

Appendixes



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APPENDIX A: 1994 CALIFORNIA DESERT PROTECTION ACT (PUBLIC LAW 103-433)

(Sections Relevant to Mojave National Preserve)

One Hundred Third Congress

of the

United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the twenty-fifth day of January, one thousand nine hundred and ninety-four*

An Act

To designate certain lands in the California Desert as wilderness, to establish the Death Valley and Joshua Tree National Parks, to establish the Mojave National Preserve, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

Sections 1 and 2, and titles I through IX of this Act may be cited as the "California Desert Protection Act of 1994".

SEC. 2. FINDINGS AND POLICY.

(a) The Congress finds and declares that--

(1) the federally owned desert lands of southern California constitute a public wildland resource of extraordinary and inestimable value for this and future generations;

(2) these desert wildlands display unique scenic, historical, archeological, environmental, ecological, wildlife, cultural, scientific, educational, and recreational values used and enjoyed by millions of Americans for hiking and camping, scientific study and scenic appreciation;

(3) the public land resources of the California desert now face and are increasingly threatened by adverse pressures which would impair, dilute, and destroy their public and natural values;

(4) the California desert, embracing wilderness lands, units of the National Park System, other Federal lands, State parks and other State lands, and private lands, constitutes a cohesive unit posing unique and difficult resource protection and management challenges;

(5) through designation of national monuments by Presidential proclamation, through enactment of general public land statutes (including section 601 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 43 U.S.C. 1701 et seq.) and through interim administrative actions, the Federal Government has begun the process of appropriately providing for protection of the significant resources of the public lands in the California desert; and

(6) statutory land unit designations are needed to afford the full protection which the resources and public land values of the California desert merit.

(b) In order to secure for the American people of this and future generations an enduring heritage of wilderness, national parks, and public land values in the California desert, it is hereby declared to be the policy of the Congress that--

(1) appropriate public lands in the California desert shall be included within the National Park System and the National Wilderness Preservation System, in order to--

(A) preserve unrivaled scenic, geologic, and wildlife values associated with these unique natural landscapes;

(B) perpetuate in their natural state significant and diverse ecosystems of the California desert;

(C) protect and preserve historical and cultural values of the California desert

associated with ancient Indian cultures, patterns of western exploration and settlement, and sites exemplifying the mining, ranching and railroading history of the Old West;

(D) provide opportunities for compatible outdoor public recreation, protect and interpret ecological and geological features and historic, paleontological, and archeological sites, maintain wilderness resource values, and promote public understanding and appreciation of the California desert; and

(E) retain and enhance opportunities for scientific research in undisturbed ecosystems.

TITLE V--MOJAVE NATIONAL PRESERVE

SEC. 501. FINDINGS.

The Congress hereby finds that--

(1) Death Valley and Joshua Tree National Parks, as established by this Act, protect unique and superlative desert resources, but do not embrace the particular ecosystems and transitional desert type found in the Mojave Desert area lying between them on public lands now afforded only impermanent administrative designation as a national scenic area;

(2) the Mojave Desert area possesses outstanding natural, cultural, historical, and recreational values meriting statutory designation and recognition as a unit of the National Park System;

(3) the Mojave Desert area should be afforded full recognition and statutory protection as a national preserve;

(4) the wilderness within the Mojave Desert should receive maximum statutory protection by designation pursuant to the Wilderness Act; and

(5) the Mojave Desert area provides an outstanding opportunity to develop services, programs, accommodations and facilities to ensure the use and enjoyment of the area by individuals with disabilities, consistent with section 504 of the Rehabilitation Act of 1973, Public Law 101-336, the Americans With Disabilities Act of 1990 (42 U.S.C. 12101), and other appropriate laws and regulations.

SEC. 502. ESTABLISHMENT OF THE MOJAVE NATIONAL PRESERVE.

There is hereby established the Mojave National Preserve, comprising approximately one million four hundred nineteen thousand eight hundred acres, as generally depicted on a map entitled "Mojave National Park Boundary-Proposed", dated May 17, 1994, which shall be on file and available for inspection in the appropriate offices of the Director of the National Park Service, Department of the Interior.

SEC. 503. TRANSFER OF LANDS.

Upon enactment of this title, the Secretary shall transfer the lands under the jurisdiction of the Bureau of Land Management depicted on the maps described in section 502 of this title, without consideration, to the administrative jurisdiction of the Director of the National Park Service. The boundaries of the public lands shall be adjusted accordingly.

SEC. 504. MAPS AND LEGAL DESCRIPTION.

Within six months after the date of enactment of this title, the Secretary shall file maps and a legal description of the preserve designated under this title with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives. Such maps and legal description shall have the same force and effect as if included in this title, except that the Secretary may correct clerical and typographical errors in such legal description and in the maps referred to in section 502. The maps and legal description shall be on file and available for public inspection in the appropriate offices of the National Park Service, Department of the Interior.

SEC. 505. ABOLISHMENT OF SCENIC AREA.

The East Mojave National Scenic Area, designated on January 13, 1981 (46 FR 3994), and

modified on August 9, 1983 (48 FR 36210), is hereby abolished.

SEC. 506. ADMINISTRATION OF LANDS.

(a) The Secretary shall administer the preserve in accordance with this title and with the provisions of law generally applicable to units of the National Park System, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2-4).

(b) The Secretary shall permit hunting, fishing, and trapping on lands and waters within the preserve designated by this Act in accordance with applicable Federal and State laws except that the Secretary may designate areas where, and establish periods when, no hunting, fishing, or trapping will be permitted for reasons of public safety, administration, or compliance with provisions of applicable law. Except in emergencies, regulations closing areas to hunting, fishing, or trapping pursuant to this subsection shall be put into effect only after consultation with the appropriate State agency having responsibility for fish and wildlife. Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the States with respect to fish and wildlife on Federal lands and waters covered by this title nor shall anything in this Act be construed as authorizing the Secretary concerned to require a Federal permit to hunt, fish, or trap on Federal lands and waters covered by this title.

SEC. 507. WITHDRAWAL.

Subject to valid existing rights, all Federal lands within the preserve are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the United States mining laws; and from disposition under all laws pertaining to mineral and geothermal leasing, and mineral materials, and all amendments thereto.

SEC. 508. REGULATION OF MINING.

Subject to valid existing rights, all mining claims located within the preserve shall be subject to all applicable laws and regulations applicable to mining within units of the National Park System, including the Mining in the Parks Act (16 U.S.C. 1901 et seq.), and any patent issued after the date of enactment of this title shall convey title only to the minerals together with the right to use the surface of lands for mining purposes, subject to such laws and regulations.

SEC. 509. STUDY AS TO VALIDITY OF MINING CLAIMS.

(a) The Secretary shall not approve any plan of operation prior to determining the validity of the unpatented mining claims, mill sites, and tunnel sites affected by such plan within the preserve and shall submit to Congress recommendations as to whether any valid or patented claims should be acquired by the United States, including the estimated acquisition costs of such claims, and a discussion of the environmental consequences of the extraction of minerals from these lands.

(b)(1) Notwithstanding any other provision of law, the Secretary shall permit the holder or holders of mining claims identified on the records of the Bureau of Land Management as Volco #A CAMC 105446, Volco #B CAMC 105447, Volco 1 CAMC 80155, Volco 2 CAMC 80156, Volco 3 CAMC 170259, Volco 4 CAMC 170260, Volco 5 CAMC 78405, Volco 6 CAMC 78404, and Volco 7 CAMC 78403, Volco Placer 78332, to continue exploration and development activities on such claims for a period of two years after the date of enactment of this title, subject to the same regulations as applied to such activities on such claims on the day before such date of enactment.

