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October 5, 2018

VIA U.S. MAIL & EMAIL

Hon. Kristin Gaspar, Third District Chair
San Diego County Board of Supervisors
County Administration Center
1600 Pacific Hwy., Room 335
San Diego, CA 92101
EMAIL: kristin.gaspar@sdcounty.ca.gov

**Re: County of San Diego's Proposed Closure of BLM Lands for Recreational Shooting
Near Donohoe Mountain**

Dear Chairwoman Gaspar:

We write on behalf of our client the California Rifle & Pistol Association, Incorporated ("CRPA"), as well as the hundreds-of-thousands of their members in California, including numerous members in San Diego County ("County"), to oppose the San Diego County Board of Supervisor's ("Supervisors") proposed actions to close Bureau of Land Management ("BLM") lands around Donohoe Mountain to recreational shooting. The CRPA represents sportsmen and women, Second Amendment supporters, law enforcement, families and others that choose to lawfully own, possess and use firearms for sport and protection.

On June 26, 2018, Supervisor Dianne Jacob placed on the Supervisors' agenda, item No. 17 "Reducing the Fire Threat Near Donohoe Mountain." The title of agenda item No. 17, however, did not adequately depict Supervisor Jacob's intention to permanently close BLM lands to recreational shooting. In fact, the agenda item was so nondescript that only two people appeared for public comment, and those individuals did not bother to speak about the "fire threat" on BLM land.¹

The real issue regarding the proposed closures is much broader and impacts many recreational users of public lands in San Diego County. Accordingly, the Supervisors should take adequate time to

¹ It should be noted that at the June 26, 2018 Supervisor's meeting, these two individuals supported the proposal stating that they had been working with Supervisor Jacob and their concern were public safety issues regarding recreational shooting near residential areas. The individuals testified that they have experienced wayward projectiles at and around their homes. To date, there has been no evidence submitted into the record to support these unsubstantiated claims (e.g., police report), and CRPA intends to address this issue should any evidence be offered in support their claims.

properly evaluate the proposed ordinance, consider public input in opposition to the Supervisor Jacob's proposal and consider the broader implications from proceeding forward with the proposed closures.

1. The BLM/San Diego County Sheriff MOU Does Not Provide the County Unlimited Authority Over Federal Lands

The Supervisors rely on a Memorandum of Understanding ("MOU") between the San Diego County Sheriff and BLM, which purports to allow the parties to collectively enforce federal, state and local laws on public lands managed by the BLM. (**EXHIBIT A**) The Supervisors contend that the MOU provides the County the "unlimited" authority to enforce state and local laws and ordinances on BLM lands. To the contrary, it does not give the County the "unlimited" authority to pre-empt federal law and regulations that change, modify or amend BLM's management of federal lands without going through the proper federal process and procedures discussed below. And the MOU expressly references limitations as to the scope of the County's authority. Further, it does not require the BLM to enforce any local law or ordinances that conflict with the authorized recreational uses under its Resource Management Plan (RMP).

While there is some precedent for giving states limited latitude in regulating environmental conditions on federal land, states and local governments do not have the right to determine the acceptable uses on federal lands. (*Norton v. SUWA*, 542 U.S. 55 (2004) (ruling that environmentalist could not seek to regulate off-roading on BLM lands, because Congress had not directed that action). Indeed, counties and local municipalities cannot prohibit certain uses on federal lands (see *Elliot v. Oregon International Mining Co.*, (Or. App. 1982) 654 P.2d 663; *Ventura v. Gulf Oil Corp.*, (9th Cir. 1979) 601 F.2d 1080; *Brubaker v. Board of County Commissioners of El Paso County*, (Colo. 1982) 652 P.2d 1050). Nor can a County regulate federal land use in such a way that is inconsistent with federal law. (*City and Cty. of Denver v. Bergland* (D. Colo. 1981) 517 F.Supp.155).

