

**United States District Court
for the District of Columbia**

PUBLIC EMPLOYEES FOR)	
ENVIRONMENTAL RESPONSIBILITY,)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:10-cv-01274 (ESH)
)	
U.S. Department of the Interior, et al.,)	
)	
Defendants.)	

FIRST AMENDED AND SUPPLEMENTAL COMPLAINT

PRELIMINARY STATEMENT

1. The original complaint in this action, filed on July 28, 2010, was brought under the Administrative Procedure Act, 5 U.S.C. §§ 555(b), 702 and 706(1), in order to compel the Secretary of the U.S. Department of the Interior (“DOI”) and the Director of the National Park Service (“NPS”) to make a determination with regard to Plaintiff’s petition for rulemaking which had been filed eight years earlier on June 20, 2002.
2. Plaintiff Public Employees for Environmental Responsibility (“PEER”) is a non-profit organization with tax-exempt status dedicated to research, public education and advocacy concerning the activities and operations of the federal government.
3. On June 20, 2002, PEER, along with other interested parties, (“petitioners”) submitted a petition for rulemaking to the then Secretary of the Interior and the then Director of NPS seeking federal regulations governing hunting in the Mojave National Preserve in the State of California (“Mojave Preserve”).

4. The petition sought specific regulations governing hunting in the Mojave Preserve, which is under the authority of NPS. Petitioners contended that such regulations were necessary to bring the NPS into compliance with the Preserve's General Management Plan ("GMP"), the Endangered Species Act ("ESA") Recovery Plan for the threatened desert tortoise, NPS management policies and the ESA Biological Opinion ("BO") for the GMP for the Mojave Preserve.
5. By letter dated November 27, 2002, the then NPS Regional Director (now NPS Director) Jonathan Jarvis, acknowledged receipt of the petition on behalf of then DOI Secretary Norton. The letter stated that NPS would seek federal regulation of hunting as sought by the petition only if a process involving amendments to state hunting regulations were unsuccessful.
6. On September 22, 2003, then Regional Director Jarvis wrote to Plaintiff PEER, stating that the timing of any action concerning Mojave Preserve hunting regulations was dependent on the agency's workload.
7. All petitioners, by letter dated September 26, 2003 to the Secretary of the Interior, requested prompt consideration of the petition and its publication in the Federal Register.
8. In a letter dated April 7, 2004, the then DOI Assistant Secretary for Fish and Wildlife and Parks responded that the petition for rulemaking would not be published in the Federal Register and that "The park fully intends to pursue promulgation of federal regulations"
9. No further response to the petition was received, and no hunting regulations were promulgated, prior to the filing of the original Complaint in this case.

10. On October 14, 2010, the same day that Defendants filed their Answer to the Complaint in this matter, Defendant NPS denied Plaintiff's petition in a letter to PEER's Executive Director from NPS Director Jonathan Jarvis.
11. In that response, NPS acknowledged that it had authority to promulgate special regulations restricting hunting in the Mojave Preserve, and that the Park's GMP, relying on the 1994 Desert Tortoise Recovery Plan, provided that NPS would seek special regulations for hunting. The response also acknowledged that the BO on the GMP assumed that hunting regulations would be adopted. The response further acknowledged that NPS Management Policies require special hunting regulations for units of the National Park System where hunting is allowed. The petition denial letter nevertheless concluded that such regulations were not warranted "at this time," and formally waived NPS Management Policies in order to deny Plaintiff's petition.
12. On information and belief, there was no review under the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* ("NEPA"), of the decision underlying the denial of Plaintiff's petition, which reversed NPS's prior commitment in the Mojave Preserve GMP and in the environmental impact statement ("EIS") reviewing that GMP to adopt special regulations governing hunting on the Mojave Preserve.
13. Plaintiff now challenges the denial of its petition as arbitrary and capricious and an abuse of discretion within the meaning of the APA, 5 U.S.C. § 5 U.S.C. §§ 701-706, and in violation of NEPA, 42 U.S.C. §§ 4321 *et seq.*

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction).
15. This Court has the authority to grant declaratory relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
16. This Court has the authority to award costs and attorneys' fees under 28 U.S.C. § 2412(d).
17. Venue is properly vested in this Court under 28 U.S.C. § 1391(e), because the Plaintiff PEER and Defendants reside in this district and a substantial part of the events and omissions which gave rise to this action occurred in this district.

