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UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

HAMMOND RANCHES, INC.	)	IBLA 2014-194
	)	OR-020-14-01
	)	
Appellant	)	**BLM Answer to Appeal**
	)	of April 28, 2014 OHA Order
v.	)	Denying Petition for Stay of
	)	
BUREAU OF LAND MANAGEMENT	)	BLM Final Decision of February 14, 2014
	)	Denying Renewal of Grazing Permit
Respondent	)	

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I. INTRODUCTION

Respondent Bureau of Land Management (BLM), by and through its attorney, Brad Grenham, hereby files this Answer to Appellant's June 30, 2014 Statement of Reasons on Appeal of Administrative Law Judge Harvey Sweitzer's April 28, 2014 Order denying Appellant's Petition for Stay.[1] By Final Decision of February 14, 2014, the BLM denied the Hammond Ranches, Inc. (hereafter "Hammond Ranches") Application for Grazing Permit Renewal in its entirety because Hammond Ranches does not have the requisite satisfactory record of performance under 43 C.F.R. § 4110.1(b)[2] as described in detail in BLM's Decision. BLM Final Decision ("Dec.") at 2. For the same reasons, BLM determined that the grazing preference associated with this permit is no longer effective and Hammond Ranches no longer holds a superior or priority position against others for the purpose of receiving a grazing permit. Dec. at 2. BLM found that because Hammond Ranches has not met the requirements for renewal of permitted use due to several felony arson convictions—which include conduct violating applicable BLM regulations—Hammond Ranches can no longer stand in first priority to receive permitted use. Dec. at 2. FLPMA, 43 U.S.C. § 1752(c), provides that, for a permittee holding an expiring grazing permit to be given first priority for receipt of a new permit, the permittee must be "in compliance with the rules and regulations issued [by the Secretary] and the terms and conditions in the permit." *See also* 43 C.F.R. § 4130.2(e).

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[1] The Hearings Division transmitted the official case file to IBLA on June 9, 2014.

[2] The BLM grazing regulations set forth at 43 C.F.R. part 4100 *et seq.* were amended effective August 11, 2006. *See* 71 Fed. Reg. 39402 (July 12, 2006). However, the United States District Court for the District of Idaho has enjoined implementation of those regulatory amendments. *Western Watersheds Project v. Kraayenbrink, et al*, 538 F. Supp. 2d 1302 (D. Idaho 2008). In accordance with that injunction, BLM's Assistant Director, Renewable Resources and Planning, issued Instruction Memorandum 2009-109, directing all western BLM field offices (excluding Alaska) not to implement any of the July 12, 2006, amendments to 43 C.F.R. part 4100 *et seq.* Consequently, the grazing regulations cited herein are those in effect in 2005.

ALJ Sweitzer found that Hammond Ranches failed to show a sufficient likelihood of success on the merits and denied the stay petition. ALJ Sweitzer concluded that:

> The Hammonds pattern of starting fires that damage vegetation on public lands and endangers lives is sufficiently serious to warrant permit non-renewal. There is a substantial risk of further vegetative destruction which [compromises] BLM's ability to orderly manage and improve resources, including utilizing prescribed burns. It is also sufficiently serious to eliminate HRI's right to first priority for a new permit pursuant to 43 CF.R. § 4130.2(e)(2).

April 28, 2014 OHA Order (hereafter "OHA Order") at 9.

Hammond Ranches is controlled by its president, Dwight Hammond, and vice-president, Steven Hammond, who is Dwight's son. Dec. at 2. The United States prosecuted Dwight and Steven Hammond for intentionally lighting several fires over multiple years on public lands in grazing allotments used by Hammond Ranches. *United States v. Dwight Hammond and Dwight (Steven) Hammond, Jr.* 10-CR-60066-HO (D.Or.). Dec. at 2. On June 21, 2012, a federal jury returned a verdict finding Dwight Hammond guilty of maliciously damaging the real property of the United States by fire, in violation of 18 U.S.C. § 844(f)(1), for his role in starting the 2001 Hardie-Hammond Fire. Dec. at 2. The jury returned a guilty verdict for two counts under § 844(f)(1) against Steven Hammond for maliciously damaging the real property of the United States by fire due to his role in starting the 2001 Hardie-Hammond Fire and the 2006 Krumbo Butte Fire. Dec. at 2. On October 30, 2012, United States District Judge Michael Hogan sentenced Dwight Hammond and Steven Hammond to prison sentences pursuant to § 844(f)(1). Dec. at 2.

On February 7, 2014, the United States Court of Appeals for the Ninth Circuit in *United States v. Steven Dwight Hammond and Dwight Lincoln Hammond, Jr.*, Nos. 12-30337, 12-30339, 2014 U.S. App. LEXIS 2400 (9th Cir. 2014), held that the District Court, which had

imposed sentences less than five years, was bound to sentence the Hammonds to the statutory minimum five-year terms of imprisonment. Dec. at 16. Noting that the "jury convicted Steven and Dwight Hammond of maliciously damaging the real property of the United States by fire," the Ninth Circuit emphasized the risk to human life and damage to property caused by the Hammonds. Dec. at 16; *United States v. Steven Dwight Hammond and Dwight Lincoln Hammond, Jr.*, Nos. 12-30337, 12-30339, slip op. at 3, 10 (9th Cir. 2014). The Ninth Circuit also pointed out that, after Steven Hammond started a fire in 1999 that burned onto public land, the BLM reminded the Hammonds they could not burn public land without authorization. *U.S. v. Hammond*, slip op. at 4.

Like the federal jury that issued guilty verdicts on three counts after the criminal trial, the Ninth Circuit did not buy the Hammonds' arguments that they were just burning their own land. The Ninth Circuit explained that this excuse was belied by the Hammonds' own relative:

> Although the Hammonds claimed that the fire was designed to burn off invasive species on their property, a teenage relative of theirs testified that Steven had instructed him to drop lit matches on the ground so as to "light up the whole country on fire." And the teenager did just that. The resulting flames, which were eight to ten feet high, spread quickly and forced the teenager to shelter in a creek. The fire ultimately consumed 139 acres of public land and took the acreage out of production for two growing seasons.

U.S. v. Hammond, slip op. at 4.

