

**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 ALL FURTHER
INJUNCTIVE RELIEF**

WHEREAS, Plaintiffs, Center for Biological Diversity, et al. ("the Center") 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 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 insure 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, 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 prohibiting all activities which may adversely affect listed species.

THEREFORE, the parties agree as follows:

1. The BLM will prepare evaluation reports for all Areas of Critical Environmental Concern ("ACEC") where threatened or endangered species are present or potentially present and where the ACEC was designated for the management of biological resources. The primary purpose of these "ACEC evaluation reports" is to determine whether BLM is allowing activities that are incompatible with the protection of the resources the ACEC was designated to protect. The ACECs for which the BLM shall prepare evaluation reports must include the following:

- (A) Western Rand Mountains;
- (B) Great Falls Basin/Argus Range;
- (C) Amargosa River Natural Area;
- (D) Grimshaw Lake Natural Area;
- (E) Jawbone/Butterbread;
- (F) Desert Tortoise Natural Area;
- (G) Harper Dry Lake;
- (H) Whitewater Canyon;

- (I) Big Morongo Canyon;
- (J) Chuckwalla Bench;
- (K) San Sebastian Marsh/San Felipe Creek;
- (L) Coachella Valley Fringe-toed Lizard Natural Area;
- (M) North Algodones Dunes National Natural Landmark;
- (N) Dos Palmas;
- (O) Surprise Canyon;
- (P) Yuha Basin ACEC; and
- (Q) West Mesa ACEC.

Within 30 days of the signing of this agreement by the Parties, BLM, in consultation with the parties, will develop a schedule for completing the ACEC evaluation reports. Any such schedule developed will ensure that eight of the needed ACEC evaluation reports will be drafted within three months, an additional seven within six months, and the final two within nine months of the date this agreement is signed by the parties. The ACEC evaluation reports will include a review of the implementation of ACEC plan actions and other resource management accomplishments. The ACEC evaluation reports will also include a description of current or on-going conflicts between biological resources and the currently allowed uses of the ACECs, and most importantly, will propose corrective actions. The BLM will provide the parties an opportunity to comment on the draft ACEC evaluation reports. BLM will finalize the evaluation reports sixty days after its receipt of any comments by the Center. After the reports are finalized, the BLM will prepare a schedule, in consultation with the parties, by which all proposed corrective actions will be implemented. BLM will make every effort to implement the proposed corrective actions according to the schedule agreed upon by the parties.

2. The BLM will attempt to implement a multi-jurisdictional vehicle closure of Windy Point in the Coachella Valley among all relevant governmental agencies, including the City of Palm Springs and Riverside County. In any event, the BLM will maintain the emergency vehicle closure of all BLM lands at Windy Point (specifically, BLM lands in T.3S., R.3E., SBM, sections 14, 22, 23, 24) that it will close by Federal Register notice effective approximately January 15, 2001.

3. By March 1, 2001, the BLM will provide the Center with an analysis of threats to, and recovery progress for, the desert pupfish at the Dos Palmas ACEC and at San Sebastian Marsh/San Felipe Creek ACEC. By April 1, 2001, BLM will provide the Center with a written description of interagency procedures for communication with and evaluation by the California Department of Fish and Game of water management activities in the Dos Palmas ACEC that might affect stream flow in Salt Creek. The BLM will continue its efforts to remove tamarisk in desert pupfish habitat. The BLM will continue its efforts to acquire in-holdings in the Dos Palmas ACEC. By July 1, 2001, BLM will produce an environmental assessment addressing the effects of removing exotic date palms at the Dos Palmas ACEC including an analysis of effects on Yuma clapper rail. BLM will issue a decision record on the environmental assessment by October 1, 2001.

4. The BLM will not authorize OHV competitive motorized events outside of designated OHV open areas except for events passing through the Navy Parachute Range between the Plaster City and Superstition Hills OHV Open Areas that comply with the Flat-tailed horned lizard conservation strategy. The parties acknowledge that the provisions of this paragraph provide temporary management direction and that all parties may continue to support more permissive or more restrictive competitive event opportunities in ongoing BLM management processes. The parties agree that "dual sport" events conforming with the existing biological opinion governing dual sport events are not restricted by this paragraph.

