WILDEARTH GUARDIANS

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WILDEARTH GUARDIANS

IBLA 2017-169 January 14, 2022

Appeal from a decision dismissing for lack of standing a request for State Director Review of the approval of an oil and gas development project. SDR UT 17-01.

Decision Reversed.

APPEARANCES: Jeremy Nichols, Climate and Energy Program Director, Denver, Colorado, for WildEarth Guardians; Bret A. Sumner, Esq., Theresa M. Sauer, Esq. & Michael K. Cross, Esq., Beatty & Wozniak, Denver, Colorado, for Newfield Exploration Company; Elizabeth A. Schulte, Office of the Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HAUGRUD

WildEarth Guardians (WEG) has appealed from a Decision issued on March 22, 2017, by the Bureau of Land Management's Utah State Office (BLM). BLM dismissed WEG's request for State Director Review (SDR) of the Bureau's September 2016 Record of Decision (Project ROD) approving the Monument Butte Oil and Gas Development Project.[1] BLM concluded that WEG lacked standing to challenge approval of the Project ROD.

[1] Record of Decision, Newfield Exploration Company Monument Butte Oil and Gas Development Project in Uintah and Duchesne Counties, Utah (Sept. 30, 2016) (Project ROD), https://eplanning.blm.gov/public_projects/nepa/62904/83880/100498/MBROD_20160930_Final.pdf (last visited Jan. 13, 2022).

SUMMARY

The approved Project allows additional and more intensive development of an existing oil and gas field in the Uinta Basin in Utah. However, the Project ROD is programmatic in nature and does not directly authorize any ground-disturbing activities. Instead, the operator needs to apply for and receive BLM authorization before conducting any site-specific work, such as drilling additional wells or constructing roads. Based on this fact, BLM concluded that WEG lacked standing because the Project ROD "cannot be seen as causing any actual injury or immediate threat of injury" to WEG's environmental, recreational, and aesthetic interests.[2]

But under Board precedent, not all types of programmatic decisions are deemed incapable of causing environmental injury for purposes of standing when they are issued. For example, when a bureau cannot completely forego implementation and its decision advances third-party development rights, the Board has recognized that parties may be adversely affected by, and thus have standing to contest, the issuance of the programmatic decision despite the lack of immediately authorized ground-disturbing activity.

Here, BLM has not retained complete discretion to deny the operator the right to conduct ground-disturbing activities, and the Project ROD is specifically intended to facilitate further oil and gas development in the Project Area. Hence, we find that BLM erred in concluding that the Project ROD could not injure a party asserting legally cognizable environmental, recreational or aesthetic interests. We have also considered the declaration WEG has submitted from one of its staff members to support its claim of standing, and we conclude that WEG has adequately established that it is a party which has been adversely affected by the Project ROD. Accordingly, we reverse BLM's Decision.

FACTUAL AND PROCEDURAL BACKGROUND

The Monument Butte Project Area encompasses nearly 120,000 acres within the Uinta Basin in northeastern Utah.[3] BLM manages approximately 87 percent of the Project Area, with most of the remaining acreage (11 percent) owned by the State of Utah.[4] The

[2] Request for State Director Review Dismissed for Lack of Standing at 2 (Mar. 22, 2017) (Decision).
[3] Final Environmental Impact Statement, Newfield Exploration Corporation Monument Butte Oil and Gas Development Project in Uintah and Duchesne Counties, DOI-BLM-UT-G010-2009-0217-EIS, at ES-1 (June 2016) (FEIS), https://eplanning.blm.gov/eplanning-ui/project/62904/570 (last visited Jan. 13, 2022) (the EIS is identified as DOI-BLM-UT-G010-2016-0065-EIS on BLM's e-planning site).
[4] *Id.*

Project Area has had extensive oil and gas development for many decades, and by 2009 most of the Project Area was being developed as a unit operated by Newfield Exploration Company (Newfield), which was also the primary leaseholder in the Area.[5]

In January 2009, Newfield submitted a proposed multi-year project to BLM that would expand its operations in the Monument Butte Project Area.[6] Under its proposal, Newfield would drill up to 5,750 wells during a 16-year period.[7] Its proposal also included the construction of new roads, pipelines, compressor stations, and other infrastructure needed for oil and gas development and production.[8]

To inform its decision-making, BLM prepared an environmental impact statement (EIS) that assessed the reasonably foreseeable impacts from implementing Newfield's proposal as well as three other alternatives. BLM issued the Project ROD on September 30, 2016, deciding "to allow oil and natural gas drilling on leased federal lands as described in the FEIS . . . Agency Preferred Alternative subject to the attached Conditions of Approval."[9] The selected alternative described a 16-year plan in which Newfield would drill up to 5,750 wells at an average rate of 360 wells per year.[10] Newfield would also construct approximately 226 miles of new roads and pipelines, 318 miles of new pipeline adjacent to existing roads, 21 new and 3 expanded compressor stations, 1 gas processing plant, 13 new or expanded water treatment and injection facilities, 12 gas-oil separation plants, 6 water pump stations, and a freshwater collector well.[11] Total new surface disturbance under the selected alternative would be approximately 10,122 acres, which would be reduced to 4,978 acres through interim reclamation.[12] The Conditions of Approval included specified reporting and monitoring requirements, implementation of numerous applicant-committed environmental

[5] *Id.* at 3-13 through 3-14; Newfield's Motion to Intervene at 2 (filed May 5, 2017). According to company news releases, Newfield was acquired in 2019 by Encana, which is now known as Ovintiv. *See* Encana News Release, Encana completes acquisition of Newfield Exploration (issued Feb. 13, 2019), https://investor.ovintiv.com/news-releases?item=35 (last visited Jan. 13, 2022). We continue to refer to the company as Newfield in this decision for ease of reference.
[6] Project ROD at 3.
[7] *Id.* at 13.
[8] *Id.*
[9] *Id.* at 5.
[10] *Id.*
[11] *Id.* at 5-6, 16.
[12] *Id.* at 16.

protection measures, and development restrictions for 100-year floodplains, riparian areas, water resources, and Special Status Species habitats.[13]

BLM emphasized that its Project ROD did not by itself authorize any site-specific, ground-disturbing activities:

