

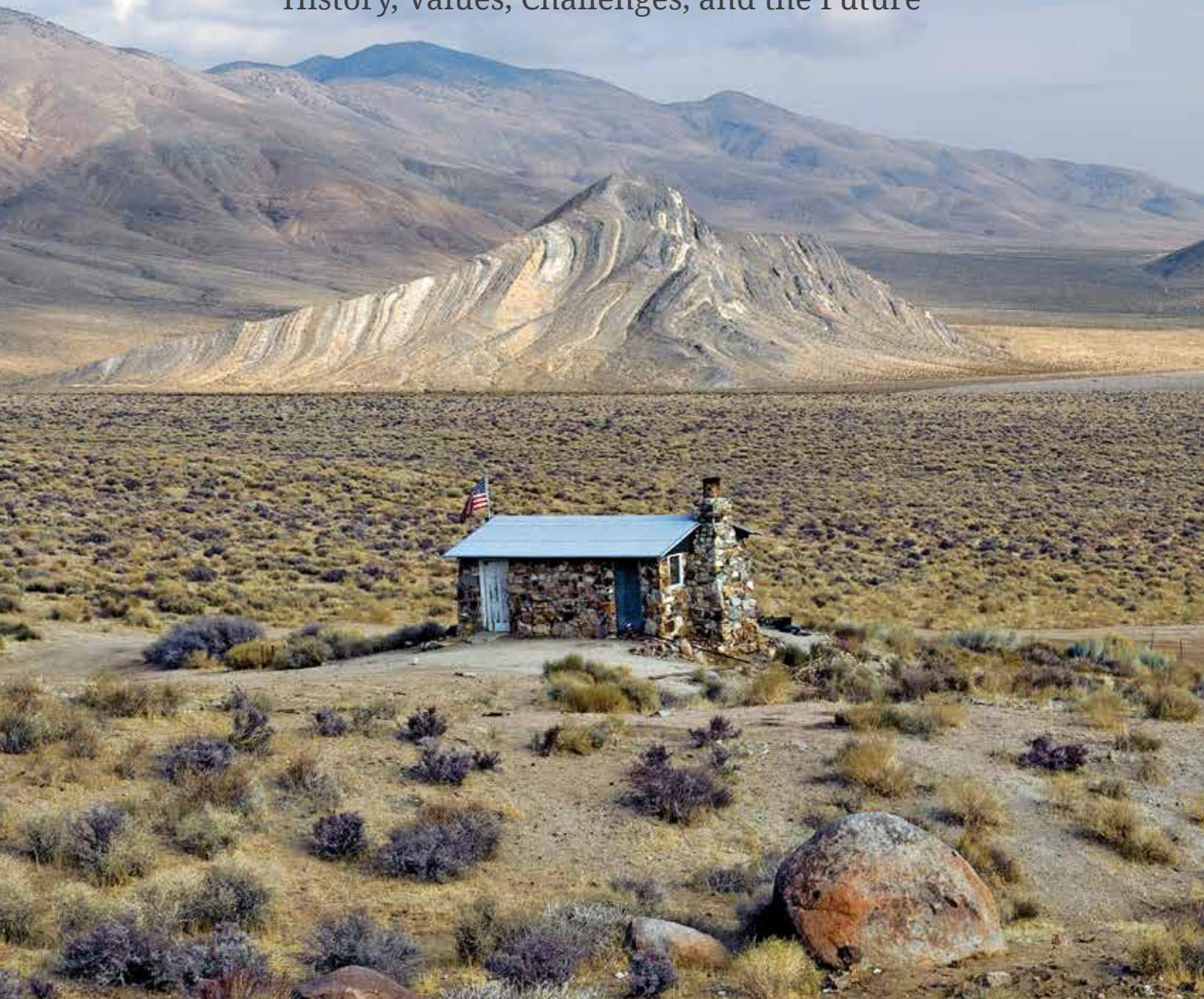
NEWS OF THE DESERT FROM SIERRA CLUB CALIFORNIA & NEVADA DESERT COMMITTEE SEPTEMBER 2020

DESERT REPORT

SPECIAL ISSUE

A VOICE FOR OUR PUBLIC LANDS

History, Values, Challenges, and the Future



FROM THE EDITORS

Past, present, and future of America's public lands

Beginning a Series of Focused Articles

OUR LIVES ARE CONSUMED WITH events that seem overwhelming: social protests in every city, upcoming elections in November, and the coronavirus pandemic. In one way or another, these will pass, and then once again we must confront the timeless question: What do we actually need and what do we really want? A part of the answer must concern itself with our relationship to the earth we live on. Where concrete has already covered the surface, the question may be moot, but where the land is only thinly populated and where lands are held in common, an opportunity to plan wisely for the future may still exist.

This issue of the *Desert Report* and the two following will carry a series of essays dealing with the challenges that are being faced by America's public lands. The idea for this focus arose in part from the interview which Birgitta Jansen reported (*Desert Report*, March 2020) with the Superintendent of Death Valley Park. Death Valley is only one of many national parks, and these in turn are only one piece of an extensive system of public lands. Wise use of these lands certainly begins with knowing the history of their use and management. The problems faced in protecting valuable spaces and wisely using shared resources have become intense as our population has grown. If we are fortunate, past experience and reasoned thought about future needs may (might) provide a guide for future management.

This issue of the *Desert Report* includes three articles dealing with our past. Adam M. Sowards at the University

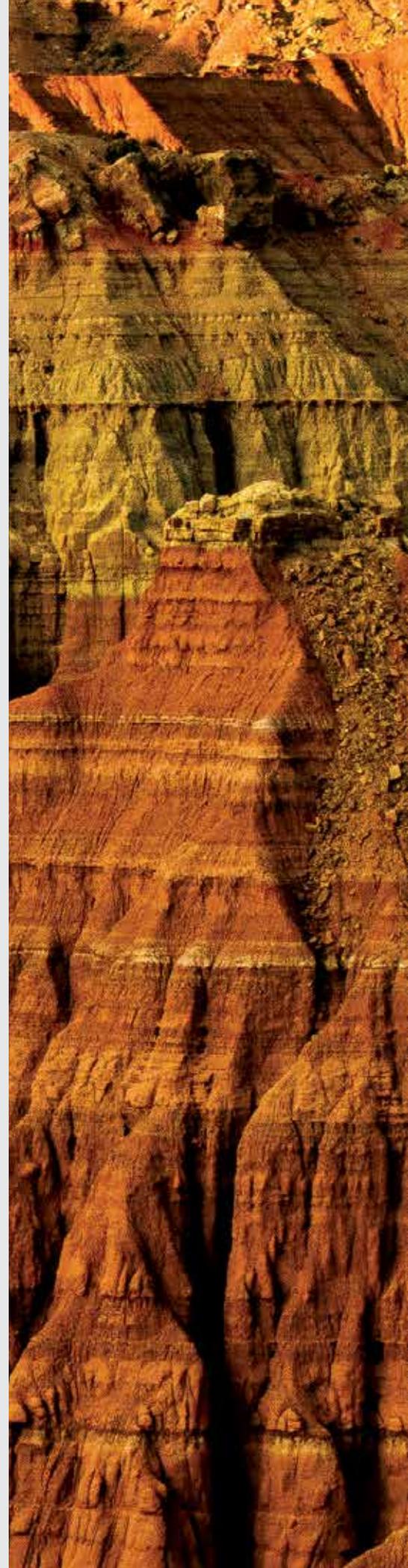
of Idaho in Moscow, Idaho, provides a broad view of these lands in the United States. Jon Jarvis, former Director of the National Park Service, focuses more specifically on National Parks and his view of the challenges they face. Phil Bellfy, Professor Emeritus at Michigan State University, has long been an advocate for the place of Native Americans in policy decisions and speaks on their behalf in a third article.

It is our intention that the December and February issues of the *Desert Report* will highlight trends in the use and misuse of these public resources, will provide examples of wise and unwise decision making, and will perhaps be able to suggest alternative approaches that might lead to cooperative problem solving rather than protracted conflicts. You may consider the series dealing broadly with public land management as an experiment, and you are invited to communicate with the editors concerning its usefulness. We all have a stake in this future.

To be sure, the immediate issues of grazing, mining, water allocation, energy planning, and recreation will not step aside waiting for extensive and far reaching reforms. As in the past, these subjects will appear in the *Desert Report* along with the still broader questions about public lands.

Craig Deutsche and Birgitta Jansen, editors for the series on public lands.

Cover, inside back cover, and this page photo by Neal Nurmi - NPS.





NATIONAL PARKS: PAST PROGRESS, NEW CHALLENGES

The 40th anniversary of the State of the Parks report

FORTY YEARS AGO, IN MAY OF 1980, the National Park Service (NPS) released a report to Congress that, for the first time, quantified the threats to the 326 units of the National Park System. The findings identified significant threats both internal and external, and categorized them as follows:

- Aesthetic Degradation (land development, timbering)
- Air Pollution (acid rain, hydrocarbon pollutants)
- Physical Removal of Resources (mineral extraction, poaching)
- Exotic Encroachment (animals, plants)
- Visitor Physical Impacts (campfires, trampling)
- Water Quality Pollution and Water Quantity Changes (oil spills, toxic chemicals)
- Park Operations (trails, misuse of biocides)

The report was the result of a survey of park superintendents, resource managers, scientists, and planners and noted “the perception of threats may be affected by the professional training and experience of these observers.”¹ I point this out because I was a park resource manager who filled out the survey. At the time, I was stationed at Prince William Forest Park, a National Park area of 19,000 acres just south of Washington, DC. My assessment was that the park was besieged with threats and consequently it ranked third on the list with fifty-seven threats, just above Glacier National Park. The report was a wake-up call for the NPS, and of particular note, it indicated that while the threats were real, our understanding of them was

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Salt flats and Panamint Mountains, Death Valley National Park
Photo by Neal Nurmi - NPS

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AN INDIGENOUS PERSPECTIVE

“American public lands”



Painting by B. Sago, Anishinaabe artist from northwestern Ontario
Photo by Birgitta Jansen

LAND AS SACRED

In the language of my people, the Ojibway of the Upper Great Lakes, the word “aki” refers to the land, the earth, the “dirt” of this planet, if you will. The city of Milwaukee derives its name from this word; Mino-aki, the “Pleasant Ground,” which has been Anglo-Saxonized to “Milwaukee.”

The word “aki” also has another, deeper meaning – That Which is Sacred – which is the “translation” that I would like you to keep in mind as you read this essay. When we, the Ojibway of the Upper Great Lakes, were facing Removal in the 1830s, we begged to remain “on the land where our ancestors are buried.” These burials are key to understanding how the Land became Sacred.

