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 Office of Hearings and Appeals
 Interior Board of Land Appeals
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November 16, 2023

IBLA 2023-0221)	DOI-BLM-CO-N050-2017-0009-EA
)	
BRANDON SIEGFRIED)	Land Exchange
)	
)	Motion to Dismiss Granted; Appeal
)	Dismissed; Petition for Stay Denied as
)	Moot

ORDER*

Brandon Siegfried appealed and petitioned to stay the effect of a September 7, 2023, Decision by the Colorado State Office, Bureau of Land Management (BLM). In the Decision, BLM denied Siegfried’s protest of BLM’s January 14, 2021, Decision Record (DR) approving the Buffalo Horn Land Exchange.

BLM moved to dismiss Siegfried’s appeal for lack of standing, among other things. As explained below, we grant BLM’s motion, dismiss the appeal for lack of standing, and deny the petition for stay as moot.

BACKGROUND

Pursuant to Section 206 of the Federal Land Policy and Management Act (FLPMA), BLM may exchange Federal lands administered by BLM for private lands when BLM determines “the public interest will be well served by making that exchange.”¹ In 2011, Buffalo Horn Properties LLC (Buffalo Horn) and BLM began working on a proposal to exchange private lands for Federal lands.² The 2011 proposal involved exchanging 6 parcels of private land totaling 6,645 acres for 18 parcels of Federal land totaling

* This Order is binding on the parties but does not constitute Board precedent.

¹ 43 U.S.C. § 1716(a); *see* 43 C.F.R. pt. 2200 (regulations implementing Section 206 of FLPMA). All citations to Title 43 of the Code of Federal Regulations are to the 2022 edition.

² Environmental Assessment, Buffalo Horn Land Exchange, DOI-BLM-CO-N050-2017-0009-EA at 1 (Jan. 2021), https://eplanning.blm.gov/public_projects/69551/200145679/20033332/250039531/Buffalo%20Horn%20LEX_EA.pdf (last visited Nov. 16, 2023.) (EA).

7,629 acres.³ In 2013, the proposal was revised to involve exchanging 3 parcels of private land totaling 4,035.77 acres for 16 parcels of Federal land totaling 3,806 acres, with all of the parcels being located in Rio Blanco and Moffat Counties, Colorado.⁴

In late 2016, BLM began the process of analyzing the environmental impacts of the proposed exchange and alternatives under the National Environmental Policy Act (NEPA)⁵ when it issued a Notice of Exchange Proposal (NOEP) that described the revised proposal and solicited scoping comments.⁶ After considering the comments, BLM prepared an environmental assessment (EA) to analyze the environmental effects of various alternatives. BLM analyzed a no-action alternative (Alternative C), under which BLM would not complete the proposed land exchange,⁷ and two action alternatives (Alternatives A and B). Under Alternative A, BLM would complete the exchange as described in the NOEP, and, under Alternative B, BLM would complete a modified exchange involving fewer parcels based upon issues raised during the scoping process.⁸

BLM released a preliminary EA and Finding of No Significant Impact (FONSI) for public review and comment⁹ and, after considering the comments,¹⁰ issued the EA and a FONSI.¹¹ Based on the EA and FONSI, BLM then issued the DR, which approved Alternative B, as modified.¹² Specifically, BLM agreed to exchange 14 parcels of Federal land totaling 2,652 acres for 1 parcel of private land containing 1,327.06 acres.¹³ BLM also agreed to accept a donation from Buffalo Horn of 4 parcels of private land totaling

³ *Id.*

⁴ *Id.*

⁵ 42 U.S.C. §§ 4321-43471.

⁶ Notice of Exchange Proposal (Dec. 1, 2016), https://eplanning.blm.gov/public_projects/nepa/69551/92012/110918/NOEP_DM_Signed_December_2016.pdf (last visited Nov. 16, 2023); *see* EA at 7-8.

⁷ EA at 12.

