

**U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
CALIFORNIA DESERT DISTRICT**

**El Centro Field Office  
1661 S. 4<sup>th</sup> Street  
El Centro, CA 92243**

**Decision Record  
and  
FINDING OF NO SIGNIFICANT IMPACT**

**for**

Temporary closure to motorized vehicle use of five selected areas in the Imperial Sand Dunes Recreation Area, Imperial County, California

Prepared by:

U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
CALIFORNIA DESERT DISTRICT  
El Centro Field Office

Environmental Assessment CA-670-EA-2001-58

**DECISION:** Based on careful review of Environmental Assessment No. CA-670-EA-2001-58 (EA) and the Finding of No Significant Impact, and consideration of the approximately 660 public comment letters submitted on the EA, my decision is to approve the temporary closure to off-highway vehicle (OHV) and other vehicle use (with certain exceptions for federal government vehicles) of approximately 49,300 acres in five selected areas in the Imperial Sand Dunes Recreation Area (ISDRA). The closed areas are within the boundaries of the California Desert Conservation Area (CDCA) and include the northern closure of approximately 3,800 acres, the small central closure of approximately 2,000 acres, the large central closure of approximately 43,035 acres, the closure in the Patton Valley area of approximately 310 acres, and the southern closure of approximately 160 acres. These areas were described in more detail in the EA. Maps of the closed areas are attached to this decision record.

This decision replaces the decision issued November 2000 authorizing the closure of 49,300 acres now in effect. I have determined it necessary to use my authority under 43 CFR 8341 to close these five areas until the significance of impacts to *Astragalus magdalanae* var. *Peirsonii* (Peirson's milk-vetch) is determined in relation to the conservation of the species as a whole. Therefore, the restrictions will be effective immediately upon the publication of a notice of the closures in the Federal Register and will remain in place until BLM develops and implements a long term conservation program for Peirson's milk-vetch as part of the Imperial Sand Dunes Recreation Management Plan (ISDRMP). ISDRMP is now in progress, and a Record of Decision is expected to be finalized on the ISDRMP by October 2002.

BLM has undertaken consultation with Fish and Wildlife Service (FWS) on the this interim decision, pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, as amended. A positive concurrence on the interim closures was received from FWS on July 13, 2001. In addition, BLM has initiated consultation on the CDCA Plan in response to a lawsuit by the Center of Biological Diversity. A Biological Evaluation on the effects of the CDCA Plan on 10 threatened and endangered plants, including Peirson's milk-vetch, was submitted to the FWS with the request for consultation on January 31, 2001. A Biological Opinion is expected late this year. Finally, BLM will complete ESA consultation on the ISDRMP prior to approving a Record of Decision on the plan.

**RATIONALE:** These interim closures will prevent the driving of OHVs and other vehicles in the five areas. This action, and its immediate implementation, is necessary based on the FWS' 1998 listing of the Peirson's milk-vetch as threatened in which FWS concluded OHV use is causing an adverse effect on the plants.

The FWS concluded in the Final Rule of October 6, 1998: "the primary threat" to Peirson's milk-vetch is "destruction of individuals and dune habitat from OHV use and the recreational development associated with it" (63 Federal Register 53596, 53600). FWS states that Peirson's milk-vetch is small in stature and provides little obstacle to OHV riders (63 Federal Register 3605). In addition, its single stem is brittle, causing the plant to break, not bend when hit by a vehicle (Id.). Its lack of lateral roots may reduce its ability to remain anchored and survive vehicle induced damage (Id.).

The FWS further concluded that OHV use, including driving and parking motorized vehicles, may damage individual plants of the species through the crushing of plants and the discharge of oil or other damaging substances from OHVs. Seasonal OHV activities, which occur from approximately October through May, coincide with active plant growth and seedling establishment (63 Federal Register 53605) of Peirson's milk-vetch. As a result, Peirson's milk-vetch is most vulnerable to crushing and trampling by OHV activities during a critical period in the life cycle of these plants. If enough Peirson's milk-vetch plants are harmed, Peirson's milk-vetch reproduction may be negatively affected. Further, the only known extant occurrences of threatened Peirson's milk-vetch in the United States are in the Imperial Sand Dunes, and the areas which are subject to this closure contain high concentrations of these plants.

