U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
CALIFORNIA DESERT DISTRICT

El Centro Field Office
1661 So. 4th Street
El Centro, CA 92243

Decision Record
and
FINDING OF NO SIGNIFICANT IMPACT

for

Temporary Camping Closure east of Glamis, adjacent to the Imperial Sand Dunes, north and south of Highway 78, Imperial County, California.

Prepared by:

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
CALIFORNIA DESERT DISTRICT
El Centro Field Office

Environmental Assessment CA-670-EA-2001-48

Approved by /s/ _____ **9/27/01**
Greg Thomsen, Manager **Date**
El Centro Field Office

DECISION

Based on review of the environmental assessment (CA-670-EA-2001-48) (EA), my Finding of No Significant Impact, and consideration of the 31 public comment letters submitted on the EA, my decision is to approve the temporary camping closure on approximately 25,600 acres of desert tortoise habitat located east of Glamis and the Imperial Sand Dunes as described in the EA and shown on the attached map. This area is within the California Desert Conservation Area (CDCA).

I have determined it necessary to use my authority under 43 Code of Federal Regulations (CFR) 8341.2(a) to close the identified area to camping in order for BLM to provide additional protection to threatened and endangered species listed under the Endangered Species Act (ESA). This restriction will take effect immediately and will remain in effect until a record of decision is signed for both the Northern and Eastern Colorado Desert Coordinated Management (NECO) Plan, which is expected to be signed September 2002, and the Imperial Sand Dunes Recreation Area (ISDRA) Plan, which is expected to be signed October 2002. The planning areas for the two plans overlap near the Imperial Sand Dunes. This camping restriction does not apply to private lands within the closure area. This camping closure does not restrict use of motorized vehicle use on existing routes of travel otherwise allowed under the CDCA plan. Certain exceptions to this closure also apply for government vehicles on official business.

RATIONALE

This decision is necessary because desert tortoise populations throughout the California Desert have been reduced considerably over the last several years as a result of a variety of causes. Desert tortoise experts testified in July 2001 as to the substantial decline in the tortoise population in the CDCA and the need for affirmative action to protect and stabilize the remaining population (Blincoe, et al.v. BLM, CA-690-01-02; CA-690-01-03, CA-690-01-04, CA-680-01-03, CA-680-01-04, CA-680-01-05, CA-680-01-06, Decision dated August 24, 2001, p20 et seq). The desert tortoise is federally listed as a threatened species by the Fish and Wildlife Service (FWS) in accordance with the ESA. By taking this interim closure action, BLM will provide additional protection for the threatened desert tortoise and its habitat while a long-term management strategy is developed. BLM is currently developing such strategy as part of the NECO and the ISDRA plans. Both plans are scheduled for completion in the fall of 2002.

BLM recognizes that the interim closure will displace some off-highway vehicle (OHV) campers. OHV campers who utilized the area to get away from the crowds, and who are unable or unwilling to camp in a remote area, will not be likely to camp in the more congested areas (EA, p.11). However, the closure will not have a significant negative impact on recreation since the closure is temporary and other campgrounds are available in the ISDRA which can fully accommodate the displaced users.

43 CFR 8341.2(a) provides that the authorized officer shall immediately close an area when he determines that OHV use is causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or

endangered species, other authorized uses, or other resources. Because tortoise populations in the CDCA are in substantial decline as a result of OHV and other impacts, and the issuance of records of decision on the NECO and ISDRA plans are not anticipated until the fall of 2002, BLM concludes immediate closure under 43 CFR 8341.2(a) is necessary. There are numerous scientific studies indicating that OHV use and related recreational activities can have adverse impacts upon the tortoise (references cited at the end of this document). BLM has observed 200-300 vehicles camping in this area on major holiday weekends, including self-contained motor homes, attached trailers, and OHVs (EA, p.7). The northern part of the closed area has historically been used for OHV staging and camping near the Dunes. The most intensive and concentrated use in this northern area is about a mile from the intersection of Highway 78 and the rail road tracks, directly east of Glamis. The southeastern end of the closure is used for hunting, mineral collecting, and by snowbird (winter-time users) camping but at a lower intensity level than the area near Highway 78. Many vehicle trails and tracks cut through the area, including approximately 10 access points between the camping area and the dunes along Ted Kipf Road, the main public access route point.

