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

**OREGON NATURAL DESERT
ASSOCIATION and CENTER FOR
BIOLOGICAL DIVERSITY**

Case No. CV-03-381-HA

Plaintiffs,

v.

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

**PLAINTIFFS’ RESPONSE TO
DEFENDANTS’ MOTION FOR
CONTINUANCE**

Defendants,

**DAYVILLE GRAZING ASSOCIATION
and OREGON CATTLEMENS
ASSOCIATION,**

Defendant-Intervenors.

Plaintiffs respond to Defendants' motion for continuance to state their concerns that further delay will only serve to prejudice Plaintiffs and their interests. Plaintiffs oppose a continuance only to the extent that such a delay will, in fact, cause such prejudice.

Recently, this Court denied Plaintiffs a preliminary injunction in a case with similar facts and some similar claims. Oregon Natural Desert Ass'n v. U.S. Forest Svc., Civ. No. 03-213-KI slip op. (June 10, 2004) (Attachment 20 to Plaintiffs Reply in Support of Motion for Preliminary Injunction). The Court found that "Plaintiffs have submitted fairly convincing evidence that the Forest Service's management of livestock grazing has caused ecological damage to the riparian habitats" and "substantial evidence that full resting may be needed in many of these areas" Id. slip op. at 12, 13. The Court held that "Plaintiffs have made a strong showing that standards are not being met and that they are likely to prevail." Id. at 15. However, the Court declined to grant a preliminary injunction because "[g]iven that the motion is being decided right up against the start of the grazing season, I am greatly influenced by the lack of time the ranchers would have to mitigate the effects of the injunction." Id. at 19.

As discussed in Plaintiffs' reply in support of their motion, the balance of harms should not tip against the Plaintiffs based on the timing and posture of the case. Plts.' Reply at 14. Plaintiffs have made every effort to resolve this motion well before the eve of grazing by filing the motion for preliminary injunction on March 19, 2003. Dkt. #48. The Forest Service did not respond to the motion until May 24, 2004. Dkt. #70. As Plaintiffs argued in response to the Forest Service's second request for an extension of time, Plaintiffs were concerned that a delay in briefing would allow insufficient time to hear this motion and prejudice their interests. Response to Second Extn at 2 (Dkt. #61).

Nor should the proximity of the grazing season favor the grazing permittees. The permit holders have known for several years that grazing practices are significantly harming riparian habitat that is critical to steelhead. Even when the Forest Service has placed minimal restrictions on the permittees, they have failed to abide by them causing additional injury to steelhead habitat. See e.g. MCAR 1090 (100 head of cattle accessed the SFMC during spawning, move triggers exceeded, “third year in a row” that the permittee failed to keep cattle off the creek during spawning); PAR 4099 (trespass and unauthorized use). Moreover, permittees have consistently failed to meet move triggers on the allotments, which is the primary responsibility of the permittees. PAR 5047. Finally, the permit holders have known since at least March 8, 2004 that Plaintiffs would need to move for a preliminary injunction. Response to Second Extn., Att. 1 at page 33. Based on these facts, the permittees should not benefit from delay in a balance of harms.

Ordinarily, Plaintiffs would not oppose Defendants’ request for a continuance based upon Mr. Odell’s emergency operation. Plaintiffs do so here only to the extent they believe that delay will cause prejudice to their interests. Plaintiffs’ lead counsel is available for hearing July 9, 2004, but Plaintiffs are uncertain whether their experts are available on that date at this time.

Dates this 23rd day of June, 2004

Respectfully Submitted,

S/Stephanie M. Parent
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