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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

OREGON NATURAL DESERT ASS’N,

Plaintiff,

v.

JOAN SUTHER, Field Manager,
Andrews Resource Area, BLM, **KENNY**
MCDANIEL, Burns District Manager,
BLM, and **BUREAU OF LAND**
MANAGEMENT,

Defendants.

Case No. 09-CV-862-PK

STIPULATION TO AVOID MOTION
FOR TEMPORARY RESTRAINING
ORDER AND/OR PRELIMINARY
INJUNCTION AND ORDER

COME NOW plaintiff Oregon Natural Desert Association (“ONDA”) and defendants Joan Suther *et al.* (hereafter “BLM”), by and through their undersigned counsel of record, who hereby stipulate and agree as follows:

1. ONDA filed a complaint in the U.S. District Court for the District of Oregon, No. 09-cv-00862-PK, on July 27, 2009, seeking judicial relief ordering BLM to comply with the requirements of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321–61, the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 1701–84, the Steens Mountain Cooperative Management and Protection Act of 2000 (“Steens Act”), 16 U.S.C. § 460nnn *et seq.*, and the Wilderness Act of 1964, 16 U.S.C. §§ 1131 *et seq.* with respect to the agency’s actions in authorizing and conducting grading and other roadwork on certain routes within the Steens Mountain Cooperative Management and Protection Area (“CMPA”).

2. On July 27, 2009, concurrent with initiating this action, ONDA provided a copy of the complaint to agency counsel for defendants and informed defendants that ONDA intended to file a motion seeking a temporary restraining order and/or preliminary injunction unless BLM would agree to halt construction, ground-disturbing activity, or other implementation of the challenged decisions and agree to other measures to maintain the status quo.

3. After the complaint was filed, the parties entered into negotiations in an attempt to reach such an agreement and avoid the need to litigate such a motion. The parties are interested in settling this matter without further litigation, have had initial discussions, and will continue to commit to settlement discussions. This stipulation is an initial step towards settling this matter. Through this stipulation, BLM agrees to certain conditions, as explained below in paragraph 7. In return, ONDA agrees to certain conditions, as explained below in paragraphs 4–6.

4. ONDA agrees not to oppose BLM’s motion to extend its answer deadline for 60 days.

5. ONDA agrees not to oppose a further BLM motion to extend its answer deadline, if settlement discussions are still proceeding when the initial extension expires.

6. This Stipulation resolves the issues that would have been raised by plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction. Therefore, upon approval of this Stipulation by the Court, and while settlement discussions proceed, ONDA agrees to not file its Motion for Temporary Restraining Order and/or Preliminary Injunction, subject to the condition that the herein agreed-upon terms are satisfied. The undersigned parties enter this Stipulation to resolve disputed claims in a mutually agreeable manner and to efficiently serve the operations of the parties and the Court. BLM is not admitting any factual or legal assertion made by ONDA in entering this stipulation with ONDA.

7. The BLM will:

- a. Within three working days from the filing of this Stipulation, close the Burnt Car-Tombstone Connector (#2 on map in Exhibit A) and the Burnt Car Road (8244-0-K0 — #1 on map in Exhibit A) east of its junction with the Burnt Car-Tombstone Connector. The temporary route closures will not prohibit administrative access or access by ONDA and its representatives for purposes related to this suit. The temporary road closure will continue until the start of the seasonal road closure in mid-November.
- b. For the next 60 days and during any further extension of the answer deadline, prior to any ground-disturbing activities or use of the roads mentioned in the complaint relating to a horse gather in the South Steens HMA, conduct review under the National Environmental Policy Act including preparation of an Environmental Assessment or Environmental Impact Statement, if appropriate.
- c. For the next 60 days and during any further extension of the answer deadline, refrain from any further construction, improvement or other maintenance activities on all routes (including cherry stems), including the routes at issue in this case (Burnt Car Road, Tombstone Road, Burnt Car-Tombstone Connector, and the unnamed route connecting the Loop Road to Burnt Car Road), within or adjacent to the Steens Mountain Wilderness, the Blitzen River WSA, the South Fork Donner Und Blitzen WSA, and ONDA-proposed WSAs within the CMPA, including routes that form borders between WSAs and proposed WSAs. This subparagraph does not apply to spot maintenance on the Steens Loop Road, including standard activities to keep down washboarding, or on roads within designated campgrounds. Unless there are threats to human health and safety, where emergency conditions warrant construction, improvement, or other maintenance activities (e.g. to repair a complete washout of a road or culvert), BLM will give ONDA at least 10 days notice and prepare appropriate NEPA