BLM found that the intentional fire-setting by Dwight and Steven Hammond, as principals of Hammond Ranches, in the 2001 Hardie-Hammond Arson and August 22, 2006 Krumbo Butte Arson, violated regulations applicable to the Hammond Ranches grazing permit and violated the permit terms. Dec. at 17. The BLM Decision carefully documents the disregard of the Hammonds toward human life and property during their intentional fire setting. The BLM consequently found that Hammond Ranches, through the acts of its principals, did not have

requisite satisfactory record of performance under 43 C.F.R. § 4110.1(b) for a renewed public land grazing permit. The BLM Decision documents a pattern of conduct by Hammond Ranches' owners and operators attempting to improve livestock forage (by burning off juniper to promote grass growth) at the risk of human life and multiple use resources. *See e.g.* Dec. at 6-7. While fire does kill juniper and generate forage for cattle grazing, it also kills sagebrush which provides important habitat for wildlife, including sensitive species such as the Greater Sage-Grouse. Dec. at 15. The United States Fish and Wildlife Service reached a finding that listing the Greater Sage-Grouse as threatened under the Endangered Species Act is warranted but precluded by higher priorities. 12-Month Findings for Petitions to List the Greater Sage-Grouse as Threatened or Endangered, 75 Fed. Reg. 13,910 (Mar. 23, 2010).

Due to the criminal public land burning by the Hammonds — proven to a jury beyond a reasonable doubt in three separate counts — the Hammond Ranches case for a renewed grazing permit is without merit and there is no basis for continuing livestock grazing privileges for Hammond Ranches on public lands. BLM's decision to not renew the permit rests on a solid rational basis in applying 43 C.F.R. § 4110.1(b). In fact, it would be hard to imagine any rational basis for renewing public land grazing privileges for permittees thrice convicted of arson on public lands. The public interest weighs heavily in favor of protecting the orderly use of public lands from the Hammonds. BLM respectfully requests that the IBLA uphold the OHA Order denying the petition for stay.

II. BACKGROUND

BLM's Final Decision concerns grazing for Mud Creek, Hammond, Hardie Summer, and Hammond Fenced Federal Range (FFR) Allotments within the Burns District of the Bureau of Land Management (BLM). Dec. at 1. Hammond Ranches submitted an Application for

Grazing Permit Renewal signed on September 30, 2013 by Susan Hammond (who is the spouse of Dwight Hammond and mother of Steven Hammond). The request is for grazing identical to the previous grazing authorization number 3602564. Dec. at 1. The expiring permit authorization was for the term of March 1, 2004 to February 28, 2014. Dec. at 1. BLM issued a Proposed Decision on January 8, 2014 which declined to renew the permit. Dec. at 16. Hammond Ranches filed a January 24, 2014 protest. Dec. at 16. The protest did not offer specific substantive points for BLM to consider. Dec. at 16. BLM issued a Final Decision which adopted the Proposed Decision. Dec. at 16.

BLM provided Hammond Ranches nearly a year's notice that Hammond Ranches should be considering alternative arrangements for its livestock due to potential permit nonrenewal. BLM wrote to Hammond Ranches on April 5, 2013 noting that the grazing permit would expire in February, 2014, and BLM advised that, "[i]n light of the criminal convictions under 18 U.S.C. § 844(f)(1) and Hammond actions described in the evidence presented in the criminal proceedings, the BLM may determine the grazing permit cannot be renewed due to an unsatisfactory record of performance. Accordingly, BLM advises that Hammond Ranches, Inc. should be considering alternative arrangements for its livestock if the permit is not renewed." BLM wrote to Hammond Ranches on September 18, 2013 concerning the renewal application process and again advised of the potential the permit would not be renewed. Dec. at 16.

III. LEGAL STANDARD OF REVIEW

Pursuant to 43 C.F.R. § 4.471(c), an appellant seeking a stay must "show sufficient justification" for the stay based upon,

> (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.

The burden to establish each element under § 4.471(c) is on the party seeking the stay. *See* 43 C.F.R. § 4.471(d); *Oregon Natural Resources Council*, 148 IBLA 186, 188 (1999). Where an appellant's stay arguments "touch upon" the four elements of § 4.471(c) but lack "adequate factual or evidentiary foundation," the stay must be denied. *Oregon Natural Resources Council*, 148 IBLA at 191.

Regarding likelihood of the appellant's success on the merits, the "BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges." *Foianini v. BLM*, 171 IBLA 244, 251 (2007). Accordingly, the appellant, and not the BLM, "has the burden to establish by a preponderance of the evidence that the decision is unreasonable or improper." *Id.* "When BLM issues a decision taking actions affecting the grazing privileges of a livestock permittee, those actions may be regarded as arbitrary, capricious, or inequitable only if they are not supportable on any rational basis." *Id.*; *Wayne D. Klump v. BLM*, 124 IBLA 176, 182 (1992). To achieve success on the merits, an appellant must meet the burden of demonstrating, by a preponderance of the evidence, that the Final Decision is unreasonable or does not substantially comply with the provisions of the grazing regulations found at 43 C.F.R. part 4100. *See* 43 C.F.R. § 4.480(b); *Eason v. BLM*, 127 IBLA 259, 262 (1993).

The ALJ noted that, regarding likelihood of success on the merits, Appellant must raise "questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation." OHA Order at 5, *citing Wyoming Outdoor Council Inc.,* 153 IBLA 379, 388 (2000).

IV. ARGUMENT

1. BLM's Final Decision Rationally Applies 43 C.F.R. § 4110.1(b) And Is Fully Supported By The Facts; Consequently, BLM Is Highly Likely To Succeed On The Merits.

BLM's Final Decision articulated, in detail, the legal and factual grounds for declining to renew the Hammond Ranches permit. Hammond Ranches bears the heavy burden to establish that these grounds are without merit. Hammond Ranches cannot collaterally attack what a federal jury – after the full due process provided by criminal procedure for felony charges – has already found three times beyond a reasonable doubt: Dwight and Steven Hammond both intentionally and maliciously burned public lands. This is in violation of the regulations applicable to the Hammond Ranches grazing permit and in violation of the permit and thus constitutes an unsatisfactory record of performance.

To obtain renewal of the permit, Hammond Ranches and its affiliates must be determined by the BLM authorized officer to have a satisfactory record of performance. BLM's Decision carefully details how Dwight and Steven Hammond are "affiliates" of Hammond Ranches as owners, operators, and officers. Dec. at 4; 43 C.F.R. §§ 4100.0-5; 4110.1(c). The expiring grazing permit 10-year authorization #3602564 is issued in the name of "Hammond Ranches, Inc. c/o Dwight Hammond." Dwight is the President of Hammond Ranches. The expiring 10-year permit authorization was signed by Steven Hammond. Steven is the Vice President. Steven signed the 2003 application for renewal of the recently-expired permit authorization. In sum, Dwight and Steven Hammond *are* Hammond Ranches as its President and Vice-President and owners. While Hammond Ranches now has a family member, Susan Hammond, sign

correspondence, this does not change the fact that Hammond Ranches through its affiliates and owners, Dwight and Steven, has an unsatisfactory record of performance.[3]

BLM grazing regulations at 43 C.F.R. § 4110.1(b) (2005) provide:

> Applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance.
>
> (1) Renewal of permit or lease. (i) The applicant for renewal of a grazing permit or lease, and any affiliate, shall be deemed to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.

