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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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| CENTER FOR BIOLOGICAL DIVERSITY, et al.<br><br>Plaintiffs,<br><br>v.<br><br>BUREAU OF LAND MANAGEMENT,<br><br>Defendant,<br><br>and<br><br>HIGH DESERT MULTIPLE USE COALITION, et al.<br><br>Defendant-Intervenors. | Case No. C-00-0927 WHA (JCS)<br><br>**STIPULATION AND ORDER CONCERNING LIVESTOCK GRAZING IN DESERT TORTOISE HABITAT** |

**WHEREAS**, Plaintiffs, Center for Biological Diversity, et al. ("the 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 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**, the FWS has determined that the Mojave Population of an animal species, *Gopherus agassizii*, commonly known as the desert tortoise (hereinafter "tortoise" or "desert tortoise"), is entitled to protection as an threatened species under the ESA. 55 Fed. Reg. 12178 (April 2, 1990).

**WHEREAS**, pursuant to Section 7(a)(2) of the ESA, Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected states, to be critical, unless such agency as been granted an exemption for such action by the Committee pursuant to section 7(h) of the ESA. 16 U.S.C. § 1536(a)(2);

**WHEREAS**, the Plaintiffs contend that livestock grazing in desert tortoise habitat (critical and non-critical) is a threat to the continued existence of the Mojave population of the desert tortoise;

**WHEREAS**, the Plaintiffs filed a motion seeking to enjoin livestock grazing in desert tortoise habitat pending BLM's completion of ESA § 7 consultation on the CDCA Plan;

**WHEREAS**, the parties would like to avoid unnecessary litigation over the need for an injunction pending BLM's completion of ESA § 7 consultation on the CDCA Plan;

**THEREFORE**, the parties agree as follows:

A. Sheep Grazing

1. Until either –

(i) The receipt by BLM of the biological opinion on the effects of the CDCA Plan on the Mojave population of the desert tortoise and (a) the implementation of any applicable terms and conditions, reasonable and prudent alternatives, and/or reasonable and prudent measures requiring immediate implementation and (b) the signing of the records of decision (RODs) for the NECO and NEMO bio-regional plan amendments, or

(ii) January 31, 2002,

whichever shall be later, BLM:

a. Shall implement the 13 terms and conditions in the current biological opinions for sheep grazing.

b. Shall apply the National Fallback standards and guidelines for rangeland health. Based upon rangeland health assessments, BLM will implement allotment-specific changes it deems necessary to meet these standards and guidelines.

c. Except as indicated for Cantil Common and Shadow Mountain Allotments below, shall not authorize sheep grazing in desert tortoise habitat. This includes 811,048 acres in the following nine allotments:

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| (1) Goldstone | 11,056 acres |
| (2) Superior Valley | 232,507 acres |
| (3) Gravel Hills | 227,565 acres |
| (4) Monolith-Cantil | 33,193 acres |
| (5) Shadow Mountain | 69,395 acres |
| (6) Buckhorn Canyon | 19,998 acres |
| (7) Cantil Common | 102,397 acres |
| (8) Lava Mountain | 2,165 acres |
| (9) Stoddard Mountain | 112,772 acres |

Not included in this total are 3,083 acres of critical habitat in Cantil Common and Shadow Mountain Allotments on which sheep grazing will be allowed. In accordance with this same adjustment, BLM, shall not authorize sheep grazing on 5,658 acres of non-critical habitat. The areas where grazing shall not be authorized will be depicted on the maps referenced in Paragraph 4 of this Stipulation.

d. Shall not authorize sheep grazing in desert tortoise habitat (non-critical) in the following two allotments (totaling 135,247 acres):

(1) Rice Valley 85,565 acres

(2) Ford Dry Lake 49,682 acres

The areas where grazing shall not be authorized will be depicted on the maps referenced in Paragraph 4 of this Stipulation.

**B. Cattle Grazing**

2. Until either –

(i) The receipt by BLM of the biological opinion on the effects of the CDCA Plan on the Mojave population of the desert tortoise and (a) the implementation of any applicable terms and conditions, reasonable and prudent alternatives, and/or reasonable and prudent measures requiring immediate implementation and (b) the signing of the records of decision (RODs) for the NECO and NEMO bio-regional plan amendments, or

(ii) January 31, 2002,

whichever shall be later, BLM:

a. Shall implement the 41 terms and conditions in the current biological opinions for cattle grazing.

b. Shall apply the National Fallback standards and guidelines for rangeland health. Based upon rangeland health assessments, BLM will implement allotment-specific changes it deems necessary to meet these standards and guidelines.

c. Shall not issue permits for temporary non-renewable perennial forage use in desert tortoise habitat.