The County cites no legal authority that permits state or local assumption of administration or primacy for determining recreational uses on federal lands. In past administrative hearings, BLM has admitted that the Secretary of the Interior may not adopt the kind of approach contemplated by this MOU, by ceding BLM's own authority to local government. (See *Mining Claims Under the General Mining Laws; Surface Management*, 65 FR 69998-01, 2000 WL 1726390).

If the Supervisors are concerned about the threat of wildfires around the proposed closure areas, San Diego County already has an Ordinance (Section 33.101.5) entitled "No Shooting—Periods of High Fire Hazard." The current ordinance addresses potential fire threats allegedly involving recreational shooting during extreme and high-risk conditions, as declared by the California Department of Forestry. The BLM also has federal authority to *temporarily* close lands to certain activities if there are concerns such as fire danger (**EXHIBIT A**), therefore Section 33.101.5 only re-states BLM's existing authority to temporarily act when necessary.

Supervisor Jacob's proposed ordinance, however, would permanently impose restrictions banning all recreational shooting on BLM lands in the Donohoe Flats and Pink Gate areas. A permanent ban on recreational shooting would modify and amend the federal purpose and management of recreational uses permitted on BLM lands, without following the proper federal process and

procedures, thus violating federal law. Consequently, Supervisor Jacob's reliance on the MOU to pass a County ordinance banning recreational shooting on BLM lands is an attempted "end-around" of federal law that will not withstand judicial scrutiny.

2. Federal Purpose and Preemption

The Supremacy Clause of the United States Constitution states that "[t]his Constitution, and the laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." (U.S. Const. art VI, cl 2). State and local agencies are also prohibited from regulating land owned or leased by federal government under the Property Clause, which provides that Congress has the power to "dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." (U.S. Const. art IV section 3) Consequently, federal statutes and regulations—as well as the policies and objectives that they encompass—preempt conflicting state laws. (See e.g., *Hillsborough County v. Automated Med Labs* (1985) 471 U.S. 707, 712) (The Supremacy Clause invalidates local laws that "interfere with or are contrary to federal law.") (quoting *Gibbons v. Ogden*, 9 Wheat., 1, 211, 6 L.Ed. 23 (1924) (Marshall, C.J.)).

The Supreme Court has found preemption where . . . state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. (*English v. General Elec. Co.* (1990) 496 U.S. 72, 78-79 (internal quotations and citations omitted)). This is true whether the state or local law is an ordinance, policy, or other action. (See, e.g., *Toll v. Moreno*, (1982) 458 U.S. 1, 17 (state university's policy violated Supremacy Clause); *Bernhardt v. Los Angeles County*, (9th Cir. 2003) 339 F.3d 920, 926 (suggesting County policy could violate the Supremacy Clause).

The Property Clause provides Congress with plenary power over federal public lands. U.S. Const. art. IV, § 3, cl. 2. Accordingly, when Congress exercises its authority over federal public lands, federal statutes and regulations, orders, and decisions issued pursuant to those statutes and regulations—and the policies and objectives encompassed within those statutes and regulations—preempt any conflicting state or local laws, regulations, policies, or objectives. (See, e.g., *Wyoming v. United States* (10th Cir. 2002) 279 F.3d 1214, 1234) (federal management and regulation of federal wildlife refuges preempts state management and regulation . . . to the extent the two actually conflict").

For the foregoing reason, the federal government need not comply with zoning regulations on land owned or leased by the federal government. As applied here, since recreational shooting is a federal function, limitations by a county would burden or interfere with a lawful federal function.

Employing its power under the Property Clause, Congress enacted the Federal Land and Management Act of 1976 ("FLPMA"), 43 U.S.C. § 1701 et seq., delegating to the BLM the specific task of managing the public lands within its jurisdiction, including the lands upon what are known as Donohue Flats and Pink Gate. Through the powers granted by this enactment, BLM has promulgated regulations and issued RMPs to govern the management and use of these public lands within their jurisdiction, including recreational shooting privileges.

