

PEER vs. U.S. Air Force

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PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY ("PEER"),
and MARK HAGAN and WANDA DEAL in their
individual capacity and as members of PEER

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY
("PEER"), MARK HAGAN, in his
individual capacity and as a member of PEER,
and WANDA DEAL, in her individual capacity
and as a member of PEER

PLAINTIFFS

vs.

UNITED STATES AIR FORCE, and F. WHITTEN PETERS,
in his official capacity as SECRETARY OF THE UNITED
STATES AIR FORCE

DEFENDANTS

Civil No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is an action for declaratory and prospective injunctive relief. Plaintiffs, Public Employees For Environmental Responsibility ("PEER"), Mark Hagan, in his individual capacity and as a member of PEER, and Wanda Deal, in her individual capacity and as a member of PEER, bring this action to require the United States Air Force to comply with the provisions of the Sikes Act, 16 U.S.C. § 670 et seq. in the conservation and management of natural resources at Edwards Air Force Base ("Edwards AFB").
2. Additionally, plaintiffs seek a declaratory judgment pertaining to interpretation of the Sikes Act provisions as they apply to conservation and management of natural resources on military installations, generally, and on Edwards AFB, specifically.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action by virtue of the general federal question statute, 28 U.S.C. § 1331, and declaratory relief is authorized by the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02. Sovereign immunity has been waived by the Administrative Procedure Act, 5 U.S.C. § 702, which also provides for declaratory and mandatory injunctive relief. Federal question jurisdiction arises by application of the Administrative Procedure Act, 28 U.S.C. §§ 701 et seq., to remedy defendants' violation of the Sikes Act, 16 U.S.C. §§ 670 et seq.
4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

PARTIES

5. Plaintiff, Public Employees for Environmental Responsibility ("PEER") is a private, I.R.S. 501(c)(3) nonprofit organization, organized under the laws of the District of Columbia. PEER works nationwide with government scientists, land managers, environmental law enforcement agents, field specialists, and other resource professionals committed to responsible management of America's public resources. PEER supports public natural resource employees in seeking a higher standard of environmental ethics and scientific integrity within their respective governmental agencies. A substantial portion of PEER's activities revolve around protection of civilian Defense workers who are raising environmental concerns. PEER supports the responsible conservation and management of natural resources on military lands and promotes a higher standard of environmental ethics and scientific integrity among military natural resource employees.
6. Plaintiff, Mark Hagan is a resident of Lancaster, Los Angeles County, California. Mr. Hagan is a civilian employee of the United States Air

Force ("USAF"), assigned to Edwards AFB as natural resource manager/base wildlife biologist. Mr. Hagan is an active member of PEER.

7. Plaintiff, Wanda Deal is a resident of Lancaster, Los Angeles County, California. Ms. Deal is a civilian employee of USAF, assigned to Edwards AFB as an assistant natural resource manager. Ms. Deal is an active member of PEER.

8. Defendant United States Department of the Air Force is a federal agency charged with the management and conservation of natural and cultural resources located on installations under USAF control, including Edwards AFB, consistent with its common national defense mission.

9. Defendant F. Whitten Peters, the Secretary of the United States Air Force is sued in his official capacity. In that capacity, he is responsible for ensuring that the USAF and its facilities comply with federal law, including the Sikes Act, 16 U.S.C. § 670 et seq., which requires the proper management and conservation of natural resources on military installations.

SIKES ACT STATUTORY BACKGROUND

10. 1949 Sikes Bill. In 1949, Congress adopted P.L. No. 81-345, originally known as the Sikes Bill, which directed and authorized the Secretary of the Air Force to carry out a program for fish and wildlife conservation on what was then known as the Elgin Field Reservation ("EFR") in the Florida panhandle. The Sikes Bill directed the Secretary, in cooperation with the U.S. Fish and Wildlife Service ("USFWS") and consistent with state fish and wildlife regulations, to plan, develop and coordinate wildlife, fish and game conservation and rehabilitation on the EFR, and to establish regulations to carry out those responsibilities. These regulations provided for the issuance of hunting and fishing permits, and the nominal fees collected for these permits were to be used for conservation purposes on EFR.