Although steeped in controversy as to its authenticity, Chief Seattle’s speech in 1854 to Treaty negotiators perhaps

sums it up best:

Every part of this soil is sacred in the estimation of my people. Every hillside, every valley, every plain and grove, has been hallowed by some sad or happy event in days long vanished. Even the rocks, which seem to be dumb and dead as they swelter in the sun along the silent shore, thrill with memories of stirring events connected with the lives of my people, and the very dust upon which you now stand responds more lovingly to their footsteps than yours, because it is rich with the blood of our ancestors, and our bare feet are conscious of the sympathetic touch.

When you consider the concept of “public land” from an Indigenous perspective, consider, as well, the words of the great Shawnee Chief Tecumseh: “The way, the only way to stop this evil [selling land], is for the red people to unite in claiming a common and equal right in the land, as it was at first, and should be now – for it was never divided, but belongs to all. No tribe has the right to sell, even to each other, much less to strangers. Sell a country?! Why not sell the air, the great sea, as well as the earth? Did not the Great Spirit make them all for the use of his children?”

Land as Public

So, when we consider “public land,” we have to consider, not only “That Which is Sacred,” but also “That Which is ‘Public.’” In our Indigenous way of thinking, we believe that if we take care of the earth, the earth will take care of us, but only if we act out of a sense that the earth, and all it contains, is Sacred. To us, “public land” is a relationship, a

Sacred Relationship, built upon balance and harmony with all “that is sacred.”

When the world becomes out of balance, and disharmony seems to be the driving force in all human relations (with the land and with each other), destruction cannot be far behind. In 1992, the Hopi, and many other Indigenous Nations, went to the UN and gave the world a warning (I’ve made a few minor edits to this presentation by Hopi Elder Qu’ah Thomas Banyacya):

Nature itself does not speak with a voice that we can easily understand. Neither can the animals and birds we are threatening with extinction talk to us. Who in this world can speak for nature and the spiritual energy that creates and flows through all life? . . . the Hopi prophecy shows us two paths. The upper path has technology; it is separate from natural and spiritual law, which can only lead to chaos. The lower path is one that remains in harmony with natural law . . . If we return to spiritual harmony and live from our hearts, we can experience a paradise in this world. If we continue only on this upper path, we will come

In our religion we don’t practice within four walls. Our religion is written in all these mountains and in the valleys, in the waters, in the wildlife – everything that belongs to the Creator. So, we’re in church everyday. That’s what

we say. *Pauline Esteves, 92, Timbisha Shoshone elder, November 2015*

to destruction.

Genesis gives us a very different “relationship” to ponder (that is, different for the non-Native): “So God created man in his image . . . And God blessed them, and God said unto them, be fruitful, and multiply, and replenish the earth, and subdue it; have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.”

Dominion versus Sacredness?

Chaos versus balance and harmony, in harmony with the natural world, and in harmony with the “public land” of this continent and this planet. This is the choice we have faced for decades (perhaps centuries), and still face today. If you ponder this “public” versus “sacred” relationship, I hope you can come to look at this “land” as much more than “dominion” over “all of creation.” It’s really about sharing this land we might very well call “the commons,” as Tecumseh would have us do.

Land as Sharing

So, what do the speeches of 19th Century Indigenous leaders have to do with “public land” here in the United States today? Well, as I see it (and I’m not alone in this interpretation), “public land” is still “Indigenous land,” and here’s why. “Land Cession Treaties” only “gave the right” to the US government to buy “ceded” land from the Indians, and then, in turn, sell (or give) that land

to settlers. Therefore, “Nation States,” like the US only have *sovereignty over settlers and settlements* – it is plainly obvious that “public land,” by definition, is not “settled” by “settlers.” Consequently, “public land” is not “ceded, settled land.” That is, it is still “Indigenous land,” land that we agreed, through treaty, to share with “settlers.”

During the time of “land cession” treaties, 1776 to 1894, Indigenous Peoples, “unlettered” as they were, most likely did not completely understand what the “selling” of their land truly meant. Treaty Council records bear this out. Probably the best way to understand the “selling” or “cession” of land can be wrought from the concept of “sharing the land,” which, again, seems to be the meaning behind Seattle’s and Tecumseh’s speeches (and that of countless others). In the 1836 Treaty of Washington, which “ceded” Northern Michigan and the east half of the Upper Peninsula (about 1/3rd of the State), the “Indians stipulate for the right of hunting on the lands ceded, with the other usual privileges of occupancy, until the land is required for settlement.” That final phrase is indicative of the “sharing” nature of the so-called 1836 “land cession.”

Land as Indigenous

Which brings me to the concluding thoughts on the subject of public land – with a reference to “public land” as

“indigenous land.” The word “indigenous” means “originating or occurring naturally in a particular place.” Some years ago, I got into a discussion at a conference when I suggested that “settlers” in North America could not be “indigenous,” could not be “of this land.” “*But my family has fished in these waters for five generations,*” was the kind of push-back I encountered. In other words, settlers lay a claim to land after, maybe, five generations, but when people indigenous to that place assert their centuries-long “privileges of occupancy,” those indigenous rights seem to have no value whatsoever.

But when a “sharing of land” becomes a “taking of land,” the world truly becomes unbalanced; when we invade the space of the animals, for example, we disrupt that balance and harmony, and when we do, we allow the natural world to invade our human “two-legged” space, as well. The results of that imbalance are all too evident – SARS, West Nile, Zika, MERS, Ebola, Lyme Disease, HIV/AIDS, and, of course, the pandemic currently ravaging the world – with deaths in the US predicted to reach over 230,000 by November – Covid-19. So, recall my reference to that “place” where your ancestors are buried, and, those burials that made you “indigenous to that place.” In my thinking on the subject of “indigeneity,” five generations of burials is not long enough to become

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Pictured Rocks National Lakeshore hugs the south shore of Lake Superior in Michigan’s Upper Peninsula, an area Phil Bellfy calls home. Photo by Phil Bellfy

NATIONAL PARKS: PAST PROGRESS, NEW CHALLENGES

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significantly lacking.

Over the following forty years, the National Park Service heeded some of the report's recommendations. They have built a stronger natural resources staff, created scientific relationships with researchers at colleges and universities, developed resource management plans for all the parks, and built a robust inventory and monitoring system.

Congress even gave the National Park Service a scientific mandate in 1998, stating "*The Secretary shall undertake a program of inventory and monitoring of National Park System resources to establish baseline information and provide information on the long-term trends in the condition of National Park System resources,*" and "*The Secretary shall take such measures as are necessary to assure the full and proper utilization of the results of scientific study for park management decisions.*"²

During that same period, I worked for the National Park Service in a variety of national parks as ranger, biologist, superintendent, regional director, and finally as the 18th Director from 2009 to 2017. My career took me from the deserts of Texas, to the snows of the Cascades, into the wilds of Alaska, and to the halls of Congress. My perception of threats to the parks is now guided, and perhaps better honed by those forty years. Many of the threats identified in the 1980 State of the Parks report are still valid such as air and water pollution, adjacent land development, and visitor impacts. Now there are new threats, new stressors to the stewardship of our national parks, not identified in 1980. For my entire career, I have been fighting to protect the integrity of our national parks against these threats and I have won some and lost some. I present these below in priority, with my perspective on their status and challenges.

1. Anthropogenic Climate Change/ Global Warming

In 2009, in testifying before Congress, I stated "*I believe climate change is fundamentally the greatest threat to the integrity of our national parks that we have ever experienced.*" Nearly every issue raised in 1980 is exacerbated by a

human-caused warming of the planet. Research by scientists³ have shown that our national parks are warming faster than other areas, in part because they are often already in extreme environments, such as high elevation or deserts. Our coastal parks will be impacted by sea level rise and increased storm intensity. Mountain parks will lose their glaciers and snow pack, forests will become drier and burn more easily, the warming of streams will impact all aquatic life, and species will be forced to move higher, or to new habitats to survive. While I was Director, the NPS began to address these issues with science, adaptation, education, monitoring, and even reducing its own carbon footprint. All of that has stopped under the current administration, which leads to the next threat.

2. Anti-Environmental Politics

The United States can rightfully claim to be the originator of national park idea, that special places would be set aside "unimpaired for the enjoyment of future generations." The national park idea has spread around the world and enjoys broad and deep public support but not always political support. If you asked the general public if the national parks are protected from the whipsaw of politics, they would likely say "of course" but they would be wrong. There are elements within our political leadership (exemplified by the current administration) who see the national parks as a waste of taxpayer's funds, as valued only for their economics, and as a storehouse for future plunder. More times than I like to admit, I have had to brief members of Congress and political appointees of new administrations on why they should not sell the parks to the highest bidder, close the ones that have low visitation, turn them over to the private sector, open them up to hunting, criss-cross them with power and pipelines, build new hotels, install zip lines, or host rock concerts. These are but a sample of the destructive ideas that emerge when the acolytes of Milton Friedman take the reins of the nation's parks and public lands. Inside the Department of the Interior, the daily routine was more like internecine warfare with sister bureaus

that would log, mine, drill, excavate, dump, pollute, or sell public lands right up to the park boundary. When there is an administration such as the one currently in office, everyone inside the NPS is afraid to fight back.

3. Non-Cooperation at the Ecosystem Scale

In 1990, the NPS issued a draft "Vision Statement" recommending that the lands around Yellowstone National Park be managed as an ecosystem. The National Park Service and US Forest Service authors of that report were punished and forcibly reassigned by Jon Sununu, then Chief of Staff to President George H.W. Bush.⁴ Today, the concept of working cooperatively at the landscape scale in the Yellowstone ecosystem is generally accepted. Ecosystem scale cooperation is at play in the California Deserts with the expansion of renewable energy projects and the need to protect desert tortoise. It is relatively functional in the northern Rocky Mountains around Glacier National Park and the Flathead region, incorporating private lands, working ranches, and forests and grizzly bear habitat. This is all good, but I identify this as a threat because we now understand that national parks are interconnected to a much larger ecosystem upon which the park's integrity depends. We are just now learning how to function, cooperate, and share common goals at the landscape scale. Figuring this out and handling the political resistance will be the key to the future stewardship of our national parks.

