



PRAIRIE COUNTY, MONTANA

186 IBLA 128

Decided September 4, 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

PRAIRIE COUNTY, MONTANA

IBLA 2015-227

Decided September 4, 2015

Appeal of a letter from the Montana State Director of the Bureau of Land Management (BLM) concerning BLM Manual Sections 6310 and 6320.

Appeal dismissed.

1. Administrative Procedure: Administrative Review -- Rules of Practice: Appeals: Generally -- Rules of Practice: Appeals: Jurisdiction -- Administrative Appeals -- Administrative Procedure: Administrative Review -- Appeals: Generally

To pursue an appeal from a BLM action, an appeal must be taken from a final BLM “decision.” 43 C.F.R. § 4.410(a). A “decision” authorizes or prohibits some action that affects a person having or seeking some right, title, or interest in public lands or their resources. In the absence of a decision, this Board does not possess the authority to adjudicate an appeal challenging an agency action or policy.

APPEARANCES: Board of County Commissioners, Prairie County, Montana, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE JONES

On August 4, 2015, the Board of County Commissioners of Prairie County, Montana (Appellant), filed an appeal (Appeal) of a July 8, 2015, letter from the Montana State Director of BLM.¹ In its Appeal, Appellant states it protests wilderness

¹ Appellant did not state it served its appeal dated Aug. 4, 2015, on the Office of the Solicitor as required by 43 C.F.R. § 4.413. Since we are dismissing the appeal, we proffer no opinion about the effect of not perfecting service on the Office of the

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inventories conducted pursuant to BLM Manual Sections 6310 and 6320 (Manual Sections).^{2,3} Appeal Ex. B. Neither the State Director's letter nor the Manual Sections constitute an agency decision appealable to this Board; therefore, we dismiss the appeal.

Background

BLM issues manuals or manual sections as policy guidance for administering its duties. Appellant's central concern is that BLM is using or will use Manual Sections 6310 and 6320 (issued March 15, 2012) to conduct wilderness inventories. Appeal Ex. A.

The pertinent facts begin on May 5, 2015, at which time Appellant sent a letter to BLM. That letter is captioned as a "formal protest" of the Manual Sections. Appeal Ex. A. In the letter, Appellant argues why the Manual Sections, including the provisions for the process and timing of conducting inventories, violate the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1784 (2012). *Id.* Appellant does not state that BLM has made a decision using the Manual Sections that affects it or in which it has an interest.

On July 8, 2015, BLM responded to Appellant's May 5, 2015, letter. Appeal Ex. B. In its July 8, 2015, letter, BLM stated:

The Federal Land Policy and Management Act and subsequent court decisions affirm that we have an ongoing responsibility to maintain a current inventory of all public lands and their resources values. The authority and responsibility to do so did not sunset or expire. Wilderness characteristics are among the resource values for which we are expected to maintain current inventories.

(...continued)

Solicitor. We are concurrently providing a copy of this decision to the Office of Solicitor, the Appellant, and BLM.

² See http://www.blm.gov/style/medialib/blm/wo/Information_Resources_Management/policy/blm_manual.Par.38337.File.dat/6310.pdf (last visited Aug. 24, 2015).

³ See http://www.blm.gov/style/medialib/blm/wo/Information_Resources_Management/policy/blm_manual.Par.52465.File.dat/6320.pdf (last visited Aug. 24, 2015).

Appeal Ex. B. BLM further noted: “We do not have any proposed decisions or actions regarding the internal guidance manuals you reference for which you could submit a formal protest at this time.” *Id.*

In response to BLM’s July 8, 2015, letter, Appellant filed the appeal before us. In its appeal, Appellant challenges BLM’s position that it can continue to conduct wilderness inventories and incorporates by reference the arguments it made in its May 5, 2015, letter.

Analysis

[1] The issue in this case is whether Appellant has appealed a “decision” within the meaning of the Board rule codified at 43 C.F.R. § 4.410(a), which limits appeals to “a decision of the Bureau or Office or an administrative law judge.” Board decisions have provided guidance on how to determine whether an agency action constitutes a “decision.” According to Board precedent, a “decision” generally authorizes or prohibits some action that affects a person having or seeking some right, title, or interest in public lands or their resources. *See, e.g., Uranium Watch*, 182 IBLA 311, 315 (2012) (citations omitted); *GEO-Energy Partners-1983 LTD.*, 170 IBLA 99, 119 (2006), *aff’d*, *GEO-Energy Partners-1983 LTD. v. United States*, 551 F. Supp. 2d 1210 (D. Nev. 2008), *aff’d*, 613 F.3d 946 (9th Cir. 2010). In the absence of an agency decision, this Board will not review agency action. *See Southern Utah Wilderness Alliance*, 122 IBLA 17, 20 (1992).

To analyze whether a “decision” is before us, we look to Appellant’s Appeal and attachments. In its Appeal and attached exhibits, Appellant suggests that BLM’s statement in its July 8, 2015, letter that it would continue to conduct wilderness inventories created an appealable decision. Appeal; *Id.* Ex. B at 1. Appellant also contends that the Manual Sections are not in compliance with FLPMA and states that the Department of the Interior must withdraw the Manual Sections. Appeal Ex. A at 4, 5.⁴

BLM’s letter does not constitute a decision appealable to this Board because it does not authorize or prohibit any action that affects a person having or seeking some right, title, or interest in public lands or their resources. *See GEO-Energy Partners-1983 LTD.*, 170 IBLA at 119. Appellant does not challenge a specific BLM action or

⁴ Appellant has attached to its Appeal as Exhibit A, a document it characterizes as a “formal protest” sent to the Montana State BLM Director. We will treat this document as Appellant’s Statement of Reasons in support of its appeal. Appellant also submitted what it characterizes as a “supplemental argument” to the Board on Aug. 24, 2015, that restates its arguments and provides additional legal citations in support of the same.

decision implementing or relying upon the Manual Sections at issue. Appellant does not articulate how its rights or interests are affected. Nor does Appellant explain how conducting wilderness inventories, which are information gathering exercises, are actually decisions about Appellant's rights or interests. Instead, Appellant seeks to challenge the Manual Sections themselves, which are internal agency policy documents, in the absence of any decision or action associated with those documents. As the regulations and our precedent make clear, we do not possess the authority to review BLM Manual Sections 6310 and 6320 in the absence of an agency decision.

We understand Appellant believes the Manual Sections and wilderness inventories violate FLPMA and perhaps other laws or policies. However, in the absence of a final agency decision that affects an appellant, the Board will not adjudicate the merits of an appeal challenging the validity of a policy, including agency Manuals.

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 appeal is dismissed.

_____/s/_____
Eileen Jones
Chief Administrative Judge

I concur:

_____/s/_____
James F. Roberts
Administrative Judge