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Office of Hearings and Appeals
Interior Board of Land Appeals
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IBLA 2023-0048 <i>et al.</i>	)	DCHD-2022-0067 MT-010-22-01
	)	DCHD-2022-0068 MT-010-22-02
STATE OF MONTANA, BY AND	)	DCHD-2022-0066 MT-010-22-03
THROUGH THE MONTANA ATTORNEY	)	
GENERAL, <i>ET AL.</i>	)	Livestock Grazing
	)	
v.	)	
	)	
BUREAU OF LAND MANAGEMENT	)	Affirmed

ORDER*

The State of Montana, by and through its Attorney General (Attorney General), the State of Montana, by and through its Governor *et al.* (Governor), and the North Phillips County Cooperative State Grazing District *et al.* (Districts) (collectively, Appellants) each separately appealed an October 13, 2022, Order issued by an Administrative Law Judge (ALJ) in the Departmental Cases Hearings Division (DCHD). In that Order, the ALJ denied Appellants' petitions to stay a Final Decision issued by the Bureau of Land Management (BLM) because Appellants had not shown the likelihood of immediate and irreparable harm. As explained below, we affirm the ALJ's Order because Appellants have not demonstrated that the ALJ erred.

BACKGROUND

In November 2017, American Prairie Reserve (APR)¹ submitted an application to BLM to modify the management of 18 grazing allotments in 5 counties in Montana.² In

* This Order is binding on the parties but does not constitute Board precedent.

¹ APR is now "American Prairie." APR Response to Petition for Stay at 1 (filed with DCHD Sept. 12, 2022) (APR Response to Petition). For consistency, we will follow the ALJ and refer to American Prairie as APR.

² Administrative Record (AR) 2.5.01, Environmental Assessment, American Prairie Reserve Bison Change of Use, DOI-BLM-MT-L010-2018-0007-EA at 1-1 (Mar. 2022) (EA). The AR is composed of documents organized into nested folders. Citations to the

September 2019, APR submitted a revised application in which it reduced the number of allotments it was seeking to modify to seven, all of which are located in Phillips County, Montana: Telegraph Creek, Box Elder, Flat Creek, Whiterock Coulee, East Dry Fork, French Coulee, and Garey Coulee Allotments.³ The proposed modifications included changes in class of livestock (from cattle only to cattle and domestic indigenous livestock, i.e., bison); changes to the authorized seasons-of-use; construction, reconstruction, and removal of range improvement projects, including fences; adjustments to the allotments (such as combining pastures); and administrative actions (such as issuing 10-year grazing permits).⁴

To analyze the environmental effects of the proposed modifications, BLM prepared an environmental assessment (EA) under the National Environmental Policy Act (NEPA)⁵ and its implementing regulations.⁶ In the EA, BLM analyzed four alternatives: a current management alternative (Alternative A);⁷ APR's proposed alternative (Alternative B);⁸ an alternative that combined elements from the current management alternative and APR's proposed alternative (Alternative C);⁹ and an alternative that would preclude livestock grazing (Alternative D).¹⁰ Under Alternatives A, B, and C, BLM would continue to permit 7,969 animal unit months (AUMs), although the actual AUM use could vary year-to-year "based upon a number of factors, such as permittee management and rangeland conditions."¹¹

AR will identify the locations of documents by providing the numbers assigned to the top-level folder, subfolder(s), and document in order of increasing specificity, separated by periods.

³ *Id.*

⁴ *Id.* at 1-2.

⁵ 42 U.S.C. §§ 4321-4347. All citations to Federal statutes and regulations are to those in effect on the date of this Order, unless noted otherwise.

⁶ 40 C.F.R. pts. 1500-1508 (Council on Environmental Quality's NEPA regulations); 43 C.F.R. pt. 46 (Department of the Interior's NEPA regulations).

⁷ EA at 2-1 to 2-6.

⁸ *Id.* at 2-6 to 2-11.

⁹ *Id.* at 2-11 to 2-13.

¹⁰ *Id.* at 2-13 to 2-14.

¹¹ *Id.* at 2-1; *see* 43 C.F.R. § 4100.0-5 (defining an AUM as "the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month"). A Federal district court permanently enjoined the 2006 amendments to the grazing regulations in 43 C.F.R. pt. 4100. *See W. Watersheds Project v. Kraayenbrink*, 538 F. Supp. 2d 1302 (D. Idaho 2008), *aff'd in part, vacated in part on other grounds, and remanded*, 632 F.3d 472 (9th Cir. 2011). As a result, citations to the regulations in 43 C.F.R. pt. 4100 are to the 2005 edition of the Code of Federal Regulations.

Following completion of the EA, BLM issued a Finding of No Significant Impact, in which BLM determined that implementation of a combination of Alternatives B and C (Selected Alternative) would not be a major federal action and would not have a significant impact on the human environment and, therefore, preparation of an environmental impact statement was not necessary.¹² BLM then issued a proposed grazing decision, in which BLM proposed to implement the Selected Alternative.¹³ The proposed decision triggered a 15-day protest period.¹⁴ BLM received 18 protests, including one from the Governor.¹⁵

After considering the protests, BLM issued the Final Decision, in which it responded to the protests and adopted the proposed decision in full.¹⁶ The Final Decision left many elements of the existing management framework for the allotments unchanged, while approving a number of modifications.¹⁷ Appellants focus primarily on two of the approved modifications in these appeals. First, for four of the allotments (Flat Creek, Whiterock Coulee, French Coulee, and Garey Coulee), the Final Decision authorized a change of use from cattle only to cattle and/or bison.¹⁸ Second, the Final Decision approved various modifications to fences (i.e., removal, construction, reconstruction, electrification) in six of the allotments (Telegraph Creek, Box Elder, Flat Creek, Whiterock Coulee, French Coulee, and Garey Coulee).¹⁹

¹² AR 2.5.02, Finding of No Significant Impact, American Prairie Reserve Bison Change of Use, DOI-BLM-MT-L010-2018-0007-EA at 1, 2 (Mar. 25, 2022).

¹³ AR 2.6.01, Notice of Proposed Decision at 2 (Mar. 29, 2022).

¹⁴ *See id.* at 11; *see also* 43 C.F.R. § 4160.2 (“Any applicant, permittee, lessee or other interested public may protest the proposed decision . . . in person or in writing to the authorized officer within 15 days after receipt of such decision.”).

