



FRONT RANGE EQUINE RESCUE

187 IBLA 28

Decided January 13, 2016



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FRONT RANGE EQUINE RESCUE

IBLA 2015-173

Decided January 13, 2016

Appeal from a Decision Record of the Field Managers, Andrews/Steens and Three Rivers Resource Areas, Burns (Oregon) District, Bureau of Land Management, approving a proposed gather and removal of wild horses from the Kiger and Riddle Mountain Herd Management Areas. DOI-BLM-OR-B070-2015-0009-DNA.

Motion to dismiss granted; appeal dismissed.

1. Administrative Procedure: Standing--Wild Free-Roaming Horses and Burros Act

The Board will grant BLM's motion to dismiss an appeal from a BLM decision to conduct a gather and removal of wild horses from the public lands where an organization asserts standing to appeal on the basis that the decision has caused a drain on the organization's resources, but does not demonstrate that the decision directly impairs the ongoing activities and mission of the organization.

APPEARANCES: Bruce A. Wagman, Esq., San Francisco, California, for Appellant; Michael A. Schoessler, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Front Range Equine Rescue (FRER) has appealed from a May 4, 2015, Decision Record (DR) of the Field Managers, Andrews/Steens and Three Rivers Resource Areas, Burns District (Oregon), Bureau of Land Management (BLM), approving the proposed gather and removal of wild horses from the Kiger and Riddle Mountain Herd Management Areas (HMAs) in southeastern Oregon.¹ BLM had previously completed a May 2011 Environmental Assessment (EA) (DOI-BLM-OR-B050-2011-0006-EA) and a

¹ The HMAs currently encompass a total of 55,219 acres of public land.

May 3, 2011, Finding of No Significant Impact (FONSI), pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4375 (2012), in connection with a 2011 proposal to gather and remove a total of 120 wild horses from the HMAs. BLM based the subject DR on a May 2015 Determination of NEPA Adequacy (DNA) DOI-BLM-OR-B070-2015- 0009-DNA), in which BLM found that the existing EA and FONSI satisfied the requirements of NEPA.²

BLM has filed a motion to dismiss FRER's appeal for lack of standing under 43 C.F.R. § 4.410(a). For the following reasons, we grant BLM's motion.

BACKGROUND

Since enactment of the Wild Free-Roaming Horses and Burros Act (WFRHBA) on December 15, 1971, BLM has been responsible, as the delegate of the Secretary of the Interior, for protecting and managing wild horses on the public lands of the Federal range. See, e.g., *Fund for Animals, Inc. v. U.S. BLM*, 460 F.3d 13, 15 (D.C. Cir. 2006). The WFRHBA requires BLM to manage wild horses “in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands.” 16 U.S.C. § 1333(a) (2012). BLM is afforded a high degree of discretion in exercising the authority conferred by this statutory mandate. See *Fund for Animals, Inc. v. U.S. BLM*, 460 F.3d at 15-16; *American Horse Protection Association, Inc. v. Frizzell*, 403 F. Supp. 1206, 1217 (D. Nev. 1975); *Redwings Horse Sanctuary*, 148 IBLA 61, 63 (1999); *American Horse Protection [Association], Inc.*, 134 IBLA 24, 26 (1995). The ultimate goal is for wild horses to be “managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat.” 43 C.F.R. § 4700.0-6(a).

In performing its statutory obligations, BLM is required by section 3(b)(1) of the WFRHBA to maintain a “current inventory” of wild horses “on given areas of the public lands.” 16 U.S.C. § 1333(b)(1) (2012); see 43 C.F.R. § 4710.2. Based upon the inventory, BLM is required to determine, *inter alia*, the AML³ for an area, whether and

² BLM's objective in 2011 was to remove wild horses in excess of the established appropriate management level (AML) for wild horses in the HMAs. BLM forecast in the EA that, in order to maintain the AML, it was reasonably foreseeable that additional gathers and removals would be needed about every 4 years over the next 10- to 20-year period. See DNA at 1, 14.

³ An AML represents the “optimum number” of wild horses that can graze a particular area of the public lands and that “results in a thriving natural ecological balance” between wild horses, wildlife, vegetation, water, and other multiple uses and “avoids a (...continued)

where overpopulations of wild horses exist, and “whether action should be taken to remove excess animals” or to control the population by other means. *Id.* Where a wild horse population exceeds an AML, constituting an overpopulation for a given area of the public lands, removal of excess animals is generally required by section 3(b)(2) of the WFRHBA, 16 U.S.C. § 1333(b)(2) (2012):

Where the Secretary determines . . . on the basis of all information currently available to [her] that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, [s]he *shall immediately remove excess animals from the range so as to achieve appropriate management levels.* Such action shall be taken . . . until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation[.] [Emphasis added.]

