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7 Attorneys for Petitioners PUBLIC EMPLOYEES FOR  
8 ENVIRONMENTAL RESPONSIBILITY and  
9 DESERT PROTECTIVE COUNCIL FOUNDATION

10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF SACRAMENTO

12 PUBLIC EMPLOYEES FOR	)	Case No.:
13 ENVIRONMENTAL RESPONSIBILITY, a	)	
14 non-profit corporation; DESERT	)	VERIFIED PETITION FOR WRIT OF
15 PROTECTIVE COUNCIL FOUNDATION, a	)	MANDATE
16 non-profit corporation,	)	
	)	[Code Civ. Proc. §§ 1085, 1087]
17	)	
18	)	
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22	)	
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24	)	

16                   Petitioners,  
17                   v.  
18 CALIFORNIA DEPARTMENT OF PARKS )  
19 AND RECREATION, an agency of the State )  
20 of California; DIVISION OF OFF- )  
21 HIGHWAY MOTOR VEHICLE )  
22 RECREATION, a division of the California )  
23 Department of Parks and Recreation; )  
24 CHRISTOPHER C. CONLIN, in his official )  
capacity, )  
Respondents. )

25                   Public Employees for Environmental Responsibility (“PEER”) and the Desert Protective  
26 Council (“DPC”) hereby petition this Court for a Writ of Mandate pursuant to California Code of Civil  
27 Procedure (“CCP”) Sections 1085 and 1087 ordering the California Department of Parks and  
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1 Recreation, the Division of Off-Highway Motor Vehicle Recreation (“OHMVR”) and responsible  
2 officials in their official capacities (collectively Respondents”), to immediately cease and desist  
3 Respondents’ ”open” off-road vehicle driving policy currently being implemented at the Ocotillo  
4 Wells State Vehicular Recreation Area (“Ocotillo SVRA”) and to take all necessary actions to restrict  
5 all vehicle use at the Ocotillo SVRA to the trails specifically identified on the Ocotillo SVRA’s trail  
6 map (attached and incorporated by reference as Exhibit A), in order to bring the SVRA into  
7 compliance with the Off-Highway Motor Vehicles Recreation Act of 2003 (“OHMVRA”), Public  
8 Resources Code (“PRC”) § 5090.35 *et seq.*

### 10 INTRODUCTION

11 1. The OHMVRA imposes on Respondents a non-discretionary duty to “promptly repair  
12 and continuously maintain areas and trails, anticipate and prevent accelerated and unnatural erosion,  
13 and restore lands damaged by erosion to the extent possible.” PRC § 5090.35(a). “Restoration” is  
14 defined as the closure of a unit or portion of a unit and the restoration of land to the contours, plant  
15 communities, and plant covers comparable to those on surrounding lands or those that existed prior to  
16 off-highway motor vehicle use. *Id.* at § 5090.11.

17 2. Respondents have failed and continue to fail to “promptly repair and continuously  
18 maintain” hundreds of miles of trail routes within the Ocotillo SVRA, as they are required to do by the  
19 OHMVRA. Respondents’ own records reveal that maintenance work has been performed  
20 inconsistently on named trails. Petitioners are informed and believe that several named trails have  
21 never been maintained. Further, Respondents’ own records indicate that there were many months  
22 throughout the year, going back to at least 2010, in which no trail maintenance work was done at all.

23 3. Respondents’ own records further reveal that no maintenance work of any kind has  
24 been performed on any of the hundreds of miles of user-made trails. Yet, under the OHMVRA, the  
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1 Department is required to maintain *all* trails, including user-created trails which have not been  
2 officially designated and named as trails by the Division. The plain language of the OHMVRA clearly  
3 provides that the duty to “promptly repair and continuously maintain” applies to both “*areas* and  
4 trails.” PRC § 5090.35(b) (emphasis added). Moreover, under the 1991 Soil Guidelines, “trail” is  
5 defined as being “[a]ny route that is not designated as a road.” OHMVR recognizes that user-created  
6 trails must be maintained pursuant to the statute. The environmental audit done in 1997 states that  
7 “[t]he law governing the application of soil standards and erosion control is to be applied to ‘each area  
8 of the system’ where ‘system’ is defined as ‘the areas and trails within the state park system.’ As such,  
9 all trails, regardless of their origin (i.e. designated or volunteer), are to be treated equally in the  
10 application of the soil standard.” Audit Report for Off-Highway Motor Vehicle Division, at 6 (1997).  
11 Thus, user-made trails are trails within the meaning of the OHMVRA, and Respondents therefore have  
12 a non-discretionary statutory obligation to “promptly repair and continuously maintain” user-made  
13 trails. As Respondents’ own records show, Respondents have failed and continue to fail to fulfill this  
14 mandatory obligation, since these records show that no maintenance work of any kind has been  
15 performed on user-made trails.  
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19 4. Respondents’ actions have worsened trail conditions instead of maintaining “all areas  
20 and trails” and improving them. This is because most of the work deemed maintenance by  
21 Respondents consists of grading, while, as the 2008 Soil Conservation Standard and Guidelines  
22 expressly note, “grading [is] not appropriate for ... trail maintenance” because it accelerates soil  
23 erosion (at p. 20) and the very purpose of the trail maintenance requirement is to mitigate soil erosion.  
24 PRC § 5090.35(b).  
25

26 5. According to the 2011 Off-Highway Motor Vehicle Report (“2011 Commission  
27 Report”), the Commission responsible for overseeing the OHMVRA program found that “natural  
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1 resources appear to be degrading” at Ocotillo Wells SVRA “sampled habitats have sustained  
2 substantial loss in vegetation, soil and general habitat integrity,” and that “OHV recreation may be  
3 causing a lack of plant recruitment and loss of annual seedbank,” which is “particularly apparent in  
4 areas of intense motorized use.” California State Parks, Off-Highway Vehicle Commission, 2011  
5 Program Report, at 84 (2011).

