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***TORTOISE ON THE  
HALF-SHELL***

**Environmental Malpractice at  
Mojave National Preserve**

November 1999

## About PEER

**Public Employees for Environmental Responsibility (PEER)** is an association of resource managers, scientists, biologists, law enforcement officials and other government professionals committed to upholding the public trust through responsible management of the nation's environment and natural resources.

PEER advocates sustainable management of public resources, promotes enforcement of environmental protection laws, and seeks to be a catalyst for supporting professional integrity and promoting environmental ethics in government agencies.

PEER provides public employees committed to ecologically responsible management with a credible voice for expressing their concerns.

PEER's objectives are to:

1. **Organize** a strong base of support among employees with local, state and federal resource management agencies;
2. **Monitor** land management and environmental protection agencies;
3. **Inform** policymakers and the public about substantive issues of concern to PEER members; and
4. **Defend** and strengthen the legal rights of public employees who speak out about issues of environmental management.

PEER recognizes the invaluable role that government employees play as defenders of the environment and stewards of our natural resources. PEER supports resource professionals who advocate environmental protection in a responsible, professional manner.

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## About This Report

At a time when Robert Stanton, the Director of the National Park Service (NPS), is unveiling a new "Action Plan for Preserving Natural Resources" pledging long range planning and greater monitoring of conditions affecting threatened and endangered species, the picture on the ground in National Park lands is not so pretty. In *Tortoise on the Half-Shell*, the latest employee-authored PEER white paper, the natural resource policies of one of the newest and largest units of the National Park System are examined by those who know them best.

In October, 1994 the passage of the California Desert Protection Act created the Mojave National Preserve. Encompassing 1.5 million acres in southeastern California, this park contains one of the most diverse desert ecosystems in the world. At the same time, this Congressional authorization "grandfathered" existing livestock grazing "at no more than the current level, subject to applicable laws and National Park Service regulations."

This report is an inside account about how a federal agency legally dedicated to conservation has abdicated its responsibilities to the direct detriment of the natural resources and wildlife in its care. As a consequence of

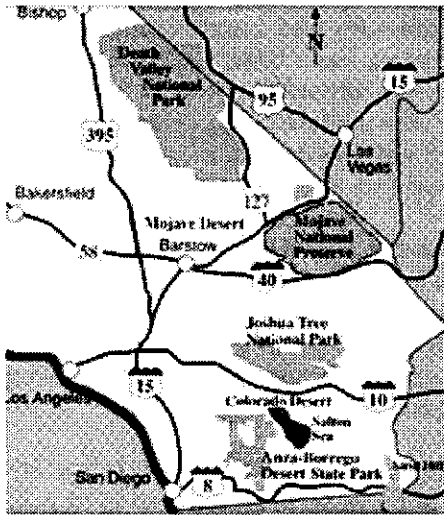
political pressure and bureaucratic inertia, legal mandates have been flaunted, critical scientific data ignored and park managers have taken the posture that grazing at Mojave NP is, and will likely remain, unmonitored, unregulated and untouchable.

*Tortoise on the Half-Shell* is part of an effort by the Park Service's own employees to get their agency to shoulder its stewardship responsibilities and stand behind the rhetoric of its newfound commitment to "Preserving Natural Resources."

Like previous employee-authored PEER white papers, the purpose of this report is to provide the public with an internal perspective on how their environmental agencies actually operate. As with previous reports, the authors remain anonymous in order to allow the information in this white paper to speak for itself. The material comprising this report has been extracted from the public record and official documents. The authors welcome independent reviewers to examine that record.

PEER is proud to assist conscientious public servants who have dedicated their careers to protection of natural resources and the faithful execution of environmental laws.

**Jeffrey Ruch**  
PEER Executive Director



DANIEL PATTERSON

## I. Executive Summary

Largely unknown by the public, commercial livestock grazing is authorized in nearly two dozen national parks, including Lake Mead, Glen Canyon, Big Cypress, Death Valley and, most recently, the Mojave National Preserve. The National Park Service (NPS), however, has no grazing regulations to spell out management policies or to prohibit blatant abuses by ranchers.

Created on October 31, 1994, the **Mojave National Preserve now supports more commercial livestock grazing than any other area of the national park system.** On October 31, 1999, grazing permits for more than 38,000 animal unit months on 1.28 million acres in the Mojave National Preserve are scheduled to lapse and be automatically renewed without environmental study, public notice or review.

The livestock are the sacred cows of the Preserve, with which no other value or resource, including the desert tortoise, listed as "threatened" under the Endangered Species Act, may interfere. Instead, the NPS oversees the Mojave National Preserve as if it were a habitat for herbivory.

### ***What Rules?***

"Oversees" is much too strong a word to describe the NPS relationship to livestock grazing. Mojave National Preserve (MNP) has its own version of "don't ask, don't tell." Livestock grazing in the Preserve is unmonitored, unregulated and untouchable.

Politics demands compromise. Without a grazing compromise, Congress may not have enacted the California Desert Protection Act. Grazing is legal in the parks where Congress authorized it and grazing is legal in the Mojave National Preserve. The problem is that, unlike the Bureau of Land Management and the U.S. Forest Service, **NPS lacks any grazing standards.**

The NPS has had the authority to regulate grazing since August 25, 1916 under the Act that established the Park Service (16 U.S.C. 3). Congress has authorized commercial livestock grazing in approximately twenty parks. Over the course of the decades spanning the creation

of those parks, Congress mistakenly assumed that the NPS promulgated regulations governing grazing. In fact, the NPS has never published rules that prescribe the conditions, standards or procedures for grazing in the parks where grazing is authorized.

More than five years after the creation of the Mojave National Preserve, NPS still has no grazing regulations. By regarding grazing as off-limits to any standards, substantive or procedural, NPS misreads congressional authorization for grazing as a green light under which anything goes so long as it does not resemble "management" of grazing.

In the absence of regulatory guidelines for grazing in the National Park System, grazing permits are issued without first determining environmental impacts, as required under the National Environmental Policy Act (NEPA). Also in direct violation of NEPA requirements, these permits are not subject to public comment. Not surprisingly, wildlife protections provided under the Endangered Species Act are routinely ignored.

### ***The Desert Tortoise***

The large and remote nature of the 1.6 million acres in the Preserve should be well suited to protect tortoises and encourage population recovery. Yet lack of land stewardship by the MNP has greatly compromised the habitat conditions at Mojave. The habitats of the Preserve are especially important given the possible expansion of the US Army's Ft. Irwin tank training base. If Ft. Irwin expands across critical habitat, wiping out both tortoises and their critical habitat, the lands within the Preserve become even more important.

