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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

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION: COMPLAINT FOR DECLARATORY AND INJUNCTIVE  
RELIEF

1. This is an action for declaratory judgment and injunctive relief. Plaintiffs challenge the failure of Defendant Bureau of Land Management ("BLM") to initiate and complete consultation with the United States Fish and Wildlife Service ("FWS") pursuant to Section 7(a)(2) of the Endangered Species Act ("ESA"), 16 U.S.C. § 1536(a)(2), regarding the effects of the on-going California Desert Conservation Area Plan ("CDCA Plan") on all federally-listed threatened and endangered species found within the CDCA or whose habitat is found within the CDCA. Plaintiffs challenge BLM's failure to initiate and complete consultation with FWS on the impacts to federally-listed threatened and endangered species of livestock grazing, road-building, off-road vehicle use, recreational use, water diversions, energy production, utility corridors, special use permits, land

exchanges, mining and other uses carried out, authorized, or otherwise allowed by BLM pursuant to the CDCA Plan. Plaintiffs further allege that BLM is in continuous violation of Section 7(d), 16 U.S.C. § 1536(d) of the ESA by continuing to carry out, authorize, or otherwise allow activities pursuant to the CDCA Plan that may affect listed species, including the approval of individual livestock grazing activities, road-building, off-road vehicle use, recreational use, water diversions, energy production, utility corridors, special use permits, land exchanges, mining and other projects without completing the required programmatic consultation.

2. This action arises under and alleges violations of the ESA, 16 U.S.C. § 1531 et seq., and the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 et seq.

3. For BLM's violations of the ESA and the APA, Plaintiffs seek an order compelling BLM to initiate and complete consultation with FWS regarding the programmatic effects of the CDCA Plan on all federally listed threatened and endangered species found within the CDCA. Plaintiffs further seek an order enjoining BLM from approving, allowing, carrying out, or continuing any individual livestock grazing activities, road-building, off-road vehicle use, recreational use, water diversions, energy production, utility corridors, special use permits, land exchange, mining and other projects pursuant to the CDCA Plan until BLM has complied with its mandatory statutory obligations under the ESA. Such relief is necessary to preserve the status quo, prevent illegal agency action, and forestall irreparable injury to the threatened and endangered species inhabiting the CDCA, and Plaintiffs' interests.

## II. JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question), 2201 (declaratory relief), and 2202 (injunctive relief), 5 U.S.C. § 702 (judicial review of agency action), and 16 U.S.C. §§ 1540(c) and (g) (action arising under the ESA and citizen suit provision). As required by the ESA, 16 U.S.C. § 1540(g), Plaintiffs have furnished BLM and the Secretary of the Interior with written notice regarding the violations alleged in this Complaint more than sixty days ago. BLM has not remedied the alleged violations. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201.

5. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e) because Plaintiffs Center for Biological Diversity and Sierra Club maintain offices in this district and no real property is involved in this action.

## III. PARTIES

6. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("The Center") is a non-profit corporation dedicated to the preservation, protection, and restoration of biodiversity, native species, ecosystems, and public lands. The Center maintains an office in Berkeley, California. The Center has approximately 5,000 members, many of whom reside in California. The Center's members and staff regularly use lands throughout the

southwestern portion of the United States, including those within the CDCA, for observation, research, aesthetic enjoyment, and other recreational, scientific, and educational activities. The Center's members and staff have researched, studied, observed, and sought protection for many federally listed threatened and endangered species that live in the CDCA. The Center's members and staff derive scientific, recreational, conservation, and aesthetic benefits from these rare species existence in the wild. The Center brings this action on behalf of itself and its adversely affected members and staff.

