



United States Department of the Interior

NATIONAL PARK SERVICE

Mojave National Preserve
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IN REPLY REFER TO:

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June 17, 2002

Memorandum

To: Deputy Assistant Secretary, Fish, Wildlife and Parks

Through: Regional Director, Pacific West Region *[Signature]* 6/20/02

From: Superintendent, Mojave National Preserve

Subject: Artificial Wildlife Watering Devices, Mojave National Preserve.

It was a pleasure to spend time with you in Mojave to discuss the matter of converting current water systems used for livestock watering by ranchers within Mojave National Preserve into wildlife watering sources as grazing rights are retired. The subject of whether livestock watering systems should be left intact for wildlife watering or whether a new artificial water system should be installed is complex. It requires careful consideration to ensure that actions taken by the Preserve will be consistent with both the statutory authorities governing the National Park System and National Park Service (NPS) management goals as reflected in NPS Management Policies and in the General Management Plan for Mojave National Preserve.

As we discussed, the job of the National Park Service is to conserve natural systems and native species. This mandate applies regardless of whether the unit is designated as a "park," "preserve," "national recreation area," or any one of the other designations given to units of the national park system. Our mission is not to enhance certain species or encourage specific species and populations to artificially levels.

Statutory Authorities

The most important statutory directive for the National Park Service is provided by interrelated provisions of the NPS Organic Act of 1916, and the NPS General Authorities Act of 1970, including amendments to the latter law enacted in 1978.

The key management-related provision of the Organic Act is:

[The National Park Service] shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified... by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. (16 USC 1)

Until 1970 when Congress passed the General Authorities Act there had been discussion about the differences between park designations. This Act, however, gave us clear direction that, regardless of designations, all national park units are managed in a similar fashion. Therefore, a "national preserve" would be managed consistent with a "national park."

All areas of land and water administered by the National Park Service, including Mojave National Preserve, are part of the "National Park System," as defined by Congress, who supplemented and clarified these provisions through enactment of the General Authorities Act in 1970, and again through enactment of a 1978 amendment to that law (the "Redwood amendment," contained in a bill expanding Redwood National Park, which added the last two sentences in the following provision). The key part of that act, as amended, is:

Congress declares that the national park system, which began with establishment of Yellowstone National Park in 1872, has since grown to include superlative natural, historic, and recreation areas in every major region of the United States, its territories and island possessions; that these areas, though distinct in character, are united through their inter-related purposes and resources into one national park system as cumulative expressions of a single national heritage; that, individually and collectively, these areas derive increased national dignity and recognition of their superlative environmental quality through their inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people of the United States; and that it is the purpose of this Act to include all such areas in the System and to clarify the authorities applicable to the system. Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park System, as defined in section 1c of this title, shall be consistent with and founded in the purpose established by section 1 of this title [the Organic Act provision quoted above], to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress. (16 USC 1a-1)

Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park System, as defined in section 1c of this title, shall be consistent with and founded in the purpose established by section 1 of this title, to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various have been established, except as may have been or shall be directly and specifically provided by Congress.

The fundamental purpose of the National Park Service is to conserve resources for the enjoyment of future generations. This Act provided the foundation for the current litigation that sparked our reemphasis on "nonimpairment" of resources (Southern Utah Wilderness Alliance v. Dabney, et al). Congress intended the language of the Redwood amendment to the General Authorities Act to reiterate the provisions of the Organic Act, not create a substantively different management standard. The House committee report described the Redwood amendment as a "declaration by Congress" that the promotion and regulation of the national park system is to be consistent with the Organic Act. The Senate committee report stated that under the Redwood amendment, "The Secretary has an absolute duty, which is not to be compromised, to fulfill the mandate of the 1916 Act to take whatever actions and seek whatever relief as will safeguard the units of the national park system." So, although the Organic Act and the General Authorities Act, as amended by the Redwood amendment, use different wording ("unimpaired" and "derogation") to describe what the National Park Service must avoid, they define a single standard for the management of the national park system—not two different standards.

Additionally, the California Desert Protection Act, which created Mojave National Preserve in 1994, expressly requires the Secretary of the Interior to administer the Preserve in accordance with the provisions of law generally applicable to units of the National Park System, including the Organic Act. 16 U.S.C. § 410aaa-46. The nonimpairment mandate of the NPS Organic Act requires each unit of the National Park System, including Mojave National Preserve, to protect park resources from impairment.

Management Policies

The conservation mission of the Organic Act has been incorporated into both NPS management policies as well as part of the consideration of environmental impacts of federal actions significantly affecting the quality of the environment under the National Environmental Policy Act, or "NEPA." See NPS Director's Order #12, Conservation Planning, Environmental Impact Analysis, and Decision Making (2001). The NPS 2001 Management Policies recognize the importance of the nonimpairment requirement:

The 'fundamental purpose' of the national park system, established by the Organic Act and reaffirmed by the General Authorities Act, as amended, begins with a mandate to conserve park resources and values. This mandate is

independent of the separate prohibition on impairment, and so applies all of the time, with respect to all park resources and values, even when there is no risk that any park resources and values may be impaired. NPS managers must always seek ways to avoid, or to minimize to the greatest degree practicable, adverse impacts on park resources and values.

