



Volume 3 Issue 2

American Sand Association

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www.AmericanSandAssociation.org

April 2003

Unite, Inform, and Mobilize to Keep Our Dunes Open

ASA Files Suit to Force PMV Delisting Decision

On February 14, 2003, The 2003 The American Sand Association, San Diego Off-Road Coalition, and the Off-Road Business Association filed a lawsuit to force the U.S. Fish and Wildlife Service (FWS) to act on a year-old petition to de-list the Peirson's Milk Vetch (PMV).

A 1999 lawsuit filed by the Center for Biological Diversity and other special interest groups took advantage of flawed studies and incomplete scientific data on the PMV. They forced the Bureau of Land Management to temporarily close 49,000 acres right in the heart of the Imperial Sand Dunes Recreation Area in southeastern California, one of the most popular off-road recreation sites in the US. The temporary closure is in addition to 32,000 acres already set aside as a Federal Wilderness Area for species preservation at the Imperial Sand Dune Recreation Area (ISDRA).

Biological studies commissioned by the ASA and performed by renowned botanist Dr. Arthur Phillips III show the PMV is thriving and not adversely affected by off-road vehicle activity. "My work has been peer-reviewed, and they have all agreed with it." Dr. Phillips said from his home in Flagstaff, Arizona. "I usually prove that a plant needs to be protected, and more often than not, I am the one who gets it listed [under the Endangered Species Act]. In this case it's just not necessary for the land to be closed due to the large number of plants and minimal observed threat."

"Our suit forces the FWS to act on the Delisting Petition that the ASA filed over 18 months ago," said Mark Harms, Chairman of the ASA Legal Committee. "The duning community has complied with the court's stipulation that closed 49,000 acres of the ISDRA well beyond the expectation of the extreme environmental groups that were instrumental in these closures. The ASA will use every legal avenue available and use the Federal Court system to force the FWS and the BLM to do the jobs they're tasked with properly and completely so as not to let these unsubstantiated closures happen in the future."

(It is important to realize that we are suing ONLY to get FWS to respond to our delisting petition. There is case law that leads us to believe we will prevail. It is possible, and even likely, the decision they give us is to maintain the listing. In that case, another suit will be filed by the ASA with the intent to force the FWS to delist the PMV but we cannot do that until the petition has been addressed by FWS – ED.)

ASA Hires Sacramento Lobbyist

The Board of Directors of the American Sand Association has joined with the Coalition for Public Access to gain representation in Sacramento, CA. The Coalition for Public Access is composed of the California Association of Four Wheel Drive Clubs, American Motorcycle Association District 36, and the California Nevada Snowmobile Association. This coalition employs the lobbyist firm Aaron Read & Associates. By joining the coalition, the ASA now has Terence McHale of Aaron Read & Associates representing our interests in Sacramento. ASA Legislative Committee Chairman Keith Rosewitz stated, "Mr. McHale has shown a serious interest in the Imperial Sand Dunes and is already hard at work on our behalf. We have already seen positive results by taking this step. By working at the political level in Sacramento, the ASA continues to advance the interests of all sand dune enthusiasts."

ASA Gains Seat on Stakeholders Roundtable

Mr. Keith Rosewitz, a member of our Board of Directors and Chairman of our Legislative Committee, has been appointed to the CA State Parks Off-Highway Vehicle Stakeholders Roundtable.

In May of 2000, just a month before the American Sand Association was formed, the Off-Highway Motor Vehicle Recreation Division (OHMVR) established the OHV Stakeholders Roundtable. Comprised of over 50 representatives, the Stakeholders consist of OHV enthusiasts, non-motorized recreationists, environmental organizations, public land management agencies, law enforcement agencies, and local governments. The Stakeholders advise the CA OHMVR Division and Commission and strives for enhanced problem solving and improved communication at all levels.

"We congratulate Keith in his appointment," says Jerry Seaver, ASA President. "We are glad that this large segment (sand dune recreation) now has recognized representation at this level in California Parks and Recreation."