PARTIES AND STANDING

18. Plaintiff PEER is a non-profit public interest organization, with its main office located in Washington, D.C., and field offices located in California, Colorado, Florida, Massachusetts, New Jersey, Arizona, and Tennessee. PEER serves the professional needs of the local, state, and federal employees – the scientists, hydrologists, biologists, and rangers – charged with the protection of America's environmental resources, including the resources within the National Park System and the Mojave Preserve in particular. PEER also represents its members who reside in California, recreate at the Mojave Preserve, and enjoy the wildlife that inhabit the Mojave Preserve. PEER was one the petitioners on the petition which is the subject of this lawsuit.
19. PEER and its members are injured by the direct harm to endangered species, such as the desert tortoise, as well as other ecosystem damage caused by the absence of

federal regulations governing hunting on the Mojave Preserve. The absence of such regulations results in hunting on the Preserve being governed only by California's game laws, which, in contrast to the hunting regulations promised in the Mojave Preserve EIS and GMP and those sought in Plaintiff's petition, allow hunting of nongame animals and varmints, and permit a prolonged hunting season within the Mojave Preserve.

20. Defendant DOI is an Executive Department and is an agency of the United States as defined by 5 U.S.C. § 551(1). Defendant Salazar is the current Secretary of the Interior.
21. Defendant NPS is subagency of Defendant DOI and is an agency of the United States as defined by 5 U.S.C. § 551(1). Defendant Jarvis is the current Director of NPS.

FACTS

The Mojave Preserve, Hunting and the Desert Tortoise

22. On October 31, 1994, Congress enacted the California Desert Protection Act ("CDPA"). 108 Stat. 4471. The CDPA, among other things, designated a 1,419,000-acre Mojave National Preserve, comprised largely of federal lands formerly administered by the Bureau of Land Management. Congress directed that the Secretary administer the Preserve as a unit of the National Park System. See Sec. 506(a), CDPA, 16 U.S.C. 410aaa-46(a).
23. As a unit of the National Park System, the Mojave Preserve is to be managed in accordance with the NPS Organic Act of 1916, 16 U.S.C. §1, which provides that the primary purpose of park units is:

... to conserve the scenery and the natural and historic objects and the wildlife 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.

24. Hunting is not permitted in national park units unless Congress makes an exception to that general rule when authorizing the particular unit. National Park System units which allow hunting are called preserves rather than parks.

25. The CDPA contains the following provision regarding hunting:

SEC. 506. Administration of Lands.

...

(b) The Secretary shall permit hunting...on lands and waters within the preserve designated by this Act in accordance with applicable Federal and State laws except that the Secretary may designate areas where, and establish periods when, no hunting...will be permitted for reasons of public safety, administration, or compliance with provisions of applicable law. Except in emergencies, regulations closing areas to hunting...pursuant to this subsection shall be put into effect only after consultation with the appropriate State agency having responsibility for fish and wildlife.

16 U.S.C. 410aaa-46.

26. On December 28, 2000, NPS announced the adoption of new Management Policies, known as Management Policies 2001. The Policies require that the NPS publish special regulations to govern hunting in all areas of the National Park System where hunting is authorized in law as either a mandated or discretionary activity. NPS Management Policies 8.2.2.6.

27. NPS Management Policies also direct that when harvesting of animals (e.g., by hunting) is allowed in a park, FWS will allow harvesting only when “the Service has determined that the harvesting will not unacceptably impact park resources or natural processes, including the natural distributions, densities, age-class

distribution, and behavior of ...” harvested species or of native species that use or are used by the harvested species. NPS Management Policies 4.4.3.

28. The Mojave population of the desert tortoise has been listed as threatened under the Endangered Species Act (“ESA”) since 1990. 55 Fed. Reg. 12178 (Oct. 13, 1990). In 1994, FWS designated critical habitat for the desert tortoise. 59 Fed. Reg. 5820 (Feb. 8, 1994).
29. Approximately one half of the land area of the Mojave Preserve is designated critical habitat for the desert tortoise.
30. In June 1994, as required by the ESA, 16 U.S.C. §1533(f), the FWS adopted a Recovery Plan for the desert tortoise.
31. The Recovery Plan recommended that in desert tortoise recovery areas, hunting be prohibited except for hunting of big game and upland game birds from September through February. (Desert Tortoise Recovery Plan, p. 57).
32. In its critical habitat determination, DOI declared that the Recovery Plan “represents the best available biological information on the conditions needed to bring the Mojave population of the desert tortoise to the point where listing under the Act [the ESA] is no longer necessary (i.e. recovery).” 59 Fed. Reg. at 5823.
33. On June 22, 2001, the NPS announced the availability of the Final EIS on the GMP for the Mojave National Preserve. 66 Fed. Reg. 33537. In July 2001, a Final General Management Plan/Environmental Impact Statement (EIS) and Record of Decision (ROD) were issued.

