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IBLA 2024-0104	)	OROR106061993
	)	
POWDER RIVER SPORTSMEN'S CLUB	)	Recreation and Public Purposes Act Lease
	)	
	)	Petition for Stay Denied

ORDER

Powder River Sportsmen's Club (Club) appealed and petitioned to stay a decision issued by the Baker Field Office, Bureau of Land Management (BLM). In the decision, BLM offered a lease to the Club under the Recreation and Public Purposes Act, but the Club objects to some of the terms and conditions of the offered lease. As explained below, we deny the Club's petition for stay because the Club has not shown a likelihood of immediate and irreparable harm that would justify issuance of a stay.

BACKGROUND

Under the Recreation and Public Purposes Act (Act),<sup>1</sup> BLM may lease public lands to non-profit organizations for recreational and public purposes.<sup>2</sup> The Club has leased public lands under the Act for the purpose of operating a shooting range for more than 50 years.<sup>3</sup>

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<sup>1</sup> 43 U.S.C. §§ 869 to 869-4; *see* 43 C.F.R. pt. 2740 (2022) (general regulations implementing the Act); *id.* subpt. 2912 (specific regulations governing the leasing of lands under the Act).

<sup>2</sup> 43 U.S.C. §§ 869, 869-1(d); *see* 43 C.F.R. 2740.0-3(a) (2022) (stating that "the Recreation and Public Purposes Act[] authorizes the Secretary of the Interior to lease or convey public lands for recreational and public purposes under specified conditions").

<sup>3</sup> Administrative Record (AR), Notice of Appeal and Petition for Stay at 3 (filed with BLM Jan. 30, 2024) (Petition) (stating that the Club "constructed the Virtue Flat Shooting Range (VFSR) on the leased land in 1967[] and has operated VFSR continually since 1968").

In December 2022, the Club applied to renew its lease,<sup>4</sup> which was set to expire on December 31, 2022.<sup>5</sup> In August 2023, BLM offered to renew the lease,<sup>6</sup> but later rescinded that offer.<sup>7</sup> In November 2023, BLM again offered to renew the lease.<sup>8</sup> After the Club objected to some of the terms and conditions of that lease offer,<sup>9</sup> BLM then issued the challenged decision in which it rescinded its previous lease offer and tendered a new lease offer.<sup>10</sup> Most significant to the Club, BLM's new offer shortened the term of the lease and imposed stipulations that limit operations of the shooting range to protect wildlife.<sup>11</sup>

The Club appealed and petitioned to stay the decision. BLM opposed the petition.<sup>12</sup>

## ANALYSIS

### *The Stay Criteria*

An appellant seeking a stay must demonstrate 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 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.<sup>13</sup> If the appellant fails to satisfy any one of these criteria, the petition for stay must be denied.<sup>14</sup>

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<sup>4</sup> AR, Application for Land for Recreation or Public Purposes (filed with BLM Dec. 15, 2022).

<sup>5</sup> See AR, Decision, Lease Extension at 1 (Oct. 2, 2018) (extending the existing lease through December 31, 2022).

<sup>6</sup> AR, Letter from BLM to the Club at 1 (Aug. 9, 2023) (offering a 20-year lease term and attaching a copy of the offered lease); see 43 C.F.R. § 2912.1-1(a) (2022) (stating that a lease issued under the Act to a non-profit organization "shall not exceed 20 years").

<sup>7</sup> AR, Lease Offer Withdrawn (Oct. 23, 2023).

<sup>8</sup> AR, Decision, Renewal of Lease Offer (Nov. 22, 2023).

<sup>9</sup> See AR, Decision, Lease Offer Rescinded and Reissued at 1 (Dec. 27, 2023) (Decision).

<sup>10</sup> *Id.* at 1; see *id.*, Attachment, Lease Offer at 1 (unsigned) (indicating that the offered lease was for 10 years) (Lease Offer); see also Lease Offer, Exhibit A, Stipulations for Powder River Sportsm[e]n's Club Recreation and Public Purposes Lease Renewal (listing 30 stipulations that we will refer to individually as "Stip. \_\_").

<sup>11</sup> Lease Offer at 1; Lease Offer, Exhibit A, Stip. 22, 24.

<sup>12</sup> BLM Response to Petition for Stay (filed Feb. 12, 2024).

<sup>13</sup> 43 C.F.R. § 4.21(b)(1) (2023); see *id.* § 4.21(b)(2) (stating that an appellant seeking a stay bears the burden of proof to show that a stay should be granted).

<sup>14</sup> *Simpson*, 197 IBLA 241, 246 (2021).