(2) At the end of the period specified in paragraph (1), or sooner if so requested by the holder or holders of the claims specified in such paragraph, the Secretary shall determine whether there has been a discovery of valuable minerals on such claims and whether, if such discovery had been made on or before July 1, 1994, such claims would have been valid as of such date under the mining laws of the United States in effect on such date.

(3) If the Secretary, pursuant to paragraph (2), makes an affirmative determination concerning the claims specified in paragraph (1), the holder or holders of such claims shall be permitted to continue to operate such claims subject only to such regulations as applied on July 1, 1994 to the exercise of valid existing rights on patented mining claims within a unit of the National Park System.

SEC. 510. GRAZING.

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

(b) If a person holding a grazing permit referred to in subsection (a) informs the Secretary that such permittee is willing to convey to the United States any base property with respect to which such permit was issued and to which such permittee holds title, the Secretary shall make the acquisition of such base property a priority as compared with the acquisition of other lands within the preserve, provided agreement can be reached concerning the terms and conditions of such acquisition. Any such base property which is located outside the preserve and acquired as a priority pursuant to this section shall be managed by the Federal agency responsible for the majority of the adjacent lands in accordance with the laws applicable to such adjacent lands.

SEC. 511. UTILITY RIGHTS OF WAY.

(a)(1) Nothing in this title shall have the effect of terminating any validly issued right-of-way or customary operation, maintenance, repair, and replacement activities in such right-of-way, issued, granted, or permitted to Southern California Edison Company, its successors or assigns, which is located on lands included in the Mojave National Preserve, but outside lands designated as wilderness under section 601(a)(3). Such activities shall be conducted in a manner which will minimize the impact on preserve resources.

(2) Nothing in this title shall have the effect of prohibiting the upgrading of an existing electrical transmission line for the purpose of increasing the capacity of such transmission line in the Southern California Edison Company validly issued Eldorado-Lugo Transmission Line right-of-way and Mojave-Lugo Transmission Line right-of-way, or in a right-of-way if issued, granted, or permitted by the Secretary adjacent to the existing Mojave-Lugo Transmission Line right-of-way (hereafter in this section referred to as "adjacent right-of-way"), including construction of a replacement transmission line: Provided, That--

(A) in the Eldorado-Lugo Transmission Line rights-of-way (hereafter in this section referred to as the "Eldorado rights-of-way") at no time shall there be more than three electrical transmission lines;

(B) in the Mojave-Lugo Transmission Line right-of-way (hereafter in this section referred to as the "Mojave right-of-way") and adjacent right-of-way, removal of the existing electrical transmission line and reclamation of the site shall be completed no later than three years after the date on which construction of the upgraded transmission line begins, after which time there may be only one electrical transmission line in the lands encompassed by Mojave right-of-way and adjacent right-of-way;

(C) if there are no more than two electrical transmission lines in the Eldorado rights-of-way, two electrical transmission lines in the lands encompassed by the Mojave right-of-way and adjacent right-of-way may be allowed;

(D) in the Eldorado rights-of-way and Mojave right-of-way no additional land shall be issued, granted, or permitted for such upgrade unless an addition would reduce the impacts to preserve resources;

(E) no more than 350 feet of additional land shall be issued, granted, or permitted for an adjacent right-of-way to the south of the Mojave right-of-way unless a greater addition would reduce the impacts to preserve resources; and

(F) such upgrade activities, including helicopter aided construction, shall be conducted in a manner which will minimize the impact on preserve resources.

(3) The Secretary shall prepare within one hundred and eighty days after the date of enactment of this title, in consultation with the Southern California Edison Company, plans for emergency access by the Southern California Edison Company to its rights-of-way.

(b)(1) Nothing in this title shall have the effect of terminating any validly issued right-of-way, or customary operation, maintenance, repair, and replacement activities in such right-of-way; prohibiting the upgrading of and construction on existing facilities in such right-of-way for the purpose of increasing the capacity of the existing pipeline; or prohibiting the renewal of such right-of-way issued, granted, or permitted to the Southern California Gas Company, its successors or assigns, which is located on lands included in the Mojave National Preserve, but outside lands designated as wilderness under section 601(a)(3). Such activities shall be conducted in a manner which will minimize the impact on preserve resources.

(2) The Secretary shall prepare within one hundred and eighty days after the date of

enactment of this title, in consultation with the Southern California Gas Company, plans for emergency access by the Southern California Gas Company to its rights-of-way.

(c) Nothing in this title shall have the effect of terminating any validly issued right-of-way or customary operation, maintenance, repair, and replacement activities of existing facilities issued, granted, or permitted for communications cables or lines, which are located on lands included in the Mojave National Preserve, but outside lands designated as wilderness under section 601(a)(3). Such activities shall be conducted in a manner which will minimize the impact on preserve resources.

(d) Nothing in this title shall have the effect of terminating any validly issued right-of-way or customary operation, maintenance, repair, and replacement activities of existing facilities issued, granted, or permitted to Molybdenum Corporation of America; Molycorp, Incorporated; or Union Oil Company of California (d/b/a Unocal Corporation); or its successors or assigns, or prohibiting renewal of such right-of-way, which is located on lands included in the Mojave National Preserve, but outside lands designated as wilderness under section 601(a)(3). Such activities shall be conducted in a manner which will minimize the impact on preserve resources.

SEC. 512. PREPARATION OF MANAGEMENT PLAN.

Within three years after the date of enactment of this title, the Secretary shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives a detailed and comprehensive management plan for the preserve. Such plan shall place emphasis on historical and cultural sites and ecological and wilderness values within the boundaries of the preserve. Such plan shall evaluate the feasibility of using the Kelso Depot and existing railroad corridor to provide public access to and a facility for special interpretive, educational, and scientific programs within the preserve. Such plan shall specifically address the needs of individuals with disabilities in the design of services, programs, accommodations and facilities consistent with section 504 of the Rehabilitation Act of 1973, Public Law 101-336, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101), and other appropriate laws and regulations.

SEC. 513. GRANITE MOUNTAINS NATURAL RESERVE.

(a) ESTABLISHMENT- There is hereby designated the Granite Mountains Natural Reserve within the preserve comprising approximately nine thousand acres as generally depicted on a map entitled "Mojave National Park Boundary and Wilderness--Proposed 6", dated May 1991.

(b) COOPERATIVE MANAGEMENT AGREEMENT- Upon enactment of this title, the Secretary shall enter into a cooperative management agreement with the University of California for the purposes of managing the lands within the Granite Mountains Natural Reserve. Such cooperative agreement shall ensure continuation of arid lands research and educational activities of the University of California, consistent with the provisions of this title and laws generally applicable to units of the National Park System.

SEC. 514. SODA SPRINGS DESERT STUDY CENTER.

Upon enactment of this title, the Secretary shall enter into a cooperative management agreement with California State University for the purposes of managing facilities at the Soda Springs Desert Study Center. Such cooperative agreement shall ensure continuation of the desert research and educational activities of California State University, consistent with the provisions of this title and laws generally applicable to units of the National Park System.

SEC. 515. CONSTRUCTION OF VISITOR CENTER.

The Secretary is authorized to construct a visitor center in the preserve for the purpose of providing information through appropriate displays, printed material, and other interpretive programs, about the resources of the preserve.

SEC. 516. ACQUISITION OF LANDS.

The Secretary is authorized to acquire all lands and interest in lands within the boundary of the preserve by donation, purchase, or exchange, except that--

(1) any lands or interests therein within the boundary of the preserve which are

owned by the State of California, or any political subdivision thereof, may be acquired only by donation or exchange except for lands managed by the California State Lands Commission; and

(2) lands or interests therein within the boundary of the preserve which are not owned by the State of California or any political subdivision thereof may be acquired only with the consent of the owner thereof unless the Secretary determines, after written notice to the owner and after opportunity for comment, that the property is being developed, or proposed to be developed, in a manner which is detrimental to the integrity of the preserve or which is otherwise incompatible with the purposes of this title: Provided, however, That the construction, modification, repair, improvement, or replacement of a single-family residence shall not be determined to be detrimental to the integrity of the preserve or incompatible with the purposes of this title.

