



THOMAS J. KATSILOMETES
v.
BUREAU OF LAND MANAGEMENT

186 IBLA 73

Decided August 13, 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

THOMAS J. KATSILOMETES
v.
BUREAU OF LAND MANAGEMENT

IBLA 2014-10

Decided August 13, 2015

Appeal from an Administrative Law Judge's order granting a motion to dismiss appeal for lack of standing to challenge a grazing decision of the Pocatello Field Office (Idaho), Bureau of Land Management. ID-I020-0132-001.

Administrative Law Judge's order affirmed.

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

The burden falls upon the appellant to make colorable allegations of an adverse effect, supported by specific facts, set forth in an affidavit, declaration, or other statement of an affected individual that are sufficient to establish a causal relationship between the approved action and the injury alleged.

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

Allegations of waste of government resources do not constitute the requisite colorable allegations of specific injury to an appellant's interests. 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. Abstract injury is not enough; deep concern for a problem will not suffice.

APPEARANCES: Thomas J. Katsilometes, *Pro Se*, Pocatello, Idaho; Robert B. Firpo, Esq., Boise Field Office, Office of the Solicitor, U.S. Department of the Interior.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Thomas J. Katsilometes (appellant, Katsilometes, or Thomas J. Katsilometes) appeals to the Board from a September 19, 2013, Order (2013 ALJ Order) of Administrative Law Judge (ALJ) James H. Heffernan, granting the Bureau of Land Management's (BLM) Motion to Dismiss, for lack of standing, Katsilometes' challenge to BLM's (Pocatello Field Office, Idaho) January 8, 2013, final decision (Final Decision), issued to Stephen Miller (Miller) regarding grazing issues on the Moonlight Mountain and North Fork Rapid Creek Allotments. Among other determinations, the Final Decision authorized a 10-year grazing permit for the North Fork Rapid Creek Allotment (#14192) granted to Miller, allotment boundary adjustments, and construction of a new fence between the two allotments, which would create a new 200-acre inclosure.¹ For the reasons stated herein, the Board affirms the 2013 ALJ Order, dismissing the appeal for lack of standing.

Background

A 20-plus year history of administrative adjudication precedes the case at hand. See *James G. Katsilometes v. BLM*, 157 IBLA 230 (2002); *Stephen Miller v. BLM & James G. Katsilometes v. BLM*, 165 IBLA 386 (2005); Order, *James G. Katsilometes v. BLM & Stephen Miller v. BLM*, IBLA 2005-205 (June 30, 2005); Order, *James G. Katsilometes v. BLM & Stephen Miller v. BLM*, IBLA 2005-205 (July 26, 2007); Order, *James G. Katsilometes v. BLM*, IBLA 2008-246 (Nov. 6, 2008); Order, *James G. Katsilometes v. BLM*, IBLA 2009-220 (Oct. 7, 2009); 2013 ALJ Order at 1-2; Motion to Dismiss at 1-3; SOR at 1-6. Generally, past adjudications concerned the Moonlight Mountain Allotment, and involved Thomas J. Katsilometes' father, James G. Katsilometes, and/or the latter's lessee, Todd Mickelsen (Mickelsen),² and Miller. Given the parties' familiarity with this history and its limited relevance to the disposition of this appeal, we need not recount the entire history here.

In 2012, and after resolving many animal unit month (AUM) ownership issues over the years, BLM began the process of renewing grazing permits on the Moonlight

¹ On Nov. 20, 2013, appellant filed a Statement of Reasons (SOR) for appeal to the Board, along with attachments. The Board granted BLM an extension of time in which to file an Answer. BLM's Answer, filed Feb. 3, 2014, incorporates arguments BLM made in its Motion to Dismiss, filed with the Hearings Division on Aug. 31, 2015.

² BLM references additional grazing challenges previously filed by Mickelsen, in his capacity as a lessee of the James G. Katsilometes base property and preference, as well as in his capacity as the grazing permittee and permit holder for the Moonlight Mountain Allotment. Motion to Dismiss at 2.

Mountain and North Fork Rapid Creek Allotments.³ Motion to Dismiss at 3. In addition, BLM determined to adjudicate a pending request by one of the Moonlight Mountain Allotment permittees to convert sheep AUMs into cattle AUMs. *Id.*

In connection with BLM's environmental review of the proposals pursuant to the Council on Environmental Quality and Department of the Interior regulations implementing the National Environmental Policy Act of 1969 (NEPA), *see* 40 C.F.R. Parts 1500-1508 and 43 C.F.R. Part 46, the agency issued a Scoping/Information Package, announcing and soliciting comments on the proposed "renewal of a grazing permit, authorization and construction of range improvements, and modification of grazing management within the Moonlight Mountain Allotment." Scoping/Information Package at unpublished (unp.) 1. On April 9, 2012, Thomas J. Katsilometes submitted scoping comments to BLM.⁴ Comments, Apr. 9, 2012.