ASA Gives Sacramento VIPs tour of the Dunes

On Sunday, March 9, ASA Board Member Grant George welcomed Terry McHale, his boss Aaron Read, 2 special asst. to the speaker of the house Herb Wesson, Alfonso Sanchez (asst to assemblyman Marco Firebaugh), 1 from Horton's office and 2 from the Hispanic caucus to the Imperial Sand Dunes Recreation Area. Along with ASA lobbyist Terence McHale of Aaron Read & Associates, Grant gave a guided and interpretive tour of the Dunes to these Sacramento legislators and staff members. Most had only heard of the Dunes but now have first hand experience with the area and as Grant George says, "They now have a new perspective on what the dunes are, who the people are that go there, and our views on the issues."

ASA Dune Info Meetings

Many Dune info meetings are in the works for Southern California. No dates are firm at this time. Check the ASA website for dates, times and places as they become confirmed.

ASA Board of Directors and Membership Meeting SATURDAY MAY 3, 2002 9 AM

MARRIOTT COURTYARD
530 BROADWAY
SAN DIEGO

PLEASE COME & JOIN THE BOARD OF DIRECTORS
AND LEARN ABOUT ASA ACTIVITIES.

Volunteers are needed to support many of the ASA tasks and objectives. Attend this meeting and learn how you can help. A two-hour period (1 to 3 PM) has been scheduled to discuss your questions, concerns, and comments. Please forward your ideas, questions, etc to Bob Mason at rwmskm@aol.com

LEGAL AND BIO ISSUES

Biological

- Dr. Phillips has submitted his final report on the Peirson's Milk Vetch (PMV) seed bank count and germination. "...no significant relationship between ... OHV use during the growing season and the plant's survival rate to winter 2001-02 could be determined." <http://www.americansandassociation.org/news/index.html?view=article&article=92> OR GO TO www.AmericanSandAssociation.org main page and look for the "Biological" link on the left.

Legal (L signifies Lounsbury, Ferguson, Altona & Peak LLP Law firm. Other client numbers refer to the Procopio firm)

- **Client Matter 1 RE: Preparation and filing of First lawsuit with BLM:** This lawsuit was filed because the BLM closed the dunes before they had done the mandatory Environmental Assessment (EA) and there was no claim or evidence of an emergency to circumvent the EA. Conclusion: Lawsuit became moot after the BLM finished the EA and therefore withdrawn. See client matters 2&1L below.
- **Client Matter 2 RE: Imperial Dunes Closure Appeal with IBLA (Internal Bureau of Land Appeals).** Conclusion: lost appeal (result was expected). See client matter 1L below.
- **Client Matter 3 RE: Imperial Dunes Camping Closure Appeal with IBLA.** Conclusion: lost appeal (result was expected)
- **Client Matter 5 RE: Flat Tailed Horned Lizard Conclusion:** The FWS determined that there is not enough data, concluding that the FTHL is NOT threatened or endangered therefore not warranting a listing.
- **Client Matter 7 Recreation Area Management Plan (RAMP).** Still Pending. The ASA requested that Mr. Hubbard comment on the Draft EIS for the ISDRA RAMP, which he did. Still pending is the 30-day protest period after the RAMP is released and any comments he deems necessary to make for the record. Latest information indicates the BLM expects the RAMP to go to print in April, the protest period in May, and a Record of Decision by July.
- **Client Matter 0L (no number assigned yet) RE: Intervention in Center for Biodiversity (CBD) V. Norton-Critical Habitat Lawsuit.** Still pending—The Court has ordered the Fish and Wildlife Service (FWS) to issue the proposed rule designating Critical Habitat for the PMV by July 28, 2003, and the final rule by July 28, 2004. Given that the FWS should have published a final decision on our delisting petition by the end of last October, we should be able to get our case to court before any Critical Habitat is designated for the PMV. See client matter 4L below.
- **Client Matter 1L RE: Present Lawsuit with the BLM.** Still pending. We are appealing in Federal Court the IBLA decision we lost last year. We have always felt that our chances of winning this case were much better in Federal Court. The IBLA is an extension of the Department of Interior, as is the BLM and FWS, therefore possibly biased. This case should conclude in May of this year. Should we win the liability phase, the remedy phase could look something like this: The RAMP won't be released until probably mid year as it stands right now, and our suit with the BLM over their illegal closure of the dunes could conclude before the RAMP is completed. It is conceivable the current closures could be reversed and come down before the RAMP is released. The new hearing date is set for May 12. Mark Harms and other top ASA members will be attending this hearing.
- **Client Matter 4L Suit against the FWS:** On February 14, 2003 The American Sand Association, San Diego Off-Road Coalition, and the Off-Road Business Association filed a suit against the FWS for not responding to our Petition to delist the PMV. The statute is clear and we have case law supporting our action. This suit will be the first we have filed that falls under the Endangered Species Act, and therefore allows for legal fees, should we prevail. Should we prevail, ONLY a decision to delist *OR NOT* should be forthcoming.
- **Client Matter 5L RE: Andrew's Scarab Dune Beetle (ASDB)** Our attorney has filed a Freedom of Information Act (FOIA) request regarding this species. He has generated an outstanding letter based on the results of the information provided him blasting the CBD's petition to list the beetle as endangered under the Endangered Species Act.

