



Public Employees for Environmental Responsibility

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Ms. Sue Masica
Regional Director
National Park Service
Intermountain Regional Office
12795 Alameda Parkway
Denver, CO 80225

Dear Ms. Masica,

Public Employees for Environmental Responsibility (PEER) requests that officials at Valles Caldera National Preserve in New Mexico manage wildlife in the park in accordance with the laws that govern both the Preserve and national park system. The Valles Caldera is a recent addition to that system and employees there may not fully recognize these laws.

In June 2016 agents of the New Mexico Department of Fish and Game killed a black bear sow in the Preserve after the bear attacked a park visitor, in a perceived defense of its two cubs. National Park Service (NPS) officials appear to have played no part in the decision but simply deferred to the conduct by State agents.

Congress designated Valles Caldera National Preserve as an area of the national park system in December 2014. For two years, Valles Caldera has been governed by the Act of August 25, 1916 (The Organic Act), after being administered as part of the national forest system since 2000.

The Organic Act specifically gives to the Secretary of the Interior, and only the Secretary, the authority to “provide in his discretion for the destruction of such animals...as may be detrimental to the use of any of said park, monuments, or reservations.” (39 STAT. 535). The Organic Act mandates the Secretary to conserve the wildlife within the parks. This mandate is so strict that Congress, in Section 3 of that same law, felt it necessary to grant the Secretary an exception for “detrimental” wildlife. PEER does not question this authority or its use but it is an authority that the NPS must use with extreme care.

Nothing in the enabling statute for Valles Caldera subordinates the authorities of the Organic Act to New Mexico fish and game laws. Congress mandates that the NPS permit hunting and trapping in the Preserve under applicable State and Federal law. Congress also provides that the Secretary may designate areas and establish periods when hunting and trapping may not be allowed, after consultation with the State of New Mexico – not

their consent. This language is the same as that for the approximately 65 other areas of the national park system where Congress has authorized recreational take of wildlife. Similarly, it is the NPS to which Congress has exclusively given the authority to destroy “detrimental” animals.

The NPS may consent to State of New Mexico agents to carry out this task. But the NPS is not allowed to helplessly stand by and subordinate its Organic Act authority to State laws. Otherwise untoward situations may arise where the individual States could remove animals they deem harmful to public safety, game management or any other number of particular objectives. State wildlife management objectives may conflict with the laws, regulations and Management Policies of the NPS. As an example, during the tenure of Secretary James Watt, the NPS was pressured to allow State agents to kill mountain lions in Guadalupe National Park, Texas to reduce depredation of sheep grazing adjacent to the park. The NPS stood its ground and said “no.” Currently, the State of Utah wishes to kill mountain lions in Glen Canyon National Recreation Area to increase the hunt-able population of bighorn sheep (We assure you that PEER is watching this situation very closely).

You recently led the NPS through a difficult situation where the NPS promulgated its own rules for the take of wolves and grizzly bears in national preserves; rules that were superior to the much more liberal Alaska State rules.

Some may point to the Valles Caldera enabling act (“Savings clause--Nothing in this section affects any jurisdiction or responsibility of the State with respect to fish and wildlife in the Preserve.”) as support for the premise that State game law is superior to the Organic Act. That would be mistaken. Similar language exists in many of the laws for those parks where hunting and/or trapping is authorized. For example, in the 1994 California Desert Protection Act for the Mojave National Preserve (108 STAT. 4491); and to “public lands” in Alaska as defined by the Alaska National Interest Lands Conservation Act of 1980 (94 STAT. 2484). Neither the NPS nor the Federal courts have applied this wording to vest in the States exclusive, or superior, authority over the Federal laws that govern, and Federal agencies that administer, wildlife in the areas of the national park system. We do not expect that the NPS will begin doing so in Valles Caldera or, potentially, in Glen Canyon.

PEER is also troubled because the park visitor who was attacked was engaged in an athletic event – a marathon in the park. The NPS apparently failed to issue a Special Use Permit for this activity under the regulations at 36 CFR 2.50. If we are incorrect, please inform us. PEER expects better from the NPS now that the Preserve begins its third year as part of the national park system.

Further, PEER requests and expects that the NPS officials at Valles Caldera will inform us of ALL requests for and approvals of athletic events in the upcoming year of 2017.

Cordially,

Jeff Ruch
Executive Director

cc: Superintendent, Valles Caldera National Preserve
Superintendent, Glen Canyon National Recreation Area