

Peter M. Lacy (“Mac”) (OSB # 01322)

David H. Becker (OSB # 08150)

Oregon Natural Desert Association

917 SW Oak Street, Suite 408

Portland, OR 97205

(503) 525-0193

lacy@onda.org

dbecker@onda.org

Kristin F. Ruether (OSB # 05368)

Advocates for the West

P.O. Box 1612

Boise, ID 83701

(208) 342-7024

kruether@advocateswest.org

Attorneys for Plaintiffs

Karin J. Immergut, OSB # 96314

United States Attorney

District of Oregon

Stephen Odell, OSB # 90353

Assistant United States Attorney

E-mail: *steve.odell@usdoj.gov*

1000 SW 3rd Ave., Suite 600

Portland, OR 97204-2902

Telephone: 503-727-1024

Telefax: 503-727-1117

Of Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

**OREGON NATURAL DESERT ASS'N and
WESTERN WATERSHEDS PROJECT,**

Plaintiffs,

Case No. 08-576-BR

v.

**STIPULATION TO AVOID MOTION
FOR TEMPORARY RESTRAINING**

STIPULATION TO AVOID MOTION FOR TRO and/or PI

PAT RYAN, Field Manager, Malheur Resource Area, BLM, **DAVE HENDERSON**, Vale District Manager, BLM, **BUREAU OF LAND MANAGEMENT**, and **UNITED STATES DEPARTMENT OF THE INTERIOR**,

ORDER AND/OR PRELIMINARY INJUNCTION AND [PROPOSED] ORDER

Defendants.

COME NOW plaintiffs Oregon Natural Desert Association and Western Watersheds Project (hereafter “ONDA”) and defendants Pat Ryan *et al.* (hereafter “BLM”), by and through their undersigned counsel of record, who hereby stipulate and agree as follows:

1. ONDA filed this action on May 13, 2008, seeking judicial relief ordering BLM to comply with the requirements of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321–61, and the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 1701–84, with respect to the agency’s management of public lands within the North Fork Malheur Geographic Management Area (“NFMGMA”), situated in the Blue Mountains of eastern Oregon. Defendants filed an Answer on July 17, 2008.

2. On May 12, 2008, prior to initiating this action, ONDA provided a copy of the complaint to agency counsel for defendants and informed defendants that plaintiffs 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 within areas that ONDA had inventoried and recommended as having wilderness characteristics and within sage grouse habitat areas.

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. Now, the parties have

reached an agreement by which BLM agrees not to move forward with or authorize construction of certain projects.

4. To avoid having to litigate the proposed Motion for Temporary Restraining Order and/or Preliminary Injunction that ONDA had contemplated filing, the parties to this Stipulation agree to the following terms:

a. BLM intends to move forward with implementation, further implementation, or completion of the challenged NFMGMA decisions projects listed on Exhibit A (attached hereto). The project locations are shown on Exhibit B. (attached hereto) (July 2008 map prepared by BLM showing planned and implemented projects, attached hereto).

b. For the duration of this agreement, BLM agrees not to authorize, implement, or further implement any of the other projects authorized under the challenged NFMGMA decisions.

c. This stipulation does not prohibit BLM from using already constructed projects or otherwise affect any portion of the challenged NFMGMA decisions, including the authorization to carry out livestock grazing, except as expressly provided herein. This stipulation shall remain in effect for the duration of the 2008 grazing season, which ends on October 31, 2008, or shall terminate upon the issuance of this Court's decision on the merits of ONDA's claims in this case, if the Court renders a decision prior to October 31, 2008.

d. In addition to the parties' agreement as to which projects BLM will and will not authorize, implement, or further implement, as described in sub-paragraphs (a) and (b) above, BLM shall maintain already constructed or implemented projects

sufficiently to avoid environmental injury throughout the 2008 grazing season, or until this Court issues a decision on the merits.

5. The parties understand that ONDA reserves the right to file a motion for preliminary injunctive relief should circumstances change, or if the Court has not yet been able to issue a ruling on the merits of Plaintiffs' claims before the BLM re-commences on-the-ground activities at any point.

6. Neither the negotiation of nor assent to this Stipulation shall be construed as an admission of any factual or legal assertion advanced in plaintiffs' Complaint, including for purposes of seeking or defending against any request for attorneys' fees, costs, and/or expenses. Rather, 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.

7. This Stipulation resolves the issues that would have been raised by plaintiffs' Motion for Temporary Restraining Order and/or Preliminary Injunction. Therefore, upon approval of this Stipulation by the Court, plaintiffs agree to not file their Motion for Temporary Restraining Order and/or Preliminary Injunction, subject to the condition that the herein agreed-upon terms are satisfied.

DATED this 22nd day of July, 2008.

s/ Peter M. Lacy

Peter M. Lacy
Oregon Natural Desert Association

Of Attorneys for Plaintiffs

DATED this 22nd day of July, 2008.

s/ Peter M. Lacy (for)

Stephen Odell
Assistant U.S. Attorney

Of Attorneys for Defendants

The court ADOPTS the parties' Stipulation to Avoid Motion for Temporary Restraining Order and/or Preliminary Injunction (Dkt # _____).

IT IS SO ORDERED

DATED this _____ day of _____, 2008

Anna J. Brown
United States District Judge

EXHIBIT A:
Projects the Parties Agree BLM May Implement in 2008
Without Triggering a Motion for TRO and/or Preliminary Injunction

- Allotment #6/Juniper Gulch Pasture: Horseshoe Bend Spring (JUOC cut and redevelopment)¹
- Whitley Canyon Allotment: Grasshopper Flat Spring (burnt in 2007 fires so no JUOC cut needed; redevelopment is not recommended at this time as the water source is not adequate to justify reconstruction)
- Whitley Canyon Allotment/Pete's Mountain Pasture: Chitsey Spring (JUOC cut and redevelopment)
- Beulah Allotment: proposed new North Homestead division fence (approx. 2 miles)
- Beulah Allotment: proposed maintenance/reconstruction of the existing Mud Springs fence (approx. 0.5 miles)
- DeArmond Murphy Allotment/Beulah Seeding Pasture: Duke Spring (JUOC cut and redevelopment)
- DeArmond Murphy Allotment/Castle Rock Pasture: Irish Spring (JUOC cut only; redevelopment is not recommended at this time as the water source is not adequate to justify reconstruction)
- Castle Rock Allotment/Poison Pasture: Twin Juniper Spring (JUOC cut and redevelopment)
- Castle Rock Allotment/Heifer Pasture: Lost Creek Spring (JUOC cut and redevelopment)
- Castle Rock Allotment/Heifer Pasture: Iris Spring (JUOC cut and redevelopment)
- Castle Rock Allotment/Sheep Rock Pasture: Castle View Spring (JUOC cut and redevelopment)
- Castle Rock Allotment/Sheep Rock Pasture: Pine Spring (JUOC cut and redevelopment)
- Castle Rock Allotment/Clevenger Butte #2 Pasture: unnamed Spring (JUOC cut and redevelopment)
- Beulah Reservoir Allotment/Poverty area fences: reconstruction of existing, burnt fences and building temporary fences along proposed project lines as identified in the NFMGMA decision.

¹ "JUOC" refers to western juniper (*Juniperus occidentalis*).