Of all of the actions in which we are currently involved, the petition to delist the PMV will take the longest. Delisting a species is typically a multi-year process. Most likely, it will require taking the FWS to Federal Court with the result of the Court ordering the FWS to delist.

As with the Flat Tailed Horned Lizard, the ASA has taken the lead on refuting the petition to list ASDB. The CBD filed a petition with FWS late last year to get the ASDB listed on the Endangered Species List. According to the CBD, the ISDRA is the only habitat this ASDB has.

Financial help with much of what the ASA is doing comes from several sources other than the ASA. At this time, we are receiving financial support from San Diego Off Road Coalition (SDORC), and the Off Road Business Association (ORBA) as well as various clubs and individuals. Our sincerest thanks to these fine organizations but we need everyone's help.

IS YOUR SPOUSE AN ASA MEMBER? CHANGED YOUR EMAIL ADDRESS?

[HTTP://WWW.AMERICANSANDASSOCIATION.ORG/MyMembership/](http://www.americansandassociation.org/MyMembership/)

Our ASA 2003 Calendars are now on sale for \$5.00 each!

These calendars list future dates for events like cleanups and poker runs. There are many great sand pictures to get you by on those "off weekends."

This is a great fundraiser for the ASA since the sponsors of each month allow us to keep 100% of the proceeds to help Keep Our Dunes Open! And, while supplies last, you can **get one FREE** with each \$50 spent on other ASA merchandise – that's like a 10% discount!



You can order these calendars from our online store:

<http://www.americansandassociation.org/store/>

Or by mail to:

ASA Store

11419 Daybreak Trail Moreno Valley, CA. 92557

(Add \$2.00 shipping for one and \$5.00 for three or more)

THE NEXT ASA GIVEAWAY is a **\$50,000 Sand Car** Sponsored by Ricochet!

The ASA would like to say a
**"Special Thanks" to Ricochet
Employees for putting this car
together on their own time!**

All proceeds to benefit ASA General Fund
Tickets are \$20 each with no limit and
will be available online and at select
retail locations.

See the ASA website for more details
www.AmericanSandAssociation.ORG



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That's all it could take to help save the dunes. If each of our members would commit to just \$5 a month, we'd have more resources to take on more legal battles and do more biological studies.

\$5 is less than you spent on your last fast food meal. At about the price of a beer at a ball game, \$5 is a lot less than a 5-gallon can of gas for your quad or buggy.

\$5 a month would accomplish so much.

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We've made it easy for you. We can set up an auto payment on your credit card to make a monthly contribution to the American Sand Association. Choose the amount you wish to donate each month, donate \$5, \$10, \$15, \$25 or whatever you feel you can afford and have it automatically charged to your credit card number each month*

(This is an ISDRA fundraiser unless the donor designates a different sand location)

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