d. Shall not authorize grazing on 206,509 acres of desert tortoise critical habitat in Pilot Knob, Piute Valley, Chemehuevi, which are ephemeral-only grazing allotments. The areas where grazing shall not be authorized will be depicted on the maps referenced in Paragraph 4 of this Stipulation.

e. Shall not authorize grazing on 47,107 acres of desert tortoise habitat (non-critical) in Pilot Knob, Piute Valley, Chemehuevi, which are ephemeral-only grazing allotments. The areas where grazing shall not be authorized will be depicted on the maps referenced in Paragraph 4 of this Stipulation.

f. Shall not authorize grazing in Jean Lake, Crescent Peak, Lanfair Valley Allotment (101,912 total acres of desert tortoise critical habitat), three allotments that are not currently being grazed.

g. Shall not authorize grazing in Whitewater Allotment, which includes 39,307 acres of non-critical tortoise habitat.

h. Shall not authorize grazing in 17,680 acres of desert tortoise critical habitat in the following two allotments:

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| (1) Valley View | 5,779 acres |
| (2) Kessler Springs | 11,901 acres |

The areas where grazing shall not be authorized will be depicted on the maps referenced in Paragraph 4 of this Stipulation.

i. Shall not authorizing grazing in 2,616 acres of desert tortoise habitat (non-critical) on the Kessler Springs Allotment. The areas where grazing shall not be authorized will be depicted on the maps referenced in Paragraph 4 of this Stipulation.

j. Shall not authorize grazing in 285,381 acres of tortoise critical habitat from March 1 through June 15 and from September 7 through November 7 in the following five allotments:

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| (1) Cronese Lake | 18,000 acres |
| (2) Harper Dry Lake | 16,482 acres |
| (3) Ord Mountain | 54,000 acres |
| (4) Valley Wells | 88,879 acres |
| (5) Lazy Daisy | 108,020 acres |

The areas where grazing shall not be authorized will be depicted on the maps referenced in Paragraph 4 of this Stipulation. For each allotment referred to in this subparagraph, BLM shall not authorize grazing that exceeds the number of animal days per year per allotment that is equal to the average of the number of animal days per year per allotment that was reported by each permittee for the 1997, 1998, and 1999 billing years. These numbers are:

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| (1) Cronese Lake | 13,383 animal days per year |
| (2) Harper Dry Lake | 17,033 animal days per year |
| (3) Ord Mountain | 62,842 animal days per year |
| (4) Valley Wells | 51,433 animal days per year |

(5) Lazy Daisy 39,541 animal days per year

k. Shall not authorize grazing in 23,300 acres of tortoise habitat (non-critical) in the following three allotments:

(1) Lacy-Cactus-McCloud 18,000 acres

(2) Tunawee Common 1,800 acres

(3) Hansen Common 3,500 acres

The areas where grazing shall not be authorized will be depicted on the maps referenced in Paragraph 4 of this Stipulation.

l. Shall not authorize grazing in 213,281 acres of non-critical tortoise habitat from March 1 through June 15 and from September 7 through November 7 in the following six allotments:

(1) Cady Mountains 88,320 acres

(2) Rattlesnake Canyon 6,600 acres

(3) Rudnick Common 31,000 acres

(4) Horsethief Springs 47,581 acres

(5) Walker Pass 32,100 acres

(6) Pahrump Valley 7,680 acres

The areas where grazing shall not be authorized will be depicted on the maps referenced in Paragraph 4 of this Stipulation.

3. Until the signing of the record of decision (ROD) for the West Mojave bio-regional plan amendment, BLM shall exclude cattle from the canyon area of the Rattlesnake Canyon Allotment. This exclusion applies to trailing of cattle through the canyon, which shall not be permitted. Fences or other barriers necessary to effectuate this exclusion shall be erected by June 1, 2001. This fencing effort will not affect the schedule for completion of the ongoing boundary fencing project on the Rattlesnake Allotment. In addition, the number of livestock that shall be authorized for the Rattlesnake Canyon Allotment shall be decreased by a percentage equal to the percentage of land that is excluded from the allotment by this provision. At the time that this Stipulation is being approved by the parties, it is generally believed that the canyon area referred to in this paragraph is bounded by Rattlesnake Spring and the Section 10 (T.2N, R.3E) boundary line. The parties agree that the final location of the fencing to be placed in this area will be determined by BLM, in consultation with the Plaintiffs, after appropriate visits to the site.

4. By February 15, 2001, BLM will provide to Plaintiffs a map or maps indicating the location of the portion or portions of the allotments referenced in Paragraphs 1 and 2 where grazing shall not be authorized while this Stipulation remains in effect.

