United States Department of the Interior
OFFICE OF HEARINGS AND APPEALS
Interior Board of Land Appeals
801 N. Quincy Street, Suite 300
Arlington, Virginia 22203

703-235-3750 703-235-8349 (fax)

August 19, 2015

| | | |
|---|---|---|
| IBLA 2015-198 & IBLA 2015-199 | ) | OCS-G 15563, *et al.* |
| | ) | |
| ENERGY RESOURCE TECHNOLOGY GOM, INC. | ) | Incident of Noncompliance |
| | ) | |
| | ) | Motions to Dismiss Denied |

ORDER

The Bureau of Safety and Environmental Enforcement (BSEE) has filed motions to dismiss in the above-captioned appeals.[1] For the reasons herein discussed, BSEE's motions are denied.

On June 29, 2015, appellant filed a notice of appeal from a May 3, 2015, decision of the District Manager, Houma District, BSEE. In that decision, BSEE denied appellant's April 20, 2015, request to have BSEE rescind the warning Notice of Incident of Noncompliance (INC). BSEE issued the INC to appellant on April 7, 2015. BSEE inspectors issued to appellant INC A-148 because Lease OCS-G 15563, Green Canyon 237, Well #3, Helix 534 allegedly failed certain requirements for blowout preventer system testing, in violation of 30 C.F.R. § 250.1707. The Board docketed appellant's appeal as IBLA 2015-198.

Also on June 29, 2015, appellant filed a notice of appeal from a May 5, 2015, decision of the Production Supervisory Inspector, Lake Charles District, BSEE. In that decision, BSEE denied appellant's April 4, 2015, request to have BSEE rescind the shut-in INC, which BSEE issued to appellant on March 24, 2015. BSEE inspectors issued to appellant INC P-130 because a fire suppression facility on Lease OCS-G 15561, EC-381-A allegedly was not correctly maintained, in violation of 30 C.F.R. § 250.803. The Board docketed that appeal as IBLA 2015-199.

---

[1] The Board will not, *sua sponte*, consolidate these appeals for final disposition at this early stage in the proceedings. *See* 43 C.F.R. § 4.404. Nevertheless, the factual and legal issues set forth in BSEE's motions to dismiss, and appellant's responses thereto, are so similar that we will dispose of BSEE's motions to dismiss in one Order.

BSEE seeks to dismiss both appeals because they purportedly were not timely filed as required by 30 C.F.R. § 250.290.3. Pursuant to 30 C.F.R. § 290.3, an appellant must file its appeal within 60 days after receiving BSEE's "final decision or order." It is well established that the failure to file an appeal timely requires that the appeal be dismissed, since the Board is without jurisdiction to entertain it. 30 C.F.R. § 290.5; *Phillips Petroleum Co.*, 147 IBLA 363, 369-70 (1999); *see, e.g., Windi S. Bierling*, 185 IBLA 257, 260 (2015).

Without citing to any legal authority for its proposition, BSEE claims in its motions to dismiss that appellant's appeals must be dismissed because the INCs issued in those cases were the final decisions appealable to this Board. Neither the District Manager's May 3, 2015, decision nor the Production Supervisory Inspector's May 5, 2015, decision served as final, appealable decisions because they were "informal." According to BSEE, the responses to appellant's rescission requests "simply concluded that the INC was justified and should be left in place. Therefore, the 60-day appeal period started running . . . when [appellant] received BSEE's final decision, the INC." IBLA 2015-198 Motion to Dismiss at unpaginated (unp.) 2; IBLA 2015-199 Motion to Dismiss at unp. 2 (identical language). BLM's motions are not persuasive.

This Board has held that an agency decision issued in response to a request for reconsideration becomes the final agency decision for appeal purposes. *See ExxonMobil Corp.*, 178 IBLA 244, 246 n.2 (2009); *Ilean Landis*, 49 IBLA 59, 62 (1980). In *ExxonMobil Corp*, the company initially appealed to the Board a February 10, 2009, decision of the Regional Supervisor for Production and Development for Gulf of Mexico Region (GOMR) of the Minerals Management Service. At the same time, ExxonMobil sought informal resolution before the Regional Director of the GOMR under 30 C.F.R. § 290.6. That request resulted in the April 9, 2009, Decision appealed in 178 IBLA 244. In an Order dated June 17, 2009, the Board noted that ExxonMobil's first appeal and the appeal in 178 IBLA 244 were "essentially appeals of a decision that has been superseded by 'final decision' of the Regional Director." 178 IBLA 246 n.2 (quoting June 17, 2009, Order at 2). The Board then dismissed the initial appeal and adjudicated the second appeal since it was the Regional Director's decision that became the final agency action from which ExxonMobil timely appealed.