¹⁵ *State of Montana v. Bureau of Land Management*, MT-010-22-01, -02, -03, Order Denying Petitions for Stay at 10 (Oct. 13, 2022) (ALJ Order). The DCHD docket numbers for these appeals are DCHD 2022-0066, 2022-0067, and 2022-0068. DCHD used the bureau-assigned case numbers on its orders in these appeals, so our citations to those orders will also use the bureau-assigned case numbers.

¹⁶ AR 2.8.01, Notice of Final Decision at 2 (July 28, 2022) (Final Decision); *see id.*, Attachment (Attach.) 2, Protest Responses.

¹⁷ *See id.* at 3-4.

¹⁸ *See id.*; *see also* ALJ Order at 6-8.

¹⁹ *See* Final Decision at 3-4; ALJ Order at 5-8.

The Attorney General, the Governor, and the Districts separately appealed and petitioned to stay the Final Decision.²⁰ The ALJ consolidated the appeals and granted APR intervention in the appeals.²¹

Under DCHD's regulations, a party seeking a stay of a final grazing decision must demonstrate to the ALJ that a stay is warranted based on four criteria: (1) the relative harm to the parties if the stay is granted or denied; (2) the likelihood of the party'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 the stay.²² If the party fails to satisfy any one of these criteria, the petition for stay must be denied.²³ The ALJ denied the petitions for stay because Appellants had not shown a likelihood of immediate and irreparable harm in the absence of a stay.²⁴

Appellants timely appealed the ALJ's denial of their petitions for stay to this Board. Given that the appeals involve similar facts and legal issues, we consolidated the three appeals,²⁵ which are ripe for adjudication.²⁶

²⁰ See ALJ Order at 1-2.

²¹ *State of Montana v. Bureau of Land Management*, MT-010-22-01, -02, -03, Order, Appeals Consolidated; Western Watershed Project's Motions to Intervene Denied; American Prairie Reserve's Motions to Intervene Granted (Oct. 4, 2022).

²² 43 C.F.R. § 4.471(c); see *id.* § 4.471(d) (stating that the party "requesting a stay bears the burden of proof to demonstrate that a stay should be granted").

²³ *Manuz*, 192 IBLA 192, 197 (2018) ("Failure to satisfy any one of the stay criteria requires denial of the stay petition.").

²⁴ ALJ Order at 20-40.

²⁵ Order, Appeals Consolidated *Sua Sponte* (July 25, 2023).

²⁶ *State of Montana, By and Through the Montana Attorney General*, Statement of Reasons in Support of Notice of Appeal, IBLA 2023-0048 (filed Dec. 23, 2022) (AG SOR); *The State of Montana, By and Through its Governor et al.'s Statement of Reasons*, IBLA 2023-0049 (filed Dec. 22, 2022) (Governor SOR); [Grazing Districts'] *Statement of Reasons in Support of Notice of Appeal Dated November 14, 2022*, IBLA 2023-0050 (filed Dec. 23, 2022) (Districts SOR); *BLM Combined Answer to Appellants' Statement of Reasons*, IBLA 2023-0048 through IBLA 2023-0050 (filed Jan. 23, 2023); *American Prairie's Answer to the Governor's Statement of Reasons*, IBLA 2023-0049 (filed Jan. 23, 2023) (APR Answer). APR filed similar answers in the other two appeals.

ANALYSIS

I. Burden of Proof

A party may appeal to this Board from an ALJ's order granting or denying a petition for stay of a final grazing decision.²⁷ To prevail on appeal, the party must demonstrate error in the ALJ's order.²⁸ Specifically, the party must demonstrate that the ALJ committed a material error of law or fact or failed to demonstrate a rational connection between the facts found and the decision made.²⁹

II. Appellants Have Not Demonstrated That the ALJ Erred in Denying the Petitions for Stay

A. The ALJ was not required to consider all four stay criteria

In adjudicating the petitions for stay, the ALJ started with the likelihood of success on the merits criterion and determined that Appellants had “raised significant doubts about” whether BLM properly analyzed the fencing changes under NEPA.³⁰ The ALJ then considered the likelihood of immediate and irreparable harm criterion and ruled that Appellants had not satisfied this criterion.³¹ Based upon this ruling, the ALJ denied the petitions for stay without considering the other two stay criteria.³²

²⁷ See 43 C.F.R. § 4.478(a).

²⁸ See *Manuz*, 192 IBLA at 197.

²⁹ *W. Watersheds Project v. BLM*, 195 IBLA 115, 121 (2020).

³⁰ ALJ Order at 16 (“Based on a preliminary review of the record, Appellants have raised significant doubts about the adequacy of BLM’s analysis and the sufficiency of the public’s opportunity to meaningfully participate in the process and inform BLM’s ultimate decision with regards to fencing.”); *id.* at 20 (“Appellants have raised serious doubts about the adequacy of the EA’s analysis regarding the fencing projects because the description and analysis of those projects in the EA and Final Decision are confusing and lack detail.”).

³¹ *Id.* at 21 (“Appellants’ assertions of immediate and irreparable harm are not adequately developed or supported by marshalled evidence to show that any harm is likely, irreparable, and immediate.”).

³² *Id.* at 3 (“I am denying the stay petitions because Appellants have not adequately demonstrated the likelihood of immediate and irreparable harm if a stay is not granted.”); *id.* at 41 (“Appellants have failed to provide sufficient proof and analysis to show that they will suffer a harm that is likely, immediate, and irreparable if a stay is not granted. Therefore, their stay petitions must be denied.”).

On appeal, the Attorney General and the Governor argue that the ALJ's failure to consider the other two stay criteria was a material legal error.³³ But a stay can only issue if the appellant satisfies all four stay criteria.³⁴ In other words, if the appellant fails to satisfy even one criterion, the petition must be denied.³⁵ Therefore, because the ALJ ruled that Appellants had not satisfied the likelihood of immediate and irreparable harm criterion, the ALJ was not required to consider the other two stay criteria,³⁶ and the discretionary choice not to do so did not constitute legal error. For the same reason, Appellants' complaints that the ALJ did not adequately address all of their merits arguments when considering the likelihood of success on the merits criterion³⁷ do not show error in the ALJ's Order, as it was unnecessary to have addressed that criterion at all.

