

July 1, 2011

Ms. Stephanie Dubois
Superintendent
Mojave National Preserve
ATTN: Mojave Water Resources Management Plan
2701 Barstow Road
Barstow, CA 92311

RE: Scoping Comments on Environmental Impact Statement for Management of Manmade Water Sources in the Mojave National Preserve

Dear Superintendent Dubois:

Thank you for announcing a scoping process as the National Park Service (NPS) develops an Environmental Impact Statement (EIS) for management of water sources in the Mojave National Preserve. The EIS would fulfill a commitment the NPS made in the Abbreviated Final General Management Plan (GMP) for the Preserve, to study the propriety of manmade water sources. The NPS signed the Record of Decision for the GMP/EIS on September 21, 2001.

GENERAL OBSERVATIONS

There are two water issues in the Mojave National Preserve. California Department of Fish and Game (CDF&G) and their volunteers have done an admirable job of restoring populations of desert bighorn sheep to suitable mountain ranges throughout the California Desert. The desert bighorn is a charismatic species that brings high bids for annual tags issued to sport hunters. The California Desert Protection Act of 1994 authorizes hunting bighorn sheep and other game in the Mojave National Preserve. CDF&G constructed large tanks and pipes to gather and distribute drinking water, primarily to bighorn sheep ("guzzlers"). Some of these guzzlers on former Bureau of Land Management (BLM) lands are now within the national park areas of the California Desert, including the Mojave Preserve. A large number of small drinking waters have also been constructed for wildlife.

Livestock have grazed the Federal lands now within the Preserve for decades. Ranchers provided their livestock with water through a series of wells, ponds, spring-boxes, pipelines and troughs. On October 31, 1994 Congress transferred the federal lands from the BLM to the NPS and titled the area as the "Mojave National Preserve." Congress authorized continued grazing in the Preserve. Third parties, such as the Conservation

Fund and the National Park Foundation, acquired several of the grazing allotments in the Preserve and retired them. This effort began with the Granite Mountains Allotment. Ultimately, the NPS retired other allotments, among them the Lanfair Valley and the Kessler Springs Allotments. As the allotments were retired, the allottees removed the range improvements to which they had title, including well apparatus, such as windmills and pumps. The NPS also assisted in removing pipelines, spring boxes, and other equipment formerly used to provide water for livestock.

Continued use of both types of water resources are of grave concern to Public Employees for Environmental Responsibility (PEER), the Western Watersheds Project and Wilderness Watch.

THE MOJAVE GMP

The Mojave GMP (p. 69) states that:

“Guzzlers will be retained for native wildlife if they are found to be necessary to replace waters lost due to actions taken by previous human activities. These developed water sites will be retained to allow native populations of plants and animals to return to or remain at a previously undisturbed population level. Simultaneously with the retention of these developed sites, the National Park Service will actively begin to restore natural water sources to be self-sustaining. When a water source becomes self-sustaining, the artificial facility will be removed.” (Emphasis added)

The NPS, on page 119 of the final GMP, decided that:

“[T]he park would not promote actions that attempt to solely preserve or enhance populations of individual species (except threatened, endangered, and sensitive species). Intervention in natural processes would only be undertaken: (1) when directed by Congress, (2) in emergencies when human life and property are at stake, (3) to restore native ecosystem functioning that has been disrupted by past or ongoing human activities, or (4) when directed by an approved recovery plan or conservation strategy.”

The availability of water is a factor that naturally limits both plants and animals in desert ecosystems, including within the Mojave Desert. Providing water for animals breaches that natural limitation, creating unnatural numbers and concentrations of wildlife. In addition, such action may harm the desert tortoise, the flagship threatened species of the Preserve by providing subsidies to predators of that species.

Maintenance of artificial water sources is perhaps the most significant “intervention” the NPS may make into the natural processes of the Preserve. The NPS selection of alternatives in the pending EIS must conform to NPS Management Policies and the decision made in the GMP. **If the NPS selects an alternative that violates NPS Management Policies, the NPS may do so ONLY after obtaining a waiver from the NPS Director or higher official.**

Now-retired park superintendent Dennis Schramm recognized the primacy and dictate of NPS Management Policies and the man-made water issue. In a series of e-mails in November 2001, Schramm wrote to a Mr. Cliff McDonald concerning McDonald's interest in acquiring the water rights and wells from a grazing allottee, Mr. Gary Overson:

“Anyone who purchases these facilities would need to obtain a permit or enter into a cooperative agreement with the NPS to maintain them for wildlife benefit. *Our management policies would focus on whether the water is needed to replace lost natural sources, and whether the development would artificially enhance native wildlife populations.*” Emphasis added. Schramm e-mail of November 2, 2001 to Cliff McDonald