SEC. 517. ACQUIRED LANDS TO BE MADE PART OF MOJAVE NATIONAL PRESERVE.

Any lands acquired by the Secretary under this title shall become part of the Mojave National Preserve.

SEC. 518. MOJAVE NATIONAL PRESERVE ADVISORY COMMISSION.

(a) The Secretary shall establish an Advisory Commission of no more than fifteen members, to advise the Secretary concerning the development and implementation of a new or revised comprehensive management plan for the Mojave National Preserve.

(b)(1) The advisory commission shall include an elected official for each County within which any part of the preserve is located, a representative of the owners of private properties located within or immediately adjacent to the preserve, and other members representing persons actively engaged in grazing and range management, mineral exploration and development, and persons with expertise in relevant fields, including geology, biology, ecology, law enforcement, and the protection and management of National Park resources and values.

(2) Vacancies in the advisory commission shall be filled by the Secretary so as to maintain the full diversity of views required to be represented on the advisory commission.

(c) The Federal Advisory Committee Act shall apply to the procedures and activities of the advisory commission.

(d) The advisory commission shall cease to exist ten years after the date of its establishment.

SEC. 519. NO ADVERSE AFFECT ON LAND UNTIL ACQUIRED.

Unless and until acquired by the United States, no lands within the boundaries of wilderness areas or National Park System units designated or enlarged by this Act that are owned by any person or entity other than the United States shall be subject to any of the rules or regulations applicable solely to the Federal lands within such boundaries and may be used to the extent allowed by applicable law. Neither the location of such lands within such boundaries nor the possible acquisition of such lands by the United States shall constitute a bar to the otherwise lawful issuance of any Federal license or permit other than a license or permit related to activities governed by 16 U.S.C. 4601-22(c). Nothing in this section shall be construed as affecting the applicability of any provision of the Mining in the Parks Act (16 U.S.C. 1901 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), or regulations applicable to oil and gas development as set forth in 36 CFR 9B.

TITLE VI--NATIONAL PARK SYSTEM WILDERNESS

SEC. 601. DESIGNATION OF WILDERNESS.

(a) In furtherance of the purposes of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1311 et seq.), the following lands within the units of the National Park System designated by this Act are hereby designated as wilderness, and therefore, as components of the National Wilderness Preservation System:

(3) Mojave National Preserve Wilderness, comprising approximately six hundred ninety-five thousand two hundred acres, as generally depicted on ten maps entitled "Mojave National Park Boundary and Wilderness-Proposed", and numbered in the title one through ten, and dated March 1994 or prior, and seven maps entitled 'Mojave National Park Wilderness--Proposed', numbered in the title one through seven, and dated March 1994 or prior, and which shall be known as the Mojave Wilderness.

SEC. 602. FILING OF MAPS AND DESCRIPTIONS.

Maps and a legal description of the boundaries of the areas designated in section 601 of this title shall be on file and available for public inspection in the appropriate offices of the National Park Service, Department of the Interior. As soon as practicable after the date of enactment of this title, maps and legal descriptions of the wilderness areas shall be filed with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives, and such maps and legal descriptions shall have the same force and effect as if included in this title, except that the Secretary may correct clerical and typographical errors in such maps and legal descriptions.

SEC. 603. ADMINISTRATION OF WILDERNESS AREAS.

The areas designated by section 601 of this title as wilderness shall be administered by the Secretary in accordance with the applicable provisions of the Wilderness Act governing areas designated by that title as wilderness, except that any reference in such provision to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this title, and where appropriate, and reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

TITLE VII--MISCELLANEOUS PROVISIONS

SEC. 702. LAND TENURE ADJUSTMENTS.

In preparing land tenure adjustment decisions with the California Desert Conservation Area, of the Bureau of Land Management, the Secretary shall give priority to consolidating Federal ownership within the national park units and wilderness areas designated by this Act.

SEC. 703. LAND DISPOSAL.

Except as provided in section 406 of this Act, none of the lands within the boundaries of the wilderness or park areas designated under this Act shall be granted to or otherwise made available for use by the Metropolitan Water District or any other agencies or persons pursuant to the Boulder Canyon Project Act (43 U.S.C. 617-619b) or any similar Acts.

SEC. 704. MANAGEMENT OF NEWLY ACQUIRED LANDS.

Any lands within the boundaries of a wilderness area designated under this Act which are acquired by the Federal Government, shall become part of the wilderness area within which they are located and shall be managed in accordance with all the provisions of this Act and other laws applicable to such wilderness area.

SEC. 705. NATIVE AMERICAN USES AND INTERESTS.

(a) ACCESS- In recognition of the past use of the National Park System units and wilderness areas designed under this Act by Indian people for traditional cultural and religious purposes, the Secretary shall ensure access to such park system units and wilderness areas by Indian people for such traditional cultural and religious purposes. In implementing this section, the Secretary, upon the request of an Indian tribe or Indian religious community, shall temporarily close to the general public use of one or more specific portions of the park system unit or wilderness area in order to protect the privacy of traditional cultural and religious activities in such areas by Indian people. Any such closure shall be made to affect the smallest practicable area for the minimum period necessary for such purposes. Such access shall be consistent with the purpose and intent of Public Law 95-341 (42 U.S.C. 1996) commonly referred to as the "American Indian Religious Freedom Act", and with respect to areas designated as wilderness, the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131).

(b) STUDY- (1) The Secretary, in consultation with the Timbisha Shoshone Tribe and relevant Federal agencies, shall conduct a study, subject to the availability of appropriations, to identify lands suitable for a reservation for the Timbisha Shoshone Tribe that are located within the Tribe's aboriginal homeland area within and outside the boundaries of the Death Valley National Monument and the Death Valley National Park, as described in title III of this Act.

(2) Not later than 1 year after the date of enactment of this title, the Secretary shall submit a report to the Committee on Energy and Natural Resources and the Committee on Indian Affairs of the United States Senate, and the Committee on Natural Resources of the United States House of Representatives on the results of the study conducted under paragraph (1).

SEC. 706. FEDERAL RESERVED WATER RIGHTS.

(a) Except as otherwise provided in section 204 of this Act, with respect to each wilderness area designated by this Act, Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this Act. The priority date of such reserved water rights shall be the date of enactment of this Act.

(b) The Secretary and all other officers of the United States shall take all steps necessary to protect the rights reserved by this section, including the filing by the Secretary of a claim for the quantification of such rights in any present or future appropriate stream adjudication in the courts of the State of California in which the United States is or may be joined in accordance with section 208 of the Act of July 10, 1952 (66 Stat. 560, 43 U.S.C. 666), commonly referred to as the McCarran Amendment.

(c) Nothing in this Act shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of California on or before the date of enactment of this Act.

(d) The Federal water rights reserved by this Act are specific to the wilderness area located in the State of California designated under this Act. Nothing in this Act related to the reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made thereto.

SEC. 707. CALIFORNIA STATE SCHOOL LANDS.

(a) NEGOTIATIONS TO EXCHANGE- Upon request of the California State Lands Commission (hereinafter in this section referred to as the "Commission"), the Secretary shall enter into negotiations for an agreement to exchange Federal lands or interests therein on the list referred to in subsection (b)(2) for California State School lands or interests therein which are located within the boundaries of one or more of the wilderness areas or park system units designated by this Act (hereinafter in this section referred to as "State School lands."). The Secretary shall negotiate in good faith to reach a land exchange agreement consistent with the requirements of section 206 of the Federal Land Policy and Management Act of 1976.

