



CHIPMUNK GRAZING ASSOCIATION, INC., *ET AL.*

188 IBLA 35

Decided June 16, 2016



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

703-235-3750

703-235-8349 (fax)

CHIPMUNK GRAZING ASSOCIATION, INC., *ET AL.*

IBLA 2016-84

Decided June 16, 2016

Interlocutory appeal from an order of Administrative Law Judge James H. Heffernan ruling that the Soda Fire did not render moot three Final Decisions establishing grazing use and management on the Group 2 Allotments in the Owyhee Mountains of Idaho, and that the Owyhee (Idaho) Field Office, Bureau of Land Management, enjoys the interim jurisdictional authority to issue temporary emergency orders covering burned areas. ID-BD-3000-2014-020, *et al.*

Order of the Administrative Law Judge affirmed; interlocutory appeal denied.

1. Administrative Practice;  
Administrative Procedure: Administrative Review;  
Rules of Practice: Appeals: Jurisdiction

The Board of Land Appeals will not entertain an appeal when no effective relief can be afforded an appellant. Where BLM issues Final Decisions establishing long-term use and management on grazing allotments, and subsequently a fire burns all or major portions of the allotments, the Final Decisions are not moot because the ALJ and/or the Board may provide the relief the permittees are seeking.

2. Administrative Practice;  
Administrative Procedure: Administrative Review;  
Rules of Practice: Appeals: Effect of;  
Rules of Practice: Appeals: Jurisdiction

When an appeal is filed with the Board of Land Appeals, subject matter jurisdiction is lodged with the Board, suspending the authority of the deciding official to exercise further decision-making jurisdiction over matters

directly relating to the subject of the appeal. However, the appeal does not have the effect of suspending the deciding official's authority to act on matters that are functionally independent from the subject of the appeal.

APPEARANCES: W. Alan Schroeder, Esq., and Brian D. Sheldon, Esq., Boise, Idaho, for Chipmunk Grazing Association, Inc., *et al.* (Appellants); Paul Ruprecht, Esq., Portland, Oregon, for Western Watersheds Project; Albert P. Barker, Esq., and Paul L. Arrington, Esq., Boise, Idaho, for Idaho Cattle Association, *et al.* (Intervenors); Robert B. Firpo, Esq., and Anne C. Briggs, Esq., Office of the Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

#### OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE ROBERTS

On March 8, 2016, this Board granted a Petition to file an Interlocutory Appeal submitted by Chipmunk Grazing Association, Inc. (GZA), Ted Blackstock, Alan Johnstone, Tim McBride, and L.S. Cattle Company (LS Cattle) (Permittees or Chipmunk Group), in connection with a series of consolidated appeals pending before the Hearings Division. In these appeals, the Permittees challenge three Final Decisions issued on December 16, 2013, by the Owyhee (Idaho) Field Office, Bureau of Land Management (BLM), establishing grazing use and management on the Group #2 Allotments in the Owyhee Mountains of Idaho. These Final Decisions were issued as part of a comprehensive process, known as the Owyhee 68 Permit Renewal Process, undertaken by BLM to examine and renew grazing permits on over 70 allotments in the Owyhee Mountains, including the Group #2 Allotments. In an order dated February 9, 2016, Administrative Law Judge James H. Heffernan granted the Permittees' Motion to Certify two issues to the Board.<sup>1</sup> Those issues arose from an earlier order, dated January 21, 2016, in which he determined that remand of the Final Decisions to BLM for further adjudication was "unnecessary."<sup>2</sup> The two issues he certified to the Board were: (1) whether the impacts of the Soda Fire, which impacted the Allotments involved in BLM's Final Decisions, have rendered those Decisions moot; and (2) "whether BLM enjoys the emergency jurisdictional authority to address the fire's impacts in the interim, short of a remand of those decisions to BLM."<sup>3</sup> As noted, the Permittees submitted a Petition to File Interlocutory Appeal to the Board, which we granted in an order dated March 8, 2016.

In this opinion, we hold that ALJ Heffernan properly concluded (1) that the Soda Fire did not render the Final Decisions moot and (2) that BLM enjoys the

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<sup>1</sup> Order Granting Certification at 4.

<sup>2</sup> Order Denying Remand at 7.