On March 16, 2000, the Center for Biological Diversity, et al (Center) filed for injunctive relief in U.S. District Court, Northern District of California (Court) against BLM. The Center alleged the BLM was in violation of Section 7 of the ESA by failing to enter into formal consultation with the FWS on the effects of the CDCA Plan, as amended, upon threatened and endangered species. Instead of litigating the case, and facing a possible injunction of all authorized desert activities, BLM entered into five stipulated agreements, including the stipulation which includes this camping closure.

Although precipitated by the Center's lawsuit, BLM has initially reviewed its current management of this camping area under the CDCA plan as it relates to desert tortoise. As an interim measure, BLM implements this closure to provide additional protection to the tortoise pending completion and implementation of the NECO and ISDRA plans. By implementing this interim closure, BLM ensures compliance with sections 7(a) and 7 (d) of the ESA. Section 7(a)(1) of the ESA provides that Federal agencies are to utilize their authorities to further the purposes of the Act by carrying out programs for the conservation of listed species (16 USC 1536(a)(1)). Section 7(d) of the ESA provides that after initiation of consultation under §7(a)(2), a federal agency shall not make any irreversible or irretrievable commitment of resources with respect to agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate the requirements of the ESA.

BLM initiated consultation on January 31, 2001 with the FWS on the CDCA Plan as amended and proposed to be amended in the NECO planning area. A biological opinion is expected later this year. BLM initiated consultation on this interim closure on September 14, 2001. FWS issued a positive concurrence on October 9, 2001. In addition, BLM will consult on the NECO and ISDRA plans prior to issuing decision records.

The interim closure of this area is consistent with the CDCA Plan, as amended. The CDCA Plan contains general and specific direction for protection listed species, such as the taking of appropriate action, including closure of routes and areas (CDCA Plan, page 82, March 1999 reprinted version).

PUBLIC INVOLVEMENT

On August 10, 2001, a notice of the proposed order for temporary closure as described the EA (CA-670-EA-2001-48) was published in the Federal Register (66 FR 42234-42235). On the same day BLM issued a news release regarding the proposed order. On August 15, 2001, BLM distributed the EA for comment to a wide range of interested parties identified through a mailing list maintained at the BLM's California Desert District Office. The period for public comments ended September 7, 2001.

Thirty-one comment letters were received. Five letters generally supported the proposed closure but did not raise specific points for response; 26 opposed the closure and raised specific objections. A summary of the specific objections and BLM's response follows:

Comment: The action is inconsistent with BLM's multiple-use management mandate. BLM should bring parties of concern together to negotiate management and uses. Human needs are not being considered along with environmental needs.
Response: The action is in keeping with BLM's responsibilities to balance resource use and resource protection while meeting regulatory and legal requirements. BLM provided the EA and the proposed closure order to the public for review for 15-days to ensure the opportunity for public participation. Further, social consequences of the proposed closures, as well as environmental consequences, were disclosed in the EA.

Comment: A case can be made that the action should not be taken when considering statements which note that the area has been used for camping for a long time, the tortoise is displaced and not likely to return, and the area is not critical habitat. In addition, only a small portion (500 acres) of the total area (25,000 acres) is intensely used, making the area of closure extremely unfair.
Response: The scope of the tortoise listing and BLM's legal responsibilities extend to all tortoise habitat - critical or non-critical. Camping by OHV users, winter visitors (snowbirds), and others is dispersed over a broad area. Despite previous disturbances to the habitat, tortoises move through disturbed areas and are at risk in the intensive camping portions of the closure.

Comment: BLM is taking such action only because it has to do so under the lawsuit.
Response: The lawsuit is a factor. The rationale above provides additional justification.