> This ROD does not directly authorize any site-specific permits or the construction of any particular facility on BLM-administered lands or minerals. Rather, the proponent or affiliate are required to submit applications for permit to drill, sundry notices, right of way, or other applications for approval of wells, well pads, pipelines, roads, or other ancillary facilities associated with project development. Those applications will be subject to an appropriate level of site-specific NEPA review before construction may be authorized.[14]

WEG participated in the decision-making process leading to the Project ROD by submitting comments on the Draft and Final EIS.[15] After the Project ROD was issued, WEG followed the appeal instructions provided in the ROD and appealed the decision directly to the Board. Because the appeal instructions were inaccurate, and a request for SDR is a prerequisite to Board review of the Project ROD, we dismissed and remanded the matter to BLM "for appropriate proceedings."[16]

WEG then filed its request for SDR, contending that BLM violated the National Environmental Policy Act and the Federal Land Policy and Management Act in approving the Project.[17] WEG's request included a statement of standing, asserting that many of its members would have their recreational and aesthetic interests harmed by BLM's approval of the Project:

> WildEarth Guardians has many members who regularly use and enjoy public lands in the Uinta Basin, including the area where the Monument Butte Project is located. They use and enjoy these lands for hiking, rockhounding, camping, sightseeing, wildlife viewing, and photography. By approving the

[13] *Id.*, Attachment 2: Data Collection and Reporting Requirements and Conditions of Approval.
[14] *Id.* at 8; *see also* FEIS 1-2 through 1-3 (describing staged decision-making process after a Project ROD is issued).
[15] Statement of Reasons at 2-3 (filed June 26, 2017).
[16] *WildEarth Guardians*, IBLA 2017-33, Order, Motion to Dismiss Appeal and Remand Case to State Director Granted; Appeal Dismissed at 1 (Nov. 22, 2016).
[17] Administrative Record, Doc. No. 2272, Letter from Jeremy Nichols, WEG, to Ed Roberson, BLM State Director (dated Feb. 22, 2017) (SDR Request).

> development of more than 5,700 new oil and gas wells, the BLM's approval of the Monument Butte Project adversely affects Guardians' members who regularly use and enjoy public lands in the area.[18]

On March 22, 2017, the Deputy State Director issued the Decision on appeal, dismissing WEG's SDR request for lack of standing. BLM relied on two 2017 Board decisions.[19] As interpreted by BLM, the Board decided in these cases that "there could be no actual injury or immediate threat of injury" to legally cognizable environmental or related interests when BLM issued "programmatic decisions that did not authorize any ground-disturbing activities, but which instead approved a suite of activities that were contingent on future, site-specific environmental analysis and subsequent decisions that would be subject to administrative review and appealable to the [Board]."[20] BLM reasoned that the same analysis applied to WEG's appeal of the Project ROD.[21]

WEG timely appealed BLM's Decision and contends that it does have standing. In support of its position, WEG has submitted the declaration of Jeremy Nichols, who is a member of WEG and the Director of its Climate and Energy Program.[22] In his declaration, Mr. Nichols describes his recreational use of areas within the Project Area and how he believes the Project ROD will injure his recreational and aesthetic interests.[23] He concludes: "Without a doubt, there will be extensive new development in lands that I currently enjoy recreating in. This development will harm my recreational enjoyment of public lands, diminishing the joy I find in hiking, rockhounding, and viewing wildlife."[24]

The Board granted Newfield's motion to intervene in this appeal,[25] and the parties completed briefing the appeal in September 2017 with the filing of Newfield's Answer.[26]

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[18] *Id.* at 2.
[19] Decision at 2 (citing and discussing *Western Watersheds Project*, 189 IBLA 310 (2017) (*WWP 2017*) and *WildLands Defense*, 189 IBLA 209 (2017) (*WildLands 2017*)).
[20] *Id.*
[21] *Id.*
[22] Statement of Reasons, Exhibit 1: Declaration of Jeremy Nichols ¶¶ 3-4 (June 21, 2017) (Nichols Decl.).
[23] *See id.* ¶¶ 7-16.
[24] *Id.* ¶ 14.
[25] Order, Motion to Intervene Granted (May 11, 2017).
[26] Newfield's Answer to Appellant's Statement of Reasons (filed Sept. 11, 2017) (Newfield Answer).

REGULATORY BACKGROUND

The Department's regulations provide that BLM decisions approving exploratory or developmental oil and gas projects are subject to State Director review.[27] Any "adversely affected party" has standing to request SDR of such a decision.[28] The regulations governing the SDR process do not define the terms "adversely affected" or "party," but those terms are defined in the Board's rules governing standing in 43 C.F.R. Part 4.[29] Consequently, BLM and the Board have applied the Part 4 definitions and standing requirements to determine whether a party has standing to request SDR.[30]

Applying the Part 4 regulations, to have standing to request SDR, the individual or organization must be both a "party to a case" and "adversely affected" by the decision it seeks to have reviewed.[31] The SDR requester has the duty to demonstrate both elements of standing, and if either element is lacking, BLM may properly dismiss the request for SDR.[32]

A "party to a case" is "one who has taken action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal," such as "by commenting on an environmental

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[27] 43 C.F.R. § 3165.3(b) (2020); *see also Center for Biological Diversity*, 195 IBLA 298, 312 (2020) ("The Board has long held that for decisions related to oil and gas operations, the SDR regulations make seeking SDR a prerequisite to an appeal to this Board."). All citations to the Code of Federal Regulations are to the current 2020 edition.
[28] *See* 43 C.F.R. § 3165.3(b) (stating in relevant part that "[a]ny adversely affected party that contests a notice of violation or assessment or an instruction, order, or decision of the authorized officer issued under the regulations in this part, may request an administrative review, before the State Director, either with or without oral presentation").
[29] *See* 43 C.F.R. §§ 4.410(a), (b), and (d).
[30] *See, e.g.*, *Southern Utah Wilderness Alliance*, 195 IBLA 315, 319 (2020) ("The regulations governing the SDR process do not define the terms 'party' and 'adversely affected,' but the Board's regulations in 43 C.F.R. Part 4 do, and, like the Acting Deputy State Director in this case, we use those definitions to interpret and apply the BLM rule."); *Citizens of Huerfano County*, 190 IBLA 253, 260 (2017) (stating that the Board's regulations in 43 C.F.R. Part 4 are used to interpret and apply the BLM rule).
[31] *Citizens of Huerfano County*, 190 IBLA at 260.
[32] *See id.* ("[I]n order to request SDR of a BLM decision, the requester must be both a 'party to a case' and 'adversely affected' by the decision on appeal."), 261 (stating that the appellant has the burden to show adverse effect in order to have standing to request SDR).

document."[33] A party is "adversely affected" by a decision "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."[34] 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.[35] A "deep concern" about a problem or "mere interest" in the issues raised by a decision will not suffice to demonstrate a legally cognizable interest.[36]

To show that the decision for which SDR is sought has caused or is substantially likely to cause injury to a legally cognizable interest, the threat of injury must be "real and immediate."[37] A party need not "prove an adverse effect will occur but must show that the threat of injury and its effect on the [party] are more than hypothetical."[38] Because this injury element of SDR standing is the central issue raised by this appeal, we discuss this requirement in more detail later in this decision.

