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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

GINGER KATHRENS, et al.

Plaintiffs,

v.

RYAN ZINKE, Secretary of the United States
Department of the Interior, et al.

Defendants.

Case No. 3:18-cv-1691

DEFENDANTS' MOTION TO STAY
ENTRY OF PROPOSED ORDER

In compliance with Civil Local Rule 7-1, the parties made a good faith effort through telephonic conference to resolve this dispute and have been unable to do so. Plaintiffs have stated that they oppose this motion.

On November 2, 2018, the Court granted Plaintiffs' motion for preliminary injunction and ordered Plaintiffs to file a proposed order granting that motion by November 7, 2018. *See* ECF

No. 15. On November 6, 2018, Defendants made a settlement offer to Plaintiffs in an attempt to resolve Plaintiffs' claims. Plaintiffs rejected Defendants' settlement offer the following day. After thorough consideration of the proceedings on November 2, 2018, and in light of Plaintiffs' rejection of their settlement offer, Defendants intend to rescind the portion of the United States Bureau of Land Management Decision Record pertaining to the spay feasibility and on-range behavioral outcomes assessment study. However, BLM is retaining the portion of the Decision Record that allows BLM to return horses to the Warm Springs Herd Management Area and permanently remove excess horses from the range.

Before BLM can rescind the portion of the Decision Record relating to the spay study itself, the Interior Board of Land Appeals must first vacate and remand the decision record to BLM. *See, e.g., Benton C. Cavin*, 166 IBLA 78, 81-82 (2005) (after appeal to the Interior Board of Land Appeals, "BLM has no jurisdiction unilaterally to reverse a decision under appeal and grant relief"). BLM will file a motion to vacate and remand the Decision Record with the Interior Board of Land Appeals in the coming days.

Because BLM will soon rescind the portion of the Decision Record relating to the spay study, Plaintiffs' claims will soon be moot and there will be no need for an order relating to Plaintiffs' motion for preliminary injunction. Therefore, Defendants respectfully request that the Court stay entry of Plaintiffs' proposed order, or any other order on the motion for preliminary injunction, for 14 days, until November 21, 2018. Defendants will submit a status report on November 21, 2018, informing the Court of their progress toward rescinding the Decision Record.

Dated: November 7, 2018

Respectfully submitted,

JEAN E. WILLIAMS, Deputy Assistant Attorney General
SETH M. BARSKY, Chief
S. JAY GOVINDAN, Assistant Chief

/s/ Kaitlyn Poirier

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CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2018, a true and correct copy of the above document was electronically filed with the Clerk of Court using CM/ECF. Copies of the document will be served upon interested counsel via the Notices of Electronic Filing that are generated by CM/ECF.

/s/ Kaitlyn Poirier

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