6  
7 6. Respondents have also violated their statutory duty to protect archeological sites which  
8 are present within the Park. The OHMVRA requires the division to monitor and protect archeological  
9 resources. PRC § 5090.35(f). There are no less than 1,272 archeological sites within the Park.  
10 Respondents have provided protection to only a handful of those sites. More than a thousand  
11 archeological sites are completely unprotected, and are constantly vulnerable to damage because  
12 Respondents have imposed no restrictions on off-road vehicles riding on or over them.

13  
14 7. Respondents have been, and will continue to be, in violation of their statutory duties  
15 under the OHMVRA unless a writ is issued by this Court ordering Respondents to put an end to their  
16 open-riding policy and prohibit drivers of off-road vehicles from driving on user-created trails, or  
17 worse, on previously undisturbed desert habitat.

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19 **Beneficial Interest of Petitioners; Capacity of Respondents**

20 8. Petitioner PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY is a  
21 national, non-profit corporation based in Washington, D.C. with chapters throughout the United States,  
22 including California. California PEER has a field office in Georgetown, California. PEER represents  
23 current and former federal and state employees of land management, wildlife protection, and pollution  
24 control agencies who are frustrated by the failure of governmental agencies to enforce or faithfully  
25 implement the environmental laws entrusted to them by Congress or States. PEER has thousands of  
26 members living across the country, including members who live, recreate and work in the immediate  
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1 vicinity of the Ocotillo Wells SVRA. Members of PEER reside in lands in the Ocotillo Wells area.  
2 They use and enjoy desert lands in and around the Ocotillo Wells SVRA for observation, research,  
3 aesthetic enjoyment, and other recreational, scientific, and educational activities. PEER members have  
4 visited Ocotillo Wells SVRA and observed large areas of damaged and eroded desert soils at the site  
5 and indications that OHV riders using the Park are not limited to designated trails but instead are  
6 allowed to travel any terrain their vehicles can maneuver within the SVRA.  
7

8 9. PEER members observe air-borne dust within the Ocotillo Wells SVRA from areas  
9 where riding off designated trails is occurring. PEER members' use and enjoyment of Anza-Borrego  
10 Desert State Park has been adversely affected by the presence of OHV drivers driving into the Park  
11 from open areas within Ocotillo Well SVRA. PEER members' observation and experience of these  
12 incidents diminishes their recreational use and enjoyment of the Ocotillo Wells SVRA, Anza-Borrego  
13 Desert State Park, and other nearby lands.  
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15 10. The interests of PEER's members have been, are being, and will continue to be  
16 adversely affected by Respondents' failure to comply with the OHMVRA. The relief sought herein  
17 will redress the harms to PEER caused by Respondents' failure to comply with the OHMVRA.  
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19 11. Petitioner DESERT PROTECTIVE COUNCIL FOUNDATION is a non-profit public  
20 benefit corporation founded in 1954. Its mission is to safeguard and preserve for this and succeeding  
21 generations the scenic, historical, spiritual, natural, cultural and recreational values of the southwest  
22 deserts and to educate children and adults to a better understanding of the deserts. The DPC works  
23 through education, land stewardship and advocacy. The DPC has participated in land use planning  
24 efforts across the American southwest deserts for decades, including supporting the initial creation of  
25 the Ocotillo Wells SVRA in order to assure that OHV recreation in this area would be controlled and  
26 not result in damage to the desert environment.  
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1           12.     Members of DPC reside in lands in the Ocotillo Wells area. The DPC's board, staff and  
2 members use the lands and waters within and in the vicinity of the Ocotillo Wells SVRA, including  
3 trails adjacent to open areas that Respondents have not maintained within the SVRA, for recreation,  
4 photography, scientific research, aesthetic pursuits, and spiritual renewal. DPC members regularly  
5 visit the Ocotillo Wells SVRA. During those visits, DPC members have observed large areas of  
6 damaged and eroded desert soils at the site and indications that OHV riders using the Park are not  
7 limited to designated trails but instead are allowed to travel any terrain their vehicles can maneuver  
8 within the SVRA. DPC members have observed large dust clouds rising from these areas of erosion,  
9 obscuring visibility within the Park and on adjacent highways. In northern sections of the Park, DPC  
10 members have documented user-created vehicular tracks criss-crossing ancient Native American foot  
11 trails and over 10,000 year-old desert pavement. DPC members have observed OHV riders creating  
12 new trails on the sides of fragile soft sandstone formations. DPC members have observed OHV  
13 drivers travel on user-created tracks into adjacent Anza-Borrego Desert State Park and crushing plants  
14 within the State Park. DPC members' observation and experience of these incidents diminishes their  
15 recreational use and enjoyment of the Ocotillo Wells SVRA, Anza-Borrego Desert State Park, and  
16 other nearby lands. The interests of DPC's members have been, are being, and will continue to be  
17 adversely affected by Respondents' failure to comply with the OHMVRA. The relief sought herein  
18 will redress the harms to DPC caused by Respondents' failure to comply with the OHMVRA.  
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22           13.     Respondent CALIFORNIA PARKS AND RECREATION is now, and at all times  
23 mentioned in this petition, has been, a state agency under the laws of the State of California.  
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25           14.     Respondent DIVISION OF OFF-HIGHWAY MOTOR VEHICLE RECREATION, a  
26 division of the California Department of Parks and Recreation, was created by the OHMVRA. PRC §  
27 5090.30. The Division's duties and responsibilities include monitoring the conditions of soils and  
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1 wildlife habitat within the Ocotillo SVRA and conserving and restoring lands in the Ocotillo SVRA  
2 required by the OHMVRA.

3 15. Respondent CJ TKUVQRJ GT C. CQP NRP is the deputy director of the Division. The  
4 f gr wq "director has no responsibilities other than directing and managing the division and the OHV  
5 r tqi tco 0"Respondent Conlin is named in his official capacity.

