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DISTRICT OF WYOMING
CHEYENNE

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CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

STATE OF WYOMING,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR; and BUREAU OF LAND MANAGEMENT,

Defendants.

03 CV 169 D

Civil Action No. _____

CONSENT DECREE

WHEREAS, Plaintiff State of Wyoming filed the complaint in this action on August 14, 2003, against Defendants the United States Department of the Interior and the Bureau of Land Management (collectively referred to as "Defendants");

WHEREAS, Plaintiff alleges that the Defendants have failed to comply with Section 3(b)(2) of the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. § 1333(b)(2);

WHEREAS, Section 3(b)(2) of the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. § 1333(b)(2), provides, inter alia, that, if the Secretary of the Interior ("Secretary") determines that an overpopulation of wild horses exists on a given area of public lands and that action is necessary to remove excess animals, she shall immediately remove excess wild horses from the range so as to achieve the appropriate management level ("AML") for the given area of land, to restore a thriving natural ecological balance to the range, and to protect the range from the deterioration associated with overpopulation;

WHEREAS, Section 3(b)(2) of the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. § 1333(b)(2), provides for the removal of wild horses where the Secretary determines that an overpopulation exists on a given area of public lands and that action is necessary to remove excess animals;

WHEREAS, the Secretary administers the Wild Free-Roaming Horses and Burros Act in Wyoming through the Bureau of Land Management; the Director of the Bureau of Land Management ("Director of the BLM") administers the Wild Free-Roaming Horses and Burros Act throughout the United States on behalf of the Secretary;

WHEREAS, Plaintiff alleges the following three (3) causes of action in its complaint:

(1) Injunctive Relief Pursuant to Section 706(1) of the federal Administrative Procedure Act -- Plaintiff alleges that the Defendants have unlawfully withheld and unreasonably delayed agency action by failing to remove excess wild horses in Wyoming as required by Section 3(b)(2) of the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. § 1333(b)(2), thereby requiring the Court to issue a mandatory injunction compelling the Defendants to remove all excess wild horses from the public lands in Wyoming;

(2) Mandamus-- Plaintiff alleges that the Defendants have unlawfully failed to discharge a statutory duty by failing to remove excess wild horses in Wyoming as required by 16 U.S.C. § 1333(b)(2), thereby requiring the Court to issue a writ of mandamus compelling the Defendants to remove all excess wild horses from the public lands in Wyoming; and

(3) Declaratory Judgment--Plaintiff alleges that the Defendants have unlawfully failed to discharge a statutory duty by failing to remove excess wild horses in Wyoming as required by 16 U.S.C. § 1333(b)(2), thereby requiring the Court to declare that the Defendants have violated 16 U.S.C. § 1333(b)(2) by not maintaining the wild horses populations in Wyoming at the established AMLs, and to issue an order compelling the Defendants to remove all excess wild horses from the public lands in Wyoming;

WHEREAS, the State of Wyoming asserts that the estimated current wild horse population in Wyoming is 7000 horses, more than double the total wild horse population limit for Wyoming as established by the Bureau of Land Management;

WHEREAS, the State of Wyoming, the United States Department of the Interior and the Bureau of Land Management (collectively referred to as the "Parties") agree that the Bureau of Land Management has established an AML for each of the sixteen (16) herd management areas ("HMAs") in Wyoming;

WHEREAS, the Parties agree that the AML for each of the sixteen (16) HMAs in Wyoming are on the date of this Consent Decree as follows:

Adobe Town	610-800 wild horses
Antelope Hills	60-82 wild horses
Conant Creek	60-100 wild horses
Crooks Mountain	65-85 wild horses
Dishpan Butte	50- 100 wild horses
Fifteenmile Herd	70-160 wild horses
Great Divide Basin	415-600 wild horses
Green Mountain	170-300 wild horses
Little Colorado	69-100 wild horses
Lost Creek	60-82 wild horses
McCullough Peaks	70-140 wild horses
Muskrat Basin	160-250 wild horses
Rock Creek	50-86 wild horses
Salt Wells	251-365 wild horses
Stewart Creek	125-175 wild horses
White Mountain	205-300 wild horses

WHEREAS, the Parties agree that AML applies only to HMAs and accordingly that the AML in a non-herd management area is zero (0);

WHEREAS, Wyoming asserts that the estimated current wild horse population in each of the sixteen (16) HMAs in Wyoming exceeds the AML established by the Bureau of Land Management for each such HMA;