Comment: The listing of the tortoise and Peirson's milkvetch are not legitimate.
Response: The listing of the desert tortoise and Peirson's milkvetch by the FWS is supported by information; however, the listing of the species is not within the purview of BLM or the scope of this action to review.

Comment: There are several faults with the EA. The EA:

1. misleads the public regarding the need for "emergency closure"
2. misleads the public regarding when the closure will be lifted
3. fails to adequately make the case that the tortoise is being impacted by campers
4. fails to disclose the number of campers affected
5. fails to analyze impacts on public access
6. fails to analyze safety issues
7. fails to analyze socio-economic impacts
8. does not provide an adequate range of alternatives
9. inadequately assesses cumulative impacts
10. fails to assess potential conflicts with state, regional and local plans and policies as required for plan amendments

Response:

1. This closure has not been described as an emergency closure, but as a temporary closure, as specified in the EA.
2. As specified in the EA, this temporary action will remain in place until the amendments to the CDCA plan are completed and implemented. The plans will determine how camping will be managed long-term in this area.
3. The EA indicates that the tortoise is affected by habitat disturbance and direct mortality from crushing of individual animals and their burrows and that the area of greatest impact covers a total of about 500 acres. Given their nature to periodically roam and relocate, tortoises covering several thousands of acres of surrounding habitat may be affected.
4. The EA indicates that about 200-300 vehicles can be involved in OHV-related camping. The number of vehicles provides an estimate of the number of people affected. The number of people involved in other, more dispersed camping, is considerably less.
5. The EA's recreation section (EA, 7) describes restrictions on access likely to occur from this action.
6. The EA indicates that displaced OHV campers would face greater congestion and safety issues. However, congestion and safety thresholds vary among individuals. There are public lands outside the closure area on which they may camp.
7. Social/economic impacts are included in the discussion under recreation (EA, 7). As the EA states, a few hundred campers and snowbirds are impacted but the estimated social/economic impacts are not considered substantial.
8. BLM has the legal and regulatory authority to determine a reasonable range of alternatives for environmental compliance documents under National Environmental Policy Act (NEPA). In this case, given the temporary nature of the closure, BLM determined that the proposed action and no action alternatives were a reasonable range of alternatives.
9. Federal law and regulations give BLM considerable discretion in defining the scope of NEPA analyses. BLM has determined that the proposed closures are widely scattered, involve different kinds of recreation and access issues, and are temporary in nature such that analysis of desert-wide cumulative effects is not warranted. In addition, cumulative

effects will be analyzed in the amendments to the CDCA Plan.

10. BLM acknowledges the legal and regulatory requirements that we consult with State and local governments in planning decisions. However, this decision is temporary, and not a long-term planning decision. Consultations with the appropriate State and local governments will be completed as part of the CDCA Plan amendments underway.

Comment:

1. two weeks public comment period is insufficient review time

2. BLM has no closure authority under CFR 8364.1 or under the Federal Land Policy and Management Act (FLPMA) of 1976 (43 USC §1781 (d))
3. BLM is making or extending withdrawals
4. BLM is making decisions that only the Secretary of the Interior can make
5. BLM cannot close CDCA areas and trails with an order
6. BLM cannot close areas or trails outside critical habitat
7. the closure is not premised on a recovery plan
8. the temporary closure is significant and requires an EIS
9. BLM is not complying with the Regulatory Flexibility Act and should conduct the process through proposed regulations and guidelines and involving hearings.

