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14 | UNITED STATES DISTRICT COURT
15 |
16 | FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 | CENTER FOR BIOLOGICAL) Case No.
DIVERSITY;)
18 | PUBLIC EMPLOYEES FOR) **COMPLAINT FOR DECLARATORY AND**
ENVIRONMENTAL RESPONSIBILITY,) **INJUNCTIVE RELIEF**
19 |)
20 | Plaintiffs,) [Administrative Procedure Act
Case]
21 | vs.)
22 | JONATHAN JARVIS, National Park)
Service Pacific West Regional)
23 | Director; NATIONAL PARK)
SERVICE,)
24 |)
25 | Defendants.)
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INTRODUCTION

1. In this action, Plaintiffs Center for Biological Diversity and Public Employees for Environmental Responsibility challenge Defendants Jonathan Jarvis, Pacific West Regional Director, National Park Service and the National Park Service (collectively "NPS") for their January 31, 2005 authorization for the construction of artificial watering devices ("guzzlers") for game animals within the Mojave National Preserve (the "Preserve") without carrying out any environmental review as required by law.

2. Defendants approved the construction of these guzzlers in the Preserve, a unit of the National Park system, without any analysis as required by the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.* despite the likelihood of significant environmental effects, including impacts on the threatened desert tortoises. In so doing, Defendants ignored the requirements of NEPA, existing management plans and policies for the Preserve, and the recommendations of NPS administrators and staff.

3. With this civil action, Plaintiffs seek declaratory and injunctive relief to remedy Defendants' violations of NEPA.

JURISDICTION

4. This court has jurisdiction over this action pursuant to 5 U.S.C. § 706 (Administrative Procedure Act) and 28 U.S.C. §§ 1331 (federal question jurisdiction), 2201 (declaratory judgment), and 2202 (injunctive relief).

1 5. An actual controversy exists between the parties within
2 the meaning of 28 U.S.C. § 2201 (declaratory judgments) because
3 Plaintiffs assert that Defendants are violating federal law.
4 Plaintiffs have notified Defendants of these violations, but
5 Defendants have not corrected them.

6 6. Venue is proper in the District Court for the Northern
7 District of California pursuant to 28 U.S.C. § 1391(e)(1) because
8 Defendant Jonathan Jarvis, Regional Director for the National Park
9 Service's Pacific West Region resides in this district.

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11 INTRADISTRICT ASSIGNMENT

12 7. Pursuant to Civil Local Rules 3-2(c) and 3-2(d), the
13 appropriate intradistrict assignment of this case is to either the
14 San Francisco Division or the Oakland Division.

15 PARTIES

16 8. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (the "Center")
17 is a non-profit corporation with over 12,000 members and offices in
18 San Francisco, Idyllwild, and San Diego, California, Tucson and
19 Phoenix, Arizona, and Silver City, New Mexico. The Center is
20 dedicated to the preservation, protection, and restoration of
21 biodiversity, native species, and ecosystems in the West and
22 elsewhere. The Center's members and staff regularly use, and
23 intend to continue to use lands within the Mojave National Preserve
24 for observation, research, aesthetic enjoyment, and other
25 recreational, scientific, and educational activities. The Center's
26 members and staff also regularly research, study, and observe the
27 federally listed threatened desert tortoise in and around the
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1 Mojave National Preserve. The Center's members and staff derive
2 scientific, recreational, conservation, and aesthetic benefits from
3 the desert tortoise's existence in the wild. The Center believes
4 that Defendants' actions will contribute to the continued decline
5 of desert tortoise populations within the Mojave National Preserve.
6 If these declines continue, the Center's members will lose the
7 recreational, aesthetic, scientific, and conservation benefits they
8 enjoy from stable and healthy populations of the desert tortoise.
9 Defendants' January 31, 2005 authorization to create guzzlers in
10 Mojave National Preserve has thus harmed and continues to harm the
11 Center and its members by threatening the Center's interests in the
12 Preserve and the desert tortoise, and by depriving the Center and
13 its members of an adequate opportunity to review and comment on the
14 environmental consequences of the guzzlers. The relief sought in
15 this action would redress the Center's and its members' injuries.

