

Joseph J. Brecher, Attorney at Law  
510 16th Street, Suite #302  
Oakland, California 94612  
(510) 832-2800

BEFORE THE INTERIOR BOARD OF LAND APPEALS

Appeal of Shasta Coalition for the ) IBLA 2007-21  
Preservation of Public Land re: CACA 43098 )  
FD/PT, Salmon Creek Resources Land ) RESPONSE TO MOTION TO DISMISS  
Exchange ) AND OPPOSITION TO REQUEST FOR  
) STAY

**I. INTRODUCTION**

Applicant has requested this Board to dismiss the current appeal for two reasons – the purported lack of standing of the Shasta Coalition for the Preservation of Public Land (“Coalition”), and its supposed failure to serve the proper corporate entity. As we show in sections II and III, neither assertion has any validity. In addition, Applicant claims that a stay is unwarranted. As we show in Section IV, that assertion, too, is without merit.

**II. THE STANDING CLAIM**

Applicant maintains that this appeal should be dismissed because the Coalition lacks standing.<sup>1</sup> This claim is utterly without merit. The strict judicial standing doctrine does not apply in administrative proceedings, such as those before the IBLA. The more liberal standing requirements set forth in the Interior Department’s regulations are clearly met in this case. Indeed, the Coalition has made a showing that it would have standing even if this were a judicial proceeding.

**A. THE JUDICIAL STANDING DOCTRINE DOES NOT APPLY**

A host of opinions have made it clear that neither the Constitutional nor the “prudential” doctrines of standing apply to administrative agency proceedings. In *Yates v. Charles County Bd. of Educ.* (D. Md. 2002) 212 F.Supp.2d 470, 472 the district court pointed out:

The ALJ's opinion contains a thorough discussion of the doctrine of standing. However, the opinion proceeds from the erroneous premise that the same

---

<sup>1</sup> Applicant complains that the Coalition is an “unincorporated association.” But “voluntary membership organizations” such as the Coalition are often accepted as plaintiffs in environmental cases. See, e.g., *Florida Public Interest Research Group Citizen Lobby, Inc. v. E.P.A.* (11th Cir. 2004) 386 F.3d 1070, 1085.

considerations underlying the standing doctrine in judicial proceedings apply in the administrative hearing context. They do not. . . . [I]t is a familiar rule that an administrative agency is not bound by Article III or prudential judicial tests of standing.

In *Chamber of Commerce of U.S. v. S.E.C.* (D.C. Cir. 2006) 443 F.3d 890, 898, the Court of Appeal wrote: “However, the Chamber overlooks the fact that administrative agencies, unlike federal courts, are not jurisdictionally constrained by the case-and-controversy limitation in Article III [of the Constitution].”

The D.C. Circuit elaborated as follows:

Federal agencies may, and sometimes do, permit persons to intervene in administrative proceedings even though these persons would not have standing to challenge the agency's final action in federal court. Agencies, of course, are not constrained by Article III of the Constitution; nor are they governed by judicially-created standing doctrines restricting access to the federal courts. The criteria for establishing “administrative standing” therefore may permissibly be less demanding than the criteria for “judicial standing.” *Envirocare of Utah, Inc. v. Nuclear Regulatory Comm’n.* (D.C. Cir. 1999) 194 F.3d 72, 74.

## B. THE COALITION MEETS THE RELAXED STANDING REQUIREMENTS OF THE APPLICABLE REGULATIONS

The IBLA has recognized that “standards governing questions of standing to appeal administrative decisions are generally less restrictive than those applied to standing in the courts.” *Nevada Outdoor Recreation Association*, 158 IBLA 207, 209 (2003).

The relaxed standing requirement for IBLA matters is described in *Newmont Mining Corp.*, 151 IBLA 190, 192 (1999):

43 CFR §4.410(a) provides that “[a]ny party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management \*\*\* shall have a right to appeal to the Board.” To be a “party to a case” a person must have “actively participated in the decisionmaking process regarding the subject matter of [the] appeal.” To be “adversely affected” by a decision “the record must show that Appellants have a legally recognizable interest.” The interest need not be an economic or a property interest; use of the land involved or ownership of adjoining land suffices. . . . Appellant must allege or the record must show an interest that is injured.

