

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Supervisor Marion Ashley and Supervisor Bob Buster

SUBMITTAL DATE:
August 3, 2010

SUBJECT: Approval of Letter to U.S. Fish and Wildlife Service Concerning March Air Reserve Base Management Area

RECOMMENDED MOTION: That the Board of Supervisors Authorize the Chairman of the Board to Execute the Attached Letter to the U.S. Fish and Wildlife Service.

BACKGROUND: In fall of 2009, the Center for Biological Diversity filed a lawsuit in U.S. District Court (San Diego) against the U.S. Fish and Wildlife Service (Center for Biological Diversity v. Bartel, Case No. 09-cv-1864-JAH, SD CA) challenging the exchange of the March Management Area for land included within the Potrero site acquired by the Riverside County Habitat Conservation Agency, the federal Bureau of Land Management and the State of California. The parties have now proposed to enter into a settlement agreement which re-instates the March Management Area as a reserve for the Stephens' kangaroo rat. This area is currently proposed for development. As indicated in the draft letter, this action will also have an adverse effect on certain identified projects within the unincorporated area and employment opportunities.

As a result of the proposed settlement agreement, the March Joint Powers Authority (JPA) has filed a motion in court to intervene as a party in the litigation. If the motion is granted, the March JPA will be a party to the litigation. Attorneys for the March JPA have requested that the County execute the attached letter opposing the terms of the settlement agreement. Attached is a copy of the proposed settlement agreement and the draft letter for your consideration.

Bob Buster

Bob Buster
Supervisor – District 1

Marion Ashley

Marion Ashley
Supervisor – District 5

Departmental Concurrence

Policy

Consent

Dept. Recomm.:
Per Exec. Ofc.:

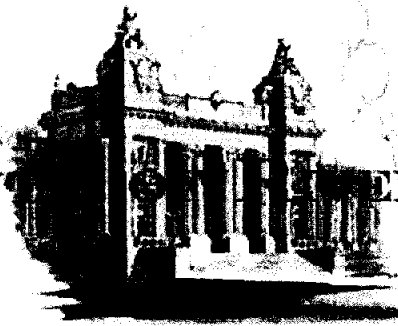
Prev. Agn. Ref.:

District:

Agenda Number:

3.73

COUNTY OF RIVERSIDE



Board of Supervisors

District 1	Bob Buster 951-955-1010
District 2	John F. Tavaglione 951-955-1020
District 3	Jeff Stone 951-955-1030
District 4	John J. Benoit 951-955-1040
District 5	Marion Ashley 951-955-1050

Jim Bartel
Field Supervisor
United States Fish and Wildlife Service
6010 Hidden Valley Road, Suite 101
Carlsbad, CA 92009

Re: Long-term Stephens' Kangaroo Rat Habitat Conservation Plan Core Reserve Exchange

Dear Mr. Bartel:

The County of Riverside (the "County") wishes to formally express its strong opposition to both the approval, and the terms, of the settlement agreement recently proposed in the lawsuit Center for Biological Diversity v. Bartel (Case No. 09-cv-1864-JAH, SD CA). The County adamantly opposes the settlement agreement, which proposes to set aside a land exchange that took place for the benefit of the Stephens' kangaroo rat ("SKR") nearly seven years ago, in part because it would result in the unacceptable delay of several important projects planned by the County and others with little or no benefit to the SKR. According to the draft settlement agreement, the United States Fish and Wildlife Service ("Service") would be obligated to rescind the approval of the land exchange within 30-days of the agreement being authorized by the Court. This land exchange should not be set aside because it carefully balanced the conservation needs of the SKR and the economic needs of Western Riverside County. The exchange was based on trade criteria developed over many years and approved by the Service after careful and thorough review, as reflected in a number of environmental documents. The Service's 2003 authorization applied this stringent criteria in a detailed analysis set out in the Service's December 2003 letter approving the exchange. Thus, extensive time and public money have been spent to satisfy the established trade criteria, and the land exchange should not be set aside.

Moreover, rescinding approval of the exchange would have a severe impact on the community at a time when residents are struggling. Most immediately, setting aside the land exchange could adversely impact the following projects:

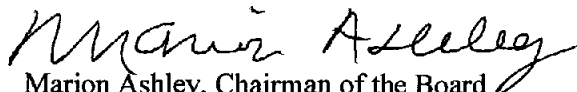
- The Van Buren Boulevard Widening Project – This project involves the widening of Van Buren Boulevard, a major arterial thoroughfare that transects the former SKR management area. Rescission of the land exchange would not only delay this project, which is required to maintain appropriate traffic circulation levels of service, but it would also result in the delay of important projects on land south of Van Buren Boulevard. Those projects are conditioned on the Van Buren Boulevard Widening Project being under construction or financially assured prior to the commencement of construction. Widening Van Buren Boulevard necessarily encroaches into the former SKR management area and, therefore, rescission of the land exchange would present a substantial hurdle to commencing construction of the project and getting people back to work.