17 9. Plaintiff PUBLIC EMPLOYEES FOR ENVIRONMENTAL
18 RESPONSIBILITY ("PEER") is a national, non-profit corporation based
19 in Washington, D.C. with chapters throughout the United States,
20 including California. PEER represents current and former federal
21 and state employees of land management, wildlife protection, and
22 pollution control agencies who are frustrated by the failure of
23 governmental agencies to enforce or faithfully implement the
24 environmental laws entrusted to them by Congress. The ability of
25 PEER's members to independently critique agency decisions
26 frequently is compromised by conflicts between their duties as
27 employees of a federal agency to uphold the law and the risk of
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1 disciplinary action for insubordination. Consequently, PEER's
2 members rely on PEER to criticize agency action, including the use
3 of litigation, on their behalf. PEER members and staff regularly
4 use the Mojave National Preserve for observation, research,
5 aesthetic enjoyment, and other recreational, scientific, and
6 educational activities. PEER members and staff research, study,
7 and observe the federally listed threatened desert tortoise in the
8 Mojave National Preserve. PEER's members and staff derive
9 scientific, recreational, conservation, and aesthetic benefits from
10 the desert tortoise's existence in the wild. PEER believes that
11 Defendants' actions will cause the continued decline of desert
12 tortoise populations within the Mojave National Preserve. If these
13 declines continue, PEER's members will lose the recreational,
14 aesthetic, scientific, and conservation benefits they enjoy from
15 stable and healthy populations of the desert tortoise. PEER's
16 members also enjoy the Mojave National Preserve as an area governed
17 by consistent, rational policies of wildlife management, as
18 directed by the NPS Management Policies, and as adopted through a
19 legislatively mandated planning process. Defendants' January 31,
20 2005 authorization to create guzzlers in the Preserve has thus
21 harmed and continues to harm PEER and its members by threatening
22 PEER's interests in the Preserve and the desert tortoise, and by
23 depriving PEER and its members of an adequate opportunity to review
24 and comment on the environmental consequences of the guzzlers. The
25 relief sought in this action would redress PEER's and its members'
26 injuries.
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1 10. Defendant JONATHAN JARVIS is sued in his official
2 capacity as Regional Director for the National Park Service's
3 Pacific West Region, which includes the Mojave National Preserve.

4 11. Defendant NATIONAL PARK SERVICE ("NPS") is the agency
5 within the United States Department of the Interior established to
6 "promote and regulate the use of the Federal areas known as
7 national parks, monuments, and reservations . . . by such means
8 and measures as conform to the fundamental purpose of the said
9 parks, monuments, and reservations, which purpose is to conserve
10 the scenery and the natural and historic objects and the wild life
11 therein and to provide for the enjoyment of the same in such manner
12 and by such means as will leave them unimpaired for the enjoyment
13 of future generations." 16 U.S.C. § 1. In performing its park
14 administration and management duties, NPS is at all times subject
15 to the requirements of NEPA, the Park Service Organic Act, the Park
16 Service General Authorities Act, the Administrative Procedure Act,
17 and the Endangered Species Act.

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19 STATUTORY AND ADMINISTRATIVE BACKGROUND

20 A. NATIONAL ENVIRONMENTAL POLICY ACT

21 12. NEPA is intended to ensure that federal agencies fully
22 consider environmental consequences before taking an action, and
23 that the public is fully informed of these consequences. "The NEPA
24 process is intended to help public officials make decisions that
25 are based on understanding of environmental consequences, and take
26 actions that protect, restore, and enhance the environment." 40
27 C.F.R. § 1500.1(c). Federal agencies must "to the fullest extent
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1 possible . . . [e]ncourage and facilitate public involvement" in
2 decision making. 40 C.F.R. § 1500.2(d).

