UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AMERICAN MOTORCYCLIST ASSOCIATION etc., et al.,

Plaintiffs,

v.

JAMES G. WATT*, etc., et al.,

Defendants.

NO. CV 80-5561-AWT

COUNTY OF INYO, etc.,

Plaintiff,

v.

JAMES G. WATT*, etc., et al.,

Defendants.

NO. CV 80-5599-AWT

NATIONAL OUTDOOR COALITION,

Plaintiff,

v.

JAMES G. WATT*, etc., et al.,

Defendants.

NO. CV 80-5629-AWT

CALIFORNIA NATIVE PLANT SOCIETY, etc., et al.,

Plaintiffs,

v.

JAMES G. WATT*, etc., et al.,

Defendants.

NO. CV 81-489-AWT

MEMORANDUM DECISION

Plaintiffs in all but one of these consolidated actions, American Motorcyclist Association and Sports Committee, District 37, A.M.A., Inc. (collectively "AMA"), County of Inyo and National Outdoor Coalition ("NOC"),[1] have each moved for a preliminary injunction restraining defendants, the Secretary of the Interior ("Secretary"), the Director of the Bureau of Land Management ("BLM"), Department of the Interior, and the California State Director of BLM, from implementing the California Desert Conservation Area Plan (the "Plan"), which was prepared by the BLM pursuant to Section 601 of the Federal Land Policy and Management Act of 1976 ("FLPMA"), 43 U.S.C. §1781.[2] Section 601 requires the Secretary to inventory the resources in the California Desert Conservation Area ("CDCA") and prepare a comprehensive land use management plan for the area. The CDCA and the Plan cover the more than 12 million acres of desert land in the State of California which are owned by the United States and administered by the BLM.

* Substituted for Cecil D. Andrus, former Secretary of the Interior, pursuant to Rule 25(d), Fed. R. Civ. P.

Plaintiffs seek to enjoin the Plan based on defendants' alleged failure to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. §4321 et seq. ("NEPA"), FLPMA, 43 U.S.C. §1701 et seq., and the resource management planning, programming and budgeting regulations promulgated by the BLM pursuant to Sections 201 and 202 of FLPMA, 43 U.S.C. §§ 1711 and 1712 (the "BLM planning regulations"). 43 C.F.R. §1600 et seq.[3] After reviewing the extensive record on these motions, I conclude that plaintiffs have shown that there is a likelihood that they will prevail on the merits at trial. However, equitable considerations militate against granting preliminary injunctive relief in favor of any of the plaintiffs. None of the plaintiffs has shown that the balance of hardships tips in its favor or that it will suffer irreparable harm if preliminary injunctive relief is denied. See Los Angeles Memorial Coliseum Comm'n v. National Football League, 634 F.2d 1197, 1201 (9th Cir. 1980). Accordingly, for the reasons hereinafter stated, each of the motions for preliminary injunctions restraining enforcement and implementation of the Plan will be denied.

BACKGROUND

The CDCA Plan

The Plan is a long-range comprehensive plan for the management, use, development and protection of the over 12 million acres of land owned by the United States and administered by the BLM in the CDCA. Section 601 of FLPMA directs the Secretary to prepare and implement a plan which "take[s] into account the principles of multiple use and sustained yield in providing for resource use and development, including, but not limited to the maintenance of

environmental quality, rights-of-way, and mineral development." 43 U.S.C. §1781(d). The Plan was developed to provide general, regional guidance for management of the CDCA over a 20-year period. BLM, Final Environmental Impact Statement and Proposed Plan VII (1980) ("Final EIS"). It is designed to consider issues and resolve basic conflicts on a large scale in order to aid future decision-makers and "will be at the top of a hierarchy and provide the framework for subsequent plans for specific resources and uses, development of site specific programs or project action." Id. at E-2.

The following "planning components" are utilized in the Plan. Broad regional resource uses are addressed by a system of four multiple use classes: Controlled (Class C), which is designed to protect and preserve areas having wilderness characteristics described in the Wilderness Act, 16 U.S.C. §1131 et seq., and which serves as a preliminary recommendation by the Secretary that the areas are suitable for wilderness designation by Congress; Limited (Class L), which protects sensitive natural scenic, ecological and cultural resources, but provides for low intensity multiple use; Moderate (Class M), designed to provide for a wide variety of use, yet mitigate damage to the most sensitive uses; and Intensive (Class I), which emphasizes development oriented use of lands and resources to meet consumptive needs, yet provides for some protection of resources. Plan at 13.

All land use actions and resource management activities within a multiple use class must meet the guidelines for that class.[4] The Plan contains a chart which sets out how each of the guidelines will affect uses in each class. Id. at 15-20. For example, in accordance with the agricultural guidelines, agricultural uses,

excluding livestock grazing, are not allowed in areas designated as Class C or Class L, but may be allowed on suitable lands within Class M and Class I. Id. at 15.

A multiple use class may incorporate a number of types and levels of use consistent with the multiple use guidelines. Where such uses conflict, the conflicts -- the major issues of the Plan -- are addressed in twelve Plan Elements.[5] Each of the Plan Elements is subdivided into three areas of interest and responsibility: goals for the element, actions proposed for the element and implementation of the Plan as it affects the element. In each of the Plan Elements an attempt is made to identify existing or possible conflicts between varying uses and to provide the manager faced with resolution of these conflicts with a framework for making decisions relating to specific land uses.

The Plan (at 125-26) also designates 75 Areas of Critical Environmental Concern ("ACEC"), pursuant to Section 103(a) of FLPMA, which defines an ACEC as an area "within the public lands where special management attention is required . . . to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems and processes, or to protect life and safety from natural hazards." 43 U.S.C. §1702(a).

Management prescriptions for each area proposed for ACEC designation have been or will be developed by the BLM. These prescriptions are "site specific" and include both actions which the BLM has authority to carry out and recommendations of action which the BLM has no direct authority to implement, such as cooperative agreements with other agencies and mineral withdrawals. Plan at 123.

For example, ACEC #4, the Saline Valley in Inyo County, has been so designated because it is a wildlife habitat. The management prescriptions developed include cooperative management with the California Department of Fish and Game, acquisition of non-BLM lands through exchange and purchase, reduction of the burro populations, limitation of vehicles to approved routes, designation of camping areas and closing the Saline Dunes to vehicle entry. Id. at 125; see also Final EIS, App. IV.

Finally, the Plan identifies "Other Support Requirements," including special soil, air quality, and water resource programs, a trespass prevention program and a cadastral survey of the CDCA. Plan at 137-38.

The Final Environmental Impact Statement

The Final EIS, prepared by the BLM as required by NEPA, provides the decision-maker with four alternatives: a "No-Action Alternative" (as required by the Council on Environmental Quality ("CEQ") regulations which interpret NEPA, 40 C.F.R. §1500 et seq.), a "Protection Alternative," a "Balanced Alternative" and a "Use Alternative." The impact of each alternative on the environment is assessed by investigation of the effect of each plan element on each major resource for each alternative. In this way, the EIS attempts to compare the cumulative impact of each of the alternatives.

Specifically, the environmental impacts on the following resources and activities are evaluated in the EIS: air quality, water quality, soils, energy and minerals, vegetation, wildlife, cultural resources/Native American values, wilderness, visual quality, recreation, domestic livestock grazing, wild horse and burro and socioeconomics. Both the Draft EIS and Final EIS employ

the same method of analysis; however, the Final EIS also attempts to assess the impact of additional issues identified in the public review process. See Final EIS at E-5.

The Final EIS serves as both a "programmatic EIS" (the first tier of environmental review applicable to the "major federal action" embodied in the Plan) and a "site-specific EIS." As a "programmatic EIS" it focuses on broad issues and attempts to consider the relationship between the disparate environmental impacts caused by or associated with the various aspects of the Plan. See National Wildlife Fed'n v. Appalachian Regional Comm'n, No. 79-2349, slip op at 10 (D.C. Cir. Mar. 19, 1981); see also Kleppe v. Sierra Club, 427 U.S. 390, 413 (1976). As a "site-specific EIS" it endeavors to assess the environmental impact of the numerous site specific actions accomplished by the Plan (such as the designation of 75 ACECs).