- Community Sports Park Project - This project involves the construction of a 60-acre community park that will be generally located north of Van Buren Boulevard, and west of the Barton Road alignment. While this project is not subject to County approval, it is one which presents construction and maintenance employment opportunities within the County. Furthermore, it provides important recreational opportunities for our residents.
- Barton Road Extension – Another important regional circulation project is the extension of Barton Road between Alessandro and Van Buren Boulevards. Not only would this project provide access for the community sports park, but it would also provide much needed traffic relief for the Mission Grove residential area and Grove Community Church.

The County unquestionably understands the importance of species conservation. Indeed, it has been a national leader on this issue, playing an integral role in the development and approval of the Long-Term SKR Habitat Conservation Plan, the Western Riverside County Multiple Species Habitat Conservation Plan and the Coachella Valley Multiple Species Habitat Conservation Plan. However, the County is also keenly aware of the importance of developing new jobs in the current economic recession as well as providing adequate traffic circulation and other public facilities. Setting aside the 2003 trade out would only exacerbate these problems and stall the very projects that will help lift the County out of this recession. Moreover, these projects will not come at the expense of species conservation as the overwhelming weight of the evidence demonstrates that the land exchange authorized in 2003 provides superior benefits to the long-term protection of the SKR. Finally, the County objects to the fact that the settlement agreement was agreed to by the federal government without the input, and over the objections of the property owner of the former SKR management area, namely the March Joint Powers Authority.

For the reasons described herein, the County opposes rescission of the trade out and urges the Service to seriously reconsider its position with respect to the proposed settlement agreement.

Very truly yours,



Marion Ashley, Chairman of the Board
Riverside County Board of Supervisors – District Five

1 Jonathan Evans (CA Bar No. 247376)
2 John Buse (CA Bar No. 163156)
3 CENTER FOR BIOLOGICAL DIVERSITY
4 351 California St., Suite 600
5 San Francisco, CA 94104
6 Telephone: (415) 436-9682 x 318
7 Fax: (415) 436-9683
8 Email: jevans@biologicaldiversity.org
9 Attorneys for Plaintiffs

6 IGNACIA S. MORENO, Assistant Attorney General
7 JEAN E. WILLIAMS, Section Chief
8 SETH M. BARSKY, Assistant Section Chief
9 BRADLEY H. OLIPHANT, Trial Attorney (CA Bar
10 No. 216468)
11 United States Department of Justice
12 Environment & Natural Resources Division
13 Wildlife & Marine Resources Section
14 Ben Franklin Station, P.O. Box 7369
15 Washington, DC 20044-7369
16 Phone: (202) 305-0500
17 Fax: (202) 305-0275
18 Email: bradley.oliphant@usdoj.gov

14 JOANNA K. BRINKMAN, Trial Attorney (IL Bar
15 No. 6299174)
16 United States Department of Justice
17 Environment & Natural Resources Division
18 Natural Resources Section
19 Ben Franklin Station, P.O. Box 663
20 Washington, D.C. 20044-0663
21 Phone: (202) 305-0476
22 Fax: (202) 305-0267
23 Email: joanna.brinkman@usdoj.gov
24 Attorneys for Defendants

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

23 CENTER FOR BIOLOGICAL DIVERSITY
24 and SAN BERNARDINO VALLEY
25 AUDUBON SOCIETY,
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27 Plaintiffs,
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29 v.
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31 JIM BARTEL, Field Supervisor for the
32 Carlsbad Office of the United States Fish and
33 Wildlife Service, the UNITED STATES
34 FISH AND WILDLIFE SERVICE, and KEN

CASE NO. 09-cv-1864-JAH-POR
SETTLEMENT AGREEMENT

1 SALAZAR, Secretary of the Interior,
2 Defendants.

3
4 Plaintiffs, Center for Biological Diversity and San Bernardino Valley Audubon Society,
5 and Defendants, Jim Bartel, Field Supervisor for the Carlsbad Office of the United States Fish
6 and Wildlife Service, the United States Fish and Wildlife Service, and Ken Salazar, Secretary of
7 the Interior, by and through their undersigned counsel, state as follows:

8 WHEREAS, Jim Bartel is the Field Supervisor for the Carlsbad Office of the United
9 States Fish and Wildlife Service, and is the federal official charged with implementation of the
10 Endangered Species Act (“ESA”) in the region, including the March Stephens’ Kangaroo Rat
11 Management Area (“March SKR Management Area”);

12 WHEREAS, the United States Fish and Wildlife Service (“Service”) is an agency within
13 the Department of Interior which has been delegated responsibility for implementing the ESA
14 including proposed and final listing and critical habitat decisions, the handling of petitions for
15 such listings, and the decisions to consult on the impacts to endangered species;

16 WHEREAS, Ken Salazar is the Secretary of the Interior (“Secretary”), and is the federal
17 official charged with listing species as endangered or threatened and supervising the consultation
18 requirements under the ESA;

19 WHEREAS, the March SKR Reserve was first established in June of 1990 as preserved
20 habitat, and the larger March SKR Management Area was established thereafter in 1991;

21 WHEREAS, the Stephens’ Kangaroo Rat Habitat Conservation Plan (“SKR HCP”) was
22 adopted, and an incidental take permit was issued, in 1996;

23 WHEREAS, on August 27, 2009, Plaintiffs initiated this lawsuit against the Defendants,
24 alleging a failure to reinstate consultation by preparing a new biological opinion under the
25 Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.* (“ESA”), and a failure to conduct
26 environmental analysis under the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*
27 (“NEPA”), prior to authorizing the release of land dedicated in perpetuity for the conservation of
28 the Stephens’ kangaroo rat (“SKR”) for commercial development;

1 WHEREAS, the parties, through their authorized representatives, and without any
2 admission or final adjudication of the issues of fact or law with respect to Plaintiffs' claims, have
3 reached a settlement;

4 NOW, THEREFORE, the parties hereby stipulate and agree as follows:

5 1. Within thirty (30) days of entry of an Order on this Settlement Agreement
6 ("Agreement"), the Service shall rescind the approval of the release of the March SKR
7 Management Area by letter to the original addressees of the December 29, 2003, approval, thus
8 restoring the March SKR Management Area as a preserve under the SKR HCP and subjecting
9 the March SKR Management Area to the restrictions applicable to preserve lands under the
10 Service's ESA section 10(a)(1)(B) permit and the SKR HCP.

11 2. Should a release of the March SKR Management Area be considered again in the
12 future, the Service agrees to the following:

- 13 a. comply with NEPA as appropriate, with the form and content of any NEPA
14 analysis depending on the proposed action
- 15 b. initiate consultation as appropriate under ESA section 7 prior to any such
16 release, and follow the section 7 regulations and the Endangered Species
17 Consultation Handbook in undertaking that consultation
- 18 c. provide Plaintiffs and the public with any necessary notice under the NEPA
19 and ESA regulations.

20 Any action to challenge a subpart of this Paragraph must be pursued in a new lawsuit under the
21 judicial review provisions of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. The
22 parties agree that such a challenge to actions in this subpart may not be pursued in the form of
23 an action to enforce this settlement.

24 3. Either party may seek to modify the deadline specified in Paragraph 1 for good
25 cause shown, consistent with the Federal Rules of Civil Procedure. In the event that either party
26 believes the other party has failed to comply with any term or condition of this Agreement,
27 except the terms in paragraph 2 which provides for separate recourse, the parties shall use the
28 dispute resolution procedures specified in Paragraph 4 below.

1 4. The Order entering this Agreement may be modified by the Court upon good
2 cause shown, consistent with the Federal Rules of Civil Procedure, by (i) written stipulation
3 between the parties filed with and approved by the Court, or (ii) upon written motion filed by
4 one of the parties and granted by the Court. At least 30 days prior to filing any motion to
5 enforce this Agreement, except paragraph 2, the party contemplating the motion must bring its
6 claimed breach to the attention of the other party, in writing, and make a good faith effort to
7 resolve the dispute informally within 30 days thereafter. The parties agree not to seek to invoke
8 the contempt powers of the district court for any alleged breach of this Agreement.

9 5. This Agreement has no precedential value and may not be used as evidence in
10 any litigation against Defendants. In any other judicial or administrative proceeding, this
11 Agreement may not be used to present or imply any position of the Defendants with regard to
12 the SKR Management Area, except to show that the Service has rescinded its approval of the
13 release of the SKR Management Area and that, under its ESA section 10(a)(1)(B) permit, the
14 Service again considers the SKR Management Area to be part of the reserves under the SKR
15 HCP.

