



THEODORE ROOSEVELT CONSERVATION PARTNERSHIP

178 IBLA 201

Decided October 28, 2009



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

THEODORE ROOSEVELT CONSERVATION PARTNERSHIP

IBLA 2009-159

Decided October 28, 2009

Appeal from the dismissal of a protest of an offering of certain parcels for leasing at a competitive oil and gas lease sale. WY 3100 (921 Mistarka).

Dismissed.

1. Administrative Procedure: Standing--Appeals: Standing--Oil and Gas Leases: Competitive Leases--Rules of Practice: Appeals: Standing to Appeal

In order to have a right to appeal a BLM decision, a person or organization must be a “party to a case” and must be “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, affected by a decision and showing how the decision has caused or is substantially likely to cause injury to those interests. 43 C.F.R. § 4.410(d). The Board will grant BLM’s motion to dismiss an appeal for lack of standing when an organization, or one of its members, fails to assert a use that serves to connect their interest to the lands at issue.

APPEARANCES: Thomas R. Wilmoth, Esq., and Donald G. Blankenau, Esq., Lincoln, Nebraska, for appellant; Kathleen C. Schroder, Esq., Robert C. Mathes, Esq., and Laura Lindley, Esq., Denver Colorado, for Contex Energy Company (Intervenor); Stephen J. Sullivan, Esq., Denver, Colorado, for Strachan Exploration, Inc., Tye Production Company LLC, and Priority Oil & Gas Limited Liability Company (Intervenors); Davis O. O’Connor, Esq., Andrew C. Emrich, Esq., and Jere C. (Trey) Overdyke, III, Denver, Colorado, for Rio Challenger, LLC (Intervenor); Philip C. Lowe, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Theodore Roosevelt Conservation Partnership (TRCP) has appealed from a January 6, 2009, decision of the Wyoming State Office, Bureau of Land Management (BLM), dismissing its protest of BLM's decision to offer certain parcels for lease at the April 2008 competitive oil and gas lease sale. Of the 264 parcels offered for lease,¹ TRCP protested the sale of 73 parcels,² contending that BLM's decision to lease those parcels violated section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2006); section 302(b) of the Federal Lands Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732(b) (2006); and Executive Order (EO) No. 13443, issued by President Bush on August 16, 2007.

By order dated April 7, 2009, the Board granted the Motion to Intervene filed by Contex Energy Company (Contex), the high bidder for parcel 106, and by order dated April 27, 2009, the Board granted the Motion to Intervene filed by Strachan Exploration, Inc. (Strachan), Tyee Production Company LLC (Tyee), and Priority Oil & Gas Limited Liability Company (Priority) (collectively, Strachan), the high bidders

¹ The Administrative Record (AR) includes at Tab 11 the Notice of Competitive Oil and Gas Lease Sale issued by the Wyoming State Office, BLM, on Feb. 15, 2008, identifying and describing the 264 parcels proposed for sale. The AR also includes at Tab 10 the results of that sale, which took place on Apr. 2, 2008.

² BLM received 21 protests to the offering of 218 of the offered parcels, including TRCP's protest of 73 parcels. Only TRCP's protest is at issue in the present order. The other entities, groups, and individuals filing protests are identified on the first page of BLM's Jan. 6, 2008, decision. The 73 parcels subject to TRCP's protest are identified as follows: WY-0804-002, WY-0804-004, WY-0804-014, WY-0804-017, WY-0804-019, WY-0804-020, WY-0804-021, WY-0804-026, WY-0804-034, WY-0804-038, WY-0804-047, WY-0804-048, WY-0804-049, WY-0804-058, WY-0804-059, WY-0804-066, WY-0804-067, WY-0804-071, WY-0804-072, WY-0804-073, WY-0804-080, WY-0804-081, WY-0804-082, WY-0804-083, WY-0804-085, WY-0804-087, WY-0804-089, WY-0804-093, WY-0804-094, WY-0804-095, WY-0804-097, WY-0804-099, WY-0804-100, WY-0804-102, WY-0804-106, WY-0804-107, WY-0804-117, WY-0804-118, WY-0804-119, WY-0804-121, WY-0804-127, WY-0804-129, WY-0804-130, WY-0804-131, WY-0804-132, WY-0804-133, WY-0804-134, WY-0804-137, WY-0804-156, WY-0804-158, WY-0804-160, WY-0804-161, WY-0804-173, WY-0804-174, WY-0804-177, WY-0804-182, WY-0804-211, WY-0804-213, WY-0804-218, WY-0804-219, WY-0804-220, WY-0804-221, WY-0804-229, WY-0804-231, WY-0804-232, WY-0804-234, WY-0804-235, WY-0804-236, WY-0804-241, WY-0804-245, WY-0804-257, WY-0804-258, and WY-0804-264