See 43 C.F.R. § 4720.1; *e.g.*, *American Horse Protection Association, Inc. v. Watt*, 694 F.2d 1310, 1317-18, 1319 n.41 (D.C. Cir. 1982); *Thomas M. Berry*, 162 IBLA 221, 224 (2004); *Animal Protection Institute of America*, 118 IBLA 20, 22-23, 27, 29 (1991) (citing *Dahl v. Clark*, 600 F. Supp. 585, 594 (D. Nev. 1984)).

In the challenged DR, the Field Managers approved the proposed gather and removal of 153 “excess” wild horses from the HMAs. At the time of its DR, BLM had determined that the population of wild horses in the HMAs exceeded the combined AML for the HMAs (a range of 84 to 138 wild horses) established in the applicable land-use plans (August 2005 Steens Mountain Cooperative Management and Protection Area (CMPA) Resource Management Plan (RMP), and September 1992 Three Rivers RMP). Based on a May 6, 2014, aerial census of the Kiger and Riddle Mountain HMAs, BLM calculated there to be a total of 164 adult wild horses and 32 foals in the HMAs. Using a 20% growth rate, BLM estimated that the wild horse population, as of the summer of 2015, would be 197 adult wild horses and 40 foals. Based on this estimate, BLM determined that there would be 153 “excess” wild horses, taking into account its land-use planning direction to manage the wild horses at the low end of the AML. BLM reported that the May 6, 2014, aerial census “document[ed] heavy [forage] utilization and wild horse wallows in [the] Kiger HMA, [and] ongoing drought causing lack of water and the movement of horses outside the Riddle Mountain HMA boundary in search of necessary forage and water[.]” DR at 8; *see* DNA at 8-9.

(continued...)

deterioration of the range [associated with an overpopulation of wild horses].” *Animal Protection Institute of America*, 109 IBLA 112, 119 (1989).

Pursuant to its DR, BLM planned in July and August 2015 to gather the entire population of wild horses in the HMAs and permanently remove a total of 153 of them. *See* DR at 4. BLM would selectively return to the HMAs only those wild horses necessary to maintain a diverse age structure and an appropriate sex ratio, and, importantly, that fit the physical characteristics of the “Kiger mustang,”⁴ as described in the 1996 Riddle Mountain and Kiger Wild Horse HMA Management Plan.⁵ *See id.* at 4-5. Approval of the proposed gathering and removal would allow maintenance and perpetuation of the physical characteristics of the Kiger mustang, one of “the primary management objectives for the Kiger Mustang Area of Critical Environmental Concern (ACEC),” designated in the 1992 Three Rivers RMP, and would conform generally with the applicable land-use plans as required by section 302(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(a) (2012). *See* DNA at 5-6; Three Rivers RMP, Record of Decision (ROD), and Rangeland Program Summary (RPS), dated Aug. 5, 1992, at 2-45; Steens Mountain CMPA ROD and RMP, dated July 15, 2005, at RMP-50 to RMP-51.⁶

The Field Managers concluded that approval of the proposed gathering and removal of wild horses “allows BLM to respond to the issue of excess wild horses within [the] Riddle Mountain and Kiger HMAs while continuing to maintain the Spanish characteristics of the Kiger Mustang and closely monitor the genetic variability of the herd[.]” DR at 8.

⁴ The Kiger mustang is deemed to be descended from the original mustang brought to the North American continent by the Spaniards.

⁵ The “excess” wild horses removed from the HMAs would be transported to BLM’s Oregon Wild Horse and Burro corral facility, and prepared for adoption, sale, or long-term pasture. DR at 6.

⁶ *See* DR at 24 (“[The] Burns District began protecting and managing for the Spanish type horses in [the] Kiger HMA in 1974. Through the 1980s, BLM and the public’s awareness and interest in preserving the important historic and cultural value of Spanish Mustang characteristics grew, ultimately leading to the development of the 1992 Kiger Mustang [ACEC].”); DNA at 7 (“The primary management objective for [the ACEC] . . . is to perpetuate and protect the dun factor color and conformation characteristics of the wild horses present in the Kiger and Riddle Mountain [HMAs].” (quoting Kiger Mustang ACEC Management Plan, dated Mar. 5, 1996, at 2)); Three Rivers RMP, ROD, and RPS at 2-44, 2-141, 2-146 (Map ACEC-6 (Kiger Mustang ACEC)), Appendices 192-93.