34. The Abbreviated Final GMP/EIS went beyond the Recovery Plan in proposing to manage the entire Mojave Preserve, not just the desert tortoise critical habitat area, to restrict hunting.
35. On July 6, 2001, FWS issued a Biological Opinion for the Mojave EIS/GMP (BO 1-8-00-F-36). The BO concluded that the “proposed action,” *i.e.* the GMP, was not likely to jeopardize the continued existence of the desert tortoise. BO at 49.

This conclusion was based in part on the understanding that:

The NPS will work with the California Department of Fish and Game to limit hunting in the Mojave National Preserve to big game and upland game bird species during the normal hunting seasons. This action, combined with existing policy on no target shooting, would eliminate the discharge of firearms when desert tortoises are active in the spring.

BO, p. 8. The BO further stated that:

In accordance with NPS regulations at 36 C.F.R., the discharge of firearms (including target shooting or random plinking) is prohibited throughout the Mojave National Preserve, except for hunting of upland game birds and big game during the seasons designated for these species by the California Department of Fish and Game.

BO, p. 25.

36. The BO noted the benefits to the desert tortoise from the hunting restrictions promised by the NPS, including reducing the likelihood of mortality of desert tortoises from shooting (BO at 37) and that the elimination of small game hunting could reduce the availability of carcasses upon which common ravens feed, and therefore the prevalence of common ravens at the Mojave Preserve and their predation of desert tortoises. BO at 39-40.

37. The BO concluded that permitted hunting under NPS's proposed restrictions was "unlikely to substantially affect the desert tortoise" because the hunting season would be restricted to avoid the desert tortoise's spring activity period. BO at 45.
38. The BO provided an Incidental Take Statement which exempted from the "take" prohibitions of the ESA various activities, including hunting, finding that: "Because of the measures that NPS proposed as part of its action to minimize the mortality of desert tortoises . . . we anticipate that . . . hunting . . . [is] likely to result in few mortalities or injuries to desert tortoises." BO at 50. The BO further provided that NPS was to contact FWS immediately if a desert tortoise was killed or injured, but that permitted activities including hunting could continue during a review of the incident "provided that the NPS's proposed protective measures and any appropriate terms and conditions of this biological opinion have been and continue to be fully implemented." BO at 50.
39. While the specific "Reasonable and Prudent Measures" and "Terms and Conditions" in the BO did not include the hunting restrictions, it is clear that the BO's finding of no jeopardy is premised upon the protective actions the NPS represented that it would take in the GMP. In addition to the references to the hunting restrictions set out above, the BO states that:

The Services evaluation of the effects of the proposed action includes consideration of the measures developed by the NPS and repeated in the Description of the Proposed Action portion of this biological opinion, to minimize the adverse effects of [various activities including hunting] on the desert tortoise. . . . *These reasonable and prudent measures are intended to clarify or supplement the protective measures that were proposed by the NPS as part of the proposed action.*

BO at 51 (emphasis supplied).

40. On September 7, 2001, the Superintendent of the Mojave Preserve issued a memo to the FWS concerning the BO, requesting a minor amendment in the BO to include small game hunting as an activity covered by the BO's Incidental Take Statement.
41. On September 19, 2001, the FWS responded, approving the request for amendment. The response noted that the FWS had not previously considered the effects of small game hunting since NPS had represented that it would not occur. FWS concluded that the addition of Audubon cottontails and black-tailed jackrabbits to the list of animals that could be hunted within the Mojave Preserve would not substantially change the conclusion in the BO that the hunting of big game and upland game birds from September to January or early February was unlikely to substantially affect the desert tortoise. This was because the animals proposed to be added could be eaten by hunters, and therefore the number of carcasses left for common ravens was unlikely to affect the number of common ravens in the region; and because most of the time that this hunting would be authorized the desert tortoises would be underground because of low temperatures. FWS noted that NPS would not allow hunting of other small game such as long-tailed weasels, badgers, skunks, rodents, coyotes, starlings or sparrows.
42. On September 21, 2001, the NPS Regional Director responsible for the Mojave National Preserve signed the Record of Decision for the Mojave Abbreviated Final EIS/GMP. The ROD noted the changes to the hunting proposal from that in the June, 2001 Final EIS/GMP, stating the regulations would be changed to

add cottontails and jackrabbits to the list of species that could be hunted, and to allow hunting only September through January, “in keeping with the goals of the Desert Tortoise Recovery Plan.” ROD at 3.

