



WESTERN AGGREGATES, LLC

174 IBLA 280

Decided April 29, 2008



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

WESTERN AGGREGATES, LLC

IBLA 2007-35

Decided April 29, 2008

Appeal from a decision of the Folsom (California) Field Office, Bureau of Land Management, approving issuance of a 20-year land lease for a heavy equipment operator training center. Lease CACA 46909.

Dismissed.

1. Administrative Procedure: Standing--Rules of Practice--Appeals: Standing to Appeal

In order to have a right to appeal a BLM decision, one must be a “party to a case” and “adversely affected” by the decision. 43 C.F.R. § 4.410(a). A party may show adverse effect through evidence of use of the lands in question. A party may also show it is adversely affected by setting forth a legally cognizable interest in resources or in other land, including adjacent land, and showing how the decision has caused or is substantially likely to cause injury to those interests. 43 C.F.R. § 4.410(d).

2. Administrative Procedure: Standing--Rules of Practice--Appeals: Standing to Appeal

Mere interest in a problem or concern with the issues involved does not suffice to show standing under 43 C.F.R. § 4.410(a). In addition, a party cannot demonstrate standing by asserting adverse impacts to the interest of another person or entity.

3. Administrative Procedure: Standing--Rules of Practice--Appeals: Standing to Appeal

Asserting interest in adjacent property alone will not suffice to demonstrate standing. It is an appellant’s responsibility to demonstrate that it has met the requisite

elements of standing under 43 C.F.R. § 4.410. An appeal will be dismissed when an appellant has failed to satisfy that burden.

APPEARANCES: Kerry Shapiro, Esq., San Francisco, California, for Western Aggregates, LLC; Barry E. Hinkle, Esq., and Theodore Franklin, Esq., Alameda, California, for Intervenor, Operating Engineers Local Union No. 3 Joint Apprenticeship Training Committee; Daniel G. Shillito, Esq., and Nancy S. Zahedi, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Western Aggregates, LLC (Western) appeals from an August 31, 2006, Finding of No Significant Impact and Decision Record (FONSI/DR or Decision) of the Folsom (California) Field Office, Bureau of Land Management (BLM), authorizing Lease CACA 46909, a 20-year lease for the construction and operation of a training facility for apprentice heavy equipment operators run by the Operating Engineers Local Union No. 3 Joint Apprenticeship Training Committee (JATC).¹ In the FONSI/DR, BLM selected the Proposed Action Alternative, as analyzed in the Environmental Assessment for Joint Training Center Lease at the Yuba Goldfields, CA-180-06-43 (EA). BLM made this Decision pursuant to the authority of section 302 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732 (2000).

Western challenges BLM's Decision, alleging that, since the lands of the lease area are withdrawn under the Act of March 1, 1893, ch. 183, 27 Stat. 507 (Caminetti Act), any management of the surface use of the withdrawn lands lies solely within the jurisdiction of the U.S. Army Corps of Engineers (the Corps) and BLM lacks jurisdiction to manage that surface use. Statement of Reasons (SOR) at 6-8. In the alternative, Western argues that BLM failed to satisfy its responsibilities under section 302 of FLPMA, to ensure that a proposed action is consistent with the applicable land use plan, and its environmental review responsibilities under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2000). SOR at 11-21. It asks the Board to vacate the Decision and remand it to BLM. SOR at 23.

By Order dated March 12, 2008, the Board directed Western to show cause why the appeal should not be dismissed for lack of standing under 43 C.F.R. § 4.410(a). We noted that Western, in its Notice of Appeal (NOA), states that the Decision authorizes a lease for operation of the training facility "on lands where

¹ On Feb. 21, 2007, the Board issued an order granting a petition to intervene filed by JATC.

Western claims ownership of mineral resources, and immediately adjacent to other property interests owned by Western” and that “[o]peration of the Training Center would directly interfere with Western’s property interests, including, *inter alia*, through mining and/or removal of mineral resources owned or claimed by Western, or environmental impacts affecting Western’s property interests.”² NOA at 1. We also observed that Western presented these claims without evidence, and thus failed to establish that it has a legally cognizable interest that may be adversely affected by the Decision.³ The Board instructed Western to provide evidence of its legally cognizable interest in the lands subject to the JATC lease, and to demonstrate how Western is “adversely affected,” by showing how the Decision has caused or is