FRER appealed timely from the DR. FRER challenges the gather/removal on the basis that it threatens the wildness and, ultimately, undermines the genetic health and viability of the Kiger and Riddle Mountain herds. FRER characterizes BLM's action as "genetic manipulation" that is, in effect, a "breeding program." Response in Opposition to BLM Motion to Dismiss (Response) at 8 n.3. According to FRER, "BLM is unlawfully perpetuating the Kiger mustang over other [F]ederally protected wild horses and reducing all [wild] horses in the HMAs to an unnatural 'breed' of Kiger[] [mustangs]." *Id.*

BLM filed a motion to dismiss the appeal for lack of standing, arguing that FRER is not "adversely affected" by the DR. Motion to Dismiss at 2.

Since we conclude FRER is not adversely affected by the DR, and thus lacks standing to appeal, we will grant BLM's motion to dismiss.

STANDING TO APPEAL

In order to appeal from a BLM decision, an appellant is required to have standing under 43 C.F.R. § 4.410. To have standing to appeal, an appellant must be a "party to a case" and "adversely affected" by the decision. 43 C.F.R. § 4.410(a); *see also* 43 C.F.R. § 4.410(b) and (d); *e.g.*, *Western Watersheds Project*, 185 IBLA 293, 298 (2015). It is the responsibility of the appellant to demonstrate the requisite elements of standing. *Id.* If either element is lacking, the appeal must be dismissed. *WildEarth Guardians*, 183 IBLA 165, 170 (2013).

It is undisputed that FRER qualifies as a "party to a case," within the meaning of 43 C.F.R. § 4.410(b), since it "has otherwise participated in the process leading to the decision under appeal, *e.g.*, . . . by commenting on an environmental document, or by filing a protest to a proposed action." *See* Motion to Dismiss at 2 n.3; *e.g.*, *WildEarth Guardians*, 183 IBLA at 171. The question here is whether FRER is "adversely affected" by BLM's decision to approve the proposed gather/removal.

In accordance with longstanding Board precedent, 43 C.F.R. § 4.410(d) provides that a party to a case is adversely affected by a decision when it "has caused or is substantially likely to cause injury" to "a legally cognizable interest" of the party. *See, e.g.*, *Western Watersheds Project*, 185 IBLA at 298. The legally cognizable interest must have been held by the appellant at the time of the decision that it seeks to appeal. *See Western Watersheds Project v. BLM*, 182 IBLA 1, 8-9 (2012); *Center for Native Ecosystems*, 163 IBLA 86, 90 (2004). The appellant need not prove that an adverse effect will, in fact, occur as a result of the BLM action, but we have long held that the threat of injury and its effect on the appellant must be more than hypothetical. *See Missouri Coalition for the Environment*, 124 IBLA 211, 216 (1992); *Donald K. Majors*,

123 IBLA 142, 145 (1992); *George Schultz*, 94 IBLA 173, 178 (1986). “Standing will only be recognized where the threat of injury is real and immediate. *Laser, Inc.*, 136 IBLA [271,] 274 [(1996)]; *Salmon River Concerned Citizens*, 114 IBLA 344, 350 (1990).” *Legal & Safety Employer Research Inc.*, 154 IBLA 167, 172 (2001). “[M]ere speculation that an injury might occur in the future will not suffice.” *Colorado Open Space Council*, 109 IBLA 274, 280 (1989).

In addition, when an organization 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 negatively affected by the decision. *See, e.g., Western Watersheds Project*, 185 IBLA at 298-99. 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. *The Fund for Animals, Inc.*, 163 IBLA 172, 176 (2004); *Southern Utah Wilderness Alliance*, 127 IBLA 325, 327 (1993); *Colorado Open Space Council*, 109 IBLA at 280. When an organization seeks to establish standing based on an injury to the *organization itself*, it bears the burden of demonstrating a nexus between the challenged action and concrete and demonstrable injury to the organization’s mission and ongoing activities. *See Board of County Commissioners of Pitkin County, Colorado [Pitkin County]*, 186 IBLA 288, 308-10 (2015).