16 6. No party shall use this Agreement or the terms herein as evidence that the
17 Defendants are required to initiate consultation under the ESA or perform environmental
18 analysis under NEPA in any other proceeding involving the March SKR Management Area.

19 7. No provision of this Agreement shall be interpreted as, or constitute, a
20 commitment or requirement that Defendants take action in contravention of the ESA, NEPA, the
21 Administrative Procedure Act ("APA"), or any other law or regulation, either substantive or
22 procedural. Nothing in this Agreement shall be construed to limit or modify the discretion
23 accorded to Defendants by the ESA, NEPA, the APA, or general principles of administrative
24 law with respect to the procedures to be followed in making any determination required herein,
25 or as to the substance of any final determination.

26 8. Nothing in this Agreement shall be interpreted as, or shall constitute, a
27 requirement that Defendants are obligated to pay any funds exceeding those available, or take
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1 any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other
2 applicable appropriations law.

3 9. The parties agree that this Agreement was negotiated for the purpose of judicial
4 economy, and by entering into this Agreement, the parties do not waive any claim or defense.

5 10. Defendants agree that Plaintiffs are the “prevailing parties” in this action, and
6 agree to pay to Plaintiffs reasonable attorneys’ fees and costs, pursuant to Section 11(g) of the
7 ESA, 16 U.S.C. § 1540 (g). The parties agree to attempt to resolve Plaintiffs’ claims for fees
8 and costs expeditiously and without the need for Court intervention. The Court shall retain
9 jurisdiction over the case for the purpose of resolving any dispute between the parties regarding
10 Plaintiffs’ claims for an award of fees and costs. If the parties are unable to resolve attorneys’
11 fees and costs among themselves, Plaintiffs shall file a motion seeking such award. By this
12 Agreement, Defendants do not waive any right to contest fees claimed by Plaintiffs, including
13 the hourly rate, in any continuation of the present action or any future litigation.

14 11. The undersigned representatives of each party certify that they are fully
15 authorized by the party or parties they represent to agree to the Court’s entry of the terms and
16 conditions of this Agreement and do hereby agree to the terms herein.

17 12. The terms of this Agreement shall become effective upon entry of an order by the
18 Court ratifying the Agreement.

19 13. Upon approval of this Agreement by the Court, all counts of Plaintiffs’ complaint
20 shall be dismissed with prejudice and Plaintiffs shall withdraw any and all pending Freedom of
21 Information Act requests related to this litigation. Notwithstanding the dismissal of this action,
22 however, the parties hereby stipulate and respectfully request that the Court retain jurisdiction to
23 oversee compliance with Paragraph 1 of this Agreement and to resolve any motions to modify
24 such terms. See Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375 (1994).

25 Dated: April 22, 2010

Respectfully submitted,

s/ Jonathan Evans

Jonathan Evans (CA Bar No. 247376)

John Buse (CA Bar No. 163156)

CENTER FOR BIOLOGICAL DIVERSITY

351 California St., Suite 600

San Francisco, CA 94104

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Telephone: (415) 436-9682 x318
Fax: (415) 436-9683
Email: jevans@biologicaldiversity.org
Attorneys for Plaintiff

IGNACIA S. MORENO, A.A.G.
JEAN E. WILLIAMS, Section Chief
s/ *Bradley H. Oliphant*
BRADLEY H. OLIPHANT, Trial Attorney
(Cal. Bar No. 216468)
Wildlife & Marine Resources Section
Ben Franklin Station, P.O. Box 7369
Washington, DC 20044-7369
Phone: (202) 305-0500
Fax: (202) 305-0275
Email: bradley.oliphant@usdoj.gov

JOANNA K. BRINKMAN, Trial Attorney
(IL Bar No. 6299174)
U.S. Department of Justice
Environment & Natural Resources Division
Natural Resources Section
Ben Franklin Station, P.O. Box 663
Washington, D.C. 20044-0663
Phone: (202) 305-0476
Fax: (202) 305-0267
Email: joanna.brinkman@usdoj.gov
Attorney for Defendants

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CENTER FOR BIOLOGICAL DIVERSITY
and SAN BERNARDINO VALLEY
AUDUBON SOCIETY,

Plaintiffs,

v.

JIM BARTEL, Field Supervisor for the
Carlsbad Office of the United States Fish and
Wildlife Service, the UNITED STATES
FISH AND WILDLIFE SERVICE, and KEN
SALAZAR, Secretary of the Interior,

Defendants.

CASE NO. 09-cv-1864-JAH-POR

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to the attorneys of record.

s/ Jonathan Evans
JONATHAN EVANS