

FILED

NOV 6 2000

**RICHARD W. WHEATING
CLERK OF COURT
NORTHERN DISTRICT OF CALIFORNIA**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SAN FRANCISCO DIVISION

CENTER FOR BIOLOGICAL
DIVERSITY, et al.,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT,
et al,

Defendant,

v.

HIGH DESERT MULTIPLE USE
COALITION, et al.

Defendant-Intervenors.

Case No. C-00-0927 WHA-JCS

**AMENDED STIPULATION AND ORDER
CONCERNING INJUNCTIVE RELIEF
FOR THE PEIRSON'S MILK-VETCH**

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 United States 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. Section 1536 (a)(2);

WHEREAS, the High Desert Multiple Use Coalition, et al., representatives of several Off-Highway Vehicle user groups who recreate in areas of the CDCA, applied for and were granted the status of Defendant-Intervenors in this action;

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. Section 1536(a)(2);

WHEREAS, the FWS has determined that a plant species, *Astragalus magdalenae* var. *peirsonii*, commonly known as the Peirson's milk-vetch, is entitled to protection under the ESA. 63 Fed. Reg. 53596 (Oct. 6, 1998);

WHEREAS, the only known populations of Peirson's milk-vetch in the United States are in the Algodones Dunes (also known as the Imperial Sand Dunes Recreation Area) within the CDCA. 63 Fed. Reg. 53599, 53605;

WHEREAS, the primary threat to the continued existence of Peirson's milk-vetch is the destruction of individual plants and dune habitat from Off-Highway Vehicle ("OHV") use and associated recreational development. 63 Fed. Reg. 53600, 53605;

WHEREAS, under the CDCA Plan approximately 75% of the Algodones Dune system is open to motorized vehicle use and between 75% and 80% percent of all known colonies of Peirson's milk-vetch are located in these open areas. 63 Fed. Reg. 53600, 53605;

WHEREAS, heavy OHV use will eliminate colonies of Peirson's milk-vetch and even moderate use will lower the reproductive success of Peirson's milk-vetch colonies. 63 Fed. Reg. 53600, 53605-06;

WHEREAS, from approximately October to March of each year portions of the Algodones Dunes, including areas which contain Peirson's milk-vetch colonies, receive intensive OHV use. 63 Fed. Reg. 53605-06;

WHEREAS, the Plaintiffs and Defendant agree that the presently permitted level of OHV use of the Algodones Dunes may affect the population of the Peirson's milk-vetch;

WHEREAS, under Section 7 of the ESA, federal agencies shall, in consultation with and with the assistance of the Secretary of the Interior, insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat for any endangered or threatened species. 16 U.S.C. Section 1536(a)(2);

WHEREAS, pursuant to Section 7 of the ESA, before consultation with the Secretary is concluded, federal agency actions shall not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat for any endangered or threatened species; and,

WHEREAS, the parties would like to avoid litigation of the need for an immediate injunction of OHV use in the Algodones Dunes to protect the Peirson's milk-vetch.

THEREFORE, the parties agree as follows:

1. BLM shall close four areas of the Algodones Dunes to all OHV and other vehicle use. Official government vehicles conducting monitoring or other legitimate governmental activities shall be allowed inside the closed areas.

2. The four closures areas are to be known as: the Northern, the Small Central, the Large Central, and the Southern Closures.

3. The borders of the North Closure are: to the South, the northern boundary of the Algodones Wilderness Area; to the West, the Coachella Canal, to the East, the road immediately west of and parallel to the Southern Pacific Railroad Tracks; and to the North, the East-West Section line dividing Section 20 from 29 at the Coachella Canal and dividing Section 19 from 30 at the Southern Pacific Railroad Tracks.

4. The borders of the Southern Closure, a small polygon south of Interstate-8, are depicted on the map previously filed in conjunction with the October 20, 2000 Stipulation on this issue.

5. The Small Central Closure shall consist of approximately 2000 acres, in an approximate oval shape, solid. The boundaries of the Small Central Closure shall be drawn to include the four high density Peirson's milk-vetch survey cells located between Roadrunner Campground and Oldsmobile Hill. There will be a minimum of one quarter mile between the southern boundary of the Small Central Closure and the northern boundary of the Large Central Closure.

6. The boundaries of the Large Central Closure shall be: to the North, beginning one quarter mile Southeast of Roadrunner Campground due east to the Canal Road, excluding China Wall Hill, to the East, Canal Road running southeast to the southern boundary in the original stipulation (filed October 20, 2000); except for the Patton Valley Area to be described below, the Southern and Western boundaries shall be the same as the those in the original stipulation (filed

October 20, 2000). The Patton Valley Area shall consist of approximately 540 acres in a semi-circle shape, solid, to include the one high density cell and portions of three medium density cells located to the northwest of Patton Valley.

7. The boundaries of the Small Central Closure and the Patton Valley Area of the Large Central Closure shall be determined after a joint site visit to those areas by representatives from each of the signatories to this Stipulation. The acreage shall remain as stated above, but the boundaries may be adjusted to account for the actual location of plant populations.

8. The four closures described above shall become effective immediately upon the Court's approval of this Stipulation and entry as an Order.

9. Within four business days after this Stipulation is entered as an Order by the Court, BLM agrees to submit a notice of the closure order to the Federal Register for immediate publication. This submission shall give notice of the Closures; provide a description of the Closures with the best available information and data; and state that the effective date of the Closures is the date of the Court's approval of the Stipulation and entry as an Order. If legal descriptions on any of the Closures is not available at the time of this submission, within three business days after the legal descriptions are filed with the Court, BLM shall submit another notice containing these legal descriptions to the Federal Register for immediate publication.

