



VINCENT H. YAZZIE
v.
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

185 IBLA 243

Decided February 23, 2015



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

VINCENT H. YAZZIE

v.

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

IBLA 2014-195

Decided February 23, 2015

Petition for discretionary review of an order of Administrative Law Judge Robert G. Holt dismissing his request for administrative review of a decision of the Manager, Indian Programs Branch, Program Support Division, Western Region, Office of Surface Mining Reclamation and Enforcement, approving the transfer of a Federal surface mine permit. DV-2014-01-R.

Petition for discretionary review granted; Administrative Law Judge's order affirmed.

1. Administrative Procedure: Standing--Surface Mining Control and Reclamation Act of 1977: Administrative Procedure: Generally--Surface Mining Control and Reclamation Act of 1977: Permits: Transfer, Assignment, or Sale of Rights

Under 43 C.F.R. § 4.1361, any person with an interest which is or may be adversely affected by a decision of the Office of Surface Mining Reclamation and Enforcement concerning a transfer of rights under a surface coal mining permit involving Indian land may file a request for review of that decision.

2. Administrative Procedure: Standing--Surface Mining Control and Reclamation Act of 1977: Administrative Procedure: Generally--Surface Mining Control and Reclamation Act of 1977: Permits: Transfer, Assignment, or Sale of Rights

Tribal membership does not confer standing on an individual Native American to challenge a permitting decision of the Office of Surface Mining Reclamation and

Enforcement (OSM) that adversely affects only the rights or interests of the tribe, or afford the individual either ownership of property or use of a resource of economic, recreational, aesthetic, or environmental value, that is or may be adversely affected by OSM's decision.

3. Administrative Procedure: Standing--Surface Mining Control and Reclamation Act of 1977: Administrative Procedure: Generally--Surface Mining Control and Reclamation Act of 1977: Permits: Transfer, Assignment, or Sale of Rights

An individual cannot demonstrate standing to challenge a decision of the Office of Surface Mining Reclamation and Enforcement approving the transfer of rights under a surface coal mining permit on Indian lands based on permits issued by an Indian tribe authorizing him to hunt and fish on tribal lands. He must demonstrate that he hunted or fished in the project area and intends to do so again in the future.

APPEARANCES: Vincent H. Yazzie, Flagstaff, Arizona, *pro se*; William Gregory Kelly, Esq., and Paul E. Frye, Esq., Albuquerque, New Mexico, for Navajo Transitional Energy Co., LLC; Arthur R. Kleven, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Office of Surface Mining Reclamation and Enforcement.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Vincent H. Yazzie has filed a Petition for Discretionary Review (PDR) of an April 22, 2014, Order (2014 Order) of Administrative Law Judge (ALJ) Robert G. Holt styled "Motions to Dismiss Granted, Motions for Summary Disposition Denied as Moot, Motion to Strike Denied as Moot." He sought discretionary review by the Board of the ALJ's dismissal of his Request for Administrative Review (RAR) of a November 1, 2013, Decision (Decision) of the Manager, Indian Programs Branch, Program Support Division, Western Region, Office of Surface Mining Reclamation and Enforcement (OSM).¹ See 43 C.F.R. §§ 4.1361, 4.1369. In its decision, OSM had conditionally approved a transfer of Federal Mine Permit No.NM0003F (Permit) from the BHP Navajo Coal Company (BNCC) to the Navajo Transitional Energy Co., LLC (NTEC).² See NTEC Response at 2 ("[T]he Navajo Nation Council

¹ Yazzie had the option, under 43 C.F.R. § 4.1369, of seeking judicial review of the ALJ's 2014 Order, but choose instead to seek discretionary review by the Board.

formed NTEC to . . . take control of the Navajo Mine, . . . and to thereby protect and promote the economic well[-]being of the Navajo Nation and Navajo people.”). The Permit concerned the Navajo Mine (Mine), a surface coal mining operation entirely situated on leased Navajo Nation tribal lands in northwestern New Mexico. *See id.* (“[T]he Navajo Mine [has been] operating since the 1960s on Navajo Nation trust lands and mining Navajo coal.”).

We agree that the ALJ correctly ruled, as a matter of law, that Yazzie does not have an interest sufficient to support standing under 43 C.F.R. § 4.1361 to seek review of OSM’s Decision. We therefore grant Yazzie’s PDR but affirm the ALJ’s 2014 Order dismissing Yazzie’s request for review of OSM’s decision.