on parcels WY-0804-103, WY-0804-108, WY-0804-111, and WY-0804-123 (the Strachan parcels).³

BLM, Contex, and Strachan have each filed a motion to dismiss TRCP's appeal for lack of standing. As explained below, we grant their motions.

TRCP'S STATEMENT OF STANDING

TRCP's supports its statement of standing with the Declaration of Dr. Rollin D. Sparrowe (Sparrowe Declaration), a founding Board member of TRCP and currently Chairman of TRCP's Board. Sparrowe is "Co-Chair of TRCP's Fish, Wildlife and Energy Working Group, which is dedicated to ensuring that energy development is conducted in a responsible manner that minimizes adverse impacts on fish, wildlife and the hunting opportunities they afford." Sparrowe Declaration at 2 (Statement of Reasons (SOR, Ex. C)).⁴ Sparrowe states that "TRCP is a non-profit organization supported by a nationwide network of over 90,000 individual sportsmen and women and more than 1,400 affiliated clubs and organizations dedicated to the pursuit of hunting, fishing, and outdoor recreation." *Id.* He explains that "[t]he mission of TRCP is to preserve the traditions of hunting and fishing by: A) Expanding access to places to hunt and fish; B) conserving fish and wildlife and the habitats necessary to sustain them; and C) increasing funding for conservation and management." *Id.* at 2-3. He states that "[o]il and gas development adversely impacts sage grouse in Wyoming," which, "in turn, is resulting in fewer hunting and wildlife viewing opportunities for TRCP's members, including me." *Id.* at 3. He further states that "TRCP members, including me, hunt sage grouse throughout Wyoming, including areas subject to the *lease sale* conducted by Wyoming BLM in April 2008." *Id.* (emphasis added).

In asserting that its members, including Sparrowe, are adversely affected by oil and gas leasing and development in Wyoming, TRCP states as follows:

TRCP is especially concerned with the fate of Greater sage-grouse and the recreational opportunities they provide sportsmen, including TRCP's members, each year in Wyoming. TRCP's members, including Dr. Sparrowe, actively hunt sage-grouse in portions of Wyoming

³ Strachan and Tyee acquired the four leases. As a result of lease issuance and assignments approved by BLM, record title interests to the Strachan parcels are now owned by Strachan, Tyee, and Priority.

⁴ TRCP asserts that the Working Group is "comprised of some of the country's oldest and most respected hunting, fishing, and conservation organizations." SOR at 2.

directly affected by the *lease sale* (i.e., on and adjacent to the parcels sold). Without comprehensive habitat management planning, closely coordinated with the Wyoming Game and Fish Department, leasing and development of energy resources within sage-grouse habitat can have a devastating impact on this wildlife resource and the hunting opportunities it affords.

SOR at 2 (citations omitted, emphasis added).

THE MOTIONS TO DISMISS FOR LACK OF STANDING

Relying upon the Board's decision in *The Coalition of Concerned National Park [Service] Retirees (The Coalition)*, 165 IBLA 79 (2005), BLM asserts that “[w]hen an organization, such as TRCP, appeals a BLM decision, it must demonstrate that one or more of its members has a legally cognizable interest in the subject matter of the appeal, coinciding with the organization’s purposes, that is or may be adversely affected by the decision.” Motion to Dismiss at 2-3. Noting that TRCP has the burden to “establish standing and make colorable allegations of an adverse effect, supported by specific facts, sufficient to establish a causal relationship between the approved action and injury alleged,” BLM argues that “TRCP merely states a conclusion that its members are concerned citizens with regard to the April 2, 2008 lease sale,” and that “[t]his is insufficient to establish standing.” *Id.* at 3-4.

