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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

**OREGON NATURAL DESERT ASSOCIATION,
WESTERN WATERSHEDS PROJECT, and
COMMITTEE FOR IDAHO’S HIGH DESERT,**

Plaintiffs,

v.

**BUREAU OF LAND MANAGEMENT and
JERRY TAYLOR, Field Manager, Jordan
Resource Area, Bureau of Land Management,**

Defendants.

Civil No. CV-01-1778-BR

STIPULATION FOR DISMISSAL

On December 10, 2001, Plaintiffs filed suit against Defendants alleging that Defendants' September 24, 2001 decision to implement the Jackies Butte/Jordan Creek Emergency Fire Rehabilitation Plan ("EFR decision") violated the National Environmental Policy Act (NEPA), 42 U.S.C. § § 4321-4370d, and the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § § 1701-1785. The parties to the above-entitled case have reached an agreement for the dismissal of Plaintiffs' action, with the parties' agreement to perform the measures in this Stipulation for Dismissal. Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, and upon the Court's approval of the reopener clause in paragraph 12 of this Stipulation, the parties, through their attorneys, hereby stipulate that the above-entitled action should be dismissed with prejudice and further agree as follows:

1. The Bureau of Land Management (BLM) will provide Plaintiffs maps and acreage measurements of the Jackies Butte/Jordan Creek Emergency Fire Rehabilitation Plan that include existing information on (i) pre-burn vegetative community composition and (ii) previous seedings within the project area. This will include existing information that identifies the locations of the pre-burn vegetative communities in relation to the areas denoted for seeding in the EFR decision as well as previous seedings within the area covered by the EFR decision. If no maps currently exist showing pre-burn vegetative communities and previous seedings, the BLM will develop such maps from existing records and information. This information will be provided within three months of dismissal of the action.

2. The parties acknowledge that the BLM is a collaborator in a United States Geological Survey-led research project titled "Integrating Weed Control and Restoration for Great Basin

Rangelands." This research project will assist the parties in understanding the potential for the use of native species in cheatgrass-infested areas in the Great Basin. Because this is a multi-state, multi-agency research project, its exact parameters and time of completion are beyond the control of the BLM. Accordingly, the parties anticipate that the research will be conducted with the BLM as a collaborator, but this Stipulation does not control the manner in which the research is carried out. As of the date of this Stipulation, four enclosure sites have been selected in the Vale District, Malheur Resource Area as follows:

one 3.5-acre enclosure near Vale, OR, in loamy 10-12" precipitation site (T.19 S.; R.45 E, Section 24); one 3.5 acre enclosure near Adrian, OR in loamy 8-10" precipitation site (T.23 S., R. 46 E., Section 16); one 60 acre enclosure near Vale, OR, in loamy 10-12" precipitation site (T.19 S.; R.46 E, Section 19); one 60-acre enclosure near Adrian, OR on a loamy 8-10" precipitation site (T.23 S.; R.46 E, Section 5).

3. The BLM will rest from livestock grazing the 35,000 acres that have been seeded pursuant to the EFR decision for a minimum of two growing seasons following seed planting. The BLM will, within three months of dismissal of the action, provide Plaintiffs with a map (or incorporate this information under Item One) that shows the exterior boundaries of the seeded area and information on the actual seed mixture which was planted under the EFR decision. The BLM has already provided, through the environmental assessment, maps of the project area and the anticipated seed mixture.

a. Opening the newly-seeded areas for grazing after this period will be based on plant health and vigor. Key indicators of plant health and vigor will be the extent to which the plants are well-rooted and able to be grazed without being pulled from the

ground. This will generally be measured by taking sample plants and determining whether the roots can be pulled from the ground when the plant is grasped 1" above the ground and pulled. The BLM will survey the seeding area and then sample certain areas as representative of conditions. The BLM will also consider factors such as whether there are other existing (non-seeded) species present, including the exotic species cheatgrass, and the potential effects of interspecies competition on seeded-species success. Whether the plants show sufficient density for the site will also be considered, but it is recognized that, due to climactic and soil conditions, plants may not become established at the density desired and grazing may be allowed in this situation. Monitoring of the degree and extent of establishment will be conducted as described in the EFR decision. The BLM will provide Plaintiffs with copies of all monitoring data, reports, and assessments used to reopen the areas to grazing. The BLM will mail Plaintiffs any assessment concerning the resumption of grazing no later than the day livestock are turned out.

b. It is understood that if the new seeding fails and cheatgrass returns, the BLM may authorize livestock grazing on failed seeding areas depending on site-specific conditions. The BLM will provide Plaintiffs with copies of all monitoring data, reports, and assessments used to reopen the areas to grazing. The BLM will mail Plaintiffs all such information no later than the day livestock are turned out.

c. As provided in the EFR decision, those burned areas that were not seeded may be open to livestock grazing after one growing season depending on plant health and vigor. The BLM will provide Plaintiffs with copies of all monitoring data, reports, and assessments used to reopen the areas to grazing. The BLM will mail Plaintiffs all such information no later than the day livestock are turned out.