Background

On May 3, 2013, BNCC applied to OSM to transfer the existing Permit to NTEC pursuant to section 511(b) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. § 1261(b) (2012), and its implementing regulations.³ At that time, the Permit authorized surface coal mining operations on a total of approximately 33,600 acres of land held in trust for and leased by the Navajo Nation, a Federally-recognized Indian tribe. The original lease, which granted the right to conduct surface coal mining operations, had been issued by the Navajo Nation to BNCC’s predecessor-in-interest on July 26, 1957. The lease area is situated south of

² NTEC is a limited liability company created and owned by the Navajo Nation. *See* OSM Response at 3; NTEC Response at 2. OSM’s 2013 Decision actually consisted of two decisions, each dated Nov. 1, 2013, issued separately to BNCC and NTEC. *See* OSM Response to PDR (Response) at 3-4. In the decision issued to BNCC, OSM approved parts of the permit transfer application, changing BNCC’s name to the Navajo Mine Coal Co., Inc. (NMCC, Inc.), and then converting that entity from a corporation to a limited liability company (NMCC, LLC). In the decision issued to NTEC, OSM approved other parts of the permit transfer application, recognizing NTEC’s acquisition of NMCC, LLC, and then merger of that entity into NTEC. Both decisions were conditioned on receipt and acceptance of performance bonding, liability insurance, and other material, plus notification of consummation of the relevant transactions, following which OSM would approve the transfer of the Permit from BNCC to NTEC. Following satisfaction of all the conditions, OSM finally approved the transfer of the Permit to NTEC, by decision dated Feb. 4, 2014. *See* NTEC Response at 2. For ease of reference, we refer to a single OSM decision conditionally approving the transfer of the Permit from BNCC to NTEC.

³ BNCC’s application was updated or revised on May 10, Aug. 30, Sept. 3, and Oct. 17, 2013. Relevant documents concerning OSM’s conditional approval of the Permit transfer may be found at http://www.wrcc.osmre.gov/Current_Initiatives/Navajo_Mine/Permit_Transfer.shtm (last visited Dec. 11, 2014).

Fruitland, New Mexico, in San Juan County, New Mexico. Mining has progressed across the lease area since 1963, resulting in the extraction and removal of coal for burning at the Four Corners Power Plant (FCPP), situated adjacent to the lease area. It is undisputed that the transfer of the Permit would not “amend the Permit or mine plan or affect mining operations in any way,” and that existing operations at the Mine were contractually obligated to continue through 2016, regardless of whether or not the transfer occurred. NTEC Response at 4; *see* OSM Response at 4 (“OSM’s decision did not approve any operational changes to the mining or reclamation plans in Permit NM-0003F.”).

The Decision conditionally approved the transfer of the Permit from BNCC to NTEC. The Navajo Nation did not challenge OSM’s Decision. However, asserting his interest as a member of the Navajo Nation, Yazzie filed his RAR on December 2, 2013, which was docketed by the Departmental Cases Hearings Division, Office of Hearings and Appeals (OHA), as DV-2014-01-R, and assigned to ALJ Holt for the purpose of a hearing and decision on the record.

After prolonged discovery, both OSM and NTEC, which had intervened in the proceeding, filed motions to dismiss, claiming that Yazzie lacked standing to seek review of OSM’s Decision. They also filed motions for summary judgment, requesting the ALJ to rule in their favor as a matter of law on the merits of Yazzie’s RAR. NTEC moved to strike new allegations of error in OSM’s Decision submitted by Yazzie. Yazzie filed an opposition to the motions to dismiss, arguing that he had standing to seek review of OSM’s Decision. He also opposed the motions for summary judgment and NTEC’s motion to strike.

ALJ Holt ruled that Yazzie lacked standing under 43 C.F.R. § 4.1361 to seek review of OSM’s Decision. ALJ Holt found that while Yazzie was an enrolled member of the Navajo tribe and had participated in OSM’s review of BNCC’s application to transfer the Permit, he did not, within the meaning of 30 C.F.R. § 700.5, either own property or use resources, of economic, recreational, aesthetic, or environmental value, which is or may be adversely affected by OSM’s decision. *See* 2014 Order at 7-8. ALJ Holt concluded: “Yazzie has neither alleged, nor pointed out in the record, facts adequate to establish that he has a *personal interest adversely affected by OSM’s decision.*” *Id.* at 8 (emphasis added). He then granted OSM’s and NTEC’s motions to dismiss, denied as moot their motions for summary judgment and NTEC’s motion to strike, and cancelled both the final pre-hearing conference and the hearing, that had been scheduled.