The Interior Board of Land Appeals has explained that:

> "[S]ubstantial compliance" is to be determined by considering both "the number of prior incidents of noncompliance," and "the nature and seriousness of any noncompliances," recognizing that the ultimate aim of a BLM decision regarding renewal is to use the record of performance "to confirm the ability" of a permittee "to be a [good] steward of the public land," and thus "to ensure that permittees ... are good stewards of the land," thereby "protect[ing] [the land] from destruction or unnecessary injury and provid[ing] for orderly use, improvement, and development of resources." 60 Fed. Reg. 9925; see 59 Fed. Reg. 14314, 14330 (Mar. 25, 1994). Further, any act of "noncompliance with the requirements of 43 CFR Part 4100," whether unauthorized grazing use or some other noncompliance, is relevant to a performance review under 43 C.F.R. § 4110.1 (b). 60 Fed. Reg. at 9925.

Hanley Ranch Partnership, 183 IBLA 184, 199 (2013); *see also* 60 Fed. Reg. 9894, 9925-27 (Feb. 22, 1995). The requirement to be in compliance with the terms and conditions of the permit and pertinent rules and regulations is based in the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1752, and Taylor Grazing Act, 43 U.S.C. §§ 315a-315b. The BLM has noted the importance of ensuring permit renewals are consistent with FLPMA and Taylor

[3] Susan (also referred to as "Susie" in the criminal trial transcript) was identified by her grandson, Dustin, as being one of the individuals at the table when he was told to "keep his mouth shut" and not reveal the Hammonds' 2001 Hardie-Hammond fire starting to authorities. Criminal Transcript (Tr.) at 282-84.

Grazing Act requirements "that public lands be managed in a way that protects them from destruction or unnecessary injury and provides for orderly use, improvement, and development of resources." 60 Fed. Reg. 9926; *see also* Taylor Grazing Act, 43 U.S.C. § 315a (providing for Secretary of the Interior to "preserve the land and its resources from destruction or unnecessary injury" and "to provide for the orderly use, improvement, and development of the range.") The Taylor Grazing Act, 43 U.S.C. § 315b, conditions renewal of a grazing permit on compliance with rules and regulations. FLPMA, 43 U.S.C. § 1752(c), provides that, for a permittee holding an expiring grazing permit to be given first priority for receipt of a new permit, the permittee must be "in compliance with the rules and regulations issued [by the Secretary] and the terms and conditions in the permit." Under 43 C.F.R. § 4130.2(e), "[p]ermittees or lessees holding expiring grazing permits or leases shall be given first priority for new permits or leases if ... [t]he permittee or lessee is in compliance with the rules and regulations and the terms and conditions in the permit or lease" and other conditions are met.

Regulations applicable to the grazing permit prohibit "(3) Cutting, burning, spraying, destroying, or removing vegetation without authorization" and "(4) Damaging or removing U.S. property without authorization." 43 C.F.R. § 4140.1(b). "The jury convicted Steven of two counts and Dwight of one count of maliciously damaging the real property of the United States by fire, in violation of 18 U.S.C. § 844(f)(1), based on their respective roles in the September 2001 and August 2006 fires." *United States v. Steven Dwight Hammond and Dwight Lincoln Hammond, Jr.*, Nos. 12-30337, 12-30339, slip op. at 5 (9th Cir. 2014). BLM found that the Hammonds' conduct of intentionally burning public lands (that their permitted livestock graze) violates the regulations applicable to Hammond Ranches' grazing permit, 43 C.F.R. § 4140.1(b), since these regulations prohibit burning or damaging public lands. Paragraph Two of Hammond

Ranches' grazing authorization (3602564) "Standard Terms and Conditions" requires compliance with rules and regulations. Dec. at 4.

Additionally, BLM regulations at 43 C.F.R. § 9212.1, which are applicable to all parties, including grazing permit holders, prohibit igniting fires on public lands without written authorization and prohibit interfering with the efforts of firefighters to extinguish a fire. BLM explained that, when Steven Hammond lit the three fires below firefighters on the night of August 22, 2006, he put firefighters at risk and caused them to alter their plans and vacate a camp. Accordingly, he interfered with the efforts of firefighters to extinguish a fire in violation of 43 C.F.R. § 9212.1. Dec. at 8-9.

BLM's Final Decision carefully summarized witness testimony and evidence presented at the Hammonds' criminal trial that took place at the United States District Court in Pendleton, Oregon from June 12 through 21, 2012 (Case 6:10-cr-60066-HO). Dec. at 5-15. This narrative describes the actions of Dwight and Steven and demonstrates how the Hammonds violated BLM regulations and the terms of Hammond Ranches' grazing permit, endangered the lives of numerous individuals including firefighters, and altered ecological conditions on public lands. *Id.*

For sake of brevity, this Answer respectfully refers the Board to the BLM Final Decision's detailed narrative and will not repeat that narrative. *See* BLM Dec. at 5-15. Some notable Hammond conduct, however, includes the following:

·enlisting a 13-year-old to help burn public lands and "light up the whole country on fire"; resulting flames of eight to ten feet in height forced the teenager to seek shelter in a creek and fear for his life. Dec. at 5-6; *United States v. Steven Dwight Hammond and Dwight Lincoln Hammond, Jr.*, Nos. 12-30337, 12-30339, slip op. at 4, 10 (9th Cir. 2014).

·lighting fires that forced a hunting guide and his clients to abandon their camp and flee for their safety. Dec. at 6

·burning in violation of a county-wide fire ban. Dec. at 7.

·lighting fires downhill from where a fire crew was spending the night — which is particularly dangerous due to the speed at which fire travels uphill — and, thus, endangering the crew and forcing the crew to move. Dec. at 8.

·burning at a time when BLM firefighting resources were already limited and allocated to existing fires. Dec. at 10, n.44.

·lighting fires that started to encircle BLM employees and caused them to flee on all-terrain-vehicles. Dec. at 12-13.

·hindering ecological restoration in the area by burning Greater Sage-Grouse habitat. Dec. at 15.

