Comments by Public Employees for Environmental Responsibility (PEER) to Department of the Interior/National Park Service concerning proposed regulations to 36 CFR Part 7 [NPS-CAMO-CRMO-NPS0043954; 277P103601, PPWOVPADU0]

These comments are submitted on behalf of Public Employees for Environmental Responsibility (PEER) to proposed special regulations by the National Park Service (NPS) at 36 CFR Part 7 to allow hunting in Castle Mountains National Monument in California, and Craters of the Moon National Monument in Idaho, displayed in the Federal Registers and Regulations. Gov. {RIN 1024-AF13}

The thrust of our comments explain why the National Park Service (NPS) should withdraw from further rulemaking the two proposed special regulations:

1. Proposed Regulations Denigrate Purpose of These Two National Monuments
Central to the Executive Order of September 17, 2026, is the Presidential determination that allowing hunting in Castle Mountain and Craters of the Moon National Monuments is permissible because hunting does not threaten any of the objects of scientific or historic interest for which past Presidents proclaimed the two sites as monuments. Specifically, the Order states:

> "I have determined that appropriately managed hunting would not put the objects of historic and scientific interest that these monuments protect at risk."

The statement reflects the mistaken belief that nothing else beyond the geologic features cited in the Proclamation is protected or that the originating proclamation is the only governing authority over the two monuments (and by implication all other NPS monuments) and that no other laws and regulations apply. Notably, the Castle Mountains National Monument proclamations explicitly lists wildlife, primarily the desert bighorn sheep, and a number of other mammal, bird and reptile species, as critical objects of scientific interest. (Bighorn sheep are a game species under California's game laws.) The Proclamation also lists among the objects of scientific interest the desert tortoise.

These two monuments are also part of an extensive national system of protected areas, known as the national park system. The two monuments and all parks "...though distinct in character, are united through their interrelated purposes and resources into one national park system as cumulative expressions of a single national heritage;" Act for Administration of the National Park System, 1970. 84 STAT. 825

Further, that same Act above directs that all park areas are governed not only by their enabling act (or proclamation) but by all laws governing the national park system, beginning with the Act of August 25, 1916 – The Organic Act. In 1978, Congress reinvigorated the protective purpose of the Organic Act by declaring that:

> "Congress further reaffirms, declares and directs that the promotion and regulation of the various areas of the National Park System . . . shall be consistent with and founded in the purpose established by the first section of the Act of August 25, 1916, 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."

Lands within the national park system are sanctuaries for wildlife unless Congress specifically and directly provides otherwise. This feature is unlike any other system of lands administered by the federal government.

Congress enacted the Yellowstone Hunting Act (28 STAT 73) in 1894 and set the tone for all the laws, regulations and policies that followed by prohibiting "...all hunting, or the killing, wounding or capturing of any bird or wild animal..." in the park, even by recreational sport hunting. So strict is this protection that in the Act of August 25, 1916, which established a national park service (The Organic Act), that Congress limited even the power of the Secretary to kill park animals and then only if the Secretary deems the wildlife "detrimental to the use of ...the parks, monuments and other reservations." (39 STAT 535)

There is only one example of Congress, in law, authorizing hunting in an NPS "national monument." That is for Hagerman Fossil Beds NM in Idaho, which allows some limited duck hunting over the Snake River.

Castle Mountain and Craters of the Moon were both reserved from BLM-administered public lands. Congress in 2002 already designated the additions to Craters of the Moon NM made by Proclamation in 2000 into a National Preserve, open to hunting and trapping. However, Congress elected to leave the original monument untouched and thus closed to hunting and Craters of the Moon NM has not been open to hunting and trapping since President Coolidge proclaimed it in 1924.

2. Proposed Regulations Exceed Executive Authority

Few ideas reverberate with greater resonance in the history of the parks than that areas of the national park system are sanctuaries for wildlife unless Congress specifically and directly provides otherwise. This characteristic makes the parks unique.