(b) PREPARATION OF LIST- Within six months after the date of enactment of this Act, the Secretary shall send to the Commission and to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives a list of the following:

(1) State School lands or interests therein (including mineral interests) which are located within the boundaries of the wilderness areas or park system units designated by this Act.

(2) Lands within the State of California under the jurisdiction of the Secretary that the Secretary determines to be suitable for disposal for exchange, identified in the following priority--

(A) lands with mineral interests, including geothermal, which have the potential for commercial development but which are not currently under mineral lease or producing Federal mineral revenues;

(B) Federal claims in California managed by the Bureau of Reclamation that the Secretary determines are not needed for any Bureau of Reclamation project; and

(C) any public lands in California that the Secretary, pursuant to the Federal Land Policy and Management Act of 1976, has determined to be suitable for disposal through exchange.

(3) Any other Federal land, or interest therein, within the State of California, which is or becomes surplus to the needs of the Federal Government. The Secretary may exclude, in the Secretary's discretion, lands located within, or contiguous to, the exterior boundaries of lands held in trust for a federally recognized Indian tribe located in the State of California.

(4) The Secretary shall maintain such list and shall annually transmit such list to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Natural Resources of the United States House of Representatives until all of the State School lands identified in paragraph (1) have been acquired.

(c) DISPOSAL OF SURPLUS FEDERAL PROPERTY- (1) Effective upon the date of enactment of

this title and until all State School lands identified in paragraph (b)(1) of this section are acquired, no Federal lands or interests therein within the State of California may be disposed of from Federal ownership unless--

(A) the Secretary is notified of the availability of such lands or interest therein;

(B) the Secretary has notified the Commission of the availability of such lands or interests therein for exchange; and

(C) the Commission has not notified the Secretary within six months that it wishes to consider entering into an exchange for such lands or interests therein.

(2) If the Commission notifies the Secretary that it wishes to consider an exchange for such lands or interests therein, the Secretary shall attempt to conclude such exchange in accordance with the provisions of this section as quickly as possible.

(3) If an agreement is reached and executed with the Commission, then upon notice to the head of the agency having administrative jurisdiction over such lands or interests therein, the Secretary shall be vested with administrative jurisdiction over such land or interests therein for the purpose of concluding such exchange.

(4) Upon the acquisition of all State School lands or upon notice by the Commission to the Secretary that it no longer has an interest in such lands or interests therein, such lands or interests shall be released to the agency that originally had jurisdiction over such lands or interests for disposal in accordance with the laws otherwise applicable to such lands or interests.

(d) NO EFFECT ON MILITARY BASE CLOSURES- The provisions of this section shall not apply to the disposal of property under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 102 Stat. 2627; 10 U.S.C. 2687 note) or the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510; 104 Stat. 1808; 10 U.S.C. 2687 note).

SEC. 708. ACCESS TO PRIVATE PROPERTY.

The Secretary shall provide adequate access to nonfederally owned land or interests in land within the boundaries of the conservation units and wilderness areas designated by this Act which will provide the owner of such land or interest the reasonable use and enjoyment thereof.

SEC. 709. FEDERAL FACILITIES FEE EQUITY.

(a) POLICY STATEMENT- It is the intent of Congress that entrance, tourism or recreational use fees for use of Federal lands and facilities not discriminate against any State or any region of the country.

(b) FEE STUDY- The Secretary, in cooperation with other affected agencies, shall prepare and submit a report by May 1, 1996 to the Committee on Energy and Natural Resources of the United States Senate, the Committee on Natural Resources of the United States House of Representatives, and any other relevant committees, which shall--

(1) identify all Federal lands and facilities that provide recreational or tourism use;

and

(2) analyze by State and region any fees charged for entrance, recreational or tourism use, if any, on Federal lands or facilities in a State or region, individually and collectively.

(c) RECOMMENDATIONS- Following completion of the report in subsection (b), the Secretary, in cooperation with other affected agencies, shall prepare and submit a report by May 1, 1997 to the Committee on Energy and Natural Resources of the United States Senate, the Committee on Natural Resources of the United States House of Representatives, and any other relevant committees, which shall contain recommendations which the Secretary deems appropriate for implementing the congressional intent outlined in subsection (a).

SEC. 710. LAND APPRAISAL.

Lands and interests in lands acquired pursuant to this Act shall be appraised without regard to the presence of a species listed as threatened or endangered pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 711. DEFINITION.

Any reference to the term "this Act" in titles I through IX shall be deemed to be solely a reference to sections 1 and 2, and titles I through IX.

TITLE VIII--MILITARY LANDS AND OVERFLIGHTS

SEC. 801. SHORT TITLE AND FINDINGS.

(a) SHORT TITLE- This title may be cited as the "California Military Lands Withdrawal and Overflights Act of 1994".

(b) FINDINGS- The Congress finds that--

(1) military aircraft testing and training activities as well as demilitarization activities in California are an important part of the national defense system of the United States, and are essential in order to secure for the American people of this and future generations an enduring and viable national defense system;

(2) the National Park System units and wilderness areas designated by this Act lie within a region critical to providing training, research, and development for the Armed Forces of the United States and its allies;

(3) there is a lack of alternative sites available for these military training, testing, and research activities;

(4) continued use of the lands and airspace in the California desert region is essential for military purposes; and

(5) continuation of these military activities, under appropriate terms and conditions, is not incompatible with the protection and proper management of the natural, environmental, cultural, and other resources and values of the Federal lands in the California desert area.

SEC. 802. MILITARY OVERFLIGHTS.

(a) OVERFLIGHTS- Nothing in this Act, the Wilderness Act, or other land management laws generally applicable to the new units of the National Park or Wilderness Preservation Systems (or any additions to existing units) designated by this Act, shall restrict or preclude low-level overflights of military aircraft over such units, including military overflights that can be seen or heard within such units.

(b) SPECIAL AIRSPACE- Nothing in this Act, the Wilderness Act, or other land management laws generally applicable to the new units of the National Park or Wilderness Preservation Systems (or any additions to existing units) designated by this Act, shall restrict or preclude the designation of new units of special airspace or the use or establishment of military flight training routes over such new park system or wilderness units.

(c) NO EFFECT ON OTHER LAWS- Nothing in this section shall be construed to modify, expand, or diminish any authority under other Federal law.

TITLE IX--AUTHORIZATION OF APPROPRIATIONS

SEC. 901. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the National Park Service and to the Bureau of Land Management to carry out this Act an amount not to exceed \$36,000,000 over and above that provided in fiscal year 1994 for additional administrative and construction costs over the fiscal year 1995-1999 period, and \$300,000,000 for all land acquisition costs. No funds in excess of these amounts may be used for construction, administration, or land acquisition authorized under this Act without a specific authorization in an Act of Congress enacted after the date of enactment of this Act..

APPENDIX B: RECORD OF DECISION

UNITED STATES DEPARTMENT OF THE INTERIOR NATIONAL PARK SERVICE

RECORD OF DECISION

GENERAL MANAGEMENT PLAN ABBREVIATED FINAL ENVIRONMENTAL IMPACT STATEMENT

Mojave National Preserve California

The Department of the Interior, National Park Service has prepared this Record of Decision on the *Final General Management Plan/Abbreviated Final Environmental Impact Statement* for Mojave National Preserve. This Record of Decision includes a description of the background of the planning effort, a description of the decision made, synopses of other alternatives considered, the basis for the decision, findings on impairment of park resources and values, a description of the environmentally preferable alternative, a listing of measures to minimize environmental harm, and an overview of public and agency involvement in the decision-making process.

