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16 Attorneys for Defendants

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 CENTER FOR BIOLOGICAL)
21 DIVERSITY, a non-profit corporation;)
22 SIERRA CLUB, a non-profit corporation;)
23 and PUBLIC EMPLOYEES FOR)
ENVIRONMENTAL RESPONSIBILITY,)
a non-profit corporation,)
24 Plaintiffs,)
25 v.)
26 BUREAU OF LAND MANAGEMENT,)
27 Defendant.)
28

Case No. C-00-0927 WHA-ADR

STIPULATION AND ORDER

ORIGINAL
FILED
AUG 25 2000

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

REC'D SEP 1 2000

1 WHEREAS, Plaintiffs, Center for Biological Diversity, et al. ("Center") filed
2 this action on March 16, 2000, alleging that the federal defendant, Bureau of Land
3 Management ("BLM") was in violation of Section 7 of the Endangered Species Act ("ESA")
4 by failing to enter into formal consultation with the U.S. Fish and Wildlife Service ("FWS")
5 on the effects of the adoption of the California Desert Conservation Area Plan, as amended,
6 ("CDCA Plan") on threatened and endangered species. 16 U.S.C. § 1536(a)(2);

7 WHEREAS, on July 20, 2000, the Center moved for summary judgment on its
8 claim that the BLM was in violation of Section 7(a)(2) of the ESA by failing to enter into
9 formal consultation with FWS on the effects of the CDCA Plan on threatened and endangered
10 species, 16 U.S.C. § 1536(a)(2) ;

11 WHEREAS, the parties desire to resolve the Center's motion for summary
12 judgment without further litigation;

13 WHEREAS, BLM represents that it is close to developing proposed plan
14 amendments for two of the five planning areas in the CDCA (the Northern and Eastern Mojave
15 Desert and the Northern and Eastern Colorado Desert planning areas), and will therefore soon be
16 able to initiate Section 7 consultation on the CDCA Plan as it would be amended by those
17 proposed plan amendments;

18 WHEREAS, BLM represents that it is reasonably close to developing a proposed
19 plan amendment for the Coachella Valley planning area, and will soon be able to initiate Section 7
20 consultation on either the CDCA Plan as it would be amended in this planning area, or on the
21 CDCA Plan as it is currently being implemented in this planning area;

22 WHEREAS, BLM represents that it is close to being able to initiate section 7
23 consultation on the CDCA Plan as it is currently being implemented for the Western Mojave
24 Desert and the Western Colorado Desert; and

25 WHEREAS, BLM represents that based upon the progress of the above plan
26 amendments, BLM has developed a schedule for consultation under Section 7 of the ESA on the
27 cumulative and programmatic effects of the CDCA Plan on federally listed threatened and
28 endangered species.

1 THEREFORE, the parties agree as follows:

2 1. BLM acknowledges that because activities authorized, permitted, or allowed
3 under the CDCA Plan may adversely affect threatened and endangered species, Section 7(a)(2)
4 of the ESA requires the BLM to consult with FWS to insure that its adoption and
5 implementation of the CDCA Plan is not likely to jeopardize the continued existence of any
6 threatened or endangered species or to result in the destruction or adverse modification of the
7 critical habitat of any such species. 16 U.S.C. § 1536(a)(2).

8 2. BLM agrees that by January 31, 2001, BLM shall enter into formal consultation
9 with FWS under Section 7 of the ESA on the CDCA Plan, as it would be amended by
10 proposed plan amendments to two (the Northern and Eastern Mojave Desert and the Northern
11 and Eastern Colorado Desert planning areas) and possibly three (Coachella Valley planning area)
12 of five planning areas and shall submit a Biological Evaluation on the entire CDCA Plan in
13 accordance with Section 7 of the ESA to FWS by January 31, 2001. On the remaining two
14 planning areas (the Mojave Desert and the Western Colorado Desert), BLM shall enter into
15 formal consultation on the CDCA Plan as it is currently being implemented as of the date of
16 this agreement. The consultation to be initiated by January 31, 2001 shall be "CDCA Plan
17 wide" and include the consideration of the direct, indirect, and cumulative impacts of the
18 activities authorized, permitted or allowed under the CDCA Plan. If the plan amendments for
19 the Northern and Eastern Mojave Desert, the Northern and Eastern Colorado Desert, or the
20 Coachella Valley planning areas have not been proposed by January 31, 2001, then BLM shall
21 enter into formal consultation, as described above, on the CDCA Plan as it is currently being
22 implemented on January 31, 2001 in that planning area.

23 3. If, by January 31, 2002, the proposed amendments to the Northern and Eastern
24 Mojave Desert, the Northern and Eastern Colorado Desert, and the Coachella Valley planning
25 areas have not been approved, then BLM shall initiate consultation on the CDCA Plan as it is
26 currently being implemented as of the date of this Stipulation. As described in Paragraph 2,
27 consultation under this Paragraph shall be "CDCA Plan wide" and include the consideration of
28

1 the direct, indirect, and cumulative impacts of the activities authorized, permitted or allowed
2 under the CDCA Plan.

3 4. In consideration of BLM's agreement to initiate consultation under Section 7 of
4 the ESA by January 31, 2001, the Center withdraws its motion for partial summary judgment
5 filed on July 20, 2000 and moves to have the hearing on its motion, currently set for
6 September 7, 2000, taken off the Court's calendar.

7 5. By entering into this Stipulation the Center does not waive its right to seek
8 interim injunctive relief for alleged violations of the ESA, either before or after the promised
9 initiation of formal Section 7 consultation; however, the parties shall immediately enter into
10 settlement discussions in an attempt to agree upon interim measures necessary to comply with
11 the ESA.

12 6. This Stipulation is effective upon its approval and entry as an Order by the
13 Court.

14
15 Dated: August 23, 2000

16 For Plaintiffs:

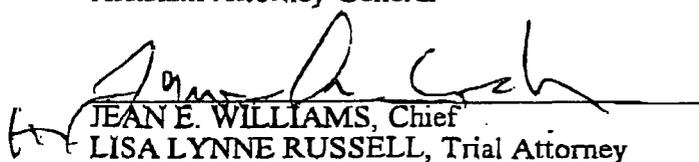
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For Defendants:

LOIS J. SCHIFFER
Assistant Attorney General

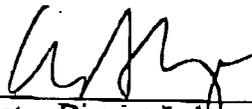

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1
2 PURSUANT TO STIPULATION, IT IS SO ORDERED.

3
4 DATED the 25 day of August, 2000

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7 _____
8 United States District Judge

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