7. Plaintiff SIERRA CLUB is a national, non-profit membership organization with over 525,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club frequently files citizen suits to stop activities that violate local, state or federal environmental laws and cause harm to the natural environment. Over 150,000 Sierra Club members reside in California. Sierra Club's national headquarters is located in San Francisco. Many of Sierra Club's members actively use the CDCA for recreational and aesthetic purposes such as hiking and nature study and would be personally harmed if the threatened and endangered species found on the CDCA were to become reduced in numbers or driven extinct. Many Sierra Club members also participate in group outings to the CDCA and will continue to do so on a regular basis. Sierra Club believes that absent a formal programmatic consultation on the CDCA Plan, populations of federally listed threatened and endangered species within the CDCA will continue to decline. Sierra Club further believes that the decline of species indicates the deteriorating health of entire ecosystems. Accordingly, if this decline continues, the Sierra Club's members would be deprived of the recreational, aesthetic, scientific, and conservation benefits they enjoy from the existence of the ecosystem as a whole. Sierra Club brings this action on behalf of itself and its adversely affected members.

8. Plaintiff PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY ("PEER") is a national non-profit corporation based in Washington, D.C. with chapters throughout the United States, including California. PEER represents current and former federal and state employees of land management, wildlife protection, and pollution control agencies who are frustrated by the failure of governmental agencies to enforce their statutory environmental mandates. PEER members working for government agencies are frequently caught in a conflict between their duties as employees of a federal agency, their ethical beliefs, and the risk of disciplinary action for insubordination. Consequently, PEER members rely on PEER to bring this action on their behalf. PEER members and staff regularly use CDCA lands for observation, research, aesthetic enjoyment, and other recreational, scientific, and educational activities. PEER members and staff have researched, studied, and observed many federally listed threatened and endangered species that live in the CDCA. PEER's members and staff derive scientific, recreational, conservation, and aesthetic benefits from these rare species existence in the wild. PEER brings this action on behalf of itself and its adversely affected members.

9. Plaintiffs' members and staff rely on BLM to comply fully with the provisions of the ESA, including the Section 7 consultation provisions, which assure that federal agencies incorporate concerns for threatened and endangered species into project planning, design, and implementation. In this regard, Plaintiffs' members and staff derive scientific, recreational, health, conservation, spiritual, and aesthetic benefits from the preservation and protection of threatened and endangered species under the ESA. Plaintiffs' members and staff spend time in areas adversely affected by BLM's refusal to conduct programmatic consultations on how its actions affect threatened and endangered species in the CDCA. Plaintiffs' members and staff have been, are being, and unless the relief requested is granted, will continue to be adversely affected and injured by BLM's refusal to initiate and complete a formal programmatic consultation on how its projects affect threatened and endangered species in the CDCA.

10. Plaintiffs' members and staff have also suffered procedural and information harms connected to their substantive conservation, recreational, scientific, and aesthetic interests from BLM's failure to complete consultation with FWS as mandated by Section 7 of the ESA. Plaintiffs' members and staff rely on the Section 7 consultation process established by Congress to protect threatened and endangered species from injuries inflicted by BLM approved activities. The consultation process provides agency decision-makers, Plaintiffs, and the public with essential information regarding the effects of BLM approved actions on threatened and endangered species. Plaintiffs have no adequate remedy at law.

11. Defendant BUREAU OF LAND MANAGEMENT is an agency of the United States Department of Interior and the government of the United States. BLM is charged with the management of public lands, including those within the CDCA, and has legal responsibility for ensuring that its actions comply with the ESA.

#### IV. LEGAL AND FACTUAL BACKGROUND

##### A. The Endangered Species Act

12. The Endangered Species Act, 16 U.S.C. §§ 1531-1544, ("ESA") was enacted, in part, to provide a "means whereby the ecosystems upon which endangered species and threatened species depend may be conserved...[and] a program for the conservation of such endangered species and threatened species..." 16 U.S.C. § 1531(b).

13. In order to fulfill these purposes, Federal agencies are required to engage in consultation with the U.S. Fish and Wildlife Service ("FWS") to "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 adverse modification of habitat of such species... determined...to be critical..." 16 U.S.C. § 1536(a)(2) (Section 7 consultation).

14. Section 7 consultation is required for "any action [that] may affect listed species or critical habitat." 50 C.F.R. § 402.14. Agency "action" is defined in the ESA's

implementing regulations to include "(c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air." 50 C.F.R. § 402.02.

