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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CENTER FOR BIOLOGICAL DIVERSITY, et al.

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT,

Defendant,

and

HIGH DESERT MULTIPLE USE COALITION, et al.

Defendant-Intervenors.

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

[PROPOSED] ORDER ON SCHEDULE FOR OBJECTIONS AND HEARINGS ON STIPULATIONS CONCERNING PENINSULAR BIGHORN SHEEP AND ALL FURTHER INJUNCTIVE RELIEF

Plaintiffs Center for Biological Diversity, et al., Defendant Bureau of Land Management and lodged a Stipulation and Proposed Order with the Court concerning interim relief for Peninsular bighorn sheep. These parties and Defendant-Intervenors High Desert Multiple Use Coalition, et al, have lodged a separate Stipulation and Proposed Order concerning all further injunctive relief.

Any objections to the Stipulation must be filed on or before January 25, 2001, in a brief not to exceed twenty-five pages. The parties to the Stipulation(s) may respond in a joint brief, also not to exceed twenty-five pages, on or before February 1, 2001. A hearing will be held on any objections to the Stipulations on February 8, 2001 at 8:00 a.m.

IT IS SO ORDERED.

Dated: January _____, 2001.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CENTER FOR BIOLOGICAL DIVERSITY, a non-profit corporation; SIERRA CLUB, a non-profit corporation; and PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY, a non-profit corporation, Plaintiffs, v. BUREAU OF LAND MANAGEMENT Defendant, and, HIGH DESERT MULTIPLE USE COALITION, DESERT VIPERS MOTORCYCLE CLUB, SAN DIEGO OFF-ROAD COALITION, CALIFORNIA ASSOCIATION OF 4-WHEEL DRIVE CLUBS, and THE BLUERIBBON COALITION, Defendant-Intervenors	Case No: C-00-0927 WHA (JCS) **STIPULATION AND PROPOSED ORDER CONCERNING INJUNCTIVE RELIEF FOR THE PENINSULAR RANGES BIGHORN SHEEP**

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

WHEREAS, in a Stipulation approved by the Court on August 25, 2000, BLM acknowledged that because activities authorized, permitted, or allowed under the CDCA Plan may adversely affect threatened and endangered species, Section 7(a)(2) of the ESA, requires BLM to consult with FWS to

ensure that its adoption and implementation of the CDCA Plan is not likely to jeopardize the continued existence of any threatened or endangered species or to result in the destruction or adverse modification of the critical habitat of any such species. 16 U.S.C. § 1536(a)(2);

WHEREAS, the FWS has determined that an animal species, Ovis canadensis, commonly known as the Peninsular Bighorn Sheep, is entitled to protection as an endangered species under the ESA. 63 Fed. Reg. 13134 (March 18, 1998);

WHEREAS, only approximately 400 Peninsular Bighorn Sheep remain and many of these Sheep and their habitat are found within the CDCA;

WHEREAS, a threat to the continued existence of Peninsular Bighorn Sheep is habitat loss, degradation, and fragmentation, including impacts from vehicular and non-vehicular recreational use of Sheep habitat. 63 Fed. Reg. 13134, 13143;

WHEREAS, under the CDCA Plan, BLM allows vehicular and non-vehicular recreational use of the public lands in Peninsular Bighorn Sheep habitat;

WHEREAS, vehicular and non-vehicular recreational use impacts can be damaging to Peninsular Bighorn Sheep during the lambing season, which runs from approximately January 1 to June 30 each year, and during the hot or water stress season, which runs from approximately July 1 to September 30 of each year;

WHEREAS, the Plaintiffs contend that the Dunn Road is very harmful to Peninsular Bighorn Sheep and that this Road was illegally created and should be completely closed and re-vegetated;

WHEREAS, the Plaintiffs intend to continue to advocate by all available means, including separate litigation, for the complete closure, obliteration, and restoration of the Dunn road;

WHEREAS, BLM acknowledges that the Creole mining operation on top of Carrizo Peak in the Coyote Mountains in Imperial Country does not have a valid mining plan of operations or a valid Biological Opinion for its operation;

WHEREAS, the parties agree that the presently permitted recreational use of Peninsular Bighorn Sheep habitat in the CDCA may affect the Peninsular Bighorn Sheep;

WHEREAS, under Section 7 of the ESA, BLM must ensure that its adoption and implementation of the CDCA Plan is not likely to jeopardize the continued existence of any threatened or endangered species or to result in the destruction or adverse modification of the critical habitat of any such species;

WHEREAS, the parties would like to avoid unnecessary litigation of the need for an immediate injunction.