Commercial cattle grazing in the desert raises a number of environmental concerns, not the least of which is its impact on wildlife. With the creation of the Mojave Preserve, the Interior Department also developed the Desert Tortoise Recovery Plan and designated more than half of the park as critical habitat for the species. The Mojave population of desert tortoise had been declared to be in a "threatened" status by the U.S. Fish and Wildlife Service (FWS) four years earlier.

Interior's plan claims to represent "the best available biological information" on the conditions needed to bring the Mojave desert tortoise population "to the point where listing it [under ESA] is no longer necessary." **The plan recognized that cattle "can affect desert tortoise and their habitats negatively" — by trampling turtles and their eggs, denigrating riparian habitat, and depleting vegetation. Not surprisingly, Interior (the Cabinet agency that includes NPS, FWS and the Bureau of Land Management) recommended eliminating domestic livestock grazing at Mojave NP.**

Notwithstanding the legal commitment to protect the desert tortoise, the MNP is proposing a management plan for the park which completely ignores the recommendations of the Interior Department's species recovery plan. The Mojave plan, for example, fails to list any alternatives that would curtail grazing, alter the grazing seasons, or exclude the destructive practice from any part of critical tortoise habitat.

As an empty gesture toward the tortoise, the Mojave plan allows only the possibility of mitigation "where credible, published research studies demonstrate that grazing negatively impacts desert tortoise" — but there are no plans for these credible studies and **the Mojave has obstructed both its own staff as well as outside researchers from gathering needed baseline data.** Not surprisingly, Mojave NP managers have ignored relevant "Biological Opinions" on grazing in the preserve, and after five years, the agency has yet to conduct any environmental impact studies or rangeland health assessments.

MNP managers stubbornly adhere to the notion that the Desert Tortoise Recovery Plan is merely advisory, not a legal mandate. Untroubled by the absence of data, Mojave NP insists that grazing poses no threat to the recovery of the tortoise and causes no harm to the species. Using a "no news is good news" approach, the Mojave NP is content to allow cattle without limit in desert tortoise habitat until they are forced by a lawsuit to "manage" livestock grazing in the Preserve.

## ***Is the Mojave Grazing Program Legal?***

In this report, Park Service employees question the legality of the manner in which MNP managers are operating the grazing program:

- Grazing on the Preserve is currently illegal under ESA and tortoises are being "taken" (or adversely affected) illegally. The ESA document permitting grazing (the Biological Opinion) expired on September 30, 1999.
- The existing grazing permits expire on October 31, 1999 and the NPS intends to issue new permits without any compliance with the National Environmental Policy Act (NEPA);
- The FWS continues to re-new and extend an old and outdated biological opinion that does not include adequate terms and conditions to protect tortoises from grazing affects. NPS has failed to reinitiate ESA consultation even in the light of new science showing direct threats to tortoises from cattle grazing in the Mojave National Preserve's Ivanpah Valley;
- The proposed general management plan for Mojave (GMP) fails to implement the Secretary of the Interior's Desert Tortoise Recovery Plan grazing provisions;
- The proposed GMP provisions for grazing do not satisfy basic NEPA regulations; and
- MNP managers routinely allow ranchers motorized access to wilderness areas in violation of Park Service policy and the California Desert Protection Act.

The irony is that the purpose behind designating the Mojave lands as a Park Service national preserve was to confer a higher level of land stewardship. The leaders of the MNP and the National Park Service have chosen to defeat that purpose by failing to exercise even minimally responsible management for the natural resources entrusted to their custody.



DANIEL PATTERSON

# II. The Difficult and Uncertain Birth of the Mojave National Preserve

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*“[T]he Committee wishes to stress that the National Park Service, in regulating grazing in Mojave National Park(s), will have full authority (as BLM has now) to require changes in livestock numbers, timing of grazing, and exclusion of areas from grazing, and to take other appropriate measures for proper resource management and protection.”*

—House Committee on Natural Resources  
Report on the California Desert Protection Act  
(May 1994, page 69)

The Mojave is the northwestern-most of America's hot deserts. Annual rainfall totals less than six inches at most sites and summer temperatures are among the highest in the nation. Ranchers have grazed livestock in the forbidding terrain of the eastern Mojave Desert of California since the 1870's.

Until the mid-1970's, the Mojave was part of the vast stretches of unreserved federal public land. As part of the 1976 Federal Land Management Policy Act (43 U.S.C. 1781), Congress established a California Desert Conservation Area



*Protected Desert. The Mojave National Preserve.*

under the jurisdiction of the Bureau of Land Management (BLM). Despite the declaration in section 601 of that Act that the California desert ecosystem is “extremely fragile, easily scarred, and slowly healed,” Congress directed the BLM to allow “multiple uses” of the Mojave. One of those uses was livestock grazing.

### ***The California Desert Protection Act***

Conservationists soon became dissatisfied with BLM administration of the California desert. They began a campaign to place significant tracts of the desert into the national park and wilderness preservation systems.

In 1986 Senator Alan Cranston from California introduced the first version of a bill (S. 2061) to establish a new national park in the eastern Mojave Desert — the Mojave National Park. That bill limited grazing to the life of the existing permit holders. The California Desert bill went nowhere, stymied by the opposition of off-roader groups, public lands ranchers, miners, and the junior Senator from California (Republican Pete Wilson, soon to be Governor Wilson) as well as the Bush Administration.

In November 1991, the House passed the bill but the main debate was about whether hunting, not grazing, should persist in the Mojave National Park. When the Senate failed to act, the bill died in the 102<sup>nd</sup> Congress.

Just as Alan Cranston, the leading advocate for the creation of a Mojave National Park, retired from the Senate, the political pendulum shifted in a way which promised to bring his vision into reality. The 1992 elections of Bill Clinton as President, together with Dianne Feinstein and Barbara Boxer as the two U.S. Senators from California made passage of a California Desert Protection Act more likely. The 103<sup>rd</sup> Congress had Democratic majorities in both houses and a sympathetic Democratic president.

The Senate Committee on Energy and Natural Resources reported a bill (S. 21) authored by Senator Feinstein on October 26, 1993. That bill would have eliminated grazing in a Mojave National Park by 2018 — a twenty-five year phase-out. Congress had used this type of phase-out provision in the authorization for several parks, including Grand Teton, Capitol Reef and Dinosaur.