Yazzie filed his PDR of the 2014 Order with the Hearings Division on May 28, 2014, and with the Board on May 29, 2014. As an initial matter, we must first address whether the PDR was timely filed.

Timeliness of Petition for Discretionary Review

Under 43 C.F.R. § 4.1369(a), any party aggrieved by a decision of an ALJ concerning a request for review of OSM's approval, *inter alia*, of an application for a transfer of rights granted under a Federal permit of Indian lands “may file a petition for discretionary review with the Board *within 30 days of receipt of the decision*[.]” (Emphasis added.) The regulation also provides: “A copy of the petition shall be served simultaneously on the [ALJ] who issued the decision . . . and on all other parties to the proceeding.” *Id.* In the case of SMCRA proceedings before OHA, “[t]he effective filing date for . . . a [PDR] filed with the Board shall be the date of mailing or the date of personal delivery,” and “[t]he burden of establishing the date of mailing shall be on the person filing the document.” 43 C.F.R. § 4.1107(g).

The record shows and the parties agree that Yazzie received the 2014 Order on April 26, 2014, and that the deadline for filing his PDR was May 27, 2014. See 43 C.F.R. §§ 4.22(e); 4.1104; Transmittal Memorandum to Board from Judge Holt, dated June 9, 2014; PDR at 1.

The Board date-stamped Yazzie's PDR as received on May 29, 2014, which was contained in an envelope postmarked as mailed from Flagstaff, Arizona, on May 27, 2014. See Yazzie Proof of Mailing, dated June 13, 2014, at 1 (“[PDR] was received by all parties except Judge Robert Holt on May 29, 2014). Since Yazzie chose to mail his PDR, the date of filing with the Board was May 27, 2014. See 43 C.F.R. § 4.1107(g). We therefore conclude that Yazzie's PDR was timely filed. Therefore, the Board has jurisdiction to adjudicate whether ALJ Holt properly dismissed Yazzie's RAR of OSM's Decision.

Merits of the Petition for Discretionary Review

[1] Section 514(c) of SMCRA, 30 U.S.C. § 1264(c) (2012), provides that “any person with an interest which is or may be adversely affected” by an OSM decision concerning an application for, *inter alia*, a transfer of rights under a Federal permit of Indian lands may challenge that decision for the purpose of a hearing on the record pursuant to 5 U.S.C. § 554 (2006). Similarly, 43 C.F.R. § 4.1361 provides that “[t]he applicant, permittee, or *any person having an interest which is or may be adversely affected* by a decision of OSM[] [concerning an application for a transfer of rights under a Federal permit of Indian lands] . . . may file a request for review of that decision.” (Emphasis added.) This language is mirrored in 30 C.F.R. § 775.11(a), which expressly provides that the “applicant, permittee, or any person with an interest which is or may be adversely affected [by such an OSM decision] may seek a hearing.” Rules implementing SMCRA define a “[p]erson having an interest which is or may be adversely affected” as

any person--

(a) Who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by . . . surface coal mining and reclamation operations or any related action of the Secretary . . .; or

(b) Whose property is or may be adversely affected by . . . surface coal mining and reclamation operations or any related action of the Secretary[.]

30 C.F.R. § 700.5.

Given this statutory and regulatory construct, the Board has held that the rules regarding standing to seek administrative review under SMCRA will be construed in accordance with the specific requirements applicable to SMCRA proceedings, rather than the general requirements for standing to appeal a decision to this Board.⁴ See, e.g., *Citizens Coal Council*, 155 IBLA 331, 338 (2001) (Conclusory allegations that appellant's member lives and uses land and resources near existing coal mine sufficient to confer standing to intervene in an enforcement proceeding); *Stebly v. OSM*, 109 IBLA 242, 244-45 (1989) (Conclusory allegations that appellant lives near existing coal preparation plant and travels road used by trucks accessing plant sufficient to confer standing to request review of permit approval); *Natural Resources Defense Council, Inc. v. OSM*, 89 IBLA 1, 7-10, 92 I.D. 389, 393-94 (1985) (Conclusory allegations that appellant's members use lands and/or waters in vicinity of proposed coal mine sufficient to confer standing to request review of permit approval); *Citizens for the Preservation of Knox County*, 81 IBLA 209, 213-14 (1984) (Conclusory allegations that appellant's members live in close proximity to and use land and resources near existing coal mine sufficient to confer standing to appeal action in enforcement proceeding). Above all, the party seeking review of an OSM permitting decision has the burden of demonstrating the requisite elements of standing under 43 C.F.R. § 4.1361, since, absent such a showing, OHA lacks jurisdiction to adjudicate the request for review, and must dismiss the request.