- B. Appellants have not demonstrated that the ALJ erred in ruling they had not shown a likelihood of immediate and irreparable harm

Appellants make five arguments, collectively or individually, as to why the ALJ erred in ruling that they had not shown a likelihood of immediate and irreparable harm:

- The ALJ erred in focusing on the Whiterock Coulee Allotment;³⁸
- The ALJ erred in ruling that Appellants had not shown the likelihood of immediate and irreparable economic harm;³⁹

³³ AG SOR at 25 (arguing that the ALJ's failure to consider the public interest criterion "constitute[d] a material error"); *id.* at 27 ("[The ALJ's] failure to consider the remaining stay factors constitutes reversible error. . . . Denial of the stay constituted a material legal error because the [ALJ] didn't consider four factors."); Governor SOR at 26 (arguing that the ALJ "fail[ed] to address the public interest prong, which weighs in favor of issuing the requested stay"); *id.* at 28 ("The [ALJ's] failure to analyze the impact of a stay on the public interest was legal error."). *But see id.* at 6 (recognizing that a "petitioner must show that it likely meets each criterion" (quotation omitted)).

³⁴ *Manuz*, 192 IBLA at 201 ("An appellant must show sufficient justification for all four criteria [in] 43 C.F.R. § 4.471(c).").

³⁵ *W. Watersheds Project v. BLM*, 195 IBLA at 121 (ruling that the failure to satisfy any one of the stay criteria in 43 C.F.R. § 4.471(c) requires denial of the petition for stay).

³⁶ *See Simpson*, 197 IBLA 241, 249 (2021) (applying the Board's stay regulation at 43 C.F.R. § 4.21 and ruling that the failure to satisfy the likelihood of immediate and irreparable harm criterion eliminated the need to consider the other stay criteria because the petition for stay had to be denied).

³⁷ *See* AG SOR at 4-20; Governor SOR at 8-22.

³⁸ AG SOR at 20-21; Governor SOR at 22-23; Districts SOR at 4-8.

³⁹ AG SOR at 21-23; Districts SOR at 10-12.

- The ALJ erred in ruling that the Attorney General had not shown the likelihood of immediate and irreparable harm from disease transmission;⁴⁰
- The ALJ erred in ruling that the Governor had not shown the likelihood of immediate and irreparable harm to State trust lands;⁴¹ and
- The ALJ erred in ruling that the environmental injuries from the fencing changes did not constitute immediate and irreparable harm.⁴²

We address each of these arguments below.

1. Appellants have not demonstrated that the ALJ erred in focusing on the Whiterock Coulee Allotment

Appellants argued below that they were likely to suffer various immediate and irreparable harms from the Final Decision, mostly from the conversion of production-oriented cattle grazing to non-production-oriented bison grazing on the Flat Creek, Whiterock Coulee, French Coulee, and Garey Coulee Allotments.⁴³ In opposition, APR provided a declaration from its Director of Bison Restoration⁴⁴ who stated that APR intended to immediately convert only the Whiterock Coulee Allotment⁴⁵ and that the Flat Creek, French Coulee, and Garey Coulee Allotments “w[ould] continue to be operated as they have in the past with [only] cattle for the foreseeable future.”⁴⁶

⁴⁰ AG SOR at 23-24.

⁴¹ Governor SOR at 23-26.

⁴² Districts SOR at 8-9.

⁴³ *See, e.g.*, AR 4.0.03, [Grazing Districts’] Notice of Appeal, Statement of Reasons in Support of Appeal, and Petition for Stay of the Bureau of Land Management’s July 28, 2022 Final Decision for the APR Grazing Proposal at 51 (received by DCHD Aug. 30, 2022) (“If non-production bison are permitted to roam on the allotments governed by this decision, members of the Appellants’ groups will be irreparably harmed, and the Allotments will be severely damaged. The presence of non-production bison on these allotments is a threat to the health of existing wildlife and domestic cattle and, therefore, the livelihoods of Appellants’ members and the future of the Phillips County community as a whole.”) (Districts Petition); *see* EA at 3-39 (characterizing APR’s bison herd as “non-production-oriented,” i.e., APR does not operate for the purpose of raising bison to sell at market).

⁴⁴ APR Response to Petition, Exhibit (Ex.) 1, Declaration of Scott Heidebrink ¶ 2 (signed Sept. 9, 2022).

⁴⁵ *Id.* ¶ 23.

⁴⁶ *Id.* ¶ 25.

Based upon that statement, and because Appellants had to show that the harm they would suffer absent a stay would be both immediate and irreparable,⁴⁷ the ALJ focused on the Whiterock Coulee Allotment⁴⁸ in ruling that Appellants had not shown the likelihood of immediate and irreparable harm from BLM's decision to permit conversion from cattle to bison grazing.⁴⁹ But the ALJ also stated that she would have reached a similar ruling even if APR intended to immediately convert the other allotments to bison grazing because Appellants had not provided evidence showing how the immediate conversion of any of the four allotments would cause harm.⁵⁰ The ALJ further stated that Appellants could "re-petition for a stay" "[s]hould APR convert the Flat Creek, French Coulee, and Garey Coulee Allotments to bison grazing while these appeals are pending."⁵¹

On appeal, Appellants argue that the ALJ erred in focusing on the Whiterock Coulee Allotment. First, Appellants criticize the ALJ for relying on the statement from APR's Director of Bison Restoration that only the Whiterock Coulee Allotment would be immediately converted to bison grazing.⁵² According to Appellants, the statement was outside the record and the Director was not subject to cross-examination.⁵³ But such statements and other extra-record evidence are often supplied by the parties at the petition-for-stay stage and are frequently relied upon by ALJs and this Board to determine whether there is a likelihood of immediate and irreparable harm to warrant

⁴⁷ See 43 C.F.R. § 4.471(c)(3) (stating that an appellant seeking a stay must show the "likelihood of immediate and irreparable harm if the stay is not granted").

⁴⁸ ALJ Order at 21 ("The analysis of the likelihood of an irreparable harm that will occur immediately as a result of converting to bison grazing is guided by the fact that only one allotment—the Whiterock Coulee Allotment—will be immediately converted. While the Flat Creek, French Coulee, and Garey Coulee Allotments are also authorized for conversion, APR represents that they will not be converted in the near future."); *see id.* (noting that "bison grazing was already authorized [on] the Telegraph Creek and Box Elder Allotments prior to the Final Decision").

⁴⁹ *See, e.g., id.* at 22 (ruling that Appellants had not shown a likelihood of immediate and irreparable economic harm from the conversion of the Whiterock Coulee Allotment to bison grazing).

⁵⁰ *Id.* at 21; *see id.* ("Appellants' assertions of immediate and irreparable harm are not adequately developed or supported by marshalled evidence to show that any harm is likely, irreparable, and immediate.").