THEREFORE, the parties agree as follows:

1. BLM will maintain in effect all existing voluntary recreation trail closures on public lands managed by BLM in Peninsular Bighorn Sheep habitat, including the existing lambing season closures of the Art Smith, North Lykken, and Boo Hoff/Guadalupe trails and Cathedral Canyon trail and canyon. In addition, BLM will initiate lambing season voluntary trail closures of the Morrow, Clara Burgess, Bear Creek Oasis and Dunn Road trails.

2. BLM will provide seven (7) full time employees during the period January 1 through June 30 of each year for which this agreement is in effect. These seven employees will be known as "Sheep Ambassadors." At least three of the seven Sheep Ambassadors will be new hires by BLM. The Sheep Ambassadors' primary duty will be to ensure the implementation of voluntary closures on the public land sections of seven (7) recreational trails from January 1 through June 30 each year. Sheep Ambassadors will generally occupy trailheads and patrol the trails intercepting potential trail users and informing them of the voluntary closure and the reasons for it. Periodically, Sheep Ambassadors will patrol high use or problem areas where trail use is most likely to occur. The seven trails are the Boo Hoff/Guadalupe Trail, the Morrow Trail, the Clara Burgess Trail, the Cathedral Canyon Trail (and canyon), the Bear Creek Oasis Trail, the Art Smith Trail and the Dunn Road. The relevant patrol locations or trailheads are the Art Smith Trail, Clara Burgess/Lower Dunn/Cathedral Canyon, the Upper Dunn and those at La Quinta Cove and Lake Cahuilla (the La Quinta Cove and Lake Cahuilla trailheads serve the Boo Hoff/Guadalupe, Morrow and Bear Creek Oasis trails). On weekends a law enforcement ranger will be available to support these trail monitoring efforts and the Dunn Road Closure. A Sheep Ambassador will visit the Martinez Canyon Road Cherry-stem on weekends primarily to monitor OHV use but should otherwise assist in monitoring higher use areas. The seven Sheep Ambassadors will also monitor the seven trail areas for illegal OHV use that will be immediately reported to law enforcement

for timely response. The seven Sheep Ambassadors will keep daily logs of their efforts to implement the voluntary closures, of their success, and of any OHV use observed. BLM will provide the Plaintiffs with these daily logs and any other monitoring or other reports generated by these employees upon request and/or quarterly.

3. Consistent with BLM Environmental Assessment CA-066-96-43, dated September 24, 1996 and signed November 28, 2000, BLM shall close the Art Smith Trailhead by maintaining a closed gate from February 1 through June 30 of each year to minimize the disturbance to Bighorn Sheep during this vulnerable period.

4. BLM will initiate a "hot season" or "water stress" trail signing and education program from July 1 to September 30 each year. This "hot season" trail signing and education program will take place on the Art Smith, Boo Hoff/Guadalupe, Bear Creek Oasis, Dunn Road, and Carrizo Canyon trails. This "hot season" trail signing and education program will be implemented by placing prominent signs at the following locations: (A) for the Art Smith Trail, at BLM Section 2 at least 1/2 mile southeast of a slot canyon with palm oasis, and at the western boundary of BLM Section 22 in Magnesia Spring Canyon; (B) for the Guadalupe Trail, at the junction with the Boo Hoff Trail; (C) for the Bear Creek Oasis Trail, where the trail leaves the wash and starts up the hill (the junction with the Bear Creek Canyon Trail); (D) for the Dunn Road, by the Art Smith Trail signs listed above; and (E) for Carrizo Canyon, by two access points where hikers enter the Canyon from Highway 74 on BLM land. These signs shall state "Sensitive Bighorn Sheep Watering Area Ahead Please Turn Around Here To Avoid Disturbing Bighorn Sheep in this Area From July 1 to September 30." In addition, on the Boo Hoff Trail, within 1/2 mile to either side of the "Mystery Canyon" dead-end trail, BLM shall place signs reading "Sensitive Bighorn Sheep Area. Please Stay on Trail." Finally, to accomplish this "hot season" trail signing and education program BLM shall maintain at least one of the Sheep Ambassadors to implement this program. This "summer" Sheep Ambassador will generally patrol the trail locations listed above. The summer Sheep Ambassador will keep daily logs of his/her efforts to implement the hot season trail signing and education program and of his/her success. BLM will provide the Plaintiffs with these daily logs and other monitoring or other reports generated by this employee upon request and/or quarterly.