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So strict is the protection of park wildlife that in the Act of August 25, 1916, that established a national park service (The Organic Act), that Congress limited even the power of the Secretary to kill park animals and then only if the Secretary deems the wildlife "detrimental to the use of ...the parks, monuments and other reservations." (39 STAT 535)

From the very beginning of the NPS, Secretaries of the Interior who oversee the parks construed

the mandate imposed by Congress on the new service it created to "conserve" among other things, "the wild life" therein, to impose the highest level of protection, safeguarding park wildlife from all harm.

In his Second Annual Report to the Secretary, the first Director of the NPS, Stephen Director Mather wrote "The National Park Service holds no one of its several public charges in greater reverence than the care, maintenance, and development of the wild animals which live free and normal lives within its reserves." (p. 22, Second Annual Report (1918)). Mather described proposals to allow the killing of buffalo and elk in Yellowstone to augment the nation's food supply during World War I as a "very grave and insidious" peril to the parks. (*Id*., p. 23).

The Third Annual Report states that "[N]o opportunity to improve the condition of wild life of the national parks has been neglected by the Service during the past year, nor have we relaxed in any degree our vigilant protection of these reservations. All are refuges for wild animals…" (p. 34, Third Annual Report (1919)) (emphasis added).

The Fourth Annual Report states that "[T]he great primary principle that the national parks must forever be maintained in absolutely unimpaired form…has been firmly established by Congress, and until Congress…by legislative mandate annuls or changes this principle it must be faithfully, unequivocally, and unilaterally adhered to." (p. 37, Fourth Annual Report (1920)).

In the 1921 report, Director Mather speaks of the "complete and absolute protection afforded the wildlife within (park) boundaries…" (p. 37, Fifth Annual Report (1921)).

The 1922 report affirms that "[T]he national parks and monuments play a very important part in the conservation of wildlife, for in them, all animals, with the exception of predatory ones, find safe refuge and complete protection, and live unhampered in a natural environment." (p. 22, Sixth Annual Report (1922)).

It was to this National Park Service that President Calvin Coolidge gave control over vacant, unappropriated Federal lands in Idaho to become Craters of the Moon National Monument on May 2, 1924, by Proclamation 1694 (43 STAT 1947). The lands, then open to hunting, were immediately closed.

The early history of the NPS leaves no doubt that park wildlife was to be protected from all take of wildlife, except as Congress provided otherwise. There is nothing in NPS history that reasonably leads to a conclusion that the protection of park wildlife was less than ironclad. The Secretary possesses no discretion to allow the take of wildlife except as provided for in law. If there were any doubt, the NPS soon adopted Federal regulations that gave unyielding protection to park wildlife.

The NPS' first formal regulations for the national park system, published in the Federal Register's first volume in 1936, included the statement that "[t]he parks and monuments are sanctuaries for wildlife of every sort, and all hunting, or the killing, wounding, frightening, capturing, or attempting to capture at any time of any wild bird or animal except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting personal

injury, is prohibited."[1] In 1936, the national park system consisted, with some exceptions, almost entirely of "parks" and "monuments."[2] The regulations, then, as today, gave the same protection to wildlife whether found in monuments or parks.

In a formal Opinion of May 29, 1942, Department of the Interior Solicitor Nathan Margold wrote to the NPS Director "...it must be kept in mind that the national parks and monuments have been set aside by Congress as wildlife sanctuaries and that this has been stated to be a fundamental purpose of these areas."

The NPS proposed the special regulations to allow recreational sport hunting in the two monuments in compliance with an Executive Order 14429 of September 17, 2026. An Executive Order cannot lawfully repeal more than a hundred years of law and regulation. In the entire history of the national park system, the NPS has never opened any park system area to sport hunting by promulgation of a special regulation or by any other means.

3. Implications for All Other National Monuments

If the this or any other President can validly order the Secretary to adopt rules to allow hunting in Castle Mountain and Craters of the Moon, the President may do so for every other NPS national monument. The President does not need to abolish or reduce their size; he can simply order the Secretary to open them all to hunting and trapping and thus destroy (what we thought for a century) was their indelible characteristic as strict sanctuaries for animals.