6  
7 **Jurisdiction and Venue**

8 16. This Court has jurisdiction pursuant to California Code of Civil Procedure Section  
9 1085. Section 1085(a) provides that “[a] writ of mandate may be issued by any court to any inferior  
10 tribunal, corporation, board, or person, to compel the performance of an act which the law specially  
11 enjoins, as a duty resulting from an office, trust, or station. . . .” Venue is proper in this court pursuant  
12 to Code of Civil Procedure Section 395(a) because all of the Respondents have their headquarters or  
13 otherwise reside in Sacramento County.

14  
15 17. PEER and the DPC have exhausted all administrative remedies that may be available to  
16 them. There is no discernible administrative procedure within the Division which Petitioner could  
17 employ to remedy the violations encompassed by this Petition. In lieu of any available administrative  
18 procedure, on March 7, 2013, PEER sent Respondents DPR, Division, and individual managers a letter  
19 requesting that the Division and those officials comply with the OMHVR Act by putting an end to the  
20 open-riding policy at the Ocotillo Wells SVRA so as to help bring them into compliance with the  
21 OHMVRA. A true and correct copy of that March 7, 2013 correspondence is attached hereto as Exhibit  
22 B and incorporated by reference. In the letter, PEER also notified the Division and its managing staff  
23 of PEER’s intent to file a petition for writ of mandate to enforce the requirements of the OHMVRA  
24 should the Division and its managing staff continue to violate this Act. On April 15, 2013, Petitioners  
25 sent a follow-up letter to those Respondents as well as Respondent Christopher C. Conlin, reiterating  
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1 their concerns, identifying the violations of the OHMVRA alleged in this petition, requesting  
2 immediate action, and notifying Respondents of PEER's and DPC's intent to file this petition for writ  
3 of mandate. A true and correct copy of that April 15, 2013 correspondence is attached hereto as  
4 Exhibit C and incorporated by reference. On April 30, 2013, in response to Petitioners' letters, PEER  
5 and DPC met with Respondent Conlin. During the meeting, Petitioners again reiterated their concerns  
6 and the OHMVRA violations and requested immediate action. Respondents, through Respondent  
7 Conlin, did not agree with Petitioners and made no commitments that would resolve Petitioners'  
8 claims.  
9

10 18. This petition is timely filed within the four-year statute of limitations pursuant to CCP  
11 Sections 1109 and 343.  
12

### 13 **Statutory Background**

#### 14 **The Off-Highway Motor Vehicle Recreation Act**

15 19. The Off-Highway Motor Vehicle Recreation Act, PRC §§ 5090.01-5090.70, is the  
16 primary state law regulating off-highway motor vehicles, the Division of Off-Highway Motor Vehicle  
17 Recreation (the "OHMVR Division" or "Division"), and the state vehicular recreation areas.  
18 Originally adopted in 1988, through the OHMVRA the Legislature declared "that effectively managed  
19 areas and adequate facilities for the use of off-highway motor vehicles and conservation and  
20 enforcement are essential for ecologically balanced recreation." PRC § 5090.02(b). The Act provides  
21 that "[w]hen areas or trails or portions thereof cannot be maintained to appropriate established  
22 standards for sustained long-term use, they should be closed to use and repaired, to prevent accelerated  
23 erosion. Those areas should remain closed until they can be managed within the soil conservation  
24 standard or should be closed and restored." *Id.*, § 5090.02(c)(4).  
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1           20.     The OHMVRA created the OHMVR Division to administer many aspects of the  
2 operation of the state vehicular recreation areas and the Off-Highway Motor Vehicle Recreation  
3 Program. *Id.*, §§ 5090.30 – 5090.38.

4           21.     With respect to the OHMVR Division’s role in managing the state vehicular recreation  
5 areas, the OHMVRA states that “[t]he protection of public safety, the appropriate utilization of lands,  
6 and the conservation of land resources are of the highest priority in the management of the state  
7 vehicular recreation areas; and, accordingly, the division shall promptly repair and continuously  
8 maintain areas and trails, anticipate and prevent accelerated and unnatural erosion, and restore lands  
9 damaged by erosion to the extent possible.” PRC § 5090.35(a). “Repair,” under the OHMVRA,  
10 “means to fix, mend, make new, or revitalize to the condition that existed prior to the unauthorized  
11 OHV use and related damage.” 14 C.C.R. § 4970.01(mm). “Conservation” means activities, practices,  
12 and programs that sustain soils, plants, wildlife, and their habitat in accordance with the standards  
13 adopted pursuant to Section 5090.35. PRC § 5090.10. “Restoration” means, upon closure of the unit  
14 or any portion thereof, the restoration of land to the contours, the plant communities, and the plant  
15 covers comparable to those on surrounding lands or at least those that existed prior to off-highway  
16 motor vehicle use. PRC § 5090.11.

17           22.     PRC § 5090.35(b)(1) provides that, if soil conservation standards are not being met, the  
18 Division must either temporarily close the noncompliant portion to repair it such that it satisfied the  
19 conservation standards, *id.* § 5090.35(b)(2); or if the conservation standards cannot be met through  
20 repairs, the Division must completely close and restore the noncompliant portion. *Id.*, § 5090.35(b)(3).