In reality, actual phase out of grazing in some of these parks has stalled and cattle remain. For example, recent retirements of allotments that were supposed to have been phased-out in Utah's Capitol Reef National Park required expensive acquisitions by non-profit organizations.

In 1994, the House Committee on Natural Resources reported a bill (H.R. 518) with different language on grazing. To resolve the differences, and at the urging of the Senate author, Dianne Feinstein, the twenty-five year phase-out was rewritten in conference committee to become an open-ended authorization for grazing privileges in the Mojave National Park.

The main focus of congressional debate was not grazing, however, but hunting. In the waning

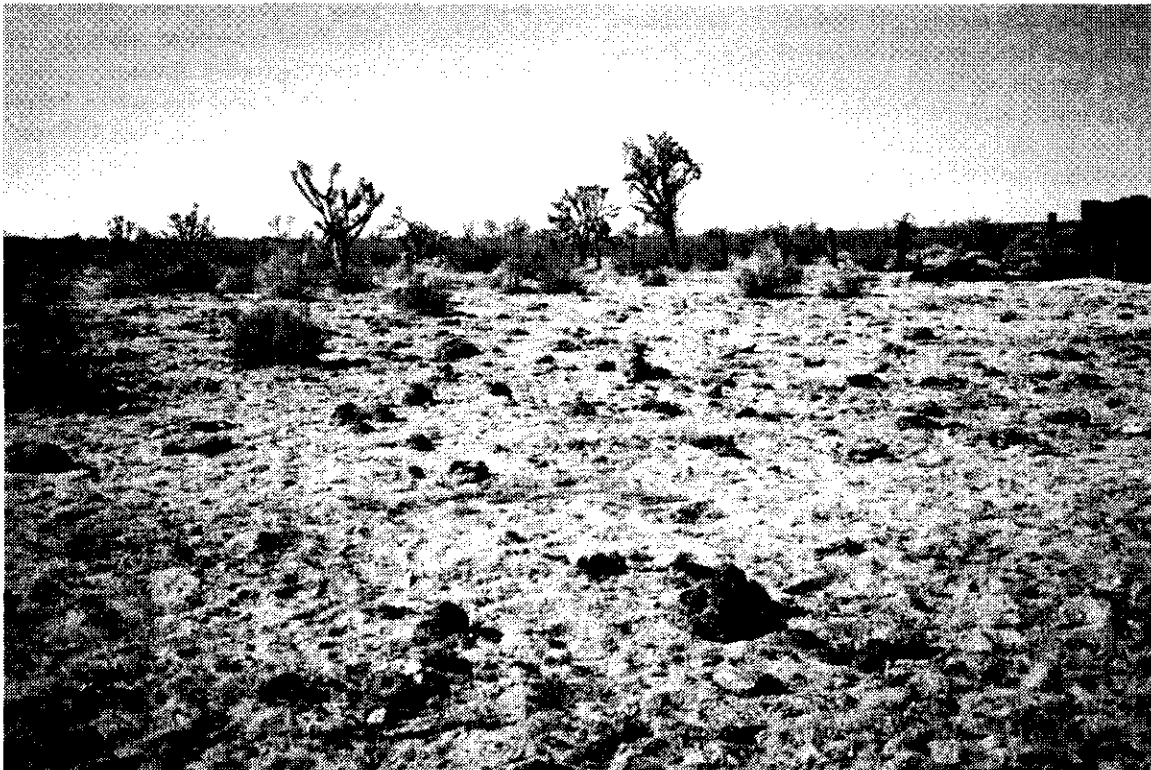
days of the Session, Congress adopted an amendment to allow hunting in the new area and, to reflect that concession, changed the name to the Mojave National Preserve. Still, significant opposition to the bill remained. Finally, on October 8, 1994, the last day of the 103<sup>rd</sup> Congress, the Senate broke a filibuster, without a vote to spare, to allow a vote on the Conference Report for the California Desert Protection Act. The compromise bill passed and was signed into law on October 31, 1994 as Public Law 103-433 (108 Stat. 4471).

On the subject of grazing in the Mojave National Preserve, the California Desert Protection Act provides as follows:

**SEC. 510. GRAZING**

(a) The privilege of grazing domestic livestock on lands within the preserve shall be continued to be exercised at no more than the current level, subject to applicable laws and National Park Service *regulations*.

NPS has chosen to interpret this statutory authorization as a mandate for unlimited grazing in the Mojave National Preserve. But an examination of the legislative history suggests that the



*Cow Pie City. Lack of grazing management can quickly destroy desert habitat.*



agency possesses wide latitude. The May 1994 Report that transmitted the California Desert Protection Act from the House Committee on Natural Resources to the House of Representatives. Page 69 of the Report states:

"The Committee wishes to stress that the National Park Service, in regulating grazing in Mojave National Park(s), will have full authority (as BLM has now) to require changes in livestock numbers, timing of grazing, and exclusion of areas from grazing, and to take other appropriate measures for proper resource management and protection. The only limits placed on normal administrative discretion in such matters by Section 409 (of H.R. 518; section 510 in the final law) is that grazing cannot be permitted to exceed its current level."

The Report contains even more forthright language. "The Committee does not intend that Section 409 be construed as exempting grazing and related activities in the Mojave National Park(s) to be exempt from curtailment or even termination as a result of the application of laws other than the California Desert Protection Act." One such law, the Report says, is the Endangered Species Act.

## ***What Grazing Rules?***

It is no small task to assume authority and control over 1.6 million acres. Yet that is what the NPS faced on the morning of November 1, 1994. Initially, NPS signalled that it intended to directly regulate grazing on the Preserve. In that first year, under Mojave Superintendent Marv Jensen, the NPS asserted authority over grazing at Mojave but almost immediately ran into a major problem — NPS had no grazing regulations.

The NPS has had the authority to regulate grazing since August 25, 1916 under the Act that established the Park Service (16 U.S.C. 3). Congress has authorized commercial livestock grazing in approximately twenty parks. Over the course of the decades spanning the creation of those park acts, Congress mistakenly assumed that the NPS had used its authority to promulgate regulations governing grazing. Nonetheless, the NPS has never published rules that prescribe the conditions, standards or procedures for grazing in the parks where grazing is authorized.