⁴ Under 43 C.F.R. § 4.410(a), an appellant must be both a "party to a case" and "adversely affected" by the decision. A party is deemed "adversely affected" when he "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) (emphasis added). Such an interest is not restricted, as in the case of 43 C.F.R. § 700.5, to property or use of resources of economic, recreational, aesthetic, or environmental value.

ALJ Holt ruled that Yazzie had failed to carry his burden to demonstrate that he has an interest which is or may be adversely affected by OSM's Decision conditionally approving the transfer of the Permit from BNCC to NTEC. See 2014 Order at 1-2, 9. He specifically stated that Yazzie had failed to make any colorable allegations that he used any resource having economic, recreational, aesthetic, or environmental value or owned any property that is or might be adversely affected by OSM's decision within the meaning of 30 C.F.R. § 700.5. See *id.* at 8 (citing *Craig M. Weaver*, 141 IBLA 276, 281 (1997)). ALJ Holt therefore concluded that Yazzie lacked standing to seek review of the decision under 43 C.F.R. § 4.1361. See 2014 Order at 9.

In his responses to OSM's and NTEC's motions to dismiss, Yazzie argued that his membership in the Navajo Nation afforded him standing to challenge OSM's decision, especially given the Department's trust responsibility to Indians and Indian tribes. However, ALJ Holt noted that numerous courts have held that "individual Indians have no individual rights in tribal land," and that Yazzie did not, by virtue of his tribal membership, have standing to challenge the decision, since it was not his, but the tribe's, property or resources, of economic, recreational, aesthetic, or environmental value, that is or may be adversely affected by the decision. 2014 Order at 7 (citing *Delaware Tribal Bus. Comm. v. Weeks*, 430 U.S. 73, 85 (1977); *Delaware Indians v. Cherokee Nation*, 193 U.S. 127, 136 (1904); *Round Valley Indian Tribes v. U.S.*, 102 Fed. Cl. 634, 637 (Fed. Cl. 2011); *Seneca Constitutional Rights Org. v. George*, 348 F. Supp. 51, 59 (W.D. N.Y. 1972)). He further stated that "[t]he property of the Navajo Nation and Mr. Yazzie's membership in the Navajo Nation cannot satisfy [30 C.F.R. § 700.5] . . . because the property upon which the Navajo Mine is located is not the same as Mr. Yazzie's individual property." *Id.* at 7-8 (citing *Bullcreek v. Western Regional Director*, 40 IBIA 196, 200-01 (2005); *Frease v. Sacramento Area Director*, 17 IBIA 250, 256 (1989) (quoting *Redfield v. Acting Deputy Assistant Secretary*, 9 IBIA 174, 177, 89 I.D. 67, 70 (1982))). In support, he noted that the Interior Board of Indian Appeals has specifically recognized that individual Indians lack standing to appeal a Departmental decision that affects only the rights or interests of the Indian tribe, of which the individual is a member, in tribal land or resources. We agree that this line of authority is equally applicable to appeals to this Board, including administrative challenges to OSM permitting decisions by an individual Indian, because that decision may adversely affect his tribe's land or resources, since it is plain that the interest sufficient to support standing under 43 C.F.R. § 4.1361 must be personal to the party seeking relief. See 30 C.F.R. § 700.5.

