

NOTE: This disposition is nonprecedential.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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September 7, 2016

IBLA 2016-238	)	DOI-BLM-OR-B000-2015-0055-EA
	)	
JANET LYNCH	)	Wild Horses and Burros
	)	
	)	Motion to Dismiss Granted;
	)	Appeal Dismissed;
	)	Petition for Stay Denied as Moot

ORDER

Janet Lynch appeals and petitions to stay the effect of a June 24, 2016, decision of the District Manager, Burns District Office, Bureau of Land Management (BLM), approving wild mare sterilization research studies. BLM has filed a motion to dismiss the appeal, arguing that Ms. Lynch does not have standing to appeal BLM's decision.<sup>1</sup> Because Ms. Lynch does not identify a legally cognizable interest that is or is substantially likely to be injured by BLM's decision, she does not satisfy the requirements for establishing standing under our regulations. We therefore grant BLM's motion, dismiss her appeal, and deny her petition for stay as moot.

*BLM's Decision to Conduct Mare Sterilization Research*

Under the Wild Free-Roaming Horses and Burros Act, BLM is responsible for managing and protecting wild horses on the public lands "in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands."<sup>2</sup> BLM regulations declare that its policy is to manage wild horses "as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat."<sup>3</sup>

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<sup>1</sup> Motion to Dismiss and Request for Leave to File Response to Stay Petition Should the Board Not Grant the Motion to Dismiss (BLM Motion to Dismiss) (Aug. 2, 2016); 43 C.F.R. § 4.410.

<sup>2</sup> 16 U.S.C. § 1333(a) (2012).

<sup>3</sup> 43 C.F.R. § 4700.0-6(a).

In the decision that is the subject of this appeal, BLM decided “to conduct research on the safety and practicality of sterilizing mares as a tool for wild horse population control.”<sup>4</sup> The purpose of the research is to evaluate three methods of wild mare sterilization—ovariectomy, tubal ligation, and hysteroscopically-guided laser ablation—to assess which methods are effective and could be applied safely and efficiently to wild mares on lands administered by BLM.<sup>5</sup> All of the procedures would take place at the Wild Horse Corral Facility in Hines, Oregon, on mares that have been removed from the range.<sup>6</sup> After completion of the studies, the mares would be placed in BLM’s wild horse adoption program.<sup>7</sup>

BLM analyzed the possible environmental impacts of the research studies in an environmental assessment (EA) and reached a Finding of No Significant Impact (FONSI).<sup>8</sup>

#### *Ms. Lynch’s Appeal*

Ms. Lynch timely appealed BLM’s decision to undertake the research studies, characterizing the decision as a “reckless proposal to conduct indefensibly dangerous and costly surgical sterilization experiments on wild mares,” and petitioned the Board to stay the effect of the decision during the pendency of the appeal.<sup>9</sup> After BLM filed its motion to dismiss challenging Ms. Lynch’s standing to appeal BLM’s decision, we issued an order holding Ms. Lynch’s stay petition in abeyance until briefing on the motion to dismiss is complete.<sup>10</sup> We observed that an appellant must have standing to appeal from and seek a stay of a BLM decision, so we must decide BLM’s motion to dismiss before we can adjudicate appellant’s stay petition.<sup>11</sup> Ms. Lynch did not respond to BLM’s motion to dismiss.<sup>12</sup>

#### *Ms. Lynch Has Not Established Standing to Appeal*

To appeal a BLM decision to the Board, an appellant must have standing under 43 C.F.R. § 4.410. That regulation requires an appellant to demonstrate it is

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<sup>4</sup> Decision Record (DR) at 2 (June 24, 2016).

<sup>5</sup> *Id.* at 3, 16.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.*

<sup>8</sup> DOI-BLM-OR-B000-2015-0055-EA (May 23, 2016); FONSI (June 24, 2016).

<sup>9</sup> Appeal and Petition for Stay of Decision (Appeal) at 1 (July 25, 2016).

<sup>10</sup> Order (Aug. 8, 2016).

<sup>11</sup> *Id.*

<sup>12</sup> See 43 C.F.R. § 4.407(b) (a party has 15 days after service of a motion to file a written response).

both a “party to a case” and “adversely affected” by the decision it seeks to appeal.<sup>13</sup> It is the responsibility of the appellant to demonstrate both of these elements of standing.<sup>14</sup> If either element is lacking, the Board must dismiss the appeal for lack of jurisdiction.<sup>15</sup>

Ms. Lynch is a party to the case because she submitted comments to BLM on the EA supporting BLM’s decision.<sup>16</sup> Standing therefore depends on whether Ms. Lynch has demonstrated that she is adversely affected by BLM’s decision.

A party to a case is adversely affected by a decision “when that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest.”<sup>17</sup> A legally cognizable interest can include cultural, recreational, or aesthetic use and enjoyment of the affected public lands.<sup>18</sup> “The interest need not be an economic or property interest; however, a deep concern for a problem will not suffice.”<sup>19</sup>

In the context of a wild horse gather, the Board has found that an appellant established a legally cognizable interest when the appellant alleged that he had visited the herd area, observed and interacted with the herd with clear intent to continue to do so, and even identified a favorite member of the herd that was killed during the challenged gather.<sup>20</sup> In contrast, the Board has found no legally cognizable interest exists when an organization claimed standing based on its members’ concerns about the impacts of oil and gas leasing on wild horses, and those members did not allege that they had visited or otherwise used the lands within or near the lease parcels inhabited by the wild horses.<sup>21</sup>

Here, Ms. Lynch has not cited any use of the lands near the Wild Horse Corral Facility where the horses are maintained and the research studies will take place, any intent to visit the facility or the horses, or any interest in interacting with the horses.