Just like in *ExxonMobil Corp.*, the INCs in the matter before us were not the final decisions appealable to this Board. Since appellant lodged with BSEE a motion to reconsider the INCs, the agency's responsive decisions were appealable to this Board. In the case docketed as IBLA 2015-198, appellant filed a rescission request with BSEE's District Manager within 60 days of receiving the INC. *See* 30 C.F.R. § 290.6 (providing an INC recipient the option of requesting "informal resolution" with the decision-issuing officer's next level supervisor during the 60-day appeal

period set forth in 30 C.F.R. § 290.3). The District Manager responded to appellant's request on May 3, 2015. Consequently, the District Manager's response became the final agency decision from which appellant had an additional 60 days to appeal. By filing its appeal on June 29, 2015, appellant's appeal is timely. The same result is true for the case docketed as IBLA 2015-199. Appellant filed a rescission request with BSEE's Production Supervisory Inspector pursuant to 30 C.F.R. § 290.6, who responded on May 5, 2015. The Production Supervisory Inspector's decision became the final decision and appellant filed its notice of appeal from that decision within the 60 days provided by 30 C.F.R. § 290.3.

Because a decision by BSEE that denies an INC recipient's request for rescission is a final decision from which an appeal can be taken within the time period set forth in 30 C.F.R. § 290.3, the Board denies BSEE's motions to dismiss.

/s/
Eileen Jones
Chief Administrative Judge

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)

September 17, 2015

| | | |
|---|---|---|
| IBLA 2015-213 | ) | BLM-OR-P040-2008-0089-EIS |
| | ) | |
| FRIENDS OF RUDIO MOUNTAIN, INC. | ) | Travel Management Plan |
| | ) | |
| | ) | Motion to Dismiss Granted; |
| | ) | Appeal Dismissed |

ORDER

On July 6, 2015, Friends of Rudio Mountain, Inc. (FORM) timely appealed from the Interim Travel Management Plan approved by the Prineville (Oregon) Field Office, Bureau of Land Management (BLM), and contained in BLM's Record of Decision for the John Day Basin Resource Management Plan (RMP). The Interim Travel Management Plan identified seasonal area and route closures and designated travel routes for motorized vehicles. After FORM filed this appeal, BLM transmitted to the Board the Administrative Record (AR).

On August 4, 2015, BLM filed a motion to dismiss (Motion) FORM's appeal. Therein, BLM argues FORM lacks standing to bring its appeal before the Board. *See* Motion at 1-5. BLM served the Motion on FORM by Federal Express Overnight mail on August 3, 2015. *See* Motion, Certificate of Service. FORM's response to BLM's Motion was due on or before August 25, 2015. *See* 43 C.F.R. § 4.407(b) ("any party has 15 days after service of the motion to file a written response"); *see also* 43 C.F.R. § 4.401(c)(5) ("delivery is deemed to take place 5 business days after the document was sent"). FORM did not respond to BLM's Motion.

Based on the following analysis, we dismiss FORM's appeal for lack of standing.

*Discussion*

The issue is whether FORM has standing to bring this action. If an appellant does not have standing, then we must dismiss the appeal. *See Center for Biological Diversity*, 181 IBLA 325, 338 (2012).

To resolve the issue before us, we turn to Board regulations as interpreted through our case law. Under our regulation codified at 43 C.F.R. § 4.410, to establish standing, an appellant must show it meets two elements. First, the organization must demonstrate it is a "party to a case," and second, that it is "adversely affected" by the decision being appealed. 43 C.F.R. § 4.410(b) and (d); *see Western Watersheds Project*, 185 IBLA 293, 298 (2015), and cases cited. An appellant may establish it is a "party to a case" by showing it "participated in the process leading to the decision under appeal." 43 C.F.R. § 4.410(b); *David Glynn*, 182 IBLA 70, 73 (2012).