4. Proposal Exceeds Purpose of Special Regulations

After the establishment of Cape Hatteras (1937) and with the advent of the 1960's, the NPS obtained many more "recreation areas," "seashores" "lakeshores," and in the 1970's, "preserves," some by administrative agreements but most by acts of Congress.[3] In most, but not all, of these areas the agreements or the enabling legislation permitted hunting, and, in fewer cases, trapping.

To address the variety of new additions to the national park system, Secretary of the Interior Stewart Udall instructed the NPS Director to develop a set of guidelines for the managing "each of these categories of areas."[4] The NPS restructured its regulations in 1966 to create three

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[1] 1 Fed. Reg. 791 (1936). Section 7, Department of the Interior, National Park Service, Rules and Regulations, 1936.

[2] In 1936, the exception consisted largely of national military parks, battlefields and cemeteries transferred to the NPS by Executive Order 6228 of 1933.

[3] The NPS administered other recreation areas under agreements. They included (in chronological order) Coulee Dam, Curecanti, Lake Meredith and Amistad. Of these, only Curecanti and Coulee Dam (now called Lake Roosevelt) remain without an enabling act.

[4] Memorandum of July 10, 1964 to Director George Hartzog.

categories of national park system areas, as described by Secretary Udall – natural, historic, and recreational. The 1966 regulations read, in pertinent part: "[T]he hunting, killing, wounding, frightening, capturing, or attempting to kill, wound, frighten, or capture at any time of any wildlife is prohibited, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting personal property."[5] But, the 1966 regulations differed from the 1936 regulations by applying the strictest prohibition only within natural and historical areas of the national park system and national parkways. The 1966 regulations authorized the hunting and trapping of wildlife in recreational areas of the system.

Never did the 1966 rules apply to natural areas in national monuments like Craters of the Moon or Castle Mountains.

As the park system continued to grow in size and variety, the NPS continued to deliberate internally about the viability and usefulness of the three management categories. Congress gave further impetus to the discussion with the enactment of the General Authorities Act in 1970 (84 Stat. 825) and the Redwood Amendments to that Act in 1978.

In 1978, Congress enacted the Redwood National Park Expansion Act (P.L. 95-250) that contained an unrelated provision that amended the General Authorities Act of 1970. That amendment stated:

> "[T]he 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*." Emphasis added.

These acts reaffirmed the fundamental purpose of preserving park resources in all units of the national park system and directed that all areas of the system be governed by the fundamental purpose of the Organic Act. 16 U.S.C. 1a-1. The Senate Report on the Redwood Amendment said:

> "The Secretary is to afford the highest standard of protection and care to the natural resources within…the National Park System. No decision shall compromise these resource values except as Congress may have specifically provided…[T]his restatement of these highest principles of management is intended to serve as the basis for any judicial resolution of competing private and public values and interests in areas of the National Park System."

In direct response to the 1978 Redwood Amendment, in 1982, the NPS proposed to revise its regulations and end the management categories. The preamble to the proposed rule stated, with

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[5] See 31 FR. 12750 (September 29, 1966) (proposed rule), and 31 FR 16650 (December 29, 1966) (final rule); codified at 36 CFR 2.32(a)(1).

regard to park wildlife, that "[I]n cases where the legislation for a park area does not authorize hunting or trapping, the taking of wildlife is prohibited."[6]

In 1983, the NPS completed the thorough revision of its regulations proposed in March 1982. The preamble explained that a "major effect of this rulemaking is the elimination of the management categories…Pursuant to this statutory mandate, activities and uses in derogation of park values and purposes can be allowed only under a park's enabling legislation or other express statutory authorization."[7]

The 1983 rulemaking recognized that, in some limited cases, the NPS may need to promulgate a park specific regulation addressing conditions or characteristics unique to that park. The general rules at 36 CFR Parts 1 and 2 may thus be supplemented by park specific "special" regulations located in 36 CFR Part7.