WHEREAS, the State of Wyoming asserts that wild horses are living in areas outside of the sixteen established (16) HMAs, including, but not limited to, the North Baxter/Jack Morrow Hills area, the area south of Interstate 80, and the Laramie Peak area;

WHEREAS, the Parties estimate that the wild horse population in Wyoming presently increases through reproduction at a rate of approximately eighteen (18%) to twenty percent (20%) per year;

WHEREAS, the State of Wyoming asserts that the overpopulation of wild horses in Wyoming has caused a decrease in the amount of habitat available for wildlife, has resulted in a decrease in the amount of forage available for wildlife and for domestic livestock, and has caused damage to lands owned by the State of Wyoming. The continuing overpopulation of wild horses in Wyoming threatens to displace wildlife, to cause additional damage to lands owned by the State of Wyoming, and to diminish the value of state-owned lands and the value of grazing leases for such lands. The continuing overpopulation of wild horses also threatens the long term viability of wildlife and the wild horse herds in Wyoming;

WHEREAS, the Parties agree that this Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 (federal question), 28 U.S.C. §§ 2201-2202 (declaratory judgments), and 5 U.S.C. §§ 702-706 (APA right of review);

WHEREAS, it is in the interest of the public, the Parties, and judicial economy to resolve the claims n this action without expensive and protracted litigation;

WHEREAS, the Parties have agreed to a settlement of this action without any admission or ıdjudication of fact or law;

WHEREAS, the Parties agree that this settlement represents a good faith compromise of disputed laims;

NOW THEREFORE, upon consent of the Parties, the Parties hereby ask this Court to enter an order ıroviding that:

PARTIES

1. The Parties to this Consent Decree are Plaintiff, the State of Wyoming, and Defendants, he United States Department of the Interior, and the Bureau of Land Management (Defendants are eferred to hereinafter collectively as "BLM" unless otherwise specified).

TERMS OF AGREEMENT

2. No later than December 15, 2003, the BLM shall reduce the number of wild horses to AML ı the following eight (8) HMAs: Adobe Town, Great Divide Basin, Salt Wells, White Mountain, Green Mountain, Crooks Mountain, Stewart Creek, and Little Colorado. The BLM also shall remove all wild orses from the Jack Morrow Hills/North Baxter area and the area south of Interstate 80 no later than December 15, 2003.

3. No later than December 15, 2004, the BLM shall reduce the number of wild horses to AML ı the following eight (8) HMAs: Conant Creek, Lost Creek, Dishpan Butte, Antelope Hills, Muskrat Basin, Rock Creek, Fifteenmile Herd, and McCullough Peaks. The BLM will use its best efforts to also remove ll wild horses that may have strayed outside of the sixteen (16) established HMAs no later than December 5, 2004. BLM will also use its best efforts for the gathers scheduled in 2004, and for future planned athers during the term of this Consent Decree, to remove sufficient wild horses to meet the lower end of ıe AML that is currently set for each HMA. Notwithstanding the preceding sentence, nothing in the Consent Decree shall be construed to limit or modify the discretion accorded to the BLM by the Wild Free-Roaming Horses and Burros Act as to specific removal and gather decisions.

4. No later than June 1, 2005, and no later than June 1 every three (3) years thereafter, the BLM ıall complete an inventory of the number of wild horses in the sixteen (16) HMAs in Wyoming. The BLM ıall provide a written report of the results of each triennial inventory to the Governor of the State of Wyoming and the Wyoming Attorney General no later than July 1 of the year in which the inventory is ompleted. Each triennial inventory shall be conducted in consultation and cooperation with the Wyoming Department of Game and Fish. Notwithstanding the preceding sentence, nothing in the Consent Decree ıall be construed to limit or modify the discretion accorded to the BLM by the Wild Free-Roaming Horses nd Burros Act as to the methodology used or the conduct of any inventory.

5. No later than September 1, 2004, and no later than September 1 every three (3) years

thereafter, the BLM shall consult with the Wyoming Department of Game and Fish regarding the census technique or method to be used to count the wild horses in the next calendar year. Notwithstanding the preceding sentence, nothing in the Consent Decree shall be construed to limit or modify the discretion accorded to the BLM by the Wild Free-Roaming Horses and Burros Act as to the census technique or method to be used to count the wild horses.