11. Sikes Act of 1960. In 1960, Congress enacted the Sikes Act, P.L. No. 86-797, "to promote effectual planning, development, maintenance, and coordination of wildlife, fish, and game conservation and rehabilitation on military reservations." The Sikes Act of 1960 continued to focus on fish and wildlife conservation, but expanded the scope of the original Sikes Bill to include all domestic military reservations. It authorized the Secretary of Defense to develop, in mutual agreement with the Secretary of Interior and the appropriate state wildlife agency, a "cooperative plan" to carry out these purposes on all military reservations. Cooperative plans were designed to allow for the issuance of special hunting and fishing permits, with proceeds to be used solely to pay for activities authorized by the plan, including habitat improvement. The 1960 Sikes Act clearly demonstrated congressional recognition of the significant potential of and need for fish and wildlife

management and recreation on an estimated 25 million acres of military lands.

12. 1974 Sikes Act Amendments. In 1974, Congress enacted P.L. No. 93-452, which amended the Sikes Act to require cooperative conservation plans to provide for: (1) fish and wildlife habitat improvements and modifications, (2) range rehabilitation when necessary for wildlife management, and (3) control of off-road vehicle traffic. The 1974 amendments also included appropriations for implementing cooperative plans, and required the Secretaries of Interior and Agriculture to develop similar comprehensive plans on public lands under their respective jurisdictions.

13. 1982 Sikes Act Amendments. Congress amended the Sikes Act again in 1982 by enacting P.L. No. 97-396. The 1982 amendments expanded the scope of cooperative conservation plans by adding a requirement that such plans provide for "specific habitat improvement projects and related activities and adequate protection for species of fish, wildlife, and plants considered threatened or endangered."

14. 1986 Sikes Act Amendments. A series of hearings and debates in Congress during 1984-1986 resulted in significant amendments to the Sikes Act in 1986, P.L. No. 99-561. Extensive testimony indicated that the Department of Defense ("DOD") was not substantially complying with the Sikes Act. In response, Section 2 of the 1986 amendments mandated that the development, implementation and enforcement of fish and wildlife management activities on military lands be provided by professionally trained DOD personnel. Specific language in the amendments addressed the related concern that DOD was outsourcing or "contracting out" significant activities related to fish and wildlife management and conservation, especially by application of Office of Management and Budget ("OMB") Circular A-76.d, in part, as follows: (b) Fish and Wildlife Management Services. – The Secretary of each military department shall ensure, to the extent feasible, that the services necessary for the development, implementation, and enforcement of fish and wildlife management on each military reservation within the United States under the jurisdiction of the Secretary are provided by the Department of Defense Personnel who have professional training in those services.

(d) With regard to the implementation and enforcement of cooperative plans agreed to under subsection (a) –

(1) neither Office of Management and Budget Circular A-76 nor any successor circular thereto applies to the procurement of services that are necessary for that implementation and enforcement; and

(2) priority shall be given to the entering into of contracts for the procurement of such implementation and enforcement services with Federal and State agencies having responsibility for the conservation or management of fish or wildlife. Sikes Act Amendments, P.L. No. 99-561. §§ 2-3. 100 Stat. 3149. 3149-50 (1986).

15. Sikes Act Improvement Act of 1997. The Sikes Act Improvement Act ("SAIA") of 1997 made additional important changes to the Sikes Act, P.L. No. 108-85. The SAIA requires the Secretary of Defense to "carry out a program to provide for the conservation and rehabilitation of natural resources on military installations." 16 U.S.C. § 670a(a)(1)(A). In order to facilitate the program, the Secretary of each military department is required to "prepare and implement an integrated natural resources management plan for each military installation in the United States" 16 U.S.C. § 670a(a)(1)(B).

16. Each Integrated Natural Resources Management Plan ("INRMP") under the SAIA "shall" include the following elements:

- (A) fish and wildlife management, land management, forest management and fish – and wildlife-oriented recreation;
- (B) fish and wildlife habitat enhancement or modifications;
- (C) wetland protection, enhancement, and restoration, where necessary for support of fish, wildlife, or plants;
- (D) integration of, and consistency among, the various activities conducted under the plan;
- (E) establishment of specific natural resource management goals and objectives and timeframes for proposed actions;
- (F) sustainable use by the public of natural resources to the extent that the use is not inconsistent with the needs of fish and wildlife resources;
- (G) public access to the military installation that is necessary or appropriate for the use described in subparagraph (F), subject to requirements necessary to ensure safety and military security;
- (H) enforcement of applicable natural resource laws (including regulations);
- (I) no net loss in the capability of military installation lands to support the military mission of the installation; and
- (J) such other activities as the Secretary of the military department determines appropriate. 16 U.S.C. § 670a(b). The Secretary of Defense annually must review the status of INRMPs and report to Congress. 16 U.S.C. § 670a(f).

