CASCADIA WILDLANDS & OREGON WILD

192 IBLA 223 Decided February 20, 2018
CASCADIA WILDLANDS & OREGON WILD

IBLA 2018-57

Decided February 20, 2018

Appeal from and petition to stay the effect of two decisions issued by Field Manager, Upper Willamette Field Office, Northwest Oregon District, Bureau of Land Management, denying a protest of two Decision Records, approving two timber sales.

Appeal dismissed; petition for stay denied as moot.

1. Administrative Procedure: Standing

Under the Board’s regulations, to establish standing an appellant must demonstrate that it is both a “party to a case” and “adversely affected” by the decision it seeks to appeal. It is the responsibility of the appellant to demonstrate both of these elements of standing. If either element is lacking, the Board must dismiss the appeal for lack of jurisdiction.

2. Administrative Procedure: Standing

An appellant demonstrates adverse effect when it shows it has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest. To do this, an appellant must make colorable allegations, supported by specific facts set forth in an affidavit, declaration, or other statement, that establish a causal relationship between the approved action and alleged injury to a legally cognizable interest.
3. Administrative Procedure: Standing

When an organization appeals a BLM decision, it must demonstrate either: (1) that the organization itself has a legally cognizable interest that is substantially likely to be injured by the decision, or (2) one or more of its members has a legally cognizable interest, coinciding with the organization's purposes, that is substantially likely to be injured by the decision.

APPEARANCES: Nicholas Cady, Eugene, Oregon, for Cascadia Wildlands; Doug Heiken, Eugene, Oregon, for Oregon Wild; Brian Bickford, Acting Field Manager, Upper Willamette Field Office, Bureau of Land Management, Springfield, Oregon, for the Bureau of Land Management.

OPINION BY ACTING DEPUTY CHIEF ADMINISTRATIVE JUDGE SOSIN

Cascadia Wildlands and Oregon Wild (appellants) have jointly appealed from and petitioned for a stay of the effect of two December 12, 2017, decisions issued by the Field Manager, Upper Willamette Field Office, Northwest Oregon District, Bureau of Land Management (BLM). In those decisions, the Field Manager denied appellants' joint protest of two August 15, 2017, Decision Records (DR), approving the Mid Indian and Wild and Woolly Timber Sales.

Summary

Under the Board's regulations, an appellant must have standing to appeal and petition for a stay of a BLM decision. To establish standing, an appellant must demonstrate that it is both a “party to a case” and “adversely affected” by the decision it seeks to appeal, and if either element is lacking, the Board must dismiss the appeal for lack of jurisdiction. To demonstrate adverse effect, an appellant must show that it has a legally cognizable interest that is or is substantially likely to be injured by the decision on appeal. In this case, appellants have appealed and petitioned to stay BLM's decisions denying their protests of two timber sales. But appellants do not demonstrate that they are adversely affected by BLM's decisions because they allege only that their members use the project area for recreational purposes, but do not provide any specificity related to any members' past, current, or future use of lands likely to be affected by those timber sales. This is insufficient under the law to establish standing. Nor have appellants shown that the organizations themselves have standing since they do not allege or demonstrate any impacts to the organizations' missions, activities, or resources from BLM's decisions. We therefore dismiss appellants' appeal for lack of standing and deny their petition for a stay as moot.
The timber sales at issue are the Mid Indian Timber Sale and the Wild and Woolly Timber Sale. Together, the two timber sales would yield approximately 8,758 thousand board feet (MBF) of timber from approximately 226 acres of public lands in Lane County, Oregon, within the McKenzie River fifth-field watershed, which encompasses approximately 164,000 acres.\footnote{Mid Indian Timber Sale DR (Administrative Record (AR) 600_007) at 2, 6; Wild and Woolly Timber Sale DR (AR 600_006) at 2, 7; Environmental Assessment (EA) and Preliminary Finding of No Significant Impact (FONSI) (July 2017) (AR 500_002) at 9 (Table 2, Comparison of Alternatives), 26 (Table 11, Existing Northern Spotted Owl Habitat Conditions).} BLM explained that the project area containing the timber sales “includes predominantly mature forest established as a result of fire disturbance episodes,” and that “fire suppression and forest management activities have altered the historic vegetative patterns within the project area.”\footnote{EA and Preliminary FONSI at 2.}

