



PETAN COMPANY OF NEVADA
v.
BUREAU OF LAND MANAGEMENT

186 IBLA 81

Decided August 20, 2015



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

PETAN COMPANY OF NEVADA
v.
BUREAU OF LAND MANAGEMENT

IBLA 2015-177

Decided August 20, 2015

Appeal from an order of Administrative Law Judge Harvey C. Sweitzer denying a petition for a partial stay of a Final Decision of the Owyhee (Idaho) Field Office, Boise District, Bureau of Land Management. ID-BD-3000-2015-001.

Affirmed.

1. Administrative Procedure: Hearings--Administrative Procedure: Stays--Grazing Permits and Licenses: Generally--Grazing Permits and Licenses: Hearings--Grazing Permits and Licenses: Adjudication

The Board will affirm an order of an ALJ denying a petition for a partial stay of a final decision by BLM renewing a 10-year grazing permit, subject to grazing use reductions and seasonal restrictions, where the ALJ properly concludes that granting the partial stay is not in the public interest.

APPEARANCES: W. Alan Schroeder, Esq., and Brian D. Sheldon, Esq., Boise, Idaho, for appellant; Robert B. Firpo, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management; Katie Fite and Brian Ertz, Boise, Idaho, *Amicus Curiae*, Wildlands Defense.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

The Petan Company of Nevada, Inc. (Petan), has appealed from a May 6, 2015, order (May 2015 Order) of Administrative Law Judge (ALJ or Judge) Harvey C. Sweitzer, denying its April 8, 2015, petition for a partial stay of the effect of a March 6, 2015, Final Decision (2015 Final Decision) of the Field Manager, Owyhee (Idaho) Field Office, Boise District, Bureau of Land Management (BLM), renewing its

10-year grazing permit for the Garat Allotment (Allotment) (No. 00584), subject to modified terms and conditions.¹ The 2015 Final Decision granted Petan's 10-year permit renewal, but reduced Petan's authorized grazing use and imposed seasonal restrictions on grazing use. Petan asks the Board to immediately reverse the ALJ's order and grant its petition for a partial stay or grant a stay of the entire decision. See Statement of Reasons (SOR) for Appeal at 3.

Because we agree with Judge Sweitzer that the petition for a stay is properly denied, we will affirm his May 2015 Order.

I. Background

The Allotment encompasses a total of 211,661 acres of public (202,618), private (207), and State (8,836) land in Owyhee County, situated in southwestern Idaho.² It is generally described as "a sagebrush steppe semi-arid landscape of

¹ In his May 2015 Order, ALJ Sweitzer denied not only Petan's petition for a partial stay, docketed by the Hearings Division as ID-BD-3000-2015-002, but also a petition for a partial stay filed by Wildlands Defense (WLD), docketed by the Hearings Division as ID-BD-3000-2015-001. He had previously consolidated both appeals for purposes of considering the stay petitions and the underlying appeals. On July 7, 2015, WLD sought to intervene in Petan's present appeal, pursuant to 43 C.F.R. § 4.406(a). In a July 20, 2015, Order, we denied WLD's motion to intervene, but afforded WLD *amicus curiae* status to participate in Petan's appeal. See 43 C.F.R. § 4.406(d)(2). WLD opposes a stay.

² Approximately 49,653 acres of public land in the Allotment were designated as part of the 267,000-acre Owyhee River Wilderness Area, pursuant to Subtitle F (Owyhee Public Land Management) of Title I of the Omnibus Public Land Management Act of 2009 (OPLMA), Pub. L. No. 111-11, 123 Stat. 991, 1032-40. Section 1503(b)(3)(A) of the OPLMA, Pub. L. No. 111-11, 123 Stat. at 1034, provides that grazing existing at the time of the Mar. 30, 2009, enactment of the OPLMA is allowed to continue "subject to such reasonable regulations, policies, and practices as the Secretary [of the Interior] considers necessary, consistent with section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)), and the guidelines described in Appendix A of House Report 101-405 [known as the 'Congressional Grazing Guidelines']." Range improvements in existence at the time of enactment may also be utilized, but using motorized vehicles or equipment to access and/or maintain improvements is constrained by the Grazing Guidelines, which basically adopt "a rule of practical necessity and reasonableness." H. R. Rep. No. 101-405, at 42 (1990).

[sagebrush] shrubs and [perennial] bunchgrasses,” where average annual precipitation varies from 8 to 13 inches. Final Decision at 4.

Petan owns the private lands with others and controls the State lands for grazing purposes, and has long held a permit to graze cattle on public lands in the Allotment. The Allotment is generally divided by fences into 6 pastures (Dry Lake (formerly, Dry Lake 1) (Pasture 1), Piute Creek (formerly, Dry Lake 2) (Pasture 2), Forty-Five (Pasture 3), Kimball (Pasture 4), Big Horse (Pasture 5), and Juniper Basin (Pasture 6)). It is crossed by 651.65 miles of Piute Creek and other intermittent and ephemeral streams, but no perennial streams. Under the existing grazing permit, the grazing season runs from March 15 through September 30, involving 3,150 cattle. Additional grazing, amounting to 250 cattle, has been allowed to occur from October 1 to October 15, in order to account for stray cattle remaining after the end of the grazing season.

Substantial portions of the Allotment contain habitat for the Greater sage-grouse (*Centrocercus urophasianus*), a special status bird species, which is a candidate for listing under the Endangered Species Act of 1973 (ESA), 16 U.S.C. §§ 1531-1544 (2012). Two occupied sage-grouse courtship strutting areas (leks) (20466 and 20264), which have generally numbered 30-49 sage-grouse, are situated near the northern and western boundaries of the Allotment in Pastures 1 and 5. See Environmental Assessment (EA) (DOI-BLM-ID-B030-2014-0015-EA), dated March 2015, at 153; EA, Maps, at Map WDLF-3 (Sage-Grouse Lek and Habitat Overview). In addition, the Allotment is situated within four miles of 9 other occupied leks. Thus, substantial portions of the Allotment are located within sage-grouse breeding and nesting habitat, and sage-grouse habitat is generally present throughout the Allotment. EA at 149.