² In an attachment to the SOR, Western provides a letter from its counsel to BLM dated Mar. 4, 2003, asserting Western’s ownership of certain mineral interests in some lands in sec. 27, including “‘common varieties of sand and gravel,’ having succeeded to valid mineral claims therein, and to reserved interests by virtue of deeds to the United States in 1901 and 1902 containing such reservations.” SOR, Att. 2, Letter dated Mar. 4, 2003, from Kerry Shapiro, Jeffer, Mangels, Butler & Marmaro LLP, counsel for Western, to Deane K. Swickard, Field Office Manager, Folsom Field Office, BLM. As we stated in the Order, “[i]t is undisputed that any such reservation would postdate the Department’s withdrawal of the lands in 1899.” Show Cause Order at 2 n .3.

³ We further noted that in *Western Aggregates, LLC*, 169 IBLA 64 (2006), we considered an appeal by this same appellant from a Sept. 16, 2003, decision of the California State Office, BLM, declaring 45 placer mining claims located in the Yuba Goldfields in secs. 22, 27, 28, and 32, T. 16 N., Rs. 4 and 5 E., MDM, Yuba County, California, null and void *ab initio* in whole or in part because, as of the date of location of the claims, some or all of the lands on which they were located were either (1) patented to the United States without mineral reservation or (2) withdrawn from location under the mining laws under the authority of the Caminetti Act, 27 Stat. 507 (1893), by Secretarial Orders dated Oct. 25, 1899, and Feb. 3, 1905 (either directly or by accretion to those portions of public lands that were withdrawn under the Caminetti Act).

Regarding Western’s mining claims located in the uplands contained in lots 1 through 5, sec. 27, we affirmed BLM’s decision declaring Western’s claims null and void *ab initio* because those lands were not open to mineral entry as of the date of location. *Western Aggregates, LLC*, 169 IBLA at 74. We also affirmed BLM’s decision declaring Western’s claims located on lands that are in the bed of the non-navigable historic Yuba River adjacent to the uplands null and void *ab initio*, on the modified basis that those lands, which arose by avulsion, are owned by the United States and were withdrawn from mineral entry along with their upland lots. *Western Aggregates, LLC*, 169 IBLA at 74-79.

substantially likely to cause injury to that interest. Show Cause Order at 3. The Board granted BLM 10 days from receipt of Western's Response to file any Reply. *Id.*

In its Response filed on March 24, 2008, Western asserts its status as a "party to a case," under 43 C.F.R. § 4.410(a), citing its active participation in the process leading up to the Decision. Response to Show Cause Order at 1-2. Addressing the issue of whether it has a legally cognizable interest that is "adversely affected," Western declines to demonstrate that it has mineral interests in the lease area, stating that "rather than consider complex title issues relating to standing, Western's standing can be further established based on ownership of lands 'immediately adjacent' to the JATC Lease Area and Parcel 27-1." *Id.* at 3. Western submits declarations and title documents in support of its asserted ownership of adjacent land, known as Parcel 34-2 in sec. 34 and Parcel 27-4 in sec. 27. *Id.*; see Sutherland Declaration and Exhibits A-E.

Alleging that it has a legally cognizable interest that may be affected by the Decision, Western principally argues that "the lands in Parcel 27-1 are under the jurisdiction of the [Corps], not the Folsom BLM, and are withdrawn for debris and flood control duties"; that "the grant of a 20-year lease to the JATC could directly interfere with future efforts by the Corps relating to such efforts"; and that "[i]n turn, direct impacts to Western's property interests and on-going business operations in the lands immediately adjacent to Parcel 27-1 are possible." Response to Show Cause Order at 4. Western also asserts that "[t]he JATC Lease Area is traversed by Hammonton Road," which crosses Western's property in Parcel 34-2, and borders it in Parcel 27-4, and that vehicles traveling to or from the Training Center "will contribute to traffic congestion as well as air quality impacts, which in turn, could affect" Western. *Id.* at 5-6.

BLM does not contest Western's assertion of adjacent land ownership, but dismisses as inapposite the cases cited by appellants, *George Jalbert*, 39 IBLA 205 (1979), and *Crooks Creek Commune*, 10 IBLA 243 (1973). BLM argues that those decisions do "not support Western's contention that mere ownership of adjacent property establishes that an appellant is 'adversely affected,'" but stand for the proposition that adjacent landowners have a legally cognizable interest that is adversely affected by a BLM decision, when they allege, "as an integral part of their appeal, some adverse impact to their enjoyment of the privately owned adjacent lands." BLM Reply at 2.