<sup>3</sup> Order Granting Certification at 4.

jurisdictional authority to address the Soda Fire's impacts during the pendency of the appeals. Accordingly, we affirm ALJ Heffernan's January 21, 2016, order, and deny the Interlocutory Appeal.

#### *BACKGROUND*

In 2010, BLM began the Owyhee 68 Permit Renewal Process culminating in a series of Final Decisions issued in 2013 that "reduced use and modified grazing management on the allotments in order to achieve long term objectives and address problems with outdated grazing management."<sup>4</sup> According to BLM, "all of BLM's Owyhee 68 decisions (including those decisions at issue here) were intended to be implemented over the long-term to promote landscape-scale change and healthy, sustainable range conditions," and "accounted for uncertainties like climate change and fire by creating conservative grazing programs which would be successful in the face of those stressors."<sup>5</sup>

On December 16, 2013, BLM issued the three Final Decisions involved herein establishing grazing use and management on the Group #2 Allotments, as follows: (1) Alkali-Wildcat and Rats Nest (Wild-Rat), Chipmunk Field FFR, Elephant Butte, Sands Basin, and Texas Basin FFR Allotments; (2) Blackstock Springs and Corral Creek FFR Allotments; and (3) Jackson Creek and Stanford FFR Allotments. BLM explains that the Decisions "modified grazing permits to promote long-term sustainable resources and resiliency against stressors like drought and fire."<sup>6</sup>

The Permittees appealed the Final Decisions to the Hearings Division, which docketed the appeals as ID-BD-300-2014-020 (appeal of CGA and Blackstock, involving the Chipmunk Field FFR, Elephant Butte, Sands Basin, Texas Basin FFR, and Alkali-Wildcat and Rats Nest (Wild-Rat) Allotments); ID-BD-300-2014-129 (appeal of CGA and Blackstock, involving the Elephant Butte Allotment); ID-BD-300-2014-021 (appeal of CGA, Blackstock, and Johnstone, involving the Blackstock Springs and Corral Creek FFR Allotments); and ID-BD-300-2014-022 (appeal by CGA, McBride, and LS Cattle, involving the Jackson Creek and Stanford FFR Allotments). By Order dated February 27, 2014, ALJ Heffernan consolidated the various appeals and stayed the underlying grazing decisions.

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<sup>4</sup> See BLM's Request for Briefing Schedule and Motion to Expedite at 2.

<sup>5</sup> BLM's Opposition to Petition for Interlocutory Review or, in the alternative, BLM's Answer (Opposition/Answer) at 3; see Declaration of Michele McDaniel, Project Manager for the Soda Fire Emergency Stabilization and Rehabilitation (ESR) Program and former Assistant Field Manager of BLM's Owyhee Field Office (McDaniel Declaration) (submitted to the Hearings Division with BLM's Dec. 1, 2015, Response to ALJ's Order to Show Cause).

<sup>6</sup> BLM's Response to Order to Show Cause at 6.

In August of 2015, during the pendency of prehearing proceedings, the Soda Fire burned 280,000 acres in southwest Idaho, including 100% of the Blackstock Springs, Coral Creek FFR, Texas Basin FFR, Sands Basin, and Wild-Rat Allotments, 88% of the Chipmunk Field FFR Allotment, 52% of the Jackson Creek Allotment, 93% of the Stanford FFR Allotment; and 34% of the Elephant Butte Allotment. Following assessment of the damage caused by the Soda Fire, on October 19, 2015, the Boise and Vale Field Offices issued a combined Soda Fire ESR Plan. The ESR Plan “describes post-fire conditions and outlines a five-year treatment plan to ensure recovery and rehabilitation.”<sup>7</sup> BLM asserts that “[t]he Final ESR Plan is sufficiently robust that it will allow recovery of the relevant BLM lands so long as BLM implements appropriate long-term grazing practices after any temporary closures.”<sup>8</sup>

The Permittees sought remand of the Final Decisions to BLM for further adjudication in light of the Soda Fire and the ESR Plan. On November 12, 2015, ALJ Heffernan issued an order for the parties to show cause why the consolidated appeals should not be remanded because of the Soda Fire. He stated: “Given that the impacts of the Soda Fire have substantially changed the vegetative circumstances on the ground, on an allotment-by-allotment basis, BLM’s . . . Final Decisions may have been rendered moot.”<sup>9</sup>