In the Mid Indian Timber Sale DR, BLM authorized regeneration timber harvest of approximately 155 acres; harvest would occur by use of cable, ground-based, and helicopter yarding.\footnote{Mid Indian Timber Sale DR at 2-3.} As BLM explained in the DR, “[t]he forest stands within Mid Indian have achieved Culmination of Mean Annual Increment (CMAI), and are in need of regeneration harvest in order to promote growth of new stands.”\footnote{Id. at 6; see id. at 17 (“BLM resource specialists identified forest stands within the Mid Indian . . . unit[] as having achieved CMAI.”).} In the Wild and Woolly Timber Sale DR, BLM authorized approximately 71 acres of commercial thinning harvest by use of cable and ground-based yarding.\footnote{Wild and Woolly Timber Sale DR at 2-3.} BLM explained that thinning is appropriate here because the stands “have not yet achieved [CMAI], and are in need of commercial thinning in order to stimulate or maintain vigorous tree growth.”\footnote{Id. at 7; see id. at 3 (“[T]hinning will decrease tree-to-tree competition, thus stimulating the growth, productivity, and future value of the remaining trees.”).} Both timber sales include replacement or installation of culverts, and improvement, renovation, or construction of haul roads.\footnote{Mid Indian Timber Sale DR at 3; Wild and Woolly Timber Sale DR at 3.} Both timber sales also include numerous Project Design Features, which
will be implemented to avoid or minimize adverse environmental consequences of the sales.\(^8\)

Before approving the two timber sales, BLM prepared an EA, analyzing the potential environmental impacts of the sales. BLM first issued an EA and Preliminary FONSI in November 2016, for a 30-day public comment period.\(^9\) BLM issued a revised EA and Preliminary FONSI in April 2017, for a 15-day public comment period; this was followed by a final EA and Preliminary FONSI, which BLM issued on July 13, 2017, and also made available for public comment.\(^10\)

BLM then issued the DRs approving the two timber sales on August 15, 2017. In the DRs, the Field Manager found that the approved timber sales would best achieve BLM’s mandate to provide timber to the local economy while protecting resource values and promoting forest health.\(^11\) The Field Manager also found that the timber sales conformed to the governing resource management plans (RMP).\(^12\)

BLM published a notice of the DRs in a newspaper of general circulation on August 16, 2017.\(^13\) Under BLM’s forest management regulations, this action made the timber sales subject to protest.\(^14\)

**Appellants’ Protest and BLM’s Protest Decision**

Appellants timely protested the DRs approving the timber sales, alleging that BLM’s approval of the sales violated the National Environmental Policy Act of 1969

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\(^8\) See Mid Indian Timber Sale DR at 2-3; Wild and Woolly Timber Sale DR at 2-3; EA and Preliminary FONSI at 16-17.

\(^9\) EA and Preliminary FONSI (November 2016) (AR 500_007); Mid Indian Timber Sale DR at 2; Wild and Woolly Timber Sale DR at 2.

\(^10\) EA and Preliminary FONSI (April 2017) (AR 500_004); EA and Preliminary FONSI (July 2017); Mid Indian Timber Sale DR at 2; Wild and Woolly Timber Sale DR at 2.

\(^11\) See Mid Indian Timber Sale DR at 6-9; Wild and Woolly Timber Sale DR at 6-9.

\(^12\) See Mid Indian Timber Sale DR at 3-5, 9; Wild and Woolly Timber Sale DR at 3-6, 9; EA and Preliminary FONSI at 3 (July 2017) (adopting original conformance analysis); EA and Preliminary FONSI at 7-9 (April 2017) (original conformance analysis).

\(^13\) Affidavit of Publication (AR 600_004); see 43 C.F.R. § 5003.2(a).

\(^14\) 43 C.F.R. § 5003.3(a) (“Protests of a forest management decision, including advertised timber sales, may be made within 15 days of the publication of a notice of decision or notice of sale in a newspaper of general circulation.”).
in numerous respects, including by failing to adequately consider the impacts of the sales on various resources; consider a reasonable range of alternatives; and prepare an environmental impact statement. Appellants also alleged that BLM’s approval of the timber sales violated the Federal Land Policy and Management Act of 1976 (FLPMA) because the sales did not comply with provisions of the governing RMPs – the 1995 Eugene RMP and the 2016 Northwestern and Coastal Oregon RMP – related to northern spotted owls, snag retention, and water quality and watershed protection. Appellants further alleged that BLM’s decisions violated State logging laws and State laws related to endangered species.

In his December 12, 2017, decisions, the Field Manager denied appellants’ protest. In the decisions, the Field Manager addressed each of appellants’ protest points, and concluded that appellants had provided no new information showing that BLM had failed in the EA to adequately analyze the likely environmental effects of the timber sales, that the sales did not conform to the governing RMPs, or that BLM had violated any State law. The Field Manager concluded: “I have determined your protest raises no new information or other reasons to change my decision, and therefore . . . I am denying your protest.”