Katsilometes stated that, while the last three years of grazing operations on the allotment have been virtually trouble-free and the condition of the allotment satisfactory, the pending request to convert some of the AUMs from sheep to cattle grazing was of concern. Comments, Apr. 9, 2012, at unp. 1. Acknowledging BLM's stated need for fencing in order to maintain proper control of cattle, Katsilometes challenged the fencing proposed in both Alternatives B and C of the Scoping/Information Package as violative of federal law, including the Unlawful Inclosures of Public Lands Act of 1885, 43 U.S.C. §§ 1061-1066 (2012), and the Federal Land Policy Management of Act of 1976 (FLPMA), 43 U.S.C. § 1701, *et seq.* (2012). Comments, Apr. 9, 2012, at unp. 1. He also argued that the location of the proposed fence under both Alternatives B and C would be contiguous to several hundred feet of the boundary of a group of patented mining claims and effectively would create a trespass situation. *Id.* at unp. 2. As for Alternative D, he contended it is unnecessary to rest the Moon pasture or the entire Moonlight Mountain allotment. *Id.* Finally, Katsilometes commented that the proposal should take into account review and analysis of all previous rangeland condition reports, assessments, and

³ In 2009, BLM issued two permits: one to Miller for use of the North Fork Rapid Creek Allotment and the Moon Pasture of the Moonlight Mountain Allotment, and one to James G. Katsilometes' lessee, Mickelsen, for use in the Moon Pasture of the Moonlight Mountain Allotment. BLM's decision to issue these permits was upheld in a Jan. 5, 2011 ALJ decision. Thomas J. Katsilometes served as counsel for his father, James G. Katsilometes, in one of these cases. *See* 2011 ALJ Decision at 9; Motion to Dismiss at 2.

⁴ Thomas J. Katsilometes was the sole signer of the Apr. 9, 2012, comments, and did not describe himself as representing James G. Katsilometes, Mickelsen, or any other party. *See* Comments, Apr. 9, 2012. Katsilometes indicated he sent courtesy copies to James G. Katsilometes and Mickelsen. *See id.* ("Cc:").

analyses during the times cattle were “illegally allowed to graze on this allotment,” specifically from 1990 through 2002. *Id.*

On November 14-15, 2012, BLM issued a Finding of No Significant Impact (FONSI) and an Environmental Assessment (EA) (DOI-BLM-ID-I010-2012-0039-EA).

On November 15, 2012, BLM also issued a Notice of Field Office Manager’s Proposed Decision (Proposed Decision for Miller), proposing to authorize issuance of a 10-year grazing permit for the North Fork Rapid Creek Allotment (#14192), and outlining the terms and conditions associated with the permit. Proposed Decision for Miller at unp. 1, 5-6. BLM also proposed to modify the allotment boundary to specify grazing pastures and to authorize range improvements. *Id.* at unp. 1-2, 5-6. BLM issued a separate Proposed Decision for Mickelsen. *See* Response to Motion to Dismiss, Exhibit (Ex.) 6. The Proposed Decision for Mickelsen was not protested or appealed, and became final by operation of law. 2013 ALJ Order at 3.

On November 23, 2012, Thomas J. Katsilometes verbally protested the Proposed Decision for Miller, and filed a written protest on December 5, 2012 (Protest), reiterating the points made in his April 9, 2012, comments on the Scoping/Information Package. *See* Protest at unp. 1. Katsilometes also protested the language in the section of the Proposed Decision for Miller discussing the fence construction and management, and expressed, *inter alia*, his view that BLM should not contribute any materials or labor for the proposed fence and that Miller should bear all costs for construction and maintenance. *Id.*

On January 8, 2013, BLM issued its Final Decision with respect to Miller. It noted that Thomas J. Katsilometes had filed a timely Protest to the Proposed Decision, which it had issued to Miller. Final Decision at unp. 1. BLM stated that it had carefully considered the points of Thomas J. Katsilometes’ Protest, and provided responses. *Id.* at unp. 1-4. A copy of the Final Decision concerning Miller was delivered to Thomas J. Katsilometes on January 9, 2013.

On February 8, 2013, Thomas J. Katsilometes submitted a Notice of Appeal and Statement of Reasons (NOA and SOR for the ALJ) with the U.S. Department of the Interior, Office of Hearings and Appeals, Hearings Division, which was filed on February 11, 2013. In that pleading, Katsilometes listed himself as *Pro Se*, captioning that pleading solely with his own name as appellant. NOA and SOR for the ALJ at 1, 8. On August 21, 2013, BLM filed the Motion to Dismiss with the ALJ. On September 18, 2013, Katsilometes filed a Response to BLM’s Motion, and on September 19, 2013, the ALJ issued the 2013 Order, granting BLM’s Motion to Dismiss.

