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**UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF HEARINGS AND APPEALS**

**JIM ALVES,**

Appeal OR-030-08-09

Appellant

v.

**BUREAU OF LAND MANAGEMENT,**

Respondent,

**MOTION TO INTERVENE**

and

**OREGON NATURAL DESERT ASS’N  
and WESTERN WATERSHEDS  
PROJECT**

Applicant-Intervenors.

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**INTRODUCTION**

Oregon Natural Desert Association and Western Watersheds Project (collectively “ONDA”) respectfully move the Office of Hearings and Appeals to allow them to intervene on behalf of respondent Bureau of Land Management (“BLM”) in the above-captioned

administrative appeal. Counsel for ONDA contacted the attorneys for BLM and for Appellant Jim Alves, to inquire whether the parties would object to this motion. Counsel for BLM indicated the agency would not oppose the filing of the motion, although noted the agency takes no position on the contents of the motion and reserved the right to respond. Counsel for Mr. Alves indicated she would not take a position on the motion at this time, but will take a position once she reviews the motion. Because the BLM does not oppose this motion, and for the additional reasons that follow, ONDA respectfully requests the OHA to grant this motion to intervene.

### **BACKGROUND**

In August, 2007, the Irish Spring wildfire burned approximately 28% of the Willow Basin Allotment's Bully Creek Pasture. On February 7, 2008, BLM issued a Notice of Final Decision closing the Bully Creek Pasture for two growing seasons. On March 6, 2008, Appellant Jim Alves administratively appealed BLM's Final Decision and requested a stay of the decision from OHA. Applicant-intervenors both received the appeal on March 13, 2008.

### **STANDARD OF REVIEW**

Intervention is granted liberally in the IBLA and is permitted "where the individual seeking to intervene could independently maintain the action in which he seeks to participate." United States v. Heirs of Pat P. Pestrikoff, 67 IBLA 361, 361 (2006) (internal quotation omitted). The IBLA "routinely grants intervention to a party receiving a favorable decision from BLM which is challenged by an adverse party." Bear River Land & Grazing, et al., 132 IBLA 110, 113 (1995).

The regulations governing this appeal provide that "[a]ny applicant, permittee, lessee, or other person whose interest is adversely affected by a final BLM grazing decision may appeal

the decision to an administrative law judge.” 43 C.F.R. § 4.470(a). An “adversely affected” party is elsewhere defined as one who “has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest.” *Id.* § 4.410(d). *See also id.* § 4.473 (affected party may appear at the hearing and, “upon a proper showing of interest, may be recognized by the administrative law judge as an intervenor in the appeal.”) A legally cognizable interest “need not be an economic or property interest.” *Wyo. Outdoor Council*, 153 IBLA 379, 383 (2000). “Use of the land will suffice . . . . An organization may establish that it is adversely affected within the meaning of 43 C.F.R. § 4.410 by showing that one or more of its members uses the public land in question.” *Id.* The IBLA has explicitly recognized a number of non-economic concerns as sufficient for appellant-party status, including cultural, recreational, aesthetic uses, and enjoyment of public lands. *So. Utah Wilderness Alliance*, 127 IBLA 325, 326 (1993).

The regulations further provide that a party who wishes to file a response to a petition for a stay may file a motion to intervene, together with a response, within 10 days after receiving the petition. 43 C.F.R. § 4.472(b). Applicant-intervenors have filed this motion within 10 days of their receipt of the appeal.

### **ARGUMENT**

ONDA has a legally cognizable interest. Both groups are nonprofit conservation groups who have extensively participated in the management of the Willow Basin Allotment, and the Bully Creek Pasture in particular, over the past ten years. Both groups participated extensively in the process leading to the adoption of the governing Bully Creek Landscape Area Management Project (“LAMP”). Bray Decl. ¶¶ 15–17 (filed herewith). Both groups are considered “Cooperators” on the Willow Basin Allotment, pursuant to Cooperative Management Agreement

Project # 9082. Id. ¶¶ 20–22. Under the terms of this Agreement, the groups contributed money to BLM to assist its completion of a required monitoring report. Id.

