is properly considered clearcutting. *See* EA at 8-9; *id.* at B-1, B-3 (Glossary). Further, the forests in the TSs are not generally over 100 years old. *See* EA at 1 (Stand Ages are 116 (RH or CT) (JLS); 86 (RH) and 56-66 (CT) (AA)), 73. The JLS TS and Sections 25 and 31 of the AA TS were not previously logged, but Section 1 of the AA TS was previously logged. *See id.* at 25. In addition, all of the Contract areas at issue have, for the most part, existing roads that will be used in timber harvesting and related activities. *See* Prospectus (JLS), dated Nov. 18, 2015, at Exhibit A; Prospectus (AA), dated Nov. 18, 2015, at Exhibit A.

<sup>6</sup> The Northern spotted owl (NSO) (*Strix occidentalis caurina*) is a terrestrial avian species designated as a threatened and endangered (T&E) species, under the Endangered Species Act of 1973 (ESA), 16 U.S.C. §§ 1531-1544 (2012).

<sup>7</sup> The NFP, which is set forth as Attachment A to the ROD, generally provides for the comprehensive management of timber and other natural resources on all Federal lands in California, Oregon, and Washington, within the geographic range of the NSO. The ROD is available at <http://www.reo.gov/riec/newroda.pdf>

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(147 acres (JLS and AA)) or Riparian Reserve (RR) (58 acres (AA)) land use allocation categories. *See* EA at 1. The NFP and RMP generally allow timber harvesting in Matrix areas, and limit timber harvesting to appropriate circumstances in RR areas. *See* NFP ROD, Attachment A, at C-31 to C-32, C-39; ROD and RMP, dated June 1995 (approved by the Oregon State Director, BLM, on May 22, 1995) at 24, 34, 84-86.<sup>8</sup>

BLM concluded that the timber stands in the Sale areas needed to be harvested because they were considered “overly dense”:

The stands proposed for thinning are in the stem exclusion stage and are competing for sunlight, water, and nutrients, causing reduced tree growth and vigor as well as limiting understory vegetation. The stands proposed for [RH] have reached [Culmination of Mean Annual Increment] and the Eugene District RMP directs us to schedule [RHs] to assure that, over time, harvest will occur in stands at or above the age of volume growth culmination[.]

Decision at 4; *see* EA at 2-3; ROD and RMP at 85. Timber harvesting in the RRs of the AA TS was specifically designed to control stocking, reestablish and manage stands, and acquire desired vegetation characteristics needed to attain the Aquatic Conservation Strategy objectives of the NFP. *See* Decision at 4, 14-15; EA at 2-3, 3; NFP ROD, Attachment A, at B-9 to B-34 (Aquatic Conservation Strategy), C-31 to C-32.

The Project area does not encompass any designated NSO Critical Habitat Unit or Nest Patch, which encompasses the area within a 300-meter radius surrounding an occupied nest site for the NSO. *See* EA at 27, 30. However, it does encompass the Core Area of two known (Lost Creek and Lost Guiley) and two potential (60NEWITS and 66NEWITS) NSO sites, and the Provincial Home Range (PHR) of five known

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(last visited Mar. 31, 2016). It amended Oregon BLM’s existing land-use plans, and was thereafter incorporated in the May 1995 Eugene District Resource Management Plan (RMP), which is applicable to the lands at issue.

<sup>8</sup> The NFP and RMP are available, respectively, at <http://www.reo.gov/library/reports/newsandga.pdf> and [http://www.blm.gov/or/plans/files/1995\\_RMP\\_Eugene.pdf](http://www.blm.gov/or/plans/files/1995_RMP_Eugene.pdf) (last visited Mar. 31, 2016).

(Lost Creek, Lost Guiley, Anthony Creek, East Buckhorn, and East Gosage Creek) and two potential (60NEWITS and 66NEWITS) NSO sites, which encompass the areas situated, respectively, within a 0.5-mile and 1.2-mile radius surrounding an occupied nest site for the NSO.<sup>9</sup> *See id.* at 30. In addition, the Sale areas would encompass a total of 49 acres of nesting, roosting, and foraging habitat (JLS) and 160 acres of dispersal habitat (AA). *See id.* at 28, 30 (Table 8 (Acres of Spotted Owl Habitat in Lost Creek Project Area by Alternative)).