Finally, when an organization seeks SDR, it must demonstrate either that the organization itself has a legally cognizable interest that is substantially likely to be injured by the decision, or 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.[39] An organization may demonstrate adverse effect by submitting an affidavit, declaration, or other statement by a member attesting to the fact that he or she uses the lands or resources at issue and that this use is or is substantially likely to be injured by the decision.[40] The 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."[41] Here, WEG relies on the recreational and aesthetic interests of one of its staff members to establish its standing.

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[33] 43 C.F.R. § 4.410(b).
[34] *Id.* § 4.410(d).
[35] *Southern Utah Wilderness Alliance*, 195 IBLA at 319.
[36] *Id.*
[37] *Id.* at 319-20.
[38] *Cascadia Wildlands*, 188 IBLA 7, 11 (2016) (quoting *Native Ecosystems Council*, 185 IBLA 268, 273 (2015)).
[39] *See Southern Utah Wilderness Alliance*, 195 IBLA at 320.
[40] *Cascadia Wildlands*, 188 IBLA at 10; *WildEarth Guardians*, 183 IBLA 165, 170 (2013).
[41] *Western Watersheds Project v. BLM*, 182 IBLA 1, 6 (2012) (quoting *The Coalition of Concerned National Park [Service] Retirees*, 165 IBLA 79, 88 (2005)); *see also Cascadia Wildlands*, 188 IBLA at 10.

ANALYSIS

In deciding that WEG lacked standing, BLM did not contest that WEG was a party and did not address whether the environmental organization had shown a legally cognizable interest in the public lands covered by the Project. Instead, BLM concluded that WEG's alleged environmental, recreational, and aesthetic interests could not be injured by a programmatic decision, such as the Project ROD, which does not authorize any ground-disturbing activities and which makes clear that no such activities will be authorized except through site-specific decisions that will be subject to administrative review.[42] Intervenor Newfield supports BLM's position, but also argues that WEG lacks standing because the aesthetic and recreational injury alleged by its declarant is a self-inflicted one which was sought out to manufacture standing.[43]

WEG is unquestionably a party because it commented on the Draft and Final EIS, so our discussion focuses on whether WEG has demonstrated that it is adversely affected by the Project ROD. Below we first address BLM's analysis, and conclude that a party can suffer injury to its legally cognizable environmental, recreational, and aesthetic interests from approval of an oil or gas development project like the Project ROD. We thus reject BLM's conclusion that the programmatic nature of the Project ROD forecloses standing to a party asserting environmentally related interests until a site-specific action has been authorized.

Turning next to Newfield's arguments, we conclude that WEG has established representational standing through the declaration submitted by WEG staff member Jeremey Nichols. Mr. Nichols provides sufficient factual averments on his past and future use of lands within identified regions of the Project Area to establish that he has legally cognizable recreational and aesthetic interests in those lands, and that those interests will be injured by approval of the Project ROD.

Given these conclusions, we reverse BLM's decision and remand so that it may consider on its merits WEG's request for SDR.

A. Burden of Proof and Standard of Review

A decision made by BLM on SDR "must have a rational basis that is stated in the decision and supported by facts of record demonstrating that the decision is not arbitrary, capricious, or an abuse of discretion."[44] WEG bears the burden of showing that

[42] Decision at 2.
[43] *See* Newfield Answer at 8-12.
[44] *Petro Hunt LLC*, 197 IBLA 100, 109 (2021) (quoting *Valid Energy, Inc.*, 192 IBLA 7, 14 (2017)).

BLM erred.[45] However, when the alleged error is solely a question of law, we review the question de novo, without deference to BLM's interpretation.[46]

Here, BLM acknowledges that its decision raises a "purely legal question" whether BLM properly concluded as a matter of law that WEG *could* not show injury to its environmentally related interests given the programmatic nature of the Project ROD.[47] We review that legal question de novo. Intervenor Newfield asserts that WEG's declaration fails to establish that WEG has a member with legally cognizable interests that are likely to be substantially injured by the Project ROD.[48] BLM could not have addressed that issue in its decision because WEG only submitted its member declaration in conjunction with its appeal to the Board. We therefore also review de novo the sufficiency of the declaration WEG has filed to support its claim of adverse effect.

B. WEG is Not Precluded as a Matter of Law From Seeking SDR of BLM's Approval of the Oil and Gas Development Project

BLM relied on two 2017 Board decisions in concluding that WEG's environmentally related interests could not be injured by the Project ROD given its programmatic nature: *WildLands Defense* (*Wildlands 2017*) and *Western Watersheds Project* (*WWP 2017*).[49] BLM summarized these Board decisions as dismissing for lack of standing "appeals of BLM programmatic decisions that did not authorize any ground-disturbing activities, but which instead approved a suite of activities that were contingent on future, site-specific environmental analysis and subsequent decisions that would be subject to administrative review and appealable to the [Board]."[50] According to BLM, the Board reasoned that an organization's legally cognizable interests related to the environment could not be actually injured or immediately threatened with injury by such a programmatic decision.[51] BLM concluded that this same reasoning applied to the Project ROD:

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[45] *Id.*
[46] *See, e.g.*, *John J. Trautner*, 197 IBLA 250, 255 (2021).
[47] BLM Answer to Statement of Reasons at 7 (filed Aug. 28, 2017) (BLM Answer) ("This appeal involves the purely legal question of whether [BLM] properly concluded that Appellant lacked standing at the time of the [Decision] to challenge the ROD through its request for SDR.").
[48] Newfield Answer at 8-12.
[49] Decision at 2 (citing *WildLands 2017*, 189 IBLA 209 and *WWP 2017*, 189 IBLA 310).
[50] *Id.*
[51] *Id.* ("The Board reasoned that since the programmatic decisions did not authorize any ground-disturbing activities and that appropriate environmental analysis would follow for site-specific projects involving ground-disturbing activities, there could be no actual