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<sup>13</sup> 43 C.F.R. § 4.410(a).

<sup>14</sup> *Cascadia Wildlands*, 188 IBLA 7, 9 (2016); *Western Watersheds Project (WWP)*, 185 IBLA 293, 298 (2015).

<sup>15</sup> *Cascadia Wildlands*, 188 IBLA at 9; *Front Range Equine Rescue*, 187 IBLA 269, 276 (2016); *WWP*, 185 IBLA at 298; *WildEarth Guardians*, 183 IBLA 165, 170 (2013).

<sup>16</sup> See 43 C.F.R. § 4.410(b); Appeal at 1; BLM Motion to Dismiss at 3 n.5.

<sup>17</sup> 43 C.F.R. § 4.410(d).

<sup>18</sup> *Cascadia Wildlands*, 188 IBLA at 9-10; *WWP v. BLM*, 182 IBLA 1, 7 (2012).

<sup>19</sup> *The Fund for Animals, Inc.*, 163 IBLA 172, 176 (2004); see also *Newmont Mining Corp.*, 151 IBLA 190, 195 (1999).

<sup>20</sup> *David Glynn*, 182 IBLA 70, 72 (2012).

<sup>21</sup> *Colorado Environmental Coalition*, 173 IBLA 362, 368-69 (2008).

Instead, Ms. Lynch asserts that she has standing to appeal because “I am a part owner of [the wild mares maintained at the Wild Horse Corral Facility], and as part owner, it is my duty to see to it that they are treated humanely.”<sup>22</sup> While she does not explain why she considers herself a “part owner” of the mares, Ms. Lynch cites her status as a taxpayer and states that she is appealing not only to protect “my tax dollars,” but also, most importantly, because “it is both my right and my solemn responsibility as a citizen to monitor and oversee the activities of the agency,” in managing wild horses on the public land.<sup>23</sup> Indeed, Ms. Lynch adds that, “[w]ere the proposed experiments allowed to go forward unchallenged, there is a high likelihood of preventable equine deaths for which I would be personally responsible as a taxpayer, and which would result in irreparable harm to me.”<sup>24</sup>

Ms. Lynch’s interest as a taxpayer in the expenditure of Federal monies does not qualify as a legally cognizable interest for purposes of demonstrating standing.<sup>25</sup> Also, Ms. Lynch’s status as a citizen concerned about the ramifications of the research studies for the health and welfare of the wild horses does not qualify as a legally cognizable interest.<sup>26</sup> We have repeatedly held that a “mere interest in a problem or deep concern with the issues will not suffice” for standing to appeal, no matter how longstanding the appellant’s concern, how qualified she is to represent the concern, or how meritorious her arguments in support of the concern.<sup>27</sup>

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<sup>22</sup> Appeal at 1.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See *Thomas J. Katsilometes v. BLM*, 186 IBLA 73, 79-80 (2015) (“An assertion of standing based on status as a member of the general public, a citizen, and a taxpayer is insufficient to demonstrate adverse effect necessary to confer standing to appeal, where the concern presented relates merely to the general welfare and the indirect interest of the citizen taxpayer in the affairs of his/her government.”).

<sup>26</sup> See *Sharon Long*, 83 IBLA 304, 308 (1984) (“While the record reveals a genuine concern by [the appellant], it does not disclose a cognizable interest. [The appellant’s] interest can best be described as that of a deeply concerned citizen.”).

<sup>27</sup> See, e.g., *Susan Carter*, 188 IBLA 97, 100 (2016) (“As the Board has stated in prior opinions, a mere interest in a perceived problem, no matter how longstanding the interest or how qualified the organization may be in evaluating the problem, is not sufficient by itself to render an appellant adversely affected.”); *Front Range Equine Rescue*, 187 IBLA at 277-78 (the appellant’s “general interest cannot serve as a proper basis for standing to appeal, no matter how meritorious the arguments that are raised in support of the appeal”).

Ms. Lynch cites no other possible legally cognizable interest. Because she has no legally cognizable interest, we do not need to examine the second element of “adverse effect” under the Board’s standing regulation.<sup>28</sup> We conclude that Ms. Lynch has failed to establish that she is adversely affected by BLM’s decision to approve the research studies and consequently lacks standing to appeal BLM’s decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,<sup>29</sup> we grant BLM’s motion to dismiss; dismiss Ms. Lynch’s appeal of BLM’s June 24, 2016, decision; and deny her petition to stay the effect of that decision as moot.

\_\_\_\_\_/s/  
Silvia M. Riechel  
Administrative Judge

I concur:

\_\_\_\_\_/s/  
James F. Roberts  
Deputy Chief Administrative Judge

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<sup>28</sup> 43 C.F.R. § 4.410(d) (“A party to a case is adversely affected . . . when that party has a legally cognizable interest, *and the decision on appeal has caused or is substantially likely to cause injury to that interest.*”) (emphasis added).

<sup>29</sup> 43 C.F.R. § 4.1.