Because FWS determined OHV use to be the primary threat to Peirson's milk-vetch, and because of the uncertainty of the date of issuance and implementation of the Biological Opinion, BLM concludes immediate closure under Section 8341 is necessary. Protecting Peirson's milk-vetch in this manner is part of a program to conserve listed species in the CDCA and will avoid making any irreversible and irretrievable commitments of resources which would preclude the implementation of any reasonable and prudent alternative measures which may be required as a result of consultation on the CDCA Plan.

On March 16, 2000, the Center for Biological Diversity, et al (Center) filed for injunctive relief in U.S. District Court, Northern District of California (Court) against BLM to immediately prohibit all OHV activities that may affect Peirson's milk-vetch. The Center alleged the BLM was in violation of Section 7 of the ESA by failing to enter into formal consultation with the FWS on the effects of adoption of the CDCA Plan, as amended, upon threatened and endangered species. On August 25, 2000, the BLM acknowledged through a court stipulation that activities authorized, permitted, or allowed under CDCA Plan may adversely affect threatened and endangered species, and that the BLM is required to consult with the FWS to insure that adoption and implementation of the CDCA Plan is not likely to jeopardize the continued existence of threatened and endangered species or to result in the destruction or adverse modification of critical habitat of listed species. Instead of litigating the case, and facing an injunction of all authorized desert activities, BLM entered into five stipulated agreements, including the stipulation respecting Imperial Sand Dunes. Immediate implementation of the interim closures will ensure that BLM remains in compliance with the settlement agreement.

Although precipitated by the Center's lawsuit, BLM has reviewed its current management of the ISDRA as it relates to Peirson's milk-vetch. As an interim measure, BLM implements these closures to provide additional protection to Peirson's milk-vetch pending implementation of the yet to be issued FWS Biological Opinion on the CDCA Plan. Section 7(a)(1) of the ESA provides that Federal agencies are to utilize their authorities to further the purposes of the Act by carrying out programs for the conservation of listed species (16 USC 1536(a)(1)). Title 43 CFR Section 8341.2 provides that the authorized officer shall immediately close an area when he determines that OHVs are causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, other authorized uses, or other resources.

Section 7(d) of the ESA provides that after initiation of consultation under §7(a)(2), a Federal agency shall not make any irreversible or irretrievable commitment of resources with respect to agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate the requirements of the ESA. Consultation on the CDCA Plan was initiated on January 31, 2001. Closure of these five areas in the Dunes will ensure that BLM has not foreclosed any reasonable and prudent alternative measures which might be required for management of the ISDRA.

As stated previously in this Decision Record, the interim closures are necessary to protect Peirson's milk-vetch from adverse effects of OHV use while BLM completes a Record of Decision for the ISDRMP. The new ISDRMP and its accompanying Environmental Impact Statement (EIS), including the results of Section 7 consultation with FWS, will determine the severity of past and potential future impacts to Peirson's milk-vetch individuals and the significance of those impacts on the conservation of the species in the dunes as a whole. The ISDRMP will analyze a range of alternatives which may include removal of the temporary closures, continuation of the closures, modification of the closures, and/or other measures to ensure the conservation of Peirson's milk-vetch.

BLM now has available the results of monitoring studies undertaken in the Imperial Dunes (Willoughby 2000, 2001; Phillips 2001) which were not available at the time of the FWS listing of Peirson's milk-vetch. These studies provide important findings regarding Peirson's milk-vetch responses to OHV use. Those findings along with other relevant information obtained during the ISDRMP process will be incorporated as part of BLM's Biological Evaluation of the proposed ISDRMP to help establish an effective long-term conservation program for Peirson's milk-vetch. However, until BLM has sufficient information to determine whether adverse effects of OHV use to Peirson's milk-vetch plants are of a magnitude that will adversely affect the long-term conservation of Peirson's milk-vetch, these interim closures are necessary.

BLM recognizes that the interim closures will displace some OHV use and will have an overall negative impact to OHV recreation (EA, page 16). However, approximately 69,000 acres of the 118,000 acres of the Dunes which have been open to OHV use since 1972 remain available to OHV use as a result of these interim closures, including many of the traditional areas of concentrated use. The interim closures avoid major camping and staging areas within the ISDRA, provide "open" access corridors to popular OHV use areas, and minimize OHV closures in high-use or traditional riding areas.