4. The BLM will use its administrative remedies to promptly address any breaches of the

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areas closed to grazing.

5. The parties agree to engage in discussions concerning seed types, seeding methods, and seeding protection in an effort to reach a better mutual understanding of the opportunities and limitations associated with vegetative rehabilitation and restoration in the Jordan Resource Area. Such discussions may occur generally or in the context of a specific project or Geographic Management Area (GMA) assessment. The BLM already recognizes Plaintiffs as interested publics and intends to include them as such in future GMA assessments, fuel management projects and fire rehabilitation actions in the Jordan Resource Area. The BLM will inform Plaintiffs of seeding proposals to facilitate early dialogues concerning seed types, seeding methods, and seeding protection. The BLM and Plaintiffs will also schedule two field tours during the year 2003 to observe past fire rehabilitation seeding efforts. The parties will schedule one tour as a pre- or mid-season visit, and the second as a post-grazing season visit.

6. Future rehabilitation and restoration decisions on the Jackies Butte Allotment and other allotments within the scope of the EFR decision will be consistent with the applicable *Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Public Lands Administered by the Bureau of Land Management in the States of Oregon and Washington.*

7. The parties agree that nothing in this Stipulation for Dismissal is evidence of, or premised upon, a finding or admission of any violation of any applicable law, regulation, or other requirement or an admission of liability in any other respect.

8. Each party shall bear its own attorney fees, costs, and expenses.

9. Plaintiffs agree to not further pursue their administrative appeal of the EFR decision (docketed as IBLA 2002-57), which was dismissed as moot by the Interior Board of Land

Appeals on May 17, 2002.

10. This Stipulation contains all of the agreements between the parties and is the final and sole agreement between the parties concerning the complete and final resolution of Plaintiffs' cause of action.

11. Nothing in this Stipulation shall be construed to deprive a federal official of authority to revise, amend, or promulgate regulations or to issue or amend decisions. Nothing in this Stipulation shall be construed to commit a federal official to expend funds not appropriated by Congress.

12. Notwithstanding the dismissal of this case with prejudice, if Defendants do not meet the terms of this Stipulation, Plaintiffs may reopen the above-entitled action by filing a motion to that effect rather than filing a new complaint or civil action. If Plaintiffs' action is not dismissed or if the case is reopened, Defendants need not meet the terms of this Stipulation. It is the parties' intent to first attempt to resolve any disputes about implementation of this Stipulation prior to reopening the case.

13. Defendants' obligations under this Stipulation shall end upon satisfaction of items 1, 2, 3 and 5 of this Stipulation in the following manner:

Item 1: BLM has delivered the maps and information to Plaintiffs.

Item 2: Implementation of the USGS study project has commenced -- meaning that the test sites have been selected and seeding, site preparation, or environmental analysis has begun and the Vale District BLM remains a collaborator in the project at that time.

Item 3: The BLM has provided Plaintiffs the maps and the documents and information used to resume livestock grazing on each portion (newly seeded,

failed seedings, and not seeded) of the EFR area. If the BLM determines to rest these areas from grazing for more than two growing seasons, this item shall be considered satisfied as soon as BLM provides Plaintiffs with the documents and information concerning the determination to provide for this rest.

Item 5: For purposes of providing a definite termination date for this Stipulation, this portion of the Stipulation shall be deemed met when the BLM and Plaintiffs have conducted two field tours including discussion of seeding issues or the parties agree in writing not to complete these tours during 2003 (in which case this portion of the Stipulation is deemed satisfied). This does not limit the opportunities of Plaintiffs, however, to continue their involvement as interested publics; nor does it indicate an intent by BLM to discontinue efforts to cooperate with Plaintiffs as interested publics.

It is understood that, for purposes of providing a definite termination date for this Stipulation, items 4 and 6 will remain in effect until items 1, 2, 3 and 5 are satisfied as described above, after which time all obligations under this stipulation will be deemed satisfied. This does not, however, indicate an intent by the BLM to cease carrying out legal responsibilities with regard to trespass abatement and the regulations implementing the *Standards for Rangeland Health*.

DATED this ____ day of April, 2003.

Respectfully submitted,

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