The Planning Process

The Plan and Final EIS were in preparation for over three years. The Secretary appointed the CDCA or Desert Advisory Committee ("DAC") in early 1977 as required by Section 601(g) of FLPMA. 43 U.S. §1781(g). The DAC, which included members of the public with expertise in the various areas critical to the Plan, held numerous meetings and public seminars from 1977 to November, 1980. During that period, a number of techniques were utilized by the BLM to gain public input on the CDCA planning effort, including "feedback meetings" with interested groups, public hearings, three opinion polls and meetings and briefings with federal, state and local government entities. In December 1979, a "Draft Preview" was published to inform the public of the scope, content and background

of the Draft Plan and EIS in preparation for public comment. The Draft Plan and EIS were published and released for public comment in February, 1980. During the comment period further public meetings and briefings were held. A proposed Plan and a Final EIS were published in October, 1980 and circulated for additional public comment. The Plan became effective on December 17, 1980, when former Assistant Secretary Martin approved a marked-up version of the Final Plan. Former Secretary Andrus subsequently concurred in the Plan. Since that time, the BLM has taken steps to implement the Plan within the constraints imposed by time and budgetary limitations. A final version of the Plan was published in April, 1981.

DISCUSSION

I. Standard for Issuance of Preliminary Injunctions in Environmental Cases

The Ninth Circuit has declined to specify the standard to be applied in determining whether to grant or deny preliminary injunctive relief in environmental cases. In at least one environmental decision the Court has used the so-called "traditional test," which requires that plaintiff show:

(1) a strong likelihood of success on the merits;

(2) the possibility of irreparable injury to the plaintiff if the preliminary relief is not granted;

(3) a balance of hardships favoring the plaintiff; and

(4) advancement of the public interest.

See Warm Springs Dam Task Force v. Gribble, 565 F.2d 549, 551-52 (9th Cir. 1977) (application for stay pending appeal).

However, in other types of cases the Court has held that plaintiffs may satisfy their burden by demonstrating either (1)

probable success on the merits and the possibility of irreparable injury, or (2) that serious questions are raised and the balance of hardships tips sharply in favor of the moving party. Los Angeles Memorial Coliseum Comm'n, supra, 634 F.2d at 1201; Benda v. Grand Lodge, IAM, 584 F.2d 308, 314-15 (9th Cir. 1978), cert. dismissed, 441 U.S. 937 (1979); William Inglis & Sons Baking Co. v. ITT Continental Baking Co., 526 F.2d 86, 88 (9th Cir. 1975). The plaintiff must make some showing of irreparable harm[6] to satisfy either alternative and at "least a minimal tip in the balance of hardships must be found even when the strongest showing on the merits is made" since "[t]hese are not separate tests, but the outer reaches of a single continuum." Los Angeles Memorial Coliseum Comm'n, supra, 634 F.2d at 1201, quoting Benda, supra, 584 F.2d at 315.

As stated, the test to be applied in environmental cases remains open in this Circuit. National Wildlife Fed'n v. Adams, 629 F.2d 587, 590 n.4 (9th Cir. 1980); City of Anaheim, Cal. v. Kleppe, 590 F.2d 285, 288 n.4 (9th Cir. 1978); Sierra Club v. Hathaway, 579 F.2d 1162, 1167 n.7 (9th Cir. 1978). However, because neither the so-called "traditional test" nor the alternative test set out in Inglis and Benda has been met by any of the plaintiffs, it is unnecessary to reach this question. Finally, as suggested by prior cases, I adopt the requirement that in environmental cases a preliminary injunction should not issue, absent a finding that the public interest will be advanced. See Warm Springs Dam Task Force, supra, 565 F.2d at 551; Reserve Mining Co. v. United States, 498 F.2d 1073, 1076-77 (8th Cir. 1974); cf., Sierra Club v. Morton, 405 U.S. 727, 740-41 & n.15 (1972) (party with standing may assert the interests of the general public in support of its claims for

equitable relief). This requirement is particularly appropriate in environmental cases which necessarily involve public rather than private disputes and in which the rights of persons who are not parties to the action are implicated. See Yakus v. United States, 321 U.S. 414, 440-41 (1944).

II. Standing

A threshold question which must be addressed is whether the plaintiff organizations and the County of Inyo have standing to challenge the Plan based on the BLM's purported violation of NEPA, FLPMA, and the BLM planning regulations. A person aggrieved by agency action has standing to challenge that action if:

(1) the challenged action causes him "injury in fact;" and

(2) the alleged injury is to an interest arguably within the zone of interests to be protected or regulated by the statute that the agency is claimed to have violated.

§10, Administrative Procedure Act ("APA"), 5 U.S.C. §702; Association of Data Processing Serv. Organizations, Inc. v. Camp, 397 U.S. 150, 152-153 (1970); Port of Astoria, Or. v. Hodel, 595 F.2d 467, 474 (9th Cir. 1979).

An organization has standing to bring an action in a representative capacity on behalf of its members when:

(1) its members would otherwise have standing to sue in their own right;

(2) the interests it seeks to protect are germane to the organization's purpose; and

(3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Hunt v. Washington Apple Advertising Comm'n, 432 U.S. 333, 342-43 (1977); Warth v. Seldin, 422 U.S. 490, 511 (1975). Finally, a plaintiff who has personally established standing to obtain judicial review of agency action may act as a private attorney general and argue the public interest in support of his claim that the agency has failed to comply with the relevant statutory mandate. Sierra Club v. Morton, supra, 405 U.S. at 737-38; Sierra Club v. Adams, 578 F.2d 389, 393 (D.C. Cir. 1978).

(a) "Injury in Fact"

The "injury in fact" component of the APA standing test is mandated by the "case or controversy" requirement of Article III, §2, of the United States Constitution. The Ninth Circuit has stated that to meet this element of the standing test, "plaintiffs must have alleged (a) a particularized injury (b) concretely and demonstrably resulting from defendant's action (c) which injury will be redressed by the remedy sought." Port of Astoria, supra, 595 F.2d at 474; Bowker v. Morton, 541 F.2d 1347, 1349 (9th Cir. 1976). Each of the plaintiffs in this action has satisfied the "case or controversy" requirement, in that each has alleged that it or its members will suffer particularized injury from implementation of the Plan and that such injury would be redressed by the injunctive relief it seeks.

AMA alleges that its members utilize portions of the CDCA for recreational motorcycle riding and that as a result of the Plan they will be severely restricted in their customary enjoyment of those areas of the desert which they have been permitted to use under the "Interim Critical Management Program" ("ICMP") (in effect before adoption of the Plan).[7] In addition, AMA alleges that its ability

to organize and sanction competitive race events will be impaired. These uncontradicted allegations, supported by the record, are sufficient to show a "distinct and palpable injury" to AMA and its members, as well as a "fairly traceable causal connection between the claimed injury and the challenged conduct." Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59, 72 (1978). Such injuries to recreational values are sufficient to satisfy the Article III "injury in fact" requirement. Sierra Club v. Morton, supra, 405 U.S. at 738; see Association of Data Processing Serv. Organizations, supra, 397 U.S. at 154. Furthermore, AMA has standing to represent its members since its claims under NEPA and FLPMA and the relief it requests do not require the participation of each of the individual members of the organization and since the interests it seeks to protect are germane to its purpose: organizing, financing and sanctioning recreational and competitive motorized vehicle events. See Washington Apple Advertising Comm'n, supra, 432 U.S. at 442-43.[8]

Plaintiff NOC alleges that its members also use the CDCA for recreational purposes, including off-road vehicle use, mineral exploration, archaelogical investigation, camping and hunting, and that these recreational opportunities have been diminished by the planning decisions activated with the Plan's adoption. Like AMA, NOC has presented adequate evidence of loss of recreational opportunities by its members to satisfy the Article III "injury in fact" requirement of the test for standing. Sierra Club v. Morton, supra, 405 U.S. at 738; see Association of Data Processing Serv. Organizations, supra, 397 U.S. at 154. Moreover, NOC, for the same reasons applicable to AMA, satisfies the requisites for represent-

ative standing set out in Washington Apple Advertising Comm'n.

