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3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA  
5 SAN FRANCISCO DIVISION

6 CENTER FOR BIOLOGICAL  
7 DIVERSITY, a non-profit corporation;  
8 SIERRA CLUB, a non-profit corporation;  
9 and PUBLIC EMPLOYEES FOR  
10 ENVIRONMENTAL RESPONSIBILITY,  
11 a non-profit corporation,

12 Plaintiffs,

13 v.

14 BUREAU OF LAND MANAGEMENT

15 Defendant,

16 and,

17 HIGH DESERT MULTIPLE USE  
18 COALITION, DESERT VIPERS  
19 MOTORCYCLE CLUB, SAN DIEGO  
20 OFF-ROAD COALITION,  
21 CALIFORNIA ASSOCIATION OF 4-  
22 WHEEL DRIVE CLUBS, and THE  
23 BLUE RIBBON COALITION,

24 Defendant-Intervenors

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

**REVISED STIPULATION AND  
PROPOSED ORDER CONCERNING  
INJUNCTIVE RELIEF FOR THE  
PENINSULAR RANGES BIGHORN  
SHEEP**

25 WHEREAS, Plaintiffs, Center for Biological Diversity, Sierra Club and Public Employees for  
26 Environmental Responsibility ("Plaintiffs") filed this action on March 16, 2000, alleging that the federal  
27 defendant, Bureau of Land Management ("BLM") was in violation of Section 7 of the Endangered  
28 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

1 that because activities authorized, permitted, or allowed under the CDCA Plan may adversely affect  
2 threatened and endangered species, Section 7(a)(2) of the ESA, requires BLM to consult with FWS to  
3 ensure that its adoption and implementation of the CDCA Plan is not likely to jeopardize the continued  
4 existence of any threatened or endangered species or to result in the destruction or adverse modification  
5 of the critical habitat of any such species. 16 U.S.C. § 1536(a)(2);

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

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

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

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

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

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

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

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

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

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

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

6           THEREFORE, the parties agree as follows:

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

12           2.       BLM will provide five (5) full time employees during the period January 1 through June  
13 30 of each year for which this agreement is in effect. These five employees will be known as "Sheep  
14 Ambassadors." The Sheep Ambassadors' primary duty will be to ensure the implementation of  
15 voluntary closures on the public land sections of seven (7) recreational trails from January 1 through  
16 June 30 each year. Sheep Ambassadors will generally occupy trailheads and patrol the trails intercepting  
17 potential trail users and informing them of the voluntary closure and the reasons for it. Periodically,  
18 Sheep Ambassadors will patrol high use or problem areas where trail use is most likely to occur. The  
19 seven trails are the Boo Hoff/Guadalupe Trail, the Morrow Trail, the Clara Burgess Trail, the Cathedral  
20 Canyon Trail (and canyon), the Bear Creek Oasis Trail, the Art Smith Trail and the Dunn Road. The  
21 relevant patrol locations or trailheads are the Art Smith Trail, Clara Burgess/Lower Dunn/Cathedral  
22 Canyon, the Upper Dunn and those at La Quinta Cove and Lake Cahuilla (the La Quinta Cove and Lake  
23 Cahuilla trailheads serve the Boo Hoff/Guadalupe, Morrow and Bear Creek Oasis trails). On weekends  
24 a law enforcement ranger will be available to support these trail monitoring efforts and the Dunn Road  
25 Closure. A Sheep Ambassador will visit the Martinez Canyon Road Cherry-stem on weekends primarily  
26 to monitor OHV use but should otherwise assist in monitoring higher use areas. The Sheep  
27 Ambassadors will also monitor the seven trail areas for illegal OHV use that will be immediately  
28 reported to law enforcement for timely response. The Sheep Ambassadors will keep daily logs of their

1 efforts to implement the voluntary closures, of their success, and of any OHV use observed. BLM will  
2 provide the Plaintiffs with these daily logs and any other monitoring or other reports generated by these  
3 employees upon request and/or quarterly.

4 3. Consistent with BLM Environmental Assessment CA-066-96-43, dated September 24,  
5 1996 and signed November 28, 2000, BLM shall close the Art Smith Trailhead by maintaining a closed  
6 gate from February 1 through June 30 of each year to minimize the disturbance to Bighorn Sheep during  
7 this vulnerable period.

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

28 5. BLM will increase its environmental education efforts concerning the effects of

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

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

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

27 8. BLM will not improve or maintain or authorize improvement or maintenance of the  
28 Martinez Canyon/Cactus Spring Trail beyond the Martinez Canyon cherry-stem. BLM will not

1 authorize or permit the use of pack stock to assist in the restoration of the Martinez Canyon Cabin.  
2 BLM agrees to place signs on Martinez Canyon Road and Trail, warning against illegal use of OHVs  
3 and to enforce the OHV prohibition at the Wilderness boundary. BLM will coordinate the placement of  
4 these new boundary signs with the Plaintiffs. Plaintiffs shall be consulted by March 15, 2001 and the  
5 signs shall be in place by March 30, 2001.