BLM land has stated federal purposes. One of the most significant purposes on BLM land is recreational shooting. The County is attempting to remove this federal purpose under the guise of “fire protection.” It is unprecedented for a county to attempt to apply its zoning authority to federal lands. Congress sets the authorized use of federal lands and the BLM implements that authorized purpose. “The states and their subdivisions have no right to apply local regulations impermissibly conflicting with achievement of a congressionally approved use of federal lands. (See *Ventura County v. Gulf Oil Corp.*, 601 F.2d 1080 (1979).) The federal government authorized a specific use of federal lands and San Diego County cannot prohibit that use. Indeed, federal preemption prohibits local land use regulations when applied to the federal government. (*U.S. v. Gardner*, 107 F.3d 1314 (9th Cir 1997).)

Absent consent or cession, a State undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the Property Clause. And when Congress so acts, the federal legislation necessarily overrides conflicting state laws under the Supremacy Clause. (*Klepp v. New Mexico*, (1976) 426 U.S. 529, 543) (See also *Wyoming v. United States*, (10th. Cir. 2002) 279 F.3d 1214, 1227).

Even absent the Supremacy Clause and the Property Clause, the federal government would be immune from state and local regulations, because there is an implied constitutional immunity of the federal government from state and local regulation (*Penn Dairies, Inc. v. Milk Control Comm’n* (1943) 318 U.S. 261, 269.). Additionally, the California Constitution prohibits local enforcement that is pre-empted where “A county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations *not in conflict with general laws.*” (Cal. Const., art. XI, § 7, italics added.) “Local law in conflict with general law is void. Conflict exists is the ordinance duplicates..., contradicts..., or enters an area fully occupied by general law.”

Simply, BLM has the authority to manage federal lands as proscribed by Congress under FLPMA, not the County.

3. Other Federal Statutes and Regulations

FLPMA Process

FLPMA allows the BLM to manage a wide range of multiple use activities on most public lands, FLPMA section 303(d), 43 U.S.C. § 1733(d) allows the Secretary of the Interior to “cooperate” with states and local authorities to assist in the administration and regulation of use and occupancy of the public lands. Cooperation does *not* imply or permit a delegation of Federal authority. At best, it is a recognition by BLM that in certain cases the Federal regulatory role may be exercised more efficiently with state assistance while still satisfying FLPMA’s mandate to prevent unnecessary or undue degradation of public lands.

While it is good practice and common sense for federal, state and local authorities to develop a joint response plan for safety concerns, this newly proposed ordinance is very different. Supervisor Jacob’s ordinance seeks the complete elimination of recreational shooting on large segments of BLM lands. Recreational shooting on BLM lands is a lawful and permitted activity. Attempting to shut down

lawful activity on federal lands without going through the proper process and procedures is both improper and unlawful.

Under the Federal Urban Land Use Act of 2002, new *local* decisions for management of federal lands should be consistent with local land use practices, however, the implementation of new local regulations *cannot be forced* upon the management of federal lands. This proposed ordinance looks like nothing more than an attempt to circumvent the more arduous, yet robust process of reviewing the current RMP for the area.

Thus, while BLM may enter into agreements with local authorities to help administer or enforce federal regulations on recreational uses, it may not enter into agreements with local authorities that cede the authority to promulgate regulations *that supersede or pre-empt its own federal purposes*. Accordingly, this proposed ordinance is federally pre-empted.

NEPA Process

Congress enacted the National Environmental Policy Act (“NEPA”) to empower the federal government to use all practicable means to carry out the policies of protecting and preserving the environment. NEPA was implemented to ensure that environmental protections were considered for federal lands whenever the purpose of those lands is developed or changed.

The Supreme Court has recognized that one of the procedures is an Environmental Impact Statement (EIS) required under 42 U.S.C. 4332 (2)(C) (*Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979).) In order for the BLM lands in San Diego County to have a change of purpose, federal law mandates EIS or an EA, and a process that must be followed under the Administrative Procedures Act (“APA”).