In a subsequent e-mail, Schramm wrote to McDonald that the allottee was not interested in selling the water rights and installations to McDonald and that:

“Our focus will be on preserving the area for self-sustaining populations of native wildlife...Generally our policies don't support activities that artificially support wildlife populations, unless their populations are in decline due to human interference. Schramm e-mail of November 28, 2001 to Cliff McDonald

The governing GMP decision on pages 69 and 119 is consistent with the NPS Management Policies (2001) applicable at the time the NPS adopted the GMP. The Schramm interpretation is consistent with NPS Management Policies (2001 and 2006) today. PEER, Wilderness Watch and Western Watersheds Project urge that the NPS adhere to the decision in the GMP.

NPS MANAGEMENT POLICIES (2006)

NPS Management Policies authorize intervention in biological and natural processes “...to restore natural system functioning that has been disrupted by past or ongoing human activities.” NPS Management Policies (2006) 4.1.

NPS Policies state that “Whenever possible, natural processes will be relied upon to maintain native plant and animal species and influence natural fluctuations in populations of those species.” NPS Management Policies (2006) 4.4.2.

NPS Policies also state “Habitat manipulation for harvested species...will not include the artificial manipulation of habitat to increase the numbers of harvested species above its natural range in population numbers” NPS Management Policies 2006, 4.4.3.

In short, preserving wildlife in the Mojave National Preserve does not justify managing the Preserve as a “game farm” under the subterfuge of “conserving wildlife.” NPS Management Policies seek to preserve naturally fluctuating populations of native species, and to engage in intervention only for listed species or to compensate for human caused disturbances. The maintenance of present, or increased, numbers of mule deer, bighorn sheep or other hunted species is not a goal that can justify artificial water sources.

Even if we accept the premise that mule deer (one of the major beneficiaries of artificial water sources) are “native” to MNP, another significant beneficiary – chukar partridge are not. Thus, perpetuating artificial water sources would also deliberately benefit a non-native upland game bird for hunting purposes, also in violation of NPS Management Policies.

On August 9, 2002, five conservation groups (The Wilderness Society, National Parks Conservation Association, California Wilderness Coalition, Defenders of Wildlife and the Center for Biological Diversity) wrote to the-then Deputy Assistant Secretary for Fish and Wildlife and Parks, Paul Hoffman to oppose any “efforts by the Department of the Interior to reverse or modify National Park Service policy regarding the removal of ranch developments associated with retired allotments.”

BIOLOGICAL OPINION FOR DESERT TORTOISE

Besides agency policy, another reason supports the removal of artificial waters, in particular those formerly used for cattle grazing. In 1994 the U.S. Fish and Wildlife Service (USFWS) Biological Opinion for the Mojave GMP prescribed that “most water developments must be turned off” in critical tortoise habitat “except where cattle are on the range.” (FWS BO #1-5-94-f-107). Artificial waters, whether for grazing cattle or wildlife enhancement, provide a subsidy to predators such as ravens and coyotes that prey on desert tortoise. The NPS probably already knows that any alternatives that they select that would perpetuate artificial water resources must also be reviewed by the USFWS under section 7 of the Endangered Species Act.

Half of the Mojave National Preserve is designated by the USFWS as “critical habitat” for desert tortoise but the NPS pledged in its 2001 GMP to manage ALL of the Preserve by the standards that may formally apply only to “critical habitat.” We seek to hold the NPS to that commitment.

On August 29, 2002, 57 scientists sent a letter to the Interior Department stating:

“[F]urthermore, artificial water development, according to studies to date, promote invasions of non-native species; *inflate raven populations which results in intensified predation upon threatened desert tortoise* and other vulnerable native animals; and generally support only select species of wildlife often at the expense of other native flora and fauna (e.g. increased population of quail strip native seed banks)...[P]ermanent removal of these livestock water developments is an important step towards restoring this ecological treasure in the California Desert. We are in accord with Congress and the American people who decided that this area should be a national park not a game park.” Emphasis added

The NPS would do well to heed this advice from these scholars and scientists.

RESEARCH NEEDS

The National Park Omnibus Management Act (NPOMA) of 1998 requires that NPS management be "...enhanced by the availability and utilization of a broad program of the highest quality science and information." 16 U.S.C. 5932. The NPS must apply high quality science to any decision that would either end or continue artificial water sources. The science must not be so facile as to answer only the question of whether adding water to the desert increases its carrying capacity for certain species. That is self-evident. The real question is whether the science demonstrates that the conditions for adding water meet NPS Management Policies that such intervention "...restore(s) natural system functioning that has been disrupted by past or ongoing human activities."

