

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Tobin Dolan; Lydia Dolan; Tangee Dolan; Dorothy Jones; Brian Rodgers; Barbara Rodgers; Michael Salazar; Reynaldo Herrera; and Kathy Valera v. Federal Emergency Management Agency; Marianna Lands and Charles William Paynter v. Federal Emergency Management Agency; Deanne Criswell, as Administrator of FEMA; and Angela Gladwell

Lands · No. CIV 23-0908 JB/JFR; CIV 23-0869 JB/JFR · Decided January 8, 2026

SUMMARY

This Memorandum Opinion and Order addresses FEMA’s motion to stay judgments pending appeal in two related actions arising from the Hermit’s Peak/Calf Canyon Fire. The court concludes that the judgments are not monetary judgments subject to an automatic stay under Federal Rule of Civil Procedure 62(b), because they do not require payment of a specified sum. The court also concludes that the discretionary stay factors weigh against FEMA and denies the motion to stay.

CASE DETAILS

COURT	United States District Court for the District of New Mexico
WRITING FOR THE COURT	James O. Browning
JURISDICTION	United States District Court for the District of New Mexico
DECIDED	January 8, 2026
DOCKET	CIV 23-0908 JB/JFR; CIV 23-0869 JB/JFR
DISPOSITION	other
PROCEDURAL POSTURE	Defendants appealed the court's final judgment in consolidated Administrative Procedure Act actions and moved to stay the judgments pending appeal under Federal Rule of Civil Procedure 62(b), (d), and (e).
STANDARD OF REVIEW	A district court exercises discretion over a stay pending appeal, guided by whether the applicant has made a strong showing of likely success on the merits, whether it will suffer irreparable injury absent a stay, whether a stay will substantially injure other parties, and where the public interest lies. Whether a judgment is monetary for purposes of an automatic stay turns on whether it presently orders payment of a

	specific sum, rather than whether it may later result in monetary payments.
PRECEDENTIAL VALUE	unpublished district court memorandum opinion and order
PARTIES	Federal Emergency Management Agency, Deanne Criswell, as Administrator of FEMA, Angela Gladwell v. Tobin Dolan, Lydia Dolan, Tangee Dolan, Dorothy Jones, Brian Rodgers, Barbara Rodgers, Michael Salazar, Reynaldo Herrera, Kathy Valera, Marianna Lands, Charles William Paynter

TOPICS

civil procedure

appellate procedure

administrative law

declaratory judgment

remedies

PRACTICE AREAS

administrative law

civil procedure

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remedies

QUESTIONS PRESENTED

1. Whether the final judgment was a money judgment automatically stayed pending FEMA's appeal under Federal Rule of Civil Procedure 62(b) and (e).
2. Whether the court should exercise its discretion under Federal Rule of Civil Procedure 62(d) to stay the final judgment pending appeal.

HOLDINGS

1. The final judgment is not a money judgment and therefore is not automatically stayed under Rule 62(b) and (e), because it does not require FEMA to pay any specific dollar amount to any person.
2. A discretionary stay is unwarranted because FEMA failed to make a strong showing of likely success or irreparable injury, a stay would substantially delay relief to the plaintiffs, and the public interest favors timely implementation of the Hermit's Peak Act.

KEY QUOTATIONS

“Because the Final Judgment mandates compliance rather than compensation -- and because the equities do not justify delay -- a stay has no place here.” (at 1)

“(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether he will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties . . .; and (4) where the public interest lies.” (at 434)

FACTUAL BACKGROUND

The Hermit's Peak/Calf Canyon Fire burned more than 340,000 acres in northeastern New Mexico, destroyed more than 900 structures, and displaced thousands of households. Congress enacted the Hermit's Peak Act to

compensate wildfire victims, and FEMA regulations established a claims process but categorically excluded noneconomic damages. The plaintiffs alleged noneconomic injuries including pain and suffering, annoyance, discomfort, and inconvenience after their homes and property were destroyed or rendered unusable by the fire and subsequent flooding.

PROCEDURAL HISTORY

The court previously held that the plaintiffs could pursue noneconomic damages under New Mexico nuisance, trespass, and personal-injury law and, alternatively, under the Hermit's Peak Act. It set aside FEMA's regulation categorically excluding noneconomic damages and entered a final judgment requiring FEMA to award such damages to claimants who establish valid claims, without specifying any dollar awards. FEMA appealed and moved for an automatic or discretionary stay pending appeal. The court denied both motions.

DISPOSITION

other

CASES CITED

- Clinton v. Jones, 520 U.S. 681, 706, 708 (1997)
- Landis v. North American Co., 299 U.S. 248, 254-55 (1936)
- S2 Automation LLC v. Micron Technology, Inc., No. CIV 11-0884 JB/WDS, 2012 WL 3150412, at *2-3 (D.N.M. July 23, 2012)
- Commodity Futures Trading Commission v. Chilcott Portfolio Management, Inc., 713 F.2d 1477, 1484 (10th Cir. 1983)
- Klein v. Adams & Peck, 436 F.2d 337, 339 (2d Cir. 1971)
- Cole v. Ruidoso Municipal Schools, 43 F.3d 1373, 1386 (10th Cir. 1994)
- Willner v. Budig, 848 F.2d 1032, 1035-36 (10th Cir. 1988)
- United States v. Ortiz, 804 F.2d 1161, 1164 n.2 (10th Cir. 1986)
- Walker v. THI of N.M. at Hobbs Center, No. CIV 09-0060 JB/KBM, 2011 WL 2728326, at *1-2 (D.N.M. June 28, 2011)
- Benavidez v. Sandia National Laboratories, No. CIV 15-0922 JB/LF, 2016 WL 6404798 (D.N.M. Sept. 27, 2016)
- Howard v. City of Albuquerque, 349 F. Supp. 3d 1137, 1148 (D.N.M. 2018)
- Saenz v. Lovington Municipal School District, No. CIV 14-1005, 2015 WL 1906140, at *10-12 (D.N.M. Apr. 6, 2015)
- Dixon v. United States, 900 F.3d 1257, 1268 (11th Cir. 2018)
- Lightfoot v. Walker, 797 F.2d 505, 507 (7th Cir. 1986)
- Restitution Trust Corporation v. Schuchmann, 2001 WL 37125041, at *1, *3 (D.N.M. 2001)
- Herbert v. Exxon Corp., 953 F.2d 936, 938 (5th Cir. 1992)
- Kaseman v. District of Columbia, 368 F. Supp. 2d 27, 28-29 (D.D.C. 2005)

- Jarita Mesa Livestock Grazing Association v. U.S. Forest Service, 921 F. Supp. 2d 1137, 1191-92 (D.N.M. 2013)
- Nken v. Holder, 556 U.S. 418, 433-35 (2009)
- Virginian Railway Co. v. United States, 272 U.S. 658, 672-73 (1926)
- Kerr v. United States District Court for the Northern District of California, 426 U.S. 394, 403 (1976)
- United States v. Dolan, 571 F.3d 1022, 1027 (10th Cir. 2009)

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