



SUSAN CARTER

188 IBLA 97

Decided July 27, 2016



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

703-235-3750

703-235-8349 (fax)

SUSAN CARTER

IBLA 2016-221

Decided July 27, 2016

Appeal from a Bureau of Land Management decision to implement the Red Desert Complex Herd Management Area Gather, a gather and fertility program for excess wild horses in Wyoming. DOI-BLM-WY-030-EA15-63.

Appeal dismissed for lack of standing; petition for stay denied as moot.

1. Appeals: Standing;
Wild Free-Roaming Horses and Burros Act

Where an appellant from a wild horse gather decision does not allege to have visited the horses at the gather area at issue in the decision, and vaguely states a “hope” to see and paint the wild horses in the future, the appellant has not identified a legally cognizable interest that is or is substantially likely to be injured by the decision. The Board will dismiss such an appeal for lack of standing.

APPEARANCES: Susan Carter, Santa Fe, New Mexico, *pro se*; Arthur R. Kleven, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE ROBERTS

Susan Carter appeals from and petitions for a stay of the effect of a June 7, 2016, decision of the Rawlins and Lander (Wyoming) Field Offices, Bureau of Land Management (BLM), to implement a gather and fertility program for excess wild horses. The decision concerns the Red Desert Complex Herd Management Area

Gather in south central and central Wyoming.¹ BLM announced plans to commence with the gather as early as August 2016.²

Summary

To have standing to appeal from a BLM decision, an appellant must be a party to the case and have a legally cognizable interest that is or is substantially likely to be injured by that decision.³ In her notice of appeal and statement of reasons (NOA/SOR), Carter expresses the “hope to return to Wyoming, see and paint the Wild Horses in their natural environment.”⁴ She does not state that she has ever observed the wild horses at issue or visited the area where they are located. Nor does she otherwise identify a legally cognizable interest or show that BLM’s decision has caused or is substantially likely to cause injury to that interest.⁵ Because Carter has not shown that she is adversely affected by BLM’s decision, her appeal is properly dismissed.

Requirements for Standing before the Board

In order to pursue an appeal to the Board from a BLM decision, an appellant is required to have standing under 43 C.F.R. § 4.410 to appeal from the decision.⁶ The regulation at 43 C.F.R. § 4.410(a) requires that an appellant demonstrate it is both a “party to a case” and “adversely affected” by the decision.⁷ The Board must dismiss the appeal if either element is lacking.⁸ It is the appellant’s responsibility to demonstrate the requisite elements of standing.⁹ In this appeal, we focus on the adversely affected requirement.

¹ Environmental Assessment, Red Desert Complex Herd Management Area Gather, DOI-BLM-WY-030-EA15-63 (May 2016) at 1.

² Decision at 3.

³ 43 C.F.R. § 4.410(a) and (d); *see also* 43 C.F.R. § 4770.3(a).

⁴ NOA/SOR at unpaginated (unp.) 1.

⁵ 43 C.F.R. § 4.410(d).

⁶ *Western Watersheds Project (WWP)*, 187 IBLA 316, 320 (2016); *see* 43 C.F.R. § 4.410.

⁷ *WWP*, 187 IBLA at 320; *Colorado Environmental Coalition*, 173 IBLA 362, 367 (2008); *The Fund for Animals, Inc.*, 163 IBLA 172, 176 (2004); *see also David Glynn*, 182 IBLA 70, 72 (2012).

⁸ *WWP*, 187 IBLA at 320; *Colorado Environmental Coalition*, 173 IBLA at 367; *see also Glynn*, 182 IBLA at 72-73.

⁹ *WWP*, 187 IBLA at 320; *Colorado Environmental Coalition*, 173 IBLA at 367.

As noted, a party to a case is adversely affected when that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest.¹⁰ “[T]he interest allegedly affected by the decision under review must be a legally cognizable interest, the allegation of adverse effect must identify specific facts supporting the claimed adverse effect, and the threat of injury and its effect on an appellant must be more than hypothetical.”¹¹ Legally cognizable interests may include aesthetic and recreational values, such as interests in the scenery, natural and historic objects, and wildlife.¹² But a single visit to a particular site in the past with only a vague intention to return there, as a general rule, will not establish use sufficient for a finding of injury.¹³