While the BLM has the authority to issue temporary closures for safety concerns on lands, if a permanent closure or restriction is required, it must be addressed in a land use plan or plan amendment and requires compliance with NEPA in advance of such action. **(EXHIBIT B)** Further, “closure restriction orders that may affect hunting access, shooting sport activities, or the discharge of firearms must be in compliance with the Federal Land Hunting, Fishing and Shooting Sports Roundtable Memorandum of Understanding (“MOU”) ... which requires that BLM notify shooting organizations of such closures or restrictions and alert them to public comment opportunities.” (See https://www.fs.fed.us/recreation/programs/trails/shooting_mou.pdf)

This proposed ordinance process is nothing but an “end-around” of the federally mandated process and procedures under NEPA and BLM’s own management directives. Accordingly, the Supervisors proposed ordinance will be invalid if passed.

APA Process

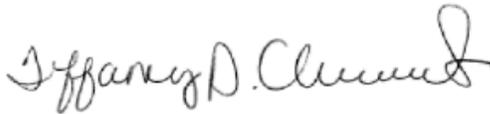
Permanent closures of federal lands to managed and lawful activity must follow the rules of the APA, which calls for publication of amendments to the land management plan (RMP), notification, public comment periods, and official regulation rulings. The County is attempting to usurp this process

of transparency by moving the local ordinance forward without any concern for the procedural process that allows for proper public and agency input, and federal consideration. Any attempt to impose a local law on federal lands that would change the federal purpose outside of the proscribed process is invalid.

4. Conclusion

Supervisor Jacob's proposed ordinance is not legally valid due to reliance on the MOU, nor is it supported by federal law and regulations. This attempt to work outside of the federal process and procedures for amending federal land use is unlawful and will not withstand judicial scrutiny. On behalf of the CRPA and the thousands of recreational shooters and sportsmen and women in San Diego County we oppose the proposed closures on BLM lands and respectfully request that the Supervisors vote no on the proposed ordinance.

Sincerely,
Michel & Associates, P.C.



Tiffany D. Chevront

Cc: Douglas J. Herrema, BLM, Field Office Manager

Encl.

EXHIBIT A

MEMORANDUM OF
UNDERSTANDING BETWEEN THE
BUREAU OF LAND MANAGEMENT
CALIFORNIA STATE OFFICE

AND THE

SAN DIEGO COUNTY SHERIFF'S
DEPARTMENT

I. PURPOSE

This Memorandum of Understanding (MOU) provides for the increased protection of persons and property on the public lands and roads administered by the United States Department of the Interior, Bureau of Land Management (BLM), through cooperation between the San Diego County Sheriff's Department (SHERIFF) and the BLM, collectively the "PARTIES", by the **granting and acceptance of authority for BLM law enforcement officers to enforce State and local laws and regulations pursuant to this MOU.**

II. AUTHORITY

A. Bureau of Land Management

Section 303(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(d)) provides that, in connection with the administration and regulation of the use and occupancy of the public lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof in the enforcement of the laws or ordinances of such State or subdivision.

B. San Diego County Sheriff's Department

California Penal Code Section 830.8(b) grants authority to the SHERIFF to give written **consent to BLM law enforcement personnel to enforce laws of the State of California and ordinances of San Diego County on property owned or possessed by the United States Government or any street, sidewalk, or property adjacent thereto.**

III. DEFINITIONS

- A. Public Lands** - Means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior, through the BLM without regard to how the United States acquired ownership, except:
1. Lands located on the outer Continental Shelf
 2. Lands held for the benefit of Indians, Aleuts, and Eskimos. 43 U.S.C, 1702 (e)
- B. Law Enforcement Officer (LEO)** - Law Enforcement Rangers and Special Agents employed by the BLM who have been delegated law enforcement authority by the Director, BLM.