Because the Greater sage-grouse is a special status species, BLM policy directs that the agency promote removal of the species from the list of special status species and avoid contributing to the need to list the species as a threatened and endangered species under the ESA.³ See generally BLM Manual 6840 (Special Status Species Management (Rel. 6-125 (12/12/2008))). The Manual sets forth two basic objectives, as follows: (1) “To conserve and/or recover ESA-listed species and the ecosystems on which they depend so that ESA protections are no longer needed for these species”; and (2) “To initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA.” BLM Manual, 6840.02B (emphasis added).

³ The BLM Manual is available at http://www.blm.gov/style/medialib/blm/wo/Information_Resources_Management/policy/blm_manual.Par.43545.File.dat/6840.pdf (last visited Aug. 10, 2015).

On March 3, 2010, the Fish and Wildlife Service (FWS), U.S. Department of the Interior, determined that listing the sage-grouse as a threatened and endangered species is warranted under the ESA, but the listing is precluded by higher priority listing actions. See 75 Fed. Reg. 13,910, 13,988 (Mar. 23, 2010). More recently, FWS committed, in settling a Federal lawsuit, to reconsider the “Warranted/But Precluded” status of the sage-grouse and to issue either a proposed listing rule or a not-warranted finding by September 30, 2015. See *Western Watersheds Project v. U.S. Fish & Wildlife Service*, No. 4:10-CV-229-BLW, 292 U.S. Dist. LEXIS 13771 (D. Idaho Feb. 2, 2012), at *24.

Pending FWS’s listing determination, in May 2010, BLM began the process of amending and revising existing land-use plans in the western United States for the purpose of developing a comprehensive long-term region-wide management strategy for conserving and restoring the sage-grouse and its habitat on public lands, with the general aim of avoiding a listing of the sage-grouse under the ESA. See Charter, BLM National Greater Sage-Grouse Planning Strategy, BLM, dated Aug. 23, 2011, at 1; Instruction Memorandum (IM) No. 2012-044, National Greater Sage-Grouse Land Use Planning Strategy, dated Dec. 27, 2011, at 1.⁴

BLM formed a National Technical Team (NTT), composed of representatives of BLM, FWS, State wildlife agencies, and other Federal agencies, which would serve “as an independent, technical and science-based team to ensure the best information related to [G]reater sage-grouse management is fully reviewed, evaluated and provided to the BLM for consideration in the land use planning process.” Charter at 2. The NTT issued “A Report on National Greater Sage-Grouse Conservation Measures” on December 21, 2011.

On December 22, 2011, BLM issued IM No. 2012-043, Greater Sage-Grouse Interim Management Policies and Procedures, setting forth an interim management policy for sage-grouse and its habitat on Federal lands across the western United States. In this IM, BLM stated that its interim policy was to promote sustainable sage-grouse populations and suitable habitat, pending development of a comprehensive long-term region-wide management strategy for conserving and restoring the sage-grouse and its habitat. The IM would provide guidance to BLM BLM affirms until amendments to and revisions of its existing RMPs. The IM addresses the need for protection of unfragmented habitat, the minimization of habitat loss and fragmentation, and the management of habitat to maintain, enhance, or restore

⁴ The Charter and IM No. 2012-044 are available at http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2012/IM_2012-044.html (last visited Aug. 10, 2015).

conditions that meet sage-grouse life history needs. See IM No. 2012-043 at 1. The IM further provides for the designation of two categories of habitat important for maintaining sustainable sage-grouse populations: (1) Preliminary Priority Habitat (PPH), encompassing breeding, late brood-rearing, and winter concentration areas, and (2) Preliminary General Habitat (PGH), encompassing occupied seasonal or year-round habitat. These two categories would be afforded special protection.

The IM sets forth a series of interim conservation policies and procedures with respect to various categories of likely management activities and actions. The IM recognizes that “[g]razing can have localized adverse effects on Greater Sage-Grouse habitat,” but that grazing practices can benefit the sage-grouse and its habitat when “used as a tool to protect intact sagebrush habitat and increase habitat extent and continuity.” IM No. 2012-043 at 4. In the case of PPH, the IM provides that grazing and associated range improvements should be authorized “in a way that maintains and/or improves Greater Sage-Grouse and its habitats.” *Id.* The measures to be implemented for PPH involve setting appropriate limits on the kind and numbers of livestock, distribution, and seasons of use, and approving “grazing practices that promote the growth and persistence of native shrubs, grasses, and forbs.” *Id.* In the case of PGH, the IM provides that, when authorizing grazing and other uses, BLM should consider management measures that will reduce direct, indirect, and cumulative adverse effects on the sage-grouse and its habitat. See *id.* at 7.

Judge Sweitzer indicated that Idaho BLM has yet to formally designate PPH or PGH in the Allotment. However, he noted that “[p]reliminary results” of BLM’s evaluation efforts “indicate that the Allotment encompasses large and contiguous areas of PPH,” which has the “highest conservation value” for maintaining sustainable sage-grouse populations. May 2015 Order at 4 (citing IM No. 2012-043 at 1); see EA at 149-50, 150-52; EA, Maps, at Map WDLF-3 (Sage-Grouse Lek and Habitat Overview), and Map WDLF-5 (Sage-grouse Habitat). He added that “[a]reas of PPH-sagebrush are present in every pasture throughout the Allotment.” May 2015 Order at 5. He also noted that sage-grouse are likely to reside within the Allotment year-round, since “most seasonal habitats are potentially present[,] . . . including breeding, nesting, brood rearing, and wintering habitat.” *Id.*

Idaho BLM is in the process of amending its applicable land-use plan, *i.e.*, the December 1999 Owyhee RMP, to incorporate sage-grouse conservation measures.⁵ The existing RMP describes a number of resource concerns for the Allotment, including the presence of Greater sage-grouse and other special status

⁵ The RMP is available at https://eplanning.blm.gov/epl-front-office/projects/lup/35607/41983/44484/Owyhee_RMP_ROD_1999.pdf (last visited Aug. 10, 2015).

species. See RMP, dated Dec. 30, 1999, at 23, 106 (Table LVST-1 (Allotments, Management Categories, Class of Livestock, Active Use and Acreages)). It provides, under Management Objective SPSS-1, that the special status species and habitat in the Allotment are to be managed so as “to increase or maintain populations at levels where their existence is no longer threatened and there is no need for listing” the species under the ESA. *Id.* at 20. Under Management Action 9, BLM is to “[i]dentify, protect and enhance key sage grouse habitats and populations.” *Id.* at 21. The RMP also provides, under Management Objective LVST-1, that BLM is to provide for “a sustained level of livestock use *compatible with meeting other resource objectives*” (emphasis added). It further provides that BLM is to “[d]evelop and implement grazing systems to meet multiple use resource objectives and/or the Standards for Rangeland Health,” and “[u]se a *minimal level* of rangeland developments (e.g., fences, water facilities) to adjust livestock grazing practices to achieve multiple use resource objectives and meet [S]tandards for [R]angeland [H]ealth.” *Id.* at 24 (emphasis added).