BLM further states that “Dr. Sparrowe has not stated with any particularity on which of the protested parcels he has visited and hunted on, when he last did so, when he intends to do so again,” and further, that “[s]ome of the parcels are several hundred miles away from Dr. Sparrowe’s home.” *Id.* at 4. BLM asserts that “[t]his generalized assertion of standing is insufficient.” In making this argument, BLM relies upon *Summers v. Earth Island Institute*, __ U.S. __, 129 S.Ct. 1142 (2009), in which the Supreme Court stated that “[a]ccepting an intention to visit the National Forests as adequate to confer standing to challenge any Government action affecting any portion of those forests would be tantamount to eliminating the requirement of concrete, particularized injury in fact.” BLM states that the injury alleged by TRCP, and by Sparrowe in his Declaration, is akin to that which the Supreme Court rejected as insufficient to confer standing in *Summers*:

[A] vague desire to return is insufficient to satisfy the requirement of imminent injury: “Such ‘some day’ intentions—without any description of concrete plans, or indeed any specification of *when* the some day will be—do not support a finding of the ‘actual or imminent injury’ that our cases require.”

129 U.S. at 1151 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 (1992)). BLM views TRCP's assertions that oil and gas development will result in fewer hunting and wildlife viewing opportunities for TRCP's members as too vague to confer standing, like the assertions made by the plaintiffs in *Summers*. According to BLM, Sparrowe "has not shown that BLM's decision to lease these parcels will directly lead to oil and gas development of a type that will 'adversely affect sage grouse' on these parcels." Motion to Dismiss at 5.

BLM argues that "TRCP must show a concrete and particularized injury in fact that is actual and imminent, not conjectural or hypothetical, and fairly traceable to the offending action." BLM explains:

Here, TRCP not only failed to establish that it uses or will use any of the protested parcels in the future, it has also failed to show any adverse impact to its interests on specific leased parcels. This failure is fatal under the IBLA's standing jurisprudence. As previously noted, Dr. Sparrowe's declaration does not provide any specific information about which of the 73 protested parcels he has hunted on, when he did so and when he intends to do so again. In addition, the declaration contains no information on how BLM's decision to lease a particular parcel will harm its ability to hunt or view greater sage-grouse on that particular parcel.

Id. at 6.

Contex, the high bidder for parcel 106, which covers 2,320 acres of public land managed by BLM's Casper Field Office, has also filed a motion to dismiss TRCP's appeal for lack of standing. Contex challenges TRCP's standing on the basis of *The Coalition*, in which the Board stated that evidence of actual use of each parcel is "the most direct way" to establish adverse effect, but that a party may demonstrate 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." 165 IBLA at 83-84. Contex emphasizes the Board's reasoning that "denial of a protest to multiple parcels in a sale does not establish that the protester has standing to appeal as to all the parcels"; that "each parcel in an oil and gas lease sale is not essential to the sale"; and that "each individual parcel has its own characteristics and is offered separate from every other parcel." 165 IBLA at 81. Citing *Wyoming Outdoor Council*, 153 IBLA 379, 384 (2000), Contex argues that one challenging an oil and gas lease sale must demonstrate adverse effect with respect to every challenged parcel.

In applying these principles to TRCP's appeal, Contex agrees with BLM that "TRCP has not established that it has standing to appeal any of the Subject Parcels,

including Parcel 106, because it has not alleged that it or its members have an interest in any specific parcel.” Contex Motion to Dismiss at 4. Rather than identifying any specific parcels, argues Contex, TRCP’s statement of standing and the Sparrowe Declaration “contain only the most general allegations of adverse effect.” *Id.* Contex asserts that “[t]his Board should not assume from Dr. Sparrowe’s generic statements that TRCP holds legally cognizable interests in all of the Subject Parcels.” *Id.* at 5. Contex emphasizes that Sparrowe “does not identify the areas in which he has hunted and, moreover, does not allege that he hunts on or near *all* of the Subject parcels.” *Id.* Moreover, Contex states that “TRCP has not alleged that all of the Subject Parcels contain sage grouse or sage grouse habitat,” and that “[i]n fact, in its Protest, TRCP indicated that some challenged parcels do not contain sage grouse or sage grouse habitat.” *Id.*