5. To the extent this Stipulation requires new fencing to exclude livestock from any area, "wildlife safe fencing" shall be used. This fencing shall be selected in accordance with the specifications outlined in BLM's Fencing Manual and Handbook.

**C. Enforcement and Compliance Review**

6. While this Stipulation remains in effect, BLM agrees to review compliance with the restrictions resulting from this Stipulation on the allotments referenced in Paragraphs 1 and 2 of this Stipulation at least once every two weeks for those allotments in which cattle are to be excluded from tortoise habitat year-round and at least once every week for those allotments in which cattle are to be excluded from tortoise habitat on a seasonal basis, to determine whether livestock are present in excluded areas. These compliance reviews shall be conducted in a manner designed to detect noncompliance. If livestock are present in excluded areas, BLM will make every reasonable effort to remedy situations of livestock encroachment into excluded areas at the time of discovery. In the event the situation cannot be remedied at the time of discovery, BLM will make every effort to verbally notify owners (within 24 hours) to remove livestock. In the event livestock are not removed as requested within 48 hours after notification, BLM shall initiate the procedures outlined in 43 C.F.R. § 4150.2 and/or 43 C.F.R. § 4170.1-1, if the owner of the livestock is known, or 43 C.F.R. § 4150.4, if the owner of the livestock is not known. For those allotments for which cattle are to be removed seasonally from desert tortoise habitat (Paragraphs 2(i) and 2(k)), for every day on which cattle are documented to be present in excluded areas during the time of exclusion, the ending date of the seasonal closure (June 15 or November 7) will be extended by an additional day. For those allotments for which cattle are to be removed year-round from desert tortoise habitat (Paragraphs 2(d), 2(e), 2(f), 2(g), 2(h), and 2(j)), if cattle are documented to be present in excluded areas, if the removal procedures outlined in this paragraph have been invoked, and cattle are subsequently documented to be in the excluded areas (second offense), BLM shall reduce the number of animal days per year authorized for that allotment by the number of animal days of cattle documented to be in the excluded areas on the occasion of the violation.

7. While this Stipulation remains in effect, whenever BLM receives a report of the presence of livestock in excluded areas, BLM agrees to verify the presence of livestock within 48 hours, and if livestock are present, to

initiate the procedures outlined in the previous paragraph of this Stipulation. To the extent practicable, any report of livestock in excluded habitat should provide the name of the reporter, the date and time of the discovery, the location of the livestock, and the number of livestock present in the excluded habitat.

8. While this Stipulation remains in effect, BLM will provide to the Plaintiffs all data or other documents in its possession generated as a result of its regular inspections of excluded habitat (referenced above).

9. Plaintiffs 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 Plaintiffs 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, Plaintiffs reserves the right to renew its motion for injunctive relief with regard to the allotment(s) in question.

**D. Conservation**

10. For allotments affected by this agreement for which resource conservation would be advanced significantly from the elimination of grazing, BLM agrees that if the lessee of record/permittee requests non-use during the period of time in which this agreement remains in effect or during the period of time until the land use plan governing that allotment is revised (whichever shall be longer), BLM agrees that it will not consider outside (third-party) applications for grazing in that allotment during the requested period of non-use.

11. For the NEMO and NECO coordinated bio-regional plan amendments, BLM agrees to include in an alternative, a proposal to cancel grazing allotments in desert tortoise critical habitat at the request of the permittee. For subsequent plan amendments, BLM further agrees to include in an alternative a proposal to cancel grazing allotments upon the request of the lessee of record/permittee where resource conservation would be advanced significantly by the elimination of grazing.

**E. Actions by Plaintiffs**

12. In consideration for the actions to be taken by BLM, Plaintiffs shall withdraw their Motion for Permanent Injunction with respect to grazing in desert tortoise habitat currently noticed for December 21, 2000. Plaintiffs further agree that they will not seek injunctive relief through this litigation with respect to livestock grazing in desert tortoise habitat so long as BLM complies with the terms of this Stipulation. Nothing in this

Stipulation shall be construed so as to prevent the Plaintiffs from challenging livestock grazing in the CDCA for reasons other than for BLM's failure to consult on the CDCA Plan.

**F. Effect of this Stipulation**

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

14. 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.

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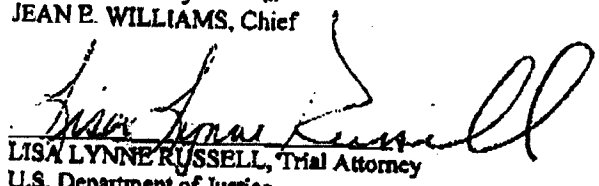

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