21           23.     The OHMVRA also requires the Division to “monitor and protect cultural and  
22 archaeological resources within the state vehicular recreation areas.” PRC § 5090.35(f). “Cultural  
23 resources” include, *inter alia*, things that “have yielded or be likely to yield, information important in  
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1 prehistory or history,” as well as “any object, building, structure, site, area, [or] place” that “is  
2 historically significant.” 14 C.C.R. § 4970.01(h). Cultural resources are “historically significant”  
3 within the meaning of the OHMVRA if they meet the criteria of the California Register of Historical  
4 Resources. *Id.*

5 24. In addition to Respondents’ duty to protect cultural resources, where off-highway motor  
6 vehicle use results in damage to any natural or cultural values, appropriate measures shall be taken to  
7 protect these lands from any further damage. These measures may include the erection of physical  
8 barriers and shall include the restoration of natural resources and the repair of damage to cultural  
9 resources. PRC § 5090.43(c).  
10

11 25. The 2008 Soil Conservation Standard and Guidelines instruct that “[c]ultural and  
12 historical resources within or adjacent to an OHV project should be identified so that the OHV project  
13 can be designed to minimize potential impacts to the features.” The Guidelines further instruct that  
14 “[o]pen-ride-area OHV activity may need to be limited in vegetated areas.”  
15

16 26. Respondents have a clear, present and ministerial duty under the OHMVRA to  
17 “promptly repair and continuously maintain [all] areas and trails” within the OWSVRA, as well as to  
18 “monitor and protect cultural and archaeological resources within” the park.  
19

20 27. Respondents have perennially failed to perform these clear and affirmative duties which  
21 the OHMVRA imposes; unless a writ is issued by this Court, will continue to operate the Ocotillo  
22 Wells SVRA in violation of their nondiscretionary duties under the OHMVRA.  
23

### 24 **Factual Background**

#### 25 **A. Respondents Have Not Conducted the Required Prompt Repairs and Continuous** 26 **Maintenance of All Areas and Trails.**

27 28. The Ocotillo Wells SVRA includes approximately 85,000 acres of desert habitat located  
28 east of Anza Borrego Desert State Park and about four miles west of the southern tip of the Salton Sea.

1 The SVRA is criss-crossed by numerous washes and contains a variety of soil types and terrains. The  
2 SVRA is habitat for numerous threatened and sensitive desert plant and animal species, including the  
3 Flat-tailed Horned Lizard (*Phrynosoma mcallii*), Peninsular Bighorn Sheep (*Ovis canadensis nelsonii*),  
4 Pierson's pincushion (*Chaenactis carphoclinia var. piersonii*), Orcutt's woody aster (*Xylorhiza*  
5 *orcuttii*), Mecca woody aster (*Xylorhiza cognata*), California fan palm (*Washingtonia filifera*), Salton  
6 milk-vetch (*Astragalus crotalariae*), Prairie falcon (*Falco mexicanus*), Golden eagle (*Aquila*  
7 *chrysaetos*), Le Conte's thrasher (*Toxostoma lecontei*), and the Colorado fringed-toed lizard (*Uma*  
8 *notata*). Through a memorandum of agreement with the United States Fish & Wildlife Service, DPR  
9 has designated 8,936 acres of the Ocotillo Wells SVRA as the Ocotillo Wells Flat-tailed Horned Lizard  
10 Research Area to be managed in accordance with that memorandum of agreement to conserve the  
11 species. This research area does not appear on the SVRA map available to SVRA users. These  
12 species and other wildlife depend upon the health of vegetation communities within the SVRA,  
13 including mesquite, ironwood, desert willow, smoketree, and Palo Verde woodlands, creosote and  
14 badland bush scrub, four-winged saltbush and other vegetation communities. Other recreational  
15 activities including hiking, biking, horseback riding, and camping, in addition to OHV riding, are  
16 available at the SVRA.  
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20 29. Based on habitat monitoring and assessment, in general, natural resources appear to be  
21 degrading at the Ocotillo Wells SVRA. Some sampled habitats have sustained substantial loss of  
22 vegetation, soil, and general habitat integrity.  
23

24 30. The official map of the Ocotillo Wells SVRA depicts certain designated trails open for  
25 riding within the SVRA. In addition to the designated trails depicted on the SVRA map, OHV users of  
26 the SVRA have created thousands of undesigned, user-created trails. Ocotillo Wells is managed  
27 primarily as open riding areas. For the eastern third of the SVRA as well as a small portion at the  
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1 northern reach of the SVRA, Respondents purport to restrict riders to designated trails and roads. In  
2 practice, however, there are numerous trails contained in these areas that have been created by OHV  
3 riders and that are not depicted on the SVRA map. Evidence of user created trails in this area has  
4 increased in the last few years and in some cases is extensive. In practice, Respondents do not cite or  
5 otherwise prevent OHV riders from riding on these user-made trails. Throughout the rest of the  
6 SVRA, OHV riders are not limited to designated trails and roads. OHV riders may travel throughout  
7 the Ocotillo SVRA in these areas, including travelling off designated routes. In effect, the Ocotillo  
8 Wells SVRA is treated as an open riding area.

10 31. On September 5, 2012, PEER sent a request for documents to Respondent DPR  
11 pursuant to the California Public Records. The request sought the following categories of documents  
12 for the Ocotillo Wells SVRA:

- 14 a. All records of maintenance for designated and non-designated routes in the  
15 OWSVRA since January 1, 2008;
- 16 b. All inventories of designated roads and/or trails in the Ocotillo Wells SVRA;
- 17 c. All inventories of non-designated (i .e., user-created, “social,” “volunteer”) roads  
18 and trails;
- 19 d. Budgets for road and trail maintenance since January 1, 2008;
- 20 e. Records of deferred maintenance on designated and undesignated roads and trails  
21 since January 1, 2008;
- 22 f. All records of archaeological surveys performed in the Ocotillo Wells SVRA,  
23 including total number of acres surveyed;
- 24 g. Any and all records reporting on archaeological site condition or disturbance;
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- 1 h. Any and all records indicating measures taken to protect known archaeological  
2 sites, and;
- 3 i. Any and all citations issued in the Ocotillo Wells SVRA for running over  
4 perennial plants, for damage to archaeological sites, or for riding or driving off  
5 designated routes.  
6

7 32. On October 29, 2012 and January 11, 2013, Respondent DPR provided responsive  
8 documents to PEER's September 5, 2012 document request. That documentary evidence, including all  
9 records pertaining to trail maintenance and repair at the Ocotillo Wells SVRA, shows that Respondents  
10 are not complying with their affirmative duty under the OHMVRA to "promptly repair and  
11 continuously maintain [all] areas and trails."  
12