> The principles set forth in the above-referenced decisions are directly applicable to [WEG's] request for SDR of the BLM's programmatic ROD issued on the Project. As mentioned above, the ROD approves the Project in concept, but does not directly authorize any ground-disturbing activities, and makes clear that no such activities will be authorized (through site-specific decisions), until additional, appropriate environmental review has been completed. At that time, administrative review by the State Director under 43 CFR § 3165.3 and appeal to the [Board] can be requested. To summarize, the ROD cannot be seen as causing any actual injury or immediate threat of injury to [WEG's] legally cognizable interests and, as a result, it lacks standing to maintain an appeal of the ROD.[52]

BLM's review of the Board's precedent is incomplete and consequently fails to interpret the cited 2017 Board opinions properly. BLM's Decision ignores entirely the Board decisions which expressly hold that a party may have standing to immediately appeal BLM's approval of an oil and gas development project despite the need for subsequent authorization of ground-disturbing activities.[53] BLM's Decision also fails to address other types of oil and gas decisions, such as lease issuance and extensions, where the Board has consistently upheld standing even though the decisions do not directly authorize ground-disturbing activities.[54]

The Board's rulings in *WildLands 2017* and *WWP 2017* – neither of which involved oil and gas decisions – did not overrule these other cases *sub silentio*, as BLM has suggested.[55] Rather, the reasoning used in *WildLands 2017* and *WWP 2017* applies to a type of programmatic decision different from the Project ROD at issue here. Their analyses apply to programmatic land management decisions in which BLM has not granted or extended development rights to third parties and for which it has retained the complete discretion whether to implement any of the site-specific actions authorized by

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injury or immediate threat of injury to the appellants' respective legally cognizable [environmental] interests." (citing *WWP 2017*, 189 IBLA at 314; *WildLands 2017*, 189 IBLA at 212)).

[52] *Id.*

[53] *See Southern Utah Wilderness Alliance*, 177 IBLA 284 (2009); *William E. Love*, 151 IBLA 309 (2000).

[54] *See, e.g.*, *Western Watersheds Project*, 192 IBLA 72, 79 (2017) (leasing decision) ("If an appellant demonstrates that it has a legally cognizable interest in each lease parcel that is substantially likely to be injured by development of the parcel, the Board has found an adverse effect from the leasing decision even though the timing, manner, and extent of development may be uncertain." (emphasis omitted)).

[55] *See* BLM Answer at 12.

the programmatic decision. But that reasoning does not apply to the Project ROD, which is a decision advancing the development rights of third parties and restricting BLM's discretion to deny applications for permits to drills (APDs) or rights-of-way (ROWs) filed in compliance with the approved project. We discuss these points in more detail below.

The primary progenitor of the Board's conclusion that certain programmatic decisions cannot by themselves adversely affect environmental interests is *Salmon River Concerned Citizens*.[56] In that case, the Board held that an environmental organization lacked standing to appeal a BLM decision that approved the use of herbicides under specified management constraints on public lands in California and Nevada.[57] The appealed decision created no vested rights in third parties, and the Board emphasized that BLM had not decided "where or whether herbicides will actually be used"[58] and that it had "properly reserved to itself the ability to preclude any and all herbicide spraying."[59] The Board also stressed that no herbicides would be used without subsequent, site-specific environmental analyses and decisions.[60] Given those facts, the Board concluded that BLM's programmatic decision could not injure the appellant's environmental interests:

> [I]n the absence of the specification of the land that will be subjected to herbicide spraying, we cannot make any determination that appellants are likely to be affected by such spraying, let alone conclude that the threat of injury is real and immediate. The mere possibility that BLM may at some future time authorize the spraying of herbicides, pursuant to the authorization contained in the [programmatic decision], in such a way as to potentially affect appellants is not sufficient to confer standing.[61]

Twenty-five years later, the Board relied upon *Salmon River Concerned Citizens* in concluding that WWP's environmental interests were not injured by BLM's programmatic approval of a 10-year vegetation treatment project on over 21,000 acres of public land:

> The decision at issue in this case is identical in effect to the decision in *Salmon River Concerned Citizens*. While BLM's [decision] generally provides

[56] 114 IBLA 344 (1990).
[57] *Id.* at 348.
[58] *Id.*
[59] *Id.* at 351.
[60] *Id.* at 348 ("[N]o activity . . . can take place until after preparation of site-specific EAs [Environmental Assessments]. Any adverse consequences will occur, if at all, only if BLM decides to engage in herbicide spraying at particular sites in California and northwestern Nevada, and only after preparation of site-specific EA's.").
[61] *Id.* at 350 (citation omitted).

> that vegetation treatments of public lands can occur, the agency has not yet decided whether, when, how, or where to authorize any actual treatment, and any future decision to approve a specific treatment will be subject to environmental review and administrative challenge.[62]

Because BLM had retained its discretion not to proceed with any treatment, and because WWP was not foreclosed from appealing any subsequent, site-specific decision, the Board concluded the WWP lacked standing to appeal the programmatic decision: "Because BLM's decision is programmatic in nature and does not authorize any ground-disturbing activity, it cannot be the cause of any actual or threatened injury; WWP can only speculate about any harm that might arise from an as yet unknown treatment proposal."[63]

The two 2017 decisions relied upon by BLM followed. Both decisions involved the same BLM decisions, just different appellants. The BLM decisions approved a suite of activities over 10 years intended to enhance water sources and riparian conditions on approximately 3 million acres of public lands administered by two BLM California field offices.[64] The Board emphasized that BLM had not authorized any ground-disturbing activities and that "BLM will issue future, site-specific decision records" authorizing such activities after an appropriate level of environmental analysis.[65] Given those facts, and relying upon the decisions in *Salmon River Concerned Citizens* and *WWP 2015*, the Board concluded that the environmental organizations could not show an adverse effect from BLM's programmatic decisions and thus lacked standing to bring an appeal:

> In past cases, the Board determined that appellants had not shown they had legally cognizable interests that were adversely affected by programmatic decisions, and therefore had not demonstrated standing to appeal, where their alleged injuries were contingent upon future, site-specific decisions. Here too, appellant's alleged injury is contingent upon future, site-specific decisions. Thus, we can discern no legally cognizable interest of appellant's that could be harmed by these programmatic Decision Records.[66]

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[62] *Western Watersheds Project*, 186 IBLA 51, 56 (2015) (*WWP 2015*).
[63] *Id.* at 55.
[64] *WildLands 2017*, 189 IBLA at 209-10.
[65] *Id.* at 211 n.13; *id.* at 212 (stating that "future [BLM] decision records will authorize site-specific, individual projects and will be subject to the rules for administratively appealing BLM decisions to the Board"); *see also WWP 2017*, 189 IBLA at 313.
[66] *Wildlands 2017*, 189 IBLA at 212 (citing *Salmon River Concerned Citizens* and *WWP 2017*); *see also WWP 2017*, 189 IBLA at 314 ("WWP's alleged injury is contingent upon future, site-specific decisions. Any alleged injury is speculative, based on actions to be taken in the future and as yet unknown. At this point in time, there is no actual injury or

As in *Salmon River Concerned Citizens and WWP 2015*, two facts were critical to this holding: BLM retained its discretion not to proceed with any of the site-specific projects and BLM did not confer any third-party development rights with its programmatic decisions. When BLM curtails its implementation discretion or confers development rights, the injury analysis is different because the decision constitutes a commitment by BLM to use the public lands in the way specified in the decision — a distinction addressed by the Board's case law on oil and gas leasing and development decisions.

The Board first distinguished between standing to appeal oil and gas development projects and standing to appeal discretionary programmatic decisions in *William E. Love.*[67] In that case, an individual (Love) asserting environmentally related interests appealed a BLM decision that approved a multi-year oil and gas development project. As described by the Board, BLM's decision authorized "the construction, drilling, completion, and stimulation of approximately 545 CBM [Coalbed Methane] gas wells and associated access roads, pipelines, and electrical distribution lines over an estimated 10-year plus period within an area of about 290-square miles."[68] The intervenor company argued that Love lacked standing because he was not adversely affected by the decision given that it "did not authorize any surface disturbing activities, and Love would be able to appeal any subsequent BLM decisions approving such activities."[69] The Board rejected the argument, distinguished its previous "programmatic decision" standing cases on their facts,[70] and held that Love had standing to appeal without waiting for a site-specific implementation decision. In distinguishing *Salmon River Concerned Citizens*, the Board emphasized that there "BLM had reserved the decision of whether and where to authorize actual herbicide spraying until after preparation of site-specific environmental assessments or environmental impact statements" while the oil and gas development decision "approves a specific project and establishes the scope and parameters of that project."[71] The Board explained that "[a]lthough further analysis will fix the exact location of wells, compressors, pipelines, powerlines, and other facilities in the project

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immediate threat of injury. Thus, just as in *Wildlands Defense*, we can discern no legally cognizable interest of appellant's that could be harmed by these programmatic Decision Records.").

[67] 151 IBLA 309 (2000).

[68] *Id.* at 313.

[69] *Id.* at 317.

[70] *Id.* at 319-20 (discussing and distinguishing *Salmon River Concerned Citizens*, 114 IBLA 344, *Colorado Environmental Coalition*, 125 IBLA 287 (1993), and *Petroleum Association of Wyoming*, 133 IBLA 337 (1995)).

[71] *Id.* at 319, 320.

area, we cannot ignore the effect of BLM's ROD. That ROD represents BLM's approval of a massive development on public lands with on-the-ground consequences."[72]

The Board reaffirmed that approvals of oil and gas development projects could be immediately appealed in *Southern Utah Wilderness Alliance* (*SUWA 2009*).[73] In that case BLM had approved the "Resource Development Group Uinta Basin Natural Gas Project," which was a multi-year plan to develop 423 gas wells, along with access roads, a compression station, a transmission pipeline, and other associated infrastructure.[74] The Board rejected BLM's argument that *Love* was wrongly decided and held that SUWA had standing to appeal the Project, despite the lack of site-specific authorization, noting that BLM had already begun approving permits to drill wells: "[W]e conclude that SUWA is 'adversely affected' by the Vernal Field Office's ROD because that programmatic ROD provides the basis for approval of pending APDs on which BLM is presently taking action and SUWA has established that its members would be adversely affected by the approval of APDs in the project area."[75] The Board also noted that it had considered the merits of appeals from programmatic BLM decisions for natural gas projects in at least five prior decisions (standing had not been raised as an issue in four of them).[76]

The Board's decisions in *Love* and *SUWA 2009* are consistent with the Board's standing precedent in appeals of other types of oil and gas decisions issued by BLM. In those cases, when an appellant asserts injury to environmentally related interests, the

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[72] *Id.* at 320.
[73] 177 IBLA 284 (2009).
[74] *See* 71 Fed. Reg. 36135-36136 (June 23, 2006) (Notice of Availability of Project's Final EIS).
[75] *Southern Utah Wilderness Alliance*, 177 IBLA at 287.
[76] *Id.* at 286 (citing to *Biodiversity Conservation Alliance*, 174 IBLA 1, 4 (2008) (standing assumed in appeal of BLM's approval of Desolation Flats Natural Gas Field Development Project – "authorizing up to 385 gas wells to be drilled on up to 361 drill sites, and construction or improvement of 542 miles of roads, 361 miles of natural gas pipelines, four compressor stations, and one natural gas processing plant over 20 years"); *Biodiversity Conservation Alliance*, 171 IBLA 218, 224 (2007) (standing assumed in appeal of approval of Pacific Rim Shallow Gas Exploration and Development Project – "108 natural gas wells, 32.1 miles of new access roads, and 35.64 miles of new gas gathering and water discharge lines"); *William E. Love*, 151 IBLA 309 (2000) (standing addressed as previously discussed); *Powder River Basin Resource Council*, 144 IBLA 319 (1998) (standing assumed in appeal of approval of Lighthouse Coal Bed Methane Project – 5-year plan to drill up to 100 gas wells over 250 square mile area); *Powder River Basin Resource Council*, 120 IBLA 47, 60-62 (1991) (standing assumed in appeal of BLM approval of plan to drill up to 1,000 gas wells over 5 years underlying an area of 2,160 square miles)).