5. BLM will increase its environmental education efforts concerning the effects of recreational trails on Peninsular Bighorn Sheep lambing habitat and watering areas. BLM's educational efforts will be prepared in coordination with the Peninsular Bighorn Sheep recovery team and will address the voluntary trail closure program described in paragraphs 1 – 3 above and the signing and education program described in paragraph 4 above. BLM's efforts will include the new installation, regular maintenance, and replacement of damaged or stolen signs which are on BLM managed public lands, and a revised informational flyer for distribution at trailheads by the Sheep Ambassadors and for placement in any existing or new BLM kiosk boxes. BLM's revised informational flyer will also be available at all BLM offices throughout the CDCA and will be provided to adjacent Forest Service and State Parks offices within the historic range of the Peninsular Bighorn Sheep. BLM's public education campaign will also include an opinion/editorial, consistent with the Peninsular Bighorn Sheep Recovery Plan. The opinion/editorial will discuss the importance of the voluntary trail closure program and the importance of the Peninsular Bighorn Sheep to our natural heritage. The opinion/editorial will be officially signed by BLM and distributed to English and Spanish language newspapers in Southern California by February 15, 2001. BLM shall also issue at least one widely distributed press release to English and Spanish language newspapers in Southern California by February 15, 2001 announcing the voluntary trail closure program and BLM shall purchase several radio advertisements, from stations in the Coachella Valley and Inland Empire doing the same. In addition, BLM shall prepare an informational presentation or slide show on the voluntary trail closure program and present this informational show to schools in the vicinity of Peninsular Bighorn Sheep habitat.

6. BLM will not open the gate to the parking lot for the Art Smith trail during the period January 1 through June 30 of each year, and will seek the California Department of Fish and Game's cooperation in keeping the gate closed during that time period.

7. BLM will install new signs at logical and historical access points to Carrizo Canyon from the Art Smith Trail. These signs will inform the public of State closures affecting Carrizo Canyon. BLM will coordinate the placement and the wording of these new signs with the California Department of Fish and Game and the Plaintiffs. BLM shall install the signs by March 15, 2001.

8. BLM will not improve or maintain or authorize improvement or maintenance of the Martinez Canyon/Cactus Spring Trail beyond the Martinez Canyon cherry-stem. BLM will not authorize or permit the use of pack stock to assist in the restoration of the Martinez Canyon Cabin. BLM agrees to place signs on Martinez Canyon Road and Trail, warning against illegal use of OHVs and to enforce the OHV prohibition at the Wilderness boundary. BLM will coordinate the placement of these new boundary signs with the Plaintiffs. Plaintiffs shall be consulted by February 15, 2001 and the signs shall be in place by February 28, 2001.

9. The parties agree that nothing in this stipulation shall prevent BLM from cooperating with responsible wildlife agencies in their trail use research, monitoring and enforcement efforts.

10. BLM will discuss the impacts of aircraft flights over Peninsular Bighorn Sheep habitat with the Desert Manager's Group (DMG). BLM will also discuss the overflight issue with the Peninsular Bighorn Sheep Recovery Team, the U.S. Fish and Wildlife Service, the Federal Aviation Administration, the Department of Defense, and other appropriate governmental agencies. BLM will propose restrictions on overflights of Peninsular Bighorn Sheep habitat, and present the views of the Peninsular Bighorn Sheep Recovery team, to the overflight working group of the DMG at its next scheduled meeting. The overflight working group will subsequently make a recommendation to the DMG during 2001. BLM's proposal will include a limit on the distance above the ground for military and all other overflights and will consider the implementation of the overflight restrictions by an intergovernmental memorandum of agreement with the appropriate agencies.

11. The parties agree that nothing in this Stipulation shall be construed to prohibit BLM or FWS permits for research, inventory, and monitoring activities involving helicopter flights over and landings on public land, so long as the flights and landings are for the purpose of legitimate research, inventory, and monitoring developed in consultation with the U.S. Fish and Wildlife Service.