13 33. Respondents keep maintenance/repair logs for trail maintenance and repair work  
14 conducted within the Ocotillo SVRA. The maintenance/repair logs document the type of work  
15 performed, the location of the work, the date the work was performed, the level of staff that performed  
16 the work, the number of hours spent on the work, and the type of tools and equipment operated to  
17 perform the work. Respondents have performed no trail maintenance work of any kind on any of the  
18 undesignated trails within the Ocotillo Wells SVRA. With respect to the designated, named trails,  
19 Respondents have performed maintenance and repair work on most of them sporadically and, on some  
20 of them, not at all. Respondents have not filled out any maintenance/repair logs for any work  
21 conducted on any of the unnamed trails or open areas. There are many designated trails for which  
22 there is no corresponding log for maintenance or repair work for multiple months out of the year.  
23 Additionally, according to citation records received by PEER in its public records request, Ocotillo  
24 Wells SVRA has never issued a citation for driving off the designated routes in the portion of the park  
25 that is designated routes only.  
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1 left unmaintained with accelerated and unnatural erosion. Respondents do not conduct any  
2 maintenance of user-made trails or open areas at the SVRA. Because Respondents do not regularly  
3 maintain user-made trails and open areas at the SVRA, Respondents have and continue to fail to  
4 promptly repair and continuously maintain areas and trails within the SVRA. Because Respondents do  
5 not regularly maintain user-made trails and open areas at the SVRA, Respondents have and continue to  
6 fail to anticipate and prevent accelerated and unnatural erosion, and restore lands damaged by erosion  
7 to the extent possible within the SVRA.  
8

9 38. Respondents have only conducted maintenance and repair work on a portion of the trails  
10 designated by Respondents within the SVRA. Because Respondents only partially maintain  
11 designated trails, Respondents have and continue to fail to promptly repair and continuously maintain  
12 designated trails within the SVRA. Because Respondents only partially maintain designated trails,  
13 Respondents have and continue to fail to anticipate and prevent accelerated and unnatural erosion, and  
14 restore lands damaged by erosion to the extent possible associated with trails designated within the  
15 SVRA.  
16

17 39. Because Respondents have implemented an open-riding policy throughout most of the  
18 SVRA and do not have any program to maintain open areas and user-made trails within the SVRA,  
19 Respondents also have not implemented sufficient physical barriers within the SVRA's open-riding  
20 areas to protect cultural and archaeological resources within the SVRA.  
21

## 22 PRAYER

23  
24 Petitioners PEER and DPC pray that this Court:

25 1. Issue a peremptory writ of mandate (a) declaring that Respondents California  
26 Department of Parks and Recreation, Division of Off-Highway Motor Vehicle Recreation, and  
27 Christopher C. Conlin, are in violation of their mandatory duties under Sections 5090.35(a) and (f) of  
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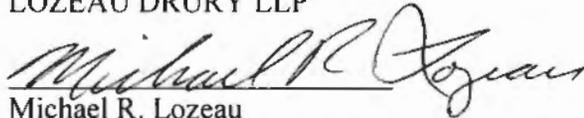
1 the OHMVRA; (b) directing Respondents, their officers, agents, and all other persons acting on their  
2 behalf or through their orders, to immediately suspend the open-riding policy at the Ocotillo Wells  
3 SVRA, and (c) to immediately prohibit motorists from driving on all user-made trails and open areas  
4 and limiting OHV driving to the SVRA's designated trails until such time as Respondents have, by  
5 means of a proper return to the Court's writ, (i) prepared and implemented an adequate plan and  
6 demonstrated sufficient capability to continuously monitor, maintain, and repair all areas of the SVRA  
7 where OHV riding will occur, anticipate and prevent accelerated and unnatural erosion, and restore  
8 lands damaged by erosion to the extent possible, and (ii) prepared and implemented an adequate plan  
9 and demonstrated sufficient capability to monitor and protect cultural and archaeological resources  
10 within the SVRA;  
11

- 12
- 13 2. Award Petitioners their costs for this suit;
- 14 3. Award Petitioners their attorneys fees pursuant to CCP § 1021.5; and
- 15 4. Grant such equitable and legal relief that the Court considers just and proper.

16 Respectfully Submitted,

17 Dated: May 21, 2013

LOZEAU DRURY LLP



Michael R. Lozeau

Attorneys for Petitioners Public Employees For  
Environmental Responsibility and Desert Protective  
Council Foundation

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**VERIFICATION**

I, Michael R. Lozeau, state that I am an attorney with Lozeau Drury LLP, the law firm representing Petitioners. I have read the foregoing Petition for Writ of Mandate and have personal knowledge that the matters set forth therein are true and correct, and on that basis allege them to be true and correct. I make this verification in accordance with California Civil Procedure Code section 446, subdivision (a) as Petitioners' counsel because the Petitioners are both absent from Alameda County, where I have my office, and the facts are within my knowledge.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification was executed on May 21, 2013, at Oakland, California.

  
Michael R. Lozeau

# EXHIBIT A



# State Vehicular Recreation Area Ocotillo Wells

5172 Highway 78, Box 10 • Borrego Springs, CA 92004 • 760.767.5391

### Park Rules and Regulations

You are responsible for knowing park rules and regulations. All provisions of the California Vehicle Code are enforced. A copy may be found at: [www.dmv.ca.gov/pubs/vctop/vc/vc.htm](http://www.dmv.ca.gov/pubs/vctop/vc/vc.htm). If you have questions, please contact the park staff, stop at the Discovery Center, or call (760) 767-5393.

The term OHV means off-highway vehicle. Any motor vehicle operated off-highway is an OHV. A highway licensed vehicle is an OHV when operated off of the highway. Vehicles having green and red stickers are OHVs.

**ALCOHOL:** Open container and DUI laws apply off-highway just as they do on-highway. Don't drink and drive. Alcohol is only allowed in your campsite.