15. A management plan such as the CDCA Plan is an "agency action" requiring consultation under the ESA.

16. At the completion of consultation FWS issues a Biological Opinion ("BO") that determines if the agency action is likely to jeopardize the species. If so the opinion may specify reasonable and prudent alternatives that will avoid jeopardy and allow the agency to proceed with the action. 16 U.S.C. § 1536(b). FWS may also "suggest modifications" to the action during the course of consultation to "avoid the likelihood of adverse effects" to the listed species even when not necessary to avoid jeopardy. 50 C.F.R. § 402.13. An agency must reinitiate formal consultation with FWS "where discretionary Federal involvement or control over the action has been retained or is authorized by law and ...if a new species is listed...that may be affected by the identified action." 50 C.F.R. § 402.16.

17. Section 7(d) of the ESA, 16 U.S.C. § 1536(d), provides that once a federal agency initiates consultation on an action under the ESA, it "shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this section." The purpose of Section 7(d) is to maintain the status quo pending the completion of interagency consultation.

## B. The California Desert Conservation Area

18. In 1976, Congress designated 25 million acres of California as the California Desert Conservation Area. Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1781. Approximately half of this land is public land which BLM manages.

19. Congress mandated that the Secretary of the Interior develop a "comprehensive, long-range plan for the management, use, development, and protection of the public lands within the [CDCA]." 43 U.S.C. § 1781(d).

20. In September of 1980, BLM, as the Secretary of Interior's designee, published and implemented a land management plan for the CDCA, called the California Desert Conservation Area Plan. The overall goal of the CDCA Plan was to have a land-use plan that would protect resources, including threatened and endangered species, while permitting the public to use and enjoy the CDCA.

21. The CDCA Plan permits a variety of individual activities, including livestock grazing, road-building, off-road vehicle use, recreational use, water diversions, energy production, utility corridors, special use permits, land exchanges, mining, and other projects that affect threatened and endangered species in the CDCA.

22. When BLM approved and implemented the CDCA Plan it did not carry out a formal programmatic consultation with FWS as to the effects of the CDCA Plan on federally listed threatened and endangered species within the CDCA.

23. Numerous species occurring within the CDCA have been listed as threatened or endangered since the CDCA plan was approved in 1980.

24. Listed species that occur within the CDCA include, but are not limited to, the Desert Tortoise, Mohave Chub, Desert Slender Salamander, Bald Eagle, Amargosa Vole, Yuma Clapper Rail, Desert Pupfish, Least Bell's Vireo, Inyo California Towhee, Southwestern Willow Flycatcher, Peninsular Ranges Bighorn Sheep, Coachella Valley Fringe-Toed Lizard, Arroyo Toad, California Condor, Parish's Daisy, Ash Meadows Gumplant, Amargosa Niterwort, Coachella Valley Milkvetch, Peirson's Milkvetch, Triple-Ribbed Milkvetch, Cushenberry Milkvetch, Lane Mountain Milkvetch, Cushenberry Buckwheat, and Cushenberry Oxytheca.

25. Since its adoption in 1980, BLM has made over 100 amendments to the CDCA Plan. BLM has not completed a formal programmatic consultation on the amended CDCA Plan as to its effects on federally listed threatened and endangered species.

26. For management purposes, BLM has divided up most of the CDCA into four separate management units. These are the Western Mojave Desert, Northern and Eastern Mojave Desert, Northern and Eastern Colorado Desert, and the Coachella Valley. BLM has stated that it intends to develop separate management plans for each of these four regions. BLM has stated that these four regional sub-plans will serve as additional amendments to the CDCA Plan. These regions do not cover the entirety of the lands encompassed within the CDCA. For lands not within these four management units, BLM has not initiated similar management plans. BLM has not consulted with FWS on the four regional plans or on any plans for the areas of the CDCA outside of these management units.

27. BLM's adoption and ongoing implementation of the original CDCA Plan, its amendments, and the regional sub-plans constitute federal action within the meaning of the ESA and its implementing regulations. BLM retains full discretion to amend or alter any land management plan for the CDCA.

