

PAUL A. TURCKE (admitted *pro hac vice*)
SUSAN E. BUXTON, OSB #91030
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
225 North 9th Street, Suite 420
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Defendant-Intervenors Robertson Ranch

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

OREGON NATURAL DESERT
ASSOCIATION and CENTER FOR
BIOLOGICAL DIVERSITY,

Case No. CV 03-0213-KI

Plaintiffs,

vs.

UNITED STATES FOREST SERVICE, and
ROGER W. WILLIAMS, Malheur National
Forest Supervisor,

STIPULATION RESOLVING
MOTION FOR PRELIMINARY
INJUNCTION AS APPLIED TO
ROBERTSON RANCH

Defendants,

and

ROBERTSON RANCH, J.W. and Carol
Robertson, Patrick and Lauri Joyce,

Defendant-Intervenors,

and

OREGON CATTLEMEN'S ASSOCIATION,

Defendant-Intervenors.

COME NOW plaintiffs, defendants, and defendant-intervenors Robertson Ranch, by and through their undersigned counsel of record, who hereby stipulate and agree as follows:

1. This matter is presently before the Court on a motion for preliminary injunction filed by Plaintiffs on March 31, 2004. In that motion, Plaintiffs ask the Court to enjoin livestock grazing along the North Fork Malheur River Wild and Scenic River corridor, or in pastures adjacent to but lacking secure fencing from that River corridor. Defendant-Intervenors Robertson Ranch are authorized to graze livestock in the Ott Allotment beginning annually on June 1.

2. Plaintiffs' motion potentially affects Robertson Ranch's livestock grazing in the Rattlesnake Pasture of the Ott Allotment. The Rattlesnake Pasture represents the only area utilized by Robertson Ranch livestock in which livestock access is authorized to the North Fork Malheur Wild and Scenic River corridor or where livestock access to that corridor is not prevented by secure fencing. Specifically, and despite Robertson Ranch's regular efforts at herding, the existing status of the Rattlesnake Pasture allows livestock to travel along the North Fork Malheur Scenic River via a route known as the Skagway Creek trail, as well as along various unnamed routes along the river's canyon rim. Under their existing authorization, Robertson Ranch would turn livestock into the Rattlesnake Pasture on July 11.

3. The North Fork Malheur Scenic River Management Plan contemplates preventing livestock access along the Skagway Creek trail. Specifically, that Plan states "[l]ivestock use of the proposed Skagway Creek trail is prohibited within the river corridor, and fences or other devices may be installed to prevent cattle from using the

trail.” River Management Plan, Management Area 22A at p. 11. In addition, the Plan authorizes expenditure of \$65,000 for construction of 13 miles of “corridor fence” in the Ott and Spring Creek Allotments. Id. at 13. Construction of 13 miles of “corridor fence” in the Ott and Spring Creek allotments are one of the projects identified “which are needed to implement this river management plan. Project level analysis will need to be conducted before the decision to implement any of these proposed actions is made. Therefore, this table is not a list of targets but can be considered a list of opportunities identified to date, which is likely to be implemented during the next 10 years, pending receipt of funding.” Id. at 11.

4. To more fully implement the management direction of the North Fork Malheur Scenic River Management Plan and to address the issues raised by Plaintiffs’ motion for preliminary injunction as applied to the Ott Allotment and Robertson Ranch, the parties to this Stipulation agree to allow the construction of a secure and permanent fence in the Rattlesnake Pasture to prevent livestock access to the North Fork Malheur River. The fence will be built to all applicable Forest Service specifications and standards, and the approximate location of the fence is depicted in yellow on Exhibit “A” attached hereto.

5. In addition to the construction of new fence described in the preceding paragraph, Robertson Ranch agrees to maintain and/or upgrade the existing fence dividing the Ott and Spring Creek allotments running east to west from the vicinity of Deadhorse Reservoir to the North Fork Malheur Scenic River corridor so as to provide a reasonably secure barrier to livestock. The approximate location of fence subject to this

duty to maintain/upgrade is identified as the “Deadhorse Reservoir Fence” and depicted in red on Exhibit “A” attached hereto.

6. The fence shall be completed on or before July 7, 2004. The final location of the fence may be modified by agreement of the parties to this Stipulation based upon further site visit(s) or other additional information. The parties agree that the purpose of the fence constructed pursuant to this Stipulation, along with existing fencing and natural barriers, is to prevent livestock access, to the extent reasonably possible, from the Ott Allotment to the North Fork Malheur Scenic River corridor. Should livestock continue to access the North Fork Malheur Scenic River corridor from the Ott Allotment after construction of the fence outlined herein, the parties agree to confer and determine whether they can agree upon additional fencing necessary to accomplish the mutual goal of preventing livestock access to the River, and to construct or otherwise implement any agreed-upon modifications and/or additional measures. The parties’ agreement referenced in the preceding sentence shall terminate upon the issuance of this Court’s decision on the merits of Plaintiffs’ claims covering the Ott Allotment in this case.

7. Robertson Ranch shall provide labor and be responsible for construction and maintenance of the fence necessitated by this Stipulation or modification(s) thereto. Defendant Forest Service shall provide materials for the fencing or shall reimburse Robertson Ranch for the reasonable and agreed-upon value of fencing and other materials used in construction of the new fence described in paragraph 4 above. Where not specifically addressed by this Stipulation responsibility for performing future maintenance and acquiring materials used in such maintenance shall not be governed by this Stipulation but shall be governed by the Forest Service grazing permit issued to

Robertson Ranch, any applicable allotment operating plan(s), or further agreement between the Forest Service and Robertson Ranch.

8. Neither the negotiation of nor assent to this Stipulation shall be construed as an admission of any factual or legal assertion advanced in Plaintiffs' motion for preliminary injunction. 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.

8. This Stipulation resolves the issues raised by Plaintiffs' motion for preliminary injunction in the Rattlesnake Pasture and Ott Allotment. This pasture constitutes the sole area where Plaintiffs' motion for preliminary injunction addresses Robertson Ranch livestock grazing. Therefore, upon approval of this Stipulation by the Court, Plaintiffs withdraw their motion for preliminary injunction without prejudice as to livestock grazing authorized by Robertson Ranch, subject to the condition that the herein agreed-upon fence be completed on or before July 7, 2004. Counsel for Robertson Ranch are excused from submitting further response to Plaintiffs' motion for preliminary injunction and are further excused from appearing at oral argument on the motion, presently scheduled for May 25, 2004, at 8:30 a.m.

DATED this 5th day of May, 2004.

s/ Peter M. Lacy

Peter M. Lacy ("Mac")

Of Attorneys for Plaintiffs

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DATED this 5th day of May, 2004.

s/ Peter M. Lacy for

Stephen J. Odell
Assistant U.S. Attorney

Val J. McLam Black
USDA Office of General Counsel

Attorneys for Defendants

DATED this 5th day of May, 2004.

s/ Peter M. Lacy for

Paul A. Turcke

Attorneys for Robertson Ranch