3 13. NEPA requires federal agencies to prepare a detailed
4 environmental impact statement ("EIS") for all "major federal
5 actions significantly affecting the quality of the human
6 environment." 42 U.S.C. § 4332(2)(C). "Major federal action"
7 includes actions with effects that may be major and are potentially
8 subject to federal control and responsibility. The EIS must, among
9 other things, disclose the environmental impact of the proposed
10 action, describe any unavoidable environmental effects, and analyze
11 alternatives to the proposed action. Id.

13 14. To determine whether an action's environmental impacts
14 are significant and whether an EIS must be prepared, federal
15 agencies may prepare an environmental assessment. 40 C.F.R. §
16 1508.9. If the EA concludes that a project may have a significant
17 impact on the environment, then an EIS must be prepared. If not,
18 the federal agency must provide a detailed statement of reasons why
19 the project's impacts are insignificant and issue a finding of no
20 significant impact ("FONSI"). Id. § 1508.13.

21 15. In either an EIS or EA, federal agencies must consider
22 the direct, indirect, and cumulative environmental impacts of their
23 actions. Indirect effects are those "caused by the action and are
24 later in time or farther removed in distance but are still
25 reasonably foreseeable." 40 C.F.R. § 1508.8. Cumulative impacts
26 include impacts of "other past, present, and reasonably foreseeable
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1 future actions regardless of what agency (Federal or non-Federal)
2 or person undertakes such other actions." 40 C.F.R. § 1508.7.

3 16. The NEPA regulations promulgated by the Council on
4 Environmental Quality ("CEQ") and binding on all federal agencies
5 provide that an agency must consider the degree to which the
6 proposed action may adversely affect endangered and threatened
7 species or their critical habitat in evaluating the significance of
8 an impact. 40 C.F.R. § 1508.27(b)(9).

9 17. The CEQ regulations also provide that each federal agency
10 shall identify in its NEPA procedures those classes of actions that
11 normally do not require either an EIS or an environmental
12 assessment. 40 C.F.R. § 1507.3(b)(2)(ii). These "categorical
13 exclusions" are actions that do not individually or cumulatively
14 have a significant effect on the human environment. If an agency
15 action falls within one of the defined categorical exclusions
16 categories, no EIS or environmental assessment is required, unless
17 one or more exceptions apply. These exceptions are also defined in
18 the agency's NEPA procedures. 40 C.F.R. § 1508.4.

19 20 18. The NPS NEPA procedures are contained in NPS's DO-12
21 Handbook (the "Handbook"), which states that the procedures
22 contained in the Handbook are binding on all NPS personnel. The
23 Handbook further states that categorical exclusions "are applicable
24 to actions that, under normal circumstances, are not considered
25 major federal actions and that have no measurable impacts on the
26 human environment. However, under exceptional circumstances . . .
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1 these same actions may have measurable or even significant impacts,
2 and a [categorical exclusion] would no longer be applicable."

3 19. The DO-12 Handbook includes a list of the categorical
4 exclusions for NPS activities. The DO-12 Handbook also describes
5 the exceptions to the categorical exclusions. If any NPS action
6 qualifies for one or more of these exceptions, it may not be
7 categorically excluded from NEPA review. These exceptions include,
8 among other things, any action that would:

9 C. have highly controversial environmental effects.

10 D. have highly uncertain and potentially significant
11 environmental effects or involve unique or unknown
12 environmental risks.

13 E. establish a precedent for future action or
14 represent a decision in principle about future actions
15 with potentially significant environmental effects.

16 F. are directly related to other actions with
17 individually insignificant, but cumulatively
18 significant, environmental effects.

19 H. have adverse effects on species listed or
20 proposed to be listed on the List of Endangered or
21 Threatened Species, or have adverse effects on
22 designated Critical Habitat for these species.

23 J. threaten to violate a federal, state, local, or
24 tribal law or requirement imposed for the protection
25 of the environment.

26 O. contribute to the introduction, continued
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1 existence, or spread of nonnative invasive species or
2 actions that may promote the introduction, growth, or
3 expansion of the range of non-native invasive species
4 ([Executive Order] 13112).