BACKGROUND OF THE PROJECT

The impetus for this planning effort was the passage of the California Desert Protection Act (CDPA) on October 31, 1994. This act transferred over 3 million acres of the California desert from the Bureau of Land Management (BLM) to the National Park Service (NPS) and designated nearly 8 million acres of wilderness on NPS and BLM lands. In addition, the CDPA created the Mojave National Preserve and redesignated Death Valley and Joshua Tree National Monuments as national parks. Changes in the management of the public lands in the California desert, including listing of the desert tortoise, increasing development, public use pressures, and passage of the California Desert Protection Act, caused NPS, BLM, and U.S. Fish and Wildlife Service (FWS) desert managers to address the anticipated changes in management of these federal lands through the development of updated or new management plans.

As a new unit of the national park system, Mojave National Preserve has no existing management plans in place. This first general management plan will serve as the overall management strategy for the next 10-15 years. The general management plan is the "blueprint" under which more detailed activity or implementation plans are prepared. A general management plan is general rather than specific in nature, and focuses on purposes of the unit, its significant attributes, its mission in relation to the overall mission of the agency, what activities are appropriate within these constraints, and resource protection strategies. It also provides guidelines for visitor use and development of facilities for visitor enjoyment and administration of the preserve. The goal of the general management plan is to determine how best to manage the new unit to meet the Congressional intent as expressed in the CDPA and the mission of the National Park Service. It was the stated intention of this planning effort to explore only alternatives that would result in an implementable management plan for the preserve. Alternatives that would require legislation before they could be implemented, are contrary to specific Congressional direction, do not comport with National Park Service regulations or policy, or would not be financially feasible would create unreasonable expectations on the part of the public and would not serve the need of creating an implementable management plan for this new unit. The purpose and need section of the plan also formed the basis for determining the range of alternatives that were evaluated.

The development of this general management plan began in 1995 with the selection of a planning team, which was stationed at Mojave National Preserve headquarters in Barstow. The Notice of Intent for this effort was published in the *Federal Register* on September 5, 1995 announcing the beginning of the planning process. The planning team conducted 20 public scoping meetings in September 1995 and April 1997 to gather public input on the management direction for the parks and BLM lands. In addition, a number of agency scoping meetings were also held. From this input and meet-

ings with interested parties (such as county departments, special interest groups, state agencies, Native American tribes, etc.) and discussions with NPS and BLM staff, proposed management plans were developed.

In September 1998 the first *Mojave National Preserve Draft Environmental Impact Statement / General Management Plan* (DEIS/GMP) was released for public review. Approximately 450 printed copies of the DEIS / GMP were distributed for review. In addition, about 100 CD-ROMs were also sent. The entire draft plan was also posted on the Internet with links from the park's homepage and the Northern and Eastern Mojave planning page. The notice of availability for the DEIS was published in the *Federal Register* by the Environmental Protection Agency on September 11, 1998 (FR 48727). Written comments were accepted from September 11, 1998 through January 15, 1999, a period of 127 days. Eleven public meetings were held in October 1998 throughout the planning region of southern California and southern Nevada. In addition, the planning team attended and participated in numerous meetings of the Mojave Advisory Commission to obtain their feedback, concerns, and direction regarding the development of the general management plan. Mojave received approximately 390 comment letters from government agencies, tribes, interest groups, and individuals. In addition, members of environmental groups (National Parks and Conservation Association, The Sierra Club, and The Wilderness Society) sent in approximately 1,800 identical postcards. Several additional letters and postcards were received after the closing date for public comments.

Due to the large number of substantial changes required as a result of public comment on the 1998 draft, the National Park Service decided to rewrite the draft document. In September 2000, a *Revised Draft Environmental Impact Statement / General Management Plan* was released for 92 days of public review. Responses to written public comments on the 1998 draft plan were addressed in a separately bound report. The Environmental Protection Agency published a notice of availability in the *Federal Register* on September 6, 2000 (FR 54064-54065). Eleven more public meetings on the revised draft plan were held in southern California and southern Nevada during October and November 2000. During the public comment period, a total of 202 written comments were received. All substantive comments on the 1998 DEIS were addressed in a separate document that was made available concurrent with the revised DEIS/GMP.

Upon review of public comments, no substantive issues were raised on the revised DEIS/GMP, therefore, the National Park Service decided to prepare an *Abbreviated Final Environmental Impact Statement / General Management Plan*, dated June 2001. The abbreviated format for the final environmental impact statement and general management plan has been used because the changes to the revised draft document are minor and confined primarily to factual corrections, which do not modify the analysis. Use of this format is in compliance with the 1969 National Environmental Policy Act regulations (40 CFR 1503.4[c]). This abbreviated format requires that the material in this document be integrated with the *Revised Draft Environmental Impact Statement / General Management Plan* to describe the final plan, its alternatives, all significant environmental impacts, and the public comments that have been received and evaluated.

DECISION (SELECTED ACTION)

The National Park Service will implement Alternative 1, the proposed general management plan, described in the *Revised Draft Environmental Impact Statement and General Management Plan*, dated July 2000, as amended by the *Abbreviated Final Environmental Impact Statement and General Management Plan*, dated June 2001. Some changes to the hunting proposal have been made as a result of concerns expressed during the no action period and in consultation with the California Department of Fish and Game and the U.S. Fish and Wildlife Service. Changes in the hunting regulations will require further regulatory action. Cottontails and jackrabbits would be added to the list of species that may be hunted, and the NPS would seek to adjust the seasons to allow hunting only from September through January, in keeping with the goals of the Desert Tortoise Recovery Plan. The one-mile safety zone around developed areas has been dropped (except for Kelso Depot and Kelso Dunes) in favor of existing State and County regulations of 150 yards. The language regarding safety zones will be modified to adopt State and County regulations. The hunting language utilized in the 2000 Revised DEIS/GMP on page 156 will be adopted instead of the proposed language changes in the FEIS/GMP, except as discussed above. The NPS would seek special regulations for Mojave National Preserve through the California Fish and Game Commission to implement the proposed hunting changes.

Other changes made based on public comments include: change in ownership of a water right for

Vontrigger Spring (S013430) listed on page 423 of the Revised DEIS/GMP as belonging to Gary Overson actually belongs to Bruce Strachan; correction to the legal description for the Preserve on page 413 of the Revised DEIS/GMP to show an 80 acre tract of private land under T11N, R17E, SBM (N1/2NE1/4 of Tract 41; citation on page 220 of Revised DEIS/GMP not included in references is (1999. Thomas, Tim. Plant List for Mojave National Preserve; list assembled from existing references).

Following the signing of this Record of Decision, the NPS will print the final General Management Plan as a stand-alone document, which will be used by park staff as a "blueprint" for managing the Preserve over the next 10-15 years. The selected alternative is the agency preferred alternative and the environmentally preferred alternative as documented in the *Abbreviated Final Environmental Impact Statement and General Management Plan*, dated June 2001.

This proposed plan represents the best mix of actions, policies and strategies for the management of the Mojave National Preserve, given the varying mandates and diverse public opinion. The proposed general management plan envisions Mojave National Preserve as a natural environment and a cultural landscape (an arid ecosystem overlain by many layers of human occupation and use from prehistoric, to historic, to the present time), where the protection of native desert ecosystems and processes is assured for future generations. The protection and perpetuation of native species in a self-sustaining environment is a primary long-term goal. The plan seeks to manage the preserve to perpetuate the sense of discovery and adventure that currently exists. This means minimizing new development inside the preserve, including the proliferation of directional signs, new campgrounds, and interpretive exhibits. The management plan envisions adjacent "gateway" communities as providing most support services (food, gas, and lodging) for visitors. The plan also seeks to retain current opportunities for roadside camping, backcountry camping and access to the backcountry via existing primitive roads, consistent with the NPS mission. The plan calls for the rehabilitation and partial restoration of the historic Kelso Depot and its use as a museum and interpretive facility. The plan also fulfills the NPS mission of resource preservation while achieving other mandates from Congress, such as maintaining grazing, hunting, and mining under NPS regulations and continuing the existence of major utility corridors. The proposal would retain the ability of landowners to develop their private property, provided that such development is not detrimental to the integrity of the Preserve or otherwise incompatible with the CDPA. The proposal states a goal of seeking funding to purchase property from willing sellers. Nearly 130,000 acres within the preserve are in nonfederal ownership.