5. The BLM will defer final route designations and will maintain the existing emergency route network in the Ord Mountain area until the West Mojave Plan is completed. By February 1, 2001, in consultation with the parties, BLM will develop a list of the routes to be rehabilitated and a rehabilitation schedule. BLM will make every reasonable effort to implement the proposed rehabilitation schedule.

6. By February 1, 2001, BLM will provide the Center with a list of burro management activities undertaken in the last two years. In 2001, the BLM will place the highest priority of its burro management program on the removal of burros in the habitat of threatened or endangered species. The BLM will hire two monitoring specialists to conduct habitat evaluations in burro herd management areas during 2001. By February 1, 2001, in consultation with the Center, BLM will develop a schedule for the removal of burros from threatened or endangered species habitat. The schedule will provide measurable objectives for burro removal

to be accomplished by December 31, 2001. BLM will make every reasonable effort to meet the objectives of the schedule.

7. BLM shall fence off the riparian area of the Mojave River in Afton Canyon from cattle. Such fencing shall be completed by January 1, 2002. BLM may provide alternative livestock water sources outside of the riparian area. BLM shall prohibit the clearing of any native vegetation on public lands within one-quarter mile of the Mojave River except as necessary for restoration work.

8. In the Argus Mountains, BLM shall:

(A) For Wilderness Areas, notify the State of federal reservation of unappropriated water.

(B) For BLM lands outside of Wilderness Areas, begin the State water rights proceedings, consistent with State law, to secure federal water rights for all springs. During 2001, the BLM commits to file state water rights applications for at least 10 springs in the Argus Mountains. During 2002, the BLM commits to file state water rights applications for an additional 5 to 10 springs in the Argus Mountains. During 2003, the BLM commits to file state water rights applications for all remaining BLM land springs in the Argus Mountains.

9. To protect and recover the Cushenberry milkvetch (Astragalus albens), Cushenberry oxytheca (Oxytheca parishii var. goodmaniana), Parish's daisy (Erigeron parishii), and Cushenberry buckwheat (Eriogonum ovalifolium var. vineum), BLM shall:

(A) Coordinate with the U.S. Forest Service in the development of the Carbonate Habitat Management Strategy ("CHMS") planning process and begin implementation by June 1, 2001. BLM will cooperate with the U.S. Forest Service, the Center, and the California Native Plant Society on the implementation and monitoring of the CHMS.

(B) Take immediate action on any U.S. Forest Service application for mineral withdrawal in the San Bernardino Mountains to benefit threatened or endangered plants.

(C) BLM shall petition for mineral withdrawal of BLM lands in support of the CHMS to protect the habitat of these threatened or endangered carbonate endemic plants.

(D) The BLM shall not approve any new mining plans of operation or any expansion of existing mining plans of operations in the habitat of the threatened or endangered carbonate endemic plants that

“may affect” the species.

10. By February 1, 2001, BLM will prepare and deliver to the parties a list of all activities that are likely to adversely affect threatened and endangered plants on BLM lands in the CDCA. Except for the Coachella Valley milkvetch, BLM will not authorize any new activities that may adversely affect threatened and endangered plants on BLM lands in the CDCA until after the completion of consultation on the plan amendments and final plan amendment for the portion of the CDCA that includes the plant population.

11. To protect and recover the Coachella Valley milkvetch (Astragalus lentiginosus var. coachellae), BLM will not allow any new activities within the Coachella Valley preserve system, or on known milkvetch sites on BLM lands near the mouth of Whitewater Canyon and near Morongo Creek that may adversely affect this species. In addition, for all known populations and habitat of the Coachella Valley milkvetch on BLM lands, BLM shall manage the habitat of this species for maintenance of hydrologic regime and sand sources.

12. To protect and recover the Lane Mountain milkvetch (Astragalus jaegerianus), BLM will retain all public lands containing populations of the Lane Mountain milkvetch, consistent with Ft. Irwin expansion legislation of December 2000.

13. To protect and recover the Ash Meadows gumplant (Grindelia fraxinopratenensis) and Amargosa niterwort (Nitrophila mohavensis), by February 1, 2001 BLM will initiate a study of water needs to guarantee adequate water in perpetuity for these plants. By September 1, 2001, BLM shall fence all significant populations of the niterwort and gumplant. BLM will cooperate with and seek the advice of the California Native Plant Society, the Center, and the FWS on protection and recovery of these plants. BLM will eliminate burros from the Chicago Valley Herd Management Area. BLM will close all undesignated routes within the habitat of these plants pending formal route designation. BLM shall, in consultation with the California Native Plant Society and the Center, develop an ACEC management plan within the NEMO plan amendment process for the conservation and recovery of these species. BLM shall coordinate these efforts with the appropriate offices of the BLM in Nevada and with the FWS.