Following briefs submitted by the parties, on January 21, 2016, ALJ Heffernan issued his Order Denying Remand. He stated “that the putative impacts of the Soda Fire do not justify remand, and that it will be necessary to proceed to an adjudication on the merits of these consolidated appeals, whether it be by hearing or Summary Judgment.”<sup>10</sup> He concluded that the Final Decisions had not become moot because of the Soda Fire and the ESR Plan, and that “because BLM enjoys the interim jurisdictional authority to issue temporary emergency orders covering burned areas, pursuant to the provisions of 43 C.F.R. Section 4110.3-3(b)(1)(i), remand of these dockets to BLM for further agency adjudication is, therefore, unnecessary.”<sup>11</sup>

The Permittees filed a Motion to Certify Interlocutory Appeal with ALJ Heffernan, arguing that the Final Decisions “are now moot in light of the Soda Fire because the fire completely changed the underlying factual basis that formed the foundation for the appealed decisions.”<sup>12</sup> The Permittees further contended that in denying remand, ALJ Heffernan “cites no legal authority for [his] conclusion that

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<sup>7</sup> Opposition/Answer at 5.

<sup>8</sup> *Id.* (citing McDaniel Declaration at ¶¶ 8-11, 14-17).

<sup>9</sup> Order to Show Cause at 4.

<sup>10</sup> Order Denying Remand at 5.

<sup>11</sup> *Id.* at 7.

<sup>12</sup> Motion to Certify at 9-10.

'BLM enjoys interim jurisdictional authority to issue temporary emergency orders covering burned areas' on the public lands."<sup>13</sup> By order dated February 9, 2016, ALJ Heffernan certified these two issues to the Board, holding that the Motion to Certify involved controlling questions of law arising from his January 21, 2016, Order, and that "an immediate appeal therefrom may materially advance the final decision."<sup>14</sup>

As noted, on February 12, 2016, the Permittees filed a Petition to File Interlocutory Appeal with the Board, which we granted by Order dated March 8, 2016. The Permittees later indicated to the Board that their Petition "could suffice" as their Statement of Reasons in support of the Interlocutory Appeal. On March 14, 2016, BLM filed an Answer to the Petition, and on April 11, 2016, the Permittees filed a Reply. BLM has filed a Motion to Expedite this appeal, which we hereby grant. We now affirm ALJ Heffernan's Order Denying Remand and deny the Interlocutory Appeal.

#### *THE PETITION FOR INTERLOCUTORY APPEAL*

A party has no right to an interlocutory appeal of an ALJ's ruling during an ongoing proceeding, but may seek one in accordance with 43 C.F.R. § 4.28. To file an interlocutory appeal, a party must obtain both the certification of the ALJ and the permission of an Appeals Board, except in the case where an ALJ abuses his or her discretion in denying a request to certify.<sup>15</sup> In this case, ALJ Heffernan certified the Interlocutory Appeal to the Board, and we granted the Petition to File Interlocutory Appeal filed by the Permittees. We now address the two issues certified to the Board by ALJ Heffernan.

#### *A. The Final Decisions on Appeal are not Moot Because the ALJ and/or the Board May Grant Effective Relief*

The Permittees argue that ALJ Heffernan incorrectly determined that the Soda Fire did not render the Final Decisions moot. They contend that mootness applies because "the Soda Fire has precluded any effective relief from being granted regarding the 2013 Decisions because the resource conditions under appeal no longer exist."<sup>16</sup> Because we agree with ALJ Heffernan's ruling that the Decisions are not moot, we affirm his order.

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<sup>13</sup> Order Granting Certification at 4 (quoting Motion to Certify at 11).

<sup>14</sup> *Id.* at 5 (quoting 43 C.F.R. § 4.28).

<sup>15</sup> 43 C.F.R. § 4.28; *Kendall Nutumya*, 180 IBLA 371, 373 (2011).

<sup>16</sup> Permittees' Reply to ALJ's Order to Show Cause at 14.

[1] The Board has consistently held that an appeal is moot when, as a result of events occurring after the appeal is filed, there is no effective relief that the Board can afford the appellant.<sup>17</sup> That is not the situation with the Final Decisions at issue.

