

NOTE: This disposition is nonprecedential.



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Interior Board of Land Appeals
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IBLA 2016-242)	DOI-BLM-OR-B000-2015-0055-EA
)	
SUSAN CARTER)	Wild Horses and Burros
)	
)	Motion to Dismiss Granted;
)	Appeal Dismissed;
)	Petition for Stay Denied as Moot

ORDER

Susan Carter 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 Carter lacks standing to bring her appeal.¹ Because Carter 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 and Carter's Appeal

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."² 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."³

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

² 16 U.S.C. § 1333(a) (2012).

³ 43 C.F.R. § 4700.0-6(a).

In the decision being appealed, BLM decided “to conduct research on the safety and practicality of sterilizing mares as a tool for wild horse population control.”⁴ The purpose of the project 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.⁵ All of the procedures would take place at Oregon’s Wild Horse Corral Facility in Hines, Oregon, on mares that have been removed from the range.⁶ After completion of the studies, the mares would be placed in BLM’s wild horse adoption program.⁷

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

In her appeal, Carter alleges that ovariectomy is an outdated procedure that is “obsolete” and “inhumane.”⁹ She states wild horses cannot “plead on their own behalves,” and her “intended goal is to see the [w]ild nature of wild horses preserved for posterity.”¹⁰

After BLM filed its motion to dismiss the appeal on the basis that Carter lacks standing to appeal BLM’s decision, we issued an order holding Carter’s stay petition in abeyance until briefing on the motion to dismiss is complete.¹¹ We observed: “Because an appellant must have standing to appeal from and seek a stay of a BLM decision, we must decide BLM’s motion to dismiss before we can adjudicate appellant’s stay petition.”¹² Carter did not respond to BLM’s motion to dismiss.¹³

Carter Does Not Have Standing to Pursue Her 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

⁴ Decision Record (DR) at 2 (June 24, 2016).

⁵ *Id.* at 3, 16.

⁶ *Id.* at 3.

⁷ *Id.*

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

⁹ Notice of Appeal (NOA) at 2, 3.

¹⁰ Statement of Standing at 1.

¹¹ Order (Aug. 8, 2016).

¹² *Id.*

¹³ 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.¹⁴ It is the responsibility of the appellant to demonstrate both of these elements of standing.¹⁵ If either element is lacking, we must dismiss the appeal for lack of jurisdiction.¹⁶

Here, Carter satisfies the “party to a case” requirement because she submitted comments to BLM on the EA supporting BLM’s decision.¹⁷ Standing therefore depends on whether Carter can demonstrate that she is adversely affected by BLM’s decision. That element of standing is met when a party to a case “has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest.”¹⁸ A legally cognizable interest can include cultural, recreational, or aesthetic use and enjoyment of the affected public lands.¹⁹ “The interest need not be an economic or property interest; however, a deep concern for a problem will not suffice.”²⁰

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.²¹ 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.²²

Carter, who lives in New Mexico, does not allege to have seen the wild horses at issue in the decision, visited the lands they may have previously inhabited, or visited or used the lands near the Wild Horse Corral Facility where they are maintained and where the research studies will take place.²³ She alleges only that

¹⁴ 43 C.F.R. § 4.410(a).

¹⁵ *Cascadia Wildlands*, 188 IBLA 7, 9 (2016); *Western Watersheds Project (WWP)*, 185 IBLA 293, 298 (2015).

¹⁶ *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).

¹⁷ See 43 C.F.R. § 4.410(b); BLM Motion to Dismiss at 2.

¹⁸ 43 C.F.R. § 4.410(d).

¹⁹ *Cascadia Wildlands*, 188 IBLA at 9-10; *WWP v. BLM*, 182 IBLA 1, 7 (2012).

²⁰ *The Fund for Animals, Inc.*, 163 IBLA 172, 176 (2004); see also *Susan Carter*, 188 IBLA 97, 100 (2016); *Newmont Mining Corp.*, 151 IBLA 190, 195 (1999).

²¹ *David Glynn*, 182 IBLA 70, 72 (2012).

²² *Colorado Environmental Coalition*, 173 IBLA 362, 368-69 (2008).

²³ See Statement of Standing at 1.

her “son lives in Oregon (where the mares will be experimented on)” and that she “may live there for a time before retiring to Wyoming.”²⁴ Carter’s statements, however, constitute no more than a vague intention of a possible future visit to the state in which the decision at issue will be implemented. Such an intention is insufficient to establish a legally cognizable interest and therefore cannot be a basis for establishing standing to appeal the decision.²⁵

Carter also states that because the research studies are “a preliminary exercise to be used on Wild Horses at large, . . . [i]t is an across the board endeavor.”²⁶ She therefore states that she has standing to appeal BLM’s decision based on the fact that the “Wyoming White Mountain and Adobe Town horses have been mentioned in other actions, as a target of sterilization,” and that she has lived in Wyoming, her “only daughter is buried there,” and she “hope[s] to return there to live, in the future; and observe and to paint the Wild Horses.”²⁷ The decision on appeal, however, involves wild horses in Oregon, not in Wyoming or any other location. And even if BLM’s decision also approved research studies in Wyoming (which it does not), Carter’s “hope” to return to Wyoming in the future is far too vague to establish any legally cognizable interest sufficient to establish standing.

Moreover, Carter’s concern about the impacts of sterilization on wild horses generally is insufficient to constitute a legally cognizable interest. 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.²⁸

²⁴ *Id.*

²⁵ See *Susan Carter*, 188 IBLA at 100-101; *WWP v. BLM*, 182 IBLA at 8 (“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.”) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563-64 (1992)).

²⁶ Statement of Standing at 1.

²⁷ *Id.*

²⁸ See, e.g., *Susan Carter*, 188 IBLA at 100 (“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.”).

Our conclusion here is consistent with our recent decision in a previous appeal brought by Carter.²⁹ In that case, as in this one, Carter appealed a BLM decision involving fertility control of wild horses. And in that case, too, Carter had neither observed the wild horses at issue nor visited the area where they were located; rather, she expressed “no more than a vague intention of a future visit.”³⁰ We held that because Carter had not identified a legally cognizable interest that was or could be injured by BLM’s decision, she did not have standing to bring her appeal.³¹

We reach the same conclusion here: because Carter has not demonstrated a legally cognizable interest that has been, or is substantially likely to be, injured by the decision being appealed, she cannot meet the requirement to demonstrate that she is adversely affected by BLM’s decision.³² She therefore does not have standing to appeal BLM’s decision and we must dismiss her appeal.³³

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,³⁴ we grant BLM’s motion to dismiss; dismiss Carter’s appeal of BLM’s June 24, 2016, decision; and deny her petition to stay the effect of that decision as moot.

/s/
Amy B. Sosin
Administrative Judge

I concur:

/s/
James F. Roberts
Deputy Chief Administrative Judge

²⁹ *Susan Carter*, 188 IBLA 97 (2016).

³⁰ *Id.* at 100.

³¹ *Id.*

³² 43 C.F.R. § 4.410(d).

³³ *Susan Carter*, 188 IBLA at 98; *WWP*, 187 IBLA at 320.

³⁴ 43 C.F.R. § 4.1.