On or about June 29, 2011, Petan applied for renewal of its 10-year grazing permit.

Before authorizing grazing use, Idaho BLM is required by the Fundamentals of Rangeland Health regulations, 43 C.F.R. Subpart 4180, to assess the health of Federal rangeland in accordance with the Idaho Standards for Rangeland Health and Guidelines for Livestock Grazing Management (Idaho S&Gs) for public lands in Idaho.⁶ The Idaho S&Gs concern eight overall aspects of rangeland health: (1) watersheds, (2) riparian areas and wetlands, (3) stream channel/floodplain, (4) native plant communities, (5) seedings, (6) exotic plant communities (other than seedings), (7) water quality, and (8) threatened and endangered plants and animals.

In a January 2012 Rangeland Health Assessment and Evaluation Report (RHA Report) and in an August 28, 2012, Determination for Achieving Standards for Rangeland Health (RHA Determination), BLM determined that the Allotment was not meeting Standards 1 (Watersheds), 2 (Riparian Areas and Wetlands), 4 (Native Plant Communities), and 8 (Threatened and Endangered Plants and Animals) of the

⁶ In view of the permanent injunction of BLM’s extensive revision of the Part 4100 regulations adopted effective Aug. 11, 2006 (71 Fed. Reg. 39,402 (July 12, 2006)), imposed by the Federal District Court in *Western Watersheds Project v. Kraayenbrink*, 538 F. Supp. 2d 1302 (D. Idaho 2008), *aff’d in part, vacated in part on other grounds, and remanded*, 632 F.3d 472 (9th Cir.), *cert. denied*, 132 S. Ct. 366 (2011), BLM’s 2015 Final Decision and Judge Sweitzer’s May 2015 Order both applied the Part 4100 regulations in effect as of Aug. 10, 2006. Since that injunction remains in effect, we will also apply the Part 4100 regulations in effect as of Aug. 10, 2006.

Idaho S&Gs, and that livestock grazing management practices were a significant factor in the failure to meet each of these.

Under 43 C.F.R. § 4180.2(c), when BLM determines “that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards [for rangeland health],” it is required to take “appropriate action . . . that will result in significant progress toward fulfillment of the standards,” not later than the start of the next grazing year. *See, e.g., Idaho Watersheds Project v. Hahn*, 187 F.3d 1035, 1036-37 (9th Cir. 1999); *Granite Trust Organization v. BLM*, 169 IBLA 237, 251-52 (2006). “Appropriate actions may include reducing livestock stocking rates, adjusting the season or duration of livestock use, or modifying or relocating range improvements,” pursuant to 43 C.F.R. Part 4100. 60 Fed. Reg. 9,894, 9,899 (Feb. 22, 1995). BLM is not required, by the start of the next grazing year, to actually make significant progress toward fulfillment of the standards, but to take appropriate action that “will result” in such progress in the future. 43 C.F.R. § 4180.2(c).

BLM also assembled a team of interdisciplinary resource experts who analyzed the likely environmental impacts of renewing Petan’s 10-year grazing permit and alternatives thereto in a January 2013 EA (DOI-BLM-ID-B030-2012-0012-EA), prepared in accordance with the Council on Environmental Quality and Department of the Interior regulations implementing the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321-4375 (2006). *See* 40 C.F.R. Parts 1500-1508 and 43 C.F.R. Part 46.

On March 29, 2013, BLM issued a Notice of Final Decision (2013 Final Decision), approving the renewal of Petan’s 10-year grazing permit, subject to modified terms and conditions. Petan appealed from the 2013 Final Decision, requesting a stay of its effect to the extent that it was required to immediately reduce its currently authorized grazing use, from 19,685 to 10,421 Animal Unit Months (AUMs),⁷ and implement a 3-year pasture-rotation grazing schedule in the Allotment. In a June 17, 2013, order, Judge Sweitzer construed Petan’s petition for a partial stay as a petition for a full stay and granted the petition, given BLM’s statement of non-opposition to the petition.

In a subsequent February 13, 2014, summary judgment decision, ALJ Robert G. Holt set aside BLM’s 2013 Final Decision and remanded the case to BLM for readjudication of Petan’s request for renewal of its grazing permit.

⁷ An AUM is defined as the amount of forage necessary to sustain one cow (or its equivalent) for one month. 43 C.F.R. § 4100.0-5 (“*Animal unit month (AUM)*”).

Judge Holt concluded only that BLM had violated section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(C) (2012), by failing to consider the reasonable alternative of constructing or reconstructing range improvements, so as to better distribute livestock grazing use in the Allotment. He held that, although Petan had proposed certain range improvements in its renewal application, BLM failed to consider such improvements, which together offered the potential of avoiding or mitigating the adverse impacts of grazing. Most importantly, Judge Holt further held that BLM had not provided any legitimate reasons for declining to afford the improvements detailed consideration in the EA.

Following remand, BLM once again determined, in a July 2014 RHA Report and a July 8, 2014, RHA Determination, that the Allotment was not meeting Standards 1, 2, 4, and 8 of the Idaho S&Gs, and that current livestock grazing management practices were a significant factor in the failure to meet Standards 2, 4, and 8, but not Standard 1. See Answer at 6, 7-12. BLM notes that it “incorporated” the data collected by Petan’s range consultant (Western Range Service (WRS)) “into BLM’s analysis and trend and utilization data.” *Id.* at 6 n.2.

On or about August 22, 2014, Petan once again applied for renewal of its 10-year grazing permit. It sought to graze livestock on the Allotment, totaling 22,750 AUMs, or all of its active use and voluntary non-use, from March 15 to September 30 of each year. It specifically proposed a number of range improvements, including the Piute Creek fence, designed to improve the distribution of livestock.