Under BLM’s regulations, the Field Manager’s denial of appellants’ protest allowed BLM to proceed with implementation of its decision. Although the timber sales were sold on September 14, 2017, we do not know if BLM has awarded the contracts or if any timber harvesting and related activity has occurred.

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16 Protest (AR 800_029) at 1-10.
18 Protest at 8, 9, 10.
19 Id. at 4-5.
20 See Oregon Wild Protest Decision (AR 800_001); Cascadia Wildlands Protest Decision (AR 800_002).
21 Oregon Wild Protest Decision at 1; Cascadia Wildlands Protest Decision at 1.
22 43 C.F.R. § 5003.3(f).
23 See BLM Response to Stay Request and Statement of Reasons (Response) at 12-13 (“[T]he sale was sold on September 14, 2017 . . . . The purchaser would like the BLM to award the sale . . . so that the purchaser will be able to operate this approaching season, including being able to complete road renovations allowable during winter/spring conditions.”).
Appellants' Appeal to the Board

Appellants have now appealed from the Field Manager's December 12, 2017, decisions, and requested a stay of the effect of BLM's approval of timber harvesting and related activity during the pendency of the appeal.

Appellants allege, as they did in their protest, that in approving the timber sales, BLM violated NEPA, FLPMA, and State law.\(^{24}\) Appellants further argue that a stay is necessary because timber harvesting and other activities authorized by BLM's decision "will irrevocably destroy older forests."\(^{25}\) Appellants allege: "Cutting down mature trees is a permanent action, and the damage this project will do to the existing forest habitat is irreversible."\(^{26}\) BLM opposes a stay.\(^{27}\)

The Regulatory Requirement to Have Standing to Appeal to the Board and Petition to Stay a Decision

[1] Before the Board can evaluate appellants' stay petition or the merits of their appeal, we must first determine if appellants have standing to pursue their appeal under the Board's regulations. To establish standing, an appellant must demonstrate that it is both a "party to a case" and "adversely affected" by the decision it seeks to appeal.\(^{28}\) It is the responsibility of the appellant to demonstrate both of these elements of standing.\(^{29}\) If either element is lacking, the Board must dismiss the appeal for lack of jurisdiction.\(^{30}\)

The "party to a case" requirement is satisfied when an appellant has "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."\(^{31}\)

\(^{24}\) See Notice of Appeal, Request for a Stay, and Statement of Reasons (Appeal) at 6-30.
\(^{25}\) Id. at 4.
\(^{26}\) Id. at 5.
\(^{27}\) See Response at 5-22.
\(^{28}\) 43 C.F.R. § 4.410(a).
\(^{29}\) Western Watersheds Project (WWP), 192 IBLA 72, 76 (2017); WildLands Defense, 189 IBLA 203, 206 (2017); Blue Mountains Biodiversity Project, 188 IBLA 143, 146 (2016); WWP, 185 IBLA 293, 298 (2015).
\(^{30}\) WWP, 192 IBLA at 76; Wildlands Defense, 189 IBLA at 206; Blue Mountains Biodiversity Project, 188 IBLA at 146; WWP, 185 IBLA at 298; WildEarth Guardians, 183 IBLA 165, 170 (2013).
\(^{31}\) 43 C.F.R. § 4.410(b).
The second element of standing, adverse effect, is met when the appellant shows that it has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest. A legally cognizable interest can include “cultural, recreational, or aesthetic use and enjoyment of the affected public lands.” But a mere interest in a problem or concern with the issues involved is not sufficient to establish standing. In order to demonstrate an adverse effect, an appellant must make colorable allegations, supported by specific facts set forth in an affidavit, declaration, or other statement, that establish a causal relationship between the approved action and alleged injury to a legally cognizable interest. While an appellant need not prove that an injury is certain, the appellant must show that the threat of an injury and its effect on the appellant are more than hypothetical.

When an organization appeals a BLM decision, it must demonstrate either: (1) that the organization itself has a legally cognizable interest that is substantially likely to be injured by the decision, or (2) one or more of its members has a legally cognizable interest, coinciding with the organization’s purposes, that is substantially likely to be injured by the decision.