Wild Horse Gathers and Standing

Concerning standing in the context of a wild horse gather, the Board has held that an appellant’s interest in interacting with and observing the herd was injured where the appellant alleged that he had visited the herd area, observed and interacted with the herd with clear intent to continue to do so, and even identified a favorite member of the herd that was killed during the challenged gather.¹⁴ Although the gather did not remove the entire herd, it removed more than half, most of them permanently; we held that the gather significantly changed the quality of his experience and thus “present[ed] a sufficient possible adverse effect.”¹⁵

In contrast, in *Colorado Environmental Coalition*,¹⁶ one of the appellant organizations claimed standing based on concerns of its members about impacts of oil and gas leasing and development on wild horses. But those members did not allege that they had visited or otherwise used the lands within or near the lease parcels inhabited by the wild horses. The Board held that the organization was properly dismissed as a party to the appeal.¹⁷

¹⁰ 43 C.F.R. § 4.410(d); *WWP*, 187 IBLA at 321.

¹¹ *The Fund for Animals, Inc.*, 163 IBLA at 176; *see also WWP*, 187 IBLA at 321.

¹² *WWP*, 187 IBLA at 321; *WWP v. BLM*, 182 IBLA 1, 7 (2012).

¹³ *See WWP*, 187 IBLA at 323; *see also WWP v. BLM*, 182 IBLA at 8 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563-64 (1992)).

¹⁴ *Glynn*, 182 IBLA at 72.

¹⁵ *Id.* at 72-73 (citing *Missouri Coalition for the Environment*, 172 IBLA 226, 235-36 (2007) (finding adverse impact on birdwatchers where a decision would allow 112 acres of forest land to be destroyed in a National Forest comprised of 1.5 million acres)).

¹⁶ 173 IBLA 362 (2008).

¹⁷ *Id.* at 368-69.

Carter Has Not Shown Adverse Impact from the Decision

[1] In accordance with the Board's standing requirements,¹⁸ we conclude that Carter has not shown that a legally cognizable interest has been, or is substantially likely to be, injured by the decision. She thus has not demonstrated any adverse effect. Carter, who currently lives in New Mexico, does not allege to have visited the horses at the gather area at issue in the decision. Instead, she summarily and vaguely alleges that she has "lived in Wyoming," and that her "daughter is buried in Rock Springs" Wyoming.¹⁹ As for the future, she states, "I see the Wild horse as the embodiment of the Spirit of the West, and hope to return to Wyoming, see and paint the Wild Horses in their natural environment and to finish out my days."²⁰ This expresses no more than a vague intention of a future visit; such an intention, by itself, is insufficient to establish standing to appeal.²¹

We also note that Carter, in her petition for stay, indicates that she manages one group on Facebook nearing 10,000 members and co-manages other groups with nearly 7,000 members, "all who follow the plight of our Wild Horses with devout intensity."²² But Carter does not provide the names of those groups, identify them as appellants, or indicate whether she has authority to represent them.²³ Nor does Carter allege that any individual from any of those groups has visited the area where the subject gather is planned.²⁴ As the Board has stated in prior opinions, a mere interest in a perceived problem, no matter how longstanding the interest or how qualified the organization may be in evaluating the problem, is not sufficient by itself to render an appellant adversely affected.²⁵

¹⁸ 43 C.F.R. § 4.410(a); *WWP*, 187 IBLA at 320; *Colorado Environmental Coalition*, 173 IBLA at 367.

¹⁹ NOA/SOR at unp. 1.

²⁰ *Id.*

²¹ *See WWP*, 187 IBLA at 322; *see also WWP v. BLM*, 182 IBLA at 8 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. at 563-64).

²² Petition for Stay (single-page document).

²³ *See WWP*, 187 IBLA at 324-25 (citing 43 C.F.R. § 1.3).

²⁴ *See Colorado Environmental Coalition*, 173 IBLA at 368-69; *see also WWP*, 187 IBLA at 321.

²⁵ *WWP*, 187 IBLA at 321; *Board of Commissioners of Pitkin County, Colorado*, 186 IBLA 288, 308 (2015) (citing *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972)).

We conclude that Carter has not demonstrated a legally cognizable interest and that BLM's gather decision has caused or is substantially likely to cause adverse harm to that interest. She therefore lacks standing to pursue this appeal.²⁶

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,²⁷ we dismiss the appeal for lack of standing and deny the petition for stay as moot.

_____/s/_____
James F. Roberts
Deputy Chief Administrative Judge

I concur:

_____/s/_____
Silvia M. Riechel
Administrative Judge

²⁶ See 43 C.F.R. § 4.410(d); *Colorado Environmental Coalition*, 173 IBLA at 368-70.

²⁷ 43 C.F.R. § 4.1.