



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
Interior Board of Land Appeals
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Arlington, Virginia 22203

CERTIFIED



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June 25, 2015

IBLA 2015-112, <i>et al.</i>)	ID-BD-3000-2014-071, <i>et al.</i>
)	
IDAHO CATTLE ASSOCIATION, <i>ET AL.</i>)	Grazing Allotments
)	
)	Motion to Dismiss Granted;
)	Interlocutory Appeal Dismissed

ORDER

The Bureau of Land Management has appealed three orders issued on January 8, 2015, by Administrative Law Judge (ALJ) Andrew Pearlstein. The appeals grew out of a comprehensive effort to renew grazing permits on approximately 80 grazing allotments administered by the Owyhee (Idaho) Field Office, Bureau of Land Management (BLM). BLM issued approximately 60 separate grazing decisions between 2012 and 2014. In December 2013, Idaho Cattle Association (ICA), Owyhee Cattle Association, Public Lands Council, National Cattlemen's Beef Association, and Idaho Farm Bureau Federation (collectively, ICA), appealed 37 of the BLM grazing decisions. Among the 37 appeals filed by ICA, 13 related to BLM's Group #5 permit renewal effort. Nine of those 13 appeals are presently at issue.

On September 12, 2014, BLM moved to dismiss the ICA Group #5 appeals on three grounds: (1) lack of jurisdiction; (2) ICA's failure to clearly and concisely state the grounds for appeal pursuant to 43 C.F.R. § 4.470(b); and (3) ICA had failed to establish standing.

On January 8, 2015, the ALJ issued three orders denying BLM's motions to dismiss nine IGA appeals. BLM filed three appeals from the ALJ's decisions on February 10, 2015. The Board docketed BLM's appeals as IBLA 2015-112, 2015-114, and 2015-115.¹

¹ IBLA 2015-112 involves BLM's motion to dismiss five of IGA's appeals, docketed by the Hearings Division as ID-BD-3000-2014-071 (ICA), ID-BD-3000-2014-072 (ICA), ID-BD-3000-2014-078 (ICA), ID-BD-3000-2014-079 (ICA), and ID-BD-3000-2014-

... continued

BLM did not seek permission to file an interlocutory appeal from the ALJ's ruling. The Hearings Division transferred BLM's appeals to this Board.

On April 6, 2015, ICA filed with the Board a Motion to Dismiss the above-captioned appeals. After receiving the pleading from ICA, BLM filed with the Hearings Division a "request for interlocutory certification." On April 20, 2015, the ALJ denied BLM's request. Therein, the ALJ stated that permission to pursue an interlocutory appeal to the Board is appropriately granted only "upon a showing that the ruling complained of involves a controlling question of law and that an immediate appeal therefrom may materially advance the final decision." ALJ Certification Order at 3 (quoting 43 C.F.R. § 4.28). The ALJ found that BLM failed to show how dismissing ICA would materially advance the final decision since the appeals of their members and the permittees, who also appealed from BLM's final grazing decisions and who are "taking presumably the same positions" as ICA, would remain pending. *Id.*

On April 27, 2015, BLM filed a response to ICA's Motion and requested the Board to accept the interlocutory appeal. BLM contends that reversal of the ALJ's order denying the agency's motion to dismiss would materially advance the ALJ's final decision because it would streamline resolution of the other appeals pending before the Hearings Division, avoid placing unnecessary and unfair discovery burdens on BLM, avoid unnecessary briefing, conserve resources and promote judicial efficiency, and allow the parties to focus on other legitimate issues that were fairly raised by other parties. On May 4, 2015, ICA filed a Petition for Leave to File Reply and Reply in Support of Motion to Dismiss. The Petition was granted. 43 C.F.R. § 4.412(a).

The issue before us is whether the ALJ abused his discretion by refusing to certify a denial of a motion to dismiss for interlocutory appeal. BLM has not persuaded us that such an abuse occurred in this case. We therefore dismiss the appeal.