While it is true that BLM does engage in prescribed burning under the right conditions and with careful coordination and safety planning, this is a far cry from the unplanned and uncoordinated burning undertaken by the Hammonds. BLM explained that:

> Anytime firefighters attack a fire they are at risk. Last summer included a number of tragic firefighting incidents, including the deaths of 19 firefighters on the Yarnell Hill fire in Arizona. Wildland firefighters cannot avoid risk, but are trained to mitigate risk. Intentionally ignited fires that are started without communication to firefighters, a burn plan, black-lining around the perimeter, secondary containment lines, or safety zones pose unnecessary risks to firefighters that are extremely difficult to mitigate. The Hammonds' behavior violated 43 C.F.R. § 9212.1 due to Hammonds' interference with firefighting efforts.

Dec. at 17.

The Hammonds burned up important sagebrush habitat to promote grasses for their livestock. Dec. at 15. It is very difficult and often prohibitively expensive to reseed sagebrush.

Sagebrush is killed outright by fire and does not readily sprout back like grass. Criminal Trial Transcript ("Tr.") at 1668. Trial testimony explained that, due to the very high costs and low prior success rate in sagebrush seedings, BLM was not able to plant sagebrush after the fires. Tr. at 1683.

BLM found that the criminal conviction for the 2006 fire alone constitutes an unsatisfactory record of performance:

> The Hammond behavior underlying the 2006 Krumbo Butte arson conviction — standing alone — constitutes an unsatisfactory record of performance. The Hammond conduct underlying this conviction is entirely inconsistent with orderly use, improvement, and development of public land resources under the Taylor Grazing Act, 43 U.S.C. § 315a, and FLPMA. The Hammond malicious disregard for human life and public property shows contempt for BLM regulation of public land. The Hammond interference with firefighting efforts is antithetical to orderly use of resources. The Hammond disregard for orderly and planned prescribed burning that accounts for ecological objectives and human safety is incompatible with the orderly use and improvement of resources. The BLM carefully plans and conducts prescribed burns to meet ecological objectives, such as retaining sagebrush and bitterbrush habitat. By taking matters into their own hands and burning public lands outside of the official BLM process, the Hammonds altered the Burns District's prescribed fire management strategy for years to come. Good stewardship is more than just producing grass for livestock — it requires orderly conduct that protects the multiple objectives of public lands and the lives of those who work and recreate on public lands.

Dec. at 17.

BLM explained that, while the 2006 conviction alone constitutes an unsatisfactory record of performance, the Hammond burning in 2006 was part of a longer pattern of Hammond conduct violating regulations that also constitutes an unsatisfactory record of performance:

> Even if, for argument's sake only, the Hammond behavior underlying the 2006 Krumbo Butte arson conviction — standing alone — was not sufficient to constitute an unsatisfactory record of performance, the Hammonds' behavior, when one considers both the 2006 conviction and 2001 convictions, also constitutes an unsatisfactory record of performance. The fact that the 2006 arson followed the 2001 arson demonstrates a pattern of Hammond conduct violating regulations applicable to the grazing permit and inconsistent

> with the orderly use, improvement, and development of resources. The 2006 arson was not an isolated incident. Rather, it was part of a pattern of conduct by Hammond Ranches, Inc.'s owners and operators attempting to improve livestock forage at the risk of human life and multiple use resources.

Dec. at 17-18.

The conduct for which the Hammonds have already been found guilty (at the criminal standard of proof — which is higher than the standard in an OHA administrative proceeding) clearly constitutes an unsatisfactory record of performance. Even if being convicted of three counts of arson on public lands were not enough to constitute an unsatisfactory record of performance, BLM found that the additional fire-setting described at the criminal trial and on which the jury did not reach a verdict further demonstrates an unsatisfactory record of performance. Dec. at 17-18.[4]

Hammond Ranches, through its controlling owners and principals, has not abided by the regulations and, in fact, has engaged in substantial deviation from applicable regulations through criminal conduct. BLM's denial of the Application for Grazing Permit Renewal for grazing privileges on BLM lands within the Burns District has more than a rational basis.

FLPMA, 43 U.S.C. § 1752(c), provides that, for a permittee holding an expiring grazing permit to be given first priority for receipt of a new permit, the permittee must be "in compliance with the rules and regulations issued [by the Secretary] and the terms and conditions in the permit." *See also* 43 C.F.R. § 4130.2(e). Because Hammond Ranches has not complied with applicable regulations or the terms of its permit, Hammond Ranches can no longer stand in first

[4] BLM's Decision (at 13) explains that the events of August 23, 2006 were combined in the indictment as the Grandad Arson (Counts 7 and 8). The evidence cited in BLM's Decision demonstrates that one or more affiliates of Hammond Ranches, including Steven, was responsible for lighting fires on August 23 and endangering the lives of individuals by almost surrounding them with fire. While the jury was still deliberating on Steven Hammond's responsibility for these counts, the defense and the government reached an agreement to resolve the criminal case based on convictions the jury had already reached for other arsons. *See United States v. Hammond*, Nos. 12-30337, 12-30339, slip op. at 5 (9th Cir. 2014) (outlining terms of resolution). Thus, the jury did not issue a verdict regarding Steven Hammond on Counts 7 and 8.

priority to receive permitted use. Consequently, BLM properly determined that the grazing preference associated with the permit is no longer effective and Hammond Ranches will no longer hold a superior or priority position against others for the purpose of receiving a grazing permit for the applicable allotments. Dec. at 2. In light of the Hammond conduct, the public lands, including any grazing privileges thereon, would be better made available to law-abiding citizens.

2. Hammond Ranches' Arguments Do Not Demonstrate Any Likelihood of Success on the Merits

a) The Hammond Satisfactory Performance Argument Does Not Demonstrate Any Arbitrariness or Lack of Reasonableness in BLM's Final Decision

Hammond Ranches argues that, if one ignores their arson criminal convictions, the Hammonds otherwise have a satisfactory record of performance. Appellant's Statement of Reasons ("SOR") at 5. Even the arson convictions, however, are still not the full story of disorderly Hammond conduct. As the United States' October 25, 2012 sentencing memorandum in the criminal proceeding explains, Steven Hammond also has a conviction for falsification of records. Sentencing Memorandum at 12 (attached as BLM 1 to BLM Stay Opposition). On top of this, he committed the Hardie-Hammond arson in 2001 while he was still on probation from a 2000 conviction for interference with lawful use of public lands. *Id.* Steven Hammond was convicted under 43 C.F.R. § 4140.1(b)(7) for interfering with lawful use of public lands by interfering with a hunting guide on public lands. *U.S. v. Hammond*, Case 00-M-2030. Dec. at 18 fn. 102. In any case, the seriousness of the Hammond arsons cited in the BLM Decision provides more than a rational basis for BLM's finding an unsatisfactory record of performance.