Response:

1. BLM has the discretion to determine the amount of time for public review of an EA. In consideration of the complexity of the proposed interim restriction and the length of the document to be reviewed, BLM feels that 15 days was an adequate period of time.
2. The authority for the basis of this restriction has been changed to 43 CFR 8341.
3. BLM is not making or extending withdrawal. This interim restriction does not propose to be withdrawn from mineral entry or other land laws. In addition, this interim action does not apply to the use of existing routes by vehicles and is temporary in nature.
4. BLM feels that the delegation to take action under 43 CFR 8341 has been delegated to Field Managers by the Secretary of Interior.
5. 43 CFR 8341 provides that a Field Manager may, after review of the compelling nature, temporarily close road, trails and areas. The long term position on such features and areas is decided through land use planning.
6. BLM's responsibility under the Endangered Species Act applies to listed species regardless whether they are inside or outside designated critical habitat.
7. This is true. However, the closure does fulfill a responsibility of BLM to adequately manage species under the Endangered Species Act.
8. The BLM has determined that the interim restriction is not considered significant given its temporary nature.
9. BLM feels that consideration of the Regulatory Flexibilty Act is not relevant to this situation.

Comment: OHV recreation in the area is important to the social well-being of individuals or families, and many people hold important childhood memories of the area.
Response: BLM understands and acknowledges the high recreation value of this part of the desert, but also must address issues relevant to habitat disturbance from camping and its obligations toward protected species under the ESA. Again, as noted above, the closure is interim; full, thorough consideration of recreation and wildlife species values in this part of the desert are being addressed in both the NECO and ISDRA plans.

Comment: Recreation use is important to the economy of Imperial County.
Response: BLM acknowledges this importance. In the case of this camping closure relatively few people are affected, with the result being, in most cases, that people will be temporarily displaced with no appreciable loss of visitation.

Comment: Areas available for OHV use and camping are being closed off and users increasingly concentrated into smaller areas. Some families feel less safe in these concentration areas. Impacts may transfer to other areas that are environmentally more valuable.
Response: This closure is interim and should affect relatively few users compared to the intensive use at the nearby ISDRA. Full consideration of recreation impacts - including safety and quality of experience - will be addressed in the amendments to the CDCA Plan.

Comment: The action should not be taken because the majority of campers are responsible to environmental considerations and do not cause the impacts so described in the EA; they are paying the price for irresponsible users.
Response: BLM agrees that most camping users are responsible. However, an accumulation of camping-related disturbance is occurring as described in the EA. The full significance of this use is being addressed in the NECO Plan. BLM has also initiated Section 7 consultation with the FWS on the adequacy of the CDCA Plan, as amended, and as proposed to be amended by NECO, to provide for the recovery of the desert tortoise. Under ESA Section 7 (d) BLM must not make any irreversible or irretrievable commitments of resources which would foreclose any reasonable and prudent alternative measures which might be required as a result of the consultation.

Comment: The action would impact not only OHV users but also Boy Scout, hunting, and rockhounding adventures and education trips.
Response: BLM acknowledges there will be impacts to recreational users resulting from this temporary closure and has limited the affected area to the minimum necessary for species protection.

Comment: There is no guarantee that this area will reopen after the described interim period.
Response: The long-term decision regarding camping use in this area is being addressed in the NECO plan and will be addressed in the ISDRA plan. There is opportunity for public comment on the NECO plan through November 1, 2001, and public scoping has just been initiated on the ISDRA plan, which will also be available for public comment when a draft is published next

year.

Comment: Camping associated with the need for on-site, overnight work associated with specific land use authorizations (rights-of-way) in and through the closure area should not be subject to this closure.
Response: Activities associated with specific use authorizations are exempt from the temporary camping requirement of this closure. This closure addresses casual use activities (i.e., activities not covered under specific use authorization).
APPEAL RIGHTS: This decision is effective immediately. This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal (43 CFR 4.21). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413). If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

(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.

FINDING OF NO SIGNIFICANT IMPACT

The environmental impacts associated with the proposed action and the alternatives have been assessed. Based upon the analysis provided in the attached EA, I conclude the approved action is not a major federal action and will result in no significant impacts to the human environment under the criteria in Title 40 Code of Federal Regulations Subpart 1508. Preparation of an Environmental Impact Statement is not required.

Approved by /s/_____ ___9/27/01__

Greg Thomsen, Manager Date

El Centro Filed Office

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The following references have been considered in making this decision:

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