BLM also contests the basis for Western's claim that the decision on appeal has caused or is substantially likely to cause injury to its legally cognizable interest by asserting that there are no "colorable allegations of adverse effect" and no "causal relationship between the action undertaken and injury alleged" (*citing Southern Utah Wilderness Alliance*, 127 IBLA 325, 327 (1993)) first because "any use of the public

lands by the Corps will completely trump the JATC lease.” BLM Reply at 3. BLM points out that BLM included with the offered lease stipulations making clear that any use of the lease area shall not interfere with the purposes for which the property is managed by the Corps and that the JATC lease can be revoked at will at the request of the Corps. *Id.*; see FONSI/DR, Exhibit A (Special Stipulations for Lease CACA 46909) at ¶1.

BLM next notes that Western’s second claim of adverse effects—that the EA fails to discuss impacts of increased traffic contributing to traffic congestion as evidenced by the fact that Western declined to raise this issue in its SOR—“stands in direct contrast” to *George Jalbert* and *Crooks Creek Commune*, where appellants appealed the denial of their respective protests to timber sales, asserting standing as adjacent landowners substantially likely to suffer adverse impacts directly resulting from the timber sales. BLM Reply at 4.

Standing to Appeal

[1] The regulations require that in order to have standing to appeal, one must be a “party to a case” and “adversely affected” by the decision under appeal. 43 C.F.R. § 4.410(a); *Southern Utah Wilderness Alliance*, 164 IBLA 1, 4 (2004); *Mark S. Altman*, 93 IBLA 265, 266 (1986). 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.” 43 C.F.R. § 4.410(d); see also *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA 79, 86 (2005). A party may show adverse effect through evidence of use of the lands in question. A party may also show it is adversely affected by setting forth a legally cognizable interest in resources or in other land, including adjacent land, and showing how the decision has caused or is substantially likely to cause injury to those interests. *Board of Commissioners of Pitkin County and Wilderness Workshop*, 173 IBLA 173, 178 (2007). When the Board has been unable to determine from the NOA or SOR the appellant’s basis for a right of appeal, we have dismissed the appeal or issued orders, as we did in the present appeal, requiring a statement of standing with supporting evidence. *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA at 88.⁴

In considering Western’s first basis for its assertion of adverse impact, we think it helpful to look briefly at the historical use, title, and management of the lease area and at language in the lease addressing the role of the Corps.

⁴ “[I]t is not our responsibility to speculate how an appellant is adversely affected, and we will dismiss an appeal rather than engage in such speculation.” *Id.*, citing *Mark S. Altman*, 93 IBLA at 266.

A. *The Yuba Goldfields*

The Yuba Goldfields encompass an area of over 9,000 acres of private and Federally-owned lands composed of sediment debris adjacent to and in the former bed of the Yuba River in the Sacramento Valley. EA at 7-8; see *Western Aggregates, LLC*, 169 IBLA at 67-69. The lands of the Yuba Goldfields came under Federal ownership with the Treaty of Guadalupe Hidalgo, 9 Stat. 922 (1848), and were open to location under the Mining Law of 1872. One of the first areas worked by miners during the Gold Rush, the Yuba Goldfields were created between 1852 and 1884 when debris from unregulated hydraulic mining of placer gold in the Sierra Nevada Mountains washed down the Yuba River.

In time, Congress became concerned when large amounts of tailings deposited in the Yuba River channel choked waterways downstream of the mines, causing flooding, and sought to regulate hydraulic mining and debris. *California ex rel. State Lands Comm'n v. Super. Ct. of Sacramento County*, 900 P.2d 648, 664 (Cal. 1995); *Western Aggregates, LLC*, 169 IBLA at 69. With the Caminetti Act, Congress established the California Debris Commission (CDC), granting it broad authority to use the public lands or “any rock, stone, timber, trees, brush or material thereon or therein for any of the purposes of this act.” Caminetti Act, § 21, 27 Stat. 510. The Caminetti Act did not transfer from the Secretary of the Interior surface management functions over the public lands, but granted to the Secretary authority to withdraw “from sale and entry under the laws of the United States” those public lands needed as requested by the CDC for any of the purposes of this Act. *Id.*; see also *Western Aggregates, LLC*, 169 IBLA at 68.