[2] We conclude that tribal membership does not confer standing on an individual Indian challenging an OSM permitting decision that adversely affects only the rights or interests of the tribe. The individual's interest in tribal land or resources is too attenuated to constitute the required personal interest for purposes

of supporting standing to seek review. A person having a sufficient interest for standing is one “who uses any resource” or “whose property is adversely affected.” 30 C.F.R. § 700.5; see NTEC Response at 2-3, 12 (“OSM’s decision *may* have an economic effect on tribal members, albeit minor.”). Thus, tribal membership does not afford the individual either ownership of property or use of a resource, of economic, recreational, aesthetic, or environmental value, that is or may be adversely affected by OSM’s decision, for purposes of standing under 43 C.F.R. § 4.1361.⁵

Yazzie does not here challenge the ALJ’s conclusion that he lacked standing to challenge OSM’s Decision by virtue of his membership in the Navajo Nation or object to the fact, asserted by OSM, and confirmed by the ALJ, that, “[i]n the course of DV 2014-01-R, [he] never identified any cognizable interest in property or use of resources of economic, recreational, esthetic, or environmental value that may be adversely affected by OSM’s decision.” OSM Response at 11. Rather, he now asserts that he has “property rights in the Navajo Mine area.”⁶ PDR at 2. However, the only property right that he has identified consists of his “hunting Elk permits . . . from 2012 and 2013 which allow [him] to hunt in unit 13 . . . where the Navajo Mine is

⁵ According standing to an individual Indian to advance, in an administrative appellate proceeding, the interests of his tribe potentially results in interference with the tribe’s sovereignty and right of self-determination, which should be avoided. See, e.g., *Frease v. Sacramento Area Director*, 17 IBIA at 256. NTEC rightly states: “[Absent transfer of the Permit,] the Navajo Mine and [FCPP] would both likely shutter in 2016,[] causing a significant loss of Navajo employment[] and a deficit to the Navajo Nation’s general operating fund of approximately \$40 million annually from loss of royalty, lease, and rights-of-way payments from the Navajo Mine and FCPP.” NTEC Response at 2-3. Rather, the individual Indian should look to the tribe to represent his rights or interests, as a member of the tribe, in tribal land or resources, in such proceedings.

⁶ ALJ Holt noted that, since Yazzie resided approximately 250 miles from the Mine, he was situated “considerably more distant from the mine site” than the parties who were deemed to have standing in *Citizens Coal Council, Stebly, and Knox County*. Order at 7; see OSM Response at 11 (“[Yazzie] resides in Flagstaff, Arizona, off the Navajo Reservation and approximately 250 miles from the Navajo Mine.”); NTEC Response at 10. Yazzie does not dispute the fact that he lives far from the Mine, and thus does not own property adversely affected by OSM’s Decision. See Yazzie Proof of Mailing at 1 (“Yazzie . . . lives on relocate land of Annie P. Walker.”).

located.”⁷ *Id.* at 2-3; *see id.*, Ex. F (Hunting Permit Nos. 14786 and 12205). Yazzie’s hunting permits were issued for a 5-day period, *i.e.*, October 17 to October 21, 2012, and October 16 to October 20, 2013. Each permit authorized Yazzie to take one elk from any of 12 Navajo Nation big game units (1 through 8 and 11 through 14), which collectively encompass 20,000 square miles, “including unit 13, in which the Navajo Mine is located.” OSM Response at 16. However, Yazzie does not aver that he hunted pursuant to either permit, or if he did, when and where he hunted. *See* NTEC Response at 13-14 (“The 2012 Permit is not even valid, as it was not signed by Yazzie, and it is unclear whether the 2013 Permit was ever used.”). Nor does he make any effort to demonstrate that his activity under either permit was precluded, restricted, or adversely affected in any way by OSM’s Decision.⁸

⁷ Yazzie briefly alludes to the Treaty of Guadalupe Hidalgo, 9 Stat. 922 (1848), and the Act of July 22, 1958, Pub. L. No. 85-547, 72 Stat. 403, as interpreted by the court in *Healing v. Jones*, 174 F. Supp. 211 (D. Ariz. 1959), as somehow supporting his assertion of vested “property rights in the Navajo Mine area,” which are adversely affected by OSM’s Decision. He asserts that the Mine is located “West of the Rio Grande River,” and thus governed by the Treaty. PDR at 2. Yazzie does not explain how the Treaty or the 1958 Act caused any property right to vest in him. *See id.* at 3 (“[T]he Navajo Mine area is part of my property.”). We agree with OSM and NTEC that Yazzie has failed to demonstrate that either Federal statute conferred, by any means, any property right on him, or, even if it did, that such right is or may be adversely affected by OSM’s November 2013 decision. *See* OSM Response at 13; NTEC Response at 10-11.