43. In April 2002, the GMP document summarizing the selected alternative from the EIS was published. It states that “the Preserve will seek special hunting regulations to limit hunting to upland game birds, cottontails, jackrabbits, and big game.” GMP, p. 11. The GMP recites that:

The National Park Service will work with the California Department of Fish and Game to limit hunting in Mojave to big game and upland game bird species during their normal state seasons and cottontails and jackrabbits from September through January. This action, combined with the existing policy on no target shooting will eliminate the discharge of firearms during the active tortoise period in the spring.

GMP at 43. Under “Plan Actions,” the GMP states:

In accordance with the Desert Tortoise Recovery Plan, hunting would be limited to upland game birds (mourning dove, quail, chukar), cottontails, jackrabbits, and big game (deer and bighorn sheep) during their designated CDF&G seasons. Cottontails and jackrabbits may be hunted only from September through January.

GMP at 78.

44. The GMP also prohibited sport collection of amphibians and reptiles as “in conflict with our administration of the area to meet the preservation mandates of the NPS mission and regulations” *Id.*
45. The NPS never promulgated hunting regulations as promised in the Final EIS and GMP, thus allowing hunting on the Mojave Preserve to continue as permitted by the game laws of the State of California.

46. Under the game laws of the State of California, persons with licenses from the State may take animals traditionally classed as game during specified seasons but may also take nongame animals and varmints. Varmints include skunks, badgers, coyotes and the like. The take of such wildlife may occur virtually year-round and with few, if any, State of California imposed restrictions.
47. Wildlife classed as non-game animals, predators, or “varmint” under California law is valued very differently by the NPS in areas of the National Park System. Such wildlife is integral to healthy, intact, and functioning ecosystems – the perpetuation of which is the overarching goal of the NPS in general and in the Mojave National Preserve. Such wildlife is an important attribute for park visitors to observe and enjoy under natural conditions. The NPS must administer and manage this wildlife differently than State game laws provide.

Plaintiff's Petition

48. Plaintiff and the other petitioners jointly submitted a petition for rulemaking dated June 20, 2002 to the Secretary of the Interior and the Director of the National Park Service. The petition sought specific regulations governing hunting in the Mojave Preserve which reflected the hunting regulations promised in the EIS/GMP. Petitioners contended that such regulations were necessary to bring the NPS into compliance with the Mojave Preserve's GMP, the ESA Desert Tortoise Recovery Plan, NPS Management Policies, and the BO for the GMP.
49. On October 29, 2002, Mr. Jay Tutchton of the Earthjustice Legal Defense Fund submitted a letter on behalf of petitioners seeking acknowledgement of receipt of the petition for rulemaking.

50. By letter dated November 27, 2002, the then NPS Regional Director Jonathan Jarvis, on behalf of the Secretary of the Interior, acknowledged receipt of the petition for rulemaking. The letter stated that NPS would seek federal regulation of hunting as sought by the petition only if a process involving potential amendments to state hunting regulations was unsuccessful.
51. On January 24, 2003, Mr. Tuthton again wrote to the Regional Director, requesting that the petition be published in the Federal Register, as authorized by 43 CFR 14.4, and that the agency otherwise respond to the petition. Mr. Tutchon pointed out that federal hunting regulations were legally required regardless of the existence or content of state hunting regulations.
52. Plaintiff, in a letter dated May 12, 2003, referenced the petition and the letter from Tutchon regarding the petition, and requested documents under FOIA regarding correspondence between DOI, NPS, and the California Department of Fish and Game concerning hunting on the Mojave Preserve.
53. The Regional Director, by letter dated September 22, 2003, stated to Plaintiff that it had “. . . correctly identified the Management Policies (8.2.2.6) that we [NPS] follow. Rest assured we will follow the General Management Plan for Mojave National Preserve, in which you indicate concerns about our moving ahead with a regulation on hunting. Timing is everything – for our staff workload and our ability to management [sic] a public process.”
54. All petitioners, by letter dated September 26, 2003 to the Secretary of the Interior, again requested prompt consideration of the petition, noting that it had been 15 months since it had been filed. Petitioners alleged that a private individual had