**ATV LAWS:** There are laws which apply specifically to the operation of ATVs only. (For more information, please see reverse page.)

**LIGHTS:** OHVs operated between sunset and sunrise must display at least one lighted white headlight and one lighted red taillight visible from 200 feet.

**NOISE EMISSIONS:** The law limits noise emissions from all OHVs. Noise emissions for most OHVs are limited to not more than 96 dBA when measured from a distance of 20 inches using standardized test procedures. For more specific information, go to: [www.ohv.parks.ca.gov/noise\\_emissions](http://www.ohv.parks.ca.gov/noise_emissions).

**REACH AND OPERATE ALL CONTROLS:** All operators of off-highway vehicles must be able to reach and operate all controls.

**REGISTRATION:** When operating an OHV, you must display either a license plate or an OHV sticker. OHV stickers include "Green Stickers," "Red Stickers," California Nonresident OHV Use Permits, and OHV stickers from states that have an OHV program.

**RED STICKER RIDING SEASON:** Red stickers are allowed to operate in the SVRA from October 1<sup>st</sup> - May 31<sup>st</sup>. These dates are established by the California Air Resources Board (CARB) and are subject to change. Please call the park for updated information.

**SPEED:** Please follow posted speed limits throughout the park. In camping and developed areas, keep speeds to 15 mph or less. Never drive faster than is safe for conditions.

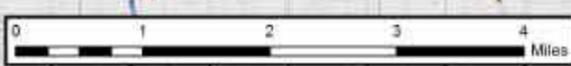
**SPARK ARRESTERS:** All vehicles operating off-highway must be equipped with either a street legal muffler or a spark arrestor maintained in effective working order.

**SUSPENDED OR REVOKED LICENSE:** Anyone whose driving privileges have been suspended or revoked is prohibited from operating any motor vehicle, on- or off-highway.

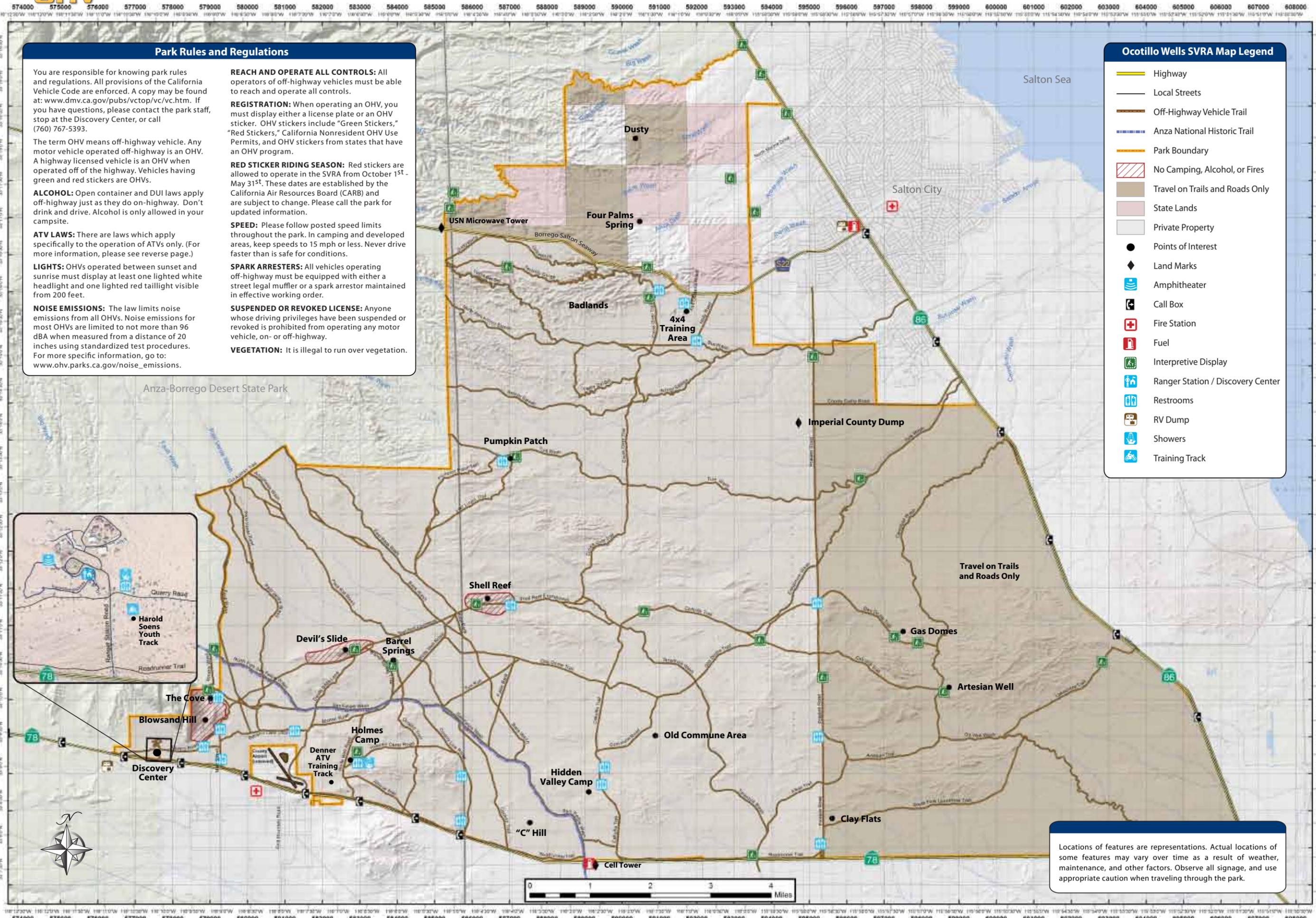
**VEGETATION:** It is illegal to run over vegetation.

