



JERRI TILLET

188 IBLA 384

Decided October 6, 2016



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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JERRI TILLET

IBLA 2016-260

Decided October 6, 2016

Petition to stay the effect of a decision of the Bureau of Land Management's Billings Field Office in Montana to conduct prescribed burning in the Pryor Mountain Wild Horse Range. DOI-BLM-MT-A010-2016-0030-EA.

Petition to stay denied.

1. Administrative Procedure: Stays

The Board will deny a petition for a stay when the appellant fails to demonstrate sufficient justification for a stay under any one of the stay criteria set forth in the Board's regulations.

2. Administrative Procedure: Stays

An appellant does not show sufficient justification to stay a BLM wildfire management decision under the public interest criterion when the public interest in avoiding a wildfire and its impacts on wildlife and other natural resources weighs in favor of allowing BLM to implement its decision.

APPEARANCES: Jerri Tillett, Lovell, Wyoming, *pro se*; Karan L. Dunnigan, Esq., U.S. Department of the Interior, Office of the Regional Solicitor, Billings, Montana, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE RIECHEL

Jerri Tillett appeals and petitions to stay the effect of a July 26, 2016, Decision Record (DR) of the Bureau of Land Management's (BLM) Billings Field Office in Montana. In the DR, BLM decided to conduct prescribed burning in the Pryor Mountain Wild Horse Range (PMWHR) in Carbon County, Montana, and Big Horn County, Wyoming.

An appellant seeking to stay the effect of a BLM decision must demonstrate that a stay is warranted by showing, among other things, that the public interest favors granting a stay. Because Ms. Tillett has not demonstrated that the public interest favors staying BLM's wildfire management decision, we deny Ms. Tillett's petition.

Standards for Granting a Stay

[1] Under the Board's regulations, a party requesting a stay bears the burden of proof to demonstrate that a stay should be granted.¹ Specifically, a petition for a stay must show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied; (2) the likelihood of 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.² A failure to satisfy any one of the stay criteria will result in denial of a petition for stay.³

BLM's Prescribed Fire Project and Ms. Tillett's Appeal

In July 2016, BLM issued a DR and Finding of No Significant Impact (FONSI) for the PMWHR prescribed fire project, based on an environmental analysis (EA).⁴ The project would implement hazardous fuels management, primarily through prescribed fires, on approximately 6,200 acres within the PMWHR.⁵ The prescribed fire project was designed to protect wild horses, wildlife, wilderness resources, and watersheds from catastrophic wildfire while promoting forest health.⁶ To minimize the project's impacts to wild horses, wildlife, and wilderness resources, however, BLM would burn no more than 300 acres annually over a period of 20 years.⁷ Ms. Tillett timely appealed the DR and petitioned for a stay.⁸

¹ 43 C.F.R. § 4.21(b)(2).

² *Id.* § 4.21(b)(1).

³ *Petan Company of Nevada v. BLM*, 186 IBLA 81, 91 (2015).

⁴ Supplemental EA (DOI-BLM-MT-A010-2016-0030).

⁵ *Id.* at 7.

⁶ *Id.* at 4.

⁷ *Id.* at 7, 43, 44.

⁸ Petition for an Immediate Stay Pending This Appeal and An Appeal Against the PMWHR Prescribed Fire Plan (Petition) (Aug. 25, 2016).

Ms. Tillett Has Not Demonstrated that the Public Interest Favors a Stay

In her petition for a stay, Ms. Tillett states, “I would say the Public Interest favors granting the Stay: Basically the conservative & cautious approach is ultimately the best.”⁹ Ms. Tillett argues that fire destroys forests and their ecosystems, wildlife, and vegetation,¹⁰ but she presents no argument why the public interest favors a stay of BLM’s wildfire management decision.

In contrast, BLM’s DR, EA, and FONSI explain why the wildfire management decision serves the public interest. According to BLM, the project area is “primed for a large scale, high-intensity wildfire that would result in catastrophic impacts to wildlife resources, wild horses, forest, wilderness resources, key watershed components and private land.”¹¹ BLM observes that, “[s]ince 1988, there has been an average of one major wildfire event annually (fires 200 acres or more in size) near or adjacent to the proposed project area.”¹² BLM explains further:

If no action is taken, forest health would continue to decline. Fuel loadings would continue to increase until affected by wildland fire. Wildland fire ignitions would have the potential to be large scale, high-intensity fires that would result in catastrophic impacts to wildlife resources, wild horses, forest, wilderness resources, key watersheds components, private land and compromise firefighter and public safety. Rugged terrain, high fuel densities, and the predicted fire behavior would make suppression difficult and wildland fire would likely spread onto adjacent lands. Forest loss could be severe and dry moisture/soil conditions would retard or limit regeneration of burned forested areas. Possible outcomes could include adverse effects to the wilderness values, forest health, wildlife, wild horses, vegetation, watershed, public/firefighter safety, and private property.^[13]

[2] The record supports BLM’s position that the public interest would be served by implementation of the DR. If BLM cannot implement its action, then the PMWHR and adjacent public lands would continue to be at risk of a catastrophic wildland fire. Ms. Tillett has not shown that the public interest would be served by

⁹ *Id.* at 14.

¹⁰ See Reply to BLM’s Stay at 3-5 (Sept. 29, 2016).

¹¹ EA at 4.

¹² FONSI at 4.

¹³ DR at 9.

staying the action pending resolution of her appeal. Because the public interest in avoiding a wildfire and its impacts on wildlife and other natural resources weighs in favor of allowing BLM to move forward with its project, we deny Ms. Tillett's stay petition.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,¹⁴ we deny the petition for stay.

_____/s/_____
Silvia M. Riechel
Administrative Judge

I concur:

_____/s/_____
Amy B. Sosin
Administrative Judge

¹⁴ 43 C.F.R. § 4.1.