

NOTE: This disposition is nonprecedential.



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

CERTIFIED
EMAILED

703-235-3750

703-235-8349 (fax)

April 21, 2016

IBLA 2016-128)	DOI-BLM-OR-C030-2012-0004-EA
)	
CASCADIA WILDLANDS AND OREGON WILD)	Timber Sale
)	
)	Appeal Dismissed;
)	Petition for Stay Denied as Moot

ORDER

Cascadia Wildlands and Oregon Wild (Appellants) appeal from and petition to stay the effect of a February 25, 2016, decision of the Field Manager, Umpqua Field Office, Coos Bay (Oregon) District Office, Bureau of Land Management (BLM). The decision denied Appellants' protest of BLM's August 6, 2015, decision approving the Lucky Star Variable Retention Harvest Timber Sale. As we explain below, because Appellants have failed to demonstrate they are adversely affected by the Field Manager's decision, we dismiss their appeal for lack of standing, and deny their petition for a stay as moot.

Background

BLM based its decision to approve the Lucky Star Timber Sale on its Soup Creek Variable Retention Harvest Environmental Assessment (EA) (DOI-BLM-OR-C030-2012-0004-EA) and associated Finding of No Significant Impact (FONSI), both dated July 2015. The EA analyzed the impacts of conducting a variable retention timber harvest, applying the principles of ecological forestry on approximately on 111 acres in stands less than 70 years old, in the Mill Creek Fifth Field Watershed and Lower Lake Creek subwatershed of Douglas County, Oregon. EA at 1, 4. As explained in the EA, variable retention harvest using the principles of ecological forestry "involves the retention of structures, organisms, and conditions from a pre-harvest forest stand for incorporation into the post-harvest forest ecosystem and ultimately, structurally complex forest stand." *Id.* at 9. The purposes of the proposed timber harvest, consistent with the analysis in the EA, would be to protect, manage, and conserve federally listed and candidate species and their habitats under the Endangered Species Act, approved recovery plans, and BLM's Special Status Species Program; provide a sustainable supply of timber and other forest commodities to provide jobs and contribute to community stability; and provide early-successional

habitat and apply ecological forestry principles to restore sustainable timber harvests and ecosystems. *Id.* at 3.

The Lucky Star Timber Sale would involve treatment on 109 acres – 85 acres of timber harvest and 24 acres of aggregate retention. Aug. 6, 2015, Decision at 1. The decision adopted project design features described in the EA that will avoid or minimize impacts on resources, including, among other things, the use of skyline cable systems, retention of all non-alder hardwoods greater than 12 inches diameter at breast height, seasonal restrictions on road renovation activities to avoid potential impacts to soil and wildlife resources, and planting an average of 200 trees per harvested acre. *Id.* at 2; *see also* EA at 13-17.

On August 20, 2015, Appellants protested the August 6, 2015, decision, raising numerous issues and alleging that the decision violated the National Environmental Policy Act (NEPA), Federal Land Policy and Management Act of 1976, the Northwest Forest Plan, the Endangered Species Act, and the Administrative Procedure Act. On February 25, 2016, BLM denied Appellants' protest. The agency provided detailed responses to each of the issues identified by Appellants. In his decision, the Field Manager concluded that the August 6, 2015, decision to approve the Lucky Star Timber Sale was "valid and based on the appropriate level of NEPA analysis." Protest Decision at 29. He further stated that Appellants' protest did not provide "any new information or reason to change [BLM's] decision." *Id.*

Appellants timely appealed to the Board, filing a combined Notice of Appeal, Statement of Reasons, and Request for Stay (NOA/SOR/Petition). Appellants challenge BLM's protest decision with respect to four issues relating to the sufficiency of the EA under NEPA. Appellants allege that: (1) BLM failed to adequately analyze the effects a timber harvest would have on the marbled murrelet; (2) BLM relied on misleading and inconsistent statements about the effects of regeneration harvest on Northern Spotted Owls; (3) BLM failed to consider new information indicating the need for greater conservation of mature forest; and (4) BLM failed to adequately analyze carbon emissions from timber harvesting. NOA/SOR/Petition at 7-13.

On April 4, 2016, BLM filed a Response, arguing that Appellants lack standing to pursue their appeal because they have not demonstrated that they are adversely affected by the protest decision. We agree.