The United States' October 25, 2012 sentencing memorandum provides context regarding the Hammond "satisfactory-performance-other-than-arson-convictions" argument:

> The fact that Steven Hammond, while on probation for violating federal law on public lands, both violated federal law on public lands and encouraged others – including children – to do so, demonstrates a history of disregard not only for the integrity of public lands, but for the justice system as a whole. See 18 U.S.C. § 3553(a)(1). Moreover, both defendants demonstrated a reckless disregard for the safety of their own kin when they handed 13-year-old Dusty Hammond Strike Anywhere matches and directed him to light up the whole country on fire. Their actions put Dusty in real danger when he became separated from them and trapped by fire. Fortunately, Dusty survived, but he was terrified by the experience (he thought he was going to be "burned up." See Trial Transcript 6/13/12 at 279-80) and he was bullied by the defendants to cover up the crime.

Sentencing Memorandum at 16-17. The Sentencing Memorandum notes Steven and Dwight Hammond's lack of remorse:

> The jury found Steven and Dwight Hammond guilty of intentionally and maliciously starting fires on September 30, 2001. Those fires damaged and destroyed property of the United States within the Hardie-Hammond grazing allotment in the Steens Mountain Cooperative Management Protection Area. The government's evidence supporting this conviction came largely from Dusty Hammond, another member of the Hammond family – Steve Hammond's nephew and Dwight Hammond's grandson. Congress decided that this particular offense should carry a mandatory, statutory minimum term of five years. The evidence of defendants' guilt was substantial. The jury's verdict of guilt for this particular offense mandates imposition of the required statutory minimum term.... Because defendants have provided no assistance to the government and, in fact, they have demonstrated no remorse for their offense,...the statutory minimum term mandates the outcome in this case.

Id. at 5. The Sentencing Memorandum continues regarding the Hammonds' lack of regard for human safety and subsequent cover-up:

> When defendants started these fires, they knew that Gordon Choate, Dennis and Dustin Nelson[5] were camped nearby. After his uncle Steven provided him with matches and told him where to start fires, then-13-year old Dusty Hammond became separated from his father Russell Hammond only to find himself alone and surrounded by fire. At trial, Dusty Hammond testified to remembering "pretty clearly" what happened because he "thought (he) was going to get burned up." Trial Transcript 6/13/12 at 279-80. After escaping the fire, Dusty Hammond was told by Dwight and Steven Hammond, while sitting at the table in the Hammond ranch kitchen with Russell and his grandmother,

[5] As explained in BLM's Decision at 5-6, these individuals are a hunting guide and two clients who ultimately had to flee their camp due to the Hammond fire setting.

> Susie Hammond, "to keep (his) mouth shut, that nobody needed to know about the fire." *Id.* at 282-83. "[A]fraid of Steven and Susie," Dusty Hammond kept silent until he was no longer afraid. *Id.* at 284-8.

Id. at 7. The Sentencing Memorandum noted aggravating factors relevant for sentencing:

> Steven Hammond's actions in committing the arson charged in Count 2 of the Superseding Indictment created a "conscious or reckless risk of death or serious bodily injury" to individuals including Dusty Hammond...

Id. at 11. The Sentencing Memorandum noted the egregious nature of the Hammond behavior:

> the nature and circumstances of the 2001 arson offense - committed on public lands and in a location the defendants knew to be used for hunting and recreation by members of the public – are egregious. Setting fires without proper authorization or controls endangered the public. *See* Trial Transcript 6/12/12 at 125-26, 138 (... Choate's testimony about encountering Dwight Lincoln Hammond, Jr., another man, and a child in a pickup truck on the mountain defendants set fire to later that same day; Dwight Lincoln Hammond, Jr. specifically asked Choate where his hunting party was camped); Trial Transcript 6/13/12 at 260 (Dusty Hammond's testimony that Dwight Lincoln Hammond, Jr. had "seen some hunters up there" near the watering hole and the reservoir while flying his airplane the morning of the offense in Count 2); *id.* at 230-31, 235 (Dennis Nelson's testimony that based on the smoke in the vicinity of their campsite "we decided to get out of there and head for home;" that when they arrived at their truck to do so, the intensity of the smoke had increased and they were able to see the flames of the actual fire coming from the area they had left)...

Id. at 15-16.

Regarding Steven Hammond's fire starting as part of the 2006 Krumbo Butte fire, the Sentencing Memorandum explains:

> The jury also found Steven Hammond guilty of intentionally and maliciously setting a fire on Krumbo Butte on August 22, 2006. This fire destroyed property of the United States near Krumbo Butte in the Malheur National Wildlife Refuge and the Steens Mountain Cooperative Management Protection Area.

Id. at 6. BLM's Decision documents the considerable risk to firefighters camped above Steven Hammond's fire starting on August 22, 2006. BLM Decision at 8-9. Regarding the August 23,

2006 fires on which the jury did not reach a verdict concerning Steven's role, BLM's Decision also documents the egregious disregard for human safety. Dec. at 9-13.

The Hammond fire starting convictions are more than a rational basis for BLM's final decision.

b) A federal court has fully adjudicated Dwight and Steven Hammond's guilt for three counts of arson after the full due process provided by federal criminal procedure. The BLM reasonably relied on the convictions in its record of performance review.

Hammond Ranches argues that the three counts of arson are "unadjudicated" because BLM has allegedly not undertaken the requisite regulatory process for adjudicating non-compliance. SOR at 4-5. The ALJ properly found this argument to be "disingenuous" because "the facts necessary to establish a criminal conviction of 18 U.S.C. § 844(f)(1) also clearly constitute a violation of 43 C.F.R. §4140.1(b)(3)." OHA Order at 7, n.5. In their felony criminal trial, the Hammonds benefited from the full due process provided by the United States Constitution and federal rules of criminal procedure. The criminal process required the government to prove its case to a jury beyond a reasonable doubt – which is a higher burden of proof than a grazing hearing. The Hammonds presented their own witnesses and cross-examined government witnesses. *See generally* Criminal Transcript. The Hammonds had the opportunity to present exhibits. The Hammonds had the benefit of representation by experienced legal counsel (consisting of a team of three lawyers including their counsel in this appeal, Alan Schroeder). *See* Criminal Transcript at 2. The Hammonds had the opportunity to appeal to the Ninth Circuit Court of Appeals (although they ultimately waived some rights as part of the resolution of counts on which the jury had not reached a verdict). *See United States v. Hammond*, slip op. at 5 (9th Cir. 2014). Thus, the Hammonds had the benefit of an adjudication that provided all the process of a grazing hearing and more – including a higher burden of proof on the government. The

three criminal convictions are a fully adjudicated[6] fact and BLM reasonably relied on these convictions in its performance review.