An organization "is adversely affected" when a decision on appeal "has caused or is substantially likely to cause injury to" that organization's legally cognizable interests. 43 C.F.R. § 4.410(d). A legally cognizable interest includes cultural, recreational, and aesthetic interests in the use and enjoyment of the public lands at issue, which coincide with the organization's purposes, that is or may be adversely affected by the decision. *Concerned Citizens for Nuclear Safety*, 175 IBLA 142, 146 (2008); *see WildEarth Guardians*, 183 IBLA 165, 171 (2013). An organization makes the requisite demonstration by submitting an affidavit, declaration, or other statement by a member or members attesting to the fact that they use the lands and/or resources at issue, or otherwise have a legally cognizable interest that is substantially likely to be injured by the approved action. *WildEarth Guardians*, 183 IBLA at 171; *Center for Biological Diversity*, 181 IBLA at 338. However, "mere interest in a problem or concern with the issues involved does not" suffice to demonstrate standing. *Board of Commissioners of Pitkin County*, 173 IBLA 173, 178 (2007) (internal quotations and citation omitted).

In the matter before us, BLM agrees FORM is a party to this case. Based on our review of the record, we reach the same conclusion. The AR shows FORM is a party based on its participation in the RMP's public review process. FORM contributed to the RMP's development and BLM's overall decision-making process. *See, e.g.*, AR[1] 126 (Letter from Kidwell to BLM dated Mar. 22, 2006).

However, we also find that FORM has not established it meets the second element of standing, *i.e.*, that it was adversely affected by BLM's decision. There are insufficient facts either in the AR or FORM's notice of appeal (NOA) to establish that any FORM members have been adversely affected by BLM's decision. On appeal, FORM explains that it "represent[s] and speak[s] for the public at large" and that "the public does not support [BLM's] decision[]." NOA at 10. The organization argues that the decision restrict off-highway-vehicle (OHV) travel on "most of Rudio

[1] The AR contains 2,494 files stored on two compact discs. We cite to the AR's index, which contains a listing of each individual record component.

Mountain . . . . Existing roads and trails should be . . . left open . . . as gifts to the general public . . . . If you close these places or place restrictions upon them, you will harm and discrim[in]ate against millions of people." NOA at 2. FORM continues:

> [P]ublic lands belong to all people. . . . The public needs unlimited recreation opportunities. . . . BLM should never restrict or close any existing road, trail or [OHV] travel in an area that is this popular for hunting. . . . Closing existing roads, trails and lands that have been historically open to OHV[]s and motor vehicles for generations has a large impact on the people [who] rely on these roads and trails. . . . We are concerned that the BLM intends to close countless existing roads without caring about the hardships and dangers it could create for the public at large.

NOA at 4-5.

Based on its NOA, FORM has not claimed that harm would come to FORM members. Nor has FORM identified any individual members who actually use the particular lands in question for recreational activity. FORM's assertions simply do not amount to a colorable allegation of real and immediate injury that would grant it standing to appeal this matter because it does not allege that BLM's decision somehow injure its members' interests. Because FORM has not demonstrated that BLM's decision adversely affect its members' interests to the extent contemplated by Departmental standing requirements, we find FORM does not have standing to appeal the decision.

In addition to not having standing to appeal, we also find FORM's filings with the Board deficient for another reason. FORM's representative has not shown that she is qualified to represent FORM in this appeal. The record must demonstrate that the organization's representative is authorized to practice before the Board. *See* 43 C.F.R. § 1.3. Under 43 C.F.R. § 1.3, an individual who is not an attorney may practice in regard to a matter in which she represents herself, a member of her family, a partnership of which she is a member, or a corporation, business trust, or association of which she is an officer or full-time employee. 43 C.F.R. § 1.3(b)(3); *Wilderness Watch*, 168 IBLA 16, 31 (2006). The NOA filed by FORM was signed by Kathleen Kidwell. Since there is no evidence Ms. Kidwell is a lawyer, she must show she is an officer or full-time employee of FORM or falls within any of the other categories of authorized representatives vis-a-vis FORM.