Under the authority of the Caminetti Act, the CDC began requesting the withdrawal from sale and entry of certain lands in the Yuba Goldfields and constructing restraining barriers and settling basins in order to hold and store mining debris in the Yuba River and its tributaries to prevent it from washing downstream to the Feather and Sacramento Rivers, and eventually to the San Francisco Bay. The work became known as the “Project of 1899” or “Yuba River Project.” *Western Aggregates, LLC*, 169 IBLA at 69. By Secretarial Order dated October 25, 1899, the public lands in sec. 27, including the lands that are the subject of the present appeal, were withdrawn from sale and entry under the authority of the Caminetti Act. *Id.* at 68.

In 1986, Congress abolished the CDC, transferring “[a]ll authorities, powers, functions, and duties of the [CDC]” to the Secretary of the Army. Pub. L. No. 99-662, § 1106, 100 Stat. 4229 (Nov. 17, 1986) (Water Resources Development Act of 1986). Lands withdrawn pursuant to the Caminetti Act were restored to entry once the CDC informed the Department of the Interior that those lands were no longer needed by the CDC, as was the case with certain lands in Lots 2 through 4 and NE¹/₄, SW¹/₄,

sec. 22, T. 16 N., R. 5 E., Mount Diablo Meridian, but not with the subject lands. *Western Aggregates, LLC.*, 169 IBLA at 68 n.4, 74.

Today the Yuba Goldfields with their dredger ponds and tall hedgerows of tailings continue to bear the signs of California's historic gold dredging operations. EA at 8; FONSI/DR at 5.

B. *Lease Stipulations*

On August 31, 2005, BLM distributed copies of a draft EA for the JATC lease to interested parties, including adjacent land owners, sand and gravel companies, Federal, state and local government agencies, and others. FONSI/DR at 9-10. BLM received comments at a public meeting in Marysville, California, and during the public comment period that ended on June 30, 2006. In revising the draft EA to address public comments, BLM included information regarding the CDC's creation and authority and the transfer of its functions to the Corps under the Water Resources Development Act of 1986. EA at 2. The EA states that the Corps "is not presently using any of the subject lands for purposes of the Caminetti Act and has no plans in the foreseeable future to do so." *Id.*

Among the lease stipulations BLM developed are those incorporating the conditions requested by the Corps in its letter dated June 7, 2006, from Marvin D. Fisher, Chief, Real Estate Division, to Howard K. Start, Chief, Branch of Lands Management, BLM. That letter addressed the "proposal to issue a use authorization for the operation of a training center on federal lands withdrawn and used by the Secretary of the Army," and stated that "[t]he proposed use does not appear to interfere with the immediate needs of the Department of the Army and the purposes for which the property has been withdrawn under the Caminetti Act." Corps Letter to BLM dated June 7, 2006, at 1. The letter also identified certain terms and conditions of the land use authorization that the Corps believed necessary to "ensure the Department of the Army's ability to carry out its mission under the Caminetti Act and other authorities." *Id.*

BLM adopted those conditions as Special Stipulation 1, which explains that the lease area is within lands withdrawn in 1899 from sale and entry under the Caminetti Act and that, under the Act, the Corps has the right to use these public lands or "any rock, stone, timber, trees, brush, or material thereon or therein" for any of the purposes of that Act. It further states:

In order to protect [the Corps'] right to use these lands for the purposes of the Caminetti Act, any structures or improvements placed thereon and found to later interfere with the [Corps'] operations shall be removed or relocated as necessary by the lessee at no cost to the United

States. Additional terms and conditions developed by the [Corps] are as follows:

- a. Use of the land shall not interfere with the purposes for which the property is managed by the Secretary of the Army, as determined by the District Engineer.
- b. Lessee will comply with all applicable Federal, State, County and municipal laws, ordinances and regulations.
- c. The exercise of the privileges granted shall be without cost or expense to the Department of the Army.
- d. The use shall not be exclusive, but shall be subject to the right of the Department of the Army to improve, use or maintain the premises, and is subject to other outgrants of the United States.
- e. The lease may be revoked at will for any purposes the Department of the Army determines is necessary to carry out its responsibilities under the Caminetti Act.

FONSI/DR, Ex. A, Special Stipulations for Lease CACA 46909, Stipulation 1.