⁵¹ *Id.*

⁵² AG SOR at 20; Governor SOR at 22-23; Districts SOR at 5-6.

⁵³ Districts SOR at 5 n.1.

issuance of a stay.⁵⁴ Accordingly, the ALJ did not err in relying on the Director's statement.

Second, Appellants criticize the ALJ for suggesting that they could re-petition for a stay if APR were to convert the other three allotments to bison grazing during the pendency of the appeals. According to Appellants, re-petitioning for a stay would violate the DCHD's stay regulations because, under 43 C.F.R. § 4.471(a), a "petition for stay must be filed 'together with the [notice of appeal].'"⁵⁵ Appellants also argue that having to re-petition for a stay would waste resources.⁵⁶

Filing a petition for stay when and if the circumstances change after the filing of a notice of appeal does not violate the DCHD's stay regulations.⁵⁷ The requirement in 43 C.F.R. § 4.471(a) that a petition for stay be filed "together with" a notice of appeal is designed to provide certainty with respect to when final grazing decisions take effect where BLM has not placed them into immediate effect.⁵⁸ Under DCHD's stay regulations, these types of decisions will generally become effective upon the expiration of the time allowed for filing an appeal.⁵⁹ If, however, a petition for stay is filed "together with" a

⁵⁴ See, e.g., *Bromm*, 193 IBLA 152, 158 & n.33 (2018) (concluding that the appellant's statements in support of her petition for stay did not show a likelihood of immediate and irreparable harm based, in part, on BLM's submission of a declaration and other extra-record evidence showing that the appellant's horse had improved since the decision on appeal had been issued); *Tennessee Gas Pipeline Co., L.L.C.*, 189 IBLA 108, 112 & n.16 (2016) (relying on the appellant's extra-record evidence showing that decommissioning costs could exceed \$3 million in finding a likelihood of immediate and irreparable harm).

⁵⁵ Districts SOR at 7 (quoting 43 C.F.R. § 4.471(a)).

⁵⁶ *Id.* (arguing that having to re-petition for a stay would be "contrary to judicial economy"); Governor SOR at 22-23 (arguing that having to re-petition for a stay "subjects the Executive to an untenable game of whack-a-mole").

⁵⁷ See Special Rules Applicable to Public Land Hearings and Appeals, 68 Fed. Reg. 68,765, 68,766 (Dec. 10, 2003) ("Because an [ALJ] would have general jurisdiction over an appeal from a BLM grazing decision, he or she could entertain a petition for a stay that was filed with [DCHD] at any time the appeal was still pending."); *id.* (citing *Oriskovich*, 128 IBLA 69, 70 (1993), favorably for the proposition that a petition for stay may be filed at any time); see also *The Klamath Tribes*, 135 IBLA 192, 195 (1996) (ruling that, "[w]hen a timely appeal has been filed, a petition for stay may be filed any time during the appeal, and the request may be considered in the exercise of the Board's discretion").

⁵⁸ See 43 C.F.R. § 4.479(b) (stating that BLM may place a final grazing decision into immediate effect).

⁵⁹ *Id.* § 4.479(a)(1).

timely notice of appeal, the effectiveness of such a decision will be postponed.⁶⁰ When this occurs, the decision will become effective if the ALJ denies the petition (in whole or in part) or fails to act on the petition within 45 days after the expiration of the time for filing a notice of appeal.⁶¹ The cited regulatory language, therefore, does not preclude parties from petitioning for a stay at later stages of the proceedings; it merely reflects that a petition filed “together with” the notice of appeal influences the effectiveness of the appealed decision differently than a later-filed petition.

In addition, Appellants’ waste of resources argument does not show error in the ALJ’s Order. The ALJ’s invitation to file a renewed petition if and when circumstances change was simply an acknowledgment of Appellants’ prospective procedural rights, distinct from the decision to deny their petitions. Appellants’ concerns with the practicality of exercising those rights have no bearing on the correctness of the ALJ’s decision to deny the current petitions for failing to show a likelihood of immediate and irreparable harm in the absence of a stay.

2. Appellants have not demonstrated error in the ALJ’s ruling that they did not show a likelihood of immediate and irreparable economic harm

Appellants argued below that the conversion from cattle to bison will economically harm local businesses that support the cattle industry and, in turn, economically harm the local communities.⁶² In support, Appellants criticized the economic model used by BLM to analyze the economic impact of the Final Decision because that model was based on a production-oriented bison operation.⁶³

⁶⁰ *Id.* § 4.479(a)(2); *see also Simpson*, 197 IBLA at 244 (explaining that, under the Board’s stay regulation, 43 C.F.R. § 4.21, the effectiveness of a decision may be temporarily postponed when a petition for stay is filed “together with” a timely notice of appeal).

⁶¹ 43 C.F.R. §§ 4.472(d)(1) (“Within 45 days after the expiration of the time for filing a notice of appeal, an [ALJ] must grant or deny . . . [a] petition for a stay filed under § 4.471(a), in whole or in part . . .”), 4.472(e) (“Any final BLM grazing decision that is not already in effect and for which a stay is not granted will become effective immediately after the [ALJ] denies a petition for a stay or fails to act on the petition within the time set forth in [43 C.F.R. § 4.472(d)(1)].”); *see Simpson*, 197 IBLA at 244 (explaining that a similar result would occur under 43 C.F.R. § 4.21).

⁶² *See* ALJ Order at 21.

⁶³ *See id.* at 22.

While the ALJ agreed that Appellants' criticism of the economic model used by BLM was "well founded,"⁶⁴ the ALJ concluded that Appellants had failed to produce sufficient evidence of immediate and irreparable economic harm.⁶⁵ In reaching this conclusion, the ALJ noted that "[w]hat little information" Appellants provided was "not illuminating" and provided "only crude measures of the potential economic impacts."⁶⁶ As a result, the ALJ ruled that Appellants had not shown the likelihood of immediate and irreparable economic harm.⁶⁷

On appeal, all Appellants argue that the ALJ's economic harm analysis was flawed because it focused only on the Whiterock Coulee Allotment.⁶⁸ But as explained above, the ALJ properly focused on the Whiterock Coulee Allotment given APR's stated intent to immediately convert only that allotment to bison grazing.⁶⁹ Moreover, the ALJ also ruled that Appellants had not produced sufficient evidence to show a likelihood of immediate and irreparable economic harm even if all four of the allotments were immediately converted to bison grazing.⁷⁰ As we have consistently held in applying the identical stay criterion under the regulation applicable to Board proceedings,⁷¹ bare allegations of harm are not sufficient,⁷² and appellants cannot meet their burden of proof through allegations that are "unsupported, vague, or speculative."⁷³

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 22-24.