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32 Id. § 4.410(d).
33 WWP, 192 IBLA at 77; Cascadia Wildlands, 188 IBLA 7, 9-10 (2016); WWP, 187 IBLA 316, 321 (2016).
34 WWP, 192 IBLA at 77; Board of Commissioners of Pitkin County, 173 IBLA 173, 178 (2007); Newmont Mining Corp., 151 IBLA 190, 195 (1999).
36 WWP, 192 IBLA at 77; Legal & Safety Employer Research Inc., 154 IBLA 167, 172 (2001) (“Standing will only be recognized where the threat of injury is real and immediate.”).
37 Umpqua Watersheds, Inc., 191 IBLA 1, 6 (2017); Klamath Siskiyou Wildlands Center, 190 IBLA 245, 249-250 (2017); Blue Mountains Biodiversity Project, 188 IBLA at 148; Cascadia Wildlands, 188 IBLA at 10; Board of County Commissioners of Pitkin County, Colorado, 186 IBLA 288, 308-310 (2015); WWP, 185 IBLA at 298-99; The Coalition of Concerned National Park [Service] Retirees, 165 IBLA 79, 86 (2005).
Appellants Do Not Demonstrate That They Are Adversely Affected by BLM's Decisions Approving the Timber Sales, and Therefore Do Not Have Standing

Here, appellants are parties to a case because Cascadia Wildlands and Oregon Wild submitted comments on the EAs and protested BLM's decisions. The issue before the Board, therefore, is whether appellants can demonstrate that they are adversely affected by BLM's decisions denying their protest to the timber sales.

In their appeal, appellants specifically address standing, stating that each organization has standing because their "[m]embers . . . have visited [the] project area many times for hikes, mushroom picking, and other recreational pursuits," and that these interests will be negatively affected by road construction, logging, and other activities approved by the decisions. Appellants state further that members of Cascadia Wildlands and Oregon Wild "regularly use and enjoy the public lands in the Salem District BLM for a variety of recreational pursuits." Appellants state that these interests will be harmed by the timber sales.

But these general assertions are insufficient to establish that each appellant organization has standing to appeal and petition for a stay of BLM's decisions. While recreational interests such as those described by appellants may constitute a legally cognizable interest that provides the foundation for standing, Board precedent requires more. In order for an organization to have standing based on a member, the member must make colorable allegations, supported by specific facts set forth in an affidavit, declaration, or other statement, that establish a causal relationship between the approved action and alleged injury to the member's legally

38 See 43 C.F.R. § 4.410(b).
39 Appeal at 2, 3.
40 Id. at 2; see id. ("Cascadia Wildlands members hike, bird watch, identify plants, pick mushrooms and otherwise learn from the riparian and terrestrial ecosystems in the project area where the timber sale activities are proposed."); id. at 3 ("Oregon Wild's members enjoy hiking, nature appreciation, camping, photography, bird watching, wildlife viewing, and other pursuits.").
41 Id. at 2-3 ("[Cascadia Wildlands members] want to see the forest canopy remain intact, hear songbirds, encounter interesting plants and animals, enjoy clear healthy streams, and be in the presence of mature forests that harbor marbled murrelets and spotted owls. These values would be directly harmed by proposed activities."); id. at 3 ("The educational, aesthetic, recreational, scientific, and other interests of Oregon Wild and its members in the public lands affected by the challenged actions will be irreparably harmed if defendant proceeds with the actions that are the subject of this appeal.").
cognizable interest.\textsuperscript{42} As we have explained, “[t]he information provided by a member of an organization must ‘provide as much specific evidence as possible about what interests are allegedly injured and what the connections are between those interests and the decision [the organization] seeks to appeal’.”\textsuperscript{43}

For example, we have found that an organization had standing to appeal a timber sale when a member of that organization submitted a declaration in which he stated that he often used the specific area that would be impacted by the timber sale for various recreational activities (\textit{e.g.}, hiking and photography), had definite plans for continued use in the future, and logging in the area would directly harm the ecological, recreational, and aesthetic values that he enjoyed.\textsuperscript{44} We similarly found standing when a member of an organization appealing an oil and gas lease sale submitted a declaration in which she attested that she frequently recreated in the areas to be leased, had future plans to visit the areas, and the activities associated with leasing would degrade the scenery, wildlife, and wilderness values in the area that she enjoyed.\textsuperscript{45}

In contrast, we have held that an organization does not establish standing “where its members or officers allege they have visited a general project area, but have not alleged they have visited the ‘specific areas’ or ‘specific portions’ of the project area where the alleged harmful actions will take place.”\textsuperscript{46} We have also found that a member’s “single visit in the past with only a vague intention to return” is insufficient to establish standing.\textsuperscript{47}