BLM once again analyzed the likely environmental impacts of renewing Petan’s 10-year grazing permit and alternatives thereto, resulting in a March 2015 EA (DOI-BLM-ID-B030-2014-0015-EA). In this EA, BLM considered Petan’s proposed permit (Alternative 2); a performance-based alternative (19,500 active AUMs, subject to a 6-year pasture-rotation grazing schedule) (Alternative 3); and a season-based alternative (Alternative 4), including three sub-alternatives (4A, 4B, and 4C); a no action alternative (Alternative 1), under which grazing would continue in the same manner as authorized in the existing permit (18,870 active AUMs, subject to a 6-year pasture-rotation grazing schedule); and a no grazing alternative (Alternative 5), under which grazing would cease.

Under Sub-alternative 4A, grazing use would be authorized no more than 1 year out of every 3 in all pastures during the sage-grouse breeding season (April 15-June 15), so as to limit disruption and herbaceous utilization while sage-grouse are breeding, nesting, and early brood-rearing. Grazing would take place according to the following rotation schedule: Pastures 1 and 2 (March 15-June 30 (Year 1), March 15-April 15 (Year 2), March 15-April 15 (Year 3)); Pasture 3 (July 1-October 15 (Year 1), Rest (Year 2), April 16-June 30 (Year 3)); Pasture 4 (Rest

(Year 1), April 16-June 30 (Year 2), July 1-October 15 (Year 3)); Pasture 5 (March 15-October 15 (Year 1), July 1-October 15 (Year 2), July 1-October 15 (Year 3)); and Pasture 6 (March 15-October 15 (Year 1), July 1-October 15 (Year 2), July 1-October 15 (Year 3)). Pastures 1 and 2 would be managed as a single unit, owing to the absence of any barrier to livestock movement between the two pastures. Grazing was not scheduled at any time after July 1 in Pastures 1 and 2 “due to limited water available to support livestock use and increasing risk of livestock moving into the Owyhee River Canyon,” which was excluded from the Allotment. EA at 39; *see* 2015 Final Decision at 3, 10, 15; *see* EA at 35, 38-42.

In the EA, BLM specifically declined to afford detailed consideration to Petan’s proposed range improvements, as reflected in Alternative 2. *See* EA at 10. BLM stated that “[t]he purpose of this action is to consider the renewal of the permit to graze livestock within the Garat [A]llotment with the existing infrastructure[] and in a manner that provides for livestock grazing opportunities on public lands where consistent with meeting management objectives, including the Idaho [S&Gs].” *Id.* at 19; *see id.* at 50-55. BLM concluded that making new improvements was not “appropriate action” under 43 C.F.R. § 4180.2(c), and therefore that they were “infeasible[.]” *Id.* at 51, 52; *see* Answer at 23-24, 24, 24-26, 26 n.8, 27-29.

BLM issued a Finding of No Significant Impact (FONSI) on March 3, 2015, concluding, based on consideration of the context and severity (or intensity) of impact criteria of 40 C.F.R. § 1508.27, that adoption of Alternative 4A would not significantly impact any aspect of the human environment, and that it was not required by section 102(2)(C) of NEPA to prepare an environmental impact statement (EIS).

II. BLM’s 2015 Final Decision

BLM issued a Proposed Decision on January 16, 2015, and, after adjudicating Petan’s February 4, 2015, protest, BLM issued the 2015 Final Decision adopting Alternative 4A. BLM extensively reviewed the relative advantages and disadvantages of maintaining grazing under the existing permit versus reducing livestock numbers and altering other aspects of grazing use under a new permit, from the standpoint of sage-grouse and their habitat and other resource values. 2015 Final Decision at 18; *see id.* at 12-14, 19-23, 25-26, 28. BLM concluded that “[w]ildlife habitat in upland and riparian areas would improve throughout the allotment under Alternative 4A, *due to this alternative’s focus on improving the health and vigor of plant communities.*” *Id.* at 21 (emphasis added) (citing IM No. 2012-043 at 4, 5). It thus approved the renewal of Petan’s 10-year grazing permit, subject to modified terms and conditions.

BLM specifically reduced Petan's permitted grazing use from 33,646 AUMs (19,500 AUMs (active), 10,896 AUMs (suspended), and 3,250 AUMs (voluntary nonuse)), to 21,246 AUMs (10,350 AUMs (active), 10,896 AUMs (suspended), and 10 AUMs (voluntary nonuse)).⁸ See 2015 Final Decision at 14. In other words, it provided for the grazing of 1,604 cattle from March 15 to September 30 (10,126 active AUMs), and 250 cattle from October 1 to October 15 (118 active AUMs). BLM thus adhered to a stocking rate of "10 acres or more per AUM on any pasture," explaining: "Th[is] stocking rate . . . is a conservative stocking rate when considering potential forage production and availability due to ecological site potential of vegetation communities within the allotment, as limited by inventoried condition, water availability, and topography." *Id.* at 17; *see id.* at 13 ("When compared to average actual use over the 10-year period between 2002 and 2011, Alternative 4 would reduce the level of active use by 30 percent").

In its 2015 Final Decision, BLM adopted season-of-use constraints which would guide the scheduling of livestock grazing use. BLM provided that grazing use would be authorized no more than 1 year out of every 3 years in all pastures during the sage-grouse breeding season (April 15-June 15); during the active growing season for upland bunchgrass species (May 1-June 30); and in pastures containing managed reaches of Piute Creek, during the mid-summer period (July 1-September 15). Based on these season-of-use constraints, BLM adopted the pasture-rotation grazing system outlined under Alternative 4A in the EA. See 2015 Final Decision at 16, 17.

BLM expressly declined to authorize any new range improvements, such as modification or construction of fences or pipelines, or re-drilling wells. *Id.* at 18. BLM stated that "the purpose . . . [of] permit renewal did not include the addition of new infrastructure." *Id.* at 27. Instead, BLM noted that, rather than encumbering the permit renewal process, it would consider proposed new range improvements "outside the current permit renewal process." *Id.*; *see id.* at 12-13.