OTHER ALTERNATIVES CONSIDERED

In addition to the proposal, other alternatives considered include existing management, and an optional management approach. The existing management alternative (**Alternative 2**) describes the continuation of current management strategies. It is commonly referred to as the **no-action or status quo** alternative. It provides a baseline from which to compare other alternatives, to evaluate the magnitude of proposed changes, and to measure the environmental effects of those changes. This no action concept follows the guidance of the Council on Environmental Quality, which describes the No Action Alternative as no change from the existing management direction or level of management intensity. These actions are typically referred to as the status quo, or the no-action alternative, since this is what would occur if the agency took no further action to adopt a general management plan. It does not mean that no agency management actions would be taken. Since Mojave is a relatively new unit of the national park system and no general management plan is in place, management of the Preserve is being done in accordance with applicable federal regulations, NPS servicewide management policies, and subject specific reference manuals and guidelines (see Policy and Planning section). The National Parks and Recreation Act of 1978 (P. L. 95-625) requires the National Park Service to prepare general management plans for each park unit. The act specifies that general management plans address measures for the preservation of the area's resources, the types and general intensities of development, visitor carrying capacities and potential boundary modifications.

Under the no action alternative, no comprehensive resource protection program for natural or cultural resources is in place. However, the Preserve has hired several key staff and management of some programs, such as minerals management and feral burro removal, have received funding. Existing staff are also now working on inventory and monitoring of natural resources in cooperation with neighboring desert parks. The park has also dedicated staff to participate in the Molycorp spill abatement, the Cadiz groundwater storage project and the AT&T cable removal project. Most of these resource actions are reactive to concerns that have arisen, rather than being a part of a comprehensive program that is planned and funded. Existing visitor and administrative support services and

facilities are being maintained in their current locations and several improvements to these facilities have been made (new water systems, new vault toilets, new picnic tables, etc.). There have been few improvements in existing structures and no change in road maintenance, although some roads have had minor improvements where funding became available. No significant changes in existing recreation use would occur under this alternative. No action is occurring to protect Kelso Depot from fire or earthquakes, although planning for rehabilitation and partial restoration is underway. The building is secured to prevent vandalism. Efforts would continue to obtain funding for acquisition of property from willing sellers and for properties where development is potentially detrimental to the integrity of the Preserve of otherwise incompatible with the CDPA.

The optional approach (**Alternative 3**) is similar to the proposed action, except as discussed below. This alternative identifies additional tortoise recovery measures, including fencing of 100 miles of paved roads with barrier fences to prevent tortoise from accessing roadways, designation of critical habitat in the Preserve as Desert Wildlife Management Areas (DWMA), not allowing dogs off leash for any purpose in DWMA's (including hunting), permanently reducing the speed limit on park paved roads to 45 mph, and immediate action to begin raven removals. Areas of designated desert tortoise critical habitat currently subject to cattle grazing would be converted to ephemeral pastures and perennial AUM's would be reduced to reflect this loss of grazing acreage. Cattle grazing would not be allowed on these pastures until ephemeral forage is at 230 lbs. per acre. In lieu of fencing the entire Clark Mountain unit boundary to exclude feral burros, this alternative proposes to fence springs and other water sources to limit the attraction of burros from adjacent BLM lands. Hunting of all species allowed under State law could occur from July to January. Power drill usage by rock climbers outside designated wilderness would be allowed, and new bolts could be installed in wilderness, using hand tools. Recreational rock climbing would not be restricted in the vicinity of the Hole-in-the-Wall visitor center, except for the placement of bolts.

Alternative 3 would not include restoration of the Kelso Depot. The Depot would be modified to provide improved protection from fire and earthquakes, and permanent comfort stations would be added. Exterior interpretive exhibits and panels would be utilized to inform the public about this historic structure. Existing information centers in Baker and Needles would be expanded in cooperation with other agencies. A visitor contact center would also be established in the Cima area in conjunction with the central field operations facility discussed below. The NPS would also seek to station an interpretive position at Soda Springs to provide ranger-guided tours of the area. Additional interpretive features and trails would also be added. Emphasis would also be placed on construction of several formal wayside exhibits and interpretive displays to inform the public on significant resources of the Preserve.

Alternative 3 provides significantly more infrastructure inside the Preserve than any other alternative by increasing the number of sites at the existing Midhills and Hole-in-the-Wall campgrounds, and by development of three new semi-primitive campgrounds (up to 15 sites each). These new campsites would generally be located west of the Providence and New York Mountains. This alternative also proposes the construction of a central field operations facility in the Cima area, to provide office space, shop and storage space, housing and fire engine garage space for all park functions. This alternative also provides for the construction of new employee housing throughout the Preserve to place employees closer to their work. Adding such infrastructure would be inconsistent with the goals of retaining the Mojave National Preserve visitor experience as it is now, which was espoused by the Advisory Commission and local communities and reflected in public comment. This alternative also envisions the NPS assuming maintenance of all park roads in the event that the county was unable or unwilling to continue this responsibility. On the Mojave Road, the NPS would not allow business permits for commercial guided tours and a permit system and annual vehicle limit would be imposed to maintain the current visitor experience. Finally, this alternative would provide increased formal hiking trails.

BASIS FOR DECISION

The proposed general management plan provides overall direction for the management of park resources, facilities and development, and use of the Preserve. This alternative presents a logical, systematic and proactive approach to management of the Preserve in compliance with NPS laws, regulations and policies.

The rationale for selection of alternative 1 over the no action (alternative 2) is based on the environ-

mental impacts that would be lessened by seeking funds and implementing activities identified in the proposed plan. Public comment was also considered in formulating the NPS preferred approach over alternative 3. In particular, the funding of the full removal of feral burros, the implementation of Desert Tortoise and Mojave Tui chub recovery actions, the establishment of a cultural resource protection program, and the development of visitor information centers and interpretive media to inform the public on desert ecosystems and protection measures. In addition, a strategy is outlined for the interim management of cattle grazing.

Protection and Enhancement of Natural and Cultural Resources

The proposed general management plan identifies proactive goals and strategies to inventory, document protect, where possible, the air quality, visibility, night sky and natural ambient sound. These resources are key elements of the desert environment that are critical to an enjoyable visit to Mojave. The plan also strives to protect water resources and water rights by seeking to restore damaged natural water sources and protection of groundwater. The plan also proposes to inventory, preserve and protect paleontological, geological, cave and soil resources. Research would be encouraged to learn means by which enhanced protection could be accomplished. These proactive strategies would also yield valuable interpretive and scientific data. The plan also provides an extensive description of the NPS responsibilities regarding cultural resource protection and management, and lays out a thorough program to meet each of these responsibilities.

Alternative 1 provides a more proactive approach to perpetuate native plant life (such as vascular plants, ferns, mosses, algae, fungi, and bacteria) as critical components of natural desert ecosystems. The plan also proposes to inventory all native plants and wildlife, and seeks to restore disturbed ecosystems, enhance habitat for sensitive species, eliminate exotic species where feasible and establish monitoring programs to serve as early warning systems for health of the system. Two key components of the natural resource protection strategy include the removal of exotic feral burros and the adoption of threatened desert tortoise and endangered Mojave tui chub recovery strategies. The key difference between the proposed action and the no action alternative for burro removal is the complete removal of all burros, versus the retention of 130 burros in alternative 2, no action. Since the burro is an exotic species and its presence is inconsistent with NPS management policies and the goal of a native, self-sustaining ecosystem, alternative 1 would result in fewer impacts to natural desert ecosystems. In alternative 3, the Clark Mountain area would continue to be subjected to trespass burros from adjacent BLM land, even though fencing of springs and other water sources would be undertaken to reduce this potential. Therefore, the complete removal of feral burros and the complete fencing of Clark Mountains in alternative 1 would result in the least impact to natural resources of Mojave from burros.