Our decision in *Sorensen* is illustrative. In that case, the appellants challenged an interim grazing decision that BLM had rescinded and replaced with a subsequent, permanent decision. Because the interim decision was no longer in effect, the Board determined that it could not grant any relief to the appellants with respect to that decision, and the appeal therefrom was dismissed as moot.<sup>18</sup> In contrast to the situation in *Sorensen*, the Final Decisions at issue continue to present a live controversy. BLM has not rescinded or replaced the Final Decisions on appeal, nor have the Decisions expired of their own accord. BLM makes a convincing case that it is imperative to implement the Final Decisions, which provide for long-term grazing use and management on the Group #2 Allotments, following stabilization and recovery of the Allotments from the impacts of the Soda Fire.

In her Declaration, McDaniel provided the following context for the Final Decisions:

BLM designed the 2013 decisions to implement long-term practices to promote healthy and resilient public lands. BLM's analysis supporting the 2013 decisions recognized the possibility of fire, and thus BLM designed the decisions and alternatives to incorporate sustainable practices that could be implemented even if there were fires. . . . For these reasons, nothing about the Soda Fire undermines the 2013 decisions or BLM's desire to implement them.<sup>[19]</sup>

She further stated that a remand of the Final Decisions would automatically serve to reinstate the former grazing permits, to the detriment of the long-term health of the Allotments:

If the Hearings Division remands the 2013 decisions to BLM, grazing on the Group #2 allotments will automatically revert back to the grazing practices captured on the old grazing permits that BLM sought to replace with the 2013 decisions. Remand of the 2013 decisions

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<sup>17</sup> See, e.g., *Robert C. Lewis*, 173 IBLA 284, 294 (2008); *Von L. and Marian Sorensen*, 155 IBLA 207, 216 (2001); *Oregon Cedar Products Co.*, 119 IBLA 89, 92 (1991); *Colorado Environmental Coalition*, 108 IBLA 10, 15 (1989).

<sup>18</sup> *Von L. & Marian Sorensen*, 155 IBLA at 219.

<sup>19</sup> McDaniel Declaration at ¶ 16.

re-imposes those permits for the long-term, and thus immediately threatens resources post-burn and post-rehabilitation.<sup>[20]</sup>

She explained that the Final Decisions were stayed by order dated February 27, 2014,<sup>21</sup> and that the Final Decisions will be implemented in the future, if upheld on appeal, even though BLM has imposed emergency closure orders that will be in place until the burned range lands are rehabilitated. Those closure orders will likely extend between 2 and 5 years, depending on “the condition of the lands before the fire.”<sup>22</sup> She concludes that “there is every reason to believe that vegetation can resume on the Group#2 allotments burned by the Soda Fire in the next 2 to 5 years.”<sup>23</sup>

In placing the Final Decisions into proper context, BLM explains that “all of BLM’s Owyhee 68 decisions (including those Group #2 decisions at issue here) were intended to be implemented over the long-term to promote landscape scale change and healthy, sustainable range conditions.”<sup>24</sup> Those Decisions “accounted for uncertainties like climate change and fire by creating conservative grazing programs which would be successful in the face of those stressors.”<sup>25</sup>

ALJ Heffernan was persuaded by BLM’s argument that the Final Decisions at issue “are actually more important in the wake of the Soda Fire than they were beforehand.”<sup>26</sup> BLM noted that “the decisions increased rest on many pastures, decreased annual growing season grazing for upland vegetation, reduced grazing during important periods for sage-grouse, and reduced hot-season use of riparian areas.”<sup>27</sup> ALJ Heffernan agreed with the following assertion made by BLM: “That a fire burned portions of the allotments after BLM issued those decisions is largely irrelevant, since BLM’s professionals determined that pre-fire grazing practices were unacceptable and needed to be changed to implement sustainable grazing systems.”<sup>28</sup> BLM has established that implementation of the Final Decisions will remain central to the long-term viability of the range. The record clearly supports ALJ Heffernan’s ruling that the Soda Fire did not render the Final Decisions moot.

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<sup>20</sup> *Id.* at ¶ 18.

<sup>21</sup> *See* Order Denying Remand at 4.

<sup>22</sup> *Id.* at ¶ 13.

<sup>23</sup> *Id.* at ¶ 15.

