

2021.² However, because BLM's decision authorizes livestock trailing that must be completed by October 15, 2021, the decision will become moot before the 45-day period for resolution of the stay petition ends. For this reason, and as further discussed below, BLM requests to withdraw its decision and to dismiss the pending appeal and petition for stay.

I. DISCUSSION

On June 15, 2021, BLM issued a Proposed Decision to allow livestock to be driven across public land administered by the BLM for the purpose of entering and leaving the Piute Allotment of the Sequoia National Forest, where applicant has an authorized season of use that runs from June 1 through September 30.³ BLM also determined that the application met the criteria for a categorical exclusion under Section 402(h)(2) of the Federal Land Policy and Management Act.⁴ The proposal was to allow Hafenfeld Ranch, LLC to drive two groups of 45 head of cattle from private corrals across public lands over a two-day period to reach the Piute Allotment, with the two 2-day drives completed by August 15, 2021.⁵ The departure from the Piute Allotment to reach private corrals was to be completed in a single day within two weeks of September 30, 2021 (i.e., by no later than October 15, 2021).

BLM received three timely written protests from Tom Budlong, WWP-WW (jointly), and from the CBD-WWP-California Wilderness Coalition ("CalWild") (jointly).⁶ After considering and responding to the protest points, BLM issued its final decision on July 30, 2021, authorizing

² 43 C.F.R. § 4.472(a) (requiring BLM transmit any response to a petition for stay within 10 days of receiving stay petition). Because the 10th day falls on a Saturday, BLM's response is due by the next work day, Monday, September 20, 2021.

³ See Notice of Field Manager's Proposed Decision to Issue Livestock Crossing Permit, dated June 15, 2021 ("Proposed Decision") at 1.

⁴ See Categorical Exclusion Documentation DOI-BLM-CA-D050-2021-0021-CX dated June 14, 2021 at 2.

⁵ Proposed Decision at 1-2. The proposal was to divide applicant's 90 head of cattle into two groups of 45 head that would be driven across the public lands a week apart. *Id.*

⁶ Notice of Field Manager's Final Decision to Issue Livestock Crossing Permit ("Final Decision"), dated July 30, 2021 at 1.

the trailing described in the proposed decision and categorical exclusion documentation.⁷ Consistent with the grazing regulations, the final decision did not go into effect during the 30-day period for filing an appeal and petition for stay.⁸ The 30-day appeal period ended on September 2, 2021 and/or September 7, 2021.⁹ However, because Appellants have filed a petition for stay, the decision does not go into effect during the additional 45 days from the end of the appeal period that the Hearings Division has to rule on the stay petition, unless the administrative law judge issues a denial of the stay before the end of that 45-day period.¹⁰ Therefore under the regulations, the administrative law judge has until October 22, 2021 (based on last appellant decision receipt date) to rule on Appellants' petition for stay.

Because the decision under appeal allows trailing of livestock to the Piute Allotment by August 15, 2021, and for trailing out of the allotment that must be completed before October 15, 2021, it will not be possible for Hafenfeld Ranch, LLC to trail its livestock across public land during the timeframes necessary to move its cattle or within the dates authorized under the decision. Hafenfeld Ranch, LLC confirms that it has already moved its cattle to the Piute Allotment without trailing across the public lands, using a gooseneck trailer to drive the cattle in several trips.¹¹ Since cattle have already been moved to the Piute Allotment, that component of BLM's final decision allowing Hafenfeld Ranch, LLC to trail cattle to the Piute Allotment by

⁷ See Final Decision.

⁸ 43 C.F.R. § 4160.3(c) (providing that a final grazing decision will not be effective during the 30-day appeal period).

⁹ See Certified Mail Receipts. Appellants filed protests in two different groups (CBD-WWP-CalWild and WWP-WW respectively) and received the final decision on different dates. CBD-WW--CalWild received the final decision on 8/3/21 making that group's appeal period end 9/2/21. WWP-WW received the final decision on 8/5/21 making that group's appeal period end 9/7/21, since 9/4/21 fell on a Saturday and Monday 9/6/2021 was a Federal Holiday. See *Heather Bromm*, 193 IBLA 152, 155 (2018) ("When the 30th day falls on a weekend (or on a holiday or other non-workday), the appeal deadline is extended to the following business day").

¹⁰ 43 C.F.R. § 4.472(d) and (e).

¹¹ Declaration of Karen Doran dated September 13, 2021 ("Doran Decl.") at ¶ 11. According to Mr. Hafenfeld, the trips were very difficult due to the steep and winding dirt road with many switchbacks, with the trailer almost flipping over several times during the trips. He was only able to transport 50 of the 90 cattle that would typically go to the Piute Allotment due to these transport difficulties. *Id.*

August 15, 2021, is now moot.¹² Hafenfeld Ranch, LLC also confirms that it will need to make alternate plans by the end of September to move its cattle out of the Piute Allotment to private property, as such removal must be completed no later than October 15, 2021.¹³ As a result, Hafenfeld Ranch, LLC will be unable to, and does not plan to trail livestock across the public lands in 2021 under the final decision.¹⁴

Given these factors, BLM has determined that Hafenfeld Ranch, LLC will be unable to make use of the authorization to trail livestock in 2021 under the final decision that is the subject of the pending appeal and petition for stay. After discussing this matter with the authorized agent/representative for Hafenfeld Ranch, LLC,¹⁵ BLM respectfully requests to withdraw (and essentially vacate) its decision since the authorization period for Hafenfeld Ranch, LLC to trail livestock will end before the Hearings Division must issue a ruling on the stay petition. BLM further requests that this tribunal dismiss the pending appeal and petition for stay as moot.

II. CONCLUSION

For the reasons stated above, the BLM moves to withdraw its July 30, 2021 Final Decision and to dismiss Appellants' appeal and petition for stay.

Dated this 14th day of September, 2021.

Respectfully submitted,

**NANCY
ZAHEDI**

Digitally signed by
NANCY ZAHEDI
Date: 2021.09.14
10:11:40 -07'00'

Nancy S. Zahedi
Assistant Regional Solicitor

¹² *Id.*

¹³ *Id.* at ¶ 12.

¹⁴ *Id.*

¹⁵ *Id.* ¶ 14.

CERTIFICATE OF SERVICE

RE: Western Watersheds Project, Center for Biological Diversity, and Wilderness Watch v.
Bureau of Land Management, CA-D050-2021-02

I, the undersigned, declare that: I am a citizen of the United States, over the age of eighteen, and not a part of this litigation. On September 14, 2021, I served the

**MOTION TO WITHDRAW BLM'S DECISION AND TO DISMISS
THE PENDING APPEAL AND PETITION FOR STAY**

by placing a true copy via email and enclosed in a sealed envelope via FedEx at Sacramento, California, addressed as follows:

United States Department of Interior
Office of Hearings and Appeals
Hearings Division
351 South West Temple, Suite 6.300
Salt Lake City, Utah 84101
dchd@oha.doi.gov

and by placing a true copy via email and enclosed in a sealed envelope via FedEx at Sacramento, California, addressed as follows:

Laura Cunningham
Western Watersheds Project
P.O. Box 70
Beatty, NV 89003
lcunningham@westernwatersheds.org

Lisa Belenky
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
lbelenky@biologicaldiversity.org

Gary Macfarlane
Board Member
Wilderness Watch
P.O. Box 9175
Missoula, MT 59807
gmacfarlane@wildernesswatch.org

I certify under penalty of perjury that the foregoing is true and correct. Executed on the 14th day of September, 2021, at Sacramento, California.



Lynnette Solorio
Administrative Assistant