17. In response to chronic concerns about DOD's noncompliance and the continued contracting out of natural resource management functions, the SAIA expanded the prior Sikes Act requirements for maintaining qualified professional natural resource personnel as follows: To the extent practicable using available resources, the Secretary of each military department shall ensure that sufficient numbers of professionally trained natural resource management personnel and natural resource law enforcement personnel are available and assigned responsibility to perform tasks necessary to carry out this title [16 U.S.C. §§ 670 et seq.], including the preparation and implementation of integrated natural resource management plans.

16 U.S.C. § 670e-2 (emphasis added). The Sikes Act continues to prohibit the application of OMB Circular A-76 to the procurement of

natural resource management-related services. 16 U.S.C. § 670a(d). The SAIA specifically makes this prohibition applicable "to the implementation and enforcement of integrated natural resources management plans." *Id.* In those limited instances where outsourcing is not prohibited by the Sikes Act, priority for the procurement of such services must be given to federal and state agencies having responsibility for the conservation or management of fish and wildlife. 16 U.S.C. § 670a(d).

18. In summary, the Sikes Act, as amended, serves to advance two primary goals: (1) to ensure the wise stewardship and management of natural resources on the approximate 25 million acres of lands on military installations in the United States for the public benefit; and (2) to ensure that DOD and the military departments maintain a work force of government employees with adequate qualifications to plan and implement a program of integrated natural resources management on military installations for the benefit of the public. Congress established a clear public policy that contracting out the planning or implementation of integrated natural resources management was not in the best long-term interest of the public.

FACTS

19. PEER is a private, I.R.S. 501(c)(3) non-profit organization that works nationwide with government scientists, land managers, environmental law enforcement agents, field specialists, and other natural resource professionals committed to responsible management of America's public resources. PEER supports public natural resource employees in seeking a higher standard of environmental ethics and scientific integrity within their respective governmental agencies. PEER specifically supports the responsible conservation and management of natural resources on military lands in the United States. PEER members include natural resource management employees within all branches of the United States military, stationed at installations across the United States, including Edwards AFB. The policies and objectives sought to be advanced by PEER are entirely consistent and co-extensive with the policies sought to be advanced by Congress in passing the Sikes Act, as amended by the SAIA.

20. Plaintiff Mark Hagan is a civilian employee of the USAF assigned to Edwards AFB as a natural resource manager/base wildlife biologist. Mr. Hagan is an active member of PEER. Mr. Hagan has been employed at Edwards AFB for approximately thirteen years, and has been involved in numerous natural resource management activities and projects within the scope of his employment. Mr. Hagan has a deep professional and personal concern for the welfare of the vast natural resources on Edwards AFB.

21. Plaintiff Wanda Deal is a civilian employee of the USAF assigned to Edwards AFB as assistant natural resource manager. Ms. Deal is an

active member of PEER. Ms. Deal has been employed at Edwards AFB for approximately fourteen years, and has been involved in numerous natural resource management activities and projects within the scope of her employment for the past ten years. Ms. Deal has a deep professional and personal concern for the welfare of the vast natural resources on Edwards AFB. She often participates in birding, hiking, and other recreational and educational uses of the natural resources on Edwards AFB during her leisure time.

22. Edwards AFB is situated on approximately 301,000 acres in the Antelope Valley of Southern California. Since the 1930s, the installation has supported defense aviation activities that have included bombing and gunnery practice, aircraft test and evaluation, rocket engine and propellant testing, and aeronautical research and flight testing.

Approximately 90 percent of the base acreage remains undeveloped to support aircraft test ranges. The host units on base are the 412th Test Wing and the 95th Air Base Wing of the Air Force Flight Test Center ("AFFTC") and the U.S. Air Force Test Pilot School ("TPS"). The base also supports a large number of associate organizations, including the National Aeronautics and Space Administration ("NASA") – Dryden Flight Research Center ("DFRC"), Air Force Research Laboratory ("AFRL"), the Air Force Operational Test and Evaluation Center ("AFOTEC"), and the 18th Space Surveillance Squadron ("18SPSS"). Edwards AFB also leases an undetermined number of remote sites that are largely undeveloped, including some wilderness areas.

23. Test activities at Edwards AFB include aircraft test flights that take off from and land at the main runway or the dry lake beds, bombing tests in the Precision Impact Range Area ("PIRA") in the eastern portion of the base, and static testing of rocket motor/engines at AFRL. Much of the aircraft testing takes place at altitude in spin test areas and low-level and supersonic test corridors; these test activities have very little ground activity and little direct impact on natural resources. Large areas of the base remain relatively undisturbed and undeveloped in order to accommodate these testing activities, allowing a large land area for effective conservation of natural resources.