The NPS has promulgated special regulations in 36 CFR Part 7 for approximately 97 parks, outside of Alaska (which has its special regulations at 36 CFR Part 13). Not one such special regulation opens a park system area to the killing of park animals by hunting or trapping. The special regulations that currently address hunting are found only in those parks where Congress has directly and specifically authorized it.

The purpose of all special regulations is spelled out in the Preamble to Final Rule of 1983 in the following:

> "...Part 7 contains special regulations that have been found necessary for individual parks as supplements to the general regulations." 48 FR 30252. (Emphasis added)

Special regulations are not supposed to counteract the general regulations.

The special regulations proposed for Craters of the Moon and Castle Mountains National Monuments do not supplement the general regulations. The proposed special rule overturns the general regulations. The proposed special regulation eviscerate 36 CFR 2.1 and 2.2 that protects park wildlife from harm and governs hunting where authorized in law as a discretionary or mandatory duty of the Secretary.

In this case, Secretary Burgum seeks to use special regulations for a wholly unanticipated and improper goal of opening two national monuments to sport hunting, albeit at the command of the President. Special rules at 36 CFR are not meant to introduce recreational or commercial consumptive uses to a park; uses that require specific and direct congressional authorization.

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[6] 47 FR 11601 (March 17, 1982).

[7] 48 FR 30252 (June 30, 1983).

The two special regulations represent a first and one-of-a-kind agency action because they go diametrically against to the 110-year understanding of the fundamental purpose "...:of said parks, monuments and other reservations."

5. Proposal Violates the Monuments' Governing Proclamations

Both Craters of the Moon and Castle Mountains National Monuments were established by Presidential Proclamations pursuant to the Antiquities Act 1906. [8] Neither monument possesses a Congressionally enacted enabling act.

> **Craters of the Moon National Monument, Idaho** is the product of several proclamations – No. 1694 of May 2, 1924, and No. 1843 of July 23, 1928, by President Calvin Coolidge, No.1916 of July 9, 1930, by President Herbert Hoover, No. 3506 of November 19, 1962, by President John F. Kennedy and No. 7373 of November 9, 2000, by President William Clinton. None of the above proclamations provide for recreational sport hunting or any other form of wildlife take. Note that Congress revisited the Clinton proclamation in 2002 by designating the approximately 410,000-acre Clinton addition as a "National Preserve" in which the Secretary shall permit hunting.[9] But Congress deliberately refrained from authorizing hunting in the pre-2000 Craters of the Moon National Monument. Congress could have easily and legally done so but elected to maintain the *status quo* for the original monument by keeping it closed to hunting. The proposed special regulation destroys that deliberate congressional balance and upsets the *status quo* by attempting to open the original monument (comprising approximately 54,000 acres) to sport hunting.
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> **Castle Mountains National Monument**, California was created by President Barack Obama on February 12, 2016, in Proclamation No. 9394. The monument encompasses 21,920 acres of federal lands, surrounded on three sides by the Mojave National Preserve, established in 1994 by the California Desert Protection Act. [10] Section 506(b) of that law provides that "[T]he Secretary shall permit hunting, fishing and trapping...within the preserve."

President Trump has not issued any new Antiquities Act proclamations that amend the existing proclamations to affect their administration or management by the NPS in any way. An Executive Order is not an Antiquities Act proclamation, nor does an Executive Order amend such proclamations. No President, in the 120-year history of the Antiquities Act, has attempted to alter the boundaries or the management of a proclaimed monument by an EO.

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[8] 34 Stat. 225

[9] P.L. 107-213, August 21, 2002, 116 Stat. 1052

[10] P.L. 103-433, October 31, 1994, 108 Stat. 4489.

The EO simply makes a Presidential finding that killing park wildlife by sport hunters does not trouble the objects of historic and scientific interest listed in the original proclamations of 1924 and 2016.