The Board's rule concerning interlocutory appeals requires, *inter alia*, that either the ALJ has certified a legal question for interlocutory review or the ALJ abused his or her discretion in not certifying a question of law. *See* 43 C.F.R. § 4.28;

080 (ICA). IBLA 2015-114 involves three IGA appeals, docketed by the Hearings Division as ID-BD-3000-2014-075 (ICA), ID-BD-3000-2014-076 (ICA), and ID-BD-3000-2014-077 (ICA). IBLA 2015-115 involves one ICA appeal, docketed by the Hearings Division as ID-BD-3000-2014-081 (ICA).

Kendall Nutumya, 180 IBLA 371, 373 (2011); *Western Watersheds Project*, 164 IBLA 300, 304 (2005). “To constitute an abuse of discretion, the action must be arbitrary, fanciful, or clearly unreasonable.” *U.S. v. Zweifel*, 11 IBLA 53, 96 (1973). The burden of proving an abuse of discretion is on the moving party, or in this case, BLM. See *Western Watersheds Project*, 164 IBLA 300 at 304.

Applying those principles to the matter before us, we find that BLM has not explained how the ALJ abused his discretion. Rather, BLM focused on how dismissing ICA from the proceedings below would materially advance the ALJ’s final decision without acknowledging the reasons the ALJ came to the opposite conclusion. In this case, the ALJ determined that BLM did not show that resolution in the agency’s favor would materially advance the final decision, because, even if BLM’s interpretation were to prevail, the appeal would remain pending as to the other appellants in that case who are presenting the same or similar arguments as ICA. BLM ignores the ALJ’s justification for denying the certification and instead attempts to persuade the Board why dismissing ICA would materially advance the proceedings below. However, the fact that BLM believes the ALJ should have resolved the matter in its favor does not *ipso facto* also demonstrate abuse of discretion. Cf. *Western Watersheds Project*, 164 IBLA at 304. Moreover, mere disagreement with an ALJ’s ruling does not suffice to discharge BLM’s burden to prove that an abuse of discretion occurred. See, e.g., *Mark Patrick Heath*, 181 IBLA 114, 137 (2011). Without a showing that the ALJ abused his discretion by issuing an arbitrary, fanciful, or clearly unreasonable order, we must deny BLM’s request.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, ICA’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





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June 10, 2015

IBLA 2015-162, <i>et al.</i>)	NV-06-14-03, <i>et al.</i>
)	
JULIAN TOMERA RANCHES, INC., <i>ET AL.</i>)	Grazing
)	
)	Petitions for Interlocutory Appeal
)	Granted; Motion to Consolidate
)	Granted; Joint Briefing Schedule
)	Established

ORDER

On August 22, 2014, the Field Manager, Mount Lewis Field Office (Nevada), Bureau of Land Management (BLM) issued a Full Force and Effect Final Decision, effecting the Argenta Allotment. In that Final Decision, BLM temporarily closed nine use areas because of drought and overgrazing in the Allotment. The grazing permittees of that Allotment, Julian Tomera Ranches, Inc., Battle Mountain Division, Chiara Ranch, Daniel E. and Eddyann U. Filippini, and Henry Filippini, Jr. (collectively, Permittees), appealed BLM's Final Decision to the Department's Hearings Division, where it was assigned to Administrative Law Judge (ALJ) James H. Heffernan. The Hearings Division docketed the Permittees' appeal as NV-06-14-03. John C. Carpenter, a concerned citizen who is generally affiliated with the Allotment, also appealed the Final Decision to the Hearings Division. That appeal was docketed as NV-06-14-04. In addition, Western Watersheds Project (WWP) appealed the Final Decision; the Hearings Division docketed that appeal as NV-06-14-05. Finally, the Nevada Land Action Association and Public Lands Council (collectively, the Associations) also appealed BLM's Final Decision to the Hearings Division, where it was given docket number NV-06-14-06. Judge Heffernan consolidated these appeals for final disposition.