- C. State Director - The State Director, BLM, California State Office
- D. Special Agent-in-Charge (SAC) - BLM Special Agent-in-Charge for the California State Office

IV. PROCEDURES

- A. The SHERIFF has the authority to enforce the state and/or county laws on such public lands administered by the BLM that lie within the confines of San Diego County; and is limited as to the amount of protection, patrol, and investigation that can be provided on those public lands, waters, roads, and trails administered by the BLM within San Diego County.
- B. The State Director, Special Agent-in-Charge, and the SHERIFF hereby mutually agree that it is desirable to cooperate and collaborate in better utilizing the resources of both agencies while providing for more adequate protection of persons and property on the public lands as follows:
 - 1. The SHERIFF agrees to continue to enforce the civil and criminal laws of the state and/or county on the public lands waters, roads, and trails administered by the BLM within the normal scope of duty to the extent of current financial and manpower resources without reimbursement by the BLM.
 - 2. The BLM agrees, within the availability of funds and established federal regulations and policies, to enforce the authorized federal laws and regulations pertaining to the public lands administered by the BLM and, state and local laws in connection with their duties in the administration and regulation of the use and occupancy of the public lands as defined herein.
 - 3. The SHERIFF and the BLM mutually agree to provide the maximum cooperation, assistance, and coordination possible, within the availability of funds and established laws, regulations, and policies governing the respective agencies that will assure the protection of persons and property on the public lands, waters, roads, and trails administered by the BLM within the confines of San Diego County.
 - 4. The SHERIFF further agrees that pursuant to section 830.8(b) of the California Penal Code of the State of California, the SHERIFF will designate BLM LEOs as peace officers of the State of California for enforcement of state and local laws and regulations in the County of San Diego. The SHERIFF further understands and agrees that the BLM LEOs so designated are limited by the BLM to exercise said enforcement authority only in connection with their duties in the administration and regulation of the use and occupancy of the public lands as defined herein. Prior to any such designation, the BLM agrees to provide any training required by state or local law or by the SHERIFF, to include courses of training prescribed by the commission on peace officer standards and training within section 832(a) of the California Penal Code.

It is understood and agreed that the authority granted by the SHERIFF includes authority to execute any state or local warrant that the SHERIFF has the authority to execute and for which the state has the authority to grant. However, it is

understood that BLM limits its LEOs to exercise such authority only in connection with their duties in the administration and regulation of the use and occupancy of the public lands as defined herein, and, when feasible, upon the request of the SHERIFF.

5. The BLM further agrees to take the following mutually agreed upon actions related to violations of California State or San Diego County laws, regulations, or ordinances.
 - a. To respond to requests for back-up services to each other in emergency "officer needs assistance" situations, as may be reasonable, prudent, and necessary under the circumstances. It is further understood and agreed that all officers will be instructed that BLM LEOs are limited to responding to those situations not on public lands where they are the closest available officer and are within reasonable proximity, considering all factors, to the situation requiring assistance.
 - b. To issue citations, arrest, and/or release persons suspected of violations of California State or San Diego County laws, regulations, or ordinances related to the administration and regulation of the use, occupancy, and development of public lands.
 - c. To detain persons suspected of violating California State or San Diego County laws, regulations, or ordinances, any witnesses to those violations, and to protect any related crime scene, pending arrival of the state or local agency having primary jurisdiction.
 - d. To arrest, transport, and release to an available California State or San Diego County law enforcement officer any person having a valid state or local warrant for his/her arrest when requested by California State or San Diego County.