24. Ground-disturbing impacts on natural resources at Edwards AFB, as a result of mission activities include bomb impacts, rocket engine testing, runway-related activities, and construction. Support and non-mission related activities, such as management and disposal of hazardous substances, industrial operations, maintenance activities, and recreational activities may also potentially affect natural resources. In addition, approximately 15,000 base personnel and their families reside on base. Recently, Edwards AFB has begun to market itself for and to accept more ground-disturbing activities. Additional contemplated or potential activities include, for example, Marine Helicopter Squadron, Army tank maneuvers, commercial racing activities, and movie industry activities.

25. Edwards AFB lies within the Mojave Desert and supports a variety of sensitive resources typical of a desert environment. The primary habitat types found on base are creosote bush scrub, Joshua tree woodland, arid-phase saltbush scrub, halophytic-phase saltbush scrub, dry lake beds, mesquite woodlands, and ponds.

26. Several ecologically sensitive plant species have been identified on Edwards AFB. Nine sensitive plant species that are listed by the California Native Plant Society ("CNPS") have been identified on the base, including alkali mariposa lily (*Calochortus striatus*), desert cymopterus (*Cymopterus deserticola*), Barstow woolly sunflower (*Eriophyllum mohavense*), crowned onion (*Muilla coronota*), Mojave spineflower (*Chorizanthe spinosa*), many-flowered sapphire flower (*Eriastrum pluriflorum*), yellow spiny cape (*Goodmania luteola*), sage-like loeflingia (*Loeflingia squarrosa*), and Lancaster milkvetch (*Astragalus preussii*). In addition, about 95% of the known population of desert cymopterus occurs on Edwards AFB. Large areas of Edwards AFB have not been surveyed adequately for the occurrence of sensitive plant species.

27. The wildlife on Edwards AFB includes a number of sensitive species. The desert tortoise (*Gopherus agassizi*) is a federal- and state-listed threatened species and is a permanent resident on the base. Approximately 60,800 acres (100 square miles or 21 percent) of the base fall within the Fremont-Kramer Desert Tortoise Critical Habitat Unit, one of twelve critical habitat units in the southwestern United States. This area must be managed to meet the U.S. Fish and Wildlife Service ("USFWS") management goal of no net loss of habitat. Critical habitat on Edwards AFB encompasses the PIRA and a portion of the AFRL, which were designated as a Desert Tortoise Enhancement Area in 1990-91.

28. Four sensitive reptile species identified on base are desert tortoise, Southwestern pond turtle (*Clemmys marmorata pallida*), chuckwalla (*Sauromalus obesus*), and Mojave fringe-toed lizard (*Uma scoparia*). Eighteen species of sensitive birds have been sighted at Edwards AFB; many of these are winter migrants and are unlikely to nest in the area. Other species are known or expected to nest on base, including the prairie falcon (*Falco mexicanus*), short-eared owl (*Asio flammeus*), long-eared owl (*Asio otus*), burrowing owl (*Speotyto cunicularia*), Le Conte's thrasher (*Toxostoma lecontei*), and loggerhead shrike (*Lanius ludovicianus*). Nine sensitive mammal species have been identified on base, including the state-threatened Mojave ground squirrel (*Spermophilus mohavensis*), American badger (*Taxidea taxus*), and desert kit fox (*Valpes macrotis*).

29. Other sensitive habitats on Edwards AFB include playa and pool areas that fall under the wetlands purview of the federal Clean Water Act, areas of significant topographic relief, sensitive plant populations, Sensitive Ecological Areas ("SEAs") as designated by the county of Los

Angeles, and rare, wind-eroded ridges called yardangs. The unique playa and pool complex is not known to occur anywhere else in North America.

30. The Environmental Management Directorate at Edwards AFB is responsible for managing environmental planning, conservation, compliance, restoration, and pollution prevention functions. Natural resource management is the responsibility of the Conservation Branch within the Plans, Programs, and Conservation Division of the Environmental Management Directorate.

31. The Natural Resource Management staff at Edwards AFB is responsible for conservation and management of threatened and endangered species, fish and wildlife, wetlands and waters of the United States, grazing and cropland, forestry, research, pest management, and outdoor recreation activities such as hunting and fishing. In addition, the Natural Resource Management personnel must coordinate project planning and implementation with other organizations on base and review project plans and environmental documentation to ensure compliance with applicable natural resources regulations. They consult with the USFWS and coordinate with the California Department of Fish and Game ("CDFG") and other agencies, as required. Natural Resource Management personnel are responsible for training and education of base personnel involved in other mission requirements regarding the presence and management of natural resources on the base. They also support the public affairs office in providing training and education for on-and off- base personnel and the public.