⁸ BLM reduced, but did not suspend, active AUMs by 9,150, since, as it explained in the 2015 EA and Final Decision, 43 C.F.R. § 4110.3-2 does not provide for holding reduced AUMs in suspension. That regulation at subsection (a) provides only for suspension in the case of a temporary reduction due to drought, fire, or other natural causes, or to facilitate the installation, maintenance, or modification of range improvements. Petan's present situation involved, instead, a reduction deemed necessary under subsection (b), because grazing use was "not consistent" with 43 C.F.R. Subpart 4180. See EA at 63 n.54 (citing 43 C.F.R. § 4110.3-2(c)); 2015 Final Decision at 14.

BLM concluded that adoption and implementation of Alternative 4A, reducing active grazing use from 19,500 to 10,350 AUMs, and changing the seasons of use, had “the greatest certainty,” over the next 10 years, of making significant progress towards meeting Idaho S&Gs and RMP objectives. 2015 Final Decision at 18. Specifically, BLM found that Alternative 4A would benefit sage-grouse, which is a species indicative of the health of the sagebrush ecosystem, consistent with BLM’s special status species policies, enunciated in the Manual and IM No. 2012-043. *Id.* at 18, 22; *see id.* at 8-9, 9, 14, 21, 22-23; Answer at 14-16.

On April 9, 2015, Petan timely appealed the 2015 Final Decision to the Hearings Division, Office of Hearings and Appeals, and requested a stay of its effect, not as to the renewal of its 10-year grazing permit, but only to the extent BLM reduced its authorized grazing use and changed the seasons of use in the Allotment.

III. Standard of Review for Petition for Stay

An appellant who petitions for a stay of a final BLM grazing decision pending appeal is required to show “sufficient justification” for a stay, based on the following four standards: (1) The relative harm to the parties if the stay is granted or denied; (2) The likelihood of the appellant’s success on the merits; (3) The likelihood of immediate and irreparable harm if the stay is not granted; and (4) Whether the public interest favors granting the stay. 43 C.F.R. § 4.471(c). The appellant requesting a stay bears the burden of proof to demonstrate the stay should be granted. 43 C.F.R. § 4.471(d); *cf. W. Wesley Wallace*, 156 IBLA 277, 278 (2002) (Proponent of stay of BLM grazing decision bears burden, under 43 C.F.R. §§ 4.21(b) and 4160.3(c) (2001), to establish, to the Board’s satisfaction, that each of the four standards is satisfied). Failure to satisfy any one of the stay criteria requires denial of the stay petition. *See, e.g., Oregon Natural Resources Council*, 148 IBLA 186, 188 (1999).

IV. Judge Sweitzer’s May 2015 Order

In his May 2015 Order, Judge Sweitzer denied Petan’s petition for a partial stay, concluding, based on a preliminary review of the record and the pleadings of the parties, that Petan had failed to carry its burden to justify a stay based solely on the public interest criterion, concluding that the public interest in taking appropriate actions to promote the conservation of the sage-grouse and its habitat in the Allotment, which is evident in BLM policy pronouncements, weighed in favor of *not staying* the effect of the decision. He reasoned that denying the stay would reduce any threat to, as well as maintain and enhance, the sage-grouse and its habitat, thereby obviating the need to list the species under the ESA, and would promote its declassification as a special status species. *See Order* at 20-22.

Judge Sweitzer quoted at length from the 2015 EA regarding the relative harms to the sage-grouse and its habitat of adopting the no action alternative (Alternative 1), which would authorize grazing consistent with the terms and conditions of the existing permit, versus the relative benefits to the sage-grouse and its habitat of adopting Alternative 4, which would authorize grazing subject to the substantially revised terms and conditions of the new permit. *See* Order at 11-17. He emphasized that, in BLM's opinion, Alternative 4 best promotes the goals of conserving the sage-grouse and its habitat in the Allotment. Under Alternative 4, he noted, there would be a reduction in the numbers of cattle allowed to graze as well as in the timing and duration of grazing use in both upland and riparian areas. This reduction would promote the diversity, health, vigor, number, and size of perennial grasses and other vegetation, and would best meet the forage, cover, and other life history requirements of sage-grouse and their progeny, possibly increasing the sage-grouse population. *Id.*

Judge Sweitzer further quoted at length from BLM's Proposed Decision, to the extent it addressed Petan's arguments, as advanced by Petan's grazing expert, WRS. Therein, BLM had stated that it substantially disagreed with WRS's assessment regarding the favorable condition of the range from the standpoint of Standard 4 (Native Plant Communities), and that even if BLM agreed that the range was making progress towards meeting the Standard, adopting Alternative 4A would facilitate faster progress and achieve "long-term potential benefits to native plant communities and the [G]reater sage-grouse." May 2015 Order at 18 (citing Proposed Decision at 18-19) (emphasis omitted); *see* 2015 Final Decision at 19-20.

Judge Sweitzer stated that both Congress and BLM have recognized a "strong public interest" in preserving the sage-grouse, a BLM sensitive and candidate species. May 2015 Order at 20. He noted that the BLM Manual provides for the initiation of "*proactive conservation measures* that reduce or eliminate threats" to special status species "to minimize the likelihood of and need for listing these species under the ESA." *Id.* (quoting BLM Manual § 6840.02B). He explained that "BLM's nationwide policy expressly recognizes the public interest in conservation of sensitive species," including the sage-grouse. *Id.* at 21 (citing BLM Manual § 6840.2). He further observed that the public interest in conserving the sage-grouse is articulated in IM No. 2012-043, which provides for the authorization of livestock grazing "in a way that maintains and/or improves Greater Sage-Grouse and its habitat," where doing so would occur in an area already largely designated as PPH, and thus "undisputedly important sage-grouse habitat." *Id.* (quoting IM No. 2012-043 at 4), 22. He also noted that the Board, in *Edward R. Woodside*, 125 IBLA 317, 324-25 (1993), upheld BLM's exercise of discretionary authority to protect a candidate species and its habitat as "in the public interest." *Id.* at 21.