The majority of the OHV recreationists at the ISDRA utilize the high-use areas south of Highway 78 between Gecko Road and the Glamis Store. Most of the users concentrate within these high-use camping or staging areas and travel to popular "open" riding areas at Competition Hill, Oldsmobile Hill, Brawley Slide Hill, Lizard Hill, China Wall and Patton Valley. The temporary closure will not affect the high use areas, except the closure one mile east of Gecko Road.

## **PUBLIC COMMENTS TO ENVIRONMENTAL ASSESSMENT (Significant issues raised and BLM response)**

BLM received 660 comment letters on the proposed closures and EA. A summary of the comments and BLM's response to those comments follows:

**Comment:** Approximately 600 letters are general, mostly falling into one of several form-letters. They were supportive of the closure or opposed, but provided no specific new information.

**Response:** BLM considered these comments, along with all others received, in developing the decision record.

**Comment:** The "No Action" alternative is supported because human uses should be the priority and the proposed action has a greater impact on recreation, including safety considerations, and wilderness values than recognized in the EA.

**Response:** BLM carefully weighed all values and possible impacts in making this decision. The agency is required to balance public uses with legal requirements under the ESA to prevent irretrievable or irreversible commitment of resources affecting listed species pending consultation with the FWS.

**Comment:** The EA's conclusion that the proposed action would protect North Algodones Wilderness values is speculative. Monitoring to date indicates no unauthorized intrusions are occurring.

**Response:** BLM acknowledges that voluntary compliance efforts, as well as effective law enforcement, have minimized OHV intrusions into the Wilderness Area.

**Comment:** The presentation of the monitoring situation (OHV recreation v. Peirson's milk-vetch) is unsupported.

**Response:** BLM's monitoring data cited (which is also public and available online at <http://www.ca.blm.gov/elcentro/algdunesmonitorstudy.html>) has been supplied to the FWS for use in developing the Biological Opinion required by the ESA which will determine the effects of OHV use on Peirson's milk-vetch.

**Comment:** The listed effect on water quality included in the Environmental Effects chart is not supported by further reference in the assessment, is unsubstantiated, and should be removed from the EA.

**Response:** Based on further review of the available data, BLM has concluded the conclusion in the EA is appropriate. A summary of the data we reviewed is as follows: the interim closure areas are under the purview of the California Regional Water Quality Control Board - Colorado River Basin Region, Region 7, which sets the water quality standards; the closure areas are located within the Region 7 Desert Aquifers Watershed Region on a sand dunes system that overlays the alluvial fan formed by the Chocolate Mountains; water that falls onto or flows into the sand dunes does not drain into any navigable water but sinks into the ground; there are no applicable water quality standards or criteria which apply in the vicinity of these washes; any localized problems associated with leaks, spills or dumping of fuels and oil would be more likely to occur in the concentrated use areas rather than the interim closure areas; thus as indicated in

the table and generally in the EA on page 14, significant adverse impacts to water quality are not expected.

**Comment:** Statements made about “Air Quality” for both alternatives cannot be supported. “No air quality monitors are located at the ISDRA. Therefore, the local ozone and PM-10 levels for the dunes are not known.” These unsupported references must be removed.

**Response:** Lacking quantitative information on air quality, as is indicated in the EA on page 12, BLM has relied on personal observations of staff in the field to draw its conclusion. The conclusion that there would not be significant impact on air quality from the interim closures is consistent with other findings of the EA.

**Comment:** The statement that alternative, non-motorized forms of recreation may increase in the closed areas with the absence of motorized vehicles has no foundation and should be stricken.

**Response:** BLM recognizes the ISDRA is primarily a vehicle-oriented recreation area. However, the proposed closed area offers arrays of habitats and species that could draw some non-OHV hiking interest from those who might desire different recreational experiences.

**Comments:** A number of comments relate to one or more of the following topics:

- boundaries are set up in a way that makes it difficult for the public to comply
- OHV recreation at ISDRA is a very important, passionate, high quality pastime that is being threatened. The closure presents a cumulative loss of areas going back 25 years
- displacement of OHV use presents management issues elsewhere.
- how much non-OHV use area is enough to adequately protect Peirson’s milk-vetch?