4. Lack of Relevancy, Diversity, and Inclusion

National park visitation, staffing, volunteers, leadership, guides and outfitters, "friends' groups", tourism businesses, and environmental advocacy organizations are all predominantly filled by white people. There are many factors that contribute to the lack of diversity in our parks and public lands, and I would suggest that some of the reason is systemic and institutional racism. The agency and its support network "self-replicates" its existing workforce, hiring young people who have the eco-

Research by scientists have shown that our national parks are warming faster than other areas, in part because they are often already in extreme environments, such as high elevation or deserts.

conomic capacity to spend years working as seasonal employees with low wages. The NPS and its affiliates prefer new hires who come with a range of outdoor skills such as hiking, river rafting, mountain climbing and camping, all of which come from white privilege. In light of the awakening of the US population to the history of racism and white privilege, the lack of diversity in the National Park Service is a threat to its future. The good news is that the NPS is working hard to address this with new recruitment and retention strategies and new parks that tell a more complete story of the civil rights struggles and our national history of racial inequality. There is much more work to be done.

5. Overwhelming Visitation

In 1980, there were 326 national park units and visitation was 220 million. In 2019, there were 417 park units and visitation was 327 million, roughly equal to the population of the entire United States. If there was one phrase in the National Park vocabulary that I could purge it would be “loving the parks to death.” I truly believe that visitation to the national parks is key to their future stewardship. Survey after survey of visitors indicate their deep appreciation of the national parks, which translates into political support, funding, volunteerism, and advocacy. But in some places and at some times, too much of a good thing can have impacts: trampled vegetation, bare ground, erosion, wildlife disturbance, even intentional vandalism. Crowds also impact the ex-

perience as well, with traffic jams, long lines, and noise. These are operational issues that take enormous staffing time and funding to manage well. The very crowded parks will have to address carrying capacities at some point, which leads back to Threat Number 2. Politics often play a strong hand when the NPS suggests it might have to limit the number of visitors. But, I will also take over-crowding over apathy anytime. The day that visitors no longer come to the parks because they don't care will be the end of the national park system as we now know it.

Conclusion: While there have been many positive accomplishments in the last forty years to address the threats to our national parks and public lands, new challenges have emerged: anthropogenic climate changes, social and economic inequality, and a global disease pandemic. During the months of self-isolation, a deep desire to connect to nature was rekindled in our nation's population, and parks of all kinds struggled to accommodate the demand. The inequity of access and availability to parks, particularly for communities of color, was revealed as well.

In 2009, in my nomination hearing before the Senate I stated: *I do not need to tell you of the challenges before us: the economy, climate change, connecting urban kids to nature, the concerns over obesity, and a concern about a loss of cultural literacy. I believe that the National Park Service has a role and a responsibility in each of these. Never in its 200 years has this nation needed the National Park System more. It stands as a collective memory of where we have been, what sacrifices we have made to get here, and who we mean to be. By investing in the preservation, interpretation, and restoration of these symbolic places, we offer hope and optimism to each generation of Americans.*⁵

I believe that even more today.

Jonathan B. Jarvis was the 18th Director of the National Park Service.

References may be found in the Notes section of the Desert Report website at www.desertreport.org.

indigenous to North America, not long enough for the land “of this place” to become sacred. European settlers were, quite obviously, willing, if not eager, to leave the land where their ancestors were buried and travel to the so-called “New World.” And, more importantly, in my mind, European settlers still had their spiritual connection to a “super-natural” being/entity; not a connection to a spiritual way of life that was wholly and solely based in the natural world, regardless of where your ancestors are buried, which is the world-view of Indigenous people – the people “of this place.”

Land as Relationship

So, how do we resolve this conundrum? How do we reconcile the problems engendered by the Biblical dominion over “public land,” and subjugation of the natural world wrought by that dominion, with the respect and balance and harmony mandated by an indigenous approach to “the commons” – to viewing public land as Indigenous land?

In my mind, there is only one way, one way to save this planet, and “all of creation.” That is, we all – Settlers and Indigenous People, alike (and together) – need to forego the “supernatural” and re-focus on the natural world as if it were “aki,” “That Which is Sacred.” For, if we don't view “public land” from the perspective of Indigenous People, with acknowledgment of its sacredness, and with a recognition of the mutual respect the land has for us, and we for it, with a goal of maintaining a harmonious and balanced relationship with that natural world, we are all dead.

Phil Bellfy is an Enrolled Member of the White Earth Band of Minnesota Chippewa, and Professor Emeritus of American Indian Studies at Michigan State University. He has been involved in environmental activism in the Upper Great Lakes at the local, state, national, and international levels for almost 50 years. His hobbies include woodworking, weaving, print-making, book-making, and photography.

AN EVOLVING IDEA

Perils and promise of the federal landscape

MANY COMMENTATORS VIEW THE United States and its Constitution as an experiment in democracy. And as an experiment, the nation remains forever unfinished, because democracy's terms change when novel ideas arise, when results of the trial fall short or turn out different from expectations, and when Americans insist that its promise be extended to all. The public lands also trace this history of trial and error and trial again.

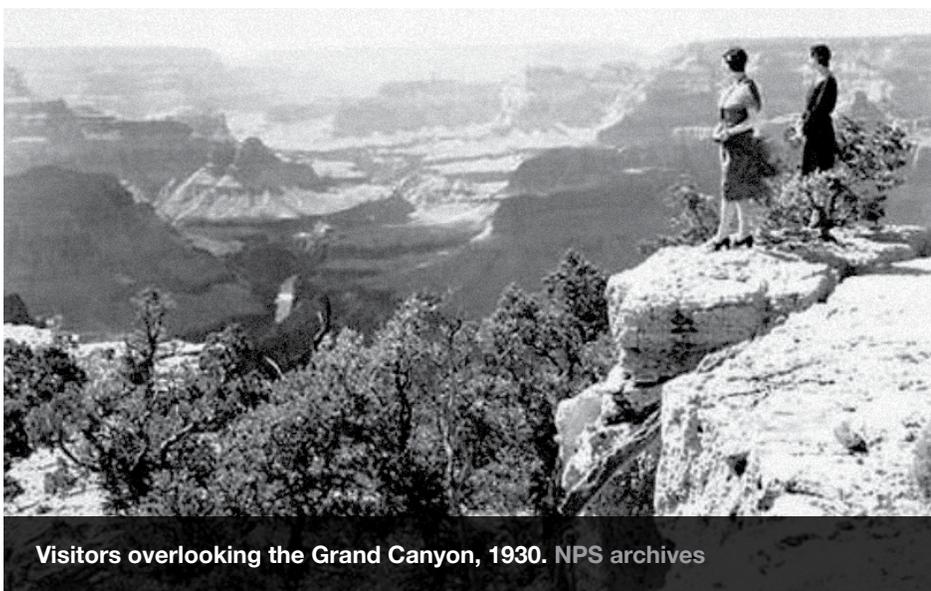
Perhaps no more eloquent statement of the link between democracy and public lands exists than the writer and activist Terry Tempest Williams' remark that, "The integrity of our public lands depends on the integrity of our public process within the open space of democracy." Over the course of the nation's 230-odd years that integrity – of

the land and of politics – has been sorely tested and frequently undermined. Yet, just as the citizens strive for "a more perfect union," public land advocates – from the early conservationists like Gifford Pinchot to long-standing organizations like the Sierra Club to newer groups like the Bears Ears Intertribal Coalition and Latino Outdoors – have invested in a system that defines and defends a public interest rooted in our common lands. The struggle to make a diverse nation work and to ensure that the public's land be protected has been imperfect but is worth having and continuing.

The seventeenth-century British philosopher John Locke claimed, "In the beginning, all the world was America." He meant that land in its original state remained unowned and held in com-

mon – as he perceived the American continents to be. By applying labor to that land, according to Locke, people transformed it into property, held by individuals and improved by their labor and technologies to produce marketable goods. Colonizers ignored the labor already pressed deeply in the soil by the hands of Indigenous people since time immemorial. Any history of American land rests squarely on this dispossession by war, treaty, theft, and duplicity.

American political leaders fashioned a nation out of many things, but the land provided one common feature, symbolized by how states relinquished their western land claims to be held in common by the national government. For a century, the United States' official land policy turned on transforming the public domain into private property. Squatters trespassed onto Native nations' lands and the state purchased and fought for millions of acres until the continental United States took its current form in 1854 with the Gadsden Purchase. Known as Manifest Destiny, this acquisitive and often violent impulse overwrote environmental and cultural histories that the Diné, Lakota, Niimípuu, and hundreds of other nations had etched in the land. And that is to say nothing of the Spanish and Mexican impact over much of the Southwest and Texas, often more than a century deep. What mattered to the American state and its citizens – except for post-Emancipation Blacks, who were effectively excluded – was to develop all of this newly Americanized land into self-sufficient farms and other profitable enterprises.



Visitors overlooking the Grand Canyon, 1930. NPS archives

However, best-laid plans often failed. The Homestead Act and other land laws that facilitated the transfer of public domain into private hands frequently fell short and often were corruptible with willing land office agents who abetted fraudulent land claims. Not only that, but large tracts of the American West proved stubborn to the idea that they might quickly be made to produce wheat or apples or support large herds of livestock. Meanwhile, in the East and Midwest, timber companies left ecological and social disasters in their wake as they cut forests and then ran out of town. The conservation movement arose in this context. Reformers vowed to protect some of the public domain, to prevent continued abuses by commercial activities, and to serve as a custodian to monumental landscapes to prevent them from being commercially exploited by private enterprises.

The first places to be set aside as parks were Yosemite and Yellowstone, undeniably beautiful and unusual landscapes. In 1864, Congress ceded Yosemite from the federal domain to California and instructed the state to dedicate the land to “public use, resort, and recreation,” and to provide for the “preservation, improvement, and protection of the property.” In 1872, Congress created Yellowstone National Park, the first place so designated in the world. More than two million acres were “reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park or pleasuring-ground for the benefit and enjoyment of the people.” With these precedents, the seeds of the national park system were planted and new sites were added regularly after 1890 where concessionaires commercially exploited these majestic places and facilitated a growing tourist trade.

Yet public lands are more than monumental parks. Concerned reformers pushed their cause of more responsible public land management, and Congress responded in 1879 by appointing a Public Lands Commission to study existing laws and suggest improvements. Among its numerous suggestions, the commission recommended that western timberlands remain under federal control. Congress moved slowly, but in 1891 it authorized the president to set aside timber reserves to stave off timber



Visitor in Yellowstone Park, 1922. NPS archives

famine and to protect watersheds. By the time the twentieth century arrived, many western mountain ranges were flanked by national parks and what soon were known as national forests nominally protected by the U.S. Forest Service, which had been established in 1905.