### 1. The Coalition “actively participated” in these proceedings

There can be no question that the Coalition “actively participated” in these proceedings. As the Declaration of Susan Weale shows, the Coalition has submitted a huge amount of data on the environmental impacts that would be associated with the development of Area 51. The Coalition submitted comments Concerning Notice of Proposed Exchange; detailed comments on the EA and

a lengthy protest of the final decision. These submissions were supported by reams of documents. In addition, Ms. Weale and other officials of the Coalition attempted numerous meetings with various BLM officials attempting to work out a way to preserve Area 51, including the possibility of purchase by the community. These attempts to meet with BLM are chronicled in the Coalition's previously submitted history of communication with BLM. The Coalition met with the BLM Northwest Resource Advisory Council November 5, 2004, February 1 and 2, 2005 and on February 16, 2006. On January 30, 2006 Coalition representatives and supporters, including Shasta Resources Council representatives and a Board Member from the Shasta CSD, and Senator Boxer's representative, met with California State BLM Director Pool in a final effort to work out a purchase alternative.

This level of participation far surpasses that which has been recognized as sufficient in various IBLA opinions. For example in *Southern Utah Wilderness Alliance* (1999) 140 IBLA 341, 346, the IBLA recognized that "where a party has actively sought to participate in the issue of motorized vehicular maintenance and motorized vehicle use within a wilderness area, has corresponded with BLM prior to the decisionmaking process in question concerning its interest, and has been recognized by BLM as having expressed a specific interest in limiting motorized maintenance in the Bull Pasture area of the Paria Wilderness Area such that it (SUWA) was included within BLM's mailing list to comment on the proposed Decision, we must conclude this test of standing has been met." And, as noted in *the Wilderness Society* (1989) 10 IBLA 67, 72 "[I]t is clear that the customary way to become a party is by making a protest against a proposed action before it is implemented." See also *National Wildlife Federation*, 82 IBLA 303, 307 (1984).

## 2. Coalition members would be "adversely affected" by the exchange of Area 51

IBLA has recognized that an organization's "allegation that its members use the area affected by [a proposed BLM action] for recreation is an adequately specific, colorable allegation of adverse effect." *Predator Project* 127 IBLA 50, 53. (1993) See also *Powder River Basin Resource Council*, 124 IBLA 83, 88-89 (1992); *Animal Protection Institute of America*, 117 IBLA 208, 209-10 (1990). Such uses may include "backpacking, climbing, and hiking." *Howard G. Booth Red Rock Audubon Society*, 134 IBLA 300, 306 (1996), citing *Sharon Long*, 83 IBLA 304, 307-08 (1984). Loss of the opportunity to use public lands because they have been transferred to private ownership satisfies the standing requirement. As the IBLA noted in *John R. Jolley*, 145 IBLA 34, 37, "If these public land parcels are transferred to private ownership, Jolley's opportunity to use and enjoy these public lands will be adversely affected. Jolley has satisfied the standing requirements established by this Board's decisions." [Citing *Howard G. Booth*, 134 IBLA 300, 301 n. 1 (1996); *Southern Utah Wilderness Alliance* (On Reconsideration), 132 IBLA 91, 92-93 (1995); *National Wildlife Federation*, 82 IBLA 303, 307-08 (1984).

"[M]embers' cultural and aesthetic enjoyment" is sufficient to convey standing. *Animal Protection Institute of America et al.*, 118 IBLA 63, 66 (1991). See also *Center for Biological Diversity, et al.* (2004) 162 IBLA 268, 274, recognizing that an assertion that "recreational and aesthetic use and enjoyment of the selected public lands will be precluded by BLM's conveyance of the lands pursuant to the proposed exchange" establishes standing.