Judge Sweitzer expressly concluded that the public interest in conserving sage-grouse and its habitat was not outweighed by the public interest in the economic stability of Petan's livestock operation. He noted that "a stay would prevent economic harm to Petan from having to find alternate means for feeding the cattle which it can no longer graze on the Allotment," but that "Petan has shown that it can survive grazing at levels on the Allotment lower than the 10,350 AUMs authorized under BLM's decision, especially in the relatively short period of time necessary to resolve the appeal[] of BLM's decision." *Id.* at 22. He held that "the public interest favors denying Petan's stay petition and therefore it must be denied." *Id.*

Judge Sweitzer noted that, since Petan disputed "nearly all the changes" in grazing use made in BLM's 2015 Final Decision, which were "the main terms and conditions" of the permit, Petan "effectively" challenged the entirety of the decision, "seek[ing] a return to grazing management under the pre-decision permit." *Id.* at 19, 20. He further noted that, since he lacked supervisory authority over BLM, he could not "pick and choose components" from the pre-decision permit and the decision permit, each of which adopted a "separate integrated grazing scheme." *Id.* at 20 (citing *Southern Utah Wilderness Alliance*, 172 IBLA 183, 184-85 (2007)). For these reasons, Judge Sweitzer stated that he "analyze[d] Petan's petition as a petition for a full stay." *Id.* (emphasis added).

Judge Sweitzer's May 2015 Order denying Petan's stay petition resulted in BLM's 2015 Final Decision becoming immediately effective on May 6, 2015, pursuant to 43 C.F.R. §§ 4.472(e) and 4.479(a).

V. *Petan's Appeal from Judge Sweitzer's May 2015 Order*

On May 20, 2015, Petan appealed from Judge Sweitzer's May 2015 Order, pursuant to 43 C.F.R. § 4.478(a). Petan filed its SOR for appeal on June 29, 2015, BLM filed its Answer on July 27, 2015. On August 14, 2015, Petan filed a Reply.⁹

⁹ In its Reply, Petan notes that BLM's Answer exceeds the page limit for answers to an SOR, as set forth in 43 C.F.R. § 4.414(b)(1). BLM's Answer is 45 pages long, not including exhibits. Petan notes further that BLM did not file a motion for leave to exceed the page limit, and that "the Board should, in its discretion, respond accordingly by omitting any analysis of the excess pages." Reply at 2. On Aug. 18, 2015, BLM filed a Motion to Exceed Page Limitations (Motion to Exceed), stating that its failure to submit the Motion to Exceed with the Answer was a matter of oversight. BLM states that Petan's underlying appeal of the 2015 Final Decision is 165 pages and addresses a wide range of complex issues, which were carried forward into its appeal of Judge Sweitzer's May 2015 Order. BLM explains that it "needs ample space

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Petan clearly attempts to establish that it satisfies all of the criteria for a stay. Petan argues that it is likely to succeed on the merits of its appeal, because, *inter alia*, neither the ALJ nor BLM addressed the overwhelming majority of the claims of error raised in Petan's appeal from and related petition for a stay of BLM's 2015 Final Decision. *See* SOR at 10-19. Petan contends that not staying BLM's 2015 Final Decision is likely to cause more harm to Petan, as a result of the severe permanent reductions in authorized grazing use, than the harm to BLM of staying the decision, and that the harm to Petan is likely to be immediate and irreparable. *See id.* at 20-22. Petan concludes that the public interest weighs in favor of staying BLM's 2015 Final Decision, rather than in favor of not staying the decision. *See id.* at 22-23.

Petan objects to the Judge's denial of its petition for a partial stay of BLM's 2015 Final Decision on the basis that Judge Sweitzer previously granted its petition for a partial stay of BLM's 2013 Final Decision, where the two decisions, and the supporting EAs, are "substantially identical[.]" *Id.* at 3; *see id.* at 18. Rather, Petan asserts that, since the factual situation is unchanged, it is currently entitled to a stay for the same reasons that convinced Judge Sweitzer to grant a stay in 2013. *See id.* at 18, 19.

Petan argues that Judge Sweitzer was bound under "the principles of collateral estoppel, res judicata, and the 'law of the case,'" to grant a partial stay of BLM's 2015 Final Decision just as he had of the earlier 2013 Final Decision. *Id.* at 19 (citing *Nellie McLaughlin*, 61 IBLA 347 (1982)); *see id.* at 18-19.¹⁰ Petan further maintains

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to defend and explain why immediate implementation of the underlying decision is important and critical." Motion to Exceed at 2. In the absence of any showing that Petan is prejudiced by BLM's delayed submission of a motion to exceed the page limit, and in view of the complexity of the issues involved in this case, we decline to omit the excess pages. Of course, as we noted in *Southern Utah Wilderness Alliance*, 185 IBLA 150, 155 (2014), "in a different case, a substantive argument might be in jeopardy as a result of ignoring the Board's rule." We conclude that this is not such a case.

¹⁰ Petan notes that Judge Sweitzer's adjudication of the stay petition is different from every other "Owyhee 68 Litigation stay order[.]" SOR at 3; *see id.* at 19 ("[T]he Hearings Division granted stays in almost all of the other appeals related to the similar Owyhee 68 litigation"). The "Owyhee 68 Litigation" refers to an area-wide grazing permit renewal process by the Owyhee Field Office involving 68 permits. *See id.* at 4-5. The Garat Allotment is part of Group 1 of the Owyhee 68 Litigation, which encompasses, in addition to the Garat, the Castlehead/Lambert, Swisher Springs, and Swisher Fenced Federal Range (FFR) allotments.

that, since the 2015 Final Decision was “essentially unchanged” from the 2013 Final Decision, BLM failed to meet the requirements of the 2014 Decision in which Judge Holt set aside the 2013 Final Decision, remanding the case to BLM for compliance section 102(2)(C) of NEPA and readjudication of Petan’s renewal application. *Id.* at

VI. Analysis

[1] Since we agree that a stay of the effect of BLM’s 2015 Final Decision is not in the public interest, we conclude that Judge Sweitzer properly denied the petition for a partial stay.

At the outset, we agree with Judge Sweitzer that Petan’s petition for a partial stay was, in effect, a petition for a full stay. The renewed permit adopted an “integrated grazing scheme[.]” May 2015 Order at 20. To “pick and choose” which components to stay or not to stay could potentially result in the authorization of grazing at odds with any coherent grazing management scheme. We find no fault with Judge Sweitzer viewing the decision as an integrated whole, and deciding whether to stay that decision in full. Moreover, we fully agree that, since Petan sought by its stay to effectively gut the renewed permit, its petition is properly viewed as a petition for a full stay.