⁶⁸ AG SOR at 22-23; Governor SOR at 22-23; Districts SOR at 12.

⁶⁹ *See supra* part II.B.1; ALJ Order at 24 ("Appellants' economic arguments fail to show that they will likely be harmed in the short-term, i.e., immediately.").

⁷⁰ ALJ Order at 22 (ruling that "Appellants fail[ed] to produce evidence that identifies any immediate or irreparable [economic] harm that is likely to occur as a result of the immediate conversion of a single allotment (Whiterock Coulee) to bison grazing, let alone evidence showing how conversion of four allotments to bison grazing would cause [economic] harm"); *id.* at 23 (deeming Appellants' "crude measure" of economic harm "insufficient to determine the extent of the economic harm, if any, from adding bison to the Whiterock Coulee Allotment or White Rock Unit, or any of the three other allotments being converted to bison grazing").

⁷¹ *See* 68 Fed. Reg. at 68,768 (stating that 43 C.F.R. § 4.479(a) was based on the stay regulation applicable to Board proceedings, 43 C.F.R. § 4.21).

⁷² *W. Watersheds Project*, 192 IBLA 72, 84-85 (2017).

⁷³ *Bromm*, 193 IBLA at 157.

The Districts also argue on appeal that the ALJ subjected them to an unreasonable burden of proof because they lacked “access to the data necessary to properly assess the economic impacts on the community.”⁷⁴ In support, the Districts contend that BLM should have been required to obtain the necessary economic data from APR and properly analyze it.⁷⁵ However, BLM had no obligation to obtain economic data from APR to assist the Districts in proving immediate and irreparable economic harm to their members. The Districts’ arguments regarding “BLM’s burden” to gather a sufficient record to support its analysis of impacts under NEPA⁷⁶ go to the merits of their appeal. Here we are focused on whether there is a likelihood of immediate and irreparable harm in the absence of a stay pending adjudication of those merits arguments. Under DCHD’s stay regulations, the burden of proving such harm rests solely with the party seeking a stay,⁷⁷ as the ALJ correctly noted.⁷⁸ If the Districts lack evidence to demonstrate the nature or extent of harm their members are likely to suffer, they do not meet this burden.

⁷⁴ Districts SOR at 11.

⁷⁵ *Id.* (“While it is true that the Appellants are required to show immediate and irreparable harm, it is unreasonable to expect the Appellants to conjure up a complete and accurate depiction of the economic impacts when only American Prairie and BLM had access to the concrete data upon which such an analysis must rely – data that the BLM failed to collect, let alone analyze.”).

⁷⁶ See Districts SOR at 10-11 (suggesting that BLM had an obligation to obtain economic data from APR under NEPA’s implementing regulations).

⁷⁷ 43 C.F.R. § 4.471(d) (“The appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.”); see *W. Watersheds Project. v. BLM*, 195 IBLA at 130-31 (ruling that 43 C.F.R. § 4.471(d) requires “an appellant to demonstrate” a likelihood of suffering immediate and irreparable harm in the absence of a stay).

⁷⁸ ALJ Order at 20-21 (ruling that Appellants “must show that an irreparable harm is likely, not merely possible, with reliable evidence of the timing and extent of the harm to show immediacy and significance”).

Even if Appellants' arguments had merit, we would not reverse the ALJ's economic harm ruling because Appellants failed to show any specific economic harm to themselves⁷⁹ or their members.⁸⁰ Neither the Attorney General nor the Governor alleged any economic harm that the State itself may suffer. Rather, the Attorney General and the Governor relied on the alleged economic harm that local businesses and communities may suffer.⁸¹ But the Attorney General and the Governor cannot pursue their claims in a *parens patriae* capacity (i.e., as a representative of its citizens)⁸² and cannot rely upon the alleged harms of third parties, such as local businesses and communities, in seeking a stay.⁸³

In addition, although the Districts represent local businesses and grazing permittees,⁸⁴ they failed to show that any particular business or permittee they represent would suffer economic harm in the absence of a stay, much less immediate, "significant"

⁷⁹ See *The Wilderness Society*, 151 IBLA 346, 348 (2000) (ruling that "a party must demonstrate that a stay is justified based on," among other things, "the likelihood of immediate and irreparable harm to the moving party" (emphasis added)); cf. *Nken v. Holder*, 556 U.S. 418, 434 (2009) (explaining that, under the traditional test for issuance of a stay, one factor is "whether the applicant will be irreparably injured absent a stay" (emphasis added)); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (ruling that a plaintiff seeking a preliminary injunction must show, among other things, "that he is likely to suffer irreparable harm in the absence of [injunctive] relief" (emphasis added)).

⁸⁰ *W. Watersheds Project*, 192 IBLA at 85-86 (recognizing that an organization may establish the likelihood of irreparable harm through harm its members may suffer).

⁸¹ AR 4.0.01, Attorney General Notice of Appeal, Statement of Reasons, and Petition for Stay at 35 (filed with DCHD Aug. 30, 2022) (stating that "[a]bsent a stay, the final decision will cause irreparable harm to . . . Montana's surrounding communities") (AG Petition); AR 4.0.02, Governor Notice of Appeal, Statement of Reasons, and Petition for Stay at 14 (dated Aug. 25, 2022) (stating that the Final Decision "will decrease agricultural production revenue and may impact support industries") (Governor Petition).

⁸² See *State of Missouri Dept. of Nat. Res.*, 142 IBLA 201, 206-07 (1998) (explaining that a "State does not have standing to appeal where it acts in the role of *parens patriae*").

⁸³ See *supra* note 79.

⁸⁴ See Districts Petition at 1 (stating that the appeal is filed on behalf of the South and North Phillips County Cooperative State Grazing Districts and the Montana Stockgrowers Association (MSGA)); *id.* at 3-4 (describing the Grazing Districts and stating that they represent more than "200 permittees engaged in livestock production in Phillips County"); *id.* at 4-5 (describing MSGA and stating that its members include "cattle ranchers of all ages, ranching operations large and small, feedlot operators, affiliate businesses, private property owners, and supporters and friends of Montana ranchers").

economic harm as required by our precedent.⁸⁵ Instead, the Districts focused only on the overall economic impact of the Decision to the area and industry generally,⁸⁶ without identifying one or more of their members that would be economically harmed. This is insufficient to meet their burden.