V. SCOPE AND CONDITIONS

A. INDEMNIFICATION RELATED TO WORKERS COMPENSATION, EMPLOYMENT AND CLAIMS, AND LIABILITY ISSUES

1. Workers Compensation and Employment
 - 1.1 Each PARTY shall fully indemnify and hold harmless the other PARTIES and their respective officers, employees, and agents, from any claims, losses, fines, expenses (including attorneys' fees, court costs, and/or arbitration costs), costs, damages or liabilities arising from or related to (1) any workers' compensation claim or demand or other workers' compensation proceeding arising from or related to, or claimed to arise from or relate to, employment which is brought by an employee of the PARTY or any contract labor provider retained by the PARTY, or (2) any claim, demand, suit, or other proceeding arising from or related to, or claimed to arise from or relate to, the status of employment (including without limitation, compensation, demotion, promotion, discipline, termination, hiring, work assignment, transfer, disability, leave or other such matters) which is brought by an employee of the PARTY or any contract labor provider retained by the PARTY.

2. Indemnification Related To Acts or Omissions; Negligence

2.1 Claims Arising From Sole Acts or Omissions of a PARTY

Each PARTY to this Agreement hereby agrees to defend and indemnify the other PARTIES to this Agreement, their agents, officers, and employees, from any claim, action, or proceeding against the other PARTIES, arising solely out of its own acts or omissions in the performance of this Agreement. At each PARTY's sole discretion, each PARTY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve any PARTY of any obligation imposed by this Agreement. PARTIES shall notify each other promptly of any claim, action, or proceeding and cooperate fully in the defense.

2.2 Claims Arising From Concurrent Acts or Omissions

PARTIES hereby agree to defend themselves from any claim, action, or proceeding arising solely out of the concurrent acts or omissions of the PARTIES. In such cases, PARTIES agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in paragraph 6.2.4 below.

2.3 Joint Defense

Notwithstanding paragraph 6.2.2 above, in cases where PARTIES agree in writing to a joint defense, PARTIES may appoint joint defense counsel to defend the claim, action, or proceeding arising out of the concurrent acts or omissions of PARTIES. Joint defense counsel shall be selected by mutual agreement of PARTIES. PARTIES agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in paragraph 6.2.4 below. PARTIES further agree that neither PARTY may bind the other PARTIES to a settlement agreement without that PARTY'S written consent.

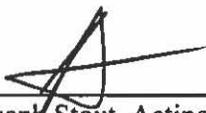
2.4 Reimbursement and/or Reallocation

Where a trial verdict or arbitration award allocates or determines the comparative fault of the PARTIES, PARTIES may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments, and awards, consistent with such comparative fault.

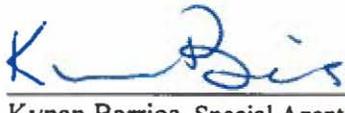
- B. No member of, or delegate to congress, or state official, shall be admitted to any share or part of this MOU, or any benefit that may arise there from.
- C. BLM LEOs will remain under the supervision and responsibility of the BLM. BLM employees shall not be considered as coming within the scope of the SHERIFF'S employment and none of the benefits of San Diego County will be conferred under this MOU.
- D. During the performance of this MOU, the participants agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex, age, disability, or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, age, disability, or national origin.
- E. Each PARTY will furnish written information necessary for mutual enforcement operations.

- F. Any issues which cannot be reconciled between the local officers and individual BLM LEOs or any issue that affects either PARTY's performance under this MOU shall be referred to the SAC. The SAC will be responsible for coordinating with the appropriate officials to mutually resolve any issue.
- G. **Nothing in this MOU will be construed as affecting the authorities of either PARTY or as binding beyond their respective authorities.**
- H. Nothing in this MOU shall obligate the BLM to expend appropriation or to enter into any contract or other obligation. Specific work projects or activities that involve the transfer of funds, service, or property between the PARTIES to this MOU will require the execution of separate agreements or contracts, contingent upon the availability of funds as appropriated by Congress. Each subsequent agreement or arrangement involving the transfer of funds, service, or property shall be made in writing and shall be independently authorized by appropriate statutory authority and regulations, including those applicable to procurement activities.
- I. Subject to availability of funds, each PARTY agrees to fund their own expenses associated with the implementation of this MOU. Nothing contained herein shall be construed as obligating the BLM to any expenditure or obligation of funds in excess or in advance of appropriations, in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341.
- J. Any records or documents generated as a result of this MOU shall be part of the official BLM record maintained in accordance with applicable BLM Records Management policies. Any request for release of records associated with the implementation of this MOU to anyone outside the PARTIES must be determined based on applicable laws, including the Freedom of Information Act and the Privacy Act.
- K. This MOU shall be effective from the date of execution and shall remain in effect for five years, unless terminated with a 60-day written notice from either PARTY to the other PARTY. This MOU may be modified or amended upon written request of either PARTY and written concurrence of the other PARTY.