32. The Conservation Branch is also responsible for implementing the Environmental Impact Assessment Program at Edwards AFB in accordance with the National Environmental Policy Act ("NEPA"). Conservation staff is required to review work orders for each proposed project on Edwards AFB to determine what level of environmental analysis and documentation would be required (e.g., categorical exclusion, environmental assessment ("EA"), or environmental impact statement ("EIS")). Natural resources management personnel also have significant responsibility in reviewing environmental impacts of on-base projects and programs.

33. At this time, only two fulltime employees at Edwards AFB are assigned exclusively to natural resource management-related responsibilities. These include Mr. Mark Hagan, Natural Resource Manager, Conservation Branch; and Ms. Wanda Deal, Assistant Natural Resource Manager, Conservation Branch. Mr. Chris Rush, Conservation Branch Chief, provides administrative oversight. An undetermined number of other Edwards AFB employees, with little or no natural resources training, devote some portion of their time to activities relating to natural resource management, constituting an estimated two fulltime equivalents. No natural resources law enforcement personnel are employed at Edwards AFB.

34. The majority of natural resource management functions at Edwards AFB are conducted by contractors. At this time, at least one fulltime natural resource manager is employed under contract, and an additional five to seven fulltime equivalents conduct natural resource management activities. In addition, significant natural resource planning and management decisions frequently are made by more senior Edwards AFB employees with no natural resource management training, often for reasons unrelated to prudent natural resource management.

35. The environmental management directorate at Edwards AFB has designated the assistant natural resource manager position (Ms. Wanda Deal) as an "over hire" position, slated for elimination in the near future as a manpower-reduction or cost-savings measure. Most of the responsibilities previously performed by the assistant natural resource manager have been transferred, or are in the process of being transferred, to contractors. Other critical natural resource management responsibilities have been, and are in the process of being, transferred from professional Edwards AFB natural resources employees to contractors.

36. The INRMP, one of the major requirements of the Sikes Act, was planned, prepared and compiled primarily by a contractor. Revision and modification of the INRMP currently is under contract to another contractor. The INRMP itself states Edward AFB's intent "that most of the projects will be accomplished by contractors." None of the natural resource-related contracts to date have been offered to either the USFWS or the California Department of Fish and Game, as required by the Sikes Act. There is no provision in the INRMP for offering such contracts to these agencies.

37. Over the last ten years, the Environmental Management Directorate at Edwards AFB has transferred an increasing amount of natural resource management responsibilities to an "in- house" engineering and technical support services ("ETSS") contractor. The transfer accelerated during 1997-99, when virtually all substantive oversight by Edwards AFB natural resource management professionals was eliminated. During this time period, the following natural resource functions were transferred to the ETSS contractor:

- (a) monitoring of Endangered Species Act compliance;
- (b) determination of the level of habitat protection required for compliance with the Endangered Species Act;
- (c) interpretation and determination of Migratory Bird Treaty Act requirements, including depredation decisions;
- (d) primary authority for determining potential project impacts to natural resources on Edwards AFB including the applicability of federal environmental protection statutes and regulations;
- (d) development and implementation of a geographic information system ("GIS") as it relates to natural resource management on Edwards AFB: and

(f) developing standard operating procedures and natural resources management requirements at Edwards AFB.

38. Air Force resources employees were harassed by their superiors for attempting to oversee the proper implementation of tasks by contractors, and for insisting that contractors comply with existing biological opinions, as well as federal and state environmental laws and regulations. In late 1999, Edwards AFB unlawfully reassigned oversight of the ETSS contractor to a new natural resource management contractor, in an increased effort to avoid the "burden" of adequate compliance with biological opinions and other federal and state environmental laws and regulatory requirements.

