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CLERK, U.S. DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND, OREGON

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

OREGON NATURAL DESERT ASSOCIATION;  
OREGON WILDLIFE FEDERATION;  
IDAHO WATERSHEDS PROJECT; and  
COMMITTEE FOR IDAHO'S HIGH DESERT,

Plaintiffs,

v.

JUAN PALMA, in his official capacity as Vale  
District Manager, Bureau of Land Management;  
JERRY L. TAYLOR, in his official capacity as  
Jordan Resource Area Manager, Bureau of Land  
Management; U.S. BUREAU OF LAND  
MANAGEMENT, an agency of the U.S.  
Department of the Interior; and BRUCE  
BABBITT, in his official capacity as Secretary  
of the Department of the Interior,

Defendants,

and

OREGON CATTLEMEN'S ASSOCIATION,  
a nonprofit organization on behalf of its members,  
Intervenor-Defendant.

Civil No. 98 - 97 - RE

ORDER OF MODIFIED  
INJUNCTION

315

On the basis of the Motions to Modify filed by the defendants and intervenor, and pursuant to Fed. R. Civ. P. 62(c), the Court hereby modifies the Injunction in its Opinion and Order of November 18, 1999, to read in its entirety as follows.

Accordingly,

**IT IS ORDERED:**

1. The Bureau of Land Management is enjoined to eliminate, permanently, domestic livestock grazing from all of the areas of concern identified by the Bureau in the 1993 Owyhee National Wild and Scenic Rivers Management Plan, pp. 86-87, commencing May 1, 2000.
2. The Bureau of Land Management is enjoined to eliminate, permanently, any and all provisions in grazing permits which allow the presence of domestic livestock in the areas of concern at any time of the year, and reduce, through cancellation, the appropriate number of animal unit months (AUMs) in the relevant permits, as expressed in the Fourth and (at a minimum) the Fifth Declarations of Jerry L. Taylor as modified in Defendants' Reply dated March 30, 2000, pp. 23, 25. Where appropriate, the initiation of said cancellation shall be linked to project completion or discontinuance, as described below.
3. The Bureau of Land Management is enjoined to take any other action necessary and feasible to exclude livestock from the aforementioned areas of concern at all times of the year as of May 1, 2000.
4. The defendants shall not be held in violation of this Injunction Order because occasional cattle stray into one of more of the areas of concern to which this Injunction

applies. The defendants shall not be held in violation of this Injunction Order if, for reasons beyond BLM's or the livestock operator's reasonable control, the trailing limitations imposed by this Order are exceeded.

5. The Court will retain jurisdiction until the Bureau of Land Management reports to the Court that the EIS has been completed.

IT IS FURTHER ORDERED:

6. This Injunction Order shall not prohibit the practice of trailing cattle from one pasture to another through the areas of concern identified by the Bureau of Land Management as livestock trailing areas, but the restrictions on trailing as stated in the 1993 Owyhee National Wild and Scenic Rivers Management Plan shall continue to apply, and, as an additional restriction, trailing through the areas of concern is restricted to three hours per herd of cattle for each passage through any area of concern. The above-stated additional restriction of three hours per herd shall not apply to trailing by the Jeff Anderson Estate through the Three Forks area of concern.

7. Paragraphs 1-3 of this Injunction Order shall not apply to the Quartz Mountain and Morcum allotments, *Provided that* the permittees have agreed to conditions in their permits stipulating frequent riding to supervise movements of their herds, with closure of the respective pasture or allotment and cancellation of the associated AUMs as a consequence of failure to perform. The Bureau of Land Management is further directed to obtain and complete the repair by the permittees of fences J-1, BLM-1, MK-2, and MK-3 (Map Exhibit 153) prior to a resumption of grazing on these allotments. If BLM determines at any time that use of riders has not succeeded in preventing a failure to

perform (as described in the Fifth Declaration of Jerry L. Taylor, Attachment 1, pp. 1, 2) at the Greeley Bar area of concern, this exception to the general Injunction herein shall cease and the Injunction in paragraphs 1-3 above shall apply.

8. The Bureau of Land Management is directed to obtain and complete the construction, installation, and maintenance by each respective permittee or group of permittees of the following projects, for which the permittees of the pertinent allotments will have the responsibility of securing funding, each project to be completed and operational prior to allowing livestock grazing to resume in each of the pastures or, if applicable, allotments within which such project will be conducted, except as otherwise provided in this and paragraphs 9-11 of this Order:

- A. Fences F-1 and F-2 (Map Exhibit 151);
- B. Fences FL-6 (Map Exhibits 150 and 151) and Fence FL-1 at Bull Creek Watergap only (Map Exhibit 151), *Provided that* construction of these fences shall not be required unless the Bureau of Land Management determines that the water developments hereinafter described have not succeeded in preventing a failure to perform (as described in the Fifth Declaration of Jerry L. Taylor, Attachment 1, pp. 1, 2), and; in that event, said fences shall be completed prior to allowing livestock grazing to resume for the 2001-2002 grazing season, *Provided further that* the Saddle Butte permittees may voluntarily complete these fencing projects at an earlier date;