Board does not determine standing solely based on whether further approvals are necessary before on-the-ground activities may be conducted. Instead, the Board deems oil and gas decisions to be immediately appealable when the decisions convey new development rights or increase the risk of pre-existing development rights being exercised. The Board summarized these standing principles in a recent decision holding that SUWA did not have standing to immediately appeal BLM's approval of a Unit Agreement:

> Our decision that approval of the Unit Agreement does not adversely affect SUWA's legally cognizable interests is not based on the need for future approvals and analyses before development may occur on the Federal Pipeline Unit. . . . As we recently observed in *SUWA*, the absence of imminent ground-disturbing activities and the need for additional BLM authorization also "exist when a minerals lease is first issued, yet the potential of development is deemed sufficient to satisfy the injury prong of the standing analysis." Consequently, the need for additional approvals and environmental analyses cannot be the sole basis to distinguish among the various types of decisions governing oil and gas leases and their effects on legally cognizable interests. Rather, our determination that BLM's unit approval decision is not substantially likely to injure SUWA's legally cognizable interests is based on our conclusion that the unit approval does not convey any new rights and does not, itself, extend the unit leases and increase the possibility of development on each lease.[77]

Through a number of decisions, the Board has applied this or similar reasoning to distinguish between types of oil and gas decisions that are potentially immediately appealable and those that are not. The table below summarizes the Board's conclusions:

[77] *Southern Utah Wilderness Alliance*, 195 IBLA at 329-30 (quoting *Southern Utah Wilderness Alliance*, 195 IBLA 164, 173 (2020)).

Type of Oil and Gas Decision	Does the Decision Create, or Advance Existing, Third-Party Development Rights (Yes or No)	Is the Decision Potentially Subject to Immediate Appeal (Yes or No)	Representative Board Decision
Opening of Area to Leasing	No	No	*State of Utah,* 192 IBLA 374 (2018)
Lease Sale	Yes	Yes	*Ojo Encino Chapter,* 192 IBLA 269 (2018)
Lease Extension	Yes	Yes	*Southern Utah Wilderness Alliance,* 195 IBLA 164 (2020)
Approval of Development Plan	Yes	Yes	*William E. Love,* 151 IBLA 309 (2000)
Directed Suspension of Operations	No	No	*Board of County Commissioners of Pitkin County,* 186 IBLA 288 (2015), *recon. denied*, 187 IBLA 328 (2016)
Approval of Unit Agreement	No	No	*Southern Utah Wilderness Alliance,* 195 IBLA 315 (2020)

When issuing the Decision on appeal, BLM ignored the Board's precedent governing standing to appeal oil and gas decisions and development plans in particular. BLM's Answer attempts to address the adverse precedent by focusing exclusively on *SUWA 2009* and arguing that the facts are different (they are not in any relevant way) and "perhaps most importantly, the Board's governing case law on appeals of programmatic approvals, as recently re-affirmed in [*WWP 2017* and *WildLands 2017*], is the applicable and appropriate law to apply in the present appeal."[78]

[78] BLM Answer at 12.

BLM's argument presumes a conflict in our precedent where none exists. As discussed above, the Board has held that a party cannot immediately appeal a BLM programmatic decision which does not directly authorize ground-disturbing activities and in which BLM has retained complete discretion whether to implement those activities; has committed to issuing appealable, site-specific decisions when authorizing any ground-disturbing activity; and has not created third-party development rights or substantially increased the likelihood of pre-existing development rights being exercised. That remains good law. But BLM's approval of an oil and gas development plan does not have those characteristics. BLM did not retain complete discretion to disapprove site-specific development activities. To the contrary, the entire point of its multi-year decision-making was to facilitate development by establishing the standards and conditions it would apply when reviewing and issuing APDs and ROWs. As BLM states in the Project ROD, "[t]he decision is hereby made to allow oil and natural gas drilling on leased federal lands as described in the FEIS."[79] Under similar facts, the Board has held that BLM's approval of oil and gas development projects can be immediately appealed. There is thus no conflict in our precedent to resolve, and we conclude that the Project ROD is subject to SDR by individuals or organizations that can show they are adversely affected by the decision, in accord with our decisions in *Love* and *SUWA 2009*. BLM thus erred in concluding that WEG could not be injured as a matter of law because of the programmatic nature of the Project ROD.

Before addressing the remaining issue of whether WEG has established standing through a member, we note one important implication of holding that the Project ROD is subject to SDR and then appeal to the Board. In some of our decisions discussing programmatic decisions which cannot create immediate injury, we have suggested that a party may wait to challenge aspects of a programmatic decision in the course of contesting an implementing site-specific decision.[80] But the approval of an oil and gas development project will become administratively final if not immediately appealed. Once administratively final, the decision will not generally be subject to challenge in a later appeal of a site-specific decision. As we have explained in numerous decisions, "when a party has had an opportunity to obtain review within the Department and no

[79] Project ROD at 5.

[80] *See, e.g.*, *Salmon River Concerned Citizens*, 114 IBLA at 350 ("In an appeal from a BLM decision to use herbicide spraying in a particular area after preparation of a site-specific EA, the EA would undoubtedly be tiered to the programmatic EIS, thus affording appellants at that time standing to challenge the adequacy of the EIS, as well as of the EA."); *id.* at 351 ("The Board is not precluded from reconsidering the acceptability of using herbicides and engaging in aerial spraying and the decision to reject biological alternatives in deciding an appeal from a decision to proceed with a site-specific plan.").

appeal was taken, . . . the decision may not be reconsidered in later proceedings except upon a showing of compelling legal or equitable reasons."[81]

C. WEG's Standing Declaration is Sufficient to Establish Representative Standing in this Instance

Although WEG is not precluded as a matter of law from seeking SDR of the Project ROD, it still must establish its standing to do so. As explained earlier, when an organization asserts standing based on injury to one or more of its members, it must submit a statement from the member showing that the individual is adversely affected by the decision for which SDR is sought.[82] WEG did not submit such a statement to BLM when it sought SDR, instead asserting in its SDR Request that it "has many members who regularly use and enjoy" the public lands where the Project is located "for hiking, rockhounding, camping, sightseeing, wildlife viewing, and photography."[83] WEG added that "[b]y approving the development of more than 5,700 new oil and gas wells, the BLM's approval of the Monument Butte Project adversely affects Guardians' members who regularly use and enjoy public lands in the area."[84]