10. Within ten days after this Stipulation is entered as an Order by the Court, BLM shall submit a legal description of the four Closures accompanied by a map that depicts the agreed upon closure boundaries. This date is contingent upon attendance of representatives by each of the parties at a site visit tentatively scheduled during the weekend of November 4-5, 2000 and upon the parties' agreement on the boundaries for the Small Central Closure and the Patton Valley area of the Large Central Closure.

11. BLM agrees to take actions including signing, preparation and distribution of maps and brochures, necessary to identify the boundaries of the Closures to members of the public by November 22, 2000.

12. BLM agrees to maintain the closures described above in effect until programmatic consultation on the CDCA Plan with FWS is completed and BLM receives a Biological Opinion on the entire CDCA Plan from FWS. During consultation, BLM agrees to make every reasonable effort to work cooperatively with FWS to facilitate completion of consultation in a timely manner.

13. BLM agrees to the following monitoring actions on the Closure areas:
- a. Checking signs and posters on a weekly basis;
 - b. Overflights of the closure areas on Saturdays;
 - c. Immediate and prominent posting of closure maps at kiosks and distribution of a closure brochure within 10 days of the Court's approval and entry of this Stipulation as an Order.

- d. Consistent with safe law enforcement and aviation practices, representatives of the Plaintiffs and Defendant-Intervenors, may request to accompany BLM on overflights and ground trips for monitoring purposes.

14. BLM also agrees to monitor OHV use in the area north of the Northern Closure to determine whether use patterns increase as a result of the Closures. If there is a substantial increase in OHV use in this area, above levels typical at the time of the signing of this Stipulation, BLM shall, in consultation with all parties to this Stipulation, take reasonable and necessary measures to limit the number of primary vehicles using the area at one time.

15. Intervenors, being an integral party to this agreement, agree to assist BLM in monitoring compliance with the terms of this agreement and educating the OHV community about the temporary closures delineated in this agreement.

16. So long as the terms of this agreement are complied with and there is substantial on the ground compliance with BLM's closure order, the Center agrees not to seek injunctive relief concerning impacts to the Peirson's milk-vetch from CDCA Plan activities until BLM completes a programmatic formal consultation with FWS on the entire CDCA Plan and receives a Biological Opinion on the entire CDCA Plan from FWS. The Plaintiffs shall provide the Defendant and Defendant-Intervenors with seven days notice before filing any motion seeking injunctive relief on the Peirson's milk-vetch.

17. This Stipulation shall not be construed as an admission of liability by Defendant, BLM, nor shall it be construed as assent by the Defendant-Intervenors to the statements made in the recitals of this Stipulation.

18. As between the parties, this Stipulation is effective as an agreement upon signature by all parties. This Stipulation is further effect as an Order of the Court upon its approval and entry by the Court.

DATED: October 31, 2000

For Plaintiffs:



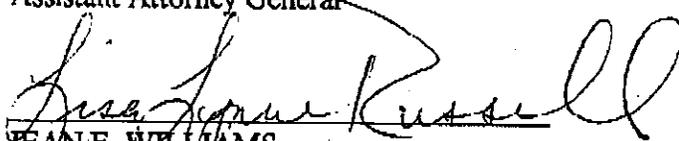
Brendan R. Cummings (CA Bar # 193952)
LAW OFFICE OF BRENDAN CUMMINGS
2325 Carleton St, Suite B
Berkeley, CA 94704
Telephone: 510-848-5486
Facsimile: 510-848-5499

James J. Tutchton (CA Bar # 150908)
EARTHJUSTICE ENVIRONMENTAL LAW
CLINIC
University of Denver-Forbes House
1714 Poplar Street
Denver, CO 80220
Telephone: 303-871-6034
Facsimile: 303-871-6991

For Defendant:

LOIS J. SCHIFFER
Assistant Attorney General

By:


JEAN E. WILLIAMS

LISA LYNNE RUSSELL

U.S. Department of Justice

Environment & Natural Resources Division

Wildlife & Marine Resources Section

Ben Franklin Station, P.O. Box 7369

Telephone: 202-305-0388

Facsimile: 202-305-0275

ROBERT S. MUELLER

United States Attorney

JAMES A. CODA

Assistant United States Attorney

Northern District of California

450 Golden Gate Avenue

San Francisco, CA 94102

OF COUNSEL:

JOHN PAYNE

Office of the Regional Solicitor

Pacific Southwest Region

Room E-1712

2800 Cottage Way

Sacramento, CA 95825

For Defendant Intervenor's.



DENNIS L. PORTER (CA Bar #67176)

Attorney at Law

10112 Roadrunner Way

Redding, CA 96003

Telephone: 530-221-4129

Facsimile: 530-221-1949

PAUL A. TURCKE (*pro hac vice*)

MOORE SMITH BUXTON & TURCKE

Attorneys at Law

225 North 9th Street, Suite 420

Boise, ID 83702

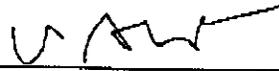
Telephone: 208-331-1800

Facsimile: 208-331-1202

PURSUANT TO STIPULATION, IT IS SO ORDERED.

11-2-00

DATED this _____ day of October, 2000.



UNITED STATES DISTRICT JUDGE