3. The Attorney General has not demonstrated error in the ALJ's ruling that the Attorney General did not show a likelihood of immediate and irreparable harm from disease transmission

Appellants argued below that they would be immediately and irreparably harmed in the absence of a stay because the conversion from cattle to bison and the authorized fencing changes will increase the risk that bison will come in close contact with cattle and wildlife, which will increase the risk of disease transmission from bison to cattle, wildlife, and, possibly, humans.⁸⁷ The ALJ, however, reviewed Appellants' evidence and arguments⁸⁸ and concluded that Appellants "failed to show that immediate and irreparable harm is likely from disease being transmitted from bison to wildlife, cattle, or humans."⁸⁹

On appeal, only the Attorney General explicitly argues that the ALJ's ruling on this point is in error. According to the Attorney General, after the ALJ determined that BLM may have failed to properly analyze the fencing changes, she "fault[ed] Appellants for failing to show that bison will cross into property containing livestock and transmit disease."⁹⁰ The Attorney General contends that "[t]his internal inconsistency undermines" the ALJ's ruling regarding the lack of immediate and irreparable harm from disease transmission.⁹¹

As noted above, in evaluating Appellants' likelihood of success on the merits, the ALJ was critical of BLM's analysis regarding the fencing changes.⁹² That criticism, however, did not create an inconsistency in her ruling because BLM's obligations to

⁸⁵ See *W. Watersheds Project v. BLM*, 195 IBLA at 134-36 (affirming an ALJ's balancing of harms where the judge determined that substantial, unrecoverable economic harm to livestock operators constituted irreparable harm); *Marker*, 194 IBLA 283, 292-93 (2019) (ruling that unrecoverable economic injury must be significant to constitute irreparable harm).

⁸⁶ See Districts Petition at 20-24.

⁸⁷ See ALJ Order at 24.

⁸⁸ See *id.* at 24-35.

⁸⁹ *Id.* at 35.

⁹⁰ AG SOR at 23-24.

⁹¹ *Id.* at 24.

⁹² See *supra* note 30 and accompanying text.

properly analyze the fencing changes under NEPA are separate and distinct from the Attorney General's burden of proving the likelihood of immediate and irreparable harm from disease transmission. The Attorney General did not satisfy its burden on this stay criterion,⁹³ regardless of how it may ultimately fare on the merits of its NEPA claims. Except for expressing fear that bison might transmit brucellosis⁹⁴ and that the proposed fencing might not contain the bison,⁹⁵ the Attorney General provided no evidence that any disease transmission was likely to occur or result in immediate and irreparable harm to the State pending resolution of the challenges to the merits of BLM's analysis.⁹⁶ Given the lack of support for the Attorney General's arguments, and the record evidence to the contrary,⁹⁷ the ALJ did not err in ruling that the Attorney General failed to show a

⁹³ See ALJ Order at 34-35.

⁹⁴ AG Petition at 24-25, 38; see ALJ Order at 25 (finding that the Attorney General "focused on the risk of transmitting a single disease: brucellosis").

⁹⁵ See AG Petition at 26-27, 38-39 (arguing that the "wildlife-friendly" fencing proposed by APR will not contain bison).

⁹⁶ See *id.* at 36 (arguing with no support that "BLM's final decision will lead to imminent and irreparable harm to Montana's public land" and that BLM's violation of NEPA itself will cause irreparable environmental harm); ALJ Order at 26 ("[T]he . . . Appellants fail to present any evidence of which diseases the local cattle are being vaccinated for, and why the lack of vaccinations in APR bison puts Appellants' cattle at higher risk for disease.").

⁹⁷ See, e.g., EA at 3-14 to 3-15, 3-18 to 3-19 (analyzing fencing effectiveness, risk of disease transmission, and public safety considerations); APR Response to Petition, Ex. 2, Declaration of Keith Aune ¶ 33 (signed Sept. 7, 2022) ("There is no increased disease risk to neighbors and to other livestock producers in Phillips, Valley or Fergus counties from American bison ranging on the Reserve and BLM lands. The source herds were free of regulated diseases and have been tested before they arrived and for several decades on the prairie lands they currently occupy. The testing protocols required before transport to Montana were rigorous and met all import and export regulations required by State or Federal animal health authorities."); *id.*, Ex. 3, Declaration of Jack Rhyan (signed Sept. 8, 2022), Ex. 2, Testimony of Jack Rhyan at 6 ("Because the APR bison herd is currently not infected with *B. abortus*, there is negligible risk of transmission to other livestock in neighboring herds. It is the same risk the livestock herds in the County pose to one another."); *id.* at 8 ("The location of the APR in Phillips County and the herd origins from bison herds long negative for brucellosis give me confidence the risk of brucellosis transmission posed by APR bison to surrounding livestock herds is negligible.").

likelihood of immediate and irreparable harm from disease transmission that would warrant issuance of a stay.⁹⁸

The Attorney General also argues that the ALJ erred by placing too much emphasis on a Settlement Agreement between APR and the South Phillips County Cooperative State Grazing District (among others), under which APR must test a certain number of bison for diseases, including brucellosis.⁹⁹ According to the Attorney General, the ALJ's determination that the Settlement Agreement established a "sufficient testing protocol, in conjunction with [the ALJ's] conclusion that the fencing analysis was inadequate, show a lack of rational connection to [the] ultimate conclusion that the Appellants' claims of harms [from disease transmission] are unfounded."¹⁰⁰

As an initial matter, the ALJ did not determine that the required testing under the Settlement Agreement was a "sufficient testing protocol." Nor was the ALJ required to make such a determination given that the Attorney General had the burden of proving a likelihood of immediate and irreparable harm from the transmission of brucellosis. Rather, the ALJ determined that the fact that the testing showed no occurrences of brucellosis,¹⁰¹ along with BLM's evidence,¹⁰² the opinions expressed by APR's experts,¹⁰³

⁹⁸ See *Friends of Animals*, 188 IBLA 394, 399 (2016) (applying 43 C.F.R. § 4.21 and ruling that an appellant seeking a stay must show that irreparable harm is likely to occur in the absence of a stay, not that the harm is only feared to occur); *W. Watersheds Project*, 192 IBLA at 85 (applying 43 C.F.R. § 4.21 and ruling that "[b]are allegations [of irreparable harm] are of no value"); *Umpqua Watersheds, Inc.*, 191 IBLA 1, 9 (2017) (applying 43 C.F.R. § 4.21 and ruling that the appellant had not demonstrated the likelihood of irreparable harm because it "provide[d] no evidence or data supporting a claim of injury").

