

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CENTER FOR BIOLOGICAL DIVERSITY,  
SIERRA CLUB, PUBLIC EMPLOYEES FOR  
ENVIRONMENTAL RESPONSIBILITY, and  
DESERT SURVIVORS,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT and  
U.S. FISH AND WILDLIFE SERVICE,

Defendants.

Case No: C-03-2509-SI

ORDER [PROPOSED]

On March 14, 2006, the Court issued an Opinion and Order resolving the parties' Cross-Motions for Summary Judgment ("Opinion"). The Court found that defendants Bureau of Land Management's ("BLM") and U.S. Fish and Wildlife Service ("FWS") violated the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531, *et seq.*, the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321, *et seq.*, and the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 1701, *et seq.*, in taking actions related to the management of Imperial Sand Dunes Recreation Area ("ISDRA") and the two threatened species that occur there, the desert tortoise and the Peirson's milk-vetch. The Court requested further briefing from the parties regarding the appropriate form of relief. After considering the parties' briefs, the record in this case, and the relevant law, the Court issues the following Order.

IT IS ORDERED that

(1) BLM's 2005 Record of Decision ("2005 ROD") approving the 2003 ISDRA Recreation Area Management Plan ("2003 RAMP"), the 2003 RAMP, and the Final Environmental Impact Statement ("FEIS") for the 2003 RAMP are vacated and remanded to BLM for further action and consideration consistent with all applicable laws and with the Court's Opinion.

(2) Those portions of the January 2005 Biological Opinion ("2005 BiOp") for the 2003 RAMP prepared by the FWS relating to the Peirson's milk-vetch are vacated and remanded to FWS for further action and consideration consistent with all applicable laws and with the Court's Opinion.

1 (3) The Incidental Take Statement (“ITS”) authorizing take of the desert tortoise contained in the  
2 2005 BiOp is remanded to FWS for further action and consideration consistent with all applicable laws and  
3 with the Court’s Opinion. Subject to the following conditions, BLM may rely upon the take authorization  
4 provided by the ITS pending remand.

5 (a) BLM shall comply with all the Terms and Conditions of the ITS.

6 (b) BLM shall, within seven days of receipt or generation, provide Plaintiffs and Defendant-  
7 Intervenors copies of all correspondence with FWS generated pursuant to Term and  
8 Condition 4.1 dealing with reported or observed injury or mortality to any desert tortoise.

9 (c) In the event more than 1 desert tortoise is reported or observed injured or killed within the  
10 ISDRA, BLM shall immediately close to vehicle use, other than on designated routes, those  
11 portions of the ISDRA identified as desert tortoise habitat in the 2005 BiOp.

12 (4) The August 4, 2004, Designation of Critical Habitat for *Astragalus magdalene* var. *peirsonii*  
13 (Peirson’s milk-vetch), 69 Fed. Reg. 47,330 (Aug. 4, 2004) (“Final Rule”), and accompanying economic  
14 analysis are remanded to FWS for further action and consideration consistent with all applicable laws and  
15 with the Court’s Opinion. Pending the issuance of a revised critical habitat designation on remand (“Revised  
16 Rule”), the following conditions shall apply:

17 (a) FWS shall submit a final Revised Rule to the Federal Register for publication therein no later  
18 than December 1, 2007.

19 (b) The August 4, 2004 Final Rule shall remain in full force and effect with all areas currently  
20 designated as critical habitat remaining so designated pending the completion of the Revised  
21 Rule.

22 (c) The areas proposed for designation in the August 5, 2003 Proposed Designation of Critical  
23 Habitat for the Peirson’s milk-vetch, but subsequently excluded from critical habitat in the  
24 Final Rule pursuant to 4(b)(2) of the ESA, 16 U.S.C. § 1533(b)(2), shall be considered  
25 proposed critical habitat for purposes of Section 4 and 7 of the ESA, 16 U.S.C. §§ 1533,  
26 1536.

27 (5) Notwithstanding any contrary provision of the 2005 ROD, 2003 RAMP, or the FEIS, BLM  
28 shall maintain the vehicle closures as identified in the “Temporary Closure of Approximately 49,300 Acres

1 to Motorized Vehicle Use of Five Selected Areas in the ISDRA,” 66 Fed. Reg. 53,431-02 (Oct. 22, 2001)  
2 (“Temporary Closure”). In maintaining and enforcing the closures, BLM shall:

- 3 (a) provide continued public notification of closure areas by posting of closure maps at kiosks  
4 and public distribution of closure brochures and maps.
- 5 (b) provide written monthly reports to Plaintiffs and Defendant-Intervenors summarizing the  
6 results of observations from aerial overflights, summarizing weekly visitation data,  
7 summarizing law enforcement compliance data relating to closure violations, and  
8 summarizing data related to actions taken to improve compliance with closures.

9 (6) This Order, and all the requirements herein, shall remain in effect until further order of this  
10 Court. Upon completion of the following actions, BLM and FWS may move the Court for relief or alteration  
11 of this Order:

- 12 (a) BLM completes a new draft and final Environmental Impact Statement (“EIS”) pursuant to  
13 NEPA, for a new or revised ISDRA RAMP;
- 14 (b) FWS completes the Revised Critical Habitat Final Rule described in Paragraph 4;
- 15 (c) BLM initiates and completes consultation with FWS pursuant to ESA Section 7(a)(2), 16  
16 U.S.C. § 1536(a)(2), regarding the new or revised ISDRA RAMP;
- 17 (d) BLM issues a ROD approving the new or revised ISDRA RAMP; and
- 18 (e) BLM makes the finding required by 43 C.F.R. § 8341.2(a) that “the adverse effects [which  
19 lead to the closure] have been eliminated and measures implemented to prevent recurrence.”

20 (7) Upon completions of the measures outlined in Paragraph 6, BLM and FWS shall provide  
21 Plaintiffs and Defendant-Intervenors with copies of the relevant final documents and file a Notice with this  
22 Court indicating completion of the listed actions. Within 14 days of the filing of the Notice, Plaintiffs and  
23 Defendant-Intervenors may file a response, if any, to the Notice explaining why the terms of this Order  
24 should or should not continue. If no responses are filed to the Notice, this Order shall automatically expire  
25 30 days following the filling of the Notice. In the event Plaintiffs and/or Defendant-Intervenors object to  
26 the expiration of this Order, the Court will, as appropriate, issue an order either terminating or amending this  
27 Order, setting a status conference, and/or requesting further briefing.

- 28 (8) The Court shall retain jurisdiction to enforce the terms of this Order, to hear any motion for

1 attorney's fees, and to address any issues that arise during or as a result of the remand.

2  
3 IT IS SO ORDERED.

4  
5 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006

6  
7  
8 United States District Judge