Nearly one-half of Inyo County is within the CDCA. The citizens and taxpayers of Inyo County are extensive users of CDCA lands both for business and recreational purposes. Inyo has a statutory duty to adopt a comprehensive general plan, Cal. Gov't Code §§ 65300-03, and its ability to do so has been significantly prejudiced by the Plan. Inyo has also shown that its tax base will be impaired because the County's economy is dependent upon visitors seeking recreation within the CDCA and upon mining revenues.

The County, in effect, asserts its standing to bring an action challenging the Plan on three theories: (1) it seeks to represent the interests of its citizens and taxpayers; (2) it claims that it has been harmed by the loss of County revenues caused by the Plan; and (3) it claims that the Plan has diminished its state-mandated planning ability. Inyo's first theory is insufficient to establish that the County has suffered "injury in fact." Inyo County is a "political division of the State." Cal. Gov't Code §23000. In this Circuit, "political subdivisions, such as cities and counties, whose power is derivative and not sovereign, cannot sue as parens patriae to protect the interests of their citizens and taxpayers." In re Multidistrict Vehicle Air Pollution M.D.L. No. 31, 481 F.2d 122, 131 (9th Cir. 1973), cert. denied sub nom., Morgan v. Automobile Mfrs. Ass'n, Inc., 414 U.S. 1045 (1973).

Political subdivisions may, however, "sue to vindicate such of their own proprietary interests as might be congruent with the interests of their inhabitants." Id. Although impairment of the County's tax base will result in harm to the County as an entity, this harm will merely be derivative of the Plan's impact on taxpayers;

therefore, it should not be considered harm to the County's "proprietary interests." Pennsylvania ex rel. Shapp v. Kleppe, 533 F.2d 668, 672-73 (D.C. Cir. 1976), cert. denied sub nom. Pennsylvania v. Kobelinski, 429 U.S. 977 (1976); Puerto Rico v. Alfred L. Snapp & Son, Inc., 469 F. Supp. 928, 930-31 (W.D. Va. 1979); cf., City of Rohnert Park v. Harris, 601 F.2d 1040, 1044 (9th Cir. 1979), cert. denied sub nom., Rohnert Park v. Landrieu, 445 U.S. 961 (1980) (treating loss of tax revenues as parens patriae interest, and finding no proprietary interest to justify standing); contra Alabama v. T.V.A., 467 F. Supp. 791, 794 (D. Ala. 1979); see Louisiana v. D.O.E., 507 F. Supp. 1365, 1370 (D. La. 1981). On the other hand, the harm caused by disruption of local comprehensive planning falls directly on the County, and may be fairly characterized as harm to the County in a proprietary sense. Cf., City of Davis v. Colemen, 521 F.2d 661, 671 (9th Cir. 1975) (where agency action might adversely affect city water supply, and would frustrate city's policy of controlled growth, injury in fact test is satisfied). Here, Inyo has shown that its ability to develop and adopt a general plan (as required by Cal. Gov't Code §§ 65300-03) has been significantly impaired. This is sufficient to show injury to Inyo's interests as a political entity, thereby satisfying the Article III "case or controversy" requirement. Accordingly, I conclude that County of Inyo has met the Article III "injury in fact" requirement, but only with respect to harm to its planning activities.

(b) "Zone of Interests"

Apart from Article III jurisdictional questions, the Supreme Court has developed a "rule of self-restraint" limiting standing to seek judicial review of agency action. Association of Data

Processing Serv. Organizations, supra, 397 U.S. at 154. In applying this rule to cases where a plaintiff challenges agency action as violative of a statute, the Court has required that the challenger be within the "zone of interests" contemplated by that statute. Id.; Port of Astoria, supra, 595 F.2d at 474.

There is no doubt that plaintiffs AMA and NOC fall within the "zone of interests" protected by the applicable provisions of FLPMA. Section 601(d), 43 U.S.C. §1781(d), directs the Secretary to "prepare and implement a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area." The Congressional findings recognize that provision should be made for "present and future use and enjoyment [of California Desert resources], particularly outdoor recreation uses, including the use, where appropriate, of off-road recreational vehicles." 43 U.S.C. §1781(a)(4). Section 601(d) further directs the Secretary to "take into account the principles of multiple use and sustained yield in providing for resource use and the development, including but not limited to maintenance of environmental quality, rights-of-way, and mineral development." 43 U.S.C. §1781(d).

County of Inyo also falls within FLPMA'a zone of interests. Section 601(d) requires that the Secretary prepare the CDCA plan in accordance with 43 U.S.C. §1712, which governs the development, maintenance and revision by the Secretary of all land use plans for public lands. Section 1712(c)(9), in turn, requires the Secretary to "provide for meaningful public involvement of state and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions

for public lands" and contains the mandate that "[l]and use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of" FLPMA.

However, none of the plaintiffs fall within the "zone of interests" contemplated by NEPA. The interests to be protected by NEPA may be gleaned from the Congressional declaration of purpose:

> "To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation. . . ."

42 U.S.C. §4321. In order to fall within NEPA's "zone of interests" a plaintiff must allege some "environmental harm" which will result from agency action. Port of Astoria, supra, 595 F.2d at 475; Realty Income Trust v. Eckerd, 564 F.2d 447, 452 (D.C. Cir. 1977); Churchill Truck Lines, Inc. v. United States, 533 F.2d 411, 416 (8th Cir. 1976); Hiatt Grain & Feed, Inc. v. Bergland, 446 F. Supp. 457, 487 (D. Kan. 1978), aff'd, 602 F.2d 929 (10th Cir. 1979), cert. denied, 444 U.S. 1073 (1980); see also Gifford-Hill & Co. v. F.T.C., 523 F.2d 730, 732 (D.C. Cir. 1975) (NEPA's concern is with protection of the environment, not with the desire of parties to prevent or delay administrative efforts to enforce the antitrust laws).

The courts have held that plaintiffs whose "real" or "obvious" interest is not environmental, but who assert cognizable injury to the environment, have standing under NEPA. See, e.g., Realty Income Trust, supra, 564 F.2d at 452 (erection of new office building alleged to cause loss of rental income and injury to the environment due to impact on vehicular and pedestrian traffic);

National Helium Corp. v. Morton, 455 F.2d 650, 655 (10th Cir. 1971) (helium extractor claimed that Secretary of the Interior's cancellation of a helium conservation contract would result in economic harm to it and depletion of the nation's supply of helium); Mobil Oil Corp. v. F.T.C., 430 F. Supp. 855, 862-63 (S.D.N.Y.) rev'd on other grounds, 562 F.2d 170 (2d Cir. 1977) (oil companies alleged that relief requested by F.T.C. in enforcement proceeding would result in unnecessary depletion of the nation's natural resources and that plaintiffs who were dependent on these resources would suffer economic injury).

Here, however, none of the plaintiffs alleges any environmental injury to itself, its members, the public or the desert as a result of the Plan. They assert only that the Plan will restrict their use of the CDCA. Accordingly, on the basis of the "injury in fact" which they allege, plaintiffs do not fall within the "zone of interests" contemplated by NEPA; consequently, they cannot challenge the adequacy of the Final EIS under NEPA. NEPA's requirement that an EIS be prepared for every "major Federal action significantly affecting the quality of the human environment," 42 U.S.C. §4332(c), is designed to insure that the agency has taken a "hard look" at the environmental consequences of its action, Kleppe v. Sierra Club, supra, 427 U.S. at 410 n.21, and to allow other officials, Congress and the public to independently evaluate the environmental consequences of the action. Columbia Basin Land Protection Ass'n v. Schlesinger, 643 F.2d 585, 592 (9th Cir. 1981). To allow plaintiffs who fail to allege or prove any environmental harm (and, thus, fail to make any showing that the Final EIS has not served its intended purpose) to challenge an EIS would subvert the

Congressional intent behind NEPA.[9]

III. The BLM's Procedural Violations

Plaintiffs allege numerous violations by defendants of FLPMA, NEPA and the BLM planning regulations, which they claim invalidate the Plan. Since I have concluded that none of the plaintiffs has standing to challenge the Final EIS, it is unnecessary to determine whether defendants violated NEPA or failed to follow any of the CEQ interpretive regulations. Therefore, we examine only the asserted violations of FLPMA and the BLM planning regulations.