Further, we held in another appeal of a timber sale brought by the same organizations that are appealing here – Cascadia Wildlands and Oregon Wild – that the organizations had failed to establish standing based only on general assertions that its members had visited an area for recreational activities and that the timber sale at issue would adversely affect those recreational pursuits.\textsuperscript{48} There, we concluded that appellants did not have standing because they did not identify

\textsuperscript{42} \textit{Klamath-Siskiyou Wildlands Center}, 190 IBLA 295, 300-301 (2017); \textit{Wilderness Workshop}, 189 IBLA 221, 224 (2017).
\textsuperscript{43} \textit{Cascadia Wildlands}, 188 IBLA at 10 (quoting \textit{WWP v. BLM}, 182 IBLA 1, 6 (2012)).
\textsuperscript{44} \textit{Klamath-Siskiyou Wildlands Center}, 190 IBLA at 302.
\textsuperscript{45} \textit{WWP}, 192 IBLA at 79-80.
\textsuperscript{46} \textit{WWP}, 187 IBLA at 321 (quoting \textit{WWP}, 185 IBLA at 299-300).
\textsuperscript{47} \textit{WWP v. BLM}, 182 IBLA at 8.
\textsuperscript{48} \textit{Cascadia Wildlands}, 188 IBLA at 11.
which of their members actually use the timber sale area; they refer only generically to "members and staff" of their organizations. Appellants have not identified any specific instances in the past when a member or members have used the area, nor have they documented their members' use in a supporting statement of any kind.\footnote{Id.}

Just as in that case, here Cascadia Wildlands and Oregon Wild make only general assertions that their members use the "project area" or the "project area where the timber sale activities are proposed."\footnote{Appeal at 2.} And while appellants identify a member of each organization who is "authorized to bring this appeal on behalf of" each organization – Nicky Cady, an employee and member of Cascadia Wildlands, as well as a member of Oregon Wild, and Doug Heiken, an employee and member of Oregon Wild\footnote{Id. at 3.} – nowhere do appellants assert whether or when either of these individuals (or any other members of the organizations) has engaged in, or plans to engage in, any recreational activities in or near the areas where the timber harvesting and other activities will occur. Appellants fail to provide any specificity related to a member's past, current, or future use of lands encompassed by the timber sales, or any lands in the vicinity or otherwise likely to be affected by those timber sales. Nor have appellants documented in any way a member's use in a supporting statement of any kind. At most, appellants have stated only a "mere interest in a problem or concern with the issues involved," which is insufficient to establish standing.\footnote{WWP, 192 IBLA at 77 (quoting Board of Commissioners of Pitkin County, 173 IBLA at 178).}

Last, we address whether appellants, as organizations, have established standing to appeal and petition to stay BLM's decisions. As noted above, an organization can establish standing on its own behalf when the organization has a legally cognizable interest that is substantially likely to be injured by the decision on appeal.\footnote{See, e.g., Umpqua Watersheds, Inc., 191 IBLA at 6.} An organization can make this showing when it demonstrates a nexus between the challenged action and a claimed injury to the organization's mission and ongoing activities.\footnote{WWP, 192 IBLA at 78.} There must be a "concrete and demonstrable injury to the organization's activities - with the consequent drain on the organization's resources."\footnote{Board of County Commissioners of Pitkin County, Colorado, 186 IBLA at 308-09 (quoting Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982)).}
Cascadia Wildlands and Oregon Wild identify themselves as organizations that are dedicated, respectively, to "restoring wild ecosystems of the Cascadia Bioregion" and "restoring Oregon’s wild lands, wildlife, and waters as an enduring legacy." Appellants assert that Cascadia Wildlands represents over 10,000 members and supporters, and Oregon Wild has over 12,000 members. But appellants make no allegations about any impacts to the organizations' missions, activities, or resources that will result from implementation of the timber sales. There is therefore no basis for finding that appellant organizations have standing, on their own, to appeal and petition for a stay of the timber sales.

Conclusion

We conclude that appellants have not established that either organization, or any member, has a legally cognizable interest that is or is substantially likely to be injured by the Field Manager's December 2017 decisions denying their protest of his August 2017 decisions approving the Mid Indian and Wild and Woolly Timber Sales. Appellants therefore have not met their burden to demonstrate that they have standing to pursue the appeal, and we must dismiss their appeal for lack of jurisdiction.

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

/s/

Amy B. Sosin
Acting Deputy Chief Administrative Judge

I concur:

/s/

Silvia Riechel Idziorek
Administrative Judge

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56 Appeal at 2, 3.
57 Id.
58 43 C.F.R. § 4.1.