Much of this conservation movement contained a strong public spiritedness in principle – the Forest Service’s guiding credo was Pinchot’s formulation of “the greatest good for the greatest number in the long run.” However, in execution, conservation often looked undemocratic. For instance, the Forest Service believed its management needed to be outside of political interference – a laudable goal perhaps – but that meant its experts were rarely accountable to the public. In another example, local land users, such as Hispanos communities in northern New Mexico or white ranchers in western Colorado, found restrictions or fees on gathering wood or grazing animals on public land to violate long-held customs that jeopardized their sustenance and profitability. National parks frequently acquired land from sovereign Native nations, and those tribes typically reserved rights to continued hunting, fishing, and gathering. Yet national park authorities often prohibited such treaty-protected rights, leading to long-standing animosity between the park and neighboring Indigenous communities. The Blackfeet who share a border with Glacier National Park are one of the most notorious examples of

this pattern that was repeated all over the West.

Public land advocates have often overlooked these flaws – then and now – which has left them open to criticism of being elitist and racist, an ongoing reckoning the nation at large continues to face.

The public land system kept growing and the agencies in charge intensified their management of the forests, parks, rangelands, and refuges under their jurisdictions to meet the competing demands the public made on the resources. This meant different things in different contexts.

Initially, national forests largely were custodial, simply trying to keep forests from devastation. However, in time, the Forest Service initiated more active management of its forests, ramping up timber sales especially after World War II, when it also began using pesticides and deployed personnel and technology to suppress all forest fires possible. By the 1960s, heavy harvest levels, including clearcutting, were radically liquidating forests and often harming stream quality and fish and wildlife populations. An agency that once served ostensibly to protect timber resources from exploitation seemed, at least to some, to be promoting such exploitation.

Meanwhile, the Park Service developed its sites with more amenities to accommodate tourists. After lowered visitation during the Great Depression

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and especially the war, national parks received increased numbers of visitors in the late 1940s and 1950s. To serve them and to revitalize the agency, the National Park Service director, Conrad Wirth, launched Mission 66, a massive development plan that spent a billion dollars in the decade before the agency's 50th anniversary in 1966. In Mission 66's wake were thousands of miles of new or improved roads, abundant new parking lots and campgrounds, and hundreds of new buildings all to serve a burgeoning tourist population that numbered 133 million people in the parks by the program's conclusion. An agency meant to protect natural spectacles from commercial exploitation now seemed, at least to some, to be promoting it.

Although their predecessor agencies existed long before, the US Fish and Wildlife Service (FWS) and the Bureau of Land Management (BLM) were created by administrative action in 1940 and 1946 respectively. These agencies, too, intensified their management activities

in the middle of the twentieth century. The FWS often rearranged a landscape's hydrology to manipulate water levels, doused fields in pesticides, and herded migratory birds to ensure they went to the *proper* fields – all of which seemed necessary to protect certain protected species but also meant the managerial presence on wildlife refuges could be heavy. Meanwhile, the BLM promoted livestock grazing and resource extraction on its lands with few restrictions, so much so that many joked its acronym stood for the Bureau of Livestock and Mining. Along with the Forest Service, the BLM sought to improve western rangelands by transforming sagebrush habitat into productive grasslands, an alteration that took little regard for wildlife and often required heavy chemical use or chaining (i.e., dragging a chain between two bulldozers to remove plants). These agencies intervened heavily to make the public lands they administered produce commodities from resources to support and enrich private individ-

uals and corporations. Agencies meant to protect species – wildlife or habitat – from exploitation seemed, at least to some, to be manipulating environments excessively.

The land agencies' managerial hands proved too heavy for broad parts of the American public. Beginning in the 1950s and accelerating throughout the next decade, advocates demanded stronger environmental protection and greater input from the public for management actions. In response, Congress passed a series of laws that transformed the legal landscape on which public lands rested.

The legislation broadly accomplished three things. First, laws like the Wilderness Act (1964) and the Endangered Species Act (ESA, 1973) established much stricter protection over some places and some species. Second, new laws like the National Environmental Policy Act (NEPA, 1970) required an assessment of potential environmental harms. NEPA included public input as part of regular



Canyon in the Black Mountains, Death Valley National Park. Photo by Birgitta Jansen - NPS

operating procedures, broke the stranglehold agencies often held, and promoted greater democratic governance over the public's land. Three, laws like the National Forest Management Act (NFMA, 1976) and the Federal Land Policy and Management Act (1976) reoriented how the Forest Service and BLM managed their lands, including the requirement for longer-term plans that incorporated new environmental and democratic values and broader scientific evidence.

Laws Congress passed between 1964 and 1976 disrupted age-old patterns where the agencies felt largely insulated from supervision. They were often slow to implement and even resisted these measures. The Forest Service, for instance, stalled its wilderness review process and also increased its timber harvest program. Despite this reluctance and obstinacy, the new circumstances transformed agencies. The planning requirements modified hiring practices in ways that diversified agency personnel dramatically, adding more biologists and other interdisciplinary scientists to meet the mandates of this legislation. At the same time, the agencies also diversified their gender and racial composition to better reflect the American public. Meanwhile, by focusing on a broader concept of the public interest, which included recreation and wildlife values along with economic concerns, different priorities emerged in discussions about public lands management, including reintroducing predators and solitude. More voices meant more conflict, though, because democracy is cacophonous when more people are allowed to participate. Consequently, public lands seemed far more politicized by 1980 than they had in 1950, but these places had always been subject to political conflict.

The years since 1980 have been characterized by deep political conflicts that have produced gridlock in policy and increased politicization over most matters related to public lands.

One side effect of the new laws of the 1960s and 1970s was the opportunity for groups to bring lawsuits against public land agencies. These changes allowed a new tool to leverage change on public

lands, and environmental organizations such as the Environmental Defense Fund and the Sierra Club Legal Defense Fund (now Earthjustice) emerged and took full advantage of the new laws. The more restrictive environmental goals, the increased number of voices at the table, and the novel legal strategies (and frequent success in court) generated a counter-movement of western commodity users known typically as the Sagebrush Rebellion in the early 1980s. It morphed into the Wise Use Movement in the 1990s and today is part of a general conservative, anti-federal government movement widespread in the West with many splinters.

This conservative backlash that has evolved in the aftermath of the 1970s disdained how public land management changed. The critics believed the new focus on environmental protection seemed to favor recreation and wilderness, yet the majority of public lands remained available for grazing, logging, and mining and other extraction. Sagebrush rebels and their progeny argued that local governments or private owners would be better land managers, by which they often meant more responsive to their economic goals for the public's resources. These positions found a welcome home in the Republican Party, which had become more ideologically conservative, and key appointments over environmental agencies in the Reagan, Bush (both), and Trump administrations courted and welcomed angry westerners who rejected the continued existence of public lands.

Over these decades, a series of protests voiced the anxieties and frustrations of longtime public land users who felt they had been written off of the land. Here are a few of them:

- In 1980, a county commissioner outside Moab, Utah, graded a road into a wilderness study area in an action meant to foreclose the possibility of wilderness status.
- In the 1994 and 1995, bombs were detonated at BLM and Forest Service offices in Nevada.
- A Nevada rancher named Wayne Hage pursued (unsuccessfully) a novel legal argument that because of his

water rights in the area, his Forest Service grazing allotment essentially functioned like his private property and agency actions and regulations that changed his access were a takings prohibited by the Constitution.

- Some ranchers stopped paying federally-mandated grazing fees, although their reasons could differ. Carrie and Mary Dann, sisters and Western Shoshone tribal members, refused to pay grazing fees and ran afoul of the BLM in the 1990s. They maintained that the 1863 Treaty of Ruby Valley never granted title of the land to the United States. In southern Nevada, Cliven Bundy refused to pay his grazing fees, which grew to more than a million dollars in delinquency, because he did not acknowledge the right of the federal government over public lands in Nevada, leading to a confrontation in 2014 with federal authorities.
- In 2016, Bundy's son and allies seized the Malheur Wildlife Refuge in eastern Oregon for more than a month, claiming that they wished to "return" the land to the original settlers – meaning ranchers, not the Burns Paiute Tribe.

The list could go on, but these few samples suggest the way frustrated westerners moved outside of the law and democratic norms.

Environmentalists also practiced what they saw as civil disobedience – blockading roads, sitting in trees, trespassing – to protect species and habitats and to insist that the laws be followed in the name of public land. Many of these protests occurred on behalf of endangered species (e.g., northern spotted owl) and the habitats they relied on (e.g., old-growth forests). Over the course of the 1980s and early 1990s, activists used legal and direct action to slow logging in western forests, drastically reducing timber harvests on public lands by forcing the Forest Service to follow NEPA, ESA, and NFMA regulations. While protesters received much blame for the economic decline, technological changes in the industry, trade policies, and other economic finagling gutted timber towns. Although inaccurate, blaming owls and

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HIGH NOON ON THE MUDDY RIVER

Unsustainable groundwater extraction in Southern Nevada

THE REMOTE BASINS OF THE NORTHERN MOJAVE DESERT and southern Great Basin are quite arid, but they also harbor remarkable aquatic biological diversity at isolated springs – oases in one of the driest places on earth. These springs, marshes, wetlands, creeks, and other surface water features are sustained by deep carbonate rock aquifers which rise to the surface through faulting. These aquifers are a legacy of a wetter time. They filled with precipitation during the Pleistocene, and are slowly discharging that water over time. What little precipitation the area currently receives rarely recharges the carbonate aquifer. As a result, this water is precious. And due to humans' rapacious appetite for water, the rare fishes and aquatic invertebrates, migratory birds, mule deer, bighorn sheep, and other desert wildlife which rely on these springs maintain a precarious existence.