**Response:** Public compliance with the closure boundaries has been high and BLM will continue to keep the boundaries well marked. BLM recognizes the popularity of OHV recreation use at ISDRA and the proposed decision was designed to minimize impacts to the most popular areas within ISDRA while still providing necessary protections for the Peirson’s milk-vetch to meet ESA requirements. Management issues created by displacement are being addressed as necessary. The question of how much non-OHV use is enough to protect the Peirson’s milk-vetch in the long-term will be addressed in the ISDRMP now being developed with public involvement.

**Comment:** Comments questioned BLM’s authority and whether BLM followed the appropriate processes: 1) a two weeks public comment period is insufficient; 2) BLM has no closure authority under CFR 8364.1 or under the Federal Land Policy and Management Act (FLPMA) of 1976 (43 USCA §1781 (d)); 3) BLM is making or extending withdrawals; 4) BLM is making decisions that only the Secretary of the Interior can make; 5) BLM cannot close areas to OHV use that were previously designated open; 6) BLM cannot close areas or trails outside critical habitat; 7) the closure is not premised on a recovery plan; 8) the temporary closure is significant and requires an EIS; 9) BLM is not complying with the Regulatory Flexibility Act and should conduct the process through proposed regulations and guidelines and involving hearings.

**Response:** BLM has the necessary legal and regulatory authority to make the decision in question as well as the policy flexibility to determine length of discretionary comment periods to facilitate public involvement within necessary time constraints. Most important, as noted earlier, these interim restrictions are temporary in nature and long-term decisions on the management of

ISDRA will be made through the ISDRMP and EIS to be completed by October 2002 with full public involvement. Finally, the interim closures are being authorized under 43 CFR 8341, not 8364, as indicated in the EA.

**Comment:** The Federal Register Notice and EA fail to disclose that BLM has already closed the Imperial Dunes.

**Response:** This decision record acknowledges the existing temporary closure put in place in November 2000.

**Comment:** The EA is at least 10 months late.

**Response:** The EA referenced in the comment, EA Number CA-670-EA-2001-58, dated June 11, 2001, was prepared for the proposed closure of June 15, 2001.

**Comment:** The Federal Register Notice misstates scope of programmatic consultation and fails to identify the technical document submitted to FWS.

**Response:** The comment is acknowledged. The programmatic consultation covers 10 plant species occurring in the CDCA. The technical document cited, *Biological Evaluation of Effects of CDCA Plan as Amended and Proposed to be Amended by the NEMO and NECO preferred Alternatives and with Other Interim Measures on Ten T&E Plants*, dated January 2001, has been submitted to FWS and is available from BLM upon request.

**Comment:** The Federal Register Notice overstates “benefits” of dunes closures on Peirson’s milk-vetch and the EA does not disclose past studies and monitoring of dunes plants, which indicate that there is no negative effect nexus between OHV use and the reproductive success of Peirson’s milk-vetch and that there may actually be a positive effect, that OHV use actually increases the occurrence of Peirson’s milk-vetch. The “Purpose and Need” for closures is not adequately supported.

**Response:** BLM’s monitoring data (which is also public and available online as cited earlier) has been supplied to the FWS for use in developing the Biological Opinion required by the ESA which will determine the effects of OHV use on Peirson’s milk-vetch. The purpose and need for these closures is explained further in the rationale section of this decision record.

**Comment:** The Federal Register Notice and EA present no data to show that several wildlife species and habitats (Colorado fringe-toed lizard, Couch’s spade-foot toad, desert tortoise, microphyll woodland, Gila woodpecker, and others) and cultural resources listed in the EA also occur in the dunes and that the closure would benefit them as well.

**Response:** NEPA analysis is based upon both known and predictive occurrences of species. The species addressed are known to occur in habitats included in the closure areas; therefore, it is likely that the indicated species may occur as well, and if their occurrence is likely, it is not only valid but necessary to include them in the EA along with a discussion of how sure BLM is of their presence.

**Comment:** By overstating OHV impacts and inflating benefits the Federal Register Notice and EA “chill” public comment and opposition to the action.

**Response:** As stated in the rationale to this decision record, BLM is taking this action based on

the FWS listing and the need to protect Peirson's milk-vetch in the interim while the long-term ISDRMP is being developed with public involvement. It is not BLM's intent to overstate or inflate the available data in any way, and we are currently seeking public identification of all issues that should be considered and analyzed in the ISDRMP. That scoping effort will be followed by development of a draft ISDRMP which will be also be available for public comment and review. BLM's commitment is to involve the public to the greatest extent possible in development of the long-term ISDRMP.