39. The environmental management directorate at Edwards AFB has unlawfully transferred significant natural resource management responsibilities from Air Force employees to contractors. Major program elements, such as endangered species management, wetlands/waters management, GIS development, and natural resources planning and budget responsibilities, recently have been transferred to natural resource management contractors. Examples of projects recently transferred to contractors (for oversight, execution, funding requests, developing statements of work, etc.) include the following:

- (a) day-to-day oversight of ETSS contracts;
- (b) geographic information systems – natural resource data manipulation planning;
- (c) oversight of ETSS contractor performing endangered species education;
- (d) operation and oversight of base regulatory requirements pursuant to Section 404 of the Clean Water Act;
- (e) oversight of ETSS contractor's monitoring of desert tortoise compliance requirements;
- (f) natural resource consultations with other federal and state agencies;
- (g) natural resource mitigation project funds;
- (h) oversight and execution of wetland/floodplain study;
- (i) oversight of contractor's performance of wildlife hazard elimination project;
- (j) desert tortoise protection in the Precision Impact Range Area;
- (k) oversight of desert tortoise exclusion fence project;
- (l) oversight of habitat protection fence (desert tortoise);
- (m) oversight of highway fencing (desert tortoise);
- (n) mesquite wetland plan development;
- (o) oversight of permits pursuant to Section 401 of the Clean Water Act;
- (p) Endangered Species Act consultation with the U.S. Fish and Wildlife Service; and
- (q) open burn/open detonation endangered species issues.

40. Examples of specific tasks that are assigned, or have been assigned, to natural resource contractors unlawfully include the following:

- (a) program and budget formulation and project funding;

- (b) perform natural resource analysis;
- (c) prepare environmental risk assessments;
- (d) specifically revise Flight line Operations Programmatic Environmental Assessment to meet current mission conditions;
- (e) develop program presentations and brief affected audiences;
- (f) develop, maintain, analyze, and report on program products;
- (g) attend and support applicable Edwards AFB program/project planning meetings;
- (h) prepare implementation plans;
- (i) track status of projects to identify possible impacts;
- (j) prepare environmental baseline surveys and waivers;
- (k) process all Air Force form 332s (work orders) and 103s (digging permits) for Edwards activities;
- (l) prepare research designs for program elements;
- (m) prepare/approve and implement mitigation, restoration and monitoring plans;
- (n) conduct technical and economic evaluations;
- (o) perform NEPA analysis as required for Edwards AFB projects;
- (p) prepare environmental impact analysis process documentation to include Air Force Form 813s, environmental impact studies / reports, environmental assessments, and categorical exclusions;
- (q) perform natural resource analysis as required for all Edwards AFB projects.

41. Bona fide natural resource management at Edwards AFB has been perceived and approached by base management primarily as an impediment to "progress." Natural resource management is treated more as an unwanted regulatory requirement that must be satisfied in a minimal way, with the least cost and the fewest personnel, rather than demonstrating a commitment to proper conservation and management for the public good.

42. Edwards AFB management has used contractors to take over natural resource management functions, in part, because contractors are more likely to do whatever it takes to please management. When Air Force civil service employees insist on a proper course of action in a particular project, and that approach is perceived to be burdensome or restrictive by management, the project often is then transferred to a contractor. The contractor is then instructed by base management to achieve management's development objective, even if it violates the INRMP or environmental regulations. Base management also has used contractors to delete projects or INRMP requirements that management did not want to carry out. Contractor requirements routinely are dictated by upper-level Environmental Management Directorate employees who lack professional natural resources management training.

43. Air Force natural resource management employees who have voiced concerns or criticisms of the base's policies or compliance issues have been retaliated against by their superiors in the form of reprimands.

removal of natural resource management responsibilities, poor performance evaluations, and planning to eliminate their civil service positions.

44. A recent independent audit of the natural resource management program at Edwards AFB, pursuant to the Air Force ECAMP process ("Environmental Compliance and Management Program") documented numerous serious violations of the Sikes Act. However, the auditor, a professional natural resource manager from another Air Force installation, was orally reprimanded for his candid report. Efforts were made to suppress results of the report and to cover up the serious violations.

45. Edwards AFB has failed to comply with Clean Water Act Section 404 and its implementing regulations relating to wetlands/waters of the United States. Specifically, Edwards AFB has refused and continues to refuse to follow jurisdictional wetland determinations by the United States Army Corps of Engineers, the federal agency with primary enforcement authority pursuant to Clean Water Act Section 404.

46. Edwards AFB has failed to comply with and refuses to enforce requirements arising under the Endangered Species Act. Specifically, Edwards AFB has developed, destroyed, and manipulated certain areas within the critical habitat area of the desert tortoise, in direct violation of existing Biological Opinions of the U.S. Fish and Wildlife Service ("USFWS").