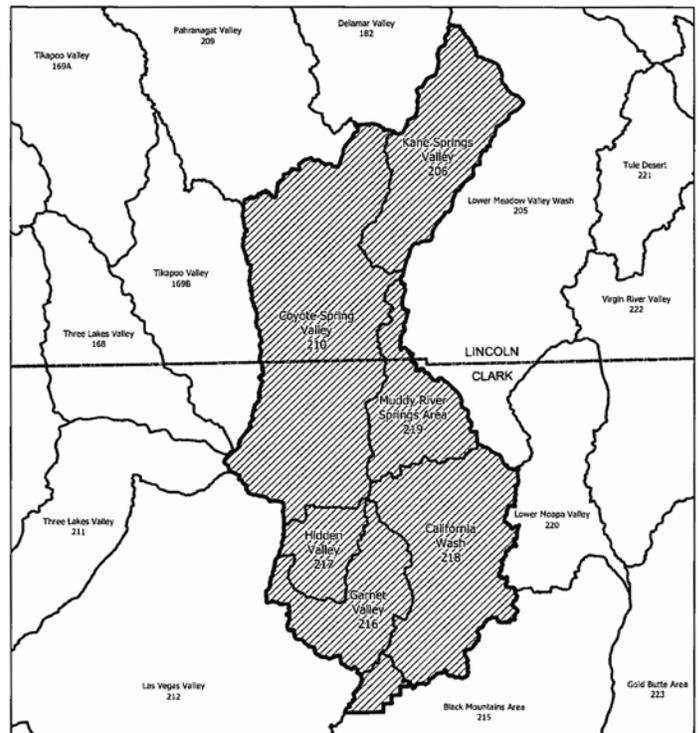
Let us now zoom in on a bountiful area of biodiversity called the Muddy River Springs Area. These springs give rise to the Muddy River in Clark County, Nevada, in the desert northeast of Las Vegas. They are a true oasis – dozens of spring vents creating an aquatic island of biodiversity in the north Mojave Desert. In particular, there are several species of fish endemic to these springs, including the Moapa dace (*Moapa coriacea*) which was listed by the federal government as an endangered species in 1967.

Why is the Moapa dace endangered? Because over-utilization of groundwater in the area surrounding the springs has decreased their discharge over time, slowly reducing the available habitat for the dace and consequently reducing dace numbers. This pumping is primarily for agricultural and industrial uses – mostly growing alfalfa and generating electricity plus various other uses across the area. There are other pressures as well – invasive fish such as tilapia have decimated dace populations. But the lack of overall habitat due to declines in spring discharge is the largest threat faced by the dace.

The basins surrounding the Muddy River Springs Area, which we call the Lower White River Flow System, have long been a subject of conservation interest as a result of the Moapa dace and the many other competing interests. In 2006, federal, state, private, and municipal agencies signed a Memorandum of Understanding that was intended to set trigger points at which pumping might need to be curtailed. The Center for Biological Diversity did not agree that this MOU provided adequate pro-

tection for the Moapa dace, and litigated the Section 7 consultation done by US Fish and Wildlife Service. They lost in the 9th Circuit federal court, and the MOU stands to this day.

Hanging over the heads of everyone in the Lower White River Flow System is the specter of Coyote Springs, the fabled city in the desert. This is political operator Harvey Whittemore's dream of a massive Las Vegas suburb some sixty miles out into the desert, fed by desert groundwater and isolated from the troubles of the big city. Coyote Springs had applied for rights to massive amounts of groundwater to feed the sprawl in their proposal. These applications are ultimately what led to the situ-



Location and Extent of LWRFS Hydrographic Basin, Clark and Lincoln Counties, Nevada

State of Nevada
 Department of Conservation and Natural Resources
 Office of the State Engineer
 Division of Water Resources
 Tim Wilson, P.E.
 State Engineer
 June 2020

LWRFS Boundary
 Hydrographic Basin Boundary
 County Boundary

0 10 Miles

ation today and the Lower White River Flow System proceedings.

In order to determine whether Coyote Springs' applications would prove detrimental to the aquifers that the dace relies on, the Nevada State Engineer, chief water regulator in the state, commenced the Order 1169 pump test. This pump test simulated a fraction of Coyote Springs proposed pumping in order to gauge the effect on nearby wells and springs. Once this limited pumping began, spring levels immediately began to decline at Pederson East, a high elevation spring and home to some Moapa dace. The pump test, which was slated to last three years, was ended after only 18 months, because of the alarming decline of the springs.

In 2019, the State Engineer issued Order 1303, initiating the Lower White River Flow System proceedings. This order instructed interested parties to submit technical and rebuttal reports, and to participate in an evidentiary hearing. The intent was to answer several questions: Which interconnected basins should be grouped and managed together as the Lower White River Flow System? What is the total quantity of water that can be sustainably pumped in this system? Where can such pumping occur? Participants were to use existing and new data, including data generated by the Order 1169 pump test, to derive answers to these questions and present their case. The ultimate intention was that this proceeding would lead to a grouping of basins to be officially managed as a single Lower White River Flow System and with a maximum allowable level of pumping (presumably less than is currently allowed).

The Center for Biological Diversity, along with over a dozen other participants, submitted technical reports and rebuttals to other technical reports, and we participated in the two week hearing in Carson City in the Fall of 2019. We worked with hydrologist Dr. Tom Myers, whose previous work analyzing the carbonate flow systems of eastern Nevada had proven essential in the fight against another water project, the Las Vegas-Eastern Nevada pipeline. The Center argued that, based on data indicating high levels of connectivity in the carbonate aquifer across the six basins being considered, *no pumping at all* should be allowed from those aquifers.

Just as important (and potentially precedent setting) was our legal argument that the State Engineer is vulnerable to litigation under Section 10 of the Endangered Species Act (ESA). This section prohibits "take" of listed species, including the destruction of their habitat. The Moapa dace is protected under the ESA, and since the State Engineer is currently permitting pumping at levels which reduce spring flows, we argued that he is "taking" the Moapa dace.

This argument presents an important question: Are state actors bound by federal environmental protection laws? Even though the substantive procedural elements of the Endangered Species Act do not apply to state entities, are they nonetheless required to ensure their actions do not result in take of listed species?

In June of 2020, we got answers. The State Engineer issued Order 1309, designating six basins (and a portion of a seventh) as the Lower White River Flow System. Pumping in those basins will be limited to a combined total of 8,000 acre feet per year, and specific locations of pumping will be permitted on a case-by-case basis.

Perhaps most importantly, the State Engineer agreed with our legal argument, acknowledging that they have a responsibility to ensure their actions, including permitting of groundwater withdrawals, do not cause take of a listed species. This is an important and potentially precedent setting ruling. It essentially ensures adequate water for listed aquatic species even if they do not have formal water rights.

This ruling also may be the beginning of the end for Coyote Springs, the city in the desert. In a related but separate action, the Las Vegas-Eastern Nevada water pipeline met its demise in the spring of 2020. Coyote Springs had two options for getting water for their city: pump it from the ground or tap into the pipeline. In the span of one month, both

options disappeared. Coyote Springs is left high and dry.

Naturally all of the parties involved found something they didn't like. And many chose to appeal the State Engineer's decision. The Center is among those parties appealing – we argued that the only sustainable option is to forbid *all* pumping from the carbonate aquifer, in contrast to the 8000 acre feet per year which State Engineer would permit. That's enough pumping to send the Moapa dace on the road to extinction by drying up its springs. The outcome of this litigation is still pending.

There are perhaps a few lessons to be drawn from the experience of trying to save the Moapa dace. First, it validates the old environmentalist's maxim of "endless pressure, endlessly applied." Center for Biological Diversity attorneys and activists have been fighting for water for the dace for over fifteen years. This effort, even with setbacks like a loss at the 9th Circuit, paved the way for a momentous ruling which benefits the dace and every other listed aquatic species in Nevada.

And second, it shows the changing broader societal norms around water management and conservation. Generations of water conservation activism have yielded a shift in thinking, where economic benefit is no longer the only factor guiding water policy decision-making. With the demise of the Las Vegas pipeline and the protection of endangered species by the state, it appears there is a new type of thinking about water in Nevada. It's now up to us to make sure it stays that way.

Patrick Donnelly is Nevada state director with the Center for Biological Diversity. He advocates for Nevada's biodiversity, waters, and public lands from the edge of the desert in the greater Death Valley region. He enjoys long desert drives, hot springs, rugged mountains, and deep canyons.



Endangered Moapa Dace. Photo by Dennis Ghiglieri

A BORDER WALL IN THE JACUMBA WILDERNESS AREA

Three months of construction, August 9, 2020

TWO AND A HALF MONTHS OF construction in the Jacumba Wilderness have produced several miles of a border wall, extensive environmental damage, a thicket of procedural and legal questions, and very few answers. Because vehicular traffic is prohibited in congressionally designated Wilderness, the area was once visited by only a few hikers and an occasional Border Patrol officer. In the interest of border security, most federal environmental laws have been waived, and now heavy equipment, construction materials, law enforcement vehicles, and security personnel travel on wide, newly constructed roads to reach the border with Mexico.

On the ground

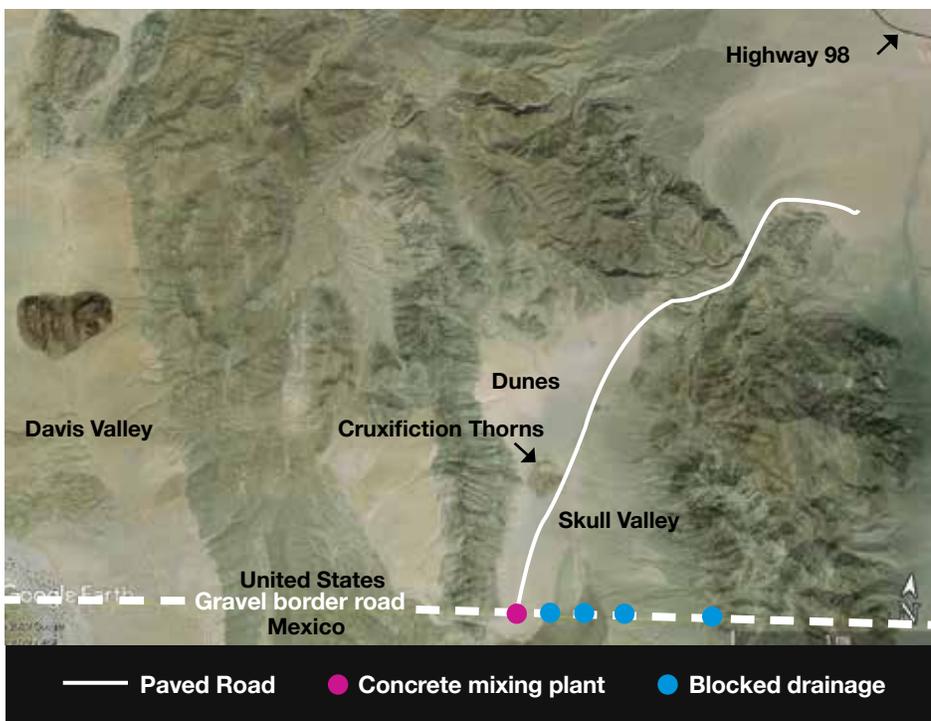
From State Highway 98, a large gravel road enters the Wilderness from the west. Forty feet wide, it has been surfaced with a polymer called Soiltac to reduce dust. The road climbs a low hill with a posted 15% grade, crosses a south facing slope, and then extends another two miles southward through Skull Valley to the border. Above ground and along one edge of the road, a flexible black plastic pipeline, twelve inches in diameter, carries water used for dust suppression and for concrete manufacture. A still wider road runs within a few feet and parallel to the border and provides an estimated ten miles of

access for construction. On June 27th, this author saw at least five large water trucks along these roads and five huge excavators positioned at the border. Also near the border was a concrete mixing facility that included water tanks and a conveyor belt assembly for transporting gravel. Other supplies included several shipping containers, presumably to hold supplies, an office building, and a picnic table under a portable sun shade. Bollards had been distributed along a portion of the road awaiting installation, and an extensive trench had been excavated to receive concrete which would form the base of the wall.