⁸ *Id.* at 8-9; *see id.* at 9-12 (describing Alternative A); *id.* at 12 (describing Alternative B).

⁹ *Id.* at 8.

¹⁰ *Id.* at 133-55 (BLM responding to public comments).

¹¹ Finding of No Significant Impact, Buffalo Horn Land Exchange, DOI-BLM-CO-N050-2017-0009-EA (Jan. 14, 2021), https://eplanning.blm.gov/public_projects/69551/200145679/20033330/250039529/Bufalo%20Horn%20LEX_FONSI_signed.pdf (last visited Nov. 16, 2023).

¹² Bureau of Land Management's Motion to Dismiss; In the Alternative, Opposition to Petition for Stay and Answer to Statement of Reasons (filed Oct. 23, 2023) (Motion to Dismiss), Exhibit (Ex.) 1 Decision Record, Buffalo Horn Land Exchange, DOI-BLM-CO-N050-2017-0009-EA at 2 (Jan. 14, 2021) (DR).

¹³ *Id.*

508.2 acres, pursuant to Section 205 of FLPMA.¹⁴ BLM explained that “[b]oth the exchange and donation are for surface estates only; there will be no change in mineral estate ownership.”¹⁵ BLM also determined that the exchange “will well serve the public interest” and that the donation improves Federal land management by consolidating land ownership.¹⁶

On February 8, 2021, Siegfried filed a protest opposing the DR,¹⁷ and on September 7, 2023, BLM dismissed Siegfried’s protest.¹⁸ On September 28, 2023, Siegfried appealed BLM’s dismissal of his protest to this Board.¹⁹ Siegfried then filed via U.S. Mail an amended notice of appeal that included a statement of reasons and a petition for stay.²⁰ Siegfried later supplemented these filings.²¹

On October 23, 2023, BLM moved to dismiss the appeal for lack of standing, among other reasons.²² BLM also answered Siegfried’s statement of reasons and opposed the petition for stay.²³ Siegfried did not respond to BLM’s motion to dismiss, and the time to do so has passed.²⁴

¹⁴ *Id.*; *see id.* at 3 tbl.1 (listing parcels to be exchanged and donated); *see* 43 U.S.C. § 1715(a) (stating that BLM may acquire private lands through donation).

¹⁵ DR at 3.

¹⁶ *Id.* at 2; *see id.* at 5-10 (explaining grounds for public interest determination); *id.* at 10 (explaining grounds for accepting the donation).

¹⁷ Motion to Dismiss, Ex. 10, Protest (filed with BLM Feb. 8, 2021) (Protest); *see* 43 C.F.R. § 2201.7-1(b) (stating that “a decision to approve or disapprove an exchange proposal . . . shall be subject to protest”).

¹⁸ *Id.*, Ex. 11, Decision, Protest Dismissed, Public Land to Be Exchanged (Sept. 7, 2023).

¹⁹ Notice of Appeal (filed with BLM Sept. 28, 2023); *see* 43 C.F.R. § 2201.7-1(c) (stating that “a protest decision” may be appealed under the “procedures of 43 CFR part 4”).

²⁰ Notice of Appeal (refiled), Statement of Reasons, Request for Stay (filed Oct. 6, 2023) (Amended Notice of Appeal). Although Siegfried had filed a similar document with the Board three days earlier via email, we will cite to his October 6, 2023, Amended Notice of Appeal because it contains an attachment that was omitted from Siegfried’s emailed filing.

²¹ Email from Siegfried to the Board (filed Oct. 17, 2023).

²² Motion to Dismiss at 9-11.

²³ *Id.* at 13-21.

²⁴ 43 C.F.R. § 4.407(b) (stating that a “party has 15 days after service of [a] motion to file a written response”).