Because timber harvesting might affect, and was likely to adversely affect, NSOs and their critical habitat, BLM and the Forest Service, U.S. Department of Agriculture, formally consulted with FWS concerning the TSs now at issue and other activities within the Willamette Planning Province, Oregon, for Fiscal Years 2016-2017. Based in part upon reviewing a Biological Assessment prepared by BLM and the Forest Service, the FWS issued an October 1, 2015, BiOp, concluding that the TSs were not likely, together with the other activities, to jeopardize the continued existence of the NSO, or adversely modify its critical habitat. *See* BiOp at 120. FWS reached this conclusion based on the fact that these activities would, in accordance with the NFP and June 28, 2011, Revised Recovery Plan for the NSO, maintain sufficient nesting, roosting, and foraging and dispersal habitat and otherwise serve to promote the survival and recovery of the NSO population across its physiographic province, as well as its entire range in Oregon, California, and Washington.<sup>10</sup> *See id.* at 120-21.

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<sup>9</sup> The Fish and Wildlife Service (FWS) reports that the TSs now at issue would affect only the Anthony Creek, East Buckhorn, and Lost Creek known spotted owl sites. *See* Biological Opinion (BiOp) (Reference No. 01EOFW00-2015-F-0319), dated Oct. 1, 2015, at 106-13. However, in the case of the Anthony Creek site, timber harvesting would not occur in the Core Area, and RH would not occur in the PHR. CT would affect the PHR. *Id.* at 107. In the case of the East Buckhorn and Lost Creek sites, timber harvesting would not occur in the Core Area. *Id.* at 108, 110. RH and CT would occur, respectively, on 17 and 1 acres in the PHR. *Id.* Timber harvesting would affect the ability of the PHR to support NSOs for at least 10-15 years, until the canopy recovers. *Id.* Recent protocol surveys (2013-2014) have not detected any NSOs using any of the three sites. *Id.* at 106, 108, 110.

<sup>10</sup> FWS also concluded that the TSs and other activities would result in an “incidental take” of three spotted owl pairs. *See* BiOp at 122. It considered the incidental take permissible so long as BLM and the Forest Service adhered to specific terms and conditions implementing reasonable and prudent measures deemed necessary and appropriate for minimizing the impacts of the incidental take on the species, which

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In order to consider the likely environmental impacts of the proposed Project, including the two TSs now at issue, and reasonable alternatives thereto, BLM prepared the Lost Creek EA.<sup>11</sup> It addressed the proposed Project (Alternative 2 (Preferred Alternative)) and 2 action alternatives, as well as a no action alternative, under which no timber harvesting and related activity would occur.<sup>12</sup> See EA at 7-12.

In the two DRs, the Field Manager approved Alternative 2, specifically authorizing the JLS and AA TSs, subject to project design features. DR (JLS) at 1; DR (AA) at 1. He concluded that the TSs would achieve the purposes of the management objectives of the ROD and RMP by producing a sustainable supply of timber, promoting the development of understory vegetation, and developing structural complexity and vegetative diversity within the RRs, all while minimizing impacts to other natural resources. See DR (JLS) at 1-2; DR (AA) at 2-3; EA at 2-3. He also determined that the TSs conformed, as required by section 302(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(a) (2012), to the applicable land-use plan (Eugene District RMP), and to the NFP. See DR (JLS) at 1; DR (AA) at 1.

The Field Manager separately concluded, in the FONSI, based on consideration of the context and intensity (or severity) of impacts, consistent with 40 C.F.R. § 1508.27, that the TSs were not likely to result in a significant impact on the human environment, and that BLM was not required by section 102(2)(C) of NEPA to prepare an EIS.

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consisted of monitoring the actual effects of the Project and completing a project implementation and monitoring form at the end of each year. *Id.* at 123.

<sup>11</sup> Preparation of the EA occurred following the end of a lengthy scoping period that formally began on Dec. 11, 2014, during which members of the public provided comments regarding the proposal to undertake the Project, and the likely impacts on the environment. See DR (JLS) at 2; DR (AA) at 3; EA at 5. BLM solicited public comment regarding the EA on Sept. 23, 2015, for a 30-day period. BLM's responses to the comments submitted by Appellants and other members of the public are set forth as Appendix A of each of the DRs.

<sup>12</sup> The EA was tiered to the November 1994 Final Environmental Impact Statement (EIS) prepared in connection with promulgation of the Eugene District RMP, and the February 1994 Final Supplemental EIS prepared in connection with promulgation of the NFP. See EA at 4.