Hammond Ranches argues that since the Hammonds were convicted under federal felony statutes and not expressly the rangeland regulations (both of which prohibit burning federal property), then there is no adjudicated violation of regulations applicable to the permit. SOR at 6. Again, the ALJ properly found that "the facts necessary to establish a criminal conviction of 18 U.S.C. § 844(f)(1) also clearly constitute a violation of 43 C.F.R. §4140.1(b)(3)." OHA Order at 7, n.5. Regulations applicable to the grazing permit prohibit "(3) Cutting, burning, spraying, destroying, or removing vegetation without authorization" and "(4) Damaging or removing U.S. property without authorization." 43 C.F.R. § 4140.1(b). BLM explained that "[t]he Hammonds' conduct of intentionally setting fires on public lands under 18 U.S.C. § 844(f)(1) violates the regulations applicable to Hammond Ranches, Inc.'s grazing permit." Dec. at 4. Additionally, as BLM noted, BLM regulations applicable to all parties, including grazing permit holders, at 43 C.F.R. § 9212.1, prohibit interfering with the efforts of firefighters to extinguish a fire.

Under the Hammond theory, a permittee could violate a host of criminal laws but, so long as the permittee was not expressly prosecuted under the rangeland regulations, he or she would have a satisfactory record of performance. The underlying Hammond criminal conduct of burning federal lands under 18 U.S.C. § 844(f)(1) violates the rangeland regulation prohibition on burning and damaging public lands. The distinction is that, due to the maliciousness of the Hammond arsons, a jury found them guilty under a felony statute that carries a five year minimum term of imprisonment — which is more extensive than the up to 12 months prescribed

[6] The Hammond argument for adjudication is also misplaced since regulation violations need not be adjudicated for a record of performance review. *Hanley Ranch Partnership*, 183 IBLA 184 (2013). There is no need to reach this point here, however, in light of the extensive federal court jury trial as an adjudication concluding in the three felony convictions.

by FLPMA, 43 U.S.C. §1733(a), for prosecution under the rangeland regulations. The Hammonds have taken range burning to an egregious degree by putting human lives at risk. Their three felony convictions for malicious burning more than suffice for BLM to find a violation of regulations and an unacceptable record of performance.

The record of performance review serves to provide for orderly use, improvement, and development of resources. *See e.g.* Taylor Grazing Act, 43 U.S.C. § 315a (providing for Secretary of the Interior to "preserve the land and its resources from destruction or unnecessary injury" and "to provide for the orderly use, improvement, and development of the range.") It would turn the "orderly use" objective on its head to say that felony criminal convictions for "maliciously" burning public land are not a basis for finding an unsatisfactory record of performance.

The Hammonds seek, in this stay proceeding, to relitigate points on which they were unsuccessful in convincing the District Court jury or the Ninth Circuit Court of Appeals. The Hammonds reargue various aspects of their case, such as the argument that they were just backburning their land. *See e.g.* SOR at 5, 7-8. While the Hammonds assert that it is new information that the Hammonds claim to have been backburning their private property, the backburning is an argument they unsuccessfully asserted in the criminal proceedings. SOR at 5, 15-17. As the prosecutor's sentencing memorandum explained, the jurors, in issuing guilty verdicts, squarely rejected the Hammonds' version of events. *See* Sentencing Memorandum at 8. The memorandum notes that, contrary to being private land "backfires," the fires Steven Hammond set on public land underneath firefighters in 2006 by Krumbo Butte were a mile from Hammond property. *Id.* at 8. Like the federal jury at the criminal trial, the Ninth Circuit also did

not give much credence to the Hammonds' arguments that they were just burning their own land. The Ninth Circuit explained:

> Although the Hammonds claimed that the fire was designed to burn off invasive species on their property, a teenage relative of theirs testified that Steven had instructed him to drop lit matches on the ground so as to "light up the whole country on fire." And the teenager did just that. The resulting flames, which were eight to ten feet high, spread quickly and forced the teenager to shelter in a creek. The fire ultimately consumed 139 acres of public land and took the acreage out of production for two growing seasons.

U.S. v. Hammond, slip op. at 4. The Hammonds try to reargue other unsuccessful points from the criminal trial, such as their argument that their grandson/nephew, Dusty Hammond, was not a reliable witness and that the hunting party that fled for its safety was not actually in danger from Hammond fires. SOR at 7. The jury obviously rejected the Hammond version of events and the Ninth Circuit was similarly not persuaded since it found that the Hammond behavior warranted five years of imprisonment. The OHA is not a forum to relitigate the three arson convictions. The issue is whether BLM reasonably relied on these final convictions in its record of performance review. For the reasons stated herein, BLM rationally relied on these convictions.

c) <u>The BLM Decision Properly Finds that the 2006 Krumbo Butte Conviction Constitutes an Unsatisfactory Record of Performance and the BLM Decision Also Properly Considers All The Hammond Arson Convictions and Fire Setting as Alternative Bases for Finding an Unsatisfactory Record of Performance</u>

The Hammonds allege that BLM only relied on the 2006 Krumbo Butte conviction because BLM expressly noted that this conviction, standing alone, constitutes an unsatisfactory record of performance. SOR at 6. It is indeed correct that BLM reasonably found that this one conviction constitutes an unsatisfactory record of performance. But BLM's decision goes on to explain that, even if the 2006 Krumbo Butte conviction, alone, were insufficient, then the two 2001 convictions demonstrate a pattern of conduct that is unsatisfactory. And, even if the three

2006 and 2001 convictions were insufficient to demonstrate an unsatisfactory record of performance, they certainly are when combined with other egregious Hammond fire-setting behavior in 2006 for which the jury did not reach a verdict concerning Steven Hammond but for which the evidence of Steven Hammond's responsibility is very compelling.