6. If BLM determines, based on the results of any inventory and on projected reproduction rates, that the wild horse population in any HMA or other area in Wyoming is likely to exceed AML in the following fiscal year, the Bureau of Land Management shall in its budget submission to the Department of the Interior for the next budget cycle include a request to reduce that HMA back to AML. If the BLM fails to reduce the number of wild horses to AML by December 15 of the year of the next budget cycle, the State of Wyoming may petition this Court to compel removal of horses over AML in the HMA at that time based on the Wild Free-Roaming Horses and Burros Act and applicable law.

7. The Defendants shall pay all costs and expenses incurred in conducting each inventory required in Section 4 of this Consent Decree. The Defendants also shall pay all costs and expenses incurred in reducing the number of wild horses to AML as required in Sections 2, 3, and 6 of this Consent Decree.

CONTINUING JURISDICTION, ENFORCEMENT and DISPUTE RESOLUTION

8. This Court shall have continuing jurisdiction over this matter, the Parties to this Consent Decree, any disputes arising under this Consent Decree, and any alleged violations of this Consent Decree. This Court may issue such further orders or directions as may be necessary or appropriate to construe, implement, or enforce the terms of this Consent Decree. The State of Wyoming explicitly agrees that if a violation of this Consent Decree occurs, the State of Wyoming shall not seek to have the Defendants or any officials of the BLM, including but not limited to the Secretary, the Director of the Bureau of Land Management or the Wyoming State Director of the Bureau of Land Management's Wyoming State Office held in contempt of court for failure to comply with this Consent Decree. The State will seek enforcement against the United States Department of the Interior and/or the Bureau of Land Management and not against the Secretary, the Director of the Bureau of Land Management, or the State Director of the Bureau of Land Management's Wyoming State Office in their official or individual capacities.

9. In the event of a disagreement between the Parties concerning the interpretation or performance of any provision in this Consent Decree, a Party shall invoke the dispute resolution procedures of this Section by notifying the other Parties in writing of the matter(s) in dispute and of the Party's intention to resolve the dispute under this Section. The Parties shall then attempt to resolve the dispute informally for a period of thirty (30) calendar days from the date of the notice. If the Parties cannot resolve a dispute by the end of the period of informal negotiations, the Party seeking interpretation or performance may petition the Court to resolve the dispute.

AGENCY DISCRETION

10. Nothing in this Consent Decree shall bar the Defendants from acting on any matters covered in this Consent Decree in a time frame earlier than required by this Consent Decree or to take additional actions not specified herein if the Defendants determine such actions are appropriate under the applicable law, including changing AML in accordance with applicable law. Nothing in this Consent Decree shall be

construed to limit or modify the discretion accorded to BLM by the Wild Free-Roaming Horses and Burros Act, the APA, or general principles of administrative law with respect to the procedures to be followed in carrying out any of the activities required herein, or as to the implementation or conduct of any of the activities required herein.

MODIFICATION and TERMINATION

11. This Consent Decree may be modified or terminated by written agreement of the Parties. Any party may petition the Court to terminate this agreement for good cause shown. In any event, this Consent Decree shall terminate no later than 10 years after entry of the decree.

12. Any dates set forth in this Consent Decree may be extended by written agreement of the Parties and notice to the Court. To the extent the Parties are not able to agree to an extension, the Defendants may seek a modification of this Consent Decree. The Defendants shall be deemed to be in compliance with this Consent Decree pending resolution by the Court of any motion by the Defendants to modify a date established by this Consent Decree. If the Court denies a motion by the BLM to modify a date established by this Consent Decree, then the date for performance for which modification has been requested shall be such date as the Court may specify.

FORCE MAJEURE

13. For purposes of this Consent Decree, a Force Majeure event is any occurrence outside the control of the Defendants, or of any entity employed by the Defendants, that delays or prevents compliance with this Consent Decree despite the Defendants' best efforts to comply. The Defendants' "best efforts" include using best efforts to anticipate any potential Force Majeure event (1) as it is occurring and (2) following the potential Force Majeure event, such that delay is minimized to the greatest extent possible.

14. When circumstances are occurring or have occurred which may delay the completion of any requirement of this Consent Decree due to a Force Majeure event, the U.S. Department of the Interior and/or the BLM shall so notify the State of Wyoming, in writing, within fifteen (15) days after learning of the delay or the anticipated delay. The notice shall describe the basis for the U.S. Department of the Interior and/or BLM's contention, if asserted, of a Force Majeure delay, the anticipated length of the delay, and the timetable by which those measures will be implemented. In proceeding on any dispute regarding a delay in performance, the dispute resolution provisions of Section 9 shall apply.