The available science thus far fails to demonstrate the criteria essential to maintain artificial water sources. The Mojave Preserve has over 240 natural springs and developed water sources. Most natural sources are "...mountain-front type springs discharging from perched aquifers that receive most of their recharge during the winter season...they are unlikely to be affected by groundwater pumping from local basin aquifers." (Poff and Kearns 2008). The available science thus far points the other way and against the continuation of artificial water sources.

WILDERNESS

The scoping announcement acknowledges that "[A]ll of the big game guzzlers and many of the small game water developments are in areas of the Preserve which are now designated Wilderness." But the scoping announcement fails to say whether the draft EIS will also constitute the NPS minimum requirement determination that must precede any decision to allow the continued existence and servicing of watering structures. Because the artificial water sources are "structures" in the meaning of the Wilderness Act, the NPS may permit them only under exceptions allowed in the Wilderness Act. The California Desert Protection Act provides no exceptions for wildlife management structures in NPS wilderness.

The NPS may not authorize the water structures except "as necessary to meet minimum requirements for the administration of the (wilderness) area for the purpose of the (Wilderness) Act." The NPS must be aware that arriving at such a determination will not be easy. The NPS needs to review the Ninth Circuit December 21, 2010 decision on bighorn sheep guzzlers in the Kofa National Wildlife Refuge wilderness in Arizona. (Wilderness Watch v. U.S. Fish and Wildlife Service).

Even if the NPS somehow concludes that maintaining artificially larger numbers of game animals and birds is "necessary" for administration of the Mojave wilderness (not the Preserve as a whole), the NPS must then determine the minimum requirements for doing so. Any array of truly "minimum requirements" should include limiting the recreational take or other removal of the animals themselves. Such requirements are "minimum" precisely because they do not implicate any of the Wilderness Act prohibitions. In such a context, continued maintenance and servicing of guzzlers can never be the "minimum requirements." Structures, like the guzzlers, that fail the minimum requirements exception violate the plain language of the Wilderness Act. Any subsequent removal must also be accomplished by application of the minimum requirement standards. The

undersigned intend to hold the guzzlers in the Mojave wilderness to the standards enunciated by the Ninth Circuit Court.

The EIS should address the disposition of all structures that are determined to not be “necessary to meet the minimum requirements” for wilderness preservation. We believe that all such structures, at a minimum, must be rendered inoperable and made safe for all wildlife. Those that can be removed without the use of motor vehicles, motorized equipment or mechanical transport should be removed. Structures, like the guzzlers, that fail the minimum requirements exception violate the plain language of the Wilderness Act. Any subsequent removal must also be accomplished by application of the minimum requirement standards.

While NEPA is a procedural act that does not prescribe any particular outcome, the Wilderness Act contains explicit prohibitions on listed conduct that may be waived only under statutory standards.

ENVIRONMENTALLY PREFERRED ALTERNATIVE

Agencies often identify their “preferred alternative” in the Draft and Final EIS as also the “environmentally preferred alternative.” The NPS likes to believe it provides environmental leadership in the nation. Thus, an NPS EA/EIS rarely acknowledges that the NPS’ “preferred alternative” may not be the “environmentally preferred alternative.” In short, if the NPS decides to select an alternative, that alternative, by default, is, according to NPS practice, the environmentally preferred alternative. We urge the NPS at Mojave to refrain from this autonomic function. It only muddies the waters and tarnishes the professional integrity of the agency.

If the NPS were to select an alternative that either allows the continued existence of the guzzlers or an alternative to increase their numbers, that decision would violate NPS principles on management of biotic resources, increase threats to the desert tortoise and maintain structures in designated wilderness. No honest document could ever describe such a decision as the “environmentally preferred” alternative. Alternatives that would increase numbers of certain animals and opportunities for recreational hunting, commercial trapping and wildlife viewing would be the “recreationally preferred alternative” (a classification in which NEPA has no interest) but not the alternative that best protects the environment.

If you have any questions about our thoughts on scoping, please feel free to call Jeff Ruch at 202 265-PEER.

Cordially,

Jeff Ruch
PEER Executive Director

A handwritten signature in black ink that reads "George Nickas". The signature is fluid and cursive, with the first name being more prominent.

George Nickas
Executive Director
Wilderness Watch

A handwritten signature in black ink that reads "Michael J. Connor". The signature is cursive and includes a long, horizontal underline stroke that extends to the right.

Dr. Michael J. Connor
California Director
Western Watersheds Project