These generalized statements do not establish that WEG's legally cognizable interests, or the interests of any member, have been or are substantially likely to be injured by BLM's approval of the Project ROD. The averments suffer from at least two defects. First, they are not alleged in an "affidavit, declaration or other statement of [the] affected individual."[85] A first-hand statement is needed to ensure its reliability and has been consistently required by the Board when an organization seeks to establish standing through a member.[86] Second, the averments lack the necessary specificity. To establish adverse effect based on a member's use of public lands, a member's statement must state with specificity what area is being used, how the member has used the land in the past and intends to use it in the future, and how

[81] *Heirs of Chaik George*, 192 IBLA 175, 188 (2018) (quoting *Heir[] of Okalena Wassillie*, 175 IBLA 355, 362 (2008)); *see also Fieldwood Energy, LLC*, 197 IBLA 169, 184-85 (2021) (holding that appellant could not challenge a Notice of Incident of Noncompliance (INC) when appealing a subsequently issued civil penalty based on the INC because "once the time to appeal the INC lapsed, the INC became administratively final for the Department and cannot now be challenged").
[82] See *supra* notes 39 - 41 and accompanying text.
[83] SDR Request, *supra* note 17, at 2.
[84] *Id.*
[85] *Western Watersheds Project*, 185 IBLA 293, 299 (2015).
[86] *See, e.g.*, *Western Watersheds Project*, 192 IBLA at 78 (stating requirement); *WWP 2017*, 189 IBLA at 313 (stating requirement).

those uses will be injured by the decision being challenged.[87] The general statements made in WEG's SDR Request do not provide any of that specific information for any member.

On appeal WEG supplemented its standing allegations by providing the declaration of Jeremy Nichols, who is the Director of WEG's Climate and Energy Program.[88] In brief, Mr. Nichols states that he has visited the Project Area annually since 2009, intends to continue visiting annually for the foreseeable future, and has plans to return that year (2017) in the fall ("most likely September").[89] He more specifically discusses driving along the Nine Mile Canyon Back Country Byway, and hiking along Wells Draw and in Fivemile Canyon, all within the Project Area.[90] He acknowledges that the existing oil and gas development has "dramatically diminished" his ability to enjoy outdoor recreation in the Project Area, but suggests that his enjoyment is less impaired as he proceeds south along the Byway because development diminishes.[91] Pointing to BLM's maps of the Project showing new development along the Byway and other areas he visits, he states that the Project will harm his recreational and aesthetic interests.[92]

We first address whether to consider Mr. Nichols' declaration at all. As a recurring appellant whose standing has been challenged in the past, WEG is aware of the need to establish standing when filing an appeal with the Board.[93] WEG is also familiar with the SDR process and its requirements.[94] BLM's SDR regulation requires a request to include "all supporting documentation,"[95] and other organizations have submitted member

[87] *See, e.g.*, *Native Ecosystems Council*, 185 IBLA at 273-75 (discussing standing allegation requirements based on member use of public lands); *see also Cascadia Wildlands*, 192 IBLA 223, 231 (2018) (stating 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" (internal quotation omitted)).
[88] Nichols Decl. ¶¶ 3-4.
[89] *Id.* ¶¶ 7, 9.
[90] *Id.* ¶ 9.
[91] *Id.* ¶¶ 10-12 (quoted phrase from ¶ 10).
[92] *Id.* ¶ 14.
[93] *See, e.g.*, *WildEarth Guardians*, 183 IBLA at 170-73 (concluding that WEG lacked standing because it was not a party to the case but also discussing the standing allegations submitted through a declaration of Jeremy Nichols).
[94] *See WildEarth Guardians*, 185 IBLA 193 (2015) (appeal from a decision made upon SDR).
[95] 43 C.F.R. § 3165.3(b).

declarations to BLM when requesting SDR[96] to demonstrate to BLM that they are adversely affected by the decision for which review is sought.[97] In this instance, Mr. Nichols submitted the request for SDR, but he did not submit a statement from himself or any other member of WEG to establish standing. The standing allegations he asserted in the SDR Request are deficient on their face, as discussed above. However, because BLM did not address this issue in its Decision and we are considering the matter for the first time on appeal, we will consider Mr. Nichols' declaration in making our assessment.

Turning to the sufficiency of Mr. Nichols' factual averments, BLM does not address the matter in its Answer, relying instead on its legal position that WEG could not be injured by the Project ROD. But Newfield asserts that WEG's declaration fails to show that Mr. Nichols has legally cognizable interests that are likely to be substantially injured by the Project ROD.[98] Newfield contends that while Mr. Nichols certainly opposes oil and gas development in the Uinta Basin, he has not shown a real recreational or aesthetic interest in the oil and gas field. Instead, Newfield believes, he has visited and hiked the area solely in an attempt to manufacture standing: "[V]oluntarily and intentionally hiking within an oil and gas field is not a viable basis for establishing an adverse effect upon a legally cognizable interest for purposes of standing."[99]

Newfield cites no authority for its position. But it could have. The Fifth Circuit, for example, has rejected attempts to establish aesthetic injury by seeking out degraded environs. In *Center for Biological Diversity v. EPA*,[100] the plaintiff environmental organizations sought to establish representational standing to challenge discharge permits for oil and gas operations in the Gulf of Mexico. One member asserted in an affidavit that he not only lived and recreated in the region, but that he actively monitored the Gulf for oil leaks from offshore oil and gas platforms by boat and by plane. He asserted aesthetic injuries from seeing the pollution. The court of appeals held that these allegations failed to establish an adverse effect to his aesthetic interests:

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[96] *See Southern Utah Wilderness Alliance*, 195 IBLA at 318, 321-22 (discussing declaration filed by SUWA with BLM when seeking SDR); *Southern Utah Wilderness Alliance*, 190 IBLA 152, 164 (2017) (discussing "declaration of Mr. Bloxham, submitted by SUWA in support of its request for SDR").
[97] *See Citizens of Huerfano County*, 190 IBLA at 261 (burden is on party to show adverse effect in order to have standing to request SDR).
[98] Newfield Answer at 8-12.
[99] *Id.* at 12; *see also id.* at 11 ("Indeed, the lack of recreation opportunities along the Nine Mile Canyon Back Country Byway . . . would likely cause most avid recreationists to choose a different route outside the Project Area to reach actual recreation destinations in the Uinta Basin, were it not for a marked desire to attempt to establish standing.").
[100] 937 F.3d 533 (5th Cir. 2019).