Management Policies 2001, at 12, § 1.4.3. The NPS Management Policies specifically address water in the parks and provide for protection of both the water and watersheds:

Park waters—either surface waters or groundwater—will be withdrawn for consumptive use only when such withdrawal is absolutely necessary for the use and management of the park. All park water withdrawn for domestic or administrative uses will be returned to the park watershed system once it has been treated to a degree that ensures that there will be no impairment of park resources.

Management Policies 2001, at 39, § 4.6.2. NPS management policies are also committed to preserving, restoring and protecting watersheds:

The Service will manage watersheds as complete hydrologic systems, and will minimize human disturbance to the natural upland processes that deliver water, sediment, and woody debris to streams. . . . The Service will achieve protection of watershed and stream features primarily by avoiding impacts to watershed and riparian vegetation, and by allowing natural fluvial processes to proceed unimpeded.

Management Policies 2001, at 40, § 4.6.6. These management policies are reflected in the new General Management Plan prepared by Mojave National Preserve in compliance with 16 U.S.C. § 1a-7(b) and NEPA. In Mojave National Preserve's General Management Plan, Mojave National Preserve's plan actions call for the protection of water and watersheds:

The National Park Service will seek to protect, perpetuate, and possibly restore surface water and groundwater as integral components of park aquatic and terrestrial ecosystems. Surface water and groundwater withdrawn for public use will be the minimum amount necessary to achieve Preserve purposes.

The NPS 2001 Management Policies provide significant guidance in considering this question. The evolution of natural processes and species is recognized and envisioned as continuing to evolve with minimal influence of human actions. Natural resources are to be managed to preserve the fundamental physical and biological processes, not to enhance any one species or to increase wildlife. The only exception to this might be in a situation where a species is threatened or endangered, even those actions would not be taken lightly. In fact the only time we intervene in natural processes is:

- when directed by Congress,
- in an emergency when human life or property is at risk,

- to restore the naturally functioning ecosystem previously disrupted by past human activities, or
- when a park's general management plan has identified the intervention as necessary to protect park resources or facilities.

Similar to the discussion held at Joshua Tree where they are surveying the bighorn sheep guzzlers, we have identified the need to return human-disturbed areas to their former natural conditions. This might entail, as with the other two desert parks, the removal of existing small and large wildlife guzzlers. As we have seen with this year's inventory of desert tortoise, natural population changes of species occur, in particular in semiarid climates in drought years. Our goal is a natural abundances, diversities, distributions, and habitats of native animal and plant populations. It is not to maintain wildlife populations at artificially high levels.

Mojave National Preserve General Management Plan (General Management Plan), further addresses this issue at page 34. The National Park Service's management goal of protecting and restoring surface water and groundwater resources as part of the ecosystems in the Preserve has been complicated by the fact that many of the 200 springs and seeps identified in the Preserve, have been altered by the installation of retention dams, pipelines, and troughs for livestock use. (General Management Plan, page 33.) In 1994, when Mojave National Preserve was created by Congress, approximately 130 small animal and 6 large animal "guzzlers" or artificial water sources existed within the Preserve boundaries. (General Management Plan, page 69.) Under the current Mojave National Preserve General Management Plan, Mojave National Preserve will examine the use and need for these guzzlers:

Guzzlers will be retained for native wildlife if they are found to be necessary to replace water 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 water 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.

The General Management Plan goes on to address this topic on page 70. The removal of livestock watering facilities is necessary to fulfill management objectives to insure restoration of the natural watershed and surface and groundwater resources and relates to the conservation mission of the Organic Act. However, as with the guzzlers, there may be certain limited circumstances where livestock watering systems may need to be temporarily left in place until the natural water systems and watersheds can be fully restored in order to protect native wildlife and plants at previously undisturbed levels. The retention of livestock watering systems is being evaluated by the NPS on a case-by-case basis in the context of restoring the natural water systems, watersheds and ecosystems. This is consistent with the existing General Management Plan.

The General Management Plan was developed with considerable public input. In fact, we had 43 public meetings and received thousands of letters from the public and interested groups on its development. Deviating from the General Management could, and most likely would, subject us to litigation and create potential conflicts with the statutory conservation mandate of the NPS. Additionally, deviating from the General Management Plan could require additional consultation with U.S. Fish and Wildlife Service over impacts to the desert tortoise and other species protected under the Endangered Species Act and other wildlife protection statutes. As evidenced by Jim Matthews article in the San Bernardino Sun, the hunters had the impression that enhancing wildlife populations by artificial watering sources would be a simple change in philosophy. It is clearly contrary to our mission, policies and legal foundation.

The question of ownership of the range developments (troughs, windmills, tanks, etc.) has been researched and it remains with the rancher. It is because they own this property and are relocating their personal property to Arizona that we are paying them relocation benefits under the Land and Water Conservation Fund. All the property has been surveyed through a cultural resource contract. In this instance, Oversons have graciously worked with us and agreed to leave certain historical items for preservation and interpretation of the ranching history.

The park is in the process of defining our overall research needs. These will be prioritized and addressed on a holistic basis and, of course, be funding dependent. This will be a long, evolving process, where one avenue of research or set of questions may prompt another avenue of investigation. I look forward to your support throughout this course of action.

I hope that this short discussion of NPS statutory authority and management policies will better explain to you the position that Mojave National Preserve has taken with respect to the issue of conversion or removal of livestock watering systems in the Preserve.



Mary G. Martin

cc: Director, National Park Service