**Comment:** The range of alternatives is too limited.

**Response:** BLM has the legal and regulatory authority to determine a reasonable range of alternatives for environmental compliance documents under the NEPA. In this case, given the temporary nature of the closure, BLM determined that the proposed action and no action alternative were a reasonable range. As noted, the ISDRMP now underway will include a full range of alternatives for long-term management of the ISDRA.

**Comment:** The EA understates the effects of the closure on OHV recreation uses. How can closure of one-third of an area that is so highly valuable and visited by hundreds of thousands of people each year be considered "insignificant" not requiring an EIS?

**Response:** BLM has the legal and regulatory authority to make a determination on the significance of this action. While we recognize others may disagree, BLM has determined that the interim restrictions justify a Finding of No Significant Action for reasons stated in the decision record. An EIS will be prepared as part of the long-term ISDRMP.

**Comment:** The EA does not provide an adequate analysis of cumulative impacts, in particular covering the cumulative effects of all currently proposed closures in the CDCA and to the detail of recreation opportunities, safety, socio-economic, accessibility, and conflicts with other local, state and federal recreation programs.

**Response:** As stated earlier, using the authority provided by Federal law and regulations giving BLM considerable discretion in defining the scope of NEPA analyses, BLM determined that this decision regarding Peirson's milk-vetch was unique to the ISDRA and should be analyzed separately from the other lawsuit-related interim actions. Therefore, cumulative impacts of other CDCA closures were not addressed.

**Comment:** The EA fails to assess socio-economic impacts of the proposed closure.

**Response:** Discussion of this topic, using available data, was included under the EA's recreation headings.

**Comment:** The EA fails to assess the proposed closure's potential conflicts with state, regional, and local planning policies.

**Response:** BLM acknowledges the legal and regulatory requirements that we consult with State and local governments on planning decisions. However, this decision is temporary and not a long-term planning decision. Consultation with appropriate State and local governments will be completed as part of the development of the ISDRMP, which will be an amendment to the CDCA plan.



**Comment:** The EA fails to assess the proposed closure's impact on persons who rely on their OHVs to access the desert.

**Response:** The EA acknowledges that there may be some displacement and concentration of recreation users. Again, BLM notes this decision is temporary and a more detailed assessment OHV recreational impacts will be developed through the ISDRMP.

**Comment:** The EA's discussion of the No Action Alternative is flawed.

**Response:** Without data derived from the absence of OHVs for a period of time, BLM had to use its professional judgment in describing the effects of continued use in the closed areas.

**APPEAL RIGHTS:** This decision is effective immediately. This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal (43 CFR 4.21). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413). If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

#### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

## **FINDING OF NO SIGNIFICANT IMPACT**

The environmental impacts associated with the proposed action and the alternatives have been assessed. Based upon the analysis provided in the attached EA, I conclude the approved action is not a major federal action and will result in no significant impacts to the human environment under the criteria in Title 40 Code of Federal Regulations Subpart 1508. Preparation of an Environmental Impact Statement is not required.

Approved by /s/ \_\_\_\_\_  
Greg Thomsen, Manager  
El Centro Filed Office

9/27/01  
Date

## **FURTHER REFERENCES**

In addition to the literature cited in the EA, the following references have been considered in this Decision Record:

BLM 1987. Habitat Management Plan

ECOS 1990. Habitat characterization and sensitive plant monitoring plan for vegetation in the Algodones Dunes, Imperial County, California. Report submitted to Bureau of Land Management, El Centro Resource Area, El Centro, CA. On file at Bureau of Land Management, El Centro Field Office and California State Office, Sacramento, CA.

Phillips, A.P., III., D.J. Kennedy, and M. Cross. 2001. Biology, distribution, and abundance of Peirson's milkvetch and other special status plants of the Algodones Dunes, California. Thomas Olsen Associates, Inc., Hemet, CA. Final Report prepared for the American Sand Association. On file at Bureau of Land Management, California State Office, Sacramento, CA.

Willoughby, J.W. 2001. Monitoring of special status plants in the Algodones Dunes, Imperial County, California: 1997, 1998, 1999, and 2000. Bureau of Land Management, California State Office, Sacramento, CA.