

INTERIOR BOARD OF LAND APPEALS

Friends and Residents of Log Creek

142 IBLA 15 (December 12, 1997)

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FRIENDS AND RESIDENTS OF LOG CREEK

IBLA 97-586

Decided December 12, 1997

Appeal from a decision by the Area Manager, McKenzie Resource Area Office (Oregon), Bureau of Land Management, dismissing Log Creek's protest of the Crooked Shot Timber Sale as untimely and implementing a decision authorizing the sale. EA-97-19.

Dismissed.

1. Contests and Protests: Generally--Rules of Practice: Appeals--Timber Sales and Disposals

A protest of a timber sale notice must be received by BLM within 15 days of the date of publication of the notice, and a protest received after the 15-day period is untimely. A person must file a timely protest of the notice with BLM to have standing to appeal the rejection of the protest to the Interior Board of Land Appeals.

APPEARANCES: Pam Hewitt, Marcola, Oregon, for Friends and Residents of Log Creek; Carol Logan, Springfield, Oregon, for the Kalapooya Sacred Circle Alliance; Emily Rice, McKenzie Resource Area Manager, Eugene, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Friends and Residents of Log Creek (Log Creek) and the Kalapooya Sacred Circle Alliance (Alliance) have appealed an August 26, 1997, Decision issued by the McKenzie Resource Area Manager, Bureau of Land Management (BLM or Bureau), dismissing Log Creek's protest of the Crooked Shot Timber Sale as untimely and implementing a Decision authorizing the sale, in accordance with 43 C.F.R. § 5003.3(f). Log Creek has also asked the Board to stay "all advertising, auctioning, offering of bids, trading or awarding the sale, and any allowance of logging, road construction, or other site preparations by the purchaser" pending final action on the appeal.

Documents in the file show that Log Creek protested the timber sale, but the Alliance did not join in that protest, and there is no evidence

that it submitted a separate protest. There being nothing in the case file that would indicate that the Alliance participated in the process leading to the challenged Decision, we find that the Alliance lacks standing because it is not a party. See 43 C.F.R. § 4.410.

The Bureau has responded to Log Creek's appeal and stay request, moving the Board to summarily dismiss the appeal. It contends that to appeal a timber sale notice, a person must have filed a timely protest of that notice with BLM, and asserts that it did not receive the protest filed by Log Creek within 15 days of the first publication of the notice of the timber sale, as required by 43 C.F.R. § 5003.3. The Bureau explains that Log Creek's protest was postmarked August 14, 1997, the last day of the 15-day period, but was not received by BLM until August 18, 1997. Noting that the timber sale notice explicitly stated that protests must be received within 15 days of July 30, 1997, which was the date of first publication of the notice, the Bureau contends that, because the regulations do not provide for a waiver of the deadline for filing protests of timber sales, Log Creek's protest was untimely and therefore Log Creek has no right of appeal to this Board.

Log Creek has not disputed BLM's determination that the protest was untimely.

[1] To appeal a timber sale notice, a person must first protest that notice to BLM. Sierra Club, Grand Canyon Chapter, 136 IBLA 358, 362 (1996). The applicable regulations provide that "[p]rotests of a forest management decision, including advertised timber sales, may be made within 15 days of publication of a notice of decision or notice of sale in a newspaper of general circulation." 43 C.F.R. § 5003.3(a). The regulations further state that "[p]rotests received more than 15 days after the publication of the notice of decision or the notice of the sale are not timely and shall not be considered." 43 C.F.R. § 5003.3(c) (emphasis added). This is a "strict" time limitation with no extensions of time or exceptions for late filing. Sierra Club, Grand Canyon Chapter, 136 IBLA at 361; Idaho Conservation League, 131 IBLA 11, 12 (1994); G. Jon Roush, 112 IBLA 293, 297 (1990).

The Notice of the Crooked Shot Timber Sale, published on both July 30 and August 6, 1997, explicitly states that "[t]his sale notice, first published on July 30, 1997, constitutes the decision document for purposes of protests under 43 CFR Subpart 5003 \* \* \*. Protests of [the Crooked Shot Timber Sale] must be filed within 15 days after the first publication of this notice." (Emphasis added.)<sup>1/</sup> Thus, a timely protest of the Crooked

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<sup>1/</sup> The fact that the notice distinctly specified that any protest was due within 15 days after first publication of the sale notice distinguishes this case from Sierra Club, Grand Canyon Chapter, 136 IBLA at 360. In that case the sale notice simply indicated that protests must be filed "within 15 days after publication of this notice" without identifying the date of the first publication as the critical date.

Shot Timber Sale was required to be received by BLM on or before August 14, 1997, 15 days after the July 30, 1997, first publication date. See In re Fire Fly Timber Sale, 114 IBLA 94, 95 (1990). Log Creek's protest was dated and mailed on August 14, 1997, but was not received by BLM until August 18, 1997, which was after the 15-day protest period closed. Because Log Creek did not protest the sale Decision in a timely manner, it is precluded from appealing the timber sale to the Board. Sierra Club, Grand Canyon Chapter, 136 IBLA at 362. The motion to dismiss the appeal filed on behalf of BLM is granted.

Our dismissal of its appeal renders Log Creek's request for a stay moot.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Kalapooya Sacred Circle Alliance appeal is dismissed for lack of standing, the Friends and Residents of Log Creek appeal is dismissed for failure to file a protest in a timely manner, and the Friends and Residents of Log Creek request for a stay is denied as moot.

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R.W. Mullen  
Administrative Judge

I concur.

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James P. Terry  
Administrative Judge