Three water developments in the Saddle Butte Allotment proposed by intervenor (Map Exhibit 1 to Docket No. 231),<sup>1</sup> consisting of wells, underground pipelines, troughs, and necessary support equipment such as generators, pumps, fuel tanks, and exclosure fencing, each main pipeline to be buried within the disturbed area of certain roads and ways that cross the Allotment and all facilities to be sited at locations designated by the Bureau of Land Management, said water facilities to be sufficient to provide a reliable water source for the livestock and wild horses grazing on the allotment;

C. Fence D-1 (Map Exhibit 149);

D. Fence A-1 (Map Exhibit 148);

E. Fences A-3 and A-4 (Map Exhibit 148);

F. Fence W-1 (Map Exhibit 154) and associated 12-foot cattle guard at road crossing;

G. Fences W-2 and W-3 (Map Exhibit 154) and associated 12-foot cattle guard at road crossing;

H. Fences W-5 (Map Exhibit 154);

I. Fences L-1 (Map Exhibit 154);

J. Fencing along the southern rim of the Upper West Little Owyhee in the Louse Canyon Allotment, to be designed by BLM and the livestock

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<sup>1</sup> Intervenor's Reply to Plaintiffs' Opposition to Intervenor's Motion to Stay or Modify Permanent Injunction, Exhibit 1, consisting of a large map on which is depicted the routes and approximate locations of the pipelines, wells, and troughs.

operators using similar stipulations and conditions as apply to the other fences identified in this Order and to be depicted in approximate locations on a map hereinafter filed as Defendants' Exhibit 155.

9. The above fences shall include gates, as specified by the Bureau of Land Management, which shall be closed during all times when cattle are present in the pastures including said fences (except to remove straying cattle from an area of concern). The exact locations and lengths of the fences directed by this Order shall be as specified by the Bureau, and it is understood that the Map Exhibits referenced herein give only the approximate locations and lengths. If negative impacts to sensitive species or cultural sites cannot be avoided through fence location, the fence project shall be discontinued. Permittees shall follow the Bureau's specifications as to the materials used in and design of the fences. The Saddle Butte permittees shall follow the Bureau's specifications as to the location and design of wells (which must also comply with State law), the diversion from Crooked Creek (also to comply with State law), the locations of and materials used for the water troughs, the location, placement, and construction methods of pipeline installation, the portability of all support equipment such as generators, fuel tanks, and containment facilities, and the design of fuel tanks and containment facilities. During construction or maintenance of the water development projects, the permittees shall, under the Bureau's supervision, conduct road maintenance as necessary to avoid driving vehicles off the roads, but road maintenance shall not exceed the existing road disturbance. Any and all of the above-identified projects may be continued and maintained pending completion of the EIS. If

a fence project or a water project is not completed by the grazing season beginning in 2001, the project shall be discontinued and the respective pasture closed to prevent livestock access to the area of concern. Prior to construction of any new structural project, the Bureau and the constructing permittee(s) will enter into a Cooperative Agreement to cover the design details and to assign individual permittees responsibilities for the construction and maintenance. The Bureau shall give telephone notice to a designee of the plaintiffs of the beginning of construction of each such project.

10. Because the new fences for the Star Valley and Louse Canyon Allotments cannot be constructed by June, 2000, due to poor access and snowdrifts, the injunction in paragraphs 1 through 3 above shall not apply until August 1, 2000, in the Star Valley Allotment, and shall not apply until commencement of the 2001 grazing season in the Louse Canyon Allotment. In the interim, the permittees must agree to conditions stipulating daily riding during the grazing seasons, and the Bureau of Land Management shall impose utilization limits in riparian areas of 19% or less on herbaceous riparian species, measured by July 15. If the Bureau determines that the permittees have failed to perform according to this standard, livestock shall be removed from the pasture immediately, and grazing shall not be allowed until the fences are complete.

11. The Bureau of Land Management shall conduct periodic compliance checks during and at the end of the grazing season. If any requirements of this Order are not being met, the Bureau shall notify the parties and the Court of the noncompliance and

of the action taken by the Bureau to follow up on the matter; however, the discovery of incidental or unintentional noncompliance beyond the permittee's control or of minor consequence shall not give rise to an immediate reporting requirement, but shall be reported in accordance with paragraph 12 herein. BLM will advise the parties when monitoring outside the areas of concern indicates immediate corrective action must be taken and what action is taken.

12. The Bureau of Land Management shall provide the Court and the parties with an annual report, by March 1 of each year, on its compliance checking for the preceding year and the results found and actions taken. Within this annual report, the Bureau shall also indicate its progress toward completion of the EIS, including resource inventory, monitoring, and planning activity during the preceding year. Finally, the Bureau will provide an outline of projected work to be accomplished toward completion of the EIS in the year to come.

13. The parties, or any of them, may return to this Court at any time for any needed interpretation, modification, or enforcement of this Order. In particular, if the permittees of the Saddle Butte Allotment ascertain that the water development projects in paragraph 8 B. hereinabove are financially or otherwise not feasible, the intervenor may return to this Court for a substitution of a water hauling alternative.

Dated this 28<sup>th</sup> day of April, 2000.

  
JAMES A. REDDEN