14. To protect and recover the Triple-ribbed milkvetch, (Astragalus tricarinatus), BLM will pursue

an avoidance strategy for this species wherever practical during pipeline maintenance and all other activities within the Big Morongo ACEC. BLM will complete design and analysis of a route restoration program for the Big Morongo ACEC by February 1, 2001. The design will include an implementation schedule. BLM will complete the implementation of the route restoration program by June 1, 2002.

15. BLM will maintain a specialist with rare plant experience in its Ridgecrest, Barstow, Palm Springs/South Coast, and El Centro field offices until the relevant regional plan(s) handled by each field office is completed.

16. The Round Mountain cattle grazing allotment is currently in non-use. BLM shall not authorize cattle grazing on the Round Mountain allotment.

17. The BLM shall ensure that construction of the east boundary fence on the Rattlesnake Canyon cattle grazing allotment is started by January 17, 2001. BLM fire crews will work to construct as much of this fence as possible between January 17, 2001 and April 15, 2001. The BLM fire crews will return to work on this fence at the conclusion of the fire season and will then work until the fence is completed. This boundary fence will exclude from grazing all identified populations of threatened or endangered plants.

18. To protect the Inyo California towhee, BLM shall:

(A) Install vehicle barriers in the vicinity of Christmas, Nadeau, North Ruth and Austin springs by July 1, 2001. These barriers will direct vehicle use and recreational use away from riparian vegetation.

(B) BLM shall develop a list of springs that have unresolved burro or OHV conflicts and a schedule for the installation of needed fencing, in consultation with the parties, by February 15, 2001. This schedule shall provide that the needed fencing shall be completed within one-year of the date of the signing of this agreement by the Parties. BLM shall monitor and maintain these enclosures. These fenced enclosures shall include an appropriate buffer around the springs that includes all present and potential riparian habitat.

(C) BLM shall investigate the legality and effect of water diversions at Alpha Spring, Bainter Springs, Surprise Canyon, and Hall Canyon by April 1, 2001. If any such water diversions are determined to be illegal, BLM shall immediately take all necessary steps to terminate illegal water diversions.

(D) BLM will work to improve habitat and scenic quality in the Great Falls Basin ACEC. This work will include trash removal, relocation of campsites, reclamation and barricading of hill climbs, restoration of OHV routes (to preclude vehicle use), and installation of an information kiosk. This work shall be completed by June 30, 2001.

(E) In accordance with existing state and federal law, BLM shall restrict vehicle and camping access near all accessible springs in the historic range of the Inyo California towhee within one-year of the date of the signing of this agreement by the parties.

19. BLM shall conduct a survey by August 1, 2001, to determine if snowy plovers use BLM lands for nesting at Koehn Lake, Searles Lake, Superior Dry Lake, Harper Dry Lake, or Cronese Lakes. If snowy plover nesting sites are discovered, BLM shall restrict human use of the areas during the nesting season (April 1 to August 1 each year), as necessary according to site specific needs. Outside the nesting season BLM shall effect any appropriate closures around all snowy plover nest sites.

20. BLM will mandate the use of ethylene glycol free (wildlife safe) coolant in all BLM maintained motor vehicles assigned to the California Desert District. BLM shall not allow the use of ethylene glycol in rain-gauges. Use of ethylene glycol free coolant for BLM vehicles will become mandatory within 60 days of the signing of this agreement. Within 90 days of the signing of this agreement, BLM will begin recommending the use of ethylene glycol free coolant in all water-cooled motorized vehicles participating in BLM permitted motorized events on the CDCA. BLM will require all permit holders for motorized events to distribute educational materials recommending the use of ethylene glycol free coolant to all event participants.

21. Concerning communications sites and facilities and power transmission and distribution infrastructure (com sites and lines):

(A) BLM shall require installation of anti-perching devices on all new communications sites and facilities (including microwave) within the CDCA. For all new com sites and lines the NEPA documentation prepared shall include consideration of the applicable specifications or guidelines in "Suggested Practices For Raptor Protection On Powerlines" (1996 edition), the FWS's "Service Guidance on the Siting, Construction, Operation and Decommissioning of Communications Towers" (September 14, 2000), and all

other Department of the Interior guidance related to communication facility siting, operation, and maintenance.