- obtained a copy of the petition and communicated his opposition to it to then DOI Deputy Secretary Paul Hoffman. Petitioners asked that the impropriety be addressed by making the petition available for comment by all members of the public by publication in the Federal Register.
55. In a letter dated April 7, 2004, Craig Manson, then DOI Assistant Secretary for Fish and Wildlife and Parks, stated that the petition for rulemaking would not be published in the Federal Register and that “The park fully intends to pursue promulgation of federal regulations” The letter further stated that the content of the federal regulations would be dependent on the actions of the State Commission. Assistant Secretary Manson continued, “The promulgation of federal regulations with regard to species and seasons for hunting, therefore, is *temporarily* on hold in anticipation of a response from the State” (emphasis added).
56. Plaintiff sent a letter dated May 13, 2009 to current Secretary of the Interior Kenneth Salazar recounting the correspondence between the agency and petitioners. Plaintiff again requested a prompt and substantive response to the petition from the agency. Plaintiff received no response to this letter.
57. Plaintiff filed its original Complaint in this action, alleging unreasonable delay in responding to its petition, on July 28, 2010.
58. On October 14, 2010, the same day that Defendants filed their Answer to the Complaint in this matter, Defendant NPS denied Plaintiff’s petition in a letter the PEER’s Executive Director from NPS Director Jonathan Jarvis.

59. In that response, NPS acknowledged that it had authority to promulgate special regulations restricting hunting in the Mojave Preserve, and that the Park's GMP provided that NPS would seek special regulations for hunting, relying on the 1994 Desert Tortoise Recovery Plan. The response also acknowledged that the BO on the GMP assumed that hunting regulations would be adopted and also that NPS Management Policies require special hunting regulations for units of the NPS where hunting is allowed. The petition denial letter nevertheless concluded that such regulations were not warranted "at this time," and formally waived NPS management policies in order to deny Plaintiff's petition.
60. NPS's response denying Plaintiff's petition repeatedly claimed that it was NPS's "experience" that hunting in accordance with California game laws without further restriction had not actually harmed the desert tortoise. NPS also claimed "lack of evidence" of harm. Yet, the letter provides only anecdotal evidence, if that, to support its conclusions, and provides no citations to any studies or scientific evidence.
61. The NPS response repeatedly relies on a Draft Revised Recovery Plan for the desert tortoise. This Plan is in draft form and has not been adopted. Moreover, the Draft Revised Recovery Plan acknowledges the threat to the desert tortoise from hunting (at 68) and acknowledges that there "are no data correlating [non-motorized recreation including hunting] with impacts to the desert tortoise" and that "very few studies have been conducted to document the effects of non-motorized activities [including hunting] to the desert tortoise." *Id.* at 136.

62. On information and belief, there was no review under the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*, (NEPA) of the decision underlying the denial of Plaintiff’s petition, which reversed NPS’s prior commitment in the Mojave Preserve EIS and GMP to adopt special regulations governing hunting on the Mojave Preserve.

STATUTORY BACKGROUND

Administrative Procedure Act

63. The Administrative Procedure Act (APA) makes final agency action subject to judicial review, 5 U.S.C. § 704, and authorizes courts reviewing agency action to hold unlawful and set aside final agency action, findings and conclusions that are arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

National Environmental Policy Act

64. The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.*, is the “basic national charter for protection of the environment.” 40 C.F.R. 1500.1. Its purposes are to “help public officials make decisions that are based on understanding of environmental consequences, to take actions that protect, restore, and enhance the environment,” *id.* at § 1500.1(c) and to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” *Id.* at § 1500.1(b).
65. To accomplish these purposes, NEPA provides that a Federal agency must prepare an environmental impact statement (EIS) for “proposals for...major Federal actions significantly affecting the quality of the human environment.” 42