*The Club Has Not Shown a Likelihood of Immediate and Irreparable Harm  
That Would Justify Issuance of a Stay*

In adjudicating the Club’s petition, we focus on the third regulatory criterion—the likelihood of immediate and irreparable harm in the absence of a stay. To satisfy this criterion, the Club must show that the harm if a stay is not granted is likely to be *both* immediate and irreparable.<sup>15</sup> Bare allegations of harm are not sufficient,<sup>16</sup> and the Club cannot meet its burden of proof through allegations that are “unsupported, vague, or speculative.”<sup>17</sup>

In an effort to satisfy this burden of proof, the Club argues that the stipulations attached to the lease offer for the protection of deer and the greater sage-grouse, along with the offered 10-year lease term, will “ultimately result in dissolution of the Club” and the loss of the shooting range to the Baker County, Oregon community.<sup>18</sup> In support, the Club argues that the potential closure of the range due to the presence of deer<sup>19</sup> and the limitation on the hours of operation during greater sage-grouse breeding season<sup>20</sup> will cause an “exodus of members from the Club,”<sup>21</sup> who “are accustomed to unfettered access to” the shooting range.<sup>22</sup> The Club further argues that reducing the lease term from

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<sup>15</sup> *Western Watersheds Project*, 192 IBLA 72, 85 (2017).

<sup>16</sup> *Id.*

<sup>17</sup> *Bromm*, 193 IBLA 152, 157 (2018).

<sup>18</sup> Petition at 6-7.

<sup>19</sup> Petition at 3-4; *see* Stip. 22 (“Use and occupancy of the site is restricted during periods of severe winter weather conditions and periods of high deer use. High deer use is described as a density of 5-6 deer per square mile within a 2-3 mile vicinity of the site. The BLM shall define ‘severe’ conditions based on snow depth (exceeding six inches) and temperature (one week of less than 10 degrees Fahrenheit). BLM shall notify the lessee prior to implementing a closure of the site. Closures may be implemented immediately due to the nature of winter storms. The lessee shall be responsible to post the area as ‘closed to shooting’, as directed by BLM.”)

<sup>20</sup> Petition at 4-5; *see* Stip. 24 (prohibiting “activities disruptive” to the greater sage-grouse between “two hours before sunset and two hours after sunrise” “within four miles of occupied and pending leks from March 1 through June 30”); *id.* 25 (“[l]imit[ing] noise at the perimeter of occupied or pending leks [between] two hours before sunset and two hours after sunrise during the breeding season (March 1 through June 30) to less than 10 decibels above ambient sound levels”).

<sup>21</sup> Petition at 7.

<sup>22</sup> *Id.* at 6.

20 years to 10 years “doubles the frequency of lease renewal interactions at which BLM can invent new restrictions for the . . . lease, which invites more . . . restrictions and closures.”<sup>23</sup>

The Club’s arguments that the offered lease will result in a loss of members and more restrictions and closures are speculative and do not show a likelihood of imminent harm. For example, the Club concludes that because the offered 10-year lease term would require more frequent renewals, this would provide BLM with opportunities to “invent new restrictions.” But any harm from future restrictions is not imminent and would be a result of a future decision rather than the decision on appeal. Moreover, even if the offered lease causes some members to leave, the Club has provided no support for its assumption that the anticipated “exodus of members” would occur immediately. Accordingly, the Club has at best alleged only the possibility of future irreparable harm, but a showing of both immediate and irreparable harm is required to justify issuance of a stay.<sup>24</sup>

### CONCLUSION

The Club has not shown a likelihood of immediate and irreparable harm that would justify issuance of a stay. As a result, there is no need to consider the other stay criteria because the petition for stay must be denied.<sup>25</sup> Accordingly, we deny the Club’s petition for stay.

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Steven J. Lechner  
Deputy Chief Administrative Judge

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<sup>23</sup> *Id.*; see 43 C.F.R. § 2912.1-1(a) (2022) (stating that a lease issued under the Act to a non-profit organization “shall not exceed 20 years”).

<sup>24</sup> See *Ute Indian Tribe of the Uintah & Ouray Reservation*, 192 IBLA 281, 287 (2018) (“The harms that the Tribe complains of may occur, if at all, . . . in the future. . . . [A]lleging such future injuries cannot satisfy the requirement that the Tribe demonstrate that BLM’s decision . . . will result in . . . *immediate* and irreparable harm.” (quotation omitted)).

<sup>25</sup> *Wallace Forest Conservation Area Advisory Committee*, 191 IBLA 338, 344 (2017) (ruling that the failure to satisfy one stay criterion eliminates the need to consider the other stay criteria, and the petition for stay must be denied).