C. *An Allegation of Interference with the Corps' Flood Control Function is not a Basis for Standing*

In an effort to demonstrate standing, Western places primary emphasis on its assertion that the Decision to offer the lease is substantially likely to adversely impact its interests because the lease operations will interfere with the Corps' flood control function. Western's argument mischaracterizes the Decision as "removing the JATC Lease Area lands in Parcel 27-1 from the inventory of lands available for debris and flood-control protection, and transferring such lands to a private Training Center by means of a 20-year lease." Response to Show Cause Order at 5. Building on that faulty premise, they then argue that, since award of the lease removes the lease area from the flood control authority of the Corps, the potential for flooding could not be controlled by the Corps, which might result in potential impacts from flooding on adjacent lands.

[2] It is clear that BLM's Decision to offer a lease does not and cannot "remove the subject lands" from such "inventory." And far from interfering with any future flood control efforts, the lease and special stipulations ensure that the full authority of the Corps is protected during the term of the lease. Western "purports to champion the interests of the [Corps] in maintaining an unhindered ability to use the 57-acre parcel at issue for flood control purposes" (JATC Response to SOR at 5), but it cannot demonstrate standing by asserting adverse impacts to the interest of another

party.⁵ An allegation of interference with the Corps' flood control function is not a basis for standing. We reject Western's claim of standing based on allegations of injury to the Corp's interest and authority.

D. *Western's Assertion of Adverse Impacts from Increased Traffic Does Not Suffice as a Basis for Standing*

In alleging adverse impacts to a legally cognizable interest from increased traffic, Western incorrectly states that the EA "identifies the potential for emissions of diesel, fugitive dust, and other emissions." Response to Show Cause Order at 6. In fact, the EA says just the opposite. The training center "will accommodate staff and class of about 20 persons," who "will generally make a single trip to the Center daily, so off-site vehicular traffic will be less than 100 ADT (average daily traffic) and associated air pollutant emissions are negligible." EA at 36; *see also* EA at 37-39. Similarly, Western incorrectly states that "the EA identifies the potential for water quality impacts relating to drainage, ground water, water quality, and noise impacts," and then asserts that "[e]ach of these impacts has the potential to impact Western's property and/or employees and agents, and thus 'adversely affect' Western's legally cognizable interests." Response to Show Cause Order at 6; *see* EA at 20-22, 44.

Appellants in *George Jalbert and Crooks Creek Commune* asserted standing as adjacent landowners substantially likely to suffer adverse impacts from the proposed timber sales to interests such as the common watershed, the appellants' water supply, their aesthetic resource, and the enjoyment of their property. We found, in those cases, that the appellants had standing to appeal from the dismissal of their protests.

[3] The circumstances of *George Jalbert and Crooks Creek Commune* bear little resemblance to the present case. Although Western asserts ownership of adjacent land, as did appellants in *George Jalbert and Crooks Creek Commune*, an assertion of interest in adjacent property alone will not suffice to demonstrate standing. Appellants in *George Jalbert and Crooks Creek Commune* went further. Each asserted that the decision on appeal would have adverse impacts on their use or enjoyment of legally cognizable interests. Western's Response to the Show Cause Order does not identify how BLM's Decision to offer a lease for a training center that will accommodate about 20 students, operating a maximum of 10 pieces of equipment at

⁵ We note that the Corps did not seek to participate in this appeal. Moreover, to the extent the assertion of standing is based on an academic interest in the legal consequences of public land withdrawals, we remind appellant that "mere interest in a problem or concern with the issues involved does not" suffice to demonstrate standing. *Board of Commissioners of Pitkin County and Wilderness Workshop*, 173 IBLA at 178, *citing Kendall's Concerned Area Residents*, 129 IBLA 130, 136-37 (1994); *Mark S. Altman*, 93 IBLA at 266.

a time on 57 acres (EA at 36) “has caused or is substantially likely to cause injury” to any legally cognizable interest Western may have in adjacent lands. 43 C.F.R. § 4.410(a).

A party may show an adverse effect “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.” *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA at 84, and cases cited. Western has not shown that the Decision has caused or is substantially likely to cause injury to its interests.

“It is an appellant’s responsibility to demonstrate that it has met the requisite elements of 43 C.F.R. § 4.410.” *Board of Commissioners of Pitkin County and Wilderness Workshop*, 173 IBLA at 178, citing *Colorado Open Space Council*, 109 IBLA 274, 280 (1989). Western has not satisfied that burden.

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 is dismissed.

/s/
Christina S. Kalavritinos
Administrative Judge

I concur:

/s/
James F. Roberts
Administrative Judge