The declarations submitted by various individuals and groups who are members of the Coalition fulfill these requirements. For example, Daniel Bernet, O.D., lives approximately 1/2 mile away from Area 51. Since 1979 he has used the area for riding mountain bikes and hikes with friends from out of area, and later with his children. He and his children have enjoyed watching the spawning steel head and jack salmon in the winter months. On the day he wrote his declaration, he took his dogs and to look at the fish in Salt Creek.

Jeannine Bernet's declaration states that she has grown up using Area 51 to meet with a friend after school to explore the creeks and woods. Since then, the area has been a place that she has used almost daily for various outdoor activities including mountain biking, hiking, jogging and dog walking. Often after family gatherings her family goes for a walk to enjoy the open space and natural beauty of the area. She states "It is the perfect place to walk off a Thanksgiving meal or take the dogs to play during the spring bloom. In addition, I value the area as an preservation area for local wildlife, as it serves as a valuable fish spawning ground in the midst of a fast-developing area. I have seen developments go in all around our house, and it is the one remaining place that our family can visit on foot."

Rosa Miehle lives directly adjacent to Area 51. She uses Area 51 for mountain biking, hiking, birdwatching, and wildlife observation. In addition, she enjoys the aesthetic experience of having a significant open space area like Area 51 located in the midst of a fast-developing area, such as the west side of Redding. She and her husband have used its network of trails for their entire family's enjoyment almost every day for the past 5 years. They ride their mountain bikes, and take long walks together. They also enjoy observing wildlife in Area 51 and have helped maintain its trail system.

Catherine Louise Yoder lives approximately two miles from Area 51 She uses Area 51 for mountain biking, hiking, birdwatching and wildlife observation. She is a Search and Rescue Volunteer for Shasta, Tehama, and Siskiyou Counties. She has trained her "Scent Specific Trailing Dog" in this area, on several occasions. In addition, she enjoys the aesthetic experience of having a significant open space area like Area 51 located in the midst of a fast-developing area, such as the west side of Redding.

Rick Lemler lives across from Area 51. He uses Area 51 for hiking and wildlife observation. He enjoys photographing the different fish, turtles and eagles that he has observed in the area. His declaration includes two photographs he has taken in Area 51.

Jan Hanks lives a short bike ride from Area 51. She uses Area 51 for mountain biking and enjoys riding the trails with the Redding Mountain Bike Club. She recently rode the Westside Trail from Sunset Market, Redding to Area 51.

Charles I. Meinershagen, lives adjacent to Area 51. He has jogged there for the past 20 years. He has enjoyed rediscovering and reopening historic mining ditches and trails and making sure they were safe for people engaging in recreation.

Marc Pfister has conducted studies of historical artefacts in the area which would be lost of the land exchange is concluded.

Ann M. Jensen and her family use the trails frequently, observe fish in Salt Creek, and conduct trail maintenance in Area 51. Mike Silva engages in the same activities with his family and has observed deer, bear, turkey, and other wildlife in the area. Bruce Crom engages in the same activities, including running and hiking, and has also observed bobcat and coyotes in the area. If Area 51 were not available to him, Mr. Crom would be forced to run on Swasey Drive and other area roads, which are dangerous because of lack of sidewalks.

Declarations submitted on behalf of the Trails and Bikeways Council of Greater Redding and the Shasta Resources Council show how members of those two organizations, which are components of the Coalition, use Area 51 for recreation and have worked diligently over the years to maintain the recreational value of the area.

Finally, Susan Weale, the chairperson of the Coalition, declares that she has lived adjacent

to Area 51, for nearly 30 years. She walks on different portions of the over 5 miles of trails at least 4 times a week. She occasionally rides her horse on the trails. During the months of December to March she walks primarily along the creek counting and photographing salmon and Steelhead trout. Her counts have been used in the publication, SHASTA WEST WATERSHED ASSESSMENT, prepared for Western Shasta Resource Conservation District, and published in June 2005. Note that a "personal inventory" of lands within a project area provides an indicium of standing. See *Southern Utah Wilderness Alliance* (2003) 159 IBLA 220, 232.