(B) BLM shall require all reconstructed or re-permitted com sites or lines to be raptor-safe. More specifically, reconstructed or re-permitted power lines which are not underground and communication sites and facilities shall include the applicable specifications and guidelines in "Suggested Practices For Raptor Protection On Powerlines" (1996 edition), the FWS's "Service Guidance on the Siting, Construction, Operation, and Decommissioning of Communications Towers" (September 14, 2000), and all other Department of the Interior guidance related to communication facility siting, operation and maintenance. As existing permits for com sites and lines power line expire, new permits will include the stipulation that these provisions are implemented within one year after permit renewal.

22. For protection of southwestern willow flycatcher and least Bell's vireo from the effects of on-going, authorized grazing:

(A) In coordination with FWS and USFS, the BLM will identify potentially suitable habitat for southwestern willow flycatcher and least Bell's vireo in active grazing allotments. Using the best available documentation, aerial photographs, and knowledge of field staff, the BLM will identify these sites on maps by April 1, 2001. Field assessments of habitat suitability for these sites will be initiated in April, 2001 and completed within two years.

(B) Those sites determined to contain suitable habitat for least Bell's vireo and southwestern willow flycatcher will be surveyed in the next breeding season according to established protocols.

(C) Where southwestern willow flycatcher and/or least Bells vireo are found breeding, the BLM will evaluate the status of existing biological opinions from FWS with regard to the grazing allotment. If necessary, consultation will be initiated or reinitiated. Until any such consultation is completed, BLM will not allow grazing on BLM lands within three miles of the breeding location. BLM will implement all terms and conditions of subsequent biological opinions and amend the CDCA Plan, if required.

23. To benefit the Southwest Willow flycatcher and the Least Bell's vireo:

(A) BLM shall initiate surveys, consistent with the U.S. Forest Service/San Bernardino National Forest protocols for these species in areas of high probability of occurrence, including Big Morongo

ACEC and Amargosa Canyon ACEC by March 1, 2001;

(B) If breeding or nesting areas for these species are discovered as a result of the surveys referenced in subparagraph (A), BLM, in coordination with the Center, shall evaluate the efficacy of a cowbird control program.

24. By April 1, 2001, BLM will prepare and deliver to the parties a list of all BLM authorized activities that may adversely affect the following species: southwestern willow flycatcher, least Bell's vireo, Yuma clapper rail, bald eagle, Amargosa vole, and arroyo southwestern toad.

25. BLM will not sell mineral materials in potential habitat for the arroyo southwestern toad, triple-ribbed milk-vetch, and desert tortoise in and around Whitewater Canyon. This specifically includes the community use pit.

26. By June 1, 2001, BLM will cause to be constructed at least 1/2 mile of fencing to protect riparian habitat for the benefit of the southwestern willow flycatcher along Kelso Creek. This fence will be approximately one-quarter mile from the edge of the riparian area to provide a buffer.

27. By March 1, 2001, BLM will develop, in coordination with the Center, and implement a stipulation regarding roadside berm size and slope for graded roads on BLM lands that will be protective of the desert tortoise. BLM will require right-of-way holders to change grading practices on BLM-administered public lands to conform to this new stipulation. BLM will work with county governments to encourage application of the stipulation to county maintained roads. BLM will implement the new stipulation as soon as reasonably possible, and not later than September 1, 2001 on the Helendale, Fossil Bed, Camp Rock, and Copper City roads.

28. BLM will close to shooting the areas within the route subregion polygons referenced in paragraph 38 of this Stipulation, except for hunting and target practice at paper targets specifically created for such purpose.

29. BLM will develop and provide to the Center a schedule for the cleanup of the Nipton dump and the Route 66 dumps at Amboy, Chambliss, and Essex. This schedule shall provide that the cleanup activities will be completed within one year of the signing of this agreement by the parties.

30. By March 1, 2001, BLM will amend its brochures and maps distributed to the public to encourage camping only in previously disturbed sites.