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

8 10. BLM will discuss the impacts of aircraft flights over Peninsular Bighorn Sheep habitat  
9 with the Desert Manager's Group (DMG). BLM will also discuss the overflight issue with the  
10 Peninsular Bighorn Sheep Recovery Team, the U.S. Fish and Wildlife Service, the Federal Aviation  
11 Administration, the Department of Defense, and other appropriate governmental agencies. BLM will  
12 present the views of the Peninsular Bighorn Sheep Recovery team and the results of existing studies, to  
13 the overflight working group of the DMG at its next scheduled meeting and will discuss with the  
14 working group at that meeting the question of whether there is a need for restrictions on overflights of  
15 Bighorn Sheep habitat, including a limit on the distance above the ground for military and all other  
16 overflights.

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

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

- 24 a. authorizations within the I-8 utility corridor;  
25 b. exchanges or acquisitions of land designed to benefit Peninsular Bighorn Sheep;  
26 c. authorizations that do not involve any new surface disturbance or other new  
27 disturbance affecting Bighorn Sheep. BLM will notify the Plaintiffs of any new proposed authorizations  
28 and any exchanges or acquisitions designed to benefit Peninsular Bighorn Sheep for at least 90 days

1 before reaching any final decision on the proposed authorization, exchange, or acquisition.

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

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

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

14 16. Concerning the Dunn Road, BLM will:

15 a. Not authorize, permit, or carry out any improvement of the Dunn Road on public  
16 lands (including improvement by private parties). BLM will require prior approval for any maintenance  
17 of the public land portions of the Dunn Road that cannot be accomplished by one or two persons without  
18 the aid of mechanized and/or motorized equipment. Major maintenance or any maintenance on public  
19 lands involving the use of mechanized or motorized equipment must be approved prior to initiation of  
20 the activity. In reviewing any request for maintenance under this provision, BLM shall undertake all  
21 analyses required by the National Environmental Policy Act, the Endangered Species Act, and any other  
22 applicable provisions of statute or regulation;

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

24 c. Close all gates on public lands which affect access along the Dunn Road and  
25 secure them with new locks by March 15, 2001;

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

1 e. BLM will replace the non-BLM lock on the northernmost gate adjacent to  
2 Cathedral City Cove with a BLM lock by March 15, 2001;

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

- 5 (1) Keys cannot be duplicated by any one other than the manufacturer of the  
6 lock (patented system for which locksmiths do not possess key banks);  
7 (2) Keys are sequentially numbered thereby providing for tracking efficiency;  
8 (3) The locks for the Dunn Road gates will constitute a stand alone system  
9 which will not interface with the commonly used BLM lock system;  
10 (4) The key and lock system used on the Dunn Road gates will be such that  
11 keys will be retained in the locking mechanism until the padlock is secured in the  
12 closed position;  
13 (5) Locks will be secured to the gate by a chain; and there will be  
14 (6) A separate key system for the locks on each gate.

15 g. BLM may provide conditional access to the Dunn Road, by issuance of keys to  
16 governmental entities with emergency service or natural resource management responsibilities. These  
17 governmental entities are the U.S. Forest Service, Palm Springs Police and Fire Departments, Cathedral  
18 City Police and Fire Departments, Coachella Valley Mountains Conservancy, Riverside County Flood  
19 Control and Water Conservation District, California Department of Fish and Game, and Agua Caliente  
20 Band of Cahuilla Indians. Use of the Dunn Road by these entities will be for emergency purposes only  
21 with the following exceptions: The Agua Caliente Band of Cahuilla Indians may use the Dunn Road to  
22 access tribal lands for the purpose of natural and cultural resource management; the California  
23 Department of Fish and Game may use the Dunn Road for the purpose of natural resource management;  
24 the U.S. Forest Service may use the Dunn Road, accessing it by the Southernly gate, for the purpose of  
25 management of the National Forest Lands; the Coachella Valley Mountains Conservancy may use the  
26 Dunn Road for the purposes of carrying out its statutory duties; and the Riverside County Flood Control  
27 and Water Conservation District may use the Dunn Road for the purposes of inspecting and maintaining  
28 its rain sensors;



1 h. BLM may provide conditional access to non-federal landowners whose lands  
2 cannot be accessed by motorized vehicle except via the Dunn Road on the following terms:

3 (1) Landowners must obtain approval from BLM for each trip on the Dunn Road.

