



Pacific PEER

Public Employees for Environmental Responsibility

June 27, 2019

Gail S. Ennis
Acting Inspector General
U.S. Department of the Interior
1849 C Street, NW Mail Stop 4428
Washington, DC 20240

RE: Request for Investigation: Sourdough Springs, Death Valley National Park

Dear Acting-General Ennis:

I am writing you on behalf of Public Employees for Environmental Responsibility (PEER) to call your attention to what believe is an illegal diversion of water from Sourdough Spring located in Death Valley National Park. The diversion would serve the Bush Management Company (BMC) mining operation at Keystone Mine, on lands managed by the Bureau of Land Management (BLM). The spring's water supplies a vital desert oasis that helps maintain vegetation and wildlife.

On March 15, 2019, National Park Service (NPS) Regional Director Stan Austin signed a Finding of No Significant Impact (FONSI) for an Environmental Assessment (EA) proposing diversion, collection, and transportation of water from Sourdough Spring. This action was taken in apparent violation of the California Desert Protection Act (16 USC § 410) and regulatory authorities pertaining to mining and mining claims on NPS lands (36 CFR § 9A) adopted pursuant to the 1976 Mining in the Parks Act (Public Law 94-429). These regulations erect a heightened barrier of protection around the parks in connection with the exercise of valid mineral rights arising from the Mining Law of 1872.

Documents obtained by PEER through a Freedom of Information Act (FOIA) request reveal disturbing NPS conduct, as detailed below.

1. NPS Deliberately Waived its Regulations Due to Perceived Political Considerations

In an e-mail dated October 3, 2017 the NPS Washington Office in Denver (Geological Resources Division (GRD)) advised Death Valley National Park officials to accept the mining claimants (Bush Mining Company - BMC) letter of September 11, 2017 as a proposed plan of operations under the NPS mining regulations at 36 CFR 9A. The e-mail states:

“I know that BMC’s letter does not come close to a real plan, but given the current administration’s priorities, I think we should just accept it as a proposed plan and move on.”

The GRD subsequently e-mailed “talking points” to the park officials on August 10, 2018:



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“BLM and NPS are working collaboratively and efficiently together here, very much consistent with Sec. Zinke’s vision of “One DOI.” The NPS is not seeking to apply the regulations to the portion of the operation that is on BLM lands, just the portion within the park, and we didn’t even get a separate plan of operations for that (which, under the (NPS) regs, we should have). And, we are not requiring a validity exam prior to the use of the millsites in the park, this deviates from our overall policy. In short, we have made a lot of concessions for Mr. McLaughlin.”

Shortly thereafter, on November 4, 2018, park superintendent Mike Reynolds decided to proceed down this path of short-circuited approval and inform his superior, Regional Director Austin.

The NPS provided no documents that demonstrate that any political appointee in the Department of the Interior influenced these decisions. The decisions appear to have been made wholly by NPS officials.

2. Research Showed that the Claimant’s Millsites at Sourdough Springs are Likely Invalid

Sourdough Springs is located on lands were that added by statute to Death Valley National Park in October 1994 from lands previously under BLM jurisdiction. The two millsites (located in 1972 and 1989 respectively) when the lands were administered by the BLM, must have been used for mining purposes on the date the lands were withdrawn from mineral entry – October 31, 1994.

Significantly, the location of the millsites may be contrary to law. The Sourdough Springs was withdrawn by President Calvin Coolidge on April 17, 1926 as part of Public Water Reserve (PWR) 107. The withdrawal was made under the Pickett Act of 1910, 36 STAT 847 and set aside the reserved water sources for domestic and stock-raising uses. PWR 107 withdrew all lands within ¼ mile of Sourdough Springs from sale, exchange, location and entry except for metalliferous minerals, as allowed in a 1912 amendment to the Pickett Act.

A millsite, by definition, must always be “nonmineral in character.” While Congress repealed the Pickett Act in 1976, (under the Federal Land Policy and Management Act – FLPMA) Congress protected all withdrawals and reservations made pursuant to that statute. The location of the millsite appears to have been impermissible and could be null and void ab initio.

The NPS considered this aspect of the proposal of no importance since the claimant possessed a water right under California state law. Reasoning that the water right would survive even if the millsites at the point of diversion were invalid, therefore, the NPS did not consider the validity of the millsites.

Nor has the NPS taken any action since to have BLM declare these millsites invalid. They remain in place.

3. The NPS Never Requested a Validity Examination by BLM on the Keystone Claims outside of the Park



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The NPS may not approve any operation in connection with a mining claim unless that claim is valid. The NPS' Part 9A rules "control all activities within units of the National Park System resulting from the exercise of valid existing mineral rights on...unpatented mining claims..." 36 CFR 9.1.

Neither the BLM nor the NPS conducted a formal validity examination of the Keystone claims. The documents provided to PEER reveal that the NPS did not at any time request that BLM determine the validity of the Keystone claims – the claims that underlie the entire proposed plan of operations, including the use of water from Sourdough Springs.

4. The NPS has Been Negligent Regarding Operations of the Claimant

Death Valley is the largest area of the national park system in the United States outside of Alaska. It is not easy to patrol or protect so vast an area. The Panamint Valley lies on the westerly side of the Park, far from park headquarters. Sourdough Springs lies at the edge of the park in the Panamint Valley, not far from the Keystone Mine claims, just outside of the park.

Unknown to the NPS, the claimant constructed a surface PVC water line from Sourdough Springs to the Keystone claims sometime in early 2016, perhaps earlier. The BLM discovered the pipeline and issued a noncompliance order on March 24, 2016 to the claimant since the BLM never authorized such a project. Of course, neither did the NPS authorize this pipeline under any regulations.

BLM copied the Order of Noncompliance to the NPS at Death Valley. Inexplicably, the NPS never contacted the claimant whose work was in trespass on Federal park land. The pipeline lacked any authorization in any form (36 CFR 9A, Special Use Permit, or right-of-way under the act of February 15, 1901) by the NPS.

This episode is illustrative of the failure by the NPS to adequately regulate conduct in connection with this mining operation in Death Valley National Park.

Conclusion

PEER requests that your office review this apparent violation of NPS regulations that threatens detriment to Death Valley resources and associated abdications of responsibility by NPS officials and recommend both appropriate disciplinary and corrective actions.

Should you desire additional supporting information and/or wish to review the documents that PEER obtained under FOIA, please let me know.

Sincerely,

Jeff Ruch
Pacific Director