31. BLM will require that all right-of-way holders schedule non-emergency pipeline maintenance, involving the use of mechanized equipment, in desert tortoise critical habitat between June 16 and September 6 and/or November 8 and February 28. This provision does not apply if the maintenance activity receives a site-specific biological opinion.

32. BLM shall issue a Record of Decision (“ROD”) regarding route designation on NECO by January 31, 2002, on NEMO in tortoise DWMA’s by January 31, 2002, in the Coachella Valley by June 30, 2002, on the West Colorado by January 31, 2002, in the West Mojave by June 30, 2003, and all remaining areas in the CDCA by June 30, 2004.

33. BLM will not authorize any new mining plans of operations or expansions of existing mining plans of operations in excess of two acres per operation, not to exceed 20 acres cumulatively for all operations, in the critical habitat of threatened or endangered species or in occupied habitat for those species where critical habitat has not been designated.

34. BLM will only consider land exchanges or disposals involving threatened or endangered species habitat or potential habitat if it benefits the affected species. BLM will provide the Center with at least 90 days notice of any such proposed land exchanges or disposals. In accordance with the California Statewide Desert Tortoise Policy, no Category I desert tortoise habitat will be transferred out of public ownership, and exchanges involving disposal of Category II desert tortoise habitat will only be allowed if an equivalent or greater amount of Category I or II habitat is acquired and habitat manageability is enhanced.

35. By February 1, 2001, BLM will develop and provide to the Center an initial list of known sites needing removal of tamarisk and other invasive exotic plants. By March 1, 2001 BLM will submit to the Center a plan, including a schedule, to address these needs. BLM will make every reasonable effort to implement this plan according to the schedule developed.

36. As part of the West Mojave bio-regional plan amendment, BLM shall make a Wild and Scenic River eligibility determination for the Mojave River. This eligibility determination will include an evaluation of the

possibility of restoring the Mojave River to a more natural state capable of supporting re-introduction of the Mojave tui chub.

37. BLM will participate in a public education campaign effort in coordination with the California Department of Fish and Game (“CDFG”), FWS, U.S. Forest Service, and the Center to promote the use of non-lead shot/bullets for hunting throughout the CDCA. This public education campaign will begin by June 1, 2001. The public education campaign will include working with county hunting commissions and the CDFG to produce educational materials for distribution to hunters and the general public. These educational materials will urge hunters and other shooters to switch to non-lead shot/bullets to avoid poisoning wildlife. The public education campaign will also include an opinion/editorial signed by BLM and distributed to all major newspapers in Southern California, and the Sacramento Bee and San Francisco Chronicle, and a BLM produced brochure promoting the use of non-lead shot/bullets for hunting throughout the CDCA to be on public display and available at all BLM offices in the CDCA.

38. BLM shall implement an emergency road closure in the West Mojave Plan Area in the following five route subregion polygons: Fremont, Kramer, Red Mountain, Newberry/Rodman, and Superior. BLM shall propose an emergency closure network of routes and rationale documents for each of the five polygons. The first polygon proposal shall be submitted within 30 days of the signing of this Stipulation by the parties, and an additional polygon proposal will be submitted every 45 days thereafter until all five polygon proposals have been submitted. Each proposal will be available for public review for a period of 90 days. Within 30 days of the completion of each public review period BLM will publish an emergency closure notice effecting the emergency route network for the applicable polygon.

39. To stop unauthorized OHV incursions in the following wilderness areas, wilderness study areas, ACEC’s, and other limited use areas, BLM, will by April 1, 2001, prepare reports detailing plans to stop the unauthorized OHV entry in the:

- (A) Jacumba Wilderness
- (B) Soda Mountains WSA
- (C) Cady Mountains WSA

- (D) Grass Valley Wilderness
- (E) Golden Valley Wilderness
- (F) Kingston Range Wilderness
- (G) Palen-McCoy Wilderness(H) West Rand ACEC (specifically addressing R 6)
- (I) Orocopia Wilderness
- (J) Chuckwalla ACEC
- (K) Great Falls ACEC
- (L) Butterbread ACEC
- (M) Desert Tortoise Natural Area (specifically addressing R 10)
- (N) San Felipe Creek/San Sebastain Wash
- (O) Coyote Mountains Wilderness
- (P) West Mesa ACEC
- (Q) West Cronese Lake
- (R) Silver Dry Lake
- (S) Kingston Wash
- (T) Sage Canyon, and
- (U) Happy Canyon.