The EO, and the proposed NPS rules that spring from it, make two invalid assumptions. First is that Craters of the Moon and Castle Mountains National Monuments are governed solely by the terms and conditions of their proclamations. Second is that for Craters of the Moon, only the features specifically listed in the proclamations merit protection, and that all other monument features, including the wildlife, are not protected. The assumptions ignore that in every national monument managed by the NPS, all wildlife is protected whether explicitly listed as objects of scientific interest or not. The assumptions also fail to recognize that both of the affected national monuments are part of a single national park system.

By contrast, when President Barack Obama proclaimed the Katahdin Woods and Waters National Monument in the State of Maine in 2016,[11] that monument was made possible only by the donation to the United States of a large tract of Maine forestland by the Roxanne Quimby Foundation. Under the Antiquities Act of 1906 the President may proclaim only "...lands owned or controlled by the Government of the United States" as a national monument. The donor conditioned the deed of conveyance to the United States with the proviso that the United States would allow hunting in a certain portion of a prospective new national monument. President Obama's proclamation thus states –

> "As provided in the deeds, the Secretary shall allow hunting by the public on the parcels east of the East Branch of the Penobscot River in accordance with applicable law."

In this case, one presidentially proclaimed, NPS-administered, national monument authorized hunting but only because it was a requirement of the land donation. Craters of the Moon and Castle Mountains National Monument have no such stipulations as both were reserved from vacant and unappropriated public lands with no such conditions attached.

6. Proposed Regulations Violate the National Environmental Policy Act (NEPA)
In proposing these special regulations, the NPS ignored the requirements of the National Environmental Policy Act of 1969 (NEPA). In this case, NPS dispensed with an environmental analysis as required under NEPA altogether.

In this regard, the proposed new special regulations are without precedent. The proposed rules are significant because they open park areas to the killing of wildlife. The proposed rules are a radical deviation from one of the most fundamental principles that protect the parks. Yet the NPS chose to take no "hard look" at the action.

[11]Proclamation 9476, August 24, 2016

The proposed rules would institute hunting where it does not now exist, governed by applicable State laws. Significantly, one of the parks – Craters of the Moon – has been closed to hunting for over a century.

In Castle Mountains, hunting under California state laws would apply not only to mule deer, desert bighorn, and upland game birds but also to nongame mammals. In California, there is no closed season on nongame mammals, and these animals may be taken by firearms on any day of the year. Inedible nongame mammals include coyotes, raccoons, weasels, skunks, badgers, squirrels and rodents. Hunters often kill these animals for sport and leave the carcass to rot. This provides a food source for ravens with a resulting population increase that poses a increased threat to the listed as threatened Mojave population of the desert tortoise. Castle Mountains National Monument contains a population of desert tortoise. In addition, the 2016 proclamation explicitly cites desert tortoise as a protected object of scientific interest.

Besides the direct and illegal killing of tortoises by gunshot, other hunting-related factors impact desert tortoise mortality rates. Such, hunting can increase the local population of ravens, which are drawn by the existence of carcasses.

The U.S. Fish and Wildlife Service cited this subsidiary impact in its July 6, 2001, Biological Opinion on the Mojave National Preserve General Management Plan as a reason for stricter regulation of hunting within the now-adjacent Preserve:

> "The elimination of small game hunting may reduce the availability of carcasses upon which common ravens can feed. The reduction in this source of food could reduce the attractiveness of the Mojave National Preserve to common ravens and thereby reduce the level of mortality that this species inflicts upon desert tortoises in the region."

The same biological factors apply to Castle Mountains.

In addition, the proposed special regulation for Castle Mountain would now authorize hunting so broadly that there could well be effects on the tortoise. Yet, the NPS has undertaken no consultation with the USWF under Section 7 of the Endangered Species Act,[12] starting with a Biological Assessment. Section 7(a)(2) states that "[e]ach Federal action agency shall, in consultation with the Secretary, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species..."

Nor has the NPS prepared any environmental review of the impacts of hunting on the desert tortoise and the nongame small mammal populations in the currently protected monument.

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[12] **16 U.S.C. §1531 et seq.**

Ironically, the only animal that would be safe from hunter take is the mountain lion, protected by California Proposition 117 of 1990.