VI. APPROVED


 _____ 4/21/17
 Joseph Stout, Acting State Director Date
 Bureau of Land Management


 _____ 4-5-17
 William D. Gore, Sheriff Date
 San Diego County Sheriff's Department


 _____ 4/19/17
 Kynan Barrios, Special Agent-in-Charge Date
 Bureau of Land Management

Approved as to form and legality:
SAN DIEGO COUNTY COUNSEL


 _____ 3/28/17
 Mark Day Date
 Senior Deputy

EXHIBIT B

In Reply Refer To:
8320 (250) P

EMS TRANSMISSION
Instruction Memorandum No. 2011-
Expires: 09/30/2012

To: All State and Field Office Officials
Attention: State, District and Field Office Program Leaders, including
Recreation, National Landscape Conservation System, Planning, Lands and
Realty, Wildlife, and Law Enforcement Officers

From: Director

Subject: Addressing and Managing Recreational Shooting on Public Lands

Program Area: Recreation, National Landscape Conservation System Lands, Planning,
Wildlife, and Law Enforcement.

Purpose: This guidance clarifies policy and procedures for addressing and managing
recreational shooting on the National System of Public Lands.

Policy/Action: All state and field offices must comply with the policies and procedures
contained in this guidance. States may develop supplemental procedures to implement this
guidance as necessary.

1. Requirement to Address Shooting Sports in Land Use Plans.

Land use plans or plan amendments should directly address recreational shooting. Plans should consider areas that may be suitable or open to dispersed shooting, as well as considering areas that may be more appropriately closed to shooting or areas where shooting may be restricted when recreational shooting is identified as an issue through internal or public scoping efforts. Addressing shooting issues specifically in land use plans will allow for the consideration of a range of alternatives and will provide opportunities for public involvement.

2. Laws and Policies Governing Recreational Shooting.

BLM Policy

Recreational shooting is one of many activities that the Bureau of Land Management (BLM) may allow on public lands as part of its discretion to manage for multiple uses. In accordance

with the Federal Land Policy and Management Act of 1976 (FLPMA), the BLM typically manages a wide range of multiple use activities on most public lands provided that they do not impair the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, and archaeological values, and that they do not endanger human health, safety, or property.

BLM Regulations

Unless there is a relevant Federal law or regulation governing the use of firearms in effect, state and local laws and ordinances regulating the use and possession of firearms apply on BLM managed public lands and are typically enforced by local law enforcement officials (43 C.F.R. § 8365.1-7). With the exception that the “[d]ischarge or use [of] firearms, other weapons, or fireworks,” is prohibited on developed recreation sites and areas, unless otherwise authorized, 43 C.F.R. § 8365.2-5(a), shooting and possession and use of firearms are allowed on public lands managed by the BLM. However, the specific shooting activity must not:

- Cause a public disturbance or create risk to other persons on public lands. 43 C.F.R. § 8365.1-4(a) (Public health, safety and comfort);
- Deface, remove or destroy natural features, native plants, cultural resources, historic structures or government and/or private property. 43 C.F.R. § 8365.1-5(a)(1);
- Facilitate and create a condition of littering, refuse accumulation and abandoned personal property. 43 C.F.R. Sec. 8365.1-1;
- Violate existing use restriction, a closure and restriction order, or supplementary rules notice. 43 C.F.R. §§ 8365.2-5(a), 8364.1, 8365.1-6.