"That's because someone who goes looking for pollution cannot claim an aesthetic injury in fact from seeing it."[101] Applying the general rule that "standing cannot be conferred by a self-inflicted injury," the court held that the affiant's "successful efforts to locate aesthetically displeasing pollution cannot serve as the basis for an aesthetic injury in fact."[102]

The Board has also rejected attempts to manufacture standing. For example, we have held that "[a]ppellants who had no clear intention to visit a site" before a decision was issued "cannot 'manufacture standing' by visiting a site after a decision has been issued for the purposes of litigation."[103] And we have favorably cited to Federal court decisions that have rejected standing based on self-inflicted injuries.[104] The question raised by Newfield is whether WEG has "manufactured standing" here. More specifically, did Mr. Nichols, like the affiant in *Center for Biological Diversity*, successfully seek to be harmed by the challenged BLM decision or rather was simply exposed to harm when conducting his recreational pursuits.

Certain facts could suggest self-inflicted injury. Mr. Nichols states he began visiting the Project Area in 2009, after oil and gas development had begun and the same year Newfield first sought approval of its development project. Mr. Nichols does not claim that the primary purpose of his annual trips has ever been to recreate in the Project Area; rather, he stops there while on his way to other destinations in the region.[105] And he emphasizes that the existing oil and gas development is "offensive and degrading" to

[101] *Id.* at 540.
[102] *Id.* at 541.
[103] *Western Watersheds Project v. BLM*, 182 IBLA at 9; *see also Center for Native Ecosystems*, 163 IBLA 86, 90 (2004) (holding that an appellant could not create standing by beginning the recreational use of public land after the challenged decision was issued); *Pitkin County*, 186 IBLA at 308 (stating that "a party cannot manufacture standing" by incurring litigation expenses and claiming its organizational resources have been adversely affected).
[104] *See Front Range Equine Rescue*, 187 IBLA 28, 40 n.10 (2016) (citing *Abigail Alliance for Better Access to Developmental Drugs v. Von Eschenbach*, 469 F.3d 129, 133 (D.C. Cir. 2006) for the proposition that "an organization is not injured [for standing purposes] by expending resources to challenge the [Federal agency][;] . . . we do not recognize such self-inflicted harm").
[105] Nichols Decl. ¶¶ 7, 8 (stating that he stops in the Project Area annually on his way to Salt Lake City, or while driving to the Nine Mile Canyon ("which is located south and southwest of the Monument Butte Area"), or "while traveling to other recreational destinations").

his recreational enjoyment of the Area.[106] In all these respects, his visits to the Project Area sound more like an annual job duty than a recreational pursuit, lending some credence to Newfield's skepticism of his motives.

But we decline to make inferences about an affiant's motives without persuasive objective evidence. Notably, the Fifth Circuit did not base its decision on its assessment of the motives of the affiant. The affiant said he sought out pollution from offshore oil and gas platforms, and the court found that to be a self-inflicted injury to his aesthetic interests. Here, Mr. Nichols does not assert that he roams the West looking for pollution from oil and gas development. Instead, he asserts that he visits "the Monument Butte area regularly to hike and explore public lands in the region, attempt to view wildlife, rockhound, and generally enjoy the scenery of the high desert and the Uinta Mountains to the north."[107] He specifically discusses his hikes along the Nine Mile Canyon Back Country By-Way through the Project Area[108] and his concrete plans to do so in the future.[109] While discussing at some length the oil and gas development he has observed, and the resulting harm to his aesthetic and recreational interests,[110] he also states that "some portions of the [Project] area have remained relatively free of oil and gas activity, particularly in the southern portion of the area."[111] He adds that "[t]hese areas are especially enjoyable to observe[] and visit while recreating in the Project area."[112]

Accepting the veracity of these statements absent evidence to the contrary, they demonstrate recreational and aesthetic interests in the Project Area sufficient to support standing. Unlike the affiant in *Center for Biological Diversity,* Mr. Nichols does not claim to visit the area to find offensive oil and gas development, but because it has intrinsic values he enjoys. Mr. Nichols' recreational use of land within the Project Area has not been the primary purpose of his trips, but the Board has never imposed a "primary purpose" requirement to establish standing based on the use of public lands. We have, for example, found representational standing based on a member's statements that she drove through and recreated on public lands when visiting her mother.[113] Mr. Nichols'

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[106] *Id.* ¶ 11 (stating that he finds the "sights, sounds, and smells" of oil and gas development to be "offensive and degrading to my recreational enjoyment of public lands in the area").
[107] *Id.* ¶ 8; *see also id.* ¶ 7.
[108] *Id.* ¶¶ 8-9.
[109] *Id.* ¶¶ 7, 9.
[110] *Id.* ¶¶ 10-11, 13-14.
[111] *Id.* ¶ 12.
[112] *Id.*
[113] *See, e.g.*, *Western Watersheds Project*, 192 IBLA at 79-80; *see also Missouri Coalition for the Environment*, 172 IBLA 226, 235 (2007) (finding adverse effect sufficient to confer

declaration, describing with specificity his current and future uses of portions of the Project Area, thus establishes that he has legally cognizable interests that are substantially likely to be injured by the Project ROD. We conclude that WEG has established standing to seek SDR of the Project ROD.

CONCLUSION

As explained above, BLM erred when it concluded that an environmental organization could not as a matter of law be adversely affected by, and thus have standing to seek SDR of, its programmatic decision approving a multi-year oil and gas development project. The requester must still demonstrate to BLM that it meets the regulatory requirement of being an adversely affected party, and we conclude in this instance that WEG satisfied that requirement. Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,[114] BLM's Decision is reversed and the matter remanded for further action consistent with this opinion.

KEVIN HAUGRUD Digitally signed by KEVIN HAUGRUD Date: 2022.01.14 09:36:59 -05'00'

K. Jack Haugrud
Administrative Judge

I concur:

STEVEN LECHNER Digitally signed by STEVEN LECHNER Date: 2022.01.14 10:05:05 -05'00'

Steven J. Lechner
Acting Chief Administrative Judge

standing on birdwatchers from approval of prospecting permits within a National Forest, stating "generally, it is sufficient that an organization shows that its members use the public lands in question").

[114] 43 C.F.R. § 4.1.