BLM published a notice of the TSs in a newspaper of general circulation in the area of the TSs on November 18, 2015. This notice of decision was subject to protest within 15 days pursuant to 43 C.F.R. § 5003.3(a). *See* 43 C.F.R. § 5003.2(a).

On December 3, 2015, Appellants filed a protest challenging the DRs, basically advancing the same concerns now raised on appeal about the sufficiency of BLM's NEPA analysis.

In his Decision, the Field Manager denied Appellants' protest and upheld the DRs, finding them to be valid and consistent with the management objectives of the NFP and RMP, and based on the appropriate level of NEPA analysis. *See* Decision at 1, 16. He concluded that Appellants had not provided any new or specific evidence that the likely effects of the TSs were not adequately analyzed in the EA, as tiered to the RMP Final EIS and NFP Final Supplemental EIS, that the TSs would cause significant harm to any particular resource, or that the TSs would otherwise cause him to change his decision to approve the TSs. *Id.* at 16.

In accordance with 43 C.F.R. § 5003.3(f), after denying the protest, BLM proceeded with implementation of the DRs.<sup>13</sup> *See* Decision at 17.

Appellants timely appealed from the Field Manager's decision and requested a stay of the effect of the Decision to approve timber harvesting and related activity, including any sale preparation, layout, contract award, or any other site preparations by BLM, during the pendency of their appeal. NA/Request at 5. Appellants are primarily concerned that the TSs will result in the cutting, yarding, and removal of mature forests in the Sale areas. *Id.* They note that, "once trees are cut, those trees cannot be put back." *Id.*

Under 43 C.F.R. § 5003.1, the filing of a notice of appeal does not automatically suspend the effect of a timber sale or other forest management decision. BLM may, in accordance with 43 C.F.R. § 5003.3(f), proceed with implementation of the decision, in the absence of issuance of a stay by the Board. *See In Re Eastside Salvage Timber Sale*, 128 IBLA 114, 115 (1993).

In this case, we need not address Appellants' stay request, since we conclude that the appeal is properly dismissed on the basis that they have failed to establish

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<sup>13</sup> The TSs occurred on Dec. 17, 2015, with Dawson & Douglas, Inc. (JLS), and Seneca Sawmill Company (AA) being declared the high bidders. *See* <http://www.blm.gov/or/districts/eugene/timbersales/> (last visited Mar. 31, 2016).

standing under 43 C.F.R. § 4.410 to appeal from BLM's Decision denying their protest.

#### STANDING TO APPEAL

In order to pursue an appeal from and petition for a stay of a BLM decision, an appellant is required to have standing under 43 C.F.R. § 4.410. An appellant must demonstrate that it is both a "party to a case" and "adversely affected" by the decision, within the meaning of 43 C.F.R. § 4.410(b) and (d), respectively. *See, e.g., Western Watersheds Project*, 185 IBLA 293, 298 (2015). It is the responsibility of the appellant to demonstrate the requisite elements of standing. *See Colorado Open Space Council*, 109 IBLA 274, 280 (1989). If either element is found to be lacking, the appeal must be dismissed. *WildEarth Guardians*, 183 IBLA 165, 170 (2013).

Appellants are all parties to the case, having jointly filed a protest to BLM's November 2015 DRs. *See* 43 C.F.R. § 4.410(b). Under 43 C.F.R. § 4.410(d), a party to a case is adversely affected by a decision when that decision has caused or is substantially likely to cause injury to a legally cognizable interest of the party. *See, e.g., Western Watersheds Project*, 185 IBLA at 298. 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 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 negatively affected by the decision. *See id.* at 298-99; *Board of County Commissioners of Pitkin County, Colorado*, 186 IBLA 288, 308-10 (2015). An organization may demonstrate standing through its members 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 that is substantially likely to be injured by the approved action. *WildEarth Guardians*, 183 IBLA 165, 170 (2013).

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. *The Fund for Animals, Inc.*, 163 IBLA 172, 176 (2004); *Colorado Open Space Council*, 109 IBLA at 280. The appellant need not prove that an adverse effect will, in fact, occur as a result of the BLM action. *Donald K. Majors*, 123 IBLA 142, 145 (1992). However, the threat of injury and its effect on the appellant must be more than hypothetical. *See Missouri Coalition for the Environment*, 124 IBLA 211, 216 (1992); *George Schultz*, 94 IBLA 173, 178 (1986).