Several other declarations, which tell similar stories, are included in the packet submitted along with this memorandum. In addition, the Coalition has gathered several more, similar declarations, that can be presented to this Board if it concludes that more factual proof is necessary.

3. The IBLA has recognized that submission of declarations is an effective way of demonstrating standing

As demonstrated in the previous section, the declarations accompanying this pleading meet the requirements to show that Coalition members actively "use" Area 51. IBLA decisions recognize that such submissions are a good way to show standing. See, e.g., *The Coalition of Concerned National Park Retirees, et al.*, 165 IBLA 79 (2005).

4. The Coalition adequately represents the interests of its members

Contrary to Salmon Creek Resource's assertion, an unincorporated association such as the Coalition has standing to represent the interests of its members. *Southern Illinois Carpenters Welfare Fund v. Carpenters Welfare Fund of Illinois* (7th Cir. 2003) 326 F.3d 919, 922. "[A]n association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw* (2000) 528 U.S. 167, 181. Absence of a "formal membership" structure does not preclude standing for an environmental organization. See *Friends of the Earth, Inc. v. Chevron Chemical Co.* (5th Cir. 1997) 129 F.3d 826, 828.

In *Florida Public Interest Research Group Citizen Lobby, Inc. v. E.P.A.* (11th Cir. 2004) 386 F.3d 1070, the Court of Appeals reviewed detailed declaration by members of the plaintiff groups, similar to those described above, and concluded they established the organizations' standing:

Those individual members of FPIRG, SOS, FSSR, and Sierra Club who have submitted detailed declarations have standing to pursue claims in their own names. Moreover, the interests this lawsuit seeks to protect are tied to the organizational missions of these groups, and the prospective relief sought, if awarded, would inure to the benefit of their members, making individual participation unnecessary. FPIRG, SOS, FSSR and Sierra Club have established the requirements of standing.

Here, as in *Florida Public Interest Research Group Citizen Lobby, Inc. v. E.P.A.*, the interest the Coalition "seeks to protect are tied to [its] organizational mission. . ." The declaration of Susan Weale shows that The Coalition is comprised of and supported by a broad group of interested citizens from throughout Shasta County, and is supported in its objectives by various organizations having local, statewide and nationwide membership, including the Trails and Bikeways Council of

Greater Redding; Redding Mountain Biking, Inc.; International Mountain Biking Association; and the Shasta Resources Council. She states that “The Coalition is particularly concerned with preserving recreational, visual, and open space values, as well as wildlife habitat and salmonid fisheries contained on Shasta County public lands, including the area embraced by the BLM-administered land contained in the recently-approved Salmon Creek Resources Land Exchange . . .”

Furthermore, the Weale declaration describes the membership structure of the Coalition. All the other declarations specifically state that the declarants are members of the Coalition and have requested it to file the appeal on their behalf. Thus, the Coalition meets the more rigorous judicial standing test; therefore, it clearly meets the requirements of 43 CFR §4.410(a).

Finally, even if all these declarations were insufficient to establish the organizational standing of the Coalition, Susan Weale’s declaration shows that she, as an individual, meets the standing requirements, and thus would be entitled to carry on the appeal. See *Las Vegas Valley Action Committee et al.*, 156 IBLA 110, 120 (2001).

In short, the Coalition clearly has demonstrated its standing to pursue this appeal. We remind the IBLA of its statement in *Predator Project*, 127 IBLA 50, 53 (1993): “Allowing standing to appellant, we hold, will assist the Department in fulfillment of its decisionmaking function regarding ADC. See *High Desert Multiple-Use Coalition*, 116 IBLA 47, 48-49 n. 1 (1990).”