Once the above reports are prepared, BLM will, in coordination with the Parties, develop an implementation schedule and make all reasonable efforts to implement the plans designed to prevent unauthorized OHV activity.

40. BLM will implement an emergency route designation by Federal Register notice publication at Edwards Bowls and in the Helendale/Silver Lakes area by March 1, 2001.

41. At Juniper Flats, BLM will retain in place the existing emergency route network, but may complete limited route designations as areas recover from the recent fire.

42. BLM will implement an emergency route designation by Federal Register notice publication in the Chemehuevi Wash by March 1, 2001. The following routes will be designated closed: 517, 522, 531,

532, 533, 534, 536, 537, 538, 540. Routes 523-528 will be closed except to persons holding valid mining claims accessible only by these otherwise closed routes.

43. BLM will implement, via emergency closure published in the Federal Register, all wash closures as identified in the preferred alternative in the NECO Plan by March 1, 2001.

44. Within 45 days of the signing of this agreement by the parties, BLM will consult with the U.S. Forest Service to consider appropriate means to protect riparian and other resource values at Furnance Creek and Birch Creek. If the BLM cannot reach an agreement with the U.S. Forest Service on the appropriate course of action to protect riparian and other resource values in these areas within 45 days, the BLM will close, via emergency closure, the final mile of Furnance Creek on BLM land and the final half mile of Birch Creek on BLM land. These closures or other protective action agreed to with the Forest Service shall remain in effect until route designation is completed for this area.

45. BLM shall, within 30 days of the signing of this Stipulation by the parties, implement, via emergency closure published in the Federal Register, a camping closure on BLM lands in the vicinity of the Algodones Dunes within the following area: (a) beginning at the intersection of Highway 78 and the railroad tracks, proceeding southeasterly along the railroad tracks to their intersection with Ogilby Road (S34), proceeding north and east along Ogilby Road (S34) to its intersection with Highway 78, proceeding southwest along Highway 78 to its intersection with the railroad tracks, the point of beginning, and (b) beginning at the intersection of Highway 78 and the railroad tracks, proceeding northwesterly along the railroad tracks to Acolita, proceeding due east to the boundary of the Chocolate Mountains Aerial Gunnery Range, proceeding along the boundary of the Chocolate Mountains Aerial Gunnery Range to the Mesquite Mine, proceeding due south to Highway 78, proceeding west along Highway 78 to the railroad tracks, the point of beginning.

46. By February 15, 2001, BLM shall institute an emergency closure, via Federal Register notice publication, to motorized vehicle access in Surprise Canyon. By May 1, 2001 BLM shall install a locked gate in the vicinity of the south 1/2 of section 14 to block vehicle access to the canyon. As soon as practicable, but no later than July 1, 2001, BLM shall, following completion of public scoping, completion of an NEPA document, and concurrence of the California Desert District Office, issue a decision document. The NEPA document shall

evaluate a full range of options for management of human access to the area in Surprise Canyon beyond the gate. The decision document shall determine the nature or conditions under which such access, if any, will be allowed. Individuals owning private property in the vicinity of Panamint City shall not be subject to the restrictions of this paragraph. Any keys to any gate installed in Surprise Canyon under this paragraph will include the following security features:

- (A) Keys cannot be duplicated by any one other than the manufacturer of the lock (patented system for which locksmiths do not possess key banks);
- (B) Keys are sequentially numbered thereby providing for tracking efficiency;
- (C) The locks for the gate will constitute a stand alone system which will not interface with the commonly used BLM lock system;
- (D) The key and lock system used on the gate will be such that keys will be retained in the locking mechanism until the padlock is secured in the closed position; and
- (E) The locks will be secured to the gate by a chain.

470 Defendant-Intervenors, having attained party status in the remedial phase of this action primarily to address OHV interests, did not participate in the negotiation of and take no position regarding the following paragraphs to this Stipulation: 3, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18(C), 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, and 37.

480 This Stipulation shall not be construed as an admission of liability by Defendant, BLM, nor shall it be construed as assent by Defendant-Intervenors to any factual statement or implication contained in or inferred from this Stipulation, including, but not limited to, acknowledging that there is an adequate factual basis for any of the emergency actions contemplated by this Stipulation.