Because of this longstanding commitment to the Bully Creek Area, both groups were involved in last year’s proceedings regarding the Bully Creek Pasture. After recording violations of applicable livestock grazing standards for several years in a row, BLM issued a Final Decision on October 6, 2006, temporarily closing the Bully Creek Pasture for the remainder of that year and through the 2007 grazing season. Mr. Alves administratively appealed BLM’s Final Decision and requested a stay of the decision. On December 11, 2006, this Court issued an order granting Alves’ Petition for Stay of BLM’s decision, allowing Alves to turn out his livestock on the Bully Creek Pasture in 2007.

On March 13, 2007, ONDA and WWP filed suit in U.S. District Court for the District of Oregon, seeking enforcement of BLM’s Final Decision, via an injunction prohibiting livestock grazing on Bully Creek Pasture in 2007. Ore. Natural Desert Ass’n v. U.S. Dept. of the Interior, Civ. No. 07-381 (D.Or. filed Mar. 13, 2007). The District Court declined to issue an injunction in an order dated May 14, 2007. Alves’ livestock grazed the Bully Creek Pasture during 2007. Both groups sought and were granted intervention in the proceeding before OHA. That appeal was dismissed as moot after the grazing season was finished.

During the summer of 2007, ONDA conducted monitoring in the Pasture to document the effects of the 2007 grazing season. ONDA’s members, along with outside experts, visited the pasture multiple times to collect data on plant utilization, water temperature, and other parameters. Bray Decl. ¶¶ 25–26. The monitoring culminated in ONDA’s submission to BLM, in September 2007, of a report titled “Willow Basin Allotment: Summary of Field Work and

Findings.” Exh. E to [Proposed] Applicant-Intervenors’ Response to Petition for Stay (filed herewith); see also Bray Decl. ¶ 27.

Furthermore, members of both organizations have recreational, aesthetic, and scientific interests in the Bully Creek Pasture. See, e.g., Bray Decl. ¶ 9 (stating that he spends time in the Pasture and surrounding areas for recreational use, aesthetic enjoyment, scientific study, hiking, birding, and observation of livestock grazing impacts on the natural systems of the sagebrush-steppe ecoregion, and intends to continue to do so). Mr. Bray conducted five ecological monitoring trips on the Pasture in 2007 alone. Id. ¶¶ 25–26.

The interests of ONDA will be adversely affected if the Final Decision on appeal is overturned. The Final Decision closes the Bully Creek Pasture to livestock grazing for two growing seasons to prevent adverse environmental effects from livestock grazing in fragile, burned areas of the Pasture. As detailed above, ONDA has worked for years to reduce the damaging environmental impacts of livestock grazing on the Pasture. If the Final Decision is overturned, riparian and other impacts from livestock grazing during the 2008 and 2009 seasons will once again affect ONDA members’ ability to recreationally and aesthetically enjoy the Bully Creek Pasture. See Bray Decl. ¶¶ 9–11, 14, 28.

Finally, this motion is timely: it is filed less than 10 days following the parties’ receipt of this appeal. The groups believe they will be useful and necessary parties at the Petition for Stay proceedings and at any hearing because of their long-time participation in the management of the Bully Creek Pasture.

### **CONCLUSION**

For these reasons, Oregon Natural Desert Association and Western Watersheds Project respectfully request that they be granted intervenor status in the above-captioned appeal.

DATED this \_\_\_\_ day of March, 2008.

Respectfully submitted,

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Advocates for the West

Of Attorneys for Applicant-Intervenors

**CERTIFICATE OF SERVICE**

I hereby certify I caused a true and correct copy of the foregoing MOTION TO INTERVENE to be served upon the following, by the method indicated:

United States Department of the Interior  
Office of Hearings and Appeals  
405 South Main St., Suite 400  
Salt Lake City, UT 84111  
Fax: 801-524-5539

[VIA FAX (without attachments) AND  
CERTIFIED MAIL, RETURN  
RECEIPT REQUESTED]

Michael Schoessler  
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[VIA CERTIFIED MAIL, RETURN  
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VIA CERTIFIED MAIL, RETURN  
RECEIPT REQUESTED]

DATED this \_\_\_\_\_ day of March, 2008.

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