### **III. THE “IMPROPER SERVICE” CLAIM**

Salmon Creek Resources, Inc. maintains that this appeal should be dismissed because it was not served at its corporate address. This assertion is completely untenable. IBLA precedent makes it clear that an appeal will not be dismissed based on improper service, especially when, as here, the party has not suffered any prejudice.

Its filing (p. 3) concedes that “Joe Rice, the President of Salmon Creek Resources has been served” and does not contend that service was untimely. As a result, the Company’s attorneys were able to review the Coalition’s Notice of Appeal and Application for Stay and had plenty of time to file a timely response in plenty of time. In *U.S. Fish and Wildlife Service, Complainant, v. Reptile Masters, Inc. Respondent*, Docket No. BOSTON 2003-2, Civil Penalty Imposed August 27, 2003, an Interior Administrative judge denied a request to dismiss for failure to serve the BLM Solicitor, noting:

The Board avoids procedural dismissals if there has been no showing that a procedural deficiency has prejudiced an adverse party. Indeed, in the absence of such a showing, dismissal of an appeal might be deemed an abuse of discretion.

In *The Klamath Tribes*, 135 IBLA 192, 194 (1996), the IBLA denied a motion to dismiss for failure of service, noting:

Atlas bases its motion on 43 CFR 4.413(a) which requires that a copy of a notice of appeal be served upon an adverse party within 15 days of filing (Motion at 5). As Atlas notes, 43 CFR 4.413(b) provides that failure to serve an adverse party will

subject an appeal to summary dismissal. However, dismissal for failure to properly serve a party is discretionary, and this Board will decline to dismiss an appeal for a procedural deficiency when there is no showing that a party has been prejudiced. See, e.g., *Red Thunder, Inc.*, 117 IBLA 167, 172-73, 97 I.D. 263, 266 (1990). Atlas does not argue that it has been prejudiced by late service and its briefing reflects an adequate opportunity to respond to the Tribes' arguments.

See also *Defenders of Wildlife*, 79 IBLA 62, 66 (1984); *United States v. Rice*, No. 72-467-PHX WEC (Feb. 1, 1974), reversing, *United States v. Rice*, 2 IBLA 124 (1971). *Pressentin v. Seaton* (D.C. Cir. 1960) 284 F.2d 195 (dismissal for late filing of brief an abuse of discretion).

Furthermore, the identity of the exchange proponent was by no means clear. Mr. Rice often communicated with BLM and community groups as an individual. See, for example, the letter he wrote to the Redding Office Field Manager on April 20, 2006, attached as Exhibit A. BLM has referenced this exchange variously as the "Rice Exchange"; "...an exchange with Joe Rice, president and owner of Salmon Creek Resources"; "Victoria Drive Exchange Proposal" and "...Salmon Creek Resources or 'Rice Exchange'". (See attached legal notice, BLM letter to Rep. Herger; RAC Agenda and email from BLM.) Salmon Creek alleges (Brief, p. 5) "At the suggestion of Shasta County, and in anticipation of the exchange, Salmon Creek Resources, Inc submitted a pre-development application on the subject property." In fact, Shasta County lists this project as "Pre-Application Number 04-012" and the applicant as "Joe Rice, P.O. Box 374, Loleta, CA 95551", not Salmon Creek Resources. Shasta County's letter responding to Joe Rice's pre-application, and submitted with Salmon Creek Resources request for dismissal, is addressed to "Joe Rice, PO Box 374, Loleta, CA 95551. According to the Post Master of Loleta, CA (Dawn, 707-733-5442), and according to Mr. Rice's verbal instructions to Shasta Resources Council for mailing of purchase offer, there is NO mail delivery service to 3335 Tompkins Hill Road. All mail is delivered to the Post Office Box, not a street address. The situation here is very similar to that in *United States v. Claude T. and Sarah E. Orme*, 57 IBLA 373, 383 (1981), in which IBLA refused to penalize a party who had improperly served an opponent based upon an ambiguous address.