CLAIM FOR RELIEF

VIOLATIONS OF THE SIKES ACT

47. All previous paragraphs of this complaint are incorporated herein by reference.

48. Edwards AFB is a "military installation" within the meaning of the Sikes Act. Edwards AFB is administered by the Secretary of the Air Force, as the person with ultimate responsibility for compliance with the Sikes Act on Air Force installations. Where the context so requires in this complaint, allegations pertaining to "Edwards AFB" as a functioning unit of the Air Force (as opposed to a unit of real property) shall be considered allegations, likewise, pertaining to the United States Air Force and the Secretary of the United States Air Force.

49. Edwards AFB has contracted out major natural resource management and implementation functions in violation of the Sikes Act 16 U.S.C. §§ 670a, 670e-2.

50. Edwards AFB has failed to maintain sufficient numbers of professionally trained natural resources management personnel and natural resources law enforcement personnel to perform tasks necessary to carry out the requirements of the Sikes Act, including the preparation and implementation of integrated natural resources management plans, in violation of 16 U.S.C. § 670e- 2.

51. Under the guise of "re-engineering," Edwards AFB unlawfully has

applied OMB Circular A-76 to downsize the natural resource management staff at Edwards AFB, and transfer those responsibilities to contractors. This action violates the Sikes Act, 16 U.S.C. § 670a(d).

52. Edwards AFB violated the Sikes Act by failing to give priority for the entering into of contracts for the procurement of natural resource implementation and enforcement services, with federal and state conservation or management agencies. 16 U.S.C. § 670a(d)(2).

53. Edwards AFB violated the Sikes Act in the preparation and implementation of its INRMP because it failed to reach a "mutual agreement" with the USFWS and the California Department of Fish and Game regarding the provisions of the INRMP. 16 U.S.C. § 670a(a)(2).

54. Edwards AFB violated the Sikes Act by failing to properly establish and implement the required elements of an INRMP including, but not limited to, failure to provide adequate wildlife management and habitat enhancement for sensitive species, inadequate wetland protection and enhancement, and failure to comply with and enforce applicable natural resource laws and regulations. 16 U.S.C. § 670a(b)(1).

55. Plaintiffs Mark Hagan and Wanda Deal are professional natural resource management personnel within the purview of the Sikes Act, 16 U.S.C. § 670e-2. This section of the Sikes Act requires the Secretary of the Air Force to ensure the continued employment of sufficient numbers of USAF employees in plaintiffs' positions, in order properly to carry out the required natural resources management functions at Edwards AFB.

56. Plaintiffs Mark Hagan and Wanda Deal have dedicated their careers to ethical natural resource management at Edwards AFB for more than a decade. They have a significant interest in continued employment at Edwards AFB as natural resource management professionals.

57. Plaintiffs Mark Hagan and Wanda Deal have significant interests, both professional and personal, in ensuring that the USAF properly manages natural resources at Edwards AFB, in compliance with the Sikes Act and other federal and state environmental laws, for the ultimate benefit of the natural environment and the public, as well as their own professional development.

58. The interests of plaintiffs Mark Hagan and Wanda Deal, as professional natural resource managers for the USAF, are wholly consistent with the goals and interests sought to be advanced by PEER, in which they are active members. PEER has significant interests in seeking a high standard of environmental ethics and scientific integrity in the management of natural resources on USAF military installations in general, and on Edwards AFB, specifically.

59. The interests of plaintiffs, as described herein, are the very interests the Sikes Act was designed to protect. Plaintiffs' interests are being damaged significantly by defendant's violations of the Sikes Act described in this complaint, and plaintiffs' injuries can be redressed by the requested relief.

60. The actions described herein as violations of the Sikes Act constitute final agency actions of the USAF, pursuant to the authority and oversight of the Secretary of the USAF. The actions described as violations of the Sikes Act are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. Plaintiffs have suffered a legal wrong, have been adversely affected, and are aggrieved by the final agency actions of the USAF in violation of the Sikes Act.

EQUAL ACCESS TO JUSTICE ACT

61. All preceding paragraphs of this complaint are incorporated herein by reference.

62. The final agency actions of the United States Air Force in violation of the Sikes Act, as set forth herein, were not substantially justified. Therefore, plaintiffs are entitled to their reasonable attorneys fees and expenses pursuant to the Equal Access to Justice Act, 5 U.S.C. §§ 504 et seq.