490 To the extent this Stipulation contemplates future BLM management actions to be determined through processes described herein, including, but not limited to, emergency closures and route designations, assent to this Stipulation shall not preclude any party hereto from challenging BLM action or inaction in accordance with applicable law.

500 The Center and BLM agree that the terms of this Stipulation are enforceable. BLM represents

that it intends to make every effort to comply with its terms in good faith. If, however, through unforeseen circumstances, events should change after the agreement is executed, BLM will notify the Center as soon as reasonably possible of the change and the reason therefore. The parties agree to attempt to work reasonably toward a mutually acceptable solution. If the parties are unable to agree, the Center reserves the right to seek injunctive relief with regard to the issue in question.

510 As indicated in the paragraphs describing interim measures, the interim measure shall remain in effect until:

(A) For paragraphs 1, 4, 16, 19, 20, 21, 30, 33, 34, and 35: The receipt of the last biological opinion on the effects of the CDCA Plan on currently listed species and the implementation of any applicable terms and conditions, reasonable and prudent alternatives, and/or reasonable and prudent measures requiring implementation;

(B) For paragraphs 9(D) and 10: The receipt of the biological opinion on the effects of the CDCA Plan on threatened and endangered plants and the implementation of any applicable terms and conditions, reasonable and prudent alternatives, and/or reasonable and prudent measures requiring implementation;

(C) For paragraphs 27, 28, and 31: The receipt of the biological opinion on the effects of the CDCA Plan on the desert tortoise and the implementation of any applicable terms and conditions, reasonable and prudent alternatives, and/or reasonable and prudent measures requiring implementation;

(D) For paragraphs 22(C) and 25: The receipt of the biological opinion on the effects of the CDCA Plan on the species referenced in the Paragraph and the implementation of any applicable terms and conditions, reasonable and prudent alternatives, and/or reasonable and prudent measures requiring implementation;

(E) For paragraphs 3, 6, 8, 14, 15, 18(D), 22(A)&(B), 24, 29, 32, 44, and 46: At the date or dates stated in the paragraph;

(F) For paragraphs 5, 7, 12, 17, 18(A),(B)&(E), 26, 36, 38, 40, and 41: The signing of the record of decision (ROD) for the West Mojave bio-regional plan amendment;

(G) For paragraphs 2 and 11: The signing of the record of decision (ROD) for the Coachella Valley bio-regional plan amendment;

(H) For paragraph 13: The signing of the record of decision (ROD) for the Northern and Eastern Mojave (NEMO) bio-regional plan;

(I) For paragraphs 42, 43, 45: The signing of the record of decision (ROD) for the Northern and Eastern Colorado Desert (NECO) bio-regional plan; or

(J) For paragraphs 9(A),(B) & (C), 18(C), 23, 37, 39: The actions necessary to implement the corrective action are completed.

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

530 Nothing in this Stipulation shall be interpreted or construed as a commitment or requirement that 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.

540 In consideration of the actions to be taken by BLM, the Center agrees that it will not seek injunctive relief through this litigation so long as BLM complies with the terms of this stipulation and all other stipulations entered into in this litigation. Nothing in this Stipulation shall be construed so as to prevent the Center from challenging any action in the CDCA for reasons other than BLM's failure to consult on the CDCA Plan.

550 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.

FOR PLAINTIFFS:

Dated: _____

JAMES JAY TUTCHTON
Earthjustice Environmental Law Clinic
University of Denver-Forbes House
1714 Poplar Street
Denver, CO 80220

BRENDAN CUMMINGS
Law Office of Brendan Cummings

2325 Carleton St., Suite B
Berkeley CA 94704

FOR DEFENDANTS:

LOIS J. SCHIFFER
Assistant Attorney General

Dated: _____

JEAN E. WILLIAMS, Chief
LISA LYNNE RUSSELL, Trial Attorney
U.S. Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
Ben Franklin Station, P.O. Box 7369
Washington, D.C. 20044-7369

ROBERT S. MUELLER, III, United States Attorney
JAMES A. CODA, Asst. U.S. Attorney
Northern District of California
10th Floor, Box 36055
450 Golden Gate Avenue
San Francisco, CA 94102

FOR DEFENDANT-INTERVENORS:

Dated: _____

PAUL TURCKE
Moore Smith Buxton & Turcke
225 North 9th Street, Suite 420
Boise, ID 83702

DENNIS PORTER
10112 Roadrunner Way
Redding, CA 96003