analysis prior to any emergency repair work. Where human health or safety are at risk, the BLM will provide ONDA and the public with as much advance public notice of any construction, improvement, or other maintenance work as is feasible under the circumstances. To the extent feasible, any emergency repair will stay within the previously-disturbed area of the road and will be designed to repair the immediate damage while minimizing disturbance to the area.

- d. Within three working days from the filing of this Stipulation, remove all flagging from the unbladed portion of Burnt Car Road (the section that runs from Loop Road northward to the junction of Burnt Car Road and unnamed route that enters Burnt Car Road from the west), except for any flagging associated solely with cultural resource survey work.
- e. For the next 60 days and during any further extension of the answer deadline, provide at least thirty (30) days notice to ONDA and to the public of the BLM's intent to perform maintenance on Level 2 roads within the Burns District.
- f. Within 14 days from the filing of this Stipulation, file a motion with the Interior Board of Land Appeals (IBLA case number 2009-129) advising the Board that BLM does not intend to implement the decision and requesting that the Board vacate and remand the January 28, 2009 Amended Decision Record in the Burnt Car Spring (Steens Mountain Implementation) Environmental Assessment, OR-027-01-27. Should the BLM determine that development of the spring is necessary, it may consider that as part of the South Steens Water Development Environmental Assessment or in some other planning decision.
- g. Pay ONDA \$10,000 in full and complete satisfaction of any and all claims, demands, rights, and causes of action pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), and/or any other statute and/or common law theory, for all attorneys' fees and costs incurred by ONDA in its litigation of the Burnt Car Spring (Steens Mountain Implementation) Environmental Assessment, OR-027-01-27 (IBLA 2009-129). BLM's payment shall be accomplished by electronic fund transfer to an ONDA bank account. BLM shall submit the paperwork for the payment within ten (10) business days after the Interior Board of Land Appeals issues an order vacating and remanding case number IBLA 2009-129 or ONDA provides the necessary information as required by this paragraph to facilitate the payment, whichever is later. ONDA's attorneys shall notify BLM's attorneys when payment is received.
- h. Develop a plan for rehabilitation of the road maintenance work within the Steens Mountain Wilderness Area. As part of that plan, the BLM will consider what, if any, rehabilitation may be appropriate along all of the roads mentioned in the Complaint. The BLM will expedite development of environmental review documents for the rehabilitation effort with a goal of completing the environmental review and starting rehabilitation work prior to the seasonal road closure. To make additional resources available for this environmental review, the

BLM will defer further action on the South Steens Water Development Environmental Assessment until environmental review of the road rehabilitation is complete and a decision has been issued on road rehabilitation. The parties recognize that the time frames associated with reviews under the National Environmental Policy Act may preclude completion of the planning process prior to the seasonal closure. So long as the BLM is proceeding in good faith to develop a rehabilitation plan in an expedited manner, failure to begin rehabilitation prior to the seasonal closure will not be considered a violation of this Stipulation.

8. For the Court's information and to identify the routes described in this Stipulation, the parties attach a map as Exhibit A.

DATED this 28th day of August, 2009.

Respectfully submitted,

s/ Peter M. Lacy

Peter M. Lacy (OSB # 01322)
Oregon Natural Desert Association

Of Attorneys for Plaintiff

DATED this 28th day of August, 2009.

Respectfully submitted,

s/ Sean Martin

Sean Martin, OSB # 054338
Assistant U.S. Attorney

Of Attorneys for Defendants

I have reviewed and hereby APPROVE the foregoing Stipulation to Avoid Motion for Temporary Restraining Order &/or Preliminary Injunction.

DATED this 31ST day of August 2009.


THE HONORABLE PAUL PAPAK
United States Magistrate Judge