Unlike the BLM and the U.S. Forest Service, NPS lacks any grazing standards. The single NPS regulation on the topic states only the types of parks where grazing is allowed and what to do when livestock are in trespass (36 Code of Federal Regulations (CFR) 2.60).

Recognizing both the lack of regulations and the lack of Park Service field staff who could manage a grazing program at Mojave, the NPS entered into an Interagency Agreement (IA) with the California Desert District of BLM in Riverside, California, under which BLM range staff from the Needles Resource Area would continue to administer grazing in Mojave until the NPS employed staff to manage grazing. The superintendent of the Preserve signed the IA on May 9, 1995.

In provision #4 of the IA, the NPS pledged to initiate an effort to promulgate rules to govern grazing; rules that the California Desert Protection Act presumed that the NPS already possessed. The NPS made the pledge but has never taken a single step towards that goal.

Federal regulations can take years to write and to finalize. For the first NPS grazing permits, there was no time for that. By March 1995, the NPS at Mojave had crafted the language of new permits to authorize grazing at the preserve. Much of the language in the permits was cobbled together from BLM permits and regulations (see 43 CFR 4100). But those permit standards were based on the Taylor Grazing Act (43 U.S.C. 315) which does not apply to national park system lands.

In this regulatory and statutory vacuum, the NPS permits needed to answer many controversial questions, including sale and transfer of grazing preferences, changes to preference levels, range improvements, fees, penalties, water rights and duration of the permits.

Several ranchers signed the first draft of these ad-hoc Special Use Permits but a few refused. The NPS negotiated with the few over acceptable permit language. The holdouts would not sign their permits until the NPS revised the permits. The NPS did so and then rewrote all the permits and sent them back to all the permittees, including those who signed the earlier version. The NPS negotiated with the ranchers without any public notice or

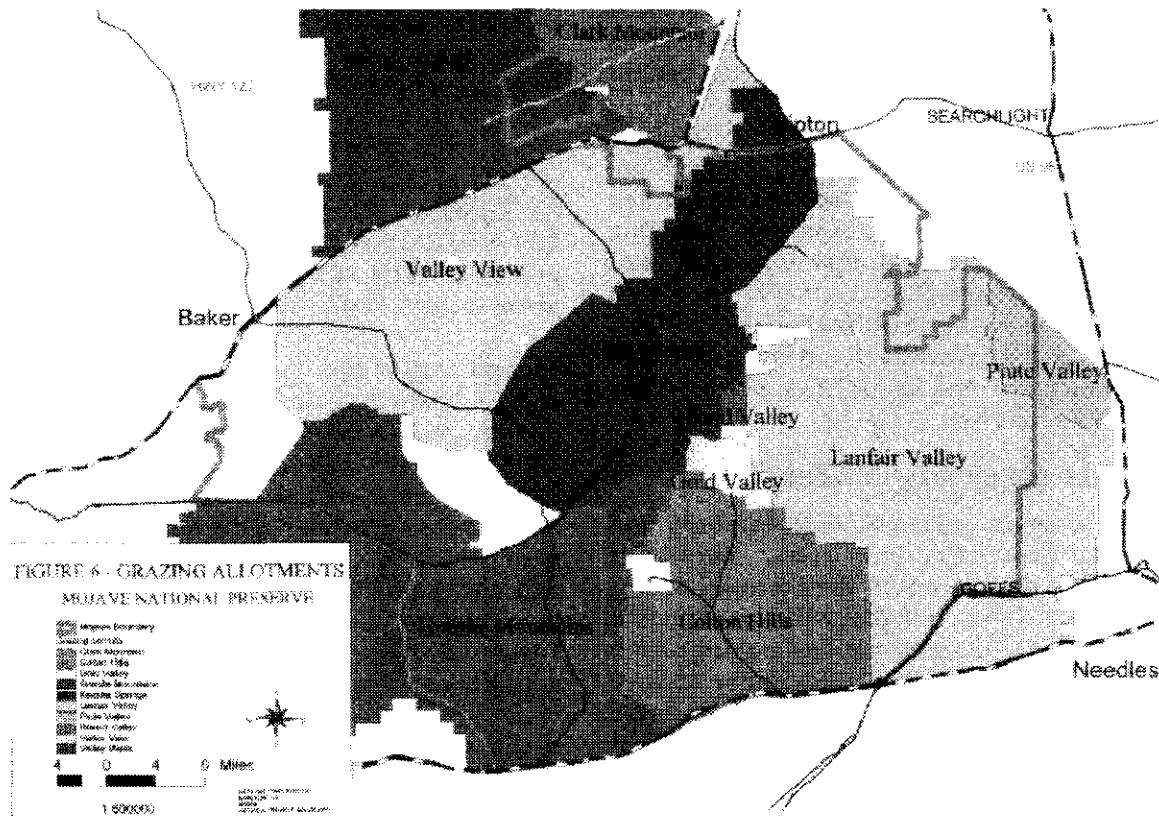
involvement. Nor did NPS attempt to assess the environmental impacts of its new grazing program as required by the National Environmental Policy Act (42 U.S.C. 4321).

In November 1995 the NPS finally issued the revised and final grazing permits on 11 allotments in the Mojave National Preserve. Those permits authorized 38,396 animal unit months (AUMs) on 1,280,000 acres. The NPS issued the permits for a five-year term on November 8,

1995, backdated to October 31, 1994. The 11 allotments were Lanfair Valley, Gold Valley, Valley Wells, Valley View, Colton Hills, Piute Valley, Granite Mountains, Round Valley, Kessler Springs, Clark Mountain and Crescent Peak.

Fragments of several of these allotments, in some cases a majority portion, still lay on BLM public lands. BLM issued permits for the portions outside of the preserve as separate allotments.

## Mojave NP Grazing Allotments



## III. The Lowly Desert Tortoise

***“Grazing by cattle can also affect desert tortoise and their habitats negatively. Livestock can kill desert tortoises and eggs directly by trampling. Grazing can also damage soil crusts, reduce water infiltration, promote erosion, inhibit nitrogen fixation in desert plants, and provide a favorable seedbed for exotic annual vegetation.”***

—Desert Tortoise Recovery Plan, June 1994, U.S. Fish and Wildlife Service, page 10.