5 R. have the potential to be controversial because of
6 disagreement over possible environmental effects.
7

8 B. PARK SERVICE ORGANIC ACT AND PARK SERVICE GENERAL AUTHORITIES
9 ACT

10 20. The Park Service Organic Act of 1916 is the principal
11 statutory authority guiding NPS's activities. The Organic Act
12 requires that the NPS "shall promote and regulate the use of the
13 Federal areas known as national parks, monuments, and reservations
14 hereinafter specified . . . by such means and measures as conform
15 to the fundamental purpose of the said parks, monuments, and
16 reservations, which purpose is to conserve the scenery and the
17 natural and historic objects and the wild life therein and to
18 provide for the enjoyment of the same in such manner and by such
19 means as will leave them unimpaired for the enjoyment of future
20 generations." 16 U.S.C. § 1.

21 21. The Park Service General Authorities Act of 1970, as
22 amended, reaffirms the mandate of the Park Service Organic Act, and
23 states that "[t]he authorization of activities shall be construed
24 and the protection, management, and administration of these areas
25 shall be conducted in light of the high public value and integrity
26 of the National Park System and shall not be exercised in
27 derogation of the values and purposes for which these various areas
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1 have been established, except as may have been or shall be directly
2 and specifically provided by Congress." 16 U.S.C. § 1a-1. NPS is
3 required to achieve these goals in part through the preparation and
4 implementation of general management plans. 16 U.S.C. § 1a-7(b).

5 C. CALIFORNIA DESERT PROTECTION ACT

6 22. The California Desert Protection Act, signed into law by
7 President Clinton on October 31, 1994, transferred over 3 million
8 acres of California desert from the Bureau of Land Management to
9 NPS, redesignated Joshua Tree and Death Valley National Monuments
10 as national parks, and created the Mojave National Preserve.

11 23. In creating the Preserve, Congress found that the "the
12 Mojave Desert area possesses outstanding natural, cultural,
13 historical, and recreational values meriting statutory designation
14 and recognition as a unit of the National Park System." 16 U.S.C.
15 § 410aaa-41(b).

16 24. Congress further found that "the Mojave Desert area
17 should be afforded full recognition and statutory protection as a
18 national preserve." 16 U.S.C. § 410aaa-41(c). With the exception
19 that hunting, trapping, and fishing would continue to be permitted,
20 the Preserve is to be administered like other parts of the National
21 Park System. 16 U.S.C. § 410aaa-46.

22 25. The California Desert Protection Act provides that NPS
23 shall develop a management plan for the Preserve that "place[s]
24 emphasis on historical and cultural sites and ecological and
25 wilderness values within the boundaries of the preserve. 16 U.S.C.
26 § 410aaa-52.

1 D. THE MOJAVE NATIONAL PRESERVE GENERAL MANAGEMENT PLAN

2 26. NPS issued a final General Management Plan for the
3 Preserve on May 31, 2002. The General Management Plan states that
4 NPS will evaluate "the use of and need for all big game and small
5 game guzzlers." Only those guzzlers "found necessary to replace
6 water lost due to actions taken by previous human activities" will
7 be retained. In addition, the General Management Plan provides
8 that restoration of natural water sources will occur simultaneously
9 with the development of any guzzlers found to be necessary. When
10 the natural water sources are restored, the guzzlers are to be
11 removed.
12

13 E. THE ENDANGERED SPECIES ACT

14 27. The ESA "provide[s] a means whereby the ecosystems upon
15 which endangered species and threatened species depend may be
16 conserved." 16 U.S.C. § 1531(b). To achieve these objectives, the
17 ESA directs (in the case of terrestrial species) the U.S. Fish and
18 Wildlife Service ("USFWS") to determine which species of plants and
19 animals are "threatened" and "endangered" and place them on a list
20 of such species. Id. § 1533. A threatened or endangered species is
21 one "in danger of extinction throughout all or a significant
22 portion of its range." Id. § 1532(6) & (20). Concurrently with
23 listing of a threatened or endangered species, USFWS must designate
24 critical habitat. Id. § 1533(a)(3). Critical habitat includes
25 those areas "essential to the conservation" of the species. Id.
26 1532(5)(A)(i) & (ii).
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1 28. Listed species receive the benefit of several protections
2 under the ESA. One of these protections, section 7(a)(2), provides
3 that all federal agencies must avoid actions that (1) jeopardize
4 listed species or (2) destroy or adversely modify designated
5 critical habitat. 16 U.S.C. § 1536(a)(2).