(a) Procedures Required by FLPMA and the BLM Planning Regulations

FLPMA requires that the Plan be prepared "in accordance with section 1712 of this title." 43 U.S.C. §1781(d). Section 1712 applies to all public lands, 43 U.S.C. §1712(a), and requires that:

> "The Secretary shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands."

43 U.S.C. §1712(f).

The BLM planning regulations were published on August 7, 1979. 44 Fed. Reg. 46,392 (1979). These regulations were promulgated pursuant to the authority delegated in FLPMA, 43 U.S.C. §§ 1711 & 1712, and several other statutes.[10] They became effective on September 6, 1979.

I conclude that the BLM planning regulations were applicable to the CDCA planning process and that the BLM was bound to adhere to the procedures established by its own regulations. Defendants' argument that these regulations do not apply to the CDCA or to the

Plan (see Decl. of James B. Ruch, Cal. State Director of BLM, at 15 (Feb. 4, 1981); Depo. of Ruch at 15-18; 34-56; 82-87 (Feb. 26, 1981))[11] is unpersuasive. First, there is no official interpretive or policy statement of the agency supporting this interpretation; it is asserted only in the declaration and deposition of a subordinate agency official. Second, although a federal agency's interpretation of a statute or regulation is entitled to great deference by reviewing courts, e.g., Zenith Radio Corp. v. United States, 437 U.S. 443, 450 (1978); Columbia Basin Land Protection Ass'n, supra, 643 F.2d at 599-600, this rule applies only if the agency interpretation is reasonable and not clearly outside the agency's statutory authority. Id. Here, even assuming that Ruch's testimony should be accorded the dignity of official agency interpretation, his interpretation is unreasonable since the statute, 43 U.S.C. §1781(d), clearly requires the Secretary to comply with Section 1712 in the preparation and implementation of the Plan. In turn, Section 1712(f) delegates to the Secretary the authority to establish procedures to give federal, state and local governments and the public adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of public lands. Finally, the language of the regulations promulgated under the Secretary's §1712(f) authority itself suggests that the regulations are applicable to the Plan. 43 C.F.R. §1601.0-7 states: "[t]hese regulations apply to all BLM administered public lands." "Public lands" is defined as "any land or interest in land owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management." 43 C.F.R. §1601.0-5(j). In

short, defendants' claim that the BLM planning regulations were not meant to apply to the CDCA planning process because the Plan was somehow different from the usual land use plan is plainly unreasonable because this interpretation is in conflict with the statute, 43 U.S.C. §§ 1781(d) & 1712(f), and the language of the regulations themselves.

Moreover, the BLM planning regulations appear to be "legislative" rather than "interpretive rules." "Legislative rules" are the product of legislative power to make law through rules which is delegated by Congress to an administrative agency. Batterton v. Francis, 432 U.S. 416, 425 n.9 (1977); 2 K. Davis, Administrative Law Treatise §7:8 (2d ed. 1979); see General Electric v. Gilbert, 429 U.S. 125, 141-42 (1976). As such, they are binding on the agency which issues them. United States v. Nixon, 418 U.S. 683, 695-96 (1974); Ruangswang v. INS, 591 F.2d 39, 46 n.12 (9th Cir. 1978); Davis, supra, at §7:21. Since the regulations became effective well before the Draft Plan and EIS were published in February, 1980, and because I conclude that they are legislative regulations, they were binding on the agency for these reasons as well.[12]

(b) Violations of FLPMA and the BLM Planning Regulations

I find on the record as a whole that there is a strong likelihood that plaintiffs will be able to prove at trial that, in several material respects, the BLM failed to follow its own planning regulations and that such failure resulted in the agency's violation of §202(c)(9)&(f) of FLPMA. 43 U.S.C. §1712(c)(9)&(f).

43 C.F.R. §1601.5-7 requires that in preparing the Plan, the BLM evaluate the alternative courses of action developed in the

planning process (and their effects according to planning criteria) and "develop a preferred alternative . . . [which] shall be incorporated into the draft plan and draft environmental impact statement." No "preferred alternative" was designated in the Draft Plan and EIS published in February, 1980. This omission deprived state and local agencies and the public of the opportunity to focus their comments on the alternative which the agency was likely to recommend to the Secretary, at the draft stage before a final BLM decision had been made.

43 C.F.R. §1601.3(i) requires that "ninety days . . . be provided for review of the draft plan, and draft environmental impact statement." Although defendants claim that the full 90 days were available, several of the appendices which were an integral part of the Plan were not available until well into the review period. By failing to make the appendices available at the outset, defendants made it impossible for state and local governments, the public, and special interest groups, such as AMA and NOC, to review and comment upon all of the changes which the Plan would effect and the data upon which these actions were based. Cf. Columbia Basin Land Protection Ass'n, supra, 643 F.2d at 595 (information necessary to allow public to respond and to know basis of agency's ultimate conclusion must be available under NEPA disclosure requirements).

The BLM's failure to follow its own planning regulations by not designating a preferred alternative at the draft stage and by not allowing the full 90 days to review all of the integral draft plan documents prejudiced plaintiffs' ability to comment upon and participate in the formulation of the Plan as required by FLPMA, 43

U.S.C. §1712(f).

Plaintiff Inyo County also claims that the BLM has violated §202(c)(9) of FLPMA, 43 U.S.C. §1712(c)(9), and 43 C.F.R. §1601.4, which provide for the coordination of BLM resource management plans with the management plans of state and local governments. BLM State Directors and District Managers are required to keep apprised of state and local plans, to assure that consideration is given to them and to assist in resolving inconsistencies between BLM plans and such plans to the extent practical. Defendants claim to have taken state and local land use plans into account in developing the Plan and to have resolved inconsistencies to the extent required by §1601.4. (See Aff. of Neil F. Pfulb at 6-7 (Dec. 17, 1981); Depo. of Ruch at 375-384 (Mar. 2, 1981).) However, the failure of defendants to comply with 43 C.F.R. §1601.4-2(c) & (d) makes it impossible for the Court to determine whether the BLM has complied with the mandate of 43 C.F.R. §1601.4 and 43 U.S.C. §1712(c)(9). Subsections 2(c) and (d) allow state and local agencies to notify the BLM of specific inconsistencies between their plans and BLM resource management plans and require that the plan document reflect how these inconsistencies were addressed and, if possible, resolved. Since this procedure was not followed in that defendants have not presented adequate evidence of their response to Inyo County's list of inconsistencies (see Ex. "A" & "B" to Complaint of Inyo County), I conclude that it is likely that Inyo County will be able to prove violations of 43 U.S.C. §1712(c)(9) and 43 C.F.R. §1601.4 at trial.

Finally, plaintiffs point out that the Decision Document (signed into law by former Assistant Secretary Martin on December 17,

1980) contained a number of material changes from the Final Plan and EIS which was circulated for comment, which changes were never subjected to the scrutiny of the DAC or published for examination and comment by state and local governments and the general public.[13] The failure of the BLM to allow any public and governmental participation relative to these changes, which amount to significant actions in their own right, appears to amount to a further violation of 43 U.S.C. §§ 1712(c)(9) & (f) and 1781(d), and the BLM planning regulations.[14]

Plaintiffs have adequately demonstrated that they have standing to prosecute these actions and that they are likely to succeed on the merits at trial.

IV. Equitable Considerations

It is not enough that plaintiffs have demonstrated likelihood of success on the merits; they must also demonstrate that the equities of the case require injunctive relief before trial, i.e., that they will suffer irreparable harm absent issuance of a preliminary injunction, that the balance of hardships tips in their favor and, since this is an environmental case where the public interest is implicated, that preliminary injunctive relief would benefit the public in general.[15]

On the record before the Court, I find that none of the plaintiffs has made a sufficient showing of the equitable elements to justify the issuance of a preliminary injunction restraining the implementation of the Plan pending trial. In making this determination and in weighing the public interest, I am mindful of Congress' concern that the CDCA is "seriously threatened by air pollution, inadequate Federal management authority, and pressures

of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California." 43 U.S.C. §1781(a)(3). Accordingly, I conclude that the public interest in maintaining the Plan and in protecting the CDCA outweighs any possible harm to plaintiffs.