We reject Petan’s argument that Judge Sweitzer was bound by the principles of collateral estoppel, *res judicata*, or the “law of the case,” in adjudicating Petan’s current stay petition. It is true that the current appeal from BLM’s 2015 Final Decision is brought by the same appellant (Petan) against the same respondent (BLM) as the prior appeal from BLM’s 2013 Final Decision, and seeks a stay, in part, for one of the same reasons that prevailed in the prior appeal, *i.e.*, BLM’s failure to consider the alternative of constructing or reconstructing range improvements as required by section 102(2)(C) of NEPA. However, the two Final Decisions do not give rise to the same issues or the same claims. The present appeal concerns the validity of the 2015 Final Decision that adjudicated Petan’s 2014 renewal application, while the prior appeal concerned the validity of the 2013 Final Decision that adjudicated Petan’s 2011 renewal application. This fact alone precludes the application of the doctrines of collateral estoppel and *res judicata*. *See, e.g., Turner Brothers Inc. v. Office of Surface Mining Reclamation and Enforcement*, 102 IBLA 111, 120-21 (1988); *Nellie McLaughlin*, 61 IBLA at 350, 351-52. Nor was Judge Sweitzer bound by the prior stay orders he or the other ALJs issued under the doctrine of “law

of the case,” since none of these orders established precedent binding in the present case. See, e.g., *Vern T. Weiss*, 128 IBLA 119, 123 (1993); *Nellie McLaughlin*, 61 IBLA 352.¹¹

The record in this case amply demonstrates that continued grazing under the prior permit is likely to adversely affect the sage-grouse and its habitat in the Allotment in a manner and to a degree greater than authorizing grazing to occur under the new permit. In ruling on Petan’s petition for a stay, regardless of whether or not he granted the stay, Judge Sweitzer was without the authority to direct BLM to construct or reconstruct any range improvements proposed by Petan in its pending renewal application. See *Robert E. Oriskovich*, 128 IBLA 69, 70-71 (1993) (“The granting of a stay would merely mean that the decision denying the plan of operations would not be effective during this Board’s review of the decision [on appeal]. It would not constitute approval of the pending plan of operations, nor would it authorize any activities under the plan.”). Judge Sweitzer was faced with the stark choice of either staying the 2015 Final Decision, permitting grazing to continue as authorized under the existing permit, or not staying the Decision, authorizing grazing to proceed in accordance with the new permit. Given the choice presented, we are not persuaded that Judge Sweitzer failed to choose the better option regarding numbers of livestock and timing and duration of grazing, so far as concerns the welfare of the sage-grouse and its habitat. Nor do we think he blindly sought to advance “generic policy concerns over species conservation” without regard to other multiple uses of the public lands. SOR at 22.

In addressing whether it is likely to succeed on the merits of its appeal, Petan touches on the question of whether Judge Sweitzer properly determined whether a stay of BLM’s 2015 Final Decision is in the public interest. Petan argues

¹¹ Petan argues that Judge Sweitzer’s adjudication of its stay petition relies improperly upon a proposed Land Use Plan Amendment (LUPA) concerning sage-grouse management “that is not final,” and, even if final, is “supportive of Petan’s position, not BLM’s position[.]” SOR at 3. We find no such reliance. On May 29, 2015, following Judge Sweitzer’s May 2015 Order, BLM published notice in the *Federal Register* of the availability of the Idaho and Southwestern Montana Greater Sage-Grouse Proposed LUPA and Final EIS. See 80 Fed. Reg. 30,676 (May 29, 2015); see SOR at 4. We find no mention of the pending LUPA in Judge Sweitzer’s May 2015 Order. Nor do we find any indication that, in denying a stay, he relied on the pending LUPA, which had yet to be formally proposed by the time of his order. The Proposed LUPA/Final EIS may be found at <http://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=42003> (last visited Aug. 10, 2015).

that Judge Sweitzer improperly focused on whether the Final Decision complied with the guidance of the BLM Manual and IM No. 2012-043 concerning the conservation of the sage grouse, when neither the Manual nor the IM have the force and effect of law. SOR at 3. According to Petan, Judge Sweitzer's reliance on the Manual and IM renders his public interest analysis faulty, since he improperly concluded that the existing grazing system adversely affected the sage-grouse and its habitat. *Id.* at 13.

Petan is correct that the Manual and IM do not have the force and effect of law, since they were not promulgated, in the manner of regulations, by notice and opportunity-for-comment rulemaking, in accordance with the Administrative Procedure Act, 5 U.S.C. § 553 (2012). *See, e.g., Robert S. Glenn*, 124 IBLA 104, 109 (1992). However, Petan overlooks the principle that, while the Manual and IM are not binding on the Board, or an ALJ, they are binding on BLM. The Board, and an ALJ, properly upholds BLM's compliance with its policy direction, unless doing so is unreasonable or contradicted by statute or regulation. *See, e.g., Lassen Motorcycle Club*, 133 IBLA 104, 108 (1995) (“[Board will generally require BLM to adhere to its policy guidance when it is] reasonable and consistent with the law”); *Predator Project*, 127 IBLA 50, 53-54 (1993); *Robert S. Glenn*, 124 IBLA at 108-09; *Howard B. Keck, Jr.*, 124 IBLA 44, 55 (1992), *aff'd*, *Keck v. Hastey*, No. S92-1670-WBS-PAN (E.D. Cal. Oct. 4, 1993); *The Wilderness Society*, 106 IBLA 46, 55 (1988); Answer at 30-31.

In any event, Petan inaccurately attributes to Judge Sweitzer the view that the Manual and IM compelled BLM, as a matter of law, to take certain steps in order to ensure that grazing comported with the conservation of the sage-grouse and its habitat. He did not rely on the “legal [enforceab]ility” of these policy documents. SOR at 22. Rather, he properly looked to the Manual and IM only to discern what guidance they offered regarding whether grazing that had the potential to impact the sage-grouse and its habitat was in the public interest. Petan itself appears to concede that the Manual and IM are instructive in this regard. *See* SOR at 13 (“[T]here may be a general public interest in species conservation”). Judge Sweitzer concluded that the Manual and IM instructed BLM that grazing should, as a matter of public interest, take place in the manner that best conserved the sage-grouse and its habitat. *See* Answer at 31 n.11. He determined that grazing under the 2015 Final Decision had the best potential for achieving that goal.