### Ocotillo Wells SVRA Map Legend

- Highway
- Local Streets
- Off-Highway Vehicle Trail
- Anza National Historic Trail
- Park Boundary
- No Camping, Alcohol, or Fires
- Travel on Trails and Roads Only
- State Lands
- Private Property
- Points of Interest
- Land Marks
- Amphitheater
- Call Box
- Fire Station
- Fuel
- Interpretive Display
- Ranger Station / Discovery Center
- Restrooms
- RV Dump
- Showers
- Training Track



Locations of features are representations. Actual locations of some features may vary over time as a result of weather, maintenance, and other factors. Observe all signage, and use appropriate caution when traveling through the park.



# EXHIBIT B



**California**

**Public Employees for Environmental Responsibility**

P.O. Box 4057, Georgetown, CA 95634 Phone: (530) 333-2545

March 7, 2013

Major General Anthony Jackson, Director  
California Department of Parks and Recreation  
1416 9<sup>th</sup> Street, Rom 1405  
Sacramento, CA 95814

By email: Anthony.Jackson@parks.ca.gov

Re: Ocotillo Wells State Vehicular Recreation Area

Dear Director Jackson:

As we discussed in our meeting on January 22, 2013, PEER and others interested in the sustainability of off-road use on our public lands have grave concerns regarding the way the Off-Highway Motor Vehicle Recreation (OHMVR) Division is managing fragile desert resources in the Ocotillo Wells State Vehicular Recreation Area (OWSVRA). We believe the time has long since passed when corrective actions should have been taken to curtail the permanent damage being done at Ocotillo Wells, and we now to urge you to do so without further delay.

As you may be aware, PEER has submitted a number of Public Records Act requests regarding the management of OWSVRA. The responses to those PRA requests, limited as they are, show current management of OWSVRA does not meet the standards mandated for resource protection as required by the Public Resources Code.

The open riding policy at Ocotillo Wells SVRA is the key problem causing resource destruction and violates the California Public Resource Code provisions.

The Off-Highway Motor Vehicle Recreation Act (“OHMVRA”) establishes a series of mandates for environmental protection within the SVRA’s. These mandates require the park to repair and continuously maintain areas, anticipate and prevent erosion, restore lands damaged by erosion, protect cultural and archaeological resources, and not allow park soils to degrade beyond restorability. *See* Cal. Pub. Res. Code §5090.35 *et seq.*

The Division is required by statute to “promptly repair and continuously maintain areas and trails, anticipate and prevent accelerated and unnatural erosion, and restore lands damaged by erosion to the extent possible.” Cal. Pub. Res. Code § 5090.35(a). “Restoration” is defined as the closure of a unit or portion of a unit and the restoration of land to the contours, plant

communities, and plant covers comparable to those on surrounding lands or those that existed prior to off-highway motor vehicle use. Cal. Pub. Res. Code § 5090.11.

Maintenance records we received from the Department confirm what our staff and others have long observed, that the maintenance required by statute is completely lacking on hundreds of miles of routes within the SVRA. Although our request was for records going back to 2008, the records provided actually start in 2010. There are many months throughout the year where no maintenance appears to be done. Moreover, the records demonstrate that “maintenance” is only being done on some of the named trails and not at all on the hundreds of miles of user-created trails at the park. This data comports with our observations that there is no maintenance of the user made trails. Also, as noted, it is not even clear that all of the designated routes are maintained, based on the map OWSVRA claims is their inventory of trails, in response to our PRA request: [http://ohv.parks.ca.gov/pages/1170/files/ocotillomap\\_web.pdf](http://ohv.parks.ca.gov/pages/1170/files/ocotillomap_web.pdf)

The SVRA is required to maintain all user-created trails. The plain language of the OHMVRA makes clear that the duty to “promptly repair and continuously maintain” applies to both “areas and trails”. Cal. Pub. Res. Code § 5090.35(b) (emphasis supplied). The Park’s Off-Highway Motor Vehicle Division recognized this fundamental principle in the trail audit done in 1997 stating that “[t]he law governing the application of soil standards and erosion control is to be applied to ‘each area of the system’ where ‘system’ is defined as ‘the areas and trails within the state park system.’” Audit Report for Off-Highway Motor Vehicle Division, at 6 (1997). Thus, the thousands of user-made trails at OWSVRA are trails within the meaning of the OHMVRA, and the division has an affirmative duty to “promptly repair and continuously maintain” them. The Division is clearly not complying with its statutory obligations, as the maintenance records PEER obtained through its Public Records request show that it has not conducted any repairs or maintenance on any of these user-made trails.

Moreover, the SVRA’s “maintenance” on many of the named trails that have had maintenance work performed consisted of grading, which actually accelerates soil erosion. This is of course contrary to the very purpose of the trail maintenance statutory requirement, which seeks to mitigate soil erosion. Cal. Pub. Res. Code § 5090.35(b).

In the 2011 Off-Highway Motor Vehicle Recreation Commission Report (“2011 Commission Report”), the Commission, responsible for oversight of the OHMVRA program, reports that “natural resources appear to be degrading,” that “sampled habitats have sustained substantial loss of vegetation, soil, and general habitat integrity,” and that “OHV recreation may be causing a lack of plant recruitment and loss of annual seedbank” which is “particularly apparent in areas of intense motorized use.” California State Parks, Off-Highway Motor Vehicle Recreation Commission, 2011 Program Report, at 84, (2011). At this time, resources staff recommended a designated trail system, in order to protect park resources from the ever-expanding damage that resulted from the open riding policy in place at OWSVRA.

The Division claims that it will address these issues in the ongoing General Plan formation process. Id. However, the law mandates that the park must continuously maintain and repair damaged areas, restore lands damaged by erosion, and protect and restore damage to natural or cultural values. The park thus has an affirmative duty right now to protect the land. It

appears the Off-Highway Motor Vehicle Recreation Commission found that the Division has failed and is failing to do so.