6 29. To comply with these section 7(a)(2) prohibitions,
7 federal agencies must "consult" with USFWS when their actions "may
8 affect" a listed species or designated critical habitat. 50 C.F.R.
9 § 402.14(a). Federal agency actions include those projects
10 "authorized, funded, or carried out by such agency." Id. To
11 facilitate the consultation process, the federal agency proposing a
12 project must prepare a "biological assessment" that identifies
13 listed species in the area and evaluates the potential effects of
14 the proposed action. 50 C.F.R. §§ 402.02, 402.12. At the
15 completion of consultation, USFWS prepares a "biological opinion"
16 as to whether the action jeopardizes the species or destroys or
17 adversely modifies critical habitat and, if so, suggests
18 "reasonable and prudent alternatives." 16 U.S.C. § 1536(b)(3)(A).
19 Both agencies must "use the best scientific and commercial data
20 available" during the consultation process. 16 U.S.C. § 1536(a)(2);
21 50 C.F.R. § 402.14(d).
22

23
24 F. THE DESERT TORTOISE LISTING AND THE BIOLOGICAL OPINION FOR THE
GENERAL MANAGEMENT PLAN

25 30. The USFWS listed the Mojave population of the desert
26 tortoise (*Gopherus agassizii*) as a threatened species on April 2,
27 1990 (55 Fed. Reg. 12178) and designated critical habitat for the
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1 tortoise on February 8, 1994 59 Fed. Reg. 5820). Desert tortoise
2 critical habitat includes most of the Mojave National Preserve.

3 31. On July 6, 2001 the USFWS issued a Biological Opinion to
4 the NPS for the Preserve General Management Plan. The Biological
5 Opinion concluded that activities carried out by NPS pursuant to
6 the General Management Plan would not jeopardize the desert
7 tortoise or adversely modify its critical habitat so long as NPS
8 observed certain measures.

9
10 32. Because game guzzlers are known to adversely affect
11 desert tortoise by attracting predators such as ravens, and by
12 acting as death traps for tortoises that approach the guzzlers to
13 drink, the Biological Opinion included several specific measures to
14 deal with guzzlers constructed or maintained in tortoise habitat:

15 (a) Ranching water developments in desert tortoise critical
16 habitat are turned off when not in use or when cattle are
17 moved off areas having insufficient perennial or ephemeral
18 forage.

19 (b) Existing guzzlers will be retained for native wildlife if
20 they are found to be necessary to replace water lost due to
21 actions taken by previous human activities. These developed
22 water sites would be retained to allow native populations of
23 plants and animals to return to or remain at a previously
24 undisturbed population level. Simultaneously with the
25 retention of these developed water sites, the NPS would
26 actively begin to restore natural water sources to be self-
27 sustaining. When a water source became self-sustaining, the
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1 artificial facility would be removed.

2 (c) Motorized access to guzzlers in wilderness would be
3 considered extraordinary and would not be routinely allowed
4 unless warranted by unusual circumstances. These instances
5 would be considered on a case-by-case basis. The NPS would
6 modify existing water developments (mostly small game
7 guzzlers) to prevent desert tortoises from gaining access and
8 to ensure they are able to escape from them.

9
10 FACTUAL ALLEGATIONS WHICH GIVE RISE TO THE CLAIMS

11 33. Subsequent to the creation of the Mojave National
12 Preserve in 1994, the federal government has been purchasing or
13 receiving via donation privately held ranch holdings in the
14 Preserve and retiring the grazing permits associated with these
15 holdings. The retired grazing lands typically contained wells and
16 other water developments.

17 34. In 2004, NPS surveyed the small game guzzlers within the
18 Preserve. The survey reviewed 116 guzzlers, approximately 87
19 percent of those recorded within the Preserve. Desert tortoise
20 remains were found in 27 percent of the guzzlers, leading NPS to
21 conclude that existing tortoise protection measures have proved
22 ineffective.