DISCUSSION

FRER is a non-profit corporation dedicated, in relevant part, to preventing the cruelty and abuse of wild horses, principally “through rescue and education.” Notice of Appeal (NOA) at 2. FRER states that it is adversely affected by BLM’s DR because it “authorizes the unlawful removal of wild horses from their protected public lands.” NOA 3. FRER indicates that its mission concerning wild horses has two facets, namely, (1) to actively challenge the unnecessary gather/removal of wild horses from the public lands; and (2) to rescue, rehabilitate, and assist with the adoption of wild horses. *See id.* FRER describes a general interest in BLM’s management of the wild horse herd on the Federal range, including the genetic health and viability of the wild horses, which FRER claims is threatened by BLM’s current and past gathers/removals. FRER argues that it “is dedicated to stopping cruelty and abuse of wild and domestic horses through rescue and education”; it “has fundamental interests and investments in seeing wild horses and burros remain free-roaming on public lands”; and it “has expended its valuable resources investigating, tracking, and challenging the BLM’s conduct in the affected areas, resources that FRER would have otherwise used on its other programs.” *Id.* at 2-3; *see* Motion to Dismiss at 4.

BLM filed a Motion to Dismiss in which it argues that FRER has failed to “show through an affidavit, declaration, or other statement of an affected individual member how that member (and, by extension, the organization) has been adversely affected.”⁷ Motion to Dismiss at 3-4. BLM further argues that FRER “focuses on its general interest in wild horses and their protection, but nowhere shows how the BLM decision has caused or is substantially likely to cause injury to a legally cognizable interest.” *Id.* at 4. BLM contends that FRER’s general interests in wild horses “is not enough to show a legally cognizable interest because that interest must be concrete and particularized, which is demonstrated by establishing a geographical nexus to the resources at issue.” *Id.* (citing *Colorado Environmental Coalition*, 173 IBLA 362, 368-70 (2008); *Salmon River Concerned Citizens*, 114 IBLA 344, 350 (1990)). BLM points out that “[n]owhere does Appellant show it has an interest in the wild horses that are a part of the herds in the Kiger and Riddle Mountain HMAs,” and that “[w]hile Appellant may have deep concerns regarding the proposed action contained in the BLM decision or wild horses in general, that is insufficient to confer standing for it to maintain this appeal.” *Id.*

In its Response to BLM’s Motion to Dismiss, FRER expressly disavows any attempt to establish, by affidavit, declaration, or other statement, that any of its members has a legally cognizable interest in the wild horses subject to BLM’s planned gather and removal. FRER states that “there is extensive case law holding that an organization establishes its own standing to sue—without reference to affidavits of its members and their viewing or visiting of the resource (land or nature or animal) in question—when the organization itself has suffered or will suffer injury from the challenged conduct.” Response at 6. FRER emphasizes that it “does not contend, and has not contended, that it is maintaining this appeal on behalf of its members who are adversely affected because they enjoy viewing the Kiger[] [mustangs] at the HMAs.” *Id.* at 7-8. FRER states that its right to bring this appeal does not rely on its, or its members, visits to the HMAs, but on FRER’s expenditure and loss of organizational resources because of BLM’s illegal activity.” *Id.* at 14; *see also* SOR at 3-4. Rather, it asserts that it has, on the basis of “two separate grounds,” an *organizational* interest in the wild horses that it seeks to protect, specifically (1) its

⁷ Evidence that member(s) visit the HMAs where the wild horses reside and from which they are to be gathered and removed, and seek to observe the horses in their natural habitat, arguably would be sufficient to establish that FRER has a legally cognizable interest in the wild horses and that such interest is substantially likely to be injured by the gather/removal. Such a showing arguably would be adequate for demonstrating that FRER has standing to appeal the DR. *See, e.g., Western Watersheds Project*, 182 IBLA at 7; *Audubon Society of Portland*, 128 IBLA 370, 373-74, 374 n.2 (1994); *Animal Protection Institute of America*, 117 IBLA 208, 209-10 (1990).

“economic interests” in the expenditure of organizational resources for the protection of the wild horses; and (2) its “direct concern with . . . BLM’s mismanagement of genetic diversity in the herds at issue[.]” *Id.* at 8; *see id.* at 5-6. FRER argues that “because the Action drains FRER’s limited resources and frustrates FRER’s mission to save truly wild horses, FRER has standing in its own right to maintain this appeal.” *Id.* at 11. According to FRER, “BLM’s Action has had, and will continue to have, a real and immediate adverse effect on FRER’s organizational expenditures and resources and frustrates FRER’s goals and mission to ensure long-term genetic diversity for herd health and to preserve and protect the wild horses on the Kiger and Riddle Mountain HMAs.” *Id.* at 17. FRER concludes:

FRER’s stated injury is plain and impossible to deny. FRER’s mission to protect and sustain wild horses on [F]ederal public lands is frustrated by BLM’s plan to reduce the Riddle Mountain and Kiger HMAs to such low genetic diversity levels that the future health of the herds is jeopardized. . . . BLM’s conduct of impeding the natural reproductive patterns and genetic diversity of the wild horse herds “directly conflict[s] with [FRER’s] mission.” *Nat’l Treasury Emps. Union v. United States*, 101 F.3d 1423, 1430 (D.C. Cir. 1996). For these reasons, *FRER has a significant organizational stake . . . in BLM’s maintenance of the challenged Action.*

Id. at 10-11 (emphasis added); *see id.* at 13 (“FRER has stated an injury to its interest in preserving natural, genetically diverse wild horse herds in the Kiger and Riddle Mountain HMAs”).