In their NA/Request, Appellants affirmatively assert that they have standing under 43 C.F.R. § 4.410 to appeal from BLM's decision, since their "members" and/or

“staff” use and enjoy the “Lost Creek watershed,” including the Sale areas, for recreational and other pursuits, and their interest will be negatively impacted by road construction and logging activities approved by the decision. NA/Request at 4, 5. However, no member or staff person who is likely to be impacted by the decision is identified, or provides a statement in support of standing.<sup>14</sup>

Recreational and other use of lands has been recognized as a legally cognizable interest that may serve to support standing to appeal. *See, e.g., The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA 79, 85-88 (2005). However, Appellants have not identified which of their members or staff persons actually use the Sale areas, nor have they documented their members’ or staff persons’ use in a supporting statement. Furthermore, the Appellants’ reference to the Lost Creek watershed is far too general to establish that any legally cognizable interest of a member or staff person is likely to be negatively affected by the TSs. In the absence of an affidavit, declaration, or other statement by a member or staff person asserting use of the lands subject to the TSs, we must conclude that Appellants have failed to establish that any member or staff person holds a legally cognizable interest that is likely to be negatively affected by BLM’s approval of the TSs. *See Western Watersheds Project*, 185 IBLA at 299; *WildEarth Guardians*, 183 IBLA at 170.

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<sup>14</sup> Appellants argue that “[t]he educational, aesthetic, recreational, scientific, and other interests of Oregon Wild and its members in the public lands affected by the challenged actions will be irreparably harmed if BLM proceeds with the actions that are the subject of this appeal.” NA/Request at 4. In *Board of County Commissioners of Pitkin County, Colorado*, 186 IBLA at 308-10, the Board stated that when an organization seeks to establish standing based on an injury to the organization itself, it has the burden to demonstrate a nexus between the challenged action and the claimed injury to the organization’s mission and ongoing activities. *See also Front Range Equine Rescue*, 187 IBLA 269, 284-85 (2016); *Front Range Equine Rescue*, 187 IBLA 28, 33 (2016). In *Pitkin County*, the Board explained that “there must be a ‘concrete and demonstrable injury to the organization’s activities—with the consequent drain on the organization’s resources.’” 186 IBLA at 310 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)). The Board further stated that “the alleged injury must be ‘real and immediate,’ and the appellant’s burden is 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.’” *Id.* (quoting *Great Basin Resource Watch*, 182 IBLA 55, 58-59 (2012)). None of the appellant organizations herein meets this standard.

Appellants, therefore, offer no evidence that any of the organizations' members or staff persons actually use any lands that may be directly or indirectly affected by the TSs, and have thus failed to establish that, by reason of their use, such members or staff persons have a legally cognizable interest that is, or at least is substantially likely to be, injured by the TSs. They fail to provide any documentation, in the form of an affidavit, a declaration, or other evidence from any member or staff person, offering *specific facts* about such use or, most importantly, how the TSs have caused or are substantially likely to cause injury to such use. Appellants have not established a causal relationship between the TSs and any alleged injury to them or their members or staff persons.

Appellants have not carried their burden to demonstrate that any of the appellant organizations has standing under 43 C.F.R. § 4.410 to appeal from BLM's decision. Both the lead appellant that filed the appeal (Cascadia Wildlands) and the lead protestant that filed the protest (Oregon Wild) are familiar with the standing requirements of 43 C.F.R. § 4.410, particularly the requirement to show adverse affect. *See, e.g., Oregon Chapter Sierra Club*, 176 IBLA 336, 345 (2009); *Oregon Natural Resources Council*, 161 IBLA 323, 330 (2004); *Umpqua Watersheds, Inc.*, 158 IBLA 62, 63 n.1 (2002); Order, *Klamath Siskiyou Wildlands Center*, IBLA 2008-166 & 2008-168, dated Aug. 14, 2008; Order, *In re Willy Slide Timber Sale*, IBLA 2005-260, dated Oct. 14, 2005.

Absent an adequate showing of standing, Appellants' appeal from the Field Manager's Decision denying their protest of the TSs will be dismissed, and their stay request will be denied as moot. *See Wyoming Outdoor Council*, 153 IBLA 379, 382 (2000).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the appeal from the Field Manager's Decision denying Appellants' protest is dismissed, and their request for a stay is denied as moot.

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/s/  
James F. Roberts  
Deputy Chief Administrative Judge

I concur:

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/s/  
Silvia M. Riechel  
Administrative Judge