On October 21, 2013, Katsilometes filed an NOA with the Board, appealing the 2013 ALJ Order. In the NOA, Katsilometes listed himself as *Pro Se* and captioned the appeal solely under his own name. NOA to the Board at 1. After the Board granted an extension of time to file an answer, BLM filed its Answer on February 3, 2014, including, as an attachment, a copy of the Motion to Dismiss.

Analysis

Regulations for appealing from a final BLM grazing decision to an ALJ provide, “Any applicant, permittee, lessee, or other person whose interest is *adversely affected* by a final BLM grazing decision may appeal the decision to an administrative law judge” 43 C.F.R. § 4.470(a) (emphasis added). Similarly, the Board’s rules also provide a right to appeal to any party to a case who is “adversely affected” by a decision of a Bureau, Office, or an ALJ. 43 C.F.R. § 4.410(a). In accordance with longstanding Board precedent, the Board’s rules define the term “adversely affected” as when “[a] 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 Western Watersheds Project*, 185 IBLA 293, 298 (2015); *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA 79, 81-82 (2005). “[T]he burden falls upon the appellant to make colorable allegations of an adverse effect, supported by specific facts, set forth in an affidavit, declaration, or other statement of an affected individual that are sufficient to establish a causal relationship between the approved action and the injury alleged.” *Western Watersheds Project*, 185 IBLA at 299.

Katsilometes argued first that BLM’s Final Decision (to Miller) constitutes a waste of government resources and an abuse of discretion. NOA and SOR for the ALJ at 6-7. In particular, he complained of the cost of erecting and maintaining fencing and challenged the EA as failing to address who would be responsible for such costs. *Id.* In his second argument, he contended that erection of a fence would violate the Unlawful Inclosures of Public Lands Act of 1885, 43 U.S.C. §§ 1061-1066 (2012). *Id.* at 7-8. In conclusion, he requested that the Final Decision be: (1) reversed with respect to approval of a permit to Miller for grazing cattle on any portion of the Moonlight Mountain allotment; (2) reversed with respect to authorizing construction of the proposed fence; and (3) vacated and reversed with respect to any consideration by BLM of proceeding with conversion of AUMs from sheep to cattle on the Moonlight Mountain Allotment. *Id.* at 8.

At no point in the NOA and SOR before the ALJ did Thomas J. Katsilometes explain how he was adversely affected by the Final Decision.

In the Motion to Dismiss, BLM explained that, in previous adjudications throughout the years, it had not challenged James G. Katsilometes’ or Mickelsen’s

standing because they clearly had an interest in the lands and decisions at issue as base-property owners, preference holders, and/or grazing permittees. Motion to Dismiss at 7. BLM claimed the same cannot be said of Thomas J. Katsilometes in the present appeal, as he does not control the grazing preference for any allotment at issue in this case, nor does he hold a permit to graze either the Moonlight Mountain or North Fork Rapid Creek Allotment. *Id.* BLM also argued that Katsilometes' waste of resources argument asserts the type of abstract taxpayer injury that has long been held insufficient to invoke review. *Id.* at 8-9, citing, *In re Thompson Creek Timber Sale*, 81 IBLA 242, 243 (1984).

Katsilometes responded to BLM's Motion to Dismiss, by asserting standing "as a member of the public, generally, to seek having BLM comply with the law." Response to Motion to Dismiss at 2. He also claimed standing "based on his recreational, professional, and business use of the BLM managed lands within the Moonlight Mountain Allotment." *Id.* Katsilometes further argued that because BLM did not file its Motion to Dismiss until five months after he filed his NOA and SOR to the ALJ, and after the ALJ had issued a Scheduling Order, BLM's Motion to Dismiss is "moot and the issue of standing has been implicitly waived." Response to Motion to Dismiss at 3. Finally, Katsilometes argued that the Motion to Dismiss to the ALJ prejudiced "potential intervenors." Response to BLM's Motion to Dismiss at 3.

The ALJ granted BLM's motion to dismiss based on Katsilometes' failure to show that he is "adversely affected" by BLM's decision, as required by 43 C.F.R. § 4.470(a) (standing for appeals to ALJs of BLM's grazing decisions) and the Board's case law on adverse impacts. 2013 ALJ Order at 3-4. Among other things, the ALJ rejected Katsilometes' argument that he has standing based on his recreational, professional, and business use of BLM lands because Katsilometes "does not state when such alleged contacts with the subject allotment took place; nor does he detail his alleged injuries resulting therefrom." *Id.* at 4. The ALJ further stated that Katsilometes "does not own or control the grazing preference for either of the allotments implicated in this appeal, and he does not hold a grazing permit . . ." *Id.*