The Hammonds allege that the BLM Decision does not make it clear that BLM found 2001 arson convictions to be inconsistent with compliance with the regulations because of the phrase "for argument's sake." SOR at 3-4. The BLM Decision states:

> Even if, for argument's sake only, the Hammond behavior underlying the 2006 Krumbo Butte arson conviction — standing alone — was not sufficient to constitute an unsatisfactory record of performance, the Hammonds' behavior, when one considers both the 2006 conviction and 2001 convictions, also constitutes an unsatisfactory record of performance. The fact that the 2006 arson followed the 2001 arson demonstrates a pattern of Hammond conduct violating regulations applicable to the grazing permit and inconsistent with the orderly use, improvement, and development of resources. The 2006 arson was not an isolated incident. Rather, it was part of a pattern of conduct by Hammond Ranches, Inc.'s owners and operators attempting to improve livestock forage at the risk of human life and multiple use resources.

Dec. at 17. The BLM Decision is clear that "for argument's sake only" is referring to the proposition that the 2006 Krumbo Butte arson conviction, alone, does not constitute an unsatisfactory record of performance. The BLM Decision continues to expressly find, without qualification, that "the Hammonds' behavior, when one considers both the 2006 conviction and 2001 convictions, also constitutes an unsatisfactory record of performance." Similarly, the BLM Decision expressly states that the Hammonds' behavior, when one considers both the 2006 conviction and 2001 convictions and 2006 fire setting for which the jury did not reach a verdict concerning Steven Hammond also constitutes an unsatisfactory record of performance. Dec. at 17-18.

Hammond Ranches argues that the Hammonds' criminal fire setting in 2001 is irrelevant to the performance review because these convictions occurred for conduct prior to the most recent grazing permit term. SOR at 10-11. As BLM's Final Decision explains, BLM only became aware of Dwight and Steven Hammond's guilt in starting the 2001 Hardie-Hammond Fire upon the jury's issuing guilty verdict on June 21, 2012. Dec. at 7. Thus, BLM became aware that the Hammonds were responsible for the Hardie-Hammond arson during the most recent performance review. The regulations do not preclude BLM's consideration of a pattern of conduct that just came to light during the current permit performance review.

In fact, the Hammond guilt in committing the 2001 arson only came to light during the most recent record of performance review because, shortly after the arson, Dwight, Susan, and Steven Hammond summoned their 13-year old grandson/nephew, Dusty, to the kitchen table to tell him to "keep his mouth shut" regarding the fire starting. Dec. at 7 (noting Dusty did keep quiet for many years); Tr. at 282-84. The Hammond cover-up should certainly not provide a loophole to a performance review. Accordingly, the 2012 convictions for 2001 arsons are indeed relevant information for BLM to consider when considering permit renewal for a permit term expiring in February, 2014. The 2001 arsons are also relevant context to show that the 2006 arson was not an isolated incident.

Nothing in BLM regulations prohibits BLM's considering a very relevant pattern of criminal disregard for orderly use of the range over an extended time period. The regulations applicable to the permit or lease have prohibited burning public lands since prior to 2001. Regulations applicable to the grazing permit prohibit "(3) Cutting, burning, spraying, destroying, or removing vegetation without authorization" and "(4) Damaging or removing U.S. property without authorization." 43 C.F.R. § 4140.1(b) (2005). The 2000 version of these regulations was

identical. Thus, the Hammonds violated this set of "rules and regulations applicable to the permit" under 43 C.F.R. § 4110.1(b)(1) when lighting the 2001 and 2006 fires.

The ALJ reasonably found that 43 C.F.R. § 4110.1(b)(1) "need not be interpreted as applying only to conduct which occurred during the current term of the permit" and that "in the present case, it is contrary to the spirit and intent of the law to say that BLM may not consider a grazing regulation violation that a permittee committed under its permit because the violation occurred under a previous term of the permit, especially when BLM did not discover the permittee's culpability until during the current term of the permit." OHA Order at 8. Indeed, the Hammonds committed the 2001 arsons while operating under the same permit terms (i.e. same allotments, same permittee, and same number of livestock). The ALJ properly held that BLM reasonably considered public land arsons that the Hammonds committed in 2001 but that, due to their cover up and intimidation of their grandson/nephew, successfully hid until their 2012 convictions. OHA Order at 3.

The object of 43 C.F.R. § 4110.1(b)(1) is to carry out FLPMA and Taylor Grazing Act requirements "that public lands be managed in a way that protects them from destruction or unnecessary injury and provides for orderly use, improvement, and development of resources." 60 Fed. Reg. 9926; *see also* Taylor Grazing Act, 43 U.S.C. § 315a; *Hanley Ranch Partnership*, 183 IBLA 184, 199 (2013); *see also* 60 Fed. Reg. 9894, 9925-27 (Feb. 22, 1995). The ALJ properly noted that *Walton*, A-31066, provided for considering conduct occurring over a 20 year span in reducing grazing privileges due to repeated trespasses. While *Walton* was not a permit renewal case, the point is the same: BLM's ensuring protection and orderly use of the range reasonably encompasses considering a pattern of permittee conduct over a number of years.

Hammond Ranches argues that *Hanley Ranch Partnership*, 183 IBLA at 216-218, "held that the BLM was limited to the four corners of the permit in terms of the scope of its compliance determinations." SOR at 12. In the cited portion of *Hanley Ranch*, the Board was addressing the Appellant's assertion that BLM's permit non-renewal decision amounted to an indefinite grazing suspension and thus necessitated that BLM weigh the *Brinkerhoff* penalty factors. *Hanley Ranch Partnership*, 183 IBLA at 217. The Board rejected the Appellant's assertion that BLM's record of performance review under 43 C.F.R. § 4110.1(b) triggered consideration of *Brinkerhoff* penalty factors. *Id.* The Board's holding, however, does not require BLM to ignore conduct occurring prior to the most recent permit term. The Board certainly did not opine on the present Hammond situation in which two 2001 arsons only came to light through 2012 convictions after a cover-up.

Hammond Ranches argues that BLM bears the burden of proof for proving trespass. SOR at 14-15. In the present situation, however, BLM is relying on federal jury convictions for arson, so the government has already proven these arsons (to the higher criminal burden of proof).

d) <u>The Hammond Ranch Challenges to the OHA Order Findings Are Without Merit</u>

Hammond Ranches argues that the OHA Order erroneously cites to a fire started by Steven Hammond that damaged William Otley's private property, SOR at 7 (citing OHA Order at 4), because this fire was allegedly excluded from the superceding indictment. The BLM Decision explains that Steven Hammond was indeed indicted for starting fires in August, 2006, including those damaging Otley property. Dec. at 7-15. The jury did not reach a verdict regarding Steven before the criminal case was eventually resolved based on convictions carrying prison sentences for other counts. Dec. at 13. These August, 2006 fires, as well as other fires, are still the subject of a civil complaint the United States filed in July, 2011 against Hammond

Ranches, Inc. and Dwight and Steven Hammond to recover fire suppression costs and resource damages. *United States v. Hammond Ranches et al*, Civ. No. 11-CV-823-SU (D.Or.). This civil action was stayed until the criminal case was resolved. With the criminal case resolved, the Court has lifted the stay. Accordingly, it is possible that the Hammonds will be found responsible for additional fires in the civil proceeding.