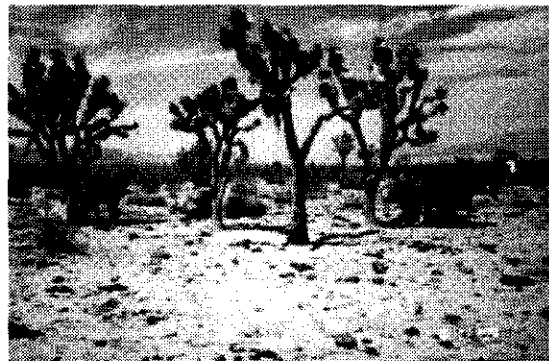
Due to legal efforts of conservation groups, the U.S. Fish & Wildlife Service (FWS) listed the Mojave population of the desert tortoise (north and west of the Colorado River) as a threatened species under the U.S. Endangered Species Act (55 FR 12178) on April 2, 1990. On February 8, 1994, again only after a legal push by conservation groups, the same agency designated over 6 million acres of habitat as critical to the survival of the desert tortoise (59 FR 5820) in parts of 4 states (California, Arizona, Nevada, and Utah). Nearly one-half of what is now the Mojave National Preserve is designated critical tortoise habitat.

### ***The Desert Tortoise Recovery Plan***

In June, 1994, the Department of the Interior adopted a Desert Tortoise Recovery Plan. In response to these efforts to recover the tortoise, on June 10, 1994, just months before passage of the California Desert Protection Act, the BLM issued a “Full Force and Effect Grazing Decision” for every allotment in the Mojave Desert that contained habitat designated as critical for desert tortoise (*Gopherus agassizii*). This decision prescribed standards for nearly all of the grazing allotments in the Mojave (Valley View, Valley Wells, Crescent Peak, Lanfair Valley, Kessler Springs, Granite Mountain, Piute Valley, Colton Hills and Gold Valley).

Designation of critical habitat by itself does not lead to recovery of the species. Designation of

critical habitat does not create a management plan for how agencies should administer that habitat. Critical habitat designation, like species listing, is just one step intended to keep a threatened species from becoming endangered, and to keep an endangered species from becoming extinct. In a critical habitat, Federal agency actions are subject to heightened scrutiny under section 7 of the Endangered Species Act.



***Welcome to the Recovery Plan. Despite Tortoise Recovery Plan recommendations that grazing be phased out of critical habitat, according to Mojave managers, these cows are not going anywhere.***

The Endangered Species Act (ESA) directs the Secretary of the Interior to develop a plan to recover listed species (16 U.S.C. 1533(f)). Recovery planning is more than the triage of ensuring that listed species do not become worse off. Recovery planning goes beyond the section 7 requirements for consultation and the section 9 prohibition on “take.” The FWS describes recovery planning as the “umbrella that eventually guides all of the Act’s activities and promotes a species’ conservation and eventual delisting.”

Because the Desert Tortoise Recovery Plan is aimed at implementing measures that lead to the eventual recovery and delisting of this species, the recovery plan is supposed to give the benefit of the doubt to the listed species by creating the most favorable conditions for the health of that species.

### ***Cows and Tortoises***

Despite this designation of critical habitat within the Mojave National Preserve, nearly all of this fragile public land is still grazed by cattle.

Due to the harsh and arid climate, the Mojave Desert is not a particularly productive place to graze cattle. The only way cattle can survive in the Mojave is through supplemental feeding and watering. Supplemental feeding and watering concentrates cattle near food and the water impoundments, creating what ecologists call the "bullseye" effect due to the fact that a large radius of land in the feeding area is completely stripped bare of plants and stomped to fine powdery dust. Watering cattle also dries up and severely degrades important natural water sources for all wildlife, including rare desert bighorn sheep and birds.

In November 1992, the General Accounting Office (GAO) lent support to those who urged an end to grazing in parts of the Mojave Desert. Pointing to high environmental risk and low economic benefit, the GAO (GAO/RCED-92-12) recommended that Congress consider, among other things, discontinuation of livestock grazing in America's hot deserts, including the Mojave.

That recommendation has yet to be implemented.



***Dietary Requirements.*** In desert tortoise habitat, cattle compete for scarce forage.

## IV. The Practice of Biostitution

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***“I call it the pool-table effect. All the habitat is stomped and chomped by cattle and there are no gamebirds to hunt. Cows have stripped the desert bare, like a pool table. It’s ridiculous! It’s oxymoronic to call it a national preserve then graze it down.”***

—Jon Tate, President of the Western Gamebird Alliance

### ***A Faulty Premise that Management Exists***

Regardless of the biological conditions, it was clear that, at the advent of the Mojave National Preserve, the political conditions would not support curtailment or elimination of grazing even within critical habitat areas.

FWS followed the listing of the desert tortoise with formal Biological Opinions (BOs), as required under section 7 of the federal Endangered Species Act. The relevant BOs were dated July 13, 1993 (1-6-92-F-19), amended on March 14, 1994 (1-8-94-F17), and April 20, 1994 (1-5-94-F-107). These “non-jeopardy” opinions concluded, under a cloud of considerable internal scientific disagreement, that the then-BLM grazing program could continue in the Mojave Desert since it would neither “jeopardize the continued existence of the desert tortoise” nor “result in destruction or adverse modification of critical habitat.”

The BOs were “interim opinions”, expiring on October 31, 1996. The BOs also assumed that BLM would administer grazing under certain improved conditions to benefit tortoise recovery. It was those conditions that BLM inserted in to its permits in the Mojave on June 10, 1994.

The MNP permits, issued in November 1995, contain this provision under condition #3: “The permit shall operate under the general guidance of the Allotment Management Plan (AMP) in effect on October 30, 1994 as amended by the BLM in a Grazing Decision of June 10, 1994 in

compliance with the FWS biological opinions on desert tortoises and their habitat.” Even though MNP adopted the terms and conditions of the June 10, 1994 Grazing Decision by reference, it has never ensured that grazing lives up to the prescribed standards of the conditions.

During the time frame of the “interim” BO, BLM was supposed to adopt specific plans for the California Desert that gave due recognition to the protection and recovery of the desert tortoise. Yet, by the time the opinion expired on October 31, 1996, neither the BLM nor the NPS had completed the land management plans that the 1994 BO envisioned.

### ***New Promises Unfulfilled***

On August 26, 1996, sixty days before the expiration of the 1994 BO, the BLM and the NPS reinitiated formal consultation on grazing. The Regional Office of the Fish and Wildlife Service issued a new BO on March 25, 1997. The BLM and the NPS convinced the FWS that, in the interim, while planning was under way, they were acting in good faith to protect desert tortoise.