Several weeks later in July, Ms Edie Harmon and two other Imperial County residents walked to the border in Skull Valley and photographed the wider road and the completed wall extending to the east. Looking in the opposite direction, the border road had been extended westward toward the next and larger Davies Valley. Unfortunately, with summer heat and the distances involved, only government and personnel authorized to drive vehicles in the Wilderness have convenient access and knowledge of the work underway in this second valley. Although waived for this construction, the *Wilderness act of 1964* once promised that these places were to be “protected and managed so as to preserve their natural conditions.”

Environmental problems

At a low point in Skull Valley, there is a small but significant population of crucifixion thorn, a California Endangered Species. This plant has a tap root enabling it to reach water at depth,



but it also has another system of roots utilizing surface water when available. This surface water follows a wash from the higher elevations in Mexico, north across the border, and into the lower elevation sink where the crucifixion thorn is found. On the U.S. side of the border, watermarks at least a foot higher than the floor of the wash give evidence of the quantity of water involved. The construction road along the border has filled in this wash, completely blocking its drainage. Topographical maps of the area indicate at least three other places where the border road intersects and blocks, identifiable washes. In a July 14, 2020, conference call, Paul Enriquez, responsible for construction managed by the Department of Customs and Border Protection (CBP), gave assurances that the contractor was investigating the drainages and making every effort to mitigate the potential problem. On August 2, Ms Harmon returned to the border and reported that the principal wash in question had been crossed and blocked by the recently constructed wall. The wall and road have the potential to significantly alter the ecological regime in the Wilderness Area.

The long road leading into the Wilderness from the east has other problems. On July 19, 2020, off-road vehicle tracks were observed crossing one of its berms and heading into the open desert.



Foot trail within wilderness – hundreds to thousands of years old. (June 14, 2020). Photo by Julio Morales

Apparently the new opportunity to explore in an otherwise inaccessible area was irresistible. The graded road also crosses several smaller washes that ultimately wend their way to the sink with its stand of crucifixion thorn. Again the alteration of natural drainage patterns is probable and will be significant.

On June 12, Ms Harmon and another friend located an old foot trail not far from the border road. With a layer of desert varnish, the trail is a relic from much earlier times and is similar to other finds in Imperial County. On other occasions, pottery shards have been located in the nearby washes and hill-sides, and there are suggestions that at

least one of these locations was a sacred site. Requirements for archaeological surveys which would normally precede any major project may have been either waived or were inadequate.

On the July 14 conference call, Customs and Border patrol indicated that there would be no wall built in border mountains immediately east of Skull Valley. They maintained that although it was a natural barrier to human travel, the mountains would not impact movement of bighorn sheep. Unfortunately bighorn sheep have been documented *only to the west of Skull Valley*, and so this “open” section of border will not be of use for these animal.

Legal questions

The water used for construction is being obtained from several wells that have been recently drilled to the east of the Wilderness. These tap into an aquifer that is the sole source of potable water for the nearby communities of Ocotillo and Nomirage. In the past five decades, the water table in western Imperial County has dropped significantly, and after extensive litigation, U.S. Gypsum Corporation has had limitations placed on its use of this aquifer for commercial purposes at their Plaster City factory. Given the diameter (12 inches) of the pipeline connecting these wells to the construction site, it is reasonable to have grave concerns. Imperial County regulations require that *a permit must be obtained in advance of drilling any water well*. When Ms Harmon asked the County Planning Division for data on the water extraction, they were entirely unaware

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The principal wash which runs from Mexico north into the United States. The photo taken looking south shows the road, the wall, and the berm completely blocking the wash. (August 2, 2020). Photo by Edie Harmon

BLM'S PROPOSALS FOR THE GREAT BASIN SAGEBRUSH SEA

More of the same, rebranded



Fuel Break in the Owyhee region of southwest Idaho.
Photo by Talasi Brooks

IN THE SPRING OF 2020, THE BUREAU OF LAND MANAGEMENT (BLM) released a raft of new proposals to carve fuel breaks and slash vegetation “treatments” into vast swaths of western public lands. While these proposals are branded as “fuels reduction” or “restoration,” the chaining, tilling, burning, spraying, mowing, and reseeding with non-native species they use are identical to actions that destroyed or degraded the majority of the sagebrush sea to support livestock grazing over the past century.¹ Indeed, one of the methods to be used is so-called “targeted” or “prescribed” grazing – which allows livestock operators to graze extra to support BLM’s management objectives. Together, these proposals will destroy hundreds of thousands of acres of the remaining sagebrush-steppe.

More than 90% of BLM-managed public lands in the lower 48 states are grazed by domestic livestock. By the 1970s, over five million acres of sagebrush habitats had been destroyed through mechanical treatments, burning, and spraying with

herbicides in efforts to increase forage for grazing. Juniper forests were decimated to grow more grass for cows and sheep. The treatments and attendant grazing have destroyed biological soil crusts, making public lands vulnerable to cheatgrass invasions, and shortening fire cycles. Sagebrush species like greater sage-grouse, pygmy rabbits, mule deer, pronghorn, and others have suffered from the degradation or destruction of these habitats, and the greater sage-grouse has suffered particularly dramatic declines. BLM’s new “fuels reduction” and “restoration” proposals promise more of the same.

The first of these decisions is the “Great Basin Fuel Breaks Programmatic Environmental Impact Statement (PEIS),” first proposed in December of 2017 and finalized on April 1 of this year.² It allows BLM to de-vegetate a massive network of fuel breaks on 38 million acres of public lands in Washington, Oregon, Idaho, California, and virtually all of Nevada and Utah. Fuel breaks would be sited along existing roads and “rights-of-way” and could be up to half a mile wide. Approved methods include mowing, chaining, tilling, herbicides, and targeted grazing to create “brown strips” where nothing grows, or “green strips” where dominant cheatgrass is removed and re-seeded with other vegetation (normally non-native) – all methods that have resulted in wholesale destruction and fragmentation of sagebrush habitats in the past. Worse yet, there is little evidence that fuel breaks actually work to slow down fires, especially in dry, windy conditions.³ While BLM claims it will issue site-specific decisions before taking actions based on this proposal, it also suggests that those decisions may be reached through “Determinations of NEPA Adequacy” and if so, will occur without any meaningful opportunity for public review or comment.

On the heels of the Great Basin Fuel Breaks PEIS decision, in April of 2020, BLM issued a draft “Programmatic EIS for Fuels Reduction and Rangeland Restoration in the Great Basin.” Also originally proposed in December of 2017, the “Fuels Reduction” PEIS covers a similar area to the Great Basin Fuel Breaks PEIS but instead operates as programmatic analysis for “restoration” and “fuels reduction” treatments. The preferred alternative would allow BLM to use manual, chemical, and mechanical “restoration treatments” including prescribed fire, seeding, and targeted grazing on approximately 38.5 million acres of BLM lands in the same five states. Ironically, while these actions are trumpeted as “restoration,” they use familiar means of remov-

ing sagebrush recognized to have decimated sagebrush habitats. Similar to the Great Basin Fuel Breaks PEIS, BLM plans to implement this action through further site-specific decisions, but again may do so through Determinations of NEPA Adequacy.

The Fuels Reduction PEIS also claims to be “complementary” to a Categorical Exclusion which the BLM has proposed for the removal of pinyon and juniper trees. That new “categorical exclusion” would allow BLM to log up to 10,000 acres (15 square miles) of “encroaching” pinyon-juniper forests – including century year-old juniper trees – without preparing a full environmental analysis of the consequences or seeking public input. These categorical exclusions would be applied haphazardly without any public review or oversight and could result in 15-mile holes in ancient juniper woodlands. The stated purpose of the categorical exclusion is to address pinyon and juniper “encroachment” and “maintain” sagebrush habitats for mule deer and sage-grouse, but juniper trees are also commonly removed to promote growth of grasses to for cattle grazing.

Finally, in 2019, BLM launched a similar sweeping Environmental Assessment to allow targeted grazing and prescribed grazing on public lands in Nevada. The assessment endorses the dubious premise that livestock grazing can be used to treat cheatgrass invasions or create firebreaks, even though several recent peer-reviewed studies have found no evidence that livestock grazing can be used to reduce invasive grass infestations over the long term.⁴ BLM plans to implement targeted grazing on 24 million acres of public lands under the proposal, but despite the proposal’s enormous geographic breadth, BLM still found that implementing it would have “no significant impact” warranting a more in-depth environmental impact statement. BLM evidently intends to implement the proposal, again, through Determinations of NEPA Adequacy or without any further analysis.

While each of these proposals, individually, is vast in scope, together they authorize a range of vegetation manipulations over an astonishing area of the West. Although BLM heralds these actions as being for restoration or to fight fires, that characterization is scientifically dubious at best. There is little support for the efficacy of fuel breaks or of broad-scale targeted or prescribed grazing. In truth, these actions will fragment habitat, promote weeds, and displace wildlife throughout the remaining sagebrush habitats in the Great Basin. Their overall effect will be to remove sagebrush and pinyon-juniper to grow more grass while simultaneously implementing targeted grazing proposals that grant ranchers more forage for their livestock. This sleight of hand seems to do little more than guarantee the sagebrush steppe will continue to be sacrificed to the sacred cow, as it has been for the last hundred years.

Talasi Brooks is a Staff Attorney for Western Watersheds Project, where her work focuses on protecting native predators, saving sage-grouse, and reining in abusive public lands livestock grazing. Talasi lives in Boise, Idaho, where she serves as President of the Environment and Natural Resources Section of the Idaho State Bar, as a Board member for the nonprofit Wilderness Watch, and volunteers on trail projects in the Boise foothills in her spare time.