4 (2) Generally, no more than two landowner trips a week may be permitted and  
5 only one of these trips may be on a weekend. All landowner trips must enter and  
6 exit from the same gate;

7 (3) A "trip" will consist of one journey in and one journey out along the Dunn  
8 Road. If the destination of the trip is North of the juncture of the Art Smith Trail  
9 and the Dunn Road, the trip must enter and exit from the North. If the destination  
10 of the trip is South of the juncture of the Art Smith Trail and the Dunn Road, the  
11 trip must enter and exit from the South.

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

13 (5) Trips must be met by a BLM ranger or Sheep Ambassador at the  
14 appropriate gate. Landowners will be advised not to stop their vehicles on the  
15 Dunn Road within Bighorn Sheep habitat other than when on their own property  
16 or during emergencies such as vehicle breakdowns or flat tires. Landowners who  
17 have demonstrated non-compliance may be denied future access;

18 (6) Keys to the locks on the gates will be loaned to the landowner and  
19 returned to BLM on the next BLM business day.

20 (7) Each month, BLM may authorize a reasonable number of additional  
21 landowner trips if the two trips per-week limit cannot accommodate landowner  
22 needs.

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

26 (9) Trips by the Agua Caliente Band of Cahuilla Indians or the U.S. Forest  
27 Service for emergency purposes or for natural and cultural resource management,  
28 the California Department of Fish and Game for natural resource management, the

1 Coachella Valley Mountains Conservancy for the purposes of carrying out its  
2 statutory duties, the Riverside County Flood Control and Water Conservation  
3 District for the purposes of inspecting and maintaining its rain sensors, and trips  
4 by the Palm Springs Police and Fire Departments and Cathedral City Police and  
5 Fire Departments for emergency purposes will not count as landowner trips, but  
6 must be reported to the BLM;

7 (10) All trips and use of specific keys will be logged and recorded by BLM.  
8 BLM will provide the Plaintiffs with all trip and key records upon request and/or  
9 quarterly;

10 (11) If a key is lost or not returned, BLM will promptly notify and consult with  
11 plaintiffs regarding corrective action, which may include changing the lock on the  
12 gate or gates.

13 i. No commercial use of the Dunn Road will be authorized by permit or otherwise,  
14 except the current permit holder will have the right to use the Dunn Road until the current permit expires  
15 on June 30, 2001;

16 j. The above limitations will not apply to trips by entities conducting legitimate  
17 research, inventory and monitoring and this Stipulation will not be construed to limit or hinder  
18 legitimate research, inventory and monitoring efforts as approved in consultation with the U.S. Fish and  
19 Wildlife Service;

20 k. BLM will install at least two traffic counters on the Dunn Road by March 15,  
21 2001. These traffic counters will be placed to ensure all vehicle trips are recorded. BLM will provide  
22 that at least one of the traffic counters records the date and time on which a vehicle passes the counter.  
23 All records produced by these traffic counters will be provided to the Plaintiffs upon request and/or  
24 quarterly.

25 17. BLM will have a wildlife biologist, natural resource, specialist or, other appropriate staff  
26 its El Centro and Palm Springs Offices attend all meetings of the Peninsular Bighorn Sheep recovery  
27 team or its successor organization.  
28

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

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

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

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

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

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

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

26 25. This Stipulation is effective immediately upon its signature as an agreement among the  
27 signatories and is further effective as an Order of the Court upon its approval and entry as an Order by  
28 the Court. This Stipulation is to remain in effect until BLM receives a Biological Opinion from FWS on

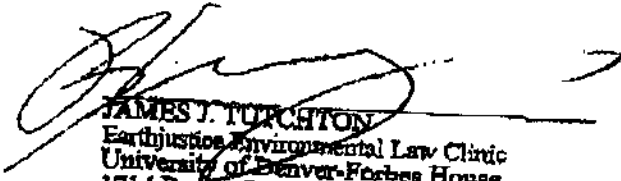
1 the effects of the CDCA Plan on Peninsular Ranges Bighorn Sheep and implements any applicable terms  
2 and conditions, reasonable and prudent alternatives, and/or reasonable and prudent measures of the  
3 Opinion that require implementation.

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

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FOR PLAINTIFFS CENTER FOR BIOLOGICAL  
DIVERSITY; SIERRA CLUB AND PUBLIC  
EMPLOYEES FOR ENVIRONMENTAL  
RESPONSIBILITY

Dated: 2/28/01



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2 **FOR DEFENDANT BUREAU OF LAND  
MANAGEMENT**

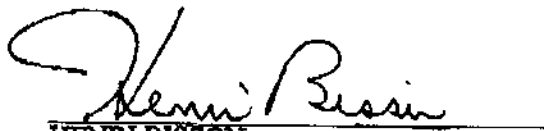
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