While Ms. Kidwell signs "for" FORM, she does not discuss or explain her affiliation with the organization she purports to represent. *See* NOA. Nor does the AR contain information about Ms. Kidwell's connection to FORM. *See* AR 125; 126; 134; 172-74; 251; 261; 268; 279; 302; 306; 347; 422; 431-32; 453; 477; 483; 640.

When a person who is unqualified to represent a party under 43 C.F.R. § 1.3(b) files an NOA, that NOA is properly dismissed as to the party the person is not qualified to represent. *The Oregon Chapter Sierra Club*, 176 IBLA 336, 345 (2009); *Helmut Rohrl*, 132 IBLA 279, 281 (1995).

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 FORM's appeal is dismissed.

/s/
Eileen Jones
Chief Administrative Judge

I concur:

/s/
James F. Roberts
Deputy Chief Administrative Judge

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)

October 20, 2015

| | | |
|---|---|---|
| IBLA 2015-233 | ) | (8732) CON020 |
| | ) | |
| JOHN PARKER AND FLY FISHING OUTFITTERS | ) | Special Recreation Permit |
| | ) | |
| | ) | Motion to Dismiss Granted; |
| | ) | Appeal Dismissed |

ORDER

On August 6, 2015, appellants, John Packer and Fly Fishing Outfitters, through counsel, appealed from a July 7, 2015, decision issued by the Kremmling Field Office (Colorado), Bureau of Land Management (BLM). In the decision, BLM denied appellants' application for a special recreation permit for commercial fly fishing on the Upper Colorado River. Appellants did not include a statement of reasons (SOR) in their notice of appeal. Instead, they stated that an SOR will be filed within the time required by 43 C.F.R. § 4.412, *i.e.*, submitted by September 8, 2015.

To date, appellants have not filed an SOR in this case. Nor have they moved for an extension of time to file an SOR or have otherwise explained why they did not file an SOR.

On October 2, 2015, BLM filed a motion to dismiss for failure to file an SOR. Appellants did not respond to BLM's motion. *See* 43 C.F.R. § 4.407(b).

If an appellant does not file an SOR, then the appeal is properly dismissed. 43 C.F.R. §§ 4.402(a), 4.412(c); *see Wendi S. Bierling*, 185 IBLA 257, 260 (2015), and cases cited; *Dvorak Expeditions*, 127 IBLA 145, 146 (1993).

In this case, appellants did not include an SOR in the notice of appeal, did not file an SOR within 30 days after filing the notice of appeal, and did not provide an explanation for why an SOR was not timely submitted. Consequently, the appeal may be summarily dismissed.

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 the appeal is dismissed.

/s/
Eileen Jones
Chief Administrative Judge

I concur:

/s/
James F. Roberts
Deputy Chief Administrative Judge

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)

December 17, 2015

| | | |
|---|---|---|
| IBLA 2015-19 | ) | AZA26194 |
| | ) | |
| EXCURSION RANCH, LLC | ) | Bond Liability Determination |
| | ) | |
| | ) | Motion to Dismiss Appeal As Moot |
| | ) | Granted; Appeal Dismissed |

ORDER

Appellant has appealed from the September 25, 2014, decision issued by the Arizona State Office, Bureau of Land Management. BLM refunded to Donald Adams a reclamation bond in the amount of $36,330.00, which Adams submitted to cover reclamation costs associated with appellant's notice-level mining operations on a mill site located on Federal land. Appellant posted the entire bond payment, although BLM titled the bond in Adams' name. Because appellant claimed to be the proper recipient for the reclamation bond refund, it appealed BLM's decision to the Board.

On December 14, 2015, counsel for appellant filed a Motion to Dismiss Appeal as Moot (Motion). Counsel explains the matter has been resolved by a State court. Therefore, counsel requests that the appeal be dismissed as moot. Based on counsel's representations, we grant the Motion. 43 C.F.R. § 4.407(c).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, appellant's Motion is granted and the appeal is dismissed.

/s/
Eileen Jones
Chief Administrative Judge

I concur:

/s/
Amy B. Sosin
Administrative Judge