References may be found in the Notes section of the Desert Report website at www.desertreport.org.

Next Desert Committee Meeting

AUTUMN MEETING

The November meeting of the Desert Committee has been cancelled as a result of the Covid-19 pandemic. The 2021 February meeting in Shoshone has been tentatively rescheduled to March 6-7. www.desertreport.com will carry this information.

Outings

As a result of the coronavirus outbreak, all Desert Committee outings have been canceled, and none will be scheduled in the future until the situation is clear and the National Sierra Club has given approval. For updated information visit the Outings section at www.desertreport.com. You may also want to consult with other groups that conduct recreational and service outings in the desert:

Desert Survivors: www.desert-survivors.org

Friends of the Inyo: www.friendsoftheinyo.org

Friends of NV Wilderness: www.nevadawilderness.org

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URBAN WILDERNESS COLLISION

A highway through Utah's Red Cliffs National Conservation Area

BACKGROUND

The Red Cliffs National Conservation Area (NCA), located in Washington County, Utah, was established in 2009 to conserve and protect threatened and endangered species as well as other congressionally-designated natural, cultural, and recreational resources. The county, 2400-square miles in the southwest corner of the state (see map at bottom right), is at the convergence of the Colorado Plateau, the Great Basin, and the Mojave Desert, with elevations of 2,000' to over 10,000', providing unique habitat for a wide variety of species. Mesas, buttes, sheer cliffs of red Navajo sandstone, and expansive views are the hallmark landscapes, including the towering formations of Zion National Park. The NCA, composed of about 45,000 acres at 3,000'– 5,000', is a mix of desert landscape and red rock formations. Most of the county's land is managed by federal agencies.

Due to its climate and outdoor environment, the county has become a retirement, tourism, and recreation destination. It has experienced almost a four-fold increase of population over the last thirty years (to 183,000), and is projected to reach over 500,000 by 2065. The metropolitan area, centered in St George, is bookended by Zion National Park in the east and the red cliffs of the NCA in the west, with concentrated development along the NCA's boundary. This growth has put economic development in conflict with environmental stewardship (see map at top right).

This story begins in 1990 when the Mojave desert tortoise was listed as "threatened" under the Endangered Species. After many years of negotiations with local officials, Washington County agreed to a Habitat Conservation Plan in 1995. The plan protected tortoises and their habitat by establishing the Red Cliffs Desert Reserve, in exchange for enabling property devel-



View of the Red Cliffs National Conservation Area. Photo by Marius van der Merwe

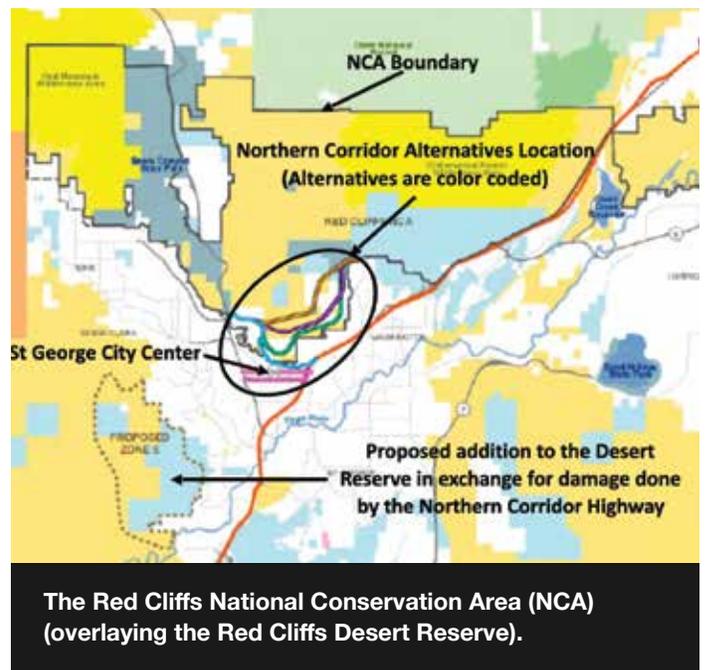
opment in tortoise habitat elsewhere in the county. Displaced tortoises were to be relocated to the Reserve. The county also pressed for approval of a new highway that would pass through a part of the Reserve, but it was rejected at the time as incompatible with protected habitat.

But ten years later, in 2005, a draft public lands bill proposed giving the county a large piece of federally-managed land and granting a “Northern Corridor Highway” through the protected Reserve as part of a ring road around the metro area. A group of local citizens formed a non-profit organization (now known as Conserve Southwest Utah) to protest those provisions in the bill. This resulted in several years of negotiation and culminated in a conservation victory. The 2009 Omnibus Public Land Management Act (OPLMA, section 1974) reversed the originally proposed land transfer and created the NCA as an overlay of protection on the Reserve.¹ This effectively denied the highway proposal which clearly would not further the protection of the tortoise and its habitat.

A “growth management/visioning process” grew out of this same citizen reaction, defining principles for “smart growth” that would avoid urban sprawl and continue the protection for these signature lands. But local governments have resisted the master planning required to implement these smart growth principles, and the resulting sprawl and poorly planned growth is largely responsible for the projected traffic problems that the Northern Corridor Highway is proposed to alleviate.

Despite these actions by citizens to protect the NCA lands, county government (with the support of state and federal representatives) continued to press for the Northern Corridor Highway through an appeal to the Department of Interior in 2016 and Congressional legislation in 2018. These appeals were unsuccessful.

Highway advocates are now attempting to set aside NCA



protections by seeking approval of a highway right-of-way and revisions to Resource Management Plans (RMP) through the National Environmental Policy Act (NEPA) process. The Bureau of Land Management (BLM) is managing that process, and their website is a primary reference for project details.² Under consideration are three routes for new highway construction (alternatives 2, 3, and 4) as well as two much-less-impactful modifications of already existing roadways (see map page 20). The Draft Environmental Impact Statement (DEIS) and draft RMP revisions are now in NEPA’s public commenting phase, which ends on September 10, 2020. Approval is targeted for January 2021, prior to the next presidential inauguration. Conserve Southwest Utah is organizing the public commenting.

The Issues

Highway construction will result directly in tortoise deaths and relocations, but indirect long-term mortality due to noise, vibration, light pollution, trash, and segmentation of habitat is a bigger issue. This is the densest animal population and the smallest area of protection for the tortoise in its range. Effects of the 4.5-mile highway extend over 4,000 meters on both sides.³ The Northern Corridor Highway would exacerbate invasive species, open fire and predator pathways, damage Native American cultural resources, and greatly decrease the recreation experience through incursions into the trail system.

As mitigation for this damage, the county proposes a “Zone 6” (see map this page, top) addition to the Reserve. This area is a mix of BLM land (including an Area of Critical Environmental Concern) and state school trust lands. It is discontinuous with the rest of the Reserve. While it has a tortoise population, it is also open to a wide range of damaging activities (many of which would continue) and is planned to be bisected by several roads in the future. Mitigation is an invalid argument in that the NCA and Reserve themselves were already mitigation for damage done elsewhere the county. Even though Zone 6 is a large space, it is a poor habitat, separated from the rest of the

URBAN WILDERNESS COLLISION

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population, and largely already protected by the ACEC.

The county has a valid concern for future traffic congestion along the north side of the greater St. George metropolitan area. Traffic models indicate bottlenecks at several intersections during peak hours by the year 2040 if improvements are not made. The DEIS shows that the new highway alternatives reduce these bottlenecks, but with significant environmental impacts. The DEIS also shows that enhancements to existing roads outside the NCA (alternatives 5 and 6) do a better job, and with virtually no environmental impacts.⁴ Yet the BLM proclaims it prefers alternative 3 through the NCA over alternatives 5 and 6 outside the NCA. While the reason is not explained in the DEIS, it is generally understood that the county has requested Utah's congressional delegation to ask the Department of Interior for approval as a favor, regardless of the DEIS technical findings. There has been no cost analysis performed as yet, and there are design alternatives to the various solutions that would impact both cost and benefit.

The Need to Reconsider

In July 2020, two human-caused fires, enabled by existing roads in or near the NCA, burned 14,000 acres, or over 20% of the NCA and Reserve. This has significantly changed the conditions assumed as a baseline for the DEIS. Fire is one of the most threatening events for the desert tortoise. The impact of these fires to the existing population is unknown until it can be surveyed, but it is likely to be severe.

Utah in general, and Washington County in particular, hold the position that there should be no federally-managed lands. There have been many assaults, both frontal and more subtle, aimed at wresting control of these lands from federal management. There is a disdain for the Endangered Species Act, for the National Environmental Policy Act, and for efforts to protect lands when economic development may be impacted. This step to force through the Northern Corridor Highway is a subtle assault, taking a bite into the protections and setting a precedent.

In addition to the environmental impacts of the highway, there are several legal questions:

1. Are new highways allowed in the protected habitat of National Conservation Areas?
2. Is there sufficient basis to allow a highway through a right-of-way avoidance area?
3. Can a highway be approved through lands that were purchased by a federal agency using Land and Water Conservation Act funds for the purpose of protecting habitat and providing recreation?
4. Do the July 2020 fires pose a significant change to the baseline conditions of the DEIS, requiring a supplemental DEIS and subsequent comment period?

The DEIS fails to address these questions, and formal requests to consider them have been denied.

Conclusions

Washington County entered into the Habitat Conservation Plan knowing that a highway would not be allowed, in ex-

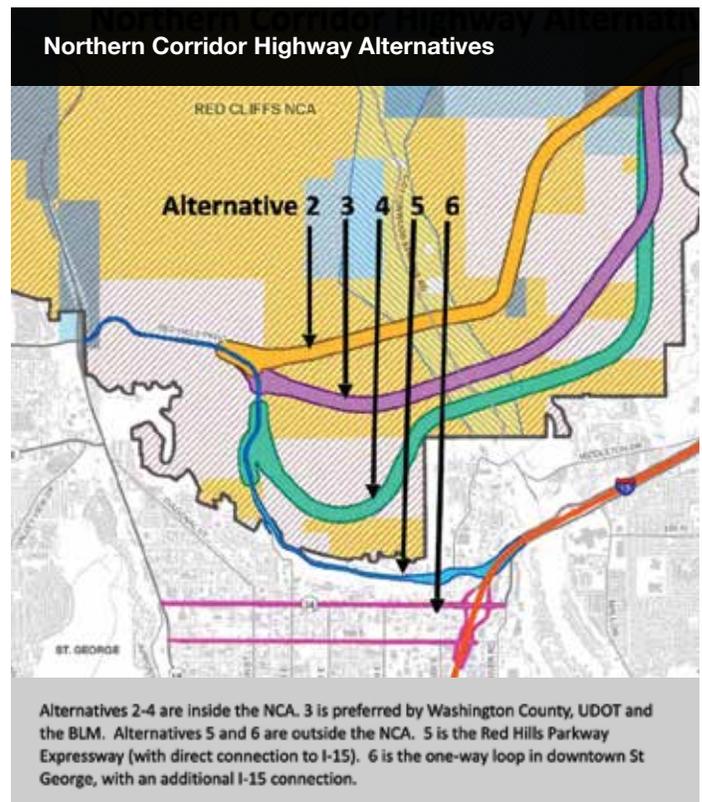
change for enabling unencumbered development throughout the rest of the county. Now that development has largely been completed, the county no longer needs the HCP or the protections it ensured. In the final months before the next election, it sees the NEPA process with a cooperative Department of Interior as its last best chance.