The only real showing of irreparable harm by plaintiffs NOC and AMA is that their members will be deprived of some recreational opportunities until trial. This deprivation is attributable to the reduction in the amount of vehicle use allowed under the Plan from that permitted under the ICMP, which governed vehicle access prior to the time that the Plan went into effect. AMA also claims that it will suffer irreparable injury because the Plan precludes holding competitive events outside of the three race routes established in the Plan. Neither NOC nor AMA have submitted any evidence that their members will be completely deprived of recreational opportunities under the Recreational and Motorized Vehicle Elements of the Plan. See Plan at 82-94 & Motorized Vehicle Access Map No. 10. The evidence shows only that such opportunities will be restricted. Further, AMA has not shown that it will be totally unable to sanction competitive events. On the other hand, I find that there is a danger of harm to the CDCA from the types of activities which these plaintiffs intend to pursue and that the restrictions on access imposed by the Plan will serve to protect fragile desert resources from the pressures of increased motorized vehicle use. Plaintiffs AMA and NOC have failed to prove either that their inconvenience pending trial outweighs the threat of harm to the desert from more intensive recreational use or that it would be in the public interest to enjoin the operation of the Plan as it impacts their interests.

County of Inyo has presented a somewhat stronger case that it will suffer irreparable harm if the Plan is not preliminarily enjoined, in that its general planning duties have been hampered by the Plan, which imposes a number of restrictions in conflict with Inyo's Master Plan for adjacent private lands. Like the other plaintiffs, however, I find that the harm which Inyo will suffer as a result of the Plan's disruption of its planning activities is not sufficient to outweigh the harm to the CDCA and the public interest if implementation of the Plan is enjoined. It should also be noted that while the County's planning efforts may be impaired by uncertainty regarding the legal validity of the Plan, issuance of a preliminary injunction would do little to redress that injury, since the Plan's validity will remain uncertain until judgment has been entered on the merits in this action.

CONCLUSION

For the foregoing reasons, each of the motions of plaintiffs for a preliminary injunction restraining the implementation and enforcement of the California Desert Conservation Area Plan by defendants is hereby denied. This memorandum opinion shall serve as the Court's findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52(a).

Dated: December 1, 1981.

A. WALLACE TASHIMA
United States District Judge

FOOTNOTES

1 These four actions were consolidated on the Court's own motion, pursuant to Rule 42(a), Fed. R. Civ. P. The motion of plaintiffs California Native Plant Society, et al., to deconsolidate No. CV 81-489 from the other cases was denied on May 18, 1981. Plaintiff Sierra Club has filed a brief in opposition to the motions of plaintiffs in the remaining actions for preliminary injunctions. The term "plaintiffs" will hereinafter refer only to those plaintiffs who have moved for preliminary injunctions. Plaintiff in a fifth action, California Mining Ass'n v. Watt, No. CV 80-5602-AWT, had also moved for a preliminary injunction. However, that action was voluntarily dismissed on November 24, 1981. That motion, therefore, is no longer pending.

2 It is undisputed that the status quo ante litem, at the time these actions were filed, was that the Plan had not yet been adopted. The Court denied plaintiffs' applications for a temporary restraining order, which were heard on December 18, 1980, because the Plan had already been adopted when it was approved by former Assistant Secretary of the Interior Guy Martin on December 17, 1980, pursuant to delegation by the Secretary of his statutory authority. The temporary restraining order hearing, originally set for December 15, was continued to December 18 in reliance on the government's representation to the Court and counsel that the Plan would not be effective until December 19, 1980, when it was to be signed by former Secretary Cecil D. Andrus. Because the lack of timeliness of the hearing on plaintiffs' applications for temporary restraining orders was caused by the government's misrepresentation, even if only inadvertent, of its own intended actions, I conclude, for the purpose of these motions, that it is proper to regard the status quo to be as if the applications were timely heard and a temporary restraining order had been issued, i.e., as if the Plan had never gone into effect.

3 AMA also alleges that the BLM has failed to comply with Executive Order 12044 and the regulations of the Secretary promulgated thereunder. 43 C.F.R. §14.1 et seq. Since the parties have not adequately briefed the issue of whether there has been an abrogation of the agency's duties under the Executive Order or regulations, this issue is not addressed on these motions. In any event, it appears doubtful that plaintiff has standing to challenge the Plan under the Executive Order and the regulations.

4 The guidelines are arranged in the Plan (at 14) according to the following list:

1. Agriculture
2. Air Quality
3. Water Quality
4. Cultural and Paleontological Resources
5. Native American Values
6. Electrical Generation Facilities
7. Transmission Facilities
8. Communication Sites
9. Fire Management
10. Vegetation
11. Land Tenure Adjustment
12. Livestock Grazing
13. Mineral Exploration and Development
14. Motorized-Vehicle Access/Transportation
15. Recreation
16. Waste Disposal
17. Wildlife Species and Habitat
18. Wetland/Riparian Areas
19. Wild Horses and Burros

5 These twelve Plan Elements are:

Cultural Resources
Native American Values
Wildlife
Vegetation
Wilderness
Wild Horses and Burros
Livestock Grazing
Recreation
Motorized-Vehicle Access
Geology-Energy-Minerals
Energy Production and Utility Corridors
Land Tenure Adjustment

Plan at 21.

6 Plaintiffs claim that in NEPA cases irreparable harm is presumed when the Court finds a "substantial violation" of the statute and contend that traditional equitable principles do not "militate against the capacity of a court of equity as the proper forum in which to make a declared policy of Congress effective." Lathan v. Volpe, 455 F.2d 1111, 1116 (9th Cir. 1971) (quoting United States v. City and County of San Francisco, 310 U.S. 16, 30-31 (1940)). Therefore, plaintiffs contend, they need not make a showing of irreparable harm. Since plaintiffs lack standing under NEPA and do not seek to effectuate the policies underlying the statute, see Part II(b), post, they may not rely on this line of cases and must satisfy the usual criteria justifying equitable relief.

7 The ICMP has controlled access and recreation and recreation vehicle use in the CDCA since 1973. ICMP maps will continue to be used by the BLM to govern vehicle access in the CDCA until the changes in designations effected by the Plan can be implemented. See Plan at 89; Depo. of Gerald E. Hillier, BLM District Manager, Cal. Desert District at 102-11 (Jan. 26, 1981).

8 It is not necessary to decide whether AMA has established "injury in fact" in its own right since, as a representative, it shares the interests of its members in organizing and sanctioning competitive events.

9 Because I base my finding of plaintiffs' probability of success on the merits on violations of FLPMA and the BLM planning regulations, (see Part III, post), I reserve decision on whether 43 C.F.R. §1601.5, which provides that the environmental analysis requirements of NEPA be included in the BLM resource management planning process, confers standing to challenge a defective EIS on a plaintiff who cannot otherwise establish standing under NEPA.

10 The following statutes are also cited as authority for issuance of these regulations: §3 of the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C. §201(a); §§ 522, 601 & 714 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1272, 1281 & 1304; and NEPA.

11 Defendant Ruch claims that these regulations are not applicable to the CDCA planning process because:

(1) The CDCA incorporates more than one BLM district within its boundaries and was developed by a special Desert Planning Staff headed by a Desert Planning Staff Director answerable to the California State Director of the BLM, rather than to a District Manager. (The regulations refer to the duties of the "District Manager.") Decl. of Ruch at 15 (Feb. 18, 1981).

(2) The regulations were intended to be implemented in a "phased process" and at the time they were issued the agency was already several years down the road on the Plan. Depo. of Ruch at 15-16, 50-51 (Feb. 26, 1981).

(3) The Plan involved "different circumstance[s]" than a normal land use plan and the BLM couldn't comply with the regulations without changing the Plan back into a series of small resource plans, rather than one large comprehensive land use plan. Id. at 47-48, 51-52.

12 Although an agency is empowered to make "legislative" rules, a rule may still be interpretive if the agency so intends. A reviewing court must do its best to discover the agency's intent. Davis, supra, at §7:8. No credible or persuasive evidence indicates that the BLM planning regulations were not intended to have the force of law. Therefore, I conclude that the BLM planning regulations, although they are procedural rather than substantive, are "legislative" rules.