<sup>24</sup> BLM’s Response to ALJ’s Order to Show Cause at 7.

<sup>25</sup> *Id.*

<sup>26</sup> Order Denying Remand at 6.

<sup>27</sup> BLM Response to ALJ’s Order to Show Cause at 21.

<sup>28</sup> Order Denying Remand at 6-7 (quoting BLM Response to ALJ’s Order to Show Cause at 21).

Of course, the ultimate fate of the Final Decisions depends upon the outcome of the Permittees' appeals before the Hearings Division, and then, potentially, before this Board. Unlike the situation in *Sorensen*, both the Hearings Division and this Board could provide the Permittees with effective relief. If the Permittees are successful before the Hearings Division in challenging the Final Decisions, the ALJ may provide the very relief they are seeking, *i.e.*, invalidation or modification of the Decisions. Similarly, if the appeal reaches this Board following a hearing and decision, we could provide Appellants with the relief they seek. The consolidated appeals of the decisions are accordingly not moot.

*B. BLM Has Authority to Address Impacts of the Soda Fire While the Final Decisions Are on Appeal*

The Permittees argue that BLM has no authority to issue post-fire grazing decisions, and that remand is necessary to “empower BLM to have jurisdiction over the subject matter of grazing so as to issue its intended wildfire decisions.”<sup>29</sup> In particular, the Permittees argue that the ALJ erred by not identifying the authority for his conclusion.<sup>30</sup> The Permittees are mistaken. ALJ Heffernan stated that “BLM enjoys the interim jurisdictional authority to issue temporary emergency orders covering burned areas, pursuant to the provisions of 43 C.F.R. Section 4110.3-3(b)(1)(i).”<sup>31</sup> The Permittees correctly note that the ALJ erred in referencing the 2006 grazing regulations, which were invalidated by the Ninth Circuit in *Western Watersheds Project v. Kraayenbrink*.<sup>32</sup> However, except for minor organizational changes, the provisions of the 2005 regulations are the same, and the inadvertent reference to the 2006 regulations does not alter the substance of the ALJ’s Order. The governing regulations clearly authorize BLM to change grazing practices to protect resources in response to events such as the fire that occurred in this appeal.<sup>33</sup> This authority is separate and distinct from the regulation providing for the issuance of the 10-year grazing permits approved in the Final Decisions.<sup>34</sup>

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<sup>29</sup> Petition at 10.

<sup>30</sup> Petition at 12.

<sup>31</sup> Order Denying Remand at 7.

<sup>32</sup> 538 F. Supp. 2d 1302 (D. Idaho 2008), *aff’d in relevant part, vacated in part, and remanded*, 632 F.3d 472 (9th Cir. 2011) *cert. denied sub nom, Public Lands Council v. Kraayenbrink*, 132 S. Ct. 366 (2011).

<sup>33</sup> 43 C.F.R. §§ 4110.3-3 and 4190.1 (2005).

<sup>34</sup> 43 C.F.R. 4130.2 (2005); *see Statoil USA E&P, Inc.*, 183 IBLA 61, 64 (2012) (“The agency may continue to carry out its statutory and regulatory duties even if the agency’s actions share a common subject matter with the decision under appeal.”).

[2] We have consistently ruled that when an appeal is filed with the Board, subject matter jurisdiction is lodged with the Board, suspending the authority of the deciding official to exercise further decision-making jurisdiction over matters directly relating to the subject of the appeal.<sup>35</sup> The corollary to this rule is that BLM loses jurisdiction only over matters “directly relating to the subject of the appeal.”<sup>36</sup> “[W]e have never held that once an agency decision has been appealed the agency can do nothing at all related to the matter.”<sup>37</sup> BLM retains jurisdiction to make decisions that are “functionally independent from the subject of the appeal.”<sup>38</sup>

The Permittees rely upon an improper application of the “functionally independent” analyses in *McMurry Oil Co.*<sup>39</sup> and *East Canyon Irrigation Co.*<sup>40</sup> The Board explained in those cases that the jurisdictional limitation pertains only to actions that alter the decision on review.<sup>41</sup> For example, *McMurry Oil Co.* involved an appeal from a decision in which BLM declined to take action on an application for a permit to drill (APD). BLM argued that because the well at issue was part of a larger natural gas development project that had been appealed to the Board, it did not have the subject matter authority to take action on the APD.<sup>42</sup> As framed by the Board, the question was whether approval of the APD was “functionally independent” of the larger project.<sup>43</sup> The Board held that approval of the APD “did not hinge” on the larger development project, and “could proceed independent of any determination regarding whether to proceed with the full field development” of the project.<sup>44</sup> BLM contends:

If the Board found that the well drilling application in *McMurry Oil Co.* was functionally independent of a decision to approve a prior plan of development in the same area, it is hard to imagine how emergency post-fire management of [Chipmunk Group’s] allotments would fall

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<sup>35</sup> See, e.g., *McMurry Oil Co.*, 153 IBLA 391, 392 (2000), and cases cited.

<sup>36</sup> *Robert B. Bunn*, 102 IBLA 292, 297 (1988); see also *McMurry Oil Co.*, 153 IBLA at 395; *East Canyon Irrigation Co.*, 47 IBLA 155, 170 (1980).

<sup>37</sup> *Statoil USA E&P Inc.*, 183 IBLA at 64.

<sup>38</sup> *Robert B. Bunn*, 102 IBLA at 297; *McMurry Oil Co.*, 153 IBLA at 396.

<sup>39</sup> 153 IBLA at 395-96.

<sup>40</sup> 47 IBLA at 170.

<sup>41</sup> *McMurry Oil Co.*, 153 IBLA at 392, 395-96; *East Canyon Irrigation Co.*, 47 IBLA at 170.

<sup>42</sup> *Id.* at 395.

<sup>43</sup> *Id.* at 396.

<sup>44</sup> *Id.* at 397.

within the scope of the 10-year grazing permits, when the post-fire decisions do not in any way alter or obviate the 2013 decisions.<sup>[45]</sup>

We agree with the above-quoted reasoning.

The Permittees have made no showing of a “dependency” between a long-term permit renewal decision and short-term emergency decisions that may temporarily close Allotments, or portions of Allotments, after a fire. As contemplated in the ESR Plan, BLM will take into account existing conditions and the timing and success of vegetation treatments in determining when and under what conditions livestock may be returned to the Allotments under the terms of the Final Decisions.<sup>46</sup> BLM explains the need for “emergency closure decisions” on the Allotments in the following terms:

(a) some permittees, including Appellants here, have refused to agree to closures and have expressed a desire to immediately graze burned lands, (b) any grazing in the immediate aftermath of fire might undermine rehabilitation and treatment efforts implemented as part of the ESR Plan, and (c) the grazing that would occur on-the-ground would be in accordance with stay orders and older existing permits that have already been shown to harm resources and Owyhee Resource Management Plan (ORMP) objectives.<sup>[47]</sup>

BLM argues that “[t]he purpose of any temporary post-fire grazing decisions in this case would be to provide immediate short-term protection to fire-impacted lands until such time as grazing can begin under the 2013 decisions or, if BLM does not prevail in the litigation, the old permits.”<sup>48</sup> We recognize, as does BLM, that the two types of decisions may complement each other, but the short-term emergency actions are not dependent upon the Final Decisions, which are part of a larger program intended to improve range resiliency and health.<sup>49</sup> The emergency grazing decisions that BLM may issue in response to the Soda Fire can proceed independently of the long-term decisions on appeal. Under the standard followed in *McMurry Oil Co.*, BLM’s actions in response to the Soda Fire are functionally independent of the Final Decisions.

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<sup>45</sup> Opposition/Answer at 13.

<sup>46</sup> See Opposition/Answer at 12.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 5-6.

<sup>49</sup> *Id.*

*CONCLUSION*

We accordingly hold that the Final Decisions pending before the Hearings Division are not moot because of the Soda Fire, and that BLM retains the jurisdiction while those appeals are pending to issue emergency decisions to address stabilization and rehabilitation issues resulting from the Fire.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,<sup>50</sup> the Board affirms the ALJ's Order Denying Remand and denies Appellants' Interlocutory Appeal.

\_\_\_\_\_/s/  
James F. Roberts  
Administrative Judge

I concur:

\_\_\_\_\_/s/  
James K. Jackson  
Administrative Judge

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<sup>50</sup> 43 C.F.R. § 4.1.