DISCUSSION

We will now review TRCP’s statement of standing in the context of the Board’s decision in *The Coalition*, in which the Coalition and others appealed from a BLM decision dismissing their protest of an offering of 27 parcels of land near Dinosaur National Monument in Moffat County and Rio Blanco County, Colorado. The Board stated that in amendments to 43 C.F.R. § 4.410,⁵ the Office of Hearings and Appeals had codified the two requirements for “standing” to appeal a BLM decision, *i.e.*, “a person or organization must be a ‘party to a case’ and must be ‘adversely affected’ by the decision.” 165 IBLA at 81. The Board noted that in *Wyoming Outdoor Council* it had stated that in addition to showing that one is a party to a case,

one must also show that he or she is adversely affected by the decision being appealed. As discussed above, this may be shown through evidence of use of the land in question. In the oil and gas lease sale context, that means providing evidence of use of each particular parcel to which the appeal relates. In this case, appellants have provided such evidence for only three parcels. [Footnote omitted.]

165 IBLA at 83 (quoting *Wyoming Outdoor Council*, 153 IBLA at 383). The Board provided the following explanation of this ruling:

It is important to point out, however, that in *Wyoming Outdoor Council* we said that adverse effect “*may* be shown through evidence of use of the land in question.” 153 IBLA at 384 (emphasis supplied). That would be the most direct way to show a connection between a legally cognizable interest and injury to that interest as the result of a decision. But “an interest in resources affected by a decision may be

⁵ See 43 C.F.R. § 4.410(b) and (d); 69 Fed. Reg. 33794, 33803 (June 5, 2003).

[a] legally cognizable [interest].” 68 FR 33794 (June 5, 2003). Therefore, one may also establish he or she is adversely affected 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. 43 CFR 4.410(d) (2003). See, e.g., *William E. Love*, 151 IBLA 309, 310, 320 (2000); *Robert M. Sayre*, 131 IBLA 337, 339 (1994); *Kendall’s Concerned Area Residents*, 129 IBLA 130, 136-37 (1994); *Missouri Coalition for the Environment*, 124 IBLA 211, 216-17 (1992); *State of California*, 121 IBLA 73, 113 (1991); *Dorothy A. Towne*, 115 IBLA 31, 35 (1990); *In re Pacific Coast Molybdenum*, 68 IBLA 325, 331-33 (1982). In the oil and gas lease sale context, if one can show a connection between a legally cognizable interest that would likely be injured by leasing one or more parcels, then one has established he or she is or may be adversely affected as to those parcels.

The Coalition, 165 IBLA at 83-84.

Noting that four individuals claimed organizational standing, the Board followed the rule, recognized by the Board’s decisions, that “for an organization to have a right of appeal, one or more of its members must have an interest in their own right that is or may be adversely affected by the decision.” 165 IBLA at 86 (citing *Wyoming Outdoor Council*, 153 IBLA at 383; *National Wildlife Federation*, 82 IBLA 303, 308 (1984)). The Board reviewed the specific activities of two of the four individuals and determined that they had shown an interest in the parcels that may be adversely affected by BLM’s decision. Reed Morris, an employee and member of Colorado Environmental Coalition (CEC), the Natural Resources Defense Council (NRDC), and The Wilderness Society (TWS), asserted that he used lands in certain specifically named parcels “for hiking, enjoying the views, and observing wildlife.” We found that his statements to this effect “connect the interests of CEC, NRDC, and TWS in daytime visual resources and wildlife resources to those parcels.” 165 IBLA at 87. The Board found that Morris’ driving “Harpers Corner Drive to Echo Park within the Monument and stopp[ing] at several points to enjoy the views and observe wildlife connects those organizations’ interest in visual resources and wildlife to all 27 parcels.” *Id.* (emphasis added). Dennis K. Huffman, a former Superintendent of the Monument and a member of the Coalition, asserted that he continues to recreate in the Monument region by hiking, bird watching, endangered species viewing, wildlife photography, and studying remains of past cultures—a statement deemed by the Board to be “sufficient to establish a connection between the Coalition’s interests in visual resources and in wildlife and all 27 parcels.” 165 IBLA at 88 (emphasis added).