Many citizens of Washington County see the Northern Corridor Highway as an unnecessary and illegal destruction of protected habitat for species that are continually stressed for survival in competition with human economic development. The natural environment is our local economic engine, attracting businesses and visitors from around the world. To destroy this especially sensitive area when there are better solutions is not sensible.

See the Conserve Southwest Utah website (<https://con-serveswu.org/northern-corridor-highway/>) for details about issues and for guidance on how to develop and submit a citizen comment on proposed highway.

Tom Butine grew up in Michigan, was educated in science, worked as an engineer for Boeing Company, and became involved in conservation after retirement. He has long been involved in outdoor recreational activities, and these interests led to his involvement in conservation, environmental, and social issues, especially anthropomorphic climate change.

References may be found in the Notes section of the Desert Report website at www.desertreport.org.



of the existence of the wells. CBP acknowledged the existence of the wells but declined to provide any data on depth, capacity, quantity, or quality of the water. Subsequently, the County issued a Cease and Desist Order to the responsible contractor, but at the time of this writing there has been no response and water still appears to be flowing. In the July 14 conference call, CBP gave assurances that the data would be available *when they have completed the application for a permit!!!* In view of the waiver of federal environmental requirements related to the wall, it is not entirely clear whether the Imperial County regulations are binding upon CBP. At least three legal opinions believe that they are, and CBP agreed to apply to the County for water well permits and provide data to the County and USGS. Nevertheless, it is likely that before any legal case on other border wall issues can be resolved, the wall in the Jacumba Wilderness Area will be completed!!

Legal issues go beyond the county regulations. The aquifer which is being tapped by CBP extends underground into Mexico. A number of agreements between the United States and Mexico relate to surface waters that cross the border. Access to ground water that is shared mutually by the two countries is a largely unresolved question.

Still another matter involves the transfer of money from the United States military budget to the CBP budget for construction of the wall. Predictably, this has been challenged in court. On July 31, 2020, an action by the U.S. Supreme Court permitted this transfer, overturning a contrary ruling issued on June 26, 2020, by the 9th Circuit Court of Appeals.

Lessons learned

The most obvious conclusion is that construction in the Jacumba Wilderness was pursued with haste and for political purposes. Environmental analysis was either ignored or postponed to the indefinite future. Public input was solicited in a perfunctory way, and later inquiries were met with platitudes rather than answers. Legal issues involved in the construction are being pursued retroactively rather than in the planning process. The usefulness of a border wall for immigration policy was never subject to an open debate, and the decision to proceed was made administratively. If nothing else, the events which have occurred in Imperial County *demonstrate the importance of our national environmental laws*. While these laws may, or may not, lead to wise decisions, they do require that every possible effort be made to determine the consequences of major proposals before they are actually put into action. It is also imperative that the public be willing to monitor project activities and document issues of concern as they occur. Without documentation, it is impossible to hold government agencies and their contractors accountable. Blindly trusting that government contractors will do what is necessary to protect environmental resources and to preserve cultural resource values is wishful dreaming.

Craig Deutsche is editor of the Desert Report, a retired high school teacher, and a desert rat since the early 1990s. The Carizo Plain and Imperial County are areas of particular interest.

hippies for their woes rather than multinational corporations and policy choices felt easier and perhaps more satisfying.

In a nation increasingly divided by political partisanship, division on public lands was to be expected, too.

The history of Bears Ears, a stunning area in southeastern Utah exemplifies many trends of public lands history. The area is undeniably beautiful and contains a rich history and material culture, especially for the Indigenous people who have long called the Four Corners their homeland. An inter-tribal coalition – led by five tribes with dozens of others supporting – called for stronger federal protection, namely a national monument. Charged with crafting a solution, a Republican-led Congress during the Obama administration dithered and devised a compromise that favored flexibility for grazing and energy interests over a diminished area. Indigenous people and environmentalists dismissed the shoddy compromise, and so President Obama declared Bears Ears National Monument in waning days of his administration.

A hallmark of the Trump administration has been to undo any Obama-era legacy, and Bears Ears represented this effort for public lands policy. The president ordered Secretary of Interior Ryan Zinke (resigned in 2018) to gather public input and review the monument's creation and status. Most observers noted that Zinke's review favored commodity interests and dismissed tribal values and preferences. The overwhelming public response was to keep Bears Ears National Monument as it had been created. Instead, President Trump rescinded Obama's order – something never before done and of uncertain legal authority – and shrunk the monument at the end of 2017 by 85 percent, from 1,351,849 acres to 201,876 acres. This unprecedented presidential action remains under litigation.

The episode symbolizes much for the history of public lands. Bears Ears reminds us that public lands are Native lands, and the sovereignty of tribes remains real but constantly threatened and undermined. It shows how the executive branch shapes policy and how the legislative branch plays a role with courts often having final say. It also demonstrates the ways the parties have in recent years rejected the imperative to govern for the public interest and instead battle against each other in what often feels like a zero-sum game.

The public lands, though, remain an area where American citizens often find some common ground. A large majority of Americans wants these lands protected for and accessible to the public, not for corporations. When democracy works, political leadership will recognize this and act accordingly. When it doesn't, the lack of political integrity erodes the public's land and their trust.

Adam M. Sowards is an environmental historian, writer, and professor who lives in the Palouse region of the inland Northwest. A specialist of public lands history, he is the author of numerous books, articles, and essays, the most recent of which is An Open Pit Visible from the Moon: The Wilderness Act and the Fight to Protect Miners Ridge and the Public Interest.

SALTON SEA REPORT

It's still there, with many challenges

OUR NEIGHBOR TO THE EAST, THE Salton Sea, is still stunningly gorgeous but continues, on a daily basis, to become a greater health hazard and wildlife habitat loss. This giant inland body of water provides an essential migratory stopover for hundreds of bird species migrating from South America to Alaska. It is the home and breeding grounds for hundreds of other bird species. Right now, increasing dust from the ever-expanding playa is a critical health issue for all of those living near the Salton Sea. If left unabated, this lung-clogging dust will spread to the entire Coachella Valley, and even beyond to the greater Southern California region.

Starting in 2017, the Salton Sea Ten Year Management Plan required the state to complete minimum acreages of dust suppression (i.e., treating soil to slow dust movement) and habitat preservation (i.e., capturing water inflows for habitat) each year. It's important to note that both soil treatment and habitat preservation will effectively quell dust, and the latter will do so permanently.

The goal was to have 3900 acres of the Ten Year Plan projects completed by the end of 2020, but currently the total

acreage completed is only 112 acres. In the meantime there has been an increase of 12,700 acres of exposed playa. The state now claims it will furrow a few thousand acres of shoreline this year for dust abatement, but it remains to be seen if that comes to reality. This still leaves the state woefully behind in habitat preservation. It becomes obvious that with this kind of progress over the remaining seven years of the Ten Year Plan there will be a total disaster!

The largest ever rural-to-urban water transfer (from Imperial to San Diego County) has lowered the level of the Salton Sea and has spiked its salinity. This kills fish, and robs birds of the nourishment that they require to survive. And finally, the specter of future water transfers to other thirsty urban areas in the Southwest is a very real threat in this time of climate change and drought along the Colorado River Basin.

Currently there are bond funds allocated to a "shovel-ready" project to shallow-flood the exposed playa at the south end of the Sea, which should begin addressing the habitat issue in that area. The state's current budget allocates another \$27 million for the cleanup of

the New River, \$19 million for the North Lake pilot project, and \$10 million for necessary staffing to move the state's major Ten Year remediation campaign forward. In addition, two minor projects to restore boat access on the east and west banks of the Salton Sea (see Mar 2020 DR article on the West Shore canal project) have been funded by various entities, but to date no groundbreaking has occurred. Additionally, after three years, the one-square-mile USFWS Red Hill Bay wetlands project is close to completion, but not yet to the finish line.

The ultimate solution to the Salton Sea's woes probably lies in bringing in water from the Pacific Ocean or the Sea of Cortez, though that will require more time and money than is currently available. In the meantime, we need to get behind the projects that are feasible and fundable now. These projects will help to cover the receding shoreline, quell the dust, and preserve migration on the Pacific Flyway.

The Sierra Club is working with several community organizations from the Coachella Valley and beyond to ensure that the current projects reflect community input and are expedited in a timely manner. A parallel action plan is to be working on the long term solution, such as feasible importation of ocean water to prepare for the inevitable water wars of the future.

As of August 1, 2020, the state has not announced a firm timeline for the public hearings on the National Environmental Protection Act process NEPA, which will give a federal go-ahead to the various Ten Year Plan projects on the Salton Sea.

Would you like to be notified of opportunities to [remotely] lobby elected officials to ensure that remediation of the Salton Sea stays on track? If so, please send an email to tahquitz@sierraclub.org or check out the Sierra Club Tahquitz Group Facebook page to get on our Salton Sea activist list. FYI, we hope to lead educational outings at the Salton Sea as well when it is safe to do so. Thank you!

Gary Gray is an avid photographer, birder, and outdoorsman who visits the Salton Sea regularly. A member of the Sierra Club since 1982, Gary is the Club's lead activist for the Salton Sea and Environmental Justice Chair of the Tahquitz Group.



Sunset Over the Salton Sea. Photo by Gary Gray



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OUR MISSION

The Sierra Club California/Nevada Desert Committee works for the protection and conservation of the deserts of California, Nevada, and other areas in the Southwest; monitors and works with public, private, and non-profit agencies to promote preservation of our arid lands; sponsors education and service trips; encourages and supports others to work for similar objectives; and maintains, shares, and publishes information about the desert.

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