In support, FRER offers the July 29, 2015, Declaration of Hilary Wood (Wood Decl.), President of FRER, who attests to the fact that FRER expended significant time and resources in evaluating and commenting on BLM’s proposed gather/removal. Wood states that FRER’s goal was to persuade BLM that the gather/removal of non-Kiger mustangs threatens to reduce the genetic diversity and health of the herds, and ultimately undermine their viability. She alleges that BLM is manipulating the genetic make-up of the wild horse herds in the HMAs. *See Wood Decl.*, ¶ 3. She asserts that FRER “diverts time, money, and efforts away from its other work in order to evaluate, research, investigate, and combat BLM’s illegal conduct affecting wild horses, and it has specifically done so with respect to BLM’s ongoing genetic manipulation of the herds in the Kiger and Riddle Mountain [HMAs].” *Id.*, ¶ 4. She states that “FRER has commented on at least 9 BLM management actions causing harm to wild horse genetic health since January 2015, including BLM’s actions in connection with the Kiger and Riddle Mountain HMAs.” *Id.* She claims that “FRER has undertaken additional investigations and evaluations of BLM’s efforts in the Kiger and Riddle Mountain HMAs, expending resources that would have been used on other organizational

missions, but for BLM's illegal conduct in connection with those HMAs." *Id.* She maintains that "FRER's mission to protect and sustain wild horses on [F]ederal public lands is frustrated by BLM's plan to reduce the herds in the Kiger and Riddle Mountain HMAs to such low genetic diversity levels that the future health of the herds is jeopardized." *Id.*, ¶ 6. She concludes that "[t]he interests of FRER have been and will continue to be adversely affected if BLM is permitted to continue its practice of selectively breeding Kiger horses and intentionally reducing the genetic diversity of the herd to the detriment of all other wild horses," and that such "practices cause or threaten irreversible effects to FRER, and significantly and directly harm the wild horses in all of these areas." *Id.*, ¶¶ 6, 7.

We reject FRER's argument. FRER has not demonstrated "a nexus between the decision under appeal and the interests which the [organization] . . . seeks to protect" and which are or are substantially likely to be injured by the decision. *Colorado Open Space Council*, 109 IBLA at 279 (emphasis added). "There must, in short, be a causal relationship between the action undertaken [by BLM] and the injury alleged." *Id.* at 280.

In its recent opinion in *Pitkin County*, 186 IBLA 288 (2015), the Board addressed the "diversion of resources" argument in the context of appeals from BLM decisions approving suspensions of operations (SOPs) of oil and gas leases in Colorado. The appellants in that case argued that BLM's approval of the SOPs had "required them to divert resources away from their respective operations and programs, and that this 'diversion of resources' [was] an adverse impact for purposes of standing." 186 IBLA at 305. The Board followed the rationale in *Colorado Open Space Council*, 109 IBLA at 280, in holding that none of the appellants had "shown any causal relationship between approval of the SOPs and any diversion of resources, and, therefore they [had] failed to show the essential nexus to establish standing." *Id.* Among other contentions raised in *Pitkin County*, the Wilderness Workshop (Workshop) asserted that BLM's approval of the SOPs required it to "expend considerable resources to undertake public outreach and education to inform its members and partners of the status of the Leases," and that "this diversion of resources 'frustrates' its mission, a 'core part of [which] involves research and public education about the ecological integrity of local landscapes and public land.'" *Id.* at 305-06 (quoting Workshop's Response at 19). In rejecting the Workshop's argument, we specifically held that it had not "shown a nexus between their claimed expenditure of resources and BLM's SOP decisions." *Id.* at 306.

Our reasoning in *Pitkin County* applies to FRER's diversion of resources argument in this case. FRER claims injury to its mission and its resources through its stated need "to expend its limited resources to stop BLM's Action that will significantly and directly affect wild horses." Response at 11. In effect, FRER makes

the untenable argument that it has standing to appeal because it has decided to expend organizational resources on filing its present appeal.⁸ We fail to see how FRER's expenditure of resources in challenging BLM's gather and removal of wild horses and maintaining its appeal to the Board adversely affects FRER's mission. Indeed, FRER defines its mission as taking the steps it deems necessary to protect wild horses, in this case those in the Kiger and Riddle Mountain HMAs. The activity that gives meaning to FRER's mission cannot also be said to cause injury to that mission.