12. BLM will not approve any new lands or minerals authorizations, or modifications of any existing lands or minerals authorizations, within Peninsular Bighorn Sheep habitat with the following exceptions:

a. authorizations within the I-8 utility corridor;

b. exchanges or acquisitions of land designed to benefit Peninsular Bighorn Sheep; or,

c. authorizations that do not involve any new surface disturbance or other new disturbance affecting Bighorn Sheep.

BLM will notify the Plaintiffs of any new proposed authorizations and any exchanges or acquisitions designed to benefit Peninsular Bighorn Sheep for at least 90 days before reaching any final decision on the proposed authorization, exchange, or acquisition.

13. BLM shall close and block the Painted Gorge Road, leading to the top of Carrizo Peak in the Coyote Mountains in Imperial County, at the first practical location past or above (Northwest of) the Imperial County mineral material pit, from January 1 to July 30 each year.

14. BLM will not issue any new or re-issue any existing special recreation or other special use permits for use between January 1 and September 30 which "may affect" Peninsular Bighorn Sheep within the meaning of Section 7 of the ESA.

15. A review of survey records for the Santa Rosa Wilderness boundary indicated the possibility of a trespass by the Quarry Golf Course onto public lands. BLM will further investigate this trespass and any other trespass by the Quarry Golf Course onto public lands and initiate a trespass action by notice to the landowner by February 20, 2001. BLM shall pursue full restoration of the public lands and removal of any Golf Course modifications from the designated Wilderness area if the trespass is verified.

16. Concerning the Dunn Road, BLM will:

a. Not authorize, permit, or carry out any maintenance or improvement of the Dunn Road on public lands (including maintenance by private parties);

b. Not grant any rights of way over the Dunn Road;

c. Close all gates on public lands which affect access along the Dunn Road and secure them with new locks by February 1, 2001;

d. Repair all fences, to prevent unauthorized vehicular access to the Dunn Road on the public lands adjacent to these access gates by January 30, 2001 and will construct new/additional fences to prevent unauthorized access, as necessary, by October 30, 2001, and maintain them thereafter;

e. BLM will replace the non-BLM lock on the northernmost gate adjacent to Cathedral City Cove with a BLM lock by February 1, 2001;

f. The BLM locks to be installed on all BLM managed gates on the Dunn Road will include the following security features:

(1) Keys cannot be duplicated by any one other than the manufacturer of the lock (patented system for which locksmiths do not possess key banks);

(2) Keys are sequentially numbered thereby providing for tracking efficiency;

(3) The locks for the Dunn Road gates will constitute a stand alone system which will not interface with the commonly used BLM lock system;

(4) The key and lock system used on the Dunn Road gates will be such that keys will be retained in the locking mechanism until the padlock is secured in the closed position; and

(5) locks will be secured to the gate by a chain.

g. BLM may provide conditional access to the Dunn Road, so long as the Dunn Road is safe and passable, by issuance of keys to governmental entities with emergency service responsibilities. These governmental entities are the U.S. Forest Service, Palm Springs Police and Fire Departments, Cathedral City Police and Fire Departments, and Agua Caliente Band of Cahuilla Indians. Use of the Dunn Road by these entities will be for emergency purposes only. Except for the Agua Caliente Band of Cahuilla Indians, which may use the Dunn Road to access tribal lands for the purpose of natural and cultural resource management, and the U.S. Forest Service which may use the Dunn Road, accessing it by the Southerly gate, for the purpose of Tamarisk eradication efforts;

h. BLM may provide conditional access to private landowners whose lands cannot be accessed by motorized vehicle except via the Dunn Road, so long as the Dunn Road is safe and passable, on the following terms:

(1) No more than two landowner trips a week may be permitted and only one of these trips may be on a weekend;

(2) A "trip" will consist of one journey in and one journey out along the Dunn Road;

(3) A "trip" may include no more than eight motorized vehicles;

(4) Trips must be led by a BLM ranger or Sheep Ambassador, who will accompany the landowners' party, in one or both directions, to the landowners' private land. Landowners will be directed not to stop their vehicles on the Dunn Road within Bighorn Sheep habitat other than when on their own property or during emergencies such as vehicle breakdowns or flat tires. Landowners who have demonstrated consistent compliance with these provisions need not be led on all trips. Landowners who have demonstrated non-compliance will be denied future access;

(5) Keys to the locks on the gates will be retained by the BLM ranger or Sheep Ambassador accompanying the trip and will not be given to landowners;