The BLM presented some noteworthy achievements to FWS, its sister agency, among which were the retirement of grazing on nearly 160,000 acres. But these achievements were in Utah, Nevada and Arizona — not California. In California the BLM had accomplished nothing.



***Modern NPS Range Management. The Mojave National Preserve has no grazing regulations yet plans to automatically renew permits this fall.***

For its part, NPS offered FWS the following management changes: 1.) To prohibit all off-highway vehicle activity within the Mojave National Preserve; and 2.) To prohibit clearing of land for agricultural vegetation harvest and landfill development. Notwithstanding the fact that these activities are prohibited automatically by NPS regulations on parklands, the NPS offered no action on live-stock grazing.

Again, despite the lack of any real progress in the Mojave Desert of California, FWS granted a new interim BO in March 1997. The only condition imposed by FWS in issuing this new opinion was that NPS must complete its plan and implement the Recovery Plan on the critical habitats of the Mojave National Preserve within three and one-half years (i.e., by April 2000).

NPS apparently and mistakenly believed that this new BO gave Mojave a free pass. But this new Opinion explicitly stated that "during this interim period, a number of agency planning and recovery initiatives will be completed that will help meet DT (desert tortoise) habitat recovery requirements. The work products associated with these initiatives include...

(3) delineation of DWMAs (Desert Wildlife Management Areas) and implementation of recovery actions as recommended in the recovery plan."

As the deadline for the current Opinion approaches, there is no indication that these tasks have been undertaken.

## ***More Smoke and Mirrors — The Mojave General Management Plan***

In September 1998 the NPS released for public comment the second of the Interior agency land management plans anticipated by the 1994 and 1997 BOs, the Mojave General Management Plan (GMP).

The first land management plan proposed in the California Desert was the GMP for the nearly 800,000 acre Joshua Tree National Park. The park contains portions of the Pinto Mountain and Chuckwalla Bench Critical

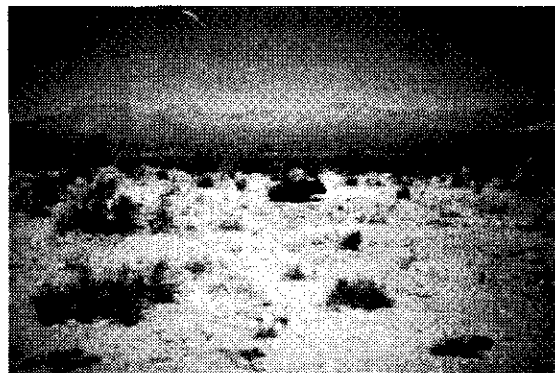
Habitats. That plan, submitted for public comment in November 1997, proposed to designate nearly all of Joshua Tree as a Desert Wildlife Management Area (DWMA) and to carry out the recommendations of the Desert Tortoise Recovery Plan.

In contrast, the Draft GMP for Mojave pointedly failed to carry out the conditions prescribed in the March 1997 BO, particularly the recommendations on grazing in the Recovery Plan.

The "no jeopardy" opinion of the March 1997 BO on grazing was explicitly based, in part, upon the FWS statement that "by the end of the time frame (April 2000), the...NPS will have implemented the DT recovery plan through..." agency planning efforts. The Draft GMP for Mojave did not propose to implement the grazing portion of the Recovery Plan. Consequently, the Mojave GMP does not meet one of the three bases for the March 25, 1997 finding of "no jeopardy." Nor is the NPS likely to meet the terms of the Recovery



***Impacts That are Hard to Ignore.*** Cattle clustered around supplemental feeding blocks in Ivanpah Valley, Mojave NP.



Plan by April 2000, as envisioned in the no-jeopardy BO.

The single most important ecological test that the Mojave GMP must meet is the degree to

which the MNP will carry out the grazing recommendations of the Recovery Plan. While the Proposed Action Alternative of the Mojave GMP (page 4) pays lip service by stating that the MNP would implement measures in the Recovery Plan to protect the desert tortoise, tellingly, the Mojave GMP alternatives for grazing do not offer a single alternative that mentions reducing grazing, limiting seasonality of grazing, or eliminating grazing from any part of the critical tortoise habitat or desert wildlife management areas in the preserve.

Also conspicuous by its absence is the key Recovery Plan measure calling for the elimination of domestic livestock grazing (page 57 of the Recovery Plan) from at least one critical habitat area (called "desert wildlife management areas" in the Recovery Plan) in the Eastern Mojave Recovery Unit.

The proposed action alternative concedes (page 87) only that the MNP may take unspecified "appropriate mitigating measures ...where credible, published research studies demonstrate that grazing negatively impacts desert tortoise..." Disturbingly, the MNP is implying that scientific research has yet to establish negative impacts to the desert tortoise. The Desert Tortoise Recovery Plan alone lists 57 separate scientific studies linking grazing as a threat to tortoises and their habitat. FWS concluded that the Recovery Plan, and its finding on grazing, "represents the best available biological information on the conditions needed to bring the Mojave population of the desert tortoise to the point where listing is no longer necessary (i.e. recovery)." (59 FR 5823).

Indeed, the most recent research (conducted for several years in the Ivanpah Valley of the Mojave National Preserve) shows that grazing may alter tortoise feeding behavior by compelling tortoise to spend more time foraging than feeding in grazed areas. Grazing reduces plant species diversity. Livestock compete with tortoise for certain annual plants, particularly in the spring. (UCLA Doctoral Dissertation, Dr. Hal Avery, U.S. Geological Survey, 1998). This same research also demonstrated tortoise habitat degradation through cattle stepping on and destroying tortoise burrows. Avery generally concluded that cattle grazing in tortoise habitat in the Ivanpah

Valley results in limited food plant and nutritional availability for tortoises in all but the wettest years; and crushed burrows are a constant occurrence.

### *Head in the Mojave Sand*

Although the MNP proposed plan fails to implement the key grazing recommendation of the Desert Tortoise Recovery Plan, the Mojave GMP disingenuously states on page 169 that the proposed action alternative "...incorporates the recommendations..." of the recovery plan. Since that plan recommends an end to all livestock grazing on at least some critical habitat, it is hard to see how the Draft GMP could claim that it adopts the recovery plan recommendation on grazing.

Internally, and not for attribution, MNP contends that the desert tortoise is not actually threatened and, even if it were threatened, that grazing causes no harm to desert tortoise. Whether the desert tortoise is, in fact, threatened, or not, is a decision the NPS possesses neither the expertise nor the authority to make. If anything, there appears to be an overwhelming consensus in the desert science community that the tortoise faces serious threats and is in steep decline from a variety of causes.