Craters of the Moon National Monument, if opened to hunting under Idaho State game laws, would not protect lions. Hunters may take without restriction or season all the above species listed as nongame animals in California but also marmots, porcupines and rattlesnakes. Hunting in the Craters of the Moon would not be limited to mule deer or pronghorn antelope. Not even a stray gray wolf, vagrant from Yellowstone, would be safe in the Monument. Further, hunting with dogs would be allowed for certain species.

In fact, the NPS *Federal Register* notice describing Castle Mountain contains language that highlights the unique and high-value wildlife which would become vulnerable to impacts from higher levels of human activity, including hunting:

> "The Castle Mountains area provides a critical linkage for plants, animals, and water between two mountain ranges within the Preserve, the New York Mountains to the northwest and the Piute Mountains to the southeast. The area's high-quality desert habitat includes some of the finest Joshua tree forest in the Mojave Desert, as well as pinyon pine and juniper forest at the upper elevations. The area's native desert grassland is a hotspot of botanical diversity. The relatively intact and undisturbed habitat within CAMO connects water flow and wildlife corridors of the Preserve and its habitat is important to the long-term survival of significant wildlife populations, including a herd of desert bighorn sheep that lives on the steep, rocky slopes of the Castle Mountains. They and other wildlife traverse the area between the Piute Mountains and the New York Mountains. Numerous bat species live in rock crevices and mine remnants in the area. Wildlife species of special concern include the Townsend's big-eared bat, California leaf-nosed bat, Swainson's hawk, golden eagle, desert tortoise, Bendire's thrasher, and gray vireo…"

Despite these potential impacts, the NPS proposes to institute hunting in Castle Mountains and Craters of the Moon without a shred of scientific data or environmental analysis under NEPA.

7. No Resources to Enforce Proposed Mitigations

During the past two years, the NPS has seen a significant reduction in staffing, including very sharp reductions of law enforcement rangers. While the proposed special regulations contain restrictions intended to minimize adverse impacts to wildlife populations, the Trump administration is not providing additional personnel to either monument to enforce proposed restrictions.

At Castle Mountain, the proposed special regulations include a prohibition of hunting within 200 yards of a wildlife watering place, defined as "a waterhole, spring, seep, or a man-made watering device for wildlife such as a guzzler (a self-filling, in-the-ground water storage tank), horizontal well, or small impoundment of less than one surface acre in size…[to] include natural watering holes and artificial water sources used by wildlife."

The notice explains:

> "This prohibition is necessary to prevent human disturbance that cuts off wildlife from scarce, life-sustaining water. Water in arid desert biomes is extremely limited. Game and non-game species—such as desert bighorn sheep, mule deer, and desert tortoises—frequently rely on isolated springs, seeps, or man-made guzzlers set up for wildlife watering. Human presence within 200 yards spooks animals away, forcing them to avoid drinking, which can cause dehydration or death. Concentrated human activities, such as hunting, within immediate riparian and waterhole zones trample fragile soil crusts, destroy native vegetative shelter, and cause contamination to limited pools of water. Finally, ambushing thirsty animals concentrated around artificial or natural watering holes is considered unsporting. Enforcing a 200-yard buffer prevents hunters from executing easy ambushes on distressed wildlife using vital watering holes."

In order for this restriction to be effective, Castle Mountain will have to patrol every significant water source within the Monument. Nor is it clear how this no-hunting zones will be demarcated, such as by signage.

At Craters of the Moon, the proposed special rule would include a prohibition on "the use of weapons other than short range weapons."

The notice explains the need for this restriction:

> "The open nature of the Original CRMO landscape provides relatively few natural backstops or other obstructions to reduce the risk posed by errant rounds."

In addition, at Craters of the Moon, hunting would be prohibited in two areas totaling 5,000-acre within NPS-administered lands within the original monument.

For both monuments, the nature of the proposed mitigations underline the potentially significantly adverse impact to wildlife populations, even assuming that these restrictions will be enforceable by diminished park staff.

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