RELIEF REQUESTED

63. All preceding paragraphs of this complaint are incorporated herein by reference.

64. For the reasons set forth herein, plaintiffs seek the following injunctive relief:

(a) an order directing defendants to refrain from taking any retaliatory action against plaintiffs Mark Hagan and Wanda Deal for bringing this action;

(b) an order prohibiting defendants from discharging, reassigning, transferring, or otherwise removing plaintiff Wanda Deal from her current position as assistant natural resource manager at Edwards AFB;

(c) an order prohibiting defendants from discharging, reassigning, transferring, or otherwise removing plaintiff Mark Hagan from his current position as natural resource manager at Edwards AFB;

(d) an order directing defendants to hire additional professional natural resources management and law enforcement personnel, assigned to Edwards AFB, to properly perform tasks necessary to carry out the mandates of the Sikes Act, including the preparation and implementation of the integrated natural resources management plan;

(e) an order directing defendants to transfer all natural resources management planning and implementation responsibilities currently being conducted by contractors, to professionally trained natural resources management personnel assigned to Edwards AFB within a reasonable period of time to be determined by the Court;

(f) an order directing defendants to transfer all natural resources management planning and implementation responsibilities currently being conducted by Edwards AFB employees lacking professional natural resources management qualifications, to professionally trained natural resources management personnel assigned to Edwards AFB

within a reasonable period of time to be determined by the Court;
(g) an order directing defendants to refrain from the application of OMB Circular A-76, "re-engineering" policies, or any other policy or procedure intended to consider or implement the contracting out of natural resources management planning or implementation functions based on manpower reduction, cost analysis or other economic determinations;

(h) an order prohibiting defendants from contracting out any services related to natural resources management functions in any way, other than functions which are labor-intensive and require no professional judgment, such as manual labor, data collection for surveys, and other raw data collection functions; and requiring that all contract personnel conducting natural resource-related services must be under the direct oversight control of a USAF natural resources employee assigned to Edwards AFB;

(i) an order directing defendants to comply with the Sikes Act requirement that priority for the entering into of contracts for the procurement of natural resource implementation and enforcement services must be given to federal and state conservation or management agencies;

(j) an order directing defendants to conduct a review of the existing INRMP, make changes necessary to comply with both the letter and the spirit of the Sikes Act, and to reach a mutual agreement with the U.S. Fish and Wildlife Service and the California Department of Fish and Game regarding the provisions of the revised INRMP;

(k) an order directing defendants to comply with the Clean Water Act, including, but not limited to, any and all jurisdictional wetland determinations by the U.S. Army Corp of Engineers;

(l) an order directing defendants to comply with the Endangered Species Act including, without limitation, absolute compliance with all conditions and requirements of any USFWS Biological Opinion related to the desert tortoise and its critical habitat;

(m) an order directing defendants to comply with all other natural resource laws, including regulations; and

(n) an order directing defendants to maintain compliance with the Sikes Act in all other regards.

65. For the reasons set forth herein, plaintiffs seek the following declaratory relief:

(a) a declaration that defendants are in violation of the Sikes Act by contracting out natural resource management and implementation functions;

(b) a declaration that defendants are in violation of the Sikes Act by failing to maintain sufficient numbers of professionally trained natural resources management personnel and natural resources law enforcement personnel to perform tasks necessary to carry out the requirements of the Sikes Act. including the preparation and implementation of integrated

natural resources management plans;
(c) a declaration that defendants unlawfully have applied OMB Circular A-76 under the guise of "re-engineering," in violation of the Sikes Act;
(d) a declaration that defendants are in violation of the Sikes Act by failing to give priority for the entering into of contracts for the procurement of natural resource implementation and enforcement services, with federal and state conservation or management agencies;
(e) a declaration that defendants are in violation of the Sikes Act by attempting to implement an INRMP without reaching a "mutual agreement" with the U.S. Fish and Wildlife Service and the California Department of Fish and Game; and
(f) a declaration that defendants are in violation of the Sikes Act by failing to properly establish and implement the required elements of an INRMP including, but not limited to, failing to provide adequate wildlife management and habitat enhancement for sensitive species, inadequate wetland protection and enhancement, and failure to comply with and enforce applicable natural resource laws and regulations.
66. Plaintiffs seek an award of reasonable attorney's fees and costs (including expert witness and consultant fees) pursuant to the Equal Access to Justice Act, 5 U.S.C. §§ 504 et seq., because defendants' actions were not substantially justified.

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WHEREFORE, plaintiffs, Public Employees for Environmental Responsibility ("PEER"), Mark Hagan, and Wanda Deal, pray that this Court award the above-requested relief, for their reasonable attorney's fees and costs, and for all other just and proper relief.

Respectfully submitted,

Date _____ By:

G. Alan Perkins

Date _____ By:

Babak Naficy

and

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[Read PEER vs. USAF Part 2 - the subsequent legal filing](#)