Nonetheless, FRER asserts “[t]here is extensive case law holding that an organization establishes its own standing to sue—without reference to affidavits of its members and their viewing or visiting of the resource (land or nature or animal) in question—when the organization itself has suffered or will suffer injury from the challenged conduct.” Response at 6. For this proposition, FRER relies on the U.S. Supreme Court’s opinion in *Havens Realty Corp. v. Coleman [Havens]*, 455 U.S. 363 (1982). In *Havens*, a housing services organization alleged that Havens made apartments in one complex available to whites, while directing blacks to a different complex, a practice known as racial steering. The organization, Housing Opportunities Made Equal (HOME), was formed to achieve equal access to housing, and provided counseling and referral services for low and moderate income home seekers. HOME was found to devote significant resources to identifying and counteracting the defendant’s discriminatory practices. The Court held that there was an injury in fact to the organization, sufficient to confer standing. The Court stated that “[i]f, as broadly alleged, [the owner’s] [racial] steering practices have perceptibly impaired HOME’s ability to provide counseling and referral services for low and moderate income home-seekers, there can be no question that the organization has suffered injury in fact.” 455 U.S. at 379. The Court concluded: “Such concrete and demonstrable *injury to the organization’s activities*—with the consequent drain on the organization’s resources—constitutes far more than simply a setback to the organization’s abstract social interests,” and thus afforded it standing to sue. *Id.* (emphasis added); see, e.g., *Valle del Sol, Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 1876 (2014) (“[Organization has] direct standing to sue [when] it show[s] a drain on its resources from both a diversion of its resources and frustration of its mission.” (quoting *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1219 (9th Cir. 2012))).

⁸ In *Pitkin County*, we acknowledged that an “organization’s expenditure of resources on a lawsuit, including litigation expenses, does not constitute an injury sufficient to constitute standing.” 186 IBLA at 308 (citing *Equal Rights Center v. Post Properties, Inc.*, 633 F.3d 1136, 1138-40 (D.C. Cir. 2011)); see also note 9 *infra*.

In *Pitkin County*, the appellants argued that *Havens* and similar cases provided clear support for their argument that they had been harmed by a drain on resources. In rejecting their argument, we began with the U.S. Supreme Court’s holding in *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972), that actions contrary to an organization’s activities do not create an injury if the organization’s activities are not somehow impeded, and that the challenged action must, in some identifiable way, directly affect or be likely to affect the ongoing activities of the organization. 186 IBLA at 308. The Board in *Pitkin County* stated that the appellants therein had “miss[ed] the crucial holding of those cases, *i.e.*, there must be a ‘concrete and demonstrable injury to the organization’s activities—with the consequent drain on the organization’s resources.’” 186 IBLA at 310 (quoting *Havens*, 455 U.S. at 379). We further held that the appellants had “not shown that the SOP decisions have caused the alleged diversion of resources or effects an ‘inhibition of their daily operations, an injury both concrete and specific to the work in which they are engaged.’” *Id.* (quoting *People for the Ethical Treatment of Animals, Inc. v. U.S. Dep’t of Agriculture [PETA v. USDA]*, 7 F. Supp. 3d 1, 8 (D.D.C. 2013)). We concluded that none of the appellants in *Pitkin County* had established the “requisite causal connection between the SOPs and the harm alleged.” *Id.*

Havens and like cases make clear that the challenged action must in some identifiable way directly affect, or be likely to directly affect, the ongoing activities of the organization. As the U.S. Supreme Court stated in *Sierra Club v. Morton*, “a mere ‘interest in a problem,’ no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization ‘adversely affected’ or ‘aggrieved’ within the meaning of the APA [Administrative Procedure Act, 5 U.S.C. § 702 (2012)].” 405 U.S. at 739; see *The Center for Law and Education v. Department of Education*, 396 F.3d 1152, 1161-62 (D.C. Cir. 2005) (citing *National Treasury Employees Union [NTEU] v. United States*, 101 F.3d at 1429; *Valle del Sol*, 732 F.3d at 1018); see also, *e.g.*, *Abigail Alliance for Better Access to Developmental Drugs v. Von Eschenbach*, 469 F.3d 129, 132-33 (D.C. Cir. 2006); *The Humane Society of the United States v. U.S. Postal Service*, 609 F. Supp. 2d 85, 89, 90-92 (D.D.C. 2009).