On April 30, 2015, ALJ Heffernan issued a Partial Summary Judgment Decision, therein denying the Permittees' Motion for Partial Summary Judgment, denying in part WWP's Motion for Summary Judgment, denying the Association's Motion for Summary Judgment, and granting BLM's Cross-Motion for Summary Judgment. The Permittees and WWP filed respective notices of appeal. In response, Judge Heffernan stated in a June 2, 2015, Order that "[b]ecause my April 30, 2015, decision was partial in content and did not cover the entirety of issues on appeal in

these consolidated dockets, [the Permittees' and WWP's] appeals are procedurally interlocutory." Certification on Interlocutory Appeals to IBLA at 2. The ALJ then held that it was his "determination that both appeals implicate controlling questions of law arising from my decision and that 'an immediate appeal therefrom may materially advance the final decision.' 43 C.F.R. § 4.28." *Id.* Judge Heffernan then transmitted the appeals to the Board; the Permittees' appeal has been docketed as IBLA 2015-162 and WWP's appeal has been docketed as IBLA 2015-163.

On June 5, 2015, the Board received the Associations' Notice of Appeal from ALJ's Heffernan's On April 30, 2015, Decision. Therein, the Associations explain that ALJ Heffernan fully adjudicated their claims pending in the Hearings Division and therefore a direct appeal to the Board is appropriate. The Associations' appeal has been docketed as IBLA 2015-164. On the same date, the Board received from John C. Carpenter a notice of appeal from the ALJ's April 30, 2015, Decision. While it is not readily apparent from the record that the ALJ's Decision included a ruling that concerned any of Carpenter's pleadings, we have nevertheless docketed that appeal as IBLA 2015-165.

Petitions for Interlocutory Appeal

A party has no right to an interlocutory appeal of an ALJ's ruling during an ongoing hearing, but may seek one in accordance with 43 C.F.R. § 4.28. To file an interlocutory appeal, a party must obtain both the permission of an Appeals Board and the certification of the ALJ, except in the case where an ALJ abuses his or her discretion in denying a request to certify. 43 C.F.R. § 4.28; *Kendall Nutumya*, 180 IBLA 371, 373 (2011). In this case, ALJ Heffernan certified the Permittees' and WWP's respective appeals to the Board. These parties have yet to seek the permission of the Board to hear the interlocutory appeal. However, in the interest of judicial economy, we construe their requests for certification by ALJ Heffernan as a request for permission from the Board. We adopt ALJ Heffernan's reasoning in the June 2, 2015, Certification Order, finding that resolution of the questions presented would materially affect the outcome of the appeal, and we therefore grant the Permittees' and WWP's petitions for interlocutory appeal.

Motion to Consolidate

On June 9, 2015, the Associations filed with the Board a Motion to Consolidate, seeking to join together IBLA appeals 2015-162, 2015-163, 2015-164, and 2015-165 for final disposition. The Associations have conferred with the Permittee, WWP, and BLM. Neither BLM nor WWP opposes the motion. The Permittees take no position on the motions. John C. Carpenter did not respond to the Associations' correspondence.

Based on the Associations' representations, we grant the Motion to Consolidate. Appeals IBLA 2015-162, 2015-163, 2015-164, and 2015-165 will hereafter be referred to by the lead docket number, IBLA 2015-162.

Briefing Schedule

The Association has also requested that the Board issue a briefing schedule for this consolidated matter. We grant the requested briefing schedule as follows: Any party seeking to file a statement of reasons must do so within 45 days of the date of this Order. Any party seeking to respond to a statement of reasons must do so within 35 days after the statement of reasons is due.

Accordingly, any party wishing to file a statement of reasons must do so by July 27, 2015. Any party seeking to file a response to a statement of reasons must do so by August 31, 2015.

_____/s/
Eileen Jones
Chief Administrative Judge