It is obvious that Salmon Creek Resources is the alter ego of Mr. Rice. According to information filed with the California Secretary of State, the President of Salmon Creek Resources, Inc. is Joseph C. Rice and the Agent for Service of Process is Joseph C. Rice. The corporation, of course, acts through its officers and, as noted previously, Mr. Rice has admittedly been served. In short, the Coalition achieved substantial compliance with the service requirements. Salmon Creek seeks to rely on a hyper-technicality to evade a decision on the merits. It has suffered no prejudice; on the other hand, the Coalition would suffer enormous prejudice if its appeal were dismissed based on such a nit-picking reason.

Finally, the pleading filed by Salmon Creek's attorneys is styled a "Notice of Appearance" and advances legal arguments with respect to standing and the efficacy of a stay. As the court noted in *People v. Ciancio* (2003) 109 Cal.App.4th 175, 192:

A general appearance occurs where a party, either directly or through counsel, participates in an action in some manner which recognizes the authority of the court to proceed. It does not require any formal or technical act. [Citation] . . . . [T]he term may apply to various acts which, under all of the circumstances, are deemed to confer jurisdiction of the person. [Citation.] *If a defendant raises any issue other than jurisdiction* or asks for any relief which can only be granted upon the hypothesis that the court has jurisdiction of his person, his appearance is general.

Therefore, the formal Notice of Appearance by Salmon Creek's attorneys, which raises legal issues in addition to the jurisdictional question, constitutes a general appearance and cures any defect in

service that might have existed.

#### **IV. A STAY SHOULD BE GRANTED**

The numerous declarations submitted with this document show how much Area 51 means to so many people. BLM concedes (Brief, p. 11) that access to the Area 51 trails would likely be blocked by a private owner. Nonetheless, the agency asserts (p. 6) that the Coalition and its members will suffer no injury due to the potential loss of access to Area 51. That claim rings hollow. The fact that the trails that so many of the declarants enjoy on a daily basis are not "designated" by BLM, has not put a damper on their enjoyment or enthusiasm. The fact that other open space exists does not compensate for the loss of *this* crucial parcel, which is enjoyed by so many people. BLM speculates that the fishery will not be harmed and views not damaged because of an unspecified restrictive covenant against development in the riparian corridor, ignoring entirely the erosion potential for construction of numerous houses and concedes that "the degree to which the parcel will change will depend largely on the County planning process."

Salmon Creek attempts to calm the Coalition's fears by arguing that there will be plenty of open space yet, since it can build only 10 houses. This is a particularly disingenuous claim, that was not even accepted by BLM. The proponent has made pre-application to Shasta County for a development of approximately 55 lots and Shasta County has formally replied to that pre-application.

The EA asserts that Shasta County will benefit from approximately \$2,000,000 per annum in property tax from Mr. Rice's anticipated housing development. At California's 1% rate of property taxation and the anticipated value of homes built at \$250,000-\$300,000 each (per James Langum, Deputy Assessor in Charge of Evaluation, Shasta County Assessors Office), \$2,000,000 translates to well over 500 homes. Although Salmon Creek attempts to state with a straight face that only 10 houses will be built (p. 5), that is based on current zoning and planning, which can be changed at the wave of a hand. There are no provisions in the exchange that guarantee any limits to development of the parcel once the exchange is completed. Shasta County simply requires the private owner of formerly public land to apply for General Plan and Zoning changes. The Coalition has requested a stay of decision to preserve the natural and recreational resources of the federal parcel pending outcome of the appeal.

BLM asserts (p.5) that Salmon Creek may "pull out" of the exchange due to delay, thereby harming both parties. It also worries about "property taxes and other holding and financing costs." This is pure speculation, and is not confirmed by Salmon Creek, whose submission mentions no such potential economic harm. Indeed, the company indicates it is in no hurry to proceed. It anticipates a "lengthy development approval process" and it does not anticipate "rushing out and obliterating . . . the trails." (Brief, p. 5). If anything, delay favors the proponent, because the exchange price is fixed, while inflation and the continuing explosive increase in land values in the Redding area make the deal better as time goes by.

