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12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA  
 14 SAN FRANCISCO DIVISION

15 CENTER FOR BIOLOGICAL DIVERSITY, )  
 16 et al., )  
 17 Plaintiffs, )  
 18 v. )  
 19 BUREAU OF LAND MANAGEMENT )  
 20 Defendant, )  
 21 \_\_\_\_\_ )  
 22 and, )  
 23 DESERT VIPERS MOTORCYCLE CLUB, )  
 et al., )  
 24 \_\_\_\_\_ )  
 25 Defendant-Intervenors )  
 26 \_\_\_\_\_ )

Case No: C-00-0927 WHA (JCS)

RESPONSE TO THE COURT'S ORDER  
 FINDING DEFENDANT BUREAU OF  
 LAND MANAGEMENT IN VIOLATION  
 OF CONSENT DECREE AND  
 ACCOMPANYING DECLARATION

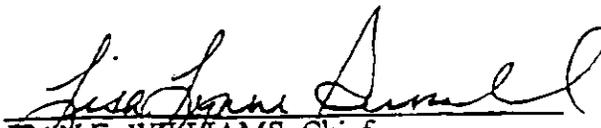
Status Conference:  
 Date: May 17, 2001  
 Time: 11:00 a.m.  
 Courtroom: 9, 19th Floor

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2 The United States submits this response to the Court's Order Finding Defendant Bureau of Land  
3 Management ("BLM") in Violation of Consent Decree in preparation for the Status Conference to be  
4 held on this matter on Thursday, May 17, 2001 at 11:00 a.m. On May 7, 2001, the Court found that  
5 BLM was in violation of the Stipulation Concerning Livestock Grazing in Desert Tortoise Habitat,  
6 which was approved by this Court on January 29, 2001. At the hearing on this matter on May 3, 2001,  
7 BLM offered to develop a plan to bring the agency into compliance. The Court set a further status  
8 conference for May 17, 2001 at 11:00 a.m. to discuss further the issue of BLM's future compliance.

9 As set forth in the accompanying declaration of Ann R. Klee, Counselor to the Secretary of the  
10 Interior, the Department of the Interior has developed a plan that it believes will ensure BLM's future  
11 compliance. This plan sets out how the Department of the Interior intends to ensure that BLM meets  
12 the September 7 deadline set forth in the Stipulation. In order to answer questions that the Court may  
13 have concerning this plan, Paul B. Smyth, Acting Associate Solicitor for the Division of Land and  
14 Water Resources, Department of the Interior, will be attending the May 17, 2001 status conference as  
15 Agency Counsel along with undersigned counsel.

16  
17 Respectfully submitted,

18 JOHN C. CRUDEN  
19 Acting Assistant Attorney General

20   
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CENTER FOR BIOLOGICAL DIVERSITY, et al.

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT,

Defendant,

and

DESERT VIPERS, et al.

Defendant-Intervenors.

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Case No. C-00-0927 WHA (JCS)

DECLARATION OF  
ANN R. KLEE

1. My name is Ann R. Klee and I am now employed as Counselor to the Secretary of the Interior. I have held this position since January 31, 2001. I am responsible for advising the Secretary on litigation and policy matters involving the Department, including matters relating to the implementation of and compliance with the Endangered Species Act.

2. The Secretary of the Interior is responsible for administration of the program for livestock grazing on public lands in accordance with the requirements of the Taylor Grazing Act (TGA), 43 U.S.C. §315 *et seq.*, the Public Rangelands Improvement Act (PRIA), 43 U.S.C. §1901, the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §1701 *et seq.*, and other applicable statutes, including the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and the Endangered Species Act (ESA), 16 U.S.C. §1531, *et seq.* Regulations implementing the specific requirements for the grazing program are contained at 43 C.F.R. Group 4100. These regulations include the standards and procedures for issuing decisions to change permitted grazing use and for closing allotments or portions of allotments to grazing of any kind.

#### Explanation of the Standard Grazing Appeals Process

3. The Department of the Interior has established a multi-stage process for the review of any such grazing decisions. 43 C.F.R. Subpart 4160 establishes a process for the issuance and review by the permittee of a proposed decision. After receipt of a proposed decision, the permittee has 15 days to protest the decision. 43 C.F.R. § 4160.2. If a protest is received, the authorized officer is

required to reconsider the proposed decision in light of the protestant's reasons for the protest and in light of other information relevant to the case. 43 C.F.R. § 4160.3(b). At the conclusion of this reconsideration, the authorized officer issues a final decision. In the absence of a protest, the proposed decision automatically becomes the final decision. 43 C.F.R. § 4160.3(a). The final decision does not become effective until the 30 day appeal period expires. 43 C.F.R. § 4160.3(c).

4. If the permittee appeals, the permittee may also ask the Interior Board of Land Appeals (IBLA) for a stay. 43 C.F.R. § 4160.3(c) and 4.21. IBLA has 45 days to act on a stay request. If a stay is requested, the decision is not effective until the IBLA either rejects the stay request or the expiration of the 45 day period during which the Board may rule on the request. 43 C.F.R. § 4.21 (a) and (b). If a stay is granted, grazing use continues at the same level as authorized for the previous year until the appeal is decided. 43 C.F.R. § 4160.3(d).