23 35. On August 10, 2004, Paul Hoffman, the Deputy Assistant
24 Secretary of the Interior for Fish, Wildlife and Parks met with
25 representatives of the Preserve, the California Department of Fish
26 and Game ("CDFG"), and Safari Club International, a hunting
27 advocacy organization, in Ontario, California. At this meeting,
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1 the participants discussed the possibility of converting abandoned
2 wells to guzzlers for wildlife watering.

3 36. Following this meeting, on August 20, 2004 CDFG requested
4 that the Preserve evaluate the water collection function and
5 storage capacity of three big game guzzlers in the Preserve.
6 Subsequently, on August 30, 2004 and September 2, 2004, CDFG
7 submitted two additional proposals for retrofitting wells and for
8 maintenance and repairs of small game wildlife guzzlers in the
9 Preserve.

10
11 37. By letter dated September 29, 2004, Preserve
12 Superintendent Mary Martin responded to CDFG's proposals regarding
13 artificial water developments in the Preserve. This letter cited
14 the concerns regarding the effects of guzzlers on desert tortoise
15 described in the Biological Opinion for the Preserve General
16 Management Plan. The letter further requested additional
17 information from CDFG regarding the wildlife guzzlers, and
18 recommended that "all three CDFG proposals, as well as any other
19 proposals related to artificial water developments, be considered
20 in one, comprehensive NEPA document."

21 38. Among other things, the September 29, 2004 letter
22 requested information on how wildlife populations have responded to
23 the retirement of grazing allotments, what wildlife species benefit
24 from and how significantly other species are impacted by artificial
25 water developments, whether existing artificial guzzlers are
26 needed, and what data exist on population dynamics of wildlife such
27 as chukar, quail, and deer. The letter noted that NEPA "requires
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1 NPS - any federal agency, for that matter - to address such
2 difficult questions in light of the available data and NPS
3 mandates."

4 39. By letter dated January 31, 2005, Superintendent Martin
5 authorized CDFG to "convert four ranching well developments in
6 Mojave National Preserve into wildlife guzzlers for mule deer."

7 40. The January 31, 2005 authorization, however, notes that
8 NPS had not yet received a response from CDFG to the request for
9 additional information contained in the September 29, 2004 letter.
10 Moreover, the January 31, 2004 authorization does not reference a
11 comprehensive NEPA document or any NEPA review for NPS's
12 authorization of the guzzlers. The letter merely states that the
13 "Department of Interior has approved your request to convert four
14 ranching well developments in Mojave National Preserve into
15 wildlife guzzlers for mule deer in fiscal year 2005."
16

17
18 CLAIM FOR RELIEF

(Violation of NEPA -- 42 U.S.C. § 4332(2)(C))

19 41. Each and every allegation set forth in this Complaint is
20 incorporated herein by reference.

21 42. Defendants' January 31, 2005 authorization to CDFG to
22 convert four former ranching well developments in Mojave National
23 Preserve into wildlife guzzlers is a major federal action
24 significantly affecting the quality of the human environment. As
25 NPS recognized in its September 29, 2004 letter to CDFG, the
26 guzzler proposals may have a significant adverse effect on desert
27 tortoise.
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1 43. Despite NPS's acknowledgment that CDFG's proposals would
2 need to be evaluated in a comprehensive NEPA document, Defendants
3 failed to prepare an EIS, an EA, or any NEPA documentation for
4 their authorization of the conversions of the ranching well
5 developments to guzzlers.

6 44. Defendants' authorization of the well conversions does
7 not fall within any of the categorical exclusions described in
8 NPS's DO-12 Handbook. In addition, one or more of the exceptions
9 to categorical exclusions described in the DO-12 Handbook apply to
10 Defendants' authorization of the well conversions.