3. The Relative Harm To The Parties And The Public Interest Favor Denying The Stay. There Is Not A Likelihood Of Immediate And Irreparable Harm To Hammond Ranches If The Stay Is Not Granted.

The ALJ found that the Appellant's failure to show sufficient likelihood of success on the merits was sufficient basis to deny the stay petition. OHA Order at 9. Appellant argues that the ALJ implicitly found for Appellant on the other stay criteria. SOR at 10. To the contrary, the ALJ did not need to analyze the other stay criteria in detail because Appellant's case on the merits is so unsupportable. In fact, the ALJ found harm to BLM and the public interest by continued Hammond grazing and explained that "[t]here is a substantial risk of further vegetative destruction which [compromises] BLM's ability to orderly manage and improve resources, including utilizing prescribed burns." OHA Order at 9. In the event the Board determines that it should address the remaining stay criteria, Respondent addresses these criteria below.

If the stay denial is upheld, Hammond Ranches will have to provide private forage for its livestock. Hammond Ranches has been on notice, however, since April, 2013 that it should be considering alternative arrangements for its livestock due to the possibility that the 10-year permit would not be renewed in light of the criminal convictions and conduct presented during the criminal trial. Hammond Ranches holds extensive private lands in the area. The BLM casefile map of the Hammond, Hammond FFR, Mud Creek, and Hardie Summer allotments denotes private Hammond land in light red. The map shows extensive Hammond private lands

in and around the Hammond FFR allotment. Hammond Ranches can use these private lands for its own livestock. Hammond Ranches has had nearly a year to plan for this. While some lost profits due to foregone grazing of public lands would potentially occur for Hammond Ranches, this is a risk that the Hammonds knowingly took by undertaking arson.

The Hammonds' continuing disregard for orderly use of public lands poses a harm to public lands, public land users, and the public interest. The BLM Final Decision documents how Dwight and Steven Hammond knowingly placed public recreationists, firefighters, and BLM range staff at high risk just to further Hammond Ranches' grazing interests. The BLM Decision also documents other disorderly Hammond behavior directed toward the public recreating on public lands. Dec. at 5-6 (Hammond party shooting into and crippling deer being tracked by commercial hunting guide and clients); Dec. at 18 fn. 102 (Steven Hammond conviction under 43 C.F.R. § 4140.1(b)(7) for interfering with lawful use of public lands by interfering with a hunting guide on public lands. *U.S. v. Hammond*, Case 00-M-2030). As detailed in the BLM Decision and above, Dwight and/or Steven Hammond: enlisted a 13-year-old to help light fires on public lands; lit fires that forced a hunting guide and his clients to flee for their safety; burned in violation of a county-wide fire ban; lit fires downhill from where a fire crew was spending the night, thus endangering the crew and forcing the crew to move; burned when BLM firefighting resources were already limited and allocated to existing fires; lit fires that started to encircle BLM employees and caused them to flee on all-terrain-vehicles; and hindered ecological restoration by burning Greater Sage-Grouse and other wildlife habitat.

Given the pattern of disregard for public safety and orderly management of the range posed by the Hammond Ranch principals, the balance of harms and public interest weighs in favor of denying the stay. The public expects, and the BLM is required to, manage the public

lands in accordance with the law. The Hammonds have demonstrated that, through their reckless desire to maximize their own use of public lands, they are willing to put people and lands at risk. The public and BLM employees should not be subjected to this. Hammond Ranches' cattle grazed public land by virtue of the grazing permit. With non-renewal of this permit and denial of the stay, the Hammonds will no longer have the same economic incentive to burn public land allotments and endanger people. *See* Dec. at 17.

The public interest strongly counsels in favor of denying the stay and removing incentive for the Hammonds to continue to maximize forage at the risk of the public. More basically, the public would not expect convicted arsonists to have the continued privilege of grazing public land.

V. CONCLUSION

Given the pattern of disregard for public safety and orderly management of the range posed by the Hammond Ranch principals, the balance of harms and public interest weigh in favor of denying the stay. As the prosecuting attorney summarized in the government's sentencing memorandum, Hammond Ranch affiliates have "a history of disregard not only for the integrity of public lands, but for the justice system as a whole." Sentencing Memorandum at 16-17. The Hammonds have demonstrated that, through their reckless desire to maximize their own use of public lands, they are willing to put recreationists, firefighters, and public and private lands at risk. Hammond Ranches has been on notice for nearly a year that it should have an alternative plan for its livestock if the permit is not renewed, so any alleged irreparable harms posed to Hammond Ranches are a result of failure to adequately plan.

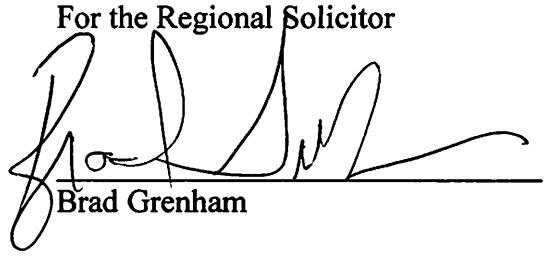
BLM's Final Decision articulated, in detail, the legal and factual grounds for declining to renew the Hammond Ranches permit. A federal jury has already found, in three separate

instances, beyond a reasonable doubt that Dwight and Steven Hammond both intentionally burned public lands. This is in violation of the regulations applicable to the Hammond Ranches grazing permit and in violation of the permit. BLM rationally relied on these convictions to find an unsatisfactory record of performance. Hammond Ranches cannot succeed on the merits.

For the reasons discussed above, BLM respectfully requests that the Board uphold the Office of Hearings and Appeals denial of the stay request.

Dated: 7/29/2014

Respectfully Submitted,
For the Regional Solicitor



Brad Grenham

CERTIFICATION OF SERVICE

I hereby certify that on this 29th day of July, 2014 I sent a copy of the foregoing **BLM Answer to Appeal of April 28, 2014 OHA Order Denying Petition for Stay of BLM Final Decision of February 14, 2014 Denying Renewal of Grazing Permit** to the following:

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