Ocotillo Wells has also violated the statutory and regulatory mandates to protect soils from erosion. The Division has established and updated Soil Conservation Guidelines and Standards, as required by statute. Cal. Pub. Res. Code § 5090.35(b)(1). Upon a determination that soil conservation standards are not being met, the Division must temporarily close the noncompliant portion to repair and prevent accelerated erosion, until the soil conservation standards are met. Cal. Pub. Res. Code § 5090.35(b)(2). If the standards cannot be met, the division must close and restore the noncompliant portion. Cal. Pub. Res. Code § 5090.35(b)(3).

The 2008 Soil Conservation Standard, established by the Off-Highway Motor Vehicle Recreation Division requires that: “Off-Highway vehicle (OHV) recreation facilities shall be managed for sustainable long-term prescribed use without generating soil loss that exceeds restorability, and without causing erosion or sedimentation which significantly affects resource values beyond the facilities. Management of OHV facilities shall occur in accordance with Public Resources Code, Sections 5090.2, 5090.35, and 5090.53. California State Parks, Off-highway Motor Vehicle Recreation Division, 2008 Soil Conservation Standards and Guidelines (2008). The open-riding policy is exacerbating erosion and soil loss and violating the law and soil standard.

The records produced in response to PEER’s Public Records requests also indicate the Division is failing to protect the archaeological sites present within the park. The division has a statutory duty under the OHMVRA to monitor and protect cultural and archaeological resources. Cal. Pub. Res. Code § 5090.35(f). “Cultural resources” include, among other things, resources that “have yielded or may be likely to yield, information important in prehistory or history” and “any object, building, structure, site, area, [or] place” that “is historically or archaeologically significant.” 14 C.C.R. § 4970.01(h). Cultural resources are “historically significant” if they meet the criteria for listing on the California Register of Historical Resources. *Id.* The park references on their website that Native Americans and early settlers were present in the area, which has resulted in the establishment of a cultural preserve in parts of the park. According to the 2011 Strategic Report, there are 1272 cultural and historical sites within the SVRA. Commission Report at 93. Information received by PEER indicates that only a handful of these are receiving any protection. The others are constantly subject to damage because there are no restrictions on riding on, over, or through the sites under current management direction. Protecting a site would seem to require, at a minimum, that you limit the ability of park-goers to drive over and through it.

We understand the many challenges presented to you and your team when you accepted the position of Director of California State Parks. But we can no longer wait until it is convenient for the Department to act. Every day of delay is a day off-road vehicles are allowed to expand their damage to new areas. PEER believes that the ongoing resource destruction brought on by the open-riding policy at OWSVRA is a violation of the California Code. We have been bringing these issues to the attention of the Division for many months now and nothing has been done. If you do not take concrete and substantial action by halting the park’s

open-riding policy and ensuring it is enforced by March 29, 2013, then we intend to involve the court.

Cordially,

A handwritten signature in black ink, appearing to read 'Kathryn Douglass', with a long horizontal stroke extending to the right.

Kathryn Douglass  
Staff Counsel

Karen Schambach  
California PEER Director

Cc: Janelle Beland, Undersecretary, California Natural Resources Agency; Phil Jenkins, Division Chief, Off-Highway Vehicle Division; Garratt Aitchison, Supervisor, Ocotillo Wells State Vehicular Recreation Area

# EXHIBIT C



**California**

**Public Employees for Environmental Responsibility**

P.O. Box 4057, Georgetown, CA 95634 Phone: (530) 333-2545

April 15, 2013

Major General Anthony Jackson, Director  
California Department of Parks and Recreation  
1416 9<sup>th</sup> Street, Room 1405  
Sacramento, CA 95814

By Registered mail

Re: Ocotillo Wells State Vehicular Recreation Area

Dear Director Jackson:

On March 7, 2013, PEER sent you a letter detailing our concerns that the open riding policy at Ocotillo Wells State Vehicular Recreation Area (OWSVRA) was violating the Off-Highway Motor Vehicle Recreation Act (OHMVRA). In that letter, (Attachment A), we asked you to stop the open riding policy as it was destroying the desert environment and violating California law. We did not receive any acknowledgment or response to that letter.

PEER and the Desert Protective Council (DPC) are very concerned that the open riding policy destroys the fragile desert environment and archeological, cultural and historical sites at OWSVRA. Such a policy violates California law. Specifically, OWSVRA has not and cannot continuously maintain all the trails, roads and areas that it is required to do by law. Secondly, OWSVRA has done very little to protect the hundreds of cultural and historical sites at the park and allowing open riding merely compounds the problem. That is, if the sites are not protected from vehicle traffic and vehicles are allowed to go wherever they like, the park's cultural resources are not being protected.

By this letter, PEER and DPC hereby repeat that we intend to sue in state superior court the Off-Highway Motor Vehicle Recreation Division (OHMVR), the California Department of Parks and Recreation, OWSVRA, and relevant officials in their official capacities for their failure to comply with California law. In an attempt to not have to bring this matter before the court, we ask you to immediately remove all open area designations from the park, to terminate the open riding policy at OWSVRA, to enforce the removal of open area designations by forbidding any riders from driving off existing designated routes, as displayed on the attached map (Attachment B); by erecting clearly worded and prominently displayed signage and by citing and vigorously prosecuting those who drive off the park designated routes. We also ask you to take substantial steps towards protecting the cultural and historical sites at OWSVRA by

restricting access to the sites. We request that these actions be taken by April 29, 2013, and that we be promptly notified when this is accomplished.

Cordially,

Karen Schambach  
California PEER Director

Also for

Terry Weiner  
Desert Protective Counsel

Cc: Chris Conlin, Deputy Director, Off Highway Motor Vehicle Recreation Division;  
Phil Jenkins, Division Chief, Off-Highway Motor Vehicle Recreation Division;  
Garratt Aitchison, Supervisor, Ocotillo Wells State Vehicular Recreation Area

Attachments: PEER letter of March 7, 2013  
Map of OWSVRA routes