13 Such changes include:

(1) Designation of all Class "L" lands as "sensitive areas" of public concern requiring, without prior determination by a BLM officer, a 60-day comment period, prior to approval of any application for a plan of operations. See Memo. from Hillier, Ex. 3002 to Depo. of Ruch (Mar. 1, 1981).

(2) The designation of a portion of the CDCA as the "East Mojave National Scenic Area." See Defendant's Memorandum in Rebuttal, filed Feb. 12, 1981, p.6a; Depo. of Hillier at 132-33.

(3) The inclusion of three race routes which had never been developed as part of any of the plan alternatives up to that point. See Partial Transcript of DAC Meeting, Jan. 16, 1981, pp. A-237-39 of Appendix to Joint Supplemental Memorandum of Points and Authorities of Plaintiffs County of Inyo and AMA in Support of Application for Preliminary Injunction ["Appendix"]; Depo. of Hillier at 81-84; Depo. of Ruch at 99-113.

(4) Increasing the ACEC's from 73 to 75 and the areas preliminarily recommended as suitable for wilderness designation from 43 to 45. Defendant's Memorandum in Rebuttal, filed Feb. 12, 1981, at p.6a; see also, Decl. of Gerald Budlong, pp. A-19-27 of Appendix.

14 It is unnecessary to decide on these motions whether alleged defects in the Mineral and Wildlife elements of the Plan and the BLM's modification of the amendment process contained in the Draft Plan and EIS resulted in further violations of FLPMA and the BLM regulations. The question of whether the Final EIS contained a discussion of alternatives sufficient to comply with 43 C.F.R. §1601.5-5 is also left to another day.

15 See Part I, ante.

DENNIS L. MYERS
County Counsel of
Inyo County
P. O. Box 428
Inyo County Courthouse
Independence, California 93526
Telephone: (714) 878-2411

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

COUNTY OF INYO, a political subdivision of the State of California, Plaintiff, vs. CECIL D. ANDRUS, in his official capacity as Secretary of the United States Department of the Interior; UNITED STATES BUREAU OF LAND MANAGEMENT; W. FRANK GREGG, in his official capacity as Director of the Bureau of Land Management; JAMES B. RUCH, in his official capacity as California State Director, Bureau of Land Management, and the UNITED STATES DEPARTMENT OF INTERIOR, Defendants.	Civ. DECLARATION

I, GERALD M. BUDLONG declare as follows:

1. I am an employee of Inyo County presently holding the position of Associate Planner in the Planning Department.

2. I presently have the assignment of up-dating the

General Plan for the County of Inyo. Recently I have been working on the open space and conservation element of said plan.

3. Due to my involvement with the General Plan especially the open space and conservation element I have been closely involved with the Bureau of Land Management and their preparation of the California Desert Conservation Area Plan and the Final Environmental Impact Statement and proposed plan for the California Desert Conservation Area.

4. Briefly my background is that I have been employed by Inyo County for the last two and one-half years as an Associate Planner. My educational background includes a Masters Degree in geography from California State University at Chico and a Bachelor's Degree in geography from Cal State Northridge.

5. The California Desert Conservation Area includes three million, thirteen thousand, nine hundred sixty (3,013,960) acres of Inyo County or 46.4 percent of its total land area. Inyo County also includes the Death Valley National Monument, portions of the U. S. Naval Weapons Center (range portion). Excluding the Owens Valley area the portions mentioned above cover 81.4 percent of the County's land area. The Owens Valley area which makes up 1,210,240 acres of Inyo County (18.6% of the land area) includes portions of Inyo National Forest, the John Muir Wilderness Area, various Indian Reservations, and lands owned by the City of Los Angeles, Department of Water and Power. Thus, private land ownership in the County of Inyo, a County of 10,141 square miles, is only about 1.8 percent of the total land area.

6. Our office received the first volume of the "Final

Environmental Impact Statement Proposed Plan" prepared by the Bureau of Land Management (BLM) on or about October 3, 1980. After the initial volume, we received seven (7) additional appendix's over a period of one month. We discovered by close review of said appendix's that they contain very detailed policy statements. For example, the proposed plan "Greenwater Canyon" designated by the number 9, California Desert Conservation Area Map attached in the first volume, states generally that in said area there will be control of user vehicle access.

Yet, in Appendix Volume C, page 7 an explicit plan for Greenwater Canyon is laid out with one of the management prescriptions being the blocking of vehicle access to north and south entrances to canyon. This would entail blocking an already existing county road which has been there for many, many years. We received Volume C on October 14, 1980. Another example of details which were picked up in the later appendix's is the Darwin Falls/Canyons designated as Number 6 on the map in the first volume. The area is very generally referred to on a chart on page 99 of said volume and speaks to some general controls including user vehicle access, increased field presence, grazing burros and the limitation of water development; yet in appendix volume C, page 5 specific management prescriptions are laid out. That is, the cancelling or the acquiring of existing water rights of the Panamint Springs Resort and the prohibition of shooting within the area which was not even mentioned in the original volume. Also, setting forth the boundaries of the area of critical environmental concern (ACEC) the Darwin Falls area itself was left out (see Final Environmental Impact Statement in proposed plan

Plng

In the Matter of the Board of Supervisors

County of Inyo, State of California

AUDITOR'S PAGE NO.

I HEREBY CERTIFY, That at a meeting of the Board of Supervisors of the County of Inyo, State of California, held in their rooms at the Court House in Independence on the 8th day of December, 1981, an order was duly made and entered as follows:

BLM/DESERT COUNCIL APPOINTMENTS

Moved by Supervisor Johnson, seconded by Supervisor Cook to approve the letter to be sent to Mr. James Watt, Secretary of the Interior, expressing Inyo County's concern over the lack of local representation on the California Desert District Advisory Council; and authorize the Chairman to sign. Motion carried unanimously.

WITNESS my hand and the seal of said Board this 8th day of December, 1981

as the same appears of record in my office.

APPROVED FOR ENTRY

MARGARET BROMLEY
County Clerk and ex-Officio Clerk of said Board.

By Roberta G. Carter
Deputy

Auditor.

BOARD OF SUPERVISORS
Referred Copies
CAO X
DA
Other Auditor, Plng.
Date 12/14/81

County of
INYO

PLANNING DEPARTMENT

Drawer L • INDEPENDENCE • CALIFORNIA 93526 • (714) 878-2411 (Ext. 318)

December 1, 1981

TO: Board of Supervisors

FROM: Planning Department

RE: California Desert District Advisory Council

Last April BLM requested that the Board of Supervisors submit names of persons who would be willing to serve on the California Desert District Advisory Council. After consideration, several names were suggested; Also, independently of the Board of Supervisors, other people who live in Inyo County were nominated for this Council. As you will recall the District Advisory Council is an advisory body to the Bureau of Land Management on matters concerning the California Desert Plan, there are 15 members on the Council.

Recently the Planning Department received a form letter from Bureau of Land Management stating that the appointments to the District Advisory Council had been made, and that none of the suggested names from Inyo County had been appointed to the Council. A close check into those appointed to the Council indicates that except for Inyo and Mono County at least 2 people were appointed from each of the Counties with land located inside the California Desert Plan Boundaries. Since Inyo County contains approximately 3,013,960 acres out of a total of 12,131,000 acres or approximately 25% of the total land inside the area of the California Desert Plan; it seems that Inyo County should be entitled to at least some representation on the Desert Council. People from such areas as Sacramento, Orange Co., the state of Nevada and Los Angeles County have been appointed to the Desert Council.

COUNTY OF INYO

BOARD OF SUPERVISORS
COURTHOUSE
INDEPENDENCE, CALIFORNIA 93526

December 1, 1981

Mr. James Watt
Secretary of Interior
18 and C Streets, Northwest
Washington, D.C. 20240

Dear Mr. Watt,

The citizens of Inyo County wish to express their concern and disappointment over the appointments you recently made to the California Desert District Advisory Council. Recently, Inyo County, at the request of the BLM, suggested several people who we believed were qualified to serve on this Council. We are not concerned with those appointed to the Council, but with the lack of representation from Inyo County.