Analysis

Appellants have not demonstrated the requisite elements of standing and therefore the Board is without jurisdiction to adjudicate their 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(a). An appellant must demonstrate that 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. *Id.*; *see also Concerned Citizens for Nuclear Safety*, 175 IBLA 142, 146 (2008); *Colorado Open Space Council*, 109 IBLA 274, 280 (1989). If either element is lacking, then the appeal must be dismissed. *WildEarth Guardians*, 183 IBLA 165, 170 (2013).

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 that party. *See, e.g., Western Watersheds Project*, 185 IBLA at 298. In order to demonstrate injury to a legally cognizable interest, “[a]n appellant must make colorable allegations of adverse effect, supported by specific facts set forth in an affidavit, declaration, or other statement, which are sufficient to establish a causal relationship between the approved action and alleged injury.” *Native Ecosystems Council*, 185 IBLA 268, 273 (2015), and cases cited; *see also The Fund for Animals*, 163 IBLA 172, 176 (2004); *Fred E. Payne*, 159 IBLA 69, 73 (2003).

When an organization appeals a decision, “one or more of its members must have an interest in their own right that is or may be adversely affected by the decision.” *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA 79, 86 (2005). Such a legally cognizable interest can include cultural, recreational, and aesthetic uses and enjoyment of public lands. *Center for Biological Diversity*, 181 IBLA 325, 338 (2012). Thus, 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 or resources at issue, or otherwise have a legally cognizable interest that has been injured or is substantially likely to be injured by the approved action. *WildEarth Guardians*, 183 IBLA at 170.

The information provided by the member or members must “provide as much specific evidence as possible about what interests are allegedly injured and what the connections are between those interests and the decision it seeks to appeal.” *Western Watersheds Project v. BLM*, 182 IBLA 1, 6 (2012) (quoting *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA at 88). For example, in *Theodore Roosevelt Conservation Partnership*, 178 IBLA 201, 208 (2009), 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.” And in *Western Watersheds Project v. BLM*, we held that “[a] single visit in the past with only a vague intention to return does not establish use sufficient to provide a

basis for finding injury.” 182 IBLA at 8 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563-64 (1992)). We stated, however, that “[r]epeated recreational use itself, accompanied by a credible allegation of desired future use, can be sufficient, even if relatively infrequent, to demonstrate that environmental degradation of the area is injurious to that person.” *Id.* (quoting *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1149 (9th Cir. 2000)).

In establishing an adverse effect, 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.” *Native Ecosystems Council*, 185 IBLA at 273; see also *The Fund for Animals*, 163 IBLA at 176; *Powder River Basin Resource Council*, 124 IBLA 83, 89 (1992). However, a “mere interest in a problem or concern with the issues involved” is not sufficient to establish standing. *Board of Commissioners of Pitkin County*, 173 IBLA 173, 178 (2007) (citing *Kendall’s Concerned Area Residents*, 129 IBLA 130, 136-37 (1994)).

Here, we find that Appellants have failed to show an adverse effect from BLM’s decision sufficient to establish standing.

Appellants assert that they are adversely affected by BLM’s decision because “[m]embers of our organizations have visited the Soup Creek site. We use and enjoy this beautiful area. Members have hiked, photographed, picnicked, birdwatched, gathered mushrooms, and hosted plant identification tours in the area.” NOA/SOR/Petition at 3. They state “[t]hese values would be directly harmed by proposed activities.” *Id.* at 4.

Although recreational and other uses of lands has been recognized as a legally cognizable interest that may serve to support standing to appeal, more is required than what Appellants have provided in this case. Appellants have not identified which of their members actually use the project area; they refer only generically to “members and staff” of their organizations. Nor have they documented their members’ use in a supporting statement of any kind. Appellants have not identified any specific instances in the past when a member or members have used the area, and they have similarly not alleged any credible statement about desired future use of the lands subject to the timber sale. Appellants’ reference to a variety of recreational activities in the area is far too general to establish any legally cognizable interest of a member or members that has been or is substantially likely to be adversely affected by BLM’s protest decision. They have therefore failed to meet their burden to provide “specific facts” sufficient to establish a causal relationship between the approved action and alleged injury. See *Native Ecosystems Council*, 185 IBLA at 273.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses Appellants' appeal for lack of standing and denies the petition for stay as moot.

_____/s/
Amy B. Sosin
Administrative Judge

I concur:

_____/s/
Silvia M. Riechel
Administrative Judge