⁹⁹ AG SOR at 24; see Districts Petition, Ex. 19, IN THE MATTER OF American Prairie Reserve's Petition for Variance from Phillips Conservation District Ordinance 2016-1, Settlement Agreement ¶ 2(a)-(b) (Dec. 11, 2020) (stating that APR must test 325 bison for certain diseases, including brucellosis, during the first 5 years of the Agreement and must test 150 bison over the next 5 years).

¹⁰⁰ AG SOR at 24.

¹⁰¹ ALJ Order at 27 ("In a recent testing of 97 APR bison, they all tested negative for brucellosis This supports a finding that the risk of transmission of [brucellosis] does not constitute a likelihood of immediate and irreparable harm." (footnote omitted)).

¹⁰² See *id.* at 25 ("[T]he grazing of cattle and bison in close proximity would fit within the character of existing grazing of cattle that occurs in allotments surrounding APR properties and occurs without incident. There is no indication that bison pasturing in close proximity to cattle poses a health risk to cattle." (quoting EA at 3-16)).

¹⁰³ *Id.* at 27-28 (summarizing opinions expressed by APR's experts that there was little risk that APR's bison would transmit brucellosis to cattle).

and the lack of evidence offered by the Attorney General and the other Appellants,¹⁰⁴ all supported the conclusion that “Appellants . . . failed to show that immediate and irreparable harm is likely from [brucellosis] being transmitted from bison to wildlife, cattle, or humans.”¹⁰⁵

But even if the ALJ had determined that the required testing under the Settlement Agreement was a “sufficient testing protocol,” the Attorney General has not explained how that determination, when combined with the ALJ’s criticism of BLM’s analysis of the fencing changes, “show[s] a lack of rational connection to [the] ultimate conclusion that the Appellants’ claims of harms [from disease transmission] are unfounded.” Because the Attorney General has not sufficiently developed this argument, it does not meet the burden to show error in the ALJ’s ruling.¹⁰⁶

4. The Governor has not demonstrated error in the ALJ’s ruling that the Governor did not show immediate and irreparable harm to State trust lands

The Governor argued below that State trust lands are likely to suffer immediate and irreparable harm in the absence of a stay because State trust lands are generally fenced in common with BLM-administered and private lands within the allotments slated for new bison grazing under the Final Decision.¹⁰⁷ According to the Governor, bison grazing on these allotments will increase the risk of disease, trespass, goring, and deterioration of the State trust lands, and will also increase the risk that the State will violate its fiduciary obligation to properly manage the State trust lands for the benefit of the school trust beneficiaries.¹⁰⁸

The ALJ, however, ruled that the Governor’s general concerns about bison grazing were “undermined by the fact that APR holds [State lease #8124] that authorizes bison

¹⁰⁴ See *id.* at 28 (“Appellants provided no evidence to support their position that APR bison pose a risk of transmission of brucellosis that amounts to a likelihood of irreparable harm to Appellants.”); *id.* at 35 (“As for the Appellants’ concerns over the zoonotic diseases, [such as brucellosis,] they offer no evidence or analysis to show that the diseases would likely be transmitted to humans.”).

¹⁰⁵ *Id.* at 35.

¹⁰⁶ Cf. *Sawyers v. Norton*, 962 F.3d 1270, 1286 (10th Cir. 2020) (explaining that arguments that are presented only in a perfunctory manner will be deemed waived).

¹⁰⁷ Governor Petition at 26, 34.

¹⁰⁸ *Id.* at 34; see *id.*, Ex. 4, Declaration of Clive Rooney ¶ 4 (signed Aug. 24, 2022) (explaining the State’s fiduciary obligation to manage the State trust lands for the benefit of the school trust beneficiaries).

grazing”¹⁰⁹ on State trust lands within the Box Elder Allotment.¹¹⁰ The ALJ also determined that the alleged risks of disease transmission, trespass, goring, and the deterioration of the State trust lands would not result in immediate and irreparable harm.¹¹¹ Moreover, based upon that determination, the ALJ ruled that “there is no likelihood of immediate and irreparable harm to the ability of the State to meet its fiduciary obligation” with respect to State trust lands.¹¹²

On appeal, the Governor argues that the ALJ erred because, absent a stay, unauthorized bison grazing will occur on State trust lands¹¹³ and this will result in immediate and irreparable harm because it constitutes an “infringement upon the State’s property rights and ability to manage its own property in accordance with its Constitutional and statutory mandates.”¹¹⁴ In support, the Governor asserts that State trust lands are fenced in common with BLM-administered lands in the Whiterock Coulee and Flat Creek Allotments¹¹⁵ but APR is not authorized to use those State trust lands for bison grazing.¹¹⁶ As a result, the Governor concludes that “unauthorized bison grazing on State [t]rust [l]ands is inevitable.”¹¹⁷

¹⁰⁹ ALJ Order at 40.

¹¹⁰ See APR Answer, Attach. A, Declaration of Scott Heidebrink ¶¶ 7-9, 11-12 (signed Jan. 23, 2023) (stating that APR holds State leases #4873 and #8124, which have authorized bison grazing since 2009 on State trust lands associated with the Telegraph Creek and Box Elder Allotments, respectively) (Second Heidebrink Decl.); see also EA at A-10 (map depicting the Telegraph Creek and Box Elder Allotments).

¹¹¹ ALJ Order at 40 (“[T]his Order has already addressed all these alleged threats and concluded that no immediate and irreparable harm is likely to result.”); see also *id.* at 24-35 (ruling there was no likelihood of immediate and irreparable harm from disease transmission); *id.* at 38-39 (ruling there was no likelihood of immediate and irreparable harm from goring).

¹¹² *Id.* at 40.

¹¹³ Governor SOR at 25.

¹¹⁴ *Id.* at 26.

¹¹⁵ Governor SOR, Ex. 1, Declaration of Clive Rooney ¶ 3 (signed Dec. 20, 2022) (stating that the State trust lands within the Whiterock Coulee and Flat Creek Allotments are covered by State leases #9361 and #8171, respectively) (Second Rooney Decl.).

¹¹⁶ Second Rooney Decl., Attach. A, Letter from Montana Department of Natural Resources and Conservation to APR at 1-2 (dated Oct. 27, 2022) (explaining that the State will not process APR’s request to graze bison on State leases #9361 and #8171 until after these appeals are adjudicated).

¹¹⁷ Governor SOR at 25.