Alternative 1 proposes numerous activities, policies and strategies for implementing the desert tortoise recovery plan. This proactive approach adopts recommendations of the 1994 Recovery Plan where feasible and not inconsistent with the California Desert Protection Act. Alternative 3 proposes additional recovery actions. The labeling of critical habitat as Desert Wildlife Management Areas (DWMA's) under alternative 3 adds no additional land protection over and above its current designation as critical habitat and its protection as NPS lands. FWS concurred with this statement in their Biological Opinion where they conclude that the NPS would not need to create a new land classification because they already receive the highest possible protection as park and wilderness lands. In addition, the NPS is managing desert tortoise habitat within the recommendations of the Recovery Plan partnership with BLM in an identical manner as if the lands inside the Preserve were called DWMA's. Not allowing dogs off leash in proposed DWMA's under alternative 3 instead of just requiring that they be under control of the owner would provide a small increased level of protection over the proposed action. Dogs not on a leash could more easily harass tortoises when hunting for game 50-100 feet from their owner. A permanent reduction in speed limits on paved roads under alternative 3 could result in fewer tortoise kills because of the increased time to react when seeing a tortoise in the road. However, the state and county have limited resources to enforce the speed limit and posting new signs may not result in reduced speeds. Also, alternative 3 does not include the additional measures proposed in alternative 1 intended to reduce desert tortoise mortality along the roads. Alternative 1 takes an approach that is more focused on informing drivers about tortoise presence and implementing speed reductions for limited areas, or during spring rainy days when tortoises are more likely to be out on the roads. We believe that this approach would result in more compliance with speed reductions than would universal speed limits throughout the paved roads. Installing desert tortoise barrier fencing on 100 miles of paved roads under alternative 3, as recommended by

the Recovery Plan, may help to reduce tortoise mortality, but could fragment some habitat and may impede other species such as snakes and rabbits. The cost of such fencing may be as much as \$3 million. Spending this amount of money on recovery actions that would affect less than 5% of the habitat may not be the highest priority use of such funding, if it were available. Seeking a permit from USFWS to begin immediate raven removals in DWMA's under alternative 3 may be useful for targeting "problem" birds. However, a coordinated interagency strategy that is implemented desert-wide, such as is called for in alternative 1, would result in greater consistency in dealing with raven populations throughout the area, potentially benefiting much more tortoise habitat. Finally, designation of critical habitat as ephemeral pastures and prohibiting grazing when ephemeral forage is less than 230 lbs. per acre under alternative 3 may not significantly improve desert tortoise habitat over the proposed action. Under alternative 1, cattle grazing could occur in critical habitat, except from March 15 to June 15, even in the absence of ephemeral forage, provided perennial utilization is below 30% (as determined through annual monitoring protocols). During this period desert tortoise are typically in their burrows.

Alternative 1 (and alternative 3) outline certain standards that must be followed by ranchers during the interim while a more detailed grazing management plan is being developed by the NPS. It also states the NPS preferred goal is to permanently retire grazing by working with third party conservation groups to acquire the permits from willing sellers and donate them back to the NPS. The strategy also limits cattle grazing in desert tortoise critical habitat whenever sufficient ephemeral and perennial forage is not present. The standards outlined in alternative 1 provide a greater level of resource protection than existing conditions under alternative 2. Alternative 1 provides the greatest level of protection for park resources consistent with varying conflicting mandates: to allow grazing (CDPA); to remove grazing from critical habitat (Desert Tortoise Recovery Plan recommendation); and the NPS Organic Act to "...conserve the scenery and the natural and historic objects and the wildlife therein...unimpaired for the enjoyment of future generations."

Enhance Visitor Experience

Alternative 1 is most consistent with NPS management policies by providing for visitor use and enjoyment while encouraging opportunities for development in gateway communities. The public and advisory commission supported this direction rather than concentrating new visitor support facilities and ancillary infrastructure inside the park. Alternative 1 would retain existing facilities, and even improve them somewhat, but would limit any new development in lieu of relying on gateway communities for visitor facilities. Alternative 3 focuses on providing more visitor support facilities within the Preserve, envisioning larger existing campgrounds, adding three new semi-developed primitive campgrounds, and adding more trails and interpretive wayside exhibits. Alternative 1 responds to public comment that Mojave remain a primitive place of self-discovery with new facilities primarily in gateway communities. Alternative 1 is also more responsive to public concerns that the Kelso Depot should be restored and used as a visitor center and to the direction in the CDPA to consider such use of the depot. Alternative 3 would only stabilize the Depot and protect it from fire and further deterioration.

Alternative 1 supports continuation of recreational climbing activity while providing for resource protection by eliminating the use of power drills and limiting the replacement of anchors in wilderness areas. This alternative also reduces the visibility of climbing features by imposing restrictions on leaving of climbing support apparatus and blending of anchors. Alternative 1 also protects bighorn sheep during lambing by proposing to limit climbing on Clark Mountain at certain times of the year. These management actions would reduce impacts from climbing on park resources more than either the no action (under which none of these restrictions would occur) or optional approach (which would allow power drill use outside wilderness and would not limit replacement of existing bolts and other fixed anchors).

Alternative 1 most effectively reconciles diverse public concerns relating to hunting. Alternative 2 would continue existing conditions allowing the continuation of all hunting under State law. By contrast, Alternative 1 allows regulated hunting for upland game birds and big game during their established state seasons, and a limited season for small game (cottontails and jackrabbits only) consistent with desert tortoise recovery and the mission of the NPS to protect wildlife for future generations. Alternative 1 would therefore retain hunting throughout the Preserve of most game species under state law, while eliminating non-game and furbearer (predator) hunting. Alternative 3 would allow hunting of all legal game and non-game species under State law from September through January, thus satisfying some of the concerns expressed the hunting community. However, this alternative differs most from the recommendations of the Recovery Plan by allowing hunting of small game and

non-game species. Alternative 1 more fully achieves the intent of the Recovery Plan with regard to hunting in the Preserve. FWS has determined that small game hunting could be allowed, along with upland game birds and big game, without substantially altering the analysis of effects on the desert tortoise in the biological opinion.

Alternative 1 would enhance visitor enjoyment of the park by providing the potential use of commercial guided tours on the Mojave Road to expand the visitor experience opportunity to those without the appropriate vehicle. Under Alternative 3 the NPS would not allow business permits for commercial guided tours and a permit system and annual vehicle limit would be imposed to maintain the current visitor experience.

Provide Effective Operations

Alternative 1 emphasizes the maximum use of existing structures and provides for limited new construction of facilities inside the Preserve. This alternative also proposes to use existing and acquired structures, improving and upgrading them where appropriate. Housing obtained via grazing permit acquisitions would be utilized for employee housing and interpretive facilities in order to provide onsite maintenance and security of the facilities. This alternative would result in the least impacts to currently undisturbed desert habitat and cultural landscape of the park, while still providing needed administrative facilities.

Alternative 3 proposes the construction of a central field operations facility in the Cima area. This facility would provide office space, shop and storage space, housing and fire engine garage space for all park functions. This alternative also provides for the construction of new employee housing throughout the Preserve to place employees closer to their work. This alternative also envisions the NPS assuming maintenance of all park roads in the event that the county was unable or unwilling to continue this responsibility. This alternative is potentially the most efficient operationally for the Preserve, but this level of development inside the boundaries would not lead to a higher quality of visitor experience and is the least responsive to public input.