5. Appeals from grazing decisions are heard by an administrative law judge (ALJ), with further appeal to the IBLA. 43 C.F.R. §§4.470-4.477.

6. The proceeding before the ALJ begins with motions in the nature of dismissal motions from the State Director of the Bureau of Land Management (BLM) who has 30 days in which to file such motions. The appellant has 20 days in which to respond. 43 C.F.R. § 4.470(d). The appellant is given at least 30 days notice of the time and place for a hearing. 43 C.F.R. § 4.471. The ALJ has substantial authority for the conduct of the hearing, including issuance of subpoenas, receiving testimony from witnesses and ordering continuances. 43 C.F.R. § 4.472. At the

conclusion of the hearing, the parties are given a reasonable amount of time to submit proposed findings of fact and conclusions of law. 43 C.F.R. § 4.474(c). The administrative law judge then makes a decision as promptly as possible after submission of the proposed findings and conclusions. 43 C.F.R. § 4.475(a).

7. Any party affected by the ALJ's decision has 30 days to appeal to the IBLA. 43 C.F.R. § 4.476 and 43 C.F.R. § 4.411(a). The IBLA, in turn, can make a de novo review of the entire record. No time frames are established for decision by the Board.

#### Current Status of BLM Grazing Decisions

8. On May 15, 2001, the BLM issued final grazing decisions to modify the use of the grazing allotments to require the removal of livestock from designated ranges between March 1 and June 15 and September 7 and November 15 in accordance with the Stipulation and Order Concerning Livestock Grazing in Desert Tortoise Habitat. The decisions will remain in effect until implementation of the biological opinions issued by the U.S. Fish and Wildlife Service in this matter in accordance with the terms of the settlement agreement. BLM sent the final decisions by certified mail, return receipt requested, through both the U.S. Postal Service overnight express mail and regular mail.

9. Under BLM's regulations, permittees will have 30 days to appeal the final grazing decisions. 43 C.F.R. § 4160.4. In the absence of an "emergency" situation meeting the standards under 43 C.F.R. § 4110.3-3 (b), this right of appeal precludes BLM's grazing decisions from becoming

effective until on or about June 15. Furthermore, as described above, a permittee's request for a stay could extend the effective date of the underlying decision beyond that time.

#### Resolution of Appeals Utilizing Secretary's Reserved Powers

10. While the Secretary recognizes the importance of providing grazing permittees the due process afforded under BLM's regulations, she is also committed to fulfilling the Department's obligations under the terms of the settlement agreement and to complying with all applicable laws, including the ESA, TGA, and FLPMA. Under the terms of the Settlement agreement, BLM is required to close certain designated ranges by September 7, 2001. Under ordinary procedures, including the stay process, it will be difficult to insure completion of the closures by that date. However, the Secretary believes that she can comply with the stipulation and order while at the same time providing grazing permittees due process under applicable law.

11. To meet the statutory obligations as well as to reassure the Court of her commitment to the settlement agreement, the Secretary will take the highly unusual step of invoking administrative powers reserved to her in accordance with Department regulations to insure that the parties receive their full right to a hearing and to expedite the process of reaching a final decision on any appeals. 43 C.F.R. § 4.5 (a)(1).

12. The Secretary will promptly assume jurisdiction under 43 C.F.R. § 4.5(a)(1) of any appeals filed on the May 15, 2001 BLM grazing decisions. This will occur within 2 days of the filing of any such appeal. Concurrently with her assumption of jurisdiction, she will immediately assign

the appeal to an ALJ within the Hearings Division of the Department's Office of Hearings and Appeals. The Secretary will delegate to the ALJ authority to render the final decision and will direct that the proceeding be expedited as described below. 43 C.F.R. § 4.5(a)(1).

13. Under the expedited process, appellants will be afforded the 30 day notice of their hearing. 43 C.F.R. § 4.471. The State Director will be instructed to file any appropriate motions on the appeal within 7 days, rather than within the 30 day time frame afforded in the regulations. 43 C.F.R. § 4.470(d). Appellants will have the time period of 20 days to respond to any motion of the State Director to run concurrently with the 30 day hearing notice.

14. The Secretary will direct the ALJ to conduct any necessary hearings and to issue final decisions no later than August 24, 2001.

15. The Secretary will implement these procedures in order to ensure that a final decision on the BLM's decisions to close the designated areas for grazing is issued well enough in advance of September 7, 2001 to allow the timely removal of livestock from the affected allotments if the BLM decisions are sustained. Based on experience, the BLM California State Office believes that two weeks is sufficient to accomplish removal.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on May 15, 2001 in Washington, D.C.

A handwritten signature in black ink, appearing to read "A. R. Klee", is written over a solid horizontal line.

ANN R. KLEE