So, while the MNP searches for proof beyond a reasonable doubt to implicate grazing, this posture gives the benefit of the doubt to cattle, the sacred cows of the Mojave. In so doing, the MNP ignores the preponderance of scientific opinion and the basic principles of species recovery. Strictly speaking, it is not a question about whether livestock grazing harms desert tortoise or adversely affects its habitat. Once the desert tortoise has been officially classified as threatened, the question becomes what actions the NPS (and the BLM) should take to ensure the most favorable conditions for tortoise so that they can be assured not just survival but recovery. The management, reduction, even the partial elimination of grazing must reasonably be among such actions.

If the MNP truly believes that livestock grazing creates the conditions most favorable to the recovery and delisting of desert tortoise, then the MNP must possess some very com-

elling, and as yet, secret, evidence. It is difficult to reasonably argue that heavy livestock usage creates the optimal conditions for desert tortoise recovery. Yet, that is where

the burden lies — the MNP must show that continued and unreduced grazing will actually contribute to the recovery of the desert tortoise.



DANIEL PATTERSON

*Vanishing Breed. Threatened with extinction after 68 million years in the Mojave.*

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### V. Where We Are Today

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***“The Park Service and Superintendent Mary Martin have given the ranchers everything they want. There has been no regulation of grazing on the Preserve.”***

—Peter Burk, President of Citizens  
for Mojave National Park

#### ***Making a Virtue of Ignorance***

On October 21, 1998, the Southwest Center for Biological Diversity wrote to NPS Regional Director John Reynolds and stated that: “After researching the situation at MNP, we conclude that NPS has never taken any steps to ensure that the terms imposed on grazing by the BOs and the BLM grazing decision of June 10, 1994 have been, or are now being complied with. It appears NPS has never performed the essential field monitoring to check forage utilization rates, nor inspected for prohibited supplemental feeding or other activities. NPS has never even carried out the permit provision that required permittees to register their brands (a non-tortoise related condition).”

The Southwest Center submitted, in that same letter of October 21, 1998, a Freedom of Information Act (FOIA) request to the NPS. Southwest Center requested: “...any and all field notes, reports, records, photos, etc., of NPS-conducted monitoring surveys, inspections, transects, or forage utilization rates of grazing allotments in Mojave NP.”

On November 24, 1998 Regional Director Reynolds responded to the FOIA with 89 pages of materials but not one page of these materials was of an item requested. The documents did not exist because the NPS had apparently not done the field work that would be reflected in them.

The Southwest Center’s FOIA demonstrated that the NPS had not conducted any standard range management surveys for at least four years after assuming control of the Preserve (from October 31, 1994 to November 28, 1998).

On January 13, 1999, almost 2 months later, the Department of Interior’s top manager for tortoise recovery, Ed Haste (commenting on behalf of BLM, NPS, and FWS for the Desert Tortoise Management Oversight Group) conceded that NPS alone was responsible for carrying out the dictates of the Biological Opinions and desert tortoise protection:

(Biological Opinion) “FWS#1-5-96-F-296R acknowledges this administrative transfer and recognizes that future grazing management of the affected allotments will be carried out by NPS in accordance with the terms and conditions of FWS#1-8-94-F-17.”

Mr. Haste again tried to persuade conservationists that tortoise conservation will be carried out by NPS responsibly, even after NPS has been shown to be fully negligent in managing cattle on Mojave. No one was convinced.

#### ***Misuse of Grazing Management Funding***

Whatever MNP’s reason for failure to conduct range management, lack of money is not a viable excuse. In Fiscal Year (FY) 1998, starting on October 1, 1997, and in every FY since, Congress placed \$132,000 in Mojave’s budget for the management of livestock grazing. Yet, the NPS could not find a single penny for assessing the condition of the range, or determining the rates at which cattle were consuming forage. Instead, in FY 1998, Superintendent Mary Martin found \$68,000 to contract for a hazardous waste survey on an rancher’s base property; lands that are not even within the legally described boundaries of the preserve.

Despite this funding and its legal obligation to know the condition of the range, MNP seems to have done everything in its power to avoid examining grazing impacts on the Preserve. MNP has yet to conduct any standard range condition or utilization rate analysis.

This “ignorance is bliss” approach also precludes the possibility of even the most elemental grazing management on the Preserve. For example, if an MNP analysis showed utilization

in excess of authorized limits, the rancher would have to take steps to redistribute or reduce cattle use of that area. Such steps could include the removal of cattle and the turning off of water at troughs to reduce adjacent grazing. The absence of data means that the Mojave National Preserve is incapable of such a "management" action. Preserve managers act as if they believe that, so long as they do not know the range condition, they will never have to take any action.

## ***MNP Faces Legal Jeopardy on Multiple Fronts***

While mere dereliction of duty is not a crime, there are certain requirements of legal adequacy that do govern Park Service resource management decision making. The MNP can no longer get along by merely doing nothing. A number of legal deadlines loom and, as presently positioned, the MNP cannot meet their statutory obligations:

### **The Mojave Grazing Management Plan Itself Violates NEPA**

The proposed GMP for Mojave and its accompanying environmental impact statement (EIS) describe three grazing alternatives (on pages 84, 101 and 108) between which there is virtually no difference. The Mojave GMP does not meet the requirements of the National Environmental Policy Act (NEPA) regulations (40 CFR 1502.14) which state that alternatives are "the heart of the environmental impact statement." The alternatives should provide "a clear basis for choice among options by the decisionmaker and the public." The regulation adds that the agency shall, among other things:

- Rigorously explore and objectively evaluate all reasonable alternatives;
- Devote substantial treatment to each alternative; and
- Include reasonable alternatives not within the jurisdiction of the lead agency.

The Mojave GMP/DEIS evaluation of grazing meets none of those requirements. Indeed, the Optional Management Alternative on page 108 is only three lines long. Under every alternative presented, the Mojave GMP/DEIS essentially proposes the continuation of grazing as now conducted.

The Plan's inadequacies are premised upon the incorrect presumption that the NPS possesses no latitude and may exercise little discretion within the statutory authorization except to allow continued grazing in the Mojave National Preserve.

### **Planned Permit Renewals Are Also Illegal**

Grazing permits for MNP expire on October 31, 1999. The issuance of such permits is a Federal agency action that requires analysis under the NEPA (see *Natural Resources Defense Council v. Morton*, 388 F. Supp. 829 (1974)).