Petan argues that Judge Sweitzer erred in finding that the public interest in conserving the sage-grouse and its habitat “outweighs the public interest in the economic stability of Petan's livestock operation.” May 2015 Order at 22; SOR at 20-22. We disagree. Petan appears to unjustly minimize the public interest in conserving the sage-grouse and its habitat, especially since FWS is considering

whether to list the species as threatened or endangered under the ESA. See Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701(a)(8), 1702(c), and 1732(a) (2012); Taylor Grazing Act, 43 U.S.C. § 315a (2012); *In re Steuart Transportation Co.*, 495 F. Supp. 38, 40 (E.D. Va. 1980) (“Under the public trust doctrine, . . . the United States ha[s] the right and the duty to protect and preserve the public’s interest in natural wildlife resources.”); *Edward R. Woodside*, 125 IBLA at 324-25.

In particular, Petan objects to Judge Sweitzer’s conclusion that, because it has adjusted in recent years to substantially reduced grazing capabilities, by relying on feedlots and other alternative forage sources, it will continue to be capable of doing so, either in the short-term or the long-term. See SOR at 20-21. Petan emphasizes that the significant reductions in authorized grazing use will cost Petan at least close to \$4.1 million in lost revenue “over the course of the ten-year permit,” as acknowledged in the EA. *Id.* at 20 (citing EA at 216 (Table SOCE-12 (Impact on expected 10-year net revenue for each alternative for the Garat allotment)), and Second John C. Jackson Decl. (Apr. 8, 2015), ¶¶ 44, 67, at 9, 13). Petan asserts that this loss of revenue, which cannot be offset, would seriously impair the viability of Petan’s operations. It notes that, in the short-term, the value of Petan’s Ranch would be immediately decreased by close to \$3.2 million. *Id.* (citing Second Jackson Decl., ¶¶ 41, 42, at 8-9). Petan challenges Judge Sweitzer’s assertion that, just because it has been able to sustain its operations “for the last three years” with alternative forage sources, it will be able to do so going forward: “[T]hese various mitigation measures all depend on a series of assumptions (e.g., the availability of feedlot space)—and if these assumptions turn out to be false, then alternative forage sources may not, in fact, exist after all.” *Id.* at 21 (citing Second Jackson Decl., ¶¶ 54-56, at 11-12).

Petan, understandably, desires “a viable short-term and long-term solution that safeguards the continued existence of Petan’s cattle operation.” *Id.* at 21. However, Judge Sweitzer’s principal concern was whether the public interest in the continued viability of Petan’s cattle operation was threatened by not staying the effect of the 2015 Final Decision. He was reasonably assured, based on the experience of the last 3 years, that Petan could sustain a reduction in authorized grazing use to 10,350 active AUMs. He therefore concluded that the public interest did not favor staying the effect of the decision. See Answer at 21 n.7; Final Decision at 6, 19 n.17, 25 (“Reported actual use in the three most recent years has not exceeded the 10,350 AUMs of active use that will be authorized under the decision.”).

We agree with Judge Sweitzer’s assessment, especially since we are not convinced that, for the foreseeable future, Petan will need to reduce its *actual*

grazing use of the Allotment, resulting in lost revenue and the costs of maintaining the reduced numbers of cattle on other pasturage or feedlots. Indeed, we are informed by Petan, in its April 8, 2015, appeal to the Hearings Division, and by BLM, in its July 24, 2015, response to Petan's present appeal, that Petan voluntarily reduced its actual grazing use in recent years because of drought conditions and that those conditions persist. See Notice of Appeal/SOR (before ALJ) at 162; Answer at 40 n.11.

While Petan may not be able to "use *temporary* mitigation measures to stave off *permanent* impacts," all that Judge Sweitzer was required to assess was whether Petan could do so in the near term, while the appeal from BLM's 2015 Final Decision is pending before the Hearings Division.¹² SOR at 21. Nothing offered by Petan on appeal dissuades us from that conclusion. At best, Petan only establishes that it will sustain substantial lost revenue and incur substantial costs over the life of the 10-year permit. We fail to see how the reduction in authorized grazing use would, in the short-term, cause that result. Nor do we discern any basis for concluding that the viability of Petan's operations on the Allotment are at all threatened in the immediate future.

At its most basic, we agree with Judge Sweitzer that the public interest favors denying Petan's petition for a partial stay. Allowing implementation of BLM's 2015 Final Decision to go forward pending a final determination of the appeal by the ALJ will better preserve the Federal rangeland at issue for the benefit of sage-grouse and its habitat. The fact that the Idaho S&Gs regarding the sage-grouse are not being satisfied mandates that "appropriate action" be taken, and it cannot be doubted that the 2015 Final Decision constituted, at least, such action in the near term.¹³

¹² We note that any adverse ruling by Judge Sweitzer on the merits of Petan's appeal currently pending before the Hearings Division will be subject to appeal to this Board. Should a petition for a stay also be filed with the Board pursuant to 43 C.F.R. §§ 4.21 and 4.478(e), we would decide whether to stay the effect of Judge Sweitzer's decision during the pendency of that appeal.

¹³ We agree with Judge Sweitzer that, while Petan objects to BLM's determination the Allotment was generally not meeting specific Idaho S&Gs, Petan "raised no serious challenges" to BLM's assessment that grazing under the existing permit was "not meeting or only minimally meeting" sage-grouse habitat requirements, and that approving grazing under the renewed permit would maintain and enhance habitat. May 2015 Order at 22; see Answer at 27, n.9; 2015 Final Decision at 20, 21, 24, 25, 28; RHA Determination, dated July 8, 2014, at 18-19. Petan noted, at best, that the Idaho S&Gs are being met in some pastures and not being met in other

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We, therefore, conclude that Judge Sweitzer properly held that the public interest weighed in favor of not staying the effect of BLM's 2015 Final Decision. We therefore affirm his May 2015 Order denying Petan's petition for a partial stay.

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 ALJ's May 2015 Order denying Petan's petition for a partial stay is affirmed.

_____/s/_____
James F. Roberts
Administrative Judge

I concur:

_____/s/_____
Amy B. Sosin
Administrative Judge

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pastures of the Allotment, in some cases as a consequence of current livestock grazing management practices, and in other cases not as a consequence of such practices. See NA/SOR (Before ALJ) at 153-54 (citing Second Quinton J. Barr Affidavit (Apr. 8, 2015), ¶ 60, at 43-44); Final Decision at 6-9.