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DISTRICT OF UTAH
BY: *pcv*
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UINTAH COUNTY, a political subdivision)
of the State of Utah, UTE INDIAN TRIBE,)
a federally recognized Indian Tribe, LYNN)
I. SIDDOWNAY, DEAN CHEW,)
ALAMEDA CORPORATION, a Delaware)
corporation, and MORAPAS CREEK)
SHEEP COMPANY, a sole proprietorship)
owned by Oscar S. Wyatt, Jr.,)

Plaintiffs,)

vs.)

GALE NORTON, in her capacity as)
Secretary of the Interior, NINA HATFIELD,)
Acting Director of the Bureau of Land)
Management, SALLY WISELY, State)
Director, Bureau of Land Management,)
DAVID E. HOWELL, Field Manager,)
Vernal Field Office, Bureau of Land)
Management, in their official capacities, and)
the UNITED STATES DEPARTMENT OF)
THE INTERIOR, and the BUREAU OF)
LAND MANAGEMENT,)

Defendants,)

ANIMAL LEGAL DEFENSE FUND,)

Amicus Curiae.)

Civil No. 2:00-CV-0482J

JUDGMENT

The above-entitled action came on for hearing before the Court, Honorable Bruce S. Jenkins, Senior District Judge, presiding, on April 3, 2001, and the issues having been duly heard

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and a Memorandum Opinion having been duly rendered in the matter by the Court on September 21, 2001,

IT IS ORDERED, ADJUDGED & DECREED:

1. The claims of the private plaintiffs herein, Lynn I. Siddoway, Dean Chew, the Alameda Corporation and the Morapas Creek Sheep Company, are DISMISSED for lack of standing to challenge the Bureau of Land Management's ("BLM") *Decision Record and Finding of No Significant Impact* (EA No. UT-080-2000-097), dated June, 2000 (the "Decision") calling for the release of eighty (80) wild horses onto the Bonanza Herd Area in Uintah County, Utah. The private plaintiffs have demonstrated that their interests fall within the "zone of interest" protected by the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. §§ 1701 *et seq.* (1986) ("FLPMA") sufficiently to qualify them to bring an action under the Administrative Procedures Act, 5 U.S.C. §§ 702 *et seq.* (1986), and that the Decision is a "final agency action." However, in order to show standing, the private plaintiffs must also meet three constitutional requirements under Article III, *viz.*, that they have suffered an injury in fact, that the injury is fairly traceable to the action challenged, and that a favorable decision is likely to redress the injury of which they complain. The Court finds that despite the private plaintiffs' significant interest in grazing allotments either wholly or partially within the Bonanza Herd Area or in the immediately surrounding area, they have not shown an injury-in-fact resulting from the Decision.

2. Plaintiff Uintah County ("County") has standing to challenge the Decision. The County sufficiently alleged violations by the BLM of the County's procedural rights under the FLPMA, including but not limited to the consistency review requirements of 43 U.S.C. § 1712 (c)(9) (1986), and applicable implementing regulations, and has raised valid health, safety and

environmental concerns relative to the Decision, all of which can be redressed by vacation of the Decision.

3. Plaintiff Ute Indian Tribe ("Tribe") has standing to challenge the Decision. The Tribe sufficiently alleged and has demonstrated that the BLM failed to comply with FLPMA's planning requirements, including but not limited to consultation under 43 U.S.C.A. § 1712(c)(9) (1986), and applicable implementing regulations, that the BLM failed to adequately consult with the Tribe concerning the Decision and failed to review the Decision for consistency with tribal land management plans, both in violation of applicable statutes and the BLM's regulations. As a result of these failures and the Tribe's "geographical nexus" to the Bonanza Head Area, the Tribe has suffered injury-in-fact.

4. The BLM issued the Decision without complying with the procedural requirements of 43 U.S.C. § 1712(c)(9) and 43 C.F.R. § 1610.1-1610.2 (2000), thereby violating the County's and Tribe's rights to consultation, coordination and consistency review. Therefore, the Decision is set aside due to the BLM's failure to observe procedures required by law. *See* 5 U.S.C.A. § 706 (2)(D) (1996).

5. The Decision does not conform with the Book Cliffs Resource Management Plan ("BCRMP"), which requires the removal of all wild horses from the Bonanza Herd Area. The BLM has no discretion to operate outside of the BCRMP's management directives. *See* 43 C.F.R. § 1610.5-3 (2000). The Decision is, accordingly, set aside as arbitrary, capricious, an abuse of discretion and not otherwise in accordance with law. *See* 5 U.S.C.A. § 706(2)(A) (1996).

6. The BLM has no discretion in deciding whether to comply with the management

directives set forth in the BCRMP. *See* 43 C.F.R. § 1610.5-3, 5-5 (2000). Therefore, the BLM's decision in the BCRMP to remove all wild horses from the Bonanza Herd Area is subject to 5 U.S.C.A. § 706(1) (1996), which directs courts to "compel agency action unlawfully withheld or unreasonably delayed." The Bureau has had at least fifteen (15) years in which to carry out the BCRMP's directive requiring removal of all wild horses from the Bonanza Herd Area.

7. The Decision is SET ASIDE, and defendants shall comply with the BCRMP by immediately and permanently removing all wild horses from the Bonanza Area pending any formal amendment to the BCRMP properly made in accordance with the procedural and substantive requirements of FLPMA and its implementing regulations addressed, in part, in the Court's Memorandum Decision. The removal shall be completed no later than thirty (30) days following entry of this Judgment.

8. The defendants are PERMANENTLY ENJOINED and prohibited from introducing or reintroducing wild horses onto the Bonanza Herd Area until such time as the BCRMP is formally amended in conformity with applicable statutes and regulations to permit such introduction or reintroduction of wild horses onto the Bonanza Herd Area.

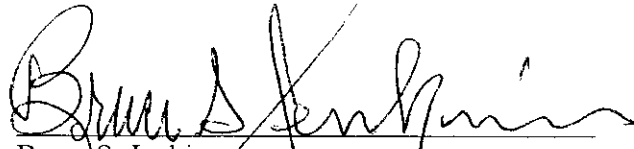
9. In the event the defendants continue their efforts to amend or replace the BCRMP, the BLM shall provide adequate consultation and coordination with the County and Tribe regarding such amendment or replacement, and the BLM shall conduct the consistency review called for by applicable statutes and regulations with regard to such amendment or replacement of the BCRMP.

10. The plaintiffs and defendants shall each bear their own costs of action and attorneys fees.

11. Judgment is hereby entered *nunc pro tunc* to September 24, 2001.

DATED this 26 day of October, 2001.

BY THE COURT:



Bruce S. Jenkins
United States Senior District Judge

United States District Court
for the
District of Utah
October 26, 2001

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:00-cv-00482

True and correct copies of the attached were either mailed or faxed by the clerk to the following:

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