- U.S.C. § 4332(2)(C); *see also* 40 C.F.R. § 1502.3. The Council on Environmental Quality regulations implementing NEPA list a number of factors that an agency must consider in deciding whether to prepare an EIS. *Id.* § 1508.27. The agency must prepare the EIS or otherwise comply with NEPA *before* going forward with an action.
66. The NEPA process requires the acting agency to first determine whether the action is one that normally requires an EIS. 40 C.F.R. § 1501.4(a)(1). An agency action does not normally require an EIS if it falls within a categorical exclusion. *Id.* § 1501.4(a)(2). “Categorical exclusion” is defined as “a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations.” 40 C.F.R. § 1508.4. If an agency chooses not to prepare an EIS and does not invoke a categorical exclusion, the agency is required to prepare an environmental assessment (EA) to determine whether an EIS is necessary. *Id.* §§ 1501.3, 1501.4(b), 1508.9. If the agency concludes, based on the EA, that an EIS is not required, it must prepare a finding of no significant impact (“FONSI”) which explains the agency’s reasons for its decision. *Id.* §§ 1501.4(e); 1508.13.
67. After preparation of an EIS, agencies must prepare a supplemental EIS if “[t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns” or “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. 1502.9(c)(1)(i) and (ii).

CAUSES OF ACTION

Count I – The Denial of Plaintiff’s Petition was Arbitrary and Capricious and an Abuse of Discretion in Violation of the APA

68. Plaintiff realleges and incorporates by reference each and every allegation in the preceding paragraphs.
69. The decision to deny Plaintiff’s petition and not to adopt special hunting regulations governing the Mojave Preserve reversed Defendants’ earlier determination to adopt specified hunting regulations without factual support or a rational basis.
70. The decision to deny Plaintiff’s petition and not to adopt special hunting regulations governing the Mojave Preserve was contrary to findings and conclusions made by Defendants in the Mojave Preserve GMP and EIS, the Desert Tortoise Recovery Plan and the BO for the GMP. Defendants did not supply factual support or a rational basis for reversing its prior findings and conclusions.
71. Defendants’ final agency action in denying Plaintiff’s petition, and in doing so, determining not to adopt special regulations governing hunting on the Mojave Preserve, is arbitrary and capricious and an abuse of discretion and therefore must be set aside pursuant to the APA, 5 U.S.C. § 706(2)(A).

Count II – The Failure to Conduct any NEPA Review of NPS’s Determination to Abandon Its Commitment to Adopt Special Hunting Regulations for the Mojave Preserve Violates NEPA

72. Plaintiff realleges and incorporates by reference each and every allegation in the preceding paragraphs.
73. Defendants’ final agency action in denying Plaintiff’s petition and determining not to adopt special hunting regulations for the Mojave Preserve is in violation of NEPA, and therefore must be set aside pursuant to the APA, 5 U.S.C. § 706(2)(A).
74. Defendants did not prepare an EIS, EA or claim a Categorical Exclusion (CE) for their decision not to adopt special hunting regulations for the Mojave Preserve, in violation of NEPA.
75. NPS’s decision not to adopt special hunting regulations for the Mojave Preserve constitutes a substantial change in the GMP that was the subject of its 2001 EIS. This change was relevant to environmental concerns. The decision not to adopt hunting regulations also constitutes a significant new circumstance relevant to environmental concerns and bearing on the proposed action (the GMP) and its impacts.
76. Therefore, Defendants were required to prepare a supplement to the 2001 EIS for the Mojave Preserve GMP. 40 C.F.R. 1502.9(c)(1)(i) and (ii). Defendants’ failure to do so violates NEPA

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request the court to order the following relief:

A. Declare that Defendants' final agency action in denying Plaintiff's petition and determining not to adopt special regulations governing hunting on the Mojave Preserve is arbitrary and capricious and an abuse of discretion in violation of the APA.

B. Declare that Defendants' failure to prepare any NEPA documentation in connection with its decision not to adopt special regulations governing hunting on the Mojave Preserve violates NEPA.

C. Set aside Defendants' decision denying Plaintiff's petition and determining not to adopt special regulations governing hunting on the Mojave Preserve as arbitrary, capricious and an abuse of discretion.

D. Set aside Defendants' decision denying Plaintiff's petition and determination not to adopt special regulations governing hunting on the Mojave Preserve unless and until full compliance with NEPA is achieved.

E. Award Plaintiffs their reasonable litigation expenses, including attorneys' fees, court costs and other expenses pursuant to the Equal Access to Justice Act, 29 U.S.C. § 2412, *et seq.*

F. Grant such additional relief as the Court deems just and proper.

Dated: November 29, 2010

/s/
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