In applying these principles to FRER’s challenge to the DR at issue, we find no evidence that the gather/removal of wild horses from the public lands in the HMAs has directly impaired, or is substantially likely to impair, FRER’s ongoing activities. 455 U.S. at 379. FRER’s mission is to “protect and sustain wild horses on federal public lands.” Wood Decl., ¶ 6. FRER is also engaged in the rescue, rehabilitation, and adoption of wild horses and the education of the public regarding roundups and responsible ownership of wild horses. *Id.*, ¶ 2. As part of its ongoing activities, FRER has, in the past, “expended significant time and resources to monitor and comment on unjustified or harmful roundups conducted by [BLM],” and, on occasion, challenged

such actions, and undoubtedly will, regardless of the current decision, continue to devote significant time and resources to those ends. *Id.*, ¶ 3. FRER fails to show, however, how its efforts are impeded or thwarted in any way by the gather/removal of the wild horses in the subject HMAs. Nor does FRER allege that it has altered its efforts or otherwise shifted course since BLM issued the decision. So far as we can discern, FRER's basic activities remain unchanged, and the action FRER is complaining about here is the very type of action FRER claims it has been organized to prevent.

Moreover, beyond the immediate consequence of the present appeal, FRER does not allege that BLM's DR actually affects its work on behalf of wild horses, since there is no evidence that the decision has led, or is even likely to lead, to similar actions. See Wood Decl., ¶ 6 ("The interests of FRER have been and will continue to be adversely affected *if* BLM is permitted to continue its practice of selectively breeding Kiger horses" (emphasis added)). FRER, at best, states that it is being "forced" to devote its limited resources in challenging the gather/removal now at issue to the detriment of its other efforts to rescue, rehabilitate, and adopt wild horses and to educate the public regarding roundups and responsible ownership of wild horses.⁹ Wood Decl., ¶ 5. However, the drain on resources envisioned as a basis for organizational standing in *Havens* stems not from the bringing of the lawsuit against the challenged action, but from the other activities that the organization must undertake as a result of the challenged action. See 455 U.S. at 379 ("[Standing arises in the case of] concrete and demonstrable injury to the organization's [counseling and referral] activities—with the *consequent* drain on the organization's resources" (emphasis added)). FRER fails to demonstrate that, other than the bringing of the appeal, BLM's decision has caused it to suffer a drain of resources.

Havens and like cases recognized standing where the challenged action was shown to have lingering, more far-reaching effects on the organization, thus impairing the other ongoing efforts that define the organization's mission. See *Abigail Alliance for Better Access to Developmental Drugs v. Von Eschenbach*, 469 F.3d at 132-33; *PETA v. USDA*, 7 F. Supp. 3d 1, 7-9 (D.D.C. 2013); *Scenic America, Inc. v. U.S. Department of*

⁹ FRER cites to *Habitat for Horses v. Salazar*, 745 F. Supp. 2d 438 (S.D.N.Y. 2010), stating that there the court found an animal welfare organization had standing to challenge a BLM gather/removal based on diversion of the organization's resources to "counteract BLM gathers and care for [wild] horses removed from the [Federal] range." Response at 6 (quoting 745 F. Supp. 2d at 446). This is incorrect. In conjunction with the quoted language, the court merely noted the factual assertions by one of the organizational plaintiffs, in the course of considering and rejecting the plaintiffs' motion for a preliminary injunction. It did not adjudicate the organizational standing of any of the plaintiffs.

Transportation, 983 F. Supp. 2d at 178; *The Humane Society of the United States v. U.S. Postal Service*, 609 F. Supp. 2d at 90-92. While FRER states that it has “invested time and resources it would have dedicated to other work of the organization, in order to implore BLM to stop ignoring the genetic risks that its management practices have on wild horse herds,” Response at 9, there is no evidence that the decision at issue has any effect on the organization itself other than by causing it to incur litigation costs to challenge the gather/removal. Indeed, whether BLM chooses to gather/remove wild horses from these HMAs or other HMAs in future years remains to be determined. The fact that BLM has chosen to gather/remove in the case of the Kiger and Riddle Mountain HMAs does not mean that it will choose to do so again in the future. FRER “cannot convert its ordinary program costs into an injury in fact[.]” *National Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1434 (D.C. Cir. 1995); see *National Association of Home Builders v. Environmental Protection Agency [NAHB v. EPA]*, 667 F.3d 6, 12 (D.C. Cir. 2011). As the court stated in *Valle del Sol Inc. v. Whiting*, 732 F.3d at 1018: “An organization ‘cannot manufacture the injury by incurring litigation costs or simply choosing to spend money fixing a problem that otherwise would not affect the organization at all. It must instead show that it would have suffered *some other injury* if it had not diverted resources to counteracting the problem.’” (Emphasis added.) FRER provides no evidence that there is “some other injury” or the decision at issue is likely to have any lingering, more far-reaching effects on it as an organization, or otherwise alleged that BLM’s decision “inhibit[s] . . . [its] daily operations,” constituting an injury “both concrete and specific to the work in which [it is] . . . engaged.”¹⁰ 7 F. Supp. 3d at 8.