15. In the event that performance of any provision or term of this Consent Decree conflicts with an order issued by any other federal court, the Defendants shall be entitled to a show cause hearing before this Court takes any action to enforce the provisions or terms of this Consent Decree.

APPLICABLE LAW

16. This Consent Decree shall be governed by and construed under the laws of the United States.

COMPLIANCE WITH OTHER LAWS

17. The State of Wyoming recognizes that the Defendants may be required to comply with other federal laws in conjunction with undertaking the required actions herein. No provision of this Consent Decree shall be interpreted or constitute a commitment or requirement that the Defendants take actions in contravention of the Administrative Procedure Act ("APA"), the National Environmental Policy Act, the Endangered Species Act, or any other law or regulation, either substantive or procedural. No provision of this Consent Decree shall be interpreted as or constitute a commitment or requirement that the United States Department of the Interior and/or the BLM obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

NO ADMISSION OF LIABILITY

18. This Consent Decree was negotiated, mutually drafted, and executed by the Parties in good faith to avoid further litigation and is a settlement of claims which were contested, denied and disputed in part. Neither the execution of this Consent Decree nor any action taken hereunder is an admission of any fact, liability or wrongdoing of any kind regarding any of the matters addressed in the Consent Decree. Accordingly, with the exception of this proceeding, this Consent Decree shall not be admissible in any judicial or administrative proceeding for use against any Settling Party over the objection of that Settling Party.

RELEASE BY STATE OF WYOMING

19. Subject to the provisions herein, the State of Wyoming's complaint is dismissed with prejudice upon entry of an order by the Court ratifying this consent decree. The State of Wyoming reserves all rights to bring an action for alleged future violations by Defendants of the Wild Free-Roaming Horses and Burros Act. Defendants reserve any and all defenses to such future actions.

FORM OF NOTICE

20. Unless otherwise specified, or as may be changed from time to time, all notices or any other written communications required to be submitted under this Consent Decree shall be sent to the respective Settlement Parties at the following addresses:

As to the U.S. Department of the Interior and the
Bureau of Land Management
Robert A. Bennett
State Director
Bureau of Land Management
Wyoming State Office
P.O. Box 1828
Cheyenne, WY 82003

and

Chief
Wildlife & Marine Resources Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7369
Ben Franklin Station
Washington, D.C. 20044-7369

As to the State of Wyoming
Patrick J. Crank
Attorney General
Office of the Attorney General
123 Capitol Building
Cheyenne, WY 82002

ENTIRE AGREEMENT

21. This Consent Decree constitutes the entire agreement of the Parties in this case. All prior conversations, meetings, discussions, drafts and writings of any kind are specifically superseded by this Consent Decree.

MUTUAL DRAFTING

22. The Parties to this Consent Decree agree that this Consent Decree was jointly drafted by them. Accordingly, the Parties agree that any and all rules of statutory construction to the effect that ambiguity is construed against the drafting Party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent Decree.

THIRD PARTY BENEFICIARIES

23. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Consent Decree shall not be construed so as to create such status. The rights, duties and obligations contained in this Consent Decree shall operate only between the Parties to this Consent Decree, and shall inure solely to the benefit of the Parties to this Consent Decree. The provisions of this Consent Decree are intended only to assist the Parties in determining and performing their obligations under this Consent Decree. The Parties intend and expressly agree that only Parties signatory to this Consent Decree shall have any legal or equitable right to seek to enforce this Consent Decree or to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this Consent Decree.

EFFECTIVE DATE

24. The terms of this Consent Decree shall become effective upon entry of an order by the United States District Court for the District of Wyoming ratifying this Consent Decree.

SEVERABILITY

25. If any term, condition or provision of this Consent Decree, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction or rendered by the adoption of a statute by the United States invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Consent Decree, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

REPRESENTATIVE AUTHORITY

26. Each undersigned representative of the Parties to this Consent Decree certifies that he or she is fully authorized to enter into and execute the terms and conditions of this Consent Decree, and to legally bind such Party to this Consent Decree. By the signatures below, the Parties consent to the entry of this Consent Decree.

FOR PLAINTIFF:

Dated: 8/11/03

PATRICK J. CRANK
Attorney General
State of Wyoming

Attorney for Plaintiff State of Wyoming

FOR DEFENDANTS:

Dated: 8.13.03

Tom Sansonetti

THOMAS L. SANSONETTI
Assistant Attorney General
Environmental & Natural Resources Division, United States Department of Justice

Attorney for Defendants United States Department of the Interior and Bureau of Land Management