Perhaps the most compelling reason for granting a stay is that once the patent is issued, the present proceedings become an exercise in futility and the Coalition will be denied the opportunity to have its meritorious claims adjudicated by the IBLA.

The effect of the issuance of a patent by the United States is to transfer the legal title from the United States and to remove from the jurisdiction of the Department the consideration of all disputed questions concerning the rights to lands. *Germania Iron Co. v. United States*, 165 U.S. 379, 383 (1897); *Southern Pacific R.R. v. United States*, 51 F.2d 873 (9th Cir. 1931); *Sage v. United States*, 140 F. 65 (8th Cir. 1905);

*Eddie S. Beroldo*, 123 IBLA 156, 158 (1992); *Lone Star Steel Co.*, 101 IBLA 369, 374 (1988). *Omar Stratman v. Leisnoi, Inc. Koniag, Inc.*, 157 IBLA 302, 311 (2002).

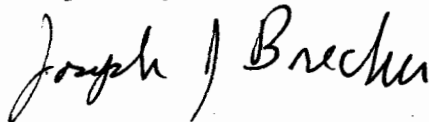
The impact of this rule is that: "Once title passes, however, the BLM loses authority over the subject lands, and the title granted by the patent can be challenged only through the courts. *High Country Citizens Alliance v. Clarke* (10th Cir. 2006) 454 F.3d 1177, 1189. Therefore, the Coalition will be forced to file a federal lawsuit, *even if IBLA agrees with their position that the transfer was unlawful*. Such a result would be wasteful of Departmental resources and grossly unfair to the parties.

As to the merits, the Coalition has submitted a compelling argument that the proposed exchange violates NEPA and the applicable regulations under FLPMA. The perfunctory arguments submitted by BLM and the proponent do not alter that situation.

## V. CONCLUSION

The submissions by BLM and the proponent seek to short-circuit this Board's authority to adjudicate this important case. The proponent's standing and service arguments are flimsy, transparent attempts to use inappropriate procedural gambits to avoid the consequences of the serious violations of law inherent in the current exchange. And, unless a stay is granted, the Coalition will suffer serious harm, without any corresponding cognizable injury to the proponent or BLM. Furthermore, if the stay is denied and the patent issued, all the work of the parties on this matter will have been in vain and this Board will be deprived of the opportunity to correct a manifest injustice "in house," without the need to resort to federal judicial intervention.

Respectfully submitted,



Joseph J. Brecher  
Attorney for Appellant  
Shasta Coalition for the Preservation of Public Land

PROOF OF SERVICE BY MAIL

I, the undersigned, declare that I am over the age of eighteen years and not a party to the within action. My business address is 510 16<sup>th</sup> Street, Third Floor, Oakland, California 94612.

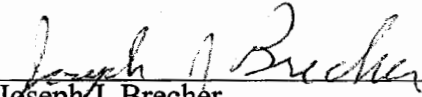
I am familiar with the practices of this office concerning the service of documents. On January 8, 2007, I served the RESPONSE TO MOTION TO DISMISS AND OPPOSITION TO REQUEST FOR STAY and SUPPORTING DECLARATIONS on the following persons by placing a true copy thereof in separate, sealed envelopes, by first-class certified mail, return receipt requested with the U.S. Postal Service, addressed as follows:

Director, Board of Land Appeals  
Office of Hearings and Appeals  
801 North Quincy Street  
MS 300-QC  
Arlington, VA 22203

DANIEL SHILLITO  
ERICA NIEBAUER  
Office of the Regional Solicitor, Pacific  
Southwest Region, U.S. Department of the  
Interior  
2800 Cottage Way, Room E-1712, Sacramento,  
CA 95825

Sandra K. Dunn  
Jonathan R. Schutz  
SOMACH, SIMMONS & DUNN  
813 Sixth Street, Third Floor  
Sacramento CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Oakland, California on January 8, 2007.

  
Joseph J. Brecher