28. BLM's adoption and ongoing implementation of the CDCA Plan, plan amendments, and regional sub-plans may affect threatened and endangered species in the plan area, including, but not limited to, all the species listed in paragraph 24 above.

29. Nevertheless, BLM has never initiated and completed consultation with FWS under the ESA regarding the effects of the CDCA Plan on all threatened or endangered species in the CDCA.

30. BLM is implementing the CDCA Plan, amendments and regional sub-plans, by authorizing, allowing, carrying out, and continuing livestock grazing, road-building, off-road vehicle use, recreational use, water diversions, energy production, utility corridors,

special use permits, land exchanges, mining, and other projects that individually and cumulatively may adversely affect threatened and endangered species within the CDCA, or adversely modify or destroy their critical habitats.

## V. CLAIM FOR RELIEF

### CLAIM I: VIOLATION OF THE ENDANGERED SPECIES ACT

[BLM's Violation of Consultation Requirements]

31. Each and every allegation set forth above in the Complaint is incorporated herein by reference.

32. BLM is violating Section 7(a)(2) of the ESA and its implementing regulations by failing to initiate and complete a programmatic consultation with FWS on the effects of the CDCA Plan and its amendments and all related actions that may affect federally listed threatened and endangered species in the CDCA that are authorized, approved, allowed, or otherwise carried out pursuant to the CDCA Plan and its amendments. 16 U.S.C. § 1536(a)(2); 50 C.F.R. Part 402.

33. BLM's implementation of the CDCA Plan and amendments without consulting with FWS regarding the Plan's effects on threatened and endangered species is arbitrary, capricious, and not in accordance with procedures required by law, in violation of the APA. 5 U.S.C. § 706.

### CLAIM II: VIOLATION OF THE ENDANGERED SPECIES ACT

[Illegal Commitment of Resources]

34. Each and every allegation set forth above in the Complaint is incorporated herein by reference.

35. BLM is violating Section 7(d) of the ESA and its implementing regulations by authorizing, allowing, or otherwise carrying out and continuing livestock grazing, road-building, off-road vehicle use, recreational use, water diversions, energy production, utility corridors, special use permits, land exchanges, mining, and other projects that may affect federally listed threatened and endangered species prior to completing a programmatic consultation with FWS on the CDCA Plan and its amendments. 16 U.S.C. § 1536(d).

36. BLM's authorizing, allowing, or otherwise carrying out and continuing livestock grazing, road-building, off-road vehicle use, recreational use, water diversions, energy production, utility corridors, special use permits, land exchanges, mining, and other projects prior to completing consultation on the CDCA Plan and its amendments is arbitrary, capricious, and not in accordance with procedures required by law, in violation of the APA. 5 U.S.C. § 706.

## VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment providing the following relief:

(1) A declaratory judgment that BLM is violating Section 7(a)(2) of the ESA and the APA by failing to consult programmatically with FWS on the effects that implementation of the CDCA Plan and its amendments have on all threatened and endangered species that occur, or whose habitat occurs, on the CDCA;

(2) A declaratory judgment that BLM is violating Section 7(d) of the ESA and the APA by authorizing, allowing, or otherwise carrying out and continuing livestock grazing, road-building, off-road vehicle use, recreational use, water diversions, energy production, utility corridors, special use permits, land exchanges, mining, and other projects on the CDCA that may affect threatened and endangered species prior to completing consultation with FWS;

(3) An order requiring BLM to initiate and complete a programmatic consultation with FWS on the CDCA Plan and its amendments for the entire CDCA pursuant to Section 7(a)(2) of the ESA;

(4) An order enjoining BLM from authorizing, allowing, carrying out, or continuing any livestock grazing, road-building, off-road vehicle use, recreational use, water diversions, energy production, utility corridors, special use permits, land exchanges, mining, and other projects on the CDCA until the agency completes the required Section 7 consultations with FWS;

(5) An order awarding Plaintiffs their costs of litigation, including reasonable attorneys' fees; and

(6) Provide such other relief as the Court deems just and proper.

DATED: March \_\_, 2000 RESPECTFULLY SUBMITTED,

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