ANALYSIS

The Standing Requirements

An appellant must have standing under 43 C.F.R. § 4.410 to appeal a BLM decision to this Board.²⁵ To have standing, an appellant must be “a party to a case” and be “adversely affected” by the decision it seeks to appeal.²⁶ An appellant must demonstrate both elements of standing to proceed; if either element is lacking, we must dismiss the appeal for lack of jurisdiction.²⁷

The “party to a case” requirement is satisfied when an appellant has “participated in the process leading to the decision under appeal,” such as “by filing a protest to a proposed action.”²⁸ The “adversely affected” requirement is satisfied when an 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.”²⁹ “Legally cognizable interests include not only economic and property interests but also the use and enjoyment of the affected public lands or their resources for cultural, recreational, or aesthetic purposes.”³⁰ The general interest all citizens share in ensuring that government agencies comply with the law, however, is not a legally cognizable interest: “a mere interest in a problem or concern with the issues involved” will not suffice.³¹

To show that a decision has injured or is substantially likely to injure a legally cognizable interest, “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.”³² “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.”³³

²⁵ *Bassler*, 197 IBLA 280, 284 (2021).

²⁶ 43 C.F.R. § 4.410(a).

²⁷ *WildLands Defense*, 192 IBLA 209, 214 (2018).

²⁸ 43 C.F.R. § 4.410(b).

²⁹ *Id.* § 4.410(d).

³⁰ *WildEarth Guardians*, 198 IBLA 13, 19 (2022).

³¹ *Center for Biological Diversity*, 195 IBLA 298, 302 (2020); *see also, e.g., Katsilometes v. BLM*, 186 IBLA 73, 79-80 (2015) (“An assertion of standing based on status as a member of the general public, a citizen, and a taxpayer is insufficient . . . where the concern presented relates merely to the general welfare and the indirect interest of the citizen taxpayer in the affairs of his/her government.”).

³² *Id.*

³³ *WildLands Defense*, 192 IBLA at 214-15.

Siegfried Has Not Established Standing

Here, the “party to a case” requirement is satisfied because Siegfried protested the DR. The question of standing, therefore, hinges on whether Siegfried is “adversely affected” by the DR, i.e., whether Siegfried has a legally cognizable interest that has been or is substantially likely to be injured by the DR.

We have held that an appellant challenging a BLM decision denying a protest of a land exchange had standing because they used the Federal lands at issue.³⁴ In his protest and filings with this Board, Siegfried does not allege that he uses the Federal lands or private lands at issue. Instead, Siegfried merely alleges that BLM violated various State and Federal laws, including Article I, Section 8, Clause 17 of the United States Constitution (the Enclave Clause) in approving the land exchange.³⁵ But Siegfried’s general concern that BLM may have violated certain laws in approving the exchange is not a legally cognizable interest,³⁶ and, without a legally cognizable interest, Siegfried lacks standing to appeal.³⁷

³⁴ *Jolley*, 145 IBLA 34, 39 (1998) (holding that an appellant who “establish[ed] a life-long history of utilizing some of the public land parcels involved in [a land] exchange for recreational purposes” had standing).

³⁵ See Protest at unpaginated 1-2; Amended Notice of Appeal at 1-8.

³⁶ *Altman*, 93 IBLA 265, 266 (1986) (ruling that a legally cognizable interest “need not be an economic or property interest,” but a “[m]ere interest in a problem or deep concern with the issues involved” will not suffice) (quotations omitted).

³⁷ See *Western Watersheds Project*, 192 IBLA 72, 78 (2017) (ruling that a general interest in an issue or a problem—“no matter how longstanding the interest or how qualified the [person or] organization may be”—will not establish standing (quoting *Board of County Commissioners of Pitkin County, Colorado*, 186 IBLA 288, 308 (2015))); cf. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573-74 (1992) (“We have consistently held that a plaintiff raising only a generally available grievance about government – claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large – does not [have standing].”).

CONCLUSION

Siegfried lacks standing to appeal the DR. Accordingly, we grant BLM's motion to dismiss, dismiss Siegfried's appeal, and deny Siegfried's petition for stay as moot.

Steven J. Lechner
Deputy Chief Administrative Judge

I concur: _____
K. Jack Haugrud
Administrative Judge