(6) Each month, BLM may allocate up to two additional landowner trips if the two trips per-week limit cannot accommodate landowner needs. If the destination of these trips is North of Cathedral Canyon the trip must enter and exit from the North; if the destination is South of Cathedral Canyon the trip must enter and exit from the South;

(7) Trips by the Agua Caliente Band of Cahuilla Indians will count as landowner trips unless these trips are for emergency purposes or for purposes of natural and cultural resource management;

(8) Trips by the Agua Caliente Band of Cahuilla Indians or the U.S. Forest Service for emergency purposes, or by the Agua Caliente Band for natural and cultural resource management or the Forest Service for Tamarisk removal efforts, and trips by the Palm Springs Police and Fire Departments and Cathedral City Police and Fire Departments for emergency purposes will not count as landowner trips, but must be reported to the BLM;

(9) All trips will be logged and recorded by BLM. BLM will provide the Plaintiffs with all trip records upon request and/or quarterly;

(10) No commercial use of the Dunn Road will be authorized by permit or otherwise, except the current permit holder will have the right to use the Dunn Road until the current permit expires on June 30, 2001;

(11) The above limitations will not apply to trips by entities conducting legitimate research, inventory and monitoring and this Stipulation will not be construed to limit or

hinder legitimate research, inventory and monitoring efforts as approved in consultation with the U.S. Fish and Wildlife Service;

(12) BLM will install at least two traffic counters on the Dunn Road by February 15, 2001. These traffic counters will be placed to ensure all vehicle trips are recorded. BLM will provide that at least one of the traffic counters records the date and time on which a vehicle passes the counter. All records produced by these traffic counters will be provided to the Plaintiffs upon request and/or quarterly.

17. BLM will have a wildlife biologist, natural resource, specialist or, other appropriate staff its El Centro and Palm Springs Offices attend all meetings of the Peninsular Bighorn Sheep recovery team or its successor organization.

18. BLM will maintain in effect and enforce the existing dog closure in Peninsular Bighorn Sheep habitat. BLM shall provide law enforcement in support of this dog closure and shall provide the Plaintiffs with summary information concerning the number of tickets issued and the location of the violations upon request and/or quarterly.

19. BLM will not locate a "dog use area" on the east side of California State Highway 74. Before locating any new "dog use area," BLM will consult with the U.S. Fish and Wildlife Service, and will seek the views of the Bighorn Institute, and the Peninsular Bighorn Sheep Recovery team concerning the location of any "dog use area." Any new "dog use area" shall not be within a mile of the Bighorn Institute.

20. Removal of the picnic tables and hitching posts on the top of Murray Hill will be considered among the alternatives analyzed in the Coachella Valley Multiple Species Habitat Conservation Plan amendment to the CDCA Plan.

21. In consideration of the actions to be taken by BLM, Plaintiffs agree that they will not seek injunctive relief through this litigation with respect to the Peninsular Bighorn Sheep so long as BLM complies with the terms of this stipulation. Nothing in this Stipulation shall be construed so as to prevent Plaintiffs from challenging any action in the CDCA affecting Peninsular Bighorn Sheep for reasons other than BLM's failure to consult on the CDCA Plan.

22. This Stipulation shall not be interpreted or construed as an admission by any of the parties of any claim or defense in this litigation.

23. Nothing in this Stipulation shall be interpreted or construed as a commitment or requirement that the BLM or any other federal agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. 1341, or any other applicable provision of law.

24. In complying with the terms of this agreement, BLM shall be subject to all applicable federal statutes and regulations, and nothing in this agreement shall be construed to require BLM to take any actions in contravention of any such applicable statutes or regulations.

25. This Stipulation is effective immediately upon its signature as an agreement among the signatories and is further effective as an Order of the Court upon its approval and entry as an Order by the Court. This Stipulation is to remain in effect until BLM receives a Biological Opinion from FWS on the effects of the CDCA Plan on Peninsular Ranges Bighorn Sheep and implements any applicable terms and conditions, reasonable and prudent alternatives, and/or reasonable and prudent measures of the Opinion that require implementation.

25. For good cause, any party to this stipulation may ask any other to modify this agreement. Any such request for modification shall be in writing. If after 30 days the parties are unable to agree upon the requested modification, the parties shall present their disagreement to the Court which may modify this agreement for good cause shown.

FOR PLAINTIFFS:

Dated: _____

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