APR, however, represents that it “will keep its bison off state lands that are associated with the allotments in the Final Decision.”¹¹⁸ In support, APR explains in detail the actions it will take to prevent unauthorized bison grazing on State trust lands within the Whiterock Coulee Allotment,¹¹⁹ as well as the three other allotments authorized for new bison grazing under the Final Decision.¹²⁰ Although the Governor questions whether the actions APR intends to take will prevent unauthorized bison grazing on State trust lands,¹²¹ the Governor must show that unauthorized bison grazing is *likely* to occur.¹²² Because the Governor has not satisfied this burden of proof, the Governor has not shown that the ALJ erred in ruling that there is no likelihood of immediate and irreparable harm to State trust lands.

5. The Districts have not demonstrated error in the ALJ’s ruling that the environmental injuries from the fencing changes did not constitute immediate and irreparable harm

The Attorney General argued below that irreparable harm can be presumed when a Federal agency violates NEPA.¹²³ The ALJ, however, rejected this argument:

[C]iting Federal court case law from the 1980’s, the Attorney General argues: “Noncompliance with NEPA itself generally causes irreparable injury, both by threatening environmental harm and by injuring the rights

¹¹⁸ APR Answer at 25.

¹¹⁹ Second Heidebrink Decl. ¶¶ 22-30 (explaining the actions APR will take to prevent unauthorized bison grazing on three sections of State trust lands in the southern and central portions of the Whiterock Coulee Allotment); Second Rooney Decl., Attach. C, Letter from APR to Clive Rooney (undated) (explaining that no bison grazing will occur in the northern portion of the Whiterock Coulee Allotment because there is no way to keep the bison off of the State trust lands located there); *see also* EA at A-7 (map depicting the State trust lands within the Whiterock Coulee Allotment).

¹²⁰ Second Heidebrink Decl. ¶¶ 31-32 (explaining the actions APR will take to prevent unauthorized bison grazing on State trust lands within the Flat Creek Allotment); *id.* ¶¶ 33-35 (explaining the actions APR will take to prevent unauthorized bison grazing on State trust lands in the French Coulee and Garey Coulee Allotments).

¹²¹ *See* Governor SOR at 26, 28-29; Second Rooney Decl. ¶¶ 2-9.

¹²² *See W. Watersheds Project v. BLM*, 195 IBLA at 130-31 (“In applying the test for preliminary injunctions, the Supreme Court has held that a preliminary injunction should be granted only when irreparable harm is likely, as opposed to merely possible, and our stay regulation similarly requires an appellant to demonstrate a *likelihood* of suffering immediate and irreparable harm from denial of a requested stay.” (footnote omitted) (citing *Winter*, 555 U.S. at 22)).

¹²³ AG Petition at 36.

of affected members of the public to participate in the agency’s decision-making process.” This is not the current state of the law, as the current Federal court case law, which the Board has adopted, provides that “a procedural violation of NEPA is not itself sufficient to establish irreparable injury.”^[124]

On appeal, the Districts recognize that an alleged violation of NEPA alone does not establish irreparable harm.¹²⁵ But the Districts argue that an alleged NEPA violation coupled with an environmental injury does.¹²⁶ The Districts further contend that environmental injuries from the fencing changes establish irreparable harm given the ALJ’s suggestion that BLM failed to comply with NEPA in analyzing the fencing changes.¹²⁷ In support, the Districts assert the following environmental injuries from the fencing changes: injuries to the range from removing (and potentially replacing) fences,¹²⁸ injuries from “the effects of electrifying the fences,”¹²⁹ and injuries to the range and wildlife from the potential overgrazing by APR’s bison resulting from the fencing changes and APR’s mismanagement of the range.¹³⁰

The flaw with the Districts’ argument is that it presumes all environmental injuries constitute irreparable harm. But we have rejected this notion.¹³¹ For example, we have ruled that environmental injuries caused by pipeline construction were not irreparable because the record showed that the harm from disturbance of the land would last at most three months¹³² and there was “nothing in the record that show[ed] that pipeline construction would have any long-term, irreparable impacts on resources.”¹³³

¹²⁴ ALJ Order at 40 (footnote omitted) (quoting AG Petition at 36; *Friends of Animals*, 188 IBLA at 401); see 40 C.F.R. § 1500.3(d) (“It is the [Council on Environmental Quality’s] intention that the regulations in this subchapter create no presumption that violation of NEPA is a basis for injunctive relief or for a finding of irreparable harm.”).

¹²⁵ Districts SOR at 8.

¹²⁶ *Id.*

¹²⁷ *Id.* at 8-9.

¹²⁸ See *id.* at 8 (claiming injuries to the range “through removal of fences”); *id.* at 8 n.2 (asserting similar injuries to the range will occur if the Districts prevail on appeal and the fences are reconstructed).

¹²⁹ *Id.* at 8.

¹³⁰ *Id.* at 8-9.

¹³¹ *W. Watersheds Project v. BLM*, 195 IBLA at 131-32 (ruling that “not . . . all environmental injury is automatically irreparable”).

¹³² *Heal Utah*, 191 IBLA 103, 107 & n.28 (2017).

¹³³ *Id.*

Here, the ALJ ruled, in line with our precedent, that the Districts’ asserted environmental injuries from the fencing changes did not constitute immediate and irreparable harm based upon findings that the asserted injuries were either “short-term and temporary”¹³⁴ or unsupported.¹³⁵ Because the Districts have not rebutted these findings, they have not demonstrated that the ALJ erred in ruling that the environmental injuries from the fencing changes did not constitute immediate and irreparable harm.

CONCLUSION

The ALJ was not required to consider all four stay criteria, and Appellants have not demonstrated error in the ALJ’s ruling that Appellants failed to show a likelihood of immediate and irreparable harm. Accordingly, we affirm the ALJ’s Order denying Appellants’ petitions for stay.

Steven J. Lechner Deputy Chief Administrative Judge	I concur:	Matthew T. Ballenger Administrative Judge
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¹³⁴ ALJ Order at 35 (finding that “the Districts ma[d]e no attempt to show that any damage to the range from fence removal . . . or fence replacement will result in irreparable harm as opposed to short-term and temporary harm which is not irreparable”) (citing *W. Watersheds Project v. BLM*, 195 IBLA at 132).

¹³⁵ *Id.* at 36 (finding that the Districts’ allegations of mismanagement of the range by APR are unsupported and contradicted by record evidence); *id.* at 37-38 (finding that the Districts’ alleged injuries from “electrifying fences” were not established).