11 45. In particular, the authorization to construct guzzlers in
12 the Mojave National Preserve and in desert tortoise habitat will
13 have highly controversial environmental effects. Based on the
14 information NPS solicited, but never received, from CDFG, the
15 guzzlers are likely to have highly uncertain and potentially
16 significant environmental effects or involve unique or unknown
17 environmental risks. The authorization of the well conversions
18 without any environmental review or consideration of mitigation
19 measures to avoid impacts to desert tortoise may establish a
20 precedent for future actions. The well conversions are related to
21 other proposed water developments that may have a cumulatively
22 significant effect on desert tortoise and other Preserve resources.
23 The well conversions are likely to have adverse effects on desert
24 tortoise and designated critical habitat for the desert tortoise.
25 The authorizations threaten to violate several federal laws,
26 including the Endangered Species Act, the Park Service Organic Act,
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1 and the California Desert Protection Act. The guzzlers are likely
2 to contribute to the spread of non-native invasive species such as
3 burros and chukars.

4 46. The California Desert Protection Act provides that the
5 Mojave National Preserve was established as a unit of the national
6 park system, among other reasons, to "perpetuate in their natural
7 state significant and diverse ecosystems of the California desert."
8 16 U.S.C. § 410aaa note. The Park Service Organic Act and Park
9 Service General Authorities Act provide that NPS's authorization of
10 activities in the Mojave National Preserve "shall be conducted in
11 light of the high public value and integrity of the National Park
12 System and shall not be exercised in derogation of the values and
13 purposes for which these various areas have been established . . ."
14 16 U.S.C. § 1a-1. NPS is required to achieve this objective
15 through implementation of the General Management Plan for the
16 Preserve. Defendants' January 31, 2005 authorization, however, is
17 inconsistent with the Preserve General Management Plan's directives
18 regarding guzzlers and artificial water developments within the
19 preserve. These measures are intended to reduce impacts to desert
20 tortoise and other wildlife. In particular, Defendants have not
21 evaluated the use of and need for all big game and small game
22 guzzlers. Defendants have also failed to consider whether the
23 converted wells are necessary to replace water lost due to actions
24 taken by previous human activities. Defendants have further failed
25 to provide for the restoration of natural water sources
26 simultaneously with the development of the guzzlers. Thus, by
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1 failing to observe the measures described in the Preserve General
2 Management Plan, Defendants have violated the Park Service Organic
3 Act and Park Service General Authorities Act, exacerbating the
4 significant environmental impact of the January 31, 2005
5 authorization.

6 47. Accordingly, Defendants' January 31, 2005 authorization
7 of the well conversions without any NEPA documentation despite the
8 acknowledged potential for impacts to desert tortoise and other
9 park resources is arbitrary and capricious, an abuse of discretion,
10 otherwise not in accordance with law, and without observance of
11 procedures required by law within the meaning of the Administrative
12 Procedure Act. 5 U.S.C. § 706(2).
13

14
15 PRAYER FOR RELIEF

16 WHEREFORE, Plaintiffs respectfully request that the Court
17 enter judgment providing the following relief:

18 1. Declare that Defendants' January 31, 2005 authorization
19 to CDFG to convert four ranch wells in the Mojave National Preserve
20 to guzzlers without any environmental review violated NEPA;

21 2. Order Defendants, through a permanent injunction, to set
22 aside and vacate the January 31, 2005 authorization;

23 3. Order Defendants, through a permanent injunction, to halt
24 all activities associated with the January 31, 2005 authorization;

25 4. Order Defendants, through a permanent injunction, to
26 comply with NEPA before any future authorization of artificial
27 water developments in the Mojave National Preserve;
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1 5. Award Plaintiffs' costs, including reasonable attorney's
2 fees and expert witness fees; and

3 6. Provide such other relief as the court deems just and
4 proper.

5 CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

6
7 Pursuant to Civil L.R. 3-16, the undersigned certifies that as
8 of this date, other than the named parties, there is no such
9 interest to report.

10
11 Respectfully submitted,

12
13 DATED: _____

14 _____
15 John Buse (CA Bar No. 163156)
16 CENTER FOR BIOLOGICAL DIVERSITY
17 5656 S. Dorchester Ave. No. 3
18 Chicago, IL 60637
19 Phone: (312) 237-1443

20 _____
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