Shooting Ranges

The BLM’s policy prohibits the agency from directly operating shooting ranges, or from issuing new leases of public lands for shooting ranges, principally because of the agency’s potential liability related to lead contamination of the environment. New shooting ranges cannot be authorized by any type of lease or other land use authorization that does not transfer fee title to the applicant.

In the expanding urban interface, community-operated shooting ranges are important shooting management tools, providing additional shooting options for the public, reducing social conflicts and safety concerns on adjacent public lands, and ensuring that expended lead ammunition will be periodically removed and recycled in a safe, legal manner. Managed shooting ranges can also provide urban youth with an attractive pathway into lifelong outdoor recreation activities, offering instruction in shooting skills, firearm safety and ethical land use practices and potentially creating a new generation of responsible public land advocates.

When identifying lands suitable for disposal in Land Use Plans, field offices are strongly encouraged to consider the use of some of these lands for community-operated shooting ranges and should facilitate the transfer of fee title ownership of suitable lands to interested local governments or organizations through direct sale when appropriate. Field offices can employ the patent provisions of the Recreation and Public Purposes (R&PP) Act, 43 U.S.C. § 1721, to convey ownership of lands for shooting ranges to non-profit organizations or local governments at less than fair market value (in some cases). Currently about 40 shooting ranges operate on

BLM-administered public lands under the discontinued lease provisions of the R&PP Act. Field offices are encouraged to convert previously leased shooting ranges to patent utilizing the provisions of H-2740-1 (Recreation and Public Purposes Handbook).

3. Management of Recreational Shooting, Identification of Shooting Areas, and Closures

Active management of recreational shooting by identifying areas of low risk or resource conflict that remain open for dispersed shooting activities, and closing areas that are identified as having high risks or conflicts through a temporary or permanent closure are effective ways to reduce risks while preserving recreational opportunities for the public. Decisions regarding recreational shooting require the BLM to balance safety and resource protection issues with its multiple-use mandate.

State or field offices must exercise due care in making the discretionary decision to allow or disallow recreational shooting in identified areas. Due care can be properly exercised by carefully evaluating risk factors and identifying shooting areas in places where risks and conflicts are low and shooting can be effectively and safely managed.

Factors for evaluating, identifying, and managing areas of low risk or resource conflict for dispersed shooting activities, as well as closing areas with high risks or conflicts for dispersed shooting are outlined in Attachment 1.

Closures and Restrictions

Safety or resource damage issues may require temporary or permanent closure or restriction of areas to recreational shooting. If a permanent closure or restriction is required, it must be addressed in a land use plan or plan amendment and requires compliance with the National Environmental Policy Act (NEPA) in advance of such action. For temporary closures or restrictions, field offices must follow the procedures detailed in WO IM-2010-028, "Requirements for Processing and Approving Temporary Public Lands Closure and Restriction Orders," including compliance with NEPA prior to the closure or restriction. Temporary closures or restrictions for shooting activities are permitted when the authorized officer finds such action is necessary to protect persons, property, and public lands and resources (43 CFR § 8364.1). In general, temporary closures cannot exceed 24 months in duration. The agency's NEPA analysis should identify alternative recreational shooting opportunities that are still available on public lands in the vicinity of the closed or restricted area.

Closure or restriction orders that may affect hunting access, shooting sport activities, or the discharge of firearms must be in compliance with the Federal Land Hunting, Fishing and Shooting Sports Roundtable Memorandum of Understanding (MOU). This MOU requires that the BLM notify shooting organizations of such closures or restrictions and alert them to public comment opportunities.

4. Information, Education, and Outreach

- Each BLM state, field office, and special management area recreation website should contain a shooting sports section, which includes maps showing areas open to shooting, and