The Superintendent of the Mojave National Preserve, Mary Martin, has signaled her intent to reissue new permits to ten of the allotments on the 31<sup>st</sup> (all but Crescent Peak which was acquired in the early 1990's by the Nature Conservancy and retired).

The MNP managers want to re-permit grazing without so much as a simple environmental assessment under a "categorical exclusion" provision. MNP's failure to



***The Preserve. Joshua trees, granite rocks, and cima dome seen on the Mojave.***

perform environmental assessments, seek public comment, or truly evaluate the threats to tortoises from cattle is both disturbing and contrary to law.

At least five conservation groups (including PEER, NRDC, SWCBD, Friends of Mojave National Park, and Wilderness Watch) have written Superintendent Mary Martin asking that the MNP comply with NEPA before renewing grazing permits but none to date have received a reply.

### **Current Mojave Grazing Illegal – No Valid Biological Opinion**

The primary Biological Opinion for the Preserve expired on September 30, 1999 and has not yet been renewed. Not surprisingly, MPN is seeking a quick extension on the BO. To get yet another extension, MPN needs to demonstrate to FWS that it is doing field monitoring of allotments and complying with the terms and conditions of the now expired and invalid BO.

Inconveniently, MPN has now admitted that they had not done the field work necessary to meet this requirement.

### **Noncompliance With the Endangered Species Act**

Several organizations, including the Desert Tortoise Council wrote to FWS in early 1999 urging a "jeopardy" opinion for NPSs proposed plan for Mojave. Grazing is a cornerstone problem that creates the jeopardy situation for the desert tortoise. FWS has yet to release its opinion for the Preserve draft GMP.

To compound matters, Mojave ranchers have been feeding protein blocks to cattle this past summer in order to supplement their otherwise meager forage diet. When the protein block feeding was reported to MPN managers they chose to do nothing.

The scattering of protein blocks on the range is not an aberration. Grazing in the forbidding landscapes of the Mojave would be high impossible without supplemental feeding and taxpayer funded water projects provided at extremely low grazing fees. Supplemental feeding with grains, another common practice, introduces invasive exotic weeds which degrade food nutritional availability for tor-

toises and, consequently, is also a violation of the Biological Opinion.

### **Wilderness Violations**

Grazing in Mojave affects wilderness as well as desert tortoise. Congress designated nearly 700,000 acres of Federal lands, or almost 50% of Mojave, as wilderness. MNP allows ranchers regular, uncontrolled and routine motor vehicle access into wilderness. This practice is so common that MPN gives it no notice yet the Proposed GMP for Mojave does not acknowledge the practice at all, as if it did not exist.

The Management Policies of the NPS (1988) state that "use of motorized or mechanical equipment (in wilderness) will not be allowed" in connection with grazing in wilderness (Chapter 6, Page 9). Mojave managers regularly violate this NPS policy.

Section 103(c) of the California Desert Protection Act authorized the BLM to permit existing grazing in the BLM administered wilderness areas designated by the Act. The Act also directs the NPS to allow existing grazing to continue in the new Mojave National Preserve. Although the law is not explicit, such authority likely allows existing grazing to continue in the wilderness portions of Mojave. However, there is a difference between the grazing authorization in BLM wilderness in section 103(c) and the language that authorizes grazing in the Mojave in section 510. Section 103(c) clearly prescribes the standards that govern grazing in the BLM wilderness areas. These standards allow limited, non-routine, motor vehicle and mechanized equipment use in BLM wilderness by ranchers.

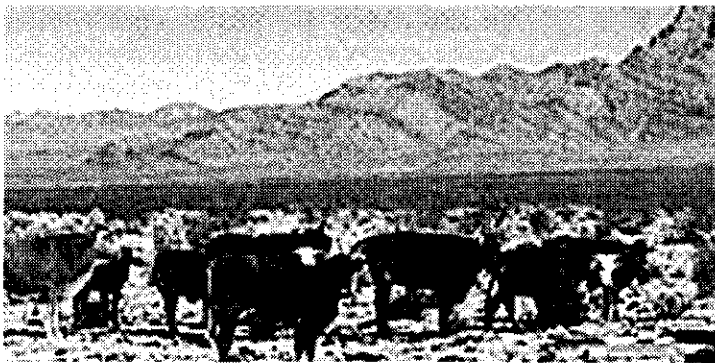
The NPS at Mojave openly allows the ranchers use of motor vehicles and mechanized equipment in NPS wilderness just as in BLM wilderness. If that were the intent of the law, the California Desert Protection Act would contain the same provisions at section 510 that it contains in section 103(c). The Act does not. Assuming that the Act allows continued grazing in Mojave's wilderness, it does not necessarily follow that the law also authorizes the continuation of all the practices that accompany that grazing. In short, the NPS needs to spell out, publicly, the standards

that govern ranchers' motor vehicle access into wilderness.

## ***Not With a Bang but With a Whimper***

MNP's only project for grazing reform was a buyout proposal to retire grazing from a portion of the Preserve. Unfortunately, even this modest initiative has recently stalled and may be dead. Reportedly, the buyout deal hit the rocks when BLM waffled on the request to permanently retire grazing from portions of BLM allotments adjacent to Mojave NP allotments. Potential conservation organizations who were interested in funding the buy-out did not want to risk re-opening of the allotments by BLM for grazing.

While conservationists supported this effort, this attempted buy-out is no substitute for actively preventing cattle from continuing to damage desert habitat. Sadly, this now moribund proposal may have been the only game in town.



***Competing Resources.*** Lack of management on the Mojave has hurt wildlife in order to serve livestock.

The NPS itself missed an opportunity to acquire the base property and 1,272 AUMs of the Gold Valley Allotment, allowing nearly all the AUMs to pour into the hands of an adjacent rancher.

## ***Conclusion***

Mojave livestock ranchers, though few in number, are politically influential. They evoke images of the Old West, of the rugged individual clearing the land of aboriginal inhabitants and putting it to productive use. Some of these images are nostalgic; others are not. Most are mythical. Still, ranchers have friends in high places, including the U.S. Congress and U.S. Department of the Interior.

In the everyday world, the NPS must respond to political realities as well as the law. The law authorizes continued livestock grazing at Mojave. It is one thing for the NPS to be attuned to political reality and quite another to completely abdicate professional responsibility.