[1] Appealing the 2013 ALJ Order to the Board, appellant continues to argue that he has been adversely affected by BLM's decision based on his "use of public lands and . . . interest in such," and takes issue with the regulatory requirement to "detail his alleged injuries" before standing is recognized. SOR at 7. Appellant argues that the rule requiring an appellant to provide specific facts detailing the adverse effects to the appellant should be rejected by the Board when injury is "imminent and potentially irreversible without great cost and can simply be avoided by mere recognition of standing and allowing review of the merits of the arguments within the appeal." *Id.*

As the Board recently explained, "[T]he burden falls upon the appellant to make colorable allegations of an adverse effect, supported by specific facts, set forth in an

affidavit, declaration, or other statement of an affected individual that are sufficient to establish a causal relationship between the approved action and the injury alleged.” *Western Watersheds Project*, 185 IBLA at 299. Although appellant vaguely asserted “recreational, professional, and business use” of the lands, he provided no specific facts to support that assertion, thus failing to satisfy the requirement to show harm to his interests by BLM’s Final Decision, which it issued to Miller. We decline to overturn our long-standing precedent requiring a showing of adverse impact for standing to appeal, and to ignore the duly promulgated regulations at 43 C.F.R. § 4.470(a) and 43 C.F.R. § 4.410(a), (d). See *Central Ohio Coal Co. v. Office of Surface Mining Reclamation and Enforcement*, 140 IBLA 1, 9 (1997) (“Duly promulgated regulations have the force and effect of law, and thus, this Board has no authority to treat as insignificant or declare invalid such duly promulgated regulations.”); see also *Pacific Offshore Operators, Inc.*, 165 IBLA 62, 78 (2005) (Board does not have authority to disregard applicable regulations).⁵ Accordingly, we conclude the ALJ properly applied the operative legal standard.

[2] Appellant alleges that BLM’s decision to build a fence is a “waste of government resources.” NOA and SOR for the ALJ at 7. Appellant states that his status as a member of the general public and his “interest in having government officials act in accordance with law,” and his “recreational, professional, and business use” of the lands at issue are sufficient to establish standing to appeal BLM’s Decision. Response to Motion to Dismiss at 2. BLM responds that “while Appellant is entitled to his opinion on how BLM should be spending its limited budget, he cannot establish standing to bring suit for this kind of claim because he cannot establish a cognizable and concrete injury.” Motion to Dismiss at 8. BLM further states that “Appellant’s only possible injury in this type of claim is an abstraction--an injury to his status as a taxpayer,” but that this type of injury is insufficient to establish standing. *Id.*

We agree with BLM. Appellant has failed to provide specific facts supporting his asserted use of the public lands. He holds no grazing permit and owns no base property on the allotment at issue, and he has provided no detailed explanation of how his use of those lands would be adversely affected by BLM’s Final Decision. An

⁵ As an exception to this principle, the Board has declined to apply a regulation when its application to the facts of a case would be “clearly inconsistent” with the statute that the regulation implements. *Casey E. Folks, Jr. (On Reconsideration)*, 183 IBLA 359, 367 (2013). Furthermore, “while the Board has no authority to ignore [duly-promulgated regulations], it is vested with authority to determine in the context of deciding an appeal whether or not a regulation as applied to an appellant is consistent with a statutory basis.” *Presco Energy, Inc.*, 183 IBLA 154, 161 (2013). Here, appellant has not shown that the standing regulations requiring an adverse impact -- 43 C.F.R. § 4.470(a) and 43 C.F.R. § 4.410(a), (d) -- are inconsistent with statutory requirements.

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. *In re Thompson Creek Timber Sale*, 81 IBLA at 243-44 (citing *Flast v. Cohen*, 392 U.S. 83 (1968); *O’Shea v. Littleton*, 414 U.S. 488, 494 (1973); *Massachusetts v. Mellon*, 262 U.S. 447 (1923); *In re Otter Slide Timber Sale*, 75 IBLA 380, 386 (1983) (Steubing, A.J. concurring)); *see also Gifford H. Allen*, 131 IBLA 195, 205 n.12 (1994) (“Appellants also assert that BLM has, by accepting the relinquishment, left rents and advance royalties unpaid Appellants lack any standing to raise this issue on appeal, since they are asserting it only as members of the public.”). Abstract injury is not enough; deep concern for a problem will not suffice *The Fund for Animals, Inc.*, 163 IBLA 172, 176 (2004); *Colorado Open Space Council*, 109 IBLA 274, 286 (1989); *Thompson Creek Timber Sale*, 81 IBLA at 243.

For the reasons discussed above, the Board concludes Appellant lacked standing to challenge BLM’s Final Decision, and therefore the ALJ did not err when he granted BLM’s motion to dismiss for lack of standing.

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 order appealed from is affirmed.

/s/
Christina S. Kalavritinos
Administrative Judge

I concur:

/s/
Amy B. Sosin
Administrative Judge