⁸ Yazzie’s Navajo Nation Fishing and Small Game Hunting Permit No. 07169 was issued to him on May 20, 2014, and authorized him to hunt and fish presumably on all Navajo tribal lands. *See* PDR, Ex. H. Yazzie states that he was authorized to fish on Morgan Lake, which is adjacent to the Mine, but nowhere does Yazzie assert that he ever hunted near or fished in Morgan Lake or anywhere else under that permit. Nor does he make any effort to demonstrate that any activity under the permit was precluded, restricted, or adversely affected in any way by OSM’s Decision. Moreover, as OSM and NTEC properly point out, this 2014 permit was issued “long after the challenged [OSM] decision and nearly a month after the proceeding below was dismissed [by the ALJ on April 22, 2014,] for lack of standing[.]” NTEC Response at 14; *see* OSM Response at 17. We do not believe that permit is sufficient to support standing in this appeal. *Cf. Western Watersheds Project v. BLM*, 182 IBLA 1, 8-9 (2012); *Center for Biological Diversity*, 181 IBLA 325, 339-41 (2012); *The Center for Tribal Water Advocacy v. BLM*, 173 IBLA 165, 167-68, 171-72 (2007); *Center for Native Ecosystems*, 163 IBLA 86, 88, 90 (“A legally cognizable interest must exist as of the time of issuance of the decision being appealed in order to have standing to appeal.”), 90-91 (2004). Absent such an interest, the appeal is properly dismissed.

[3] We conclude that Yazzie cannot demonstrate standing based on a permit authorizing him to hunt or fish. He must also demonstrate that he hunted or fished in the project area and intends to do so again in the future. Yazzie has failed to offer any argument or evidence showing that he has a sufficient interest in property or resource use that it is or may be adversely affected by OSM's Decision to conditionally approve the transfer of the Permit from BNCC to NTEC. See NTEC Response at 13 ("Yazzie's . . . two hunting permits do[] not demonstrate that he has ever hunted in areas impacted by the Navajo Mine, and Yazzie never asserts that he has"); *Center for Biological Diversity*, 181 IBLA at 339 ("[The Board] ha[s] uniformly required parties to establish that they have **used the land or area affected** by a decision prior to issuance of the decision being appealed." (Emphasis added)).

We do not doubt that Yazzie has a strong interest in the question of whether NTEC should be allowed to hold the Permit. He apparently believes that NTEC's acquisition of the Permit may allow the Navajo tribe to evade its responsibility for past degradation of the environment by the Mine. See PDR at 3-4. However, his mere interest in the question at hand is not sufficient to afford him standing under 43 C.F.R. § 4.1361 to challenge OSM's Decision to conditionally approve the transfer of the Permit from BNCC to NTEC.⁹ See *Rebel Coal Co., Inc.*, 4 IBAMA 69, 78-86, 89 I.D. 331, 336-39 (1982).

Finally, Yazzie claims that he was denied an adequate opportunity to demonstrate standing under 43 C.F.R. § 4.1361. In its December 20, 2013, discovery request, OSM asked Yazzie, *inter alia*, to present arguments and evidence in support of his standing. The record shows that he was provided an ample opportunity to establish his standing, either in responding to OSM's and NTEC's motions to dismiss, or more recently, in filing his PDR from the 2014 Order. We see no reason to afford him more time or excuse his failure to carry his burden.

⁹ OSM states that its Decision, being "administrative in nature," could never adversely affect any interest of Yazzie's, since it simply changed "ownership of permit rights at the Navajo Mine," and did not effect "any operational changes at the mine." Response at 11, 12. Under 30 C.F.R. § 700.5, a person may be deemed to have an interest that is or may be adversely affected, *inter alia*, not only by OSM's approval of "surface coal mining and reclamation operations," but also by any "related action[s][.]" We are not entirely persuaded that OSM's approval of a change in permit ownership would not result in an adverse effect, sufficient to afford an owner of property or a user of resources, of economic, recreational, aesthetic, or environmental value, standing to file a PDR pursuant to 43 C.F.R. § 4.1361. However, we need not finally decide whether that is the case here, since Yazzie has failed to establish that he qualifies as such an owner or a user.

We therefore conclude that ALJ Holt, in his 2014 Order, properly dismissed Yazzie's RAR of OSM's Decision because he lacked standing to seek review of the Decision under 43 C.F.R. § 4.1361.

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 PDR is granted and ALJ Holt's 2014 Order is affirmed.

/s/
James F. Roberts
Administrative Judge

I concur:

/s/
James K. Jackson
Administrative Judge