As you may not be aware Inyo County is a very large California County however, 98% of the area is controlled by other political jurisdictions (BLM, Forest Service, City of Los Angeles Dept. of Water and Power, and others). Since the Federal Government administers and controls approximately 3,000,000 acres of land in the County under the California Desert Plan (25% of the Plan's area) we feel that the least they can do is to give Inyo County one appointment on the Advisory Council. This Council is the body which will consider and recommend basic policy concerning the administration of the Plan.

Of the six California Counties inside the Desert Plan all but two (Inyo and Mono) are represented by people who live inside their particular Counties. We feel if you, as Secretary of Interior, and the Bureau of Land Management are serious about the involvement of local people and expertise on the administration and implementation of the California Desert Plan then an Inyo County representative should be permitted to sit on the Advisory Council.

Once again we are expressing our concern over the lack of local representation on such an important body.

Yours truly,

H B Irwin

H.B. Irwin
Chairman of the Board

United States Department of the Interior

IN REPLY REFER TO
8342 (C-065)

BUREAU OF LAND MANAGEMENT
Ridgecrest Resource Area
1415A North Norma Street
Ridgecrest, California 93555

RECEIVED
JAN 21 19[illegible]
INYO CO. PLANNING DEPT.

✓	Planning Dir.	
	Roger DeHart	
✓	Gerry Budlong	ins
✓	FILE Bum	
	Other	

Mr. Harold R. Callahan, Director
Department of Public Works
Drawer Q
Independence, California 93526

Dear Mr. Callahan:

Your maps of routes recommended for approval in Inyo County, which you sent to Gerald Hillier in Riverside, were forwarded to this office since we are responsible for designating approved routes of travel in your area. Thank you for providing us with this information.

To bring you up to date on our process, we are planning to begin route designations in Inyo County during the 1983 fiscal year which will begin on October 1, 1982. As part of that process we will have an Ad Hoc Advisory Committee consisting of representatives of various interest groups (mining, vehicle use, wildlife, vegetation, environmental, etc.) to assist us with the process. In addition we will coordinate closely with your department and other governmental agencies to obtain input on access needs. Since you have provided us with information that was developed through public input and includes county needs, this will be very helpful in expediting our designations.

Our process consists of four phases: inventory, analysis, conflict resolution, and decision. For your information I have enclosed a summary sheet that outlines our procedures. The dates shown are the time frames for the portions of Kern and San Bernardino County that we are completing this year.

Thanks again for the information you have provided us. We will plan to work closely with your department when we begin the designation process in Inyo County next October.

Sincerely yours,

Mark E. Lawrence

Mark E. Lawrence
Area Manager

CC:
DM, CDD
AM, Barstow

Actions	Target Date 1982	Responsibilities
Public will mail back comments to the respective RA.	March 24	RA
IV. Conflict Resolution		
The RA will apply selection criteria to additional public input and identify conflicts.		RA
Conflicts involving permission to cross private lands for tentative approved vehicle routes, should be directed to the Regional Solicitor's Office.		
V. Decision		
After weighing all input the AM with concurrence from the DM will decide on any changes from the draft decision.	April 2	AM
Federal Register notice will be written as final decision by the RA. Decision becomes effective 30 days after publication.		RA
Final maps will be published and distributed to all public who originally commented.	May 1	SO
Initiate signing of specific routes and a monitoring program for each area.		RA

Actions	Target Date 1981	Responsibilities
I. Preplanning Priority		
Work schedule developed for "route approval polygons" by each Resource Area (RA) by using the priorities listed on page 63 in the Final Desert Plan.	May 15 (Completed)	RA DO
The public awareness letter will be written and sent out by the District Office (DO). The public will be given 30 days in which to respond by requesting the maps. The public will be instructed to send requests through the DO for recording purpose and proper redistribution to the Resource Areas.	July 31 (Completed)	DO

Actions	Target Date	Responsibilities
The State Office is currently working with each RA in the updating and printing of the 22 ICMP maps to reflect the final Desert Plan amendments.	Aug. 31 (Work Maps are out, ICMP Maps at same).	SO
II. Inventory		
The RA will then respond to the letters by sending the proper maps and introducing themselves as the lead office in the process. The RA will also initiate a 45-day comment period based on their priority work areas.	Nov. 5	RA
RA Form Ad-Hoc Advisory Committees.	Oct 30	
The public will now forward all responses to the respective RAs with their route additions and/or corrections. The development of an existing route of travel map will be made at each RA.	Dec 21	RA
RA hold "open house stand-up meetings."		
III. Analysis		
The Resource Area will apply the selection criteria by RA team and draft decisions will be made by the Area Manager (with concurrence with the DM). Rationale for decision should be filed at each RA.	Jan 5	RA
Tentative access approval decisions will be printed and sent out to all interested public appearing on the computerized mailing list for each route approval process polygon. A 45-day comment period will be initiated by the RA	Feb. 5.	RA

In the Rooms of the Board of Supervisors

County of Inyo, State of California

AUDITOR'S
CASE
NO.

I HEREBY CERTIFY That at a meeting of the Board of Supervisors of the County of Inyo, State of California, held in their rooms at the Court House in Independence on the 26th day of January, 19 82, an order was duly made and entered as follows:

BUREAU OF LAND MANAGEMENT/LAWSUIT

Moved by Supervisor Bremmer, seconded by Supervisor Cook to authorize the County Counsel to notify the attorney for the American Motorcycle Association that Inyo County wishes to be included within a Notice of Appeal regarding the lawsuit against the Bureau of Land Management Desert Plan. Motion carried. Supervisor Johnson, absent.

WITNESS my hand and the seal of said Board as the same appears of record in my office. this 26th day of January, 19 82

APPROVED FOR ENTRY

Auditor.

MARGARET BROMLEY
County Clerk and ex-Officio Clerk of said Board.

By Roberta J. Carter
Deputy

BOARD OF SUPERVISORS
Referred Copies
CAO X
DA
Other Auditor, CC
Date 02/02/82

58

10-5-4

1-26-82

United States Department of the Interior

IN REPLY REFER TO
1120 (C-060)

BUREAU OF LAND MANAGEMENT

California Desert District
1695 Spruce Street
Riverside, California 92507

RECEIVED
JAN 29 1982
INYO CO. PLANNING DEPT.

FEB - 3 1982
BOARD OF SUPERVISORS
BY DEPUTY

Mrs. Wilma Muth, Chairman
Inyo County Board of Supervisors
168 North Edwards Street
Independence, California 93526

Dear Mrs. Muth:

It certainly was a pleasure to have met with you last week during Assistant Secretary Garrey Carruther's visit to Bishop. We had met before, perhaps a year ago but in the more formal setting of a Board meeting.

During the past couple weeks my staff and I have had several interesting and fruitful discussions with the Inyo County staff. We have met with the Planning staff to discuss specific concerns of the County regarding the California Desert Conservation Area Plan. We will be getting back to the staff to confirm items discussed and inclusion of these items in our consideration of Plan amendments during 1982. (In the 1981 process, now almost complete, Inyo County did not submit any proposals for amendments.)

Also during the past week, members of my staffs from Ridgecrest and Barstow met with Supervisor Brimmer and the Planning staff to discuss waste disposal. My understanding is that these discussions resulted in general agreement on potential sites.

From our brief conversation, it appears Inyo County residents concerns over the Desert Plan and its implementation falls into two categories - 1) some specific site concerns on which perhaps a second look is now warranted, and 2) some over-reaction based on misreading or reading into the Plan a worst case scenario. There are some concerns, too, which may simply be based on rumor without basis.

I hope our past meetings and our current dialogue can grow into a partnership of at least mutual understanding, if not agreement. We potentially are on the right track. Our meeting with the Board a year ago was largely introductory and did not as I recall get into the substance of the Desert Plan. Perhaps it would be both healthy and helpful for us to set up some information meetings on the Plan in Inyo County for local citizens. These would not only help them understand what is in the Plan, and what is not in it, but how they can participate in implementation. Our implementation program may prove more important than the Plan itself since it will set forth the methods of protection, the access to be designated, and stipulations on developments. It may also, as it already is in several areas, point up refinement or fine tuning which can be quickly considered and done in the amendment process.