¹⁰ See *NAHB v. EPA*, 667 F.3d at 12; *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d at 1219 (“[S]tanding must be established independent of the lawsuit filed by the plaintiff” (quoting *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 943 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1566 (2012))); *Abigail Alliance for Better Access to Developmental Drugs v. Von Eschenbach*, 469 F.3d at 133 (“[A]n organization is not injured [for standing purposes] by expending resources to challenge the [Federal agency] [;] . . . we do not recognize such self-inflicted harm.”); *Fair Employment Council of Greater Washington, Inc. v. BMC Marketing Corp.*, 28 F.3d 1268, 1277 (D.C. Cir. 1994) (“By this logic, the time and money that plaintiffs spend in bringing suit against a defendant would itself constitute a sufficient ‘injury in fact’, a circular position that would effectively abolish the requirement altogether”); *Scenic America, Inc. v. U.S. Department of Transportation*, 983 F. Supp. 2d at 179 (“Were an association able to gain standing merely by choosing to fight a policy that is contrary to its mission, the courthouse door would be open to all associations” (quoting *Long Term Care Pharmacy Alliance v. UnitedHealth Group, Inc.*, 498 F. Supp. 2d 187, 192 (D.D.C. 2007))); see also *Association for Retarded Citizens of Dallas v. Dallas County Mental Health & Mental Retardation Center Board of Trustees*,

(...continued)

We do not doubt the sincerity of FRER's statement that "[t]he interests of FRER have been and will continue to be adversely affected if BLM is permitted to continue its practice of selectively breeding Kiger horses and intentionally reducing the genetic diversity of the herd to the detriment of all other wild horses." Wood Decl., ¶ 6 (emphasis added). FRER shows that it has a general interest in promoting the proper management of wild horses on the Federal range, and, to this end, monitors, researches, investigates, and, if necessary, combats what it deems to be BLM's illegal efforts to gather/remove and otherwise manage wild horses on public lands. See Wood Decl., ¶¶ 3, 4. In doing so, FRER claims to divert its resources away from other efforts to promote the welfare of wild horses, both on and off the Federal range. See *id.*, ¶¶ 4, 5. We conclude, however, that FRER has not demonstrated that there exists a causal relationship between the action approved in the DR and injury to a *legally cognizable interest*. See, e.g., *The Fund for Animals, Inc.*, 163 IBLA at 176. At bottom, FRER fails to show that it will be impaired or thwarted in its general efforts to promote the welfare of wild horses by the decision at issue.¹¹

We conclude that FRER is not adversely affected by the DR approving the gather of the wild horses in the Kiger and Riddle Mountain HMAs, and, therefore, that BLM's motion to dismiss for lack of standing to appeal is properly granted.¹²

(continued...)

19 F.3d 241, 244 (5th Cir. 1994); *Spann v. Colonial Village, Inc.*, 899 F.2d 24, 27 (D.C. Cir.), *cert. denied*, 498 U.S. 980 (1990).

¹¹ While FRER implies that the decision at issue is part of a program by BLM to "inflict economic injury on FRER, through a series of ongoing policies enacted by BLM and carried out in the Kiger and Riddle Mountain HMAs and across the country," it offers no evidence to that effect. Wood Decl., ¶ 7. In its desire to challenge the DR, FRER seeks to transform the nature of the approved action, and to attribute to it programmatic and policy ramifications that are not supported by the record. See *Sierra Club v. Morton*, 405 U.S. at 740; *National Taxpayers Union, Inc. v. United States*, 68 F.3d at 1433.

¹² We also deny FRER's motion for oral argument before the Board pursuant to 43 C.F.R. § 4.25, since we are not persuaded that the Board's understanding of the issues related to the question of standing would be materially advanced thereby.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BLM's motion to dismiss is granted, and FRER's appeal from the DR is dismissed.

_____/s/_____
James F. Roberts
Administrative Judge

I concur:

_____/s/_____
Amy B. Sosin
Administrative Judge