The Board's analysis makes clear that whether an organization has standing turns upon whether the activity of a member of the organization *connects* or is *sufficient to establish a connection* between the organization's interest and the protested parcels. We conclude that Sparrowe has failed to establish such a connection.

TRCP does not establish that it or any of its members, including Sparrowe, has used or in the future will use any of the protested parcels. As quoted previously, Sparrowe, the sole declarant, states only that he (and others) hunt sage grouse in areas that include "areas subject to the *lease sale*." SOR Ex. C at 3 (emphasis added). The lease sale included 264 parcels; only 73 were protested. Sparrowe makes no allegation as to any protested parcel. TRCP articulates a generalized concern with the general health of the sage grouse population in Wyoming, arguing that oil and gas leasing can have a "devastating impact on this wildlife resource and the hunting opportunities it affords." SOR at 2. However, TRCP does not identify any protested parcels on which Sparrowe or any other of its members have hunted. TRCP therefore has not connected TRCP's interests to the protested parcels.

Nor has TRCP identified which of the parcels contain sage grouse or sage grouse habitat. As Contex states, "in its Protest, TRCP indicated that some challenged parcels do not contain sage grouse or sage grouse habitat." Answer of Contex at 5. Further, Contex observes that "some of the leases to the Subject Parcels do not have stipulations related to sage grouse, suggesting that these leases may not be located within sage grouse habitat." *Id.* We agree with Contex that in light of its failure to even allege which of the protested parcels contains sage grouse or sage grouse habitat, "TRCP cannot demonstrate that its alleged interest in hunting sage grouse is adversely affected by BLM's decision to lease the Subject Parcels."⁶ *Id.*

⁶ In addition, BLM makes the related argument that "[t]he leasing decision itself does not approve or result in any surface-disturbing activity on the parcels in question." *Id.* (quoting *Western Slope Environmental Council*, 164 IBLA 329, 341 (2005)). BLM states that issuing an oil and gas lease does not guarantee that drilling, development, or other on-the-ground activity will occur, and that "[e]ven if the parcels are developed, injuries to greater sage-grouse and their habitat are still far from certain because BLM retains the ability to condition operational activities." Motion to Dismiss at 6 (citing *Yates Petroleum Corporation*, 176 IBLA 144 (2008)). BLM reasons as follows:

When and if a lessee submits an APD [application for permit to drill], BLM will then be able to analyze environmental concerns at the site-specific level. Many of TRCP's concerns may be moot, for unless and until a lessee submits an APD, potential impacts remain speculative. If and when an APD is submitted, at that time if TRCP

(continued...)

For all of these reasons, we conclude that TRCP has failed to show that the activity of any of its members connects TRCP's interests to the protested parcels. TRCP thus has failed to establish standing to appeal the April 2008 lease sale.

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 decision appealed from is dismissed.

_____/s/
James F. Roberts
Administrative Judge

I concur:

_____/s/
Geoffrey Heath
Administrative Judge

⁶ (...continued)

believes its members' interests will be harmed, TRCP can then challenge BLM's approval of the APD. Until that time, any impacts to greater sage-grouse would be hypothetical and TRCP cannot show any harm prior to any surface disturbing activities. As the Supreme Court put it, standing is not an "ingenious academic exercise in the conceivable . . . [b]ut requires a factual showing of perceptible harm." *Summers*, p. 20. Motion to Dismiss at 6-7; *see also* 43 C.F.R. § 3101.1-2. However, as BLM recognizes, the Board has evaluated specific provisions of an APD regarding sage grouse in terms of whether those provisions were necessary, or adequate, for the protection of sage grouse. *E.g.*, *Yates Petroleum Corporation*, 176 IBLA at 155-58. That TRCP may then challenge such a provision does not mean that TRCP may not now challenge BLM's decision to offer an oil and gas lease, provided it could meet the standards of 43 C.F.R. § 4.410 as construed and applied by the Board in *The Coalition*.