Please feel free to contact me personally if I can be of help to you and the Board. It may be helpful if you would set a date (late in February or early March) for me to come and discuss some specifics about the Plan with the Board as well as following up on my suggestion for information meetings to local citizens.

One final note, Assistant Secretary Carruthers was quite impressed with Inyo County. Our visit was far too brief, but we did want to get him over as much of the desert as we could by Saturday.

Before leaving the County, he had a chance to visit (quite by accident) with two of your deputies who gave him insight into the public land uses and cooperation with our ranger program. He also had a chance to see the Coso geothermal area and to view the new well in the area.

Again, thank you so much for participating at Bishop. And let us resolve to better stay in touch.

Sincerely,

Gerald E. Hillier
District Manager

cc:
C-910
AM, Ridgecrest
AM, Barstow

Copies
=cc
Supvs, Plng, Pcrs
2/3/82

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

California Desert District
1695 Spruce Street
Riverside, California 92507

IN REPLY REFER TO
1120 (C-060)

RECEIVED
JAN 29 1982
FEB - 3 1982
BOARD OF SUPERVISORS
COUNTY OF INYO
BY DEPUTY

Mrs. Wilma Muth, Chairman
Inyo County Board of Supervisors
168 North Edwards Street
Independence, California 93526

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Also during the past week, members of my staffs from Ridgecrest and Barstow met with Supervisor Brimmer and the Planning staff to discuss waste disposal. My understanding is that these discussions resulted in general agreement on potential sites.

From our brief conversation, it appears Inyo County residents concerns over the Desert Plan and its implementation falls into two categories - 1) some specific site concerns on which perhaps a second look is now warranted, and 2) some over-reaction based on misreading or reading into the Plan a worst case scenario. There are some concerns, too, which may simply be based on rumor without basis.

I hope our past meetings and our current dialogue can grow into a partnership of at least mutual understanding, if not agreement. We potentially are on the right track. Our meeting with the Board a year ago was largely introductory and did not as I recall get into the substance of the Desert Plan. Perhaps it would be both healthy and helpful for us to set up some information meetings on the Plan in Inyo County for local citizens. These would not only help them understand what is in the Plan, and what is not in it, but how they can participate in implementation. Our implementation program may prove more important than the Plan itself since it will set forth the methods of protection, the access to be designated, and stipulations on developments. It may also, as it already is in several areas, point up refinement or fine tuning which can be quickly considered and done in the amendment process.

Please feel free to contact me personally if I can be of help to you and the Board. It may be helpful if you would set a date (late in February or early March) for me to come and discuss some specifics about the Plan with the Board as well as following up on my suggestion for information meetings to local citizens.

DD 1170

Document 76 - Page 1 of 2

Letter 2/9

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One final note, Assistant Secretary Carruthers was quite impressed with Inyo County. Our visit was far too brief, but we did want to get him over as much of the desert as we could by Saturday.

Before leaving the County, he had a chance to visit (quite by accident) with two of your deputies who gave him insight into the public land uses and cooperation with our ranger program. He also had a chance to see the Coso geothermal area and to view the new well in the area.

Again, thank you so much for participating at Bishop. And let us resolve to better stay in touch.

Sincerely,

Gerald E. Hillier
District Manager

cc:
C-910
AM, Ridgecrest
AM, Barstow

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=cc
[illegible] Supv, Plng Branch Rollin Enfield
Date 2/3/83

Board of Supervisors
meeting 2/9/82

Desert Plan/ Settlement

The County Counsel reported to the Board that he will be meeting with representati from the Bureau of Land Management on February 10, 1982 in Los Angeles for settlement purposes regarding the suit against the B.L.M. Desert Plan. He noted that Ted Hilton, Planning Director, and Gerry Budlong, Associate Planner, will als be attending this meeting.

BLM/ Meeting

The County Counsel, Dennis Myers, requested authority to respond to the letter fro the Bureau of Land Management requesting a meeting with the Board to discuss the California Desert Conservation Plan and suggesting the scheduling of informational meetings for local citizens. Mr. Myers recommended that the Board not schedule a meeting with the B.L.M. until the settlement meeting with them is conducted tommorrow. He also stated he feels several of the statements made within the lette are inaccurate. The Board directed the County Counsel and the County Administrator to respond to the letter from the B.L.M.

Board of Supervisors meeting 2/16/82

B.L.M./Desert Plan Settlement

The County Counsel reported that he had recently attended a settlement meeting with representatives of the Bureau of Land Management to discuss a possible settlement of the lawsuit regarding the Desert Plan. He stated he feels the B.L.M. is now beginning to respond to Inyo County's concerns. He requested further discussion regarding the matter be held in Closed Session.

OFFICE OF THE COUNTY COUNSEL
COUNTY OF INYO
POST OFFICE BOX 428
INDEPENDENCE, CALIFORNIA 93526
(714) 878-2411

DENNIS L. MYERS, *County Counsel*

GREGORY L. JAMES, *Special Counsel*

March 4, 1982

Mr. Gerald E. Hillier, District Manager
United States Department of the Interior
Bureau of Land Management
California Desert District
1695 Spruce Street
Riverside, California 92507

Re: California Desert Plan

Dear Mr. Hillier:

Reference is made to your letter received by our Board of Supervisors on or about February 3, 1982, referenced as 1120 (C-060), addressed to Mrs. Wilma Muth, our Chairman. The Board of Supervisors, through Mrs. Muth, have ordered me, as of their meeting of February 9, 1982, to respond to said letter.

First of all, let me remind you that we are in litigation with the Bureau of Land Management and the Department of the Interior on the subject of the California Desert Plan and its implementation. Therefore, all meetings between representatives of the Bureau of Land Management and officials of the County of Inyo, including the Board of Supervisors, concerning the specifics of said plan and Inyo County's objections to it, should be considered settlement negotiations under the law. Thus, we hereby request that you notify this office or Mr. Ted Hilton, Planning Department Director of Inyo County, whenever you wish to discuss specifics of the said Plan with any member of the Inyo County staff or Board of Supervisors.

We feel that your letter was somewhat misleading in several paragraphs. For example "some overreaction based on misreading or reading into the Plan a worst case scenario."

We would like to know specifically to which allegations in our Complaint or negotiations you are referring. Also, you state: "There are some concerns, too, which may simply be based on rumor without basis." We are interested to know exactly to which concerns you are referring.

In the second paragraph of your letter you refer to the fact that Inyo County did not submit any proposal for amendments under the Plan process. First, let me point out that you had not formally notified Inyo County at any time prior to the settlement negotiations that you were doing amendments. We have found out, belatedly, that you have already processed two amendments within our county. We have recently met with you, and you have now explained to us the process which we must go through to amend.

Of course, we have related to you that our legal position is that it is impossible to amend an illegal plan. However, in the spirit of cooperation which has been present in the past settlement conference, we are willing to undertake the amendment process with the proper stipulations to protect our interests.

We hope that we will be able to continue to have a meaningful dialogue with you concerning specifics of litigation in which we are now engaged. Our main objection all along has been that you and your planners, when developing the California Desert Plan, apparently totally ignored the concerns of the local citizens of our county.

We are also concerned with press releases you have made, in particular, the one you made to BLM NEWSBEAT, wherein the headlines read "Federal Judge Turns Down Injunction Against Plan." The tone of the article is one in which you seem to assume victory in the Desert Plan. A careful reading of Judge Tashima's opinion, read most favorably to your point of view, would indicate that the Plan is most likely in trouble from a legal point of view. One undisputable fact which has been admitted by your side, and which will not be changed at time of trial, is that there was no preferred alternative designated in the draft EIS. That fact alone is discussed by the Judge in his opinion and has been brought up many times by him in hearings. If the plaintiffs prove no other

facts except that one, you stand a possibility of having no Plan at all.

If you have any questions regarding the California Desert Plan lawsuit, please do not hesitate to address them to us.

Very truly yours,

DENNIS L. MYERS
County Counsel

DLM:jb

cc: Wilma Muth, Chairman
Inyo County Board of Supervisors

Ed Hasty, State Director
Bureau of Land Management

James R. Arnold, Esq.
Assistant U. S. Attorney

Ted Hilton, Planning Director
County of Inyo