In summary, Alternative 1 includes the most actions that are beneficial to the cultural and natural resources of Mojave and to the enjoyment of the Preserve. It is also the most responsive alternative to public input received during scoping and alternative development. The one exception is on hunting. Hunters generally supported alternative 2, while a substantial number of other commenters wanted hunting eliminated completely, an option not represented in the DEIS because of the CDPA mandate.

FINDINGS ON IMPAIRMENT OF PARK RESOURCES AND VALUES

The National Park Service may not allow the impairment of park resources and values unless directly and specifically provided for by legislation or by the proclamation establishing the park. Impairment that is prohibited by the National Park Service Organic Act and the General Authorities Act is an impact that, in the professional judgement of the responsible National Park Service manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. (NPS Management Policies 2001).

In determining whether impairment may occur, park managers consider the duration, severity, and magnitude of the impact; the resources and values affected; and direct, indirect, and cumulative effects of the action. According to National Park Service Policy, "An impact would be more likely to constitute an impairment to the extent that it affects a resource or value whose conservation is: a) Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park; b) Key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park; or c) Identified as a goal in the park's general management plan or other relevant National Park Service planning documents." (NPS Management Policies, 2001).

This policy does not prohibit impacts to park resources and values. The National Park Service has the discretion to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, so long as the impacts do not constitute impairment. Moreover, an impact is less likely to constitute impairment if it is an unavoidable result of an action necessary to preserve or restore the integrity of park resources or values.

Human activity and past development have resulted in the ongoing disruption of natural systems and

processes in Mojave National Preserve for generations. The No Action Alternative would result in future unplanned and uncoordinated actions that are merely reactive to immediate concerns. Furthermore, these actions would likely be responsive to immediate, short-term, adverse impacts that demand attention, but may result in long term impairment to park values and resources. Thus, the ability of the public to experience, understand, appreciate, and enjoy Mojave National Preserve could be impaired under the No Action alternative.

The National Park Service has determined that implementation of Alternative 1 will not constitute an impairment to Mojave National Preserve's resources and values. This conclusion is based on a thorough analysis of the environmental impacts described in the *Revised Draft EIS/GMP*, the *Abbreviated Final EIS/GMP*, the public comments received, relevant scientific studies, and the professional judgment of the decision-maker guided by the direction in NPS Management Policies, section 1.4. While the plan has some minor negative impacts, in all cases these adverse impacts are the result of proactive strategies intended to implement the NPS mission, policies and regulations in the management of Mojave National Preserve. None of the proposals would result in impacts that would impair the integrity of park resources or values, including opportunities that would otherwise be present for the enjoyment of those resources or values. Overall, the plan results in major benefits to park resources and values, opportunities for their enjoyment, and it does not result in their impairment.

The actions comprising Alternative 1 will achieve the goals of the CDPA and NPS management policies (which include protecting and enhancing the natural and cultural resources of Mojave and providing opportunities for high-quality, resource-based visitor experiences) in a comprehensive, integrated manner that takes into account the interplay between resource protection and visitor use. Actions implemented under Alternative 1 that would cause overall negligible adverse impacts, minor adverse impacts, short term impacts, and beneficial impacts to park resources and values, as described in the *Revised Draft EIS/GMP* and the *Abbreviated Final EIS/GMP*, will not constitute impairment. This is because these impacts have limited severity and/or duration and will not result in appreciable irreversible commitments of resources. Beneficial effects identified during the NEPA process include effects related to removal of exotic burros and protecting threatened park resources and values. Beneficial effects do not constitute impairment.

The collective actions discussed in alternative 1 are proposed as a means of managing Mojave National Preserve in a manner that would result in a protected native desert ecosystem that functions without interference from human activities, while allowing visitor use and Congressionally mandated resource consumptive activities. While some of these activities could result in impacts on resources that seem contrary to the NPS preservation mission (e.g. hunting, grazing, mining), Congress specifically provides for these activities in Mojave in the California Desert Protection Act. These activities may only be allowed subject to other applicable laws and regulations. This proposal outlines management strategies for these activities, and others, that would be implemented to minimize potential impacts from these activities to levels below the threshold of impairment. For example, all future mining operations would be required to undergo NPS review and impact analysis under 36 CFR Part 9, Subpart A. A grazing management plan would be developed to manage cattle grazing activities so that park resources are protected. Hunting of game species during the adjusted state seasons (or a limited season for small game) and the resulting elimination of firearm discharge during the desert tortoise active season implement recommendations of the Recovery Plan for the threatened desert tortoise. Other actions in the proposal to construct wayside exhibits, maintain existing developments, and rehabilitate Kelso Depot would create minor impacts on some resources locally, but would not result in impairment. In addition, construction of these facilities would help to minimize impacts by providing visitor education and information about desert ecosystems. Kelso Depot, which is nominated to the National Register of Historic Places, would be rehabilitated and partially restored, resulting in increased protection and greater public enjoyment of this important cultural resource. The proposed actions included in this alternative would establish an overall management approach that would allow activities to occur in the Preserve without impairing the integrity of park resources or values, including opportunities that would otherwise be present for the enjoyment of those resources or values.

In conclusion, the National Park Service has determined that the implementation of Alternative 1 will not constitute impairment of park resources and values in Mojave National Preserve.

ENVIRONMENTALLY PREFERABLE ALTERNATIVE

Environmentally preferable is defined as "the alternative that will promote the national environmental

policy as expressed in the National Environmental Policy Act's Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources" (Forty Most Asked Questions Concerning Council on Environmental Quality's National Environmental Policy Act Regulations, 1981).

The goals characterizing the environmentally preferable condition are described in Section 101 of the National Environmental Policy Act (NEPA). NEPA Section 101 states that "...it is the continuing responsibility of the Federal Government to ... (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations; (2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings; (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences; (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice; (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources." The environmentally preferable alternative for the *Mojave National Preserve General Management Plan* is based on these national environmental policy goals.

Alternative 1

This alternative will realize each of the provisions of the national environmental policy goals stated in NEPA Section 101. Alternative 1 will protect and enhance natural and cultural resources by laying out strategies, planning, inventorying and monitoring, and restoring disturbed ecosystems and historic resources. These actions will further the goals of NEPA Section 101 by attaining the widest range of beneficial uses of the environment without degradation, and by preserving important resources and maintaining a variety of individual choice for visitors to Mojave. Alternative 1 implements recovery measures for the threatened desert tortoise, fully removes exotic feral burros, presents strategies for management of grazing, mining and hunting, and provides for the rehabilitation and partial restoration of the nationally significant Kelso Depot. Alternative 1 also best reflects the expressed interests of the public in minimizing development in Mojave that would detract from the setting and sense of self-discovery and adventure that currently exists. In aggregate, the environmental restoration and alternative elements and features of Alternative 1 will most fully attain the goals outlined in NEPA Section 101.

Alternative 2

This alternative represents the current management direction with no dramatic or comprehensive changes taking place in the management of Mojave National Preserve. Although Alternative 2 would include the least change, it would not result in the same level of environmental protection and restoration for natural and cultural resources as the other alternatives. Management of the Preserve without an overall strategy as in the other alternatives would result in reactive management of natural and cultural resources, including highly valued sensitive and nationally significant resources. Failing to be proactive may result in Alternative 2 not fully achieving provisions 1, 3, 4, and 5 of Section 101 of NEPA. Compared to the action alternatives, the No Action alternative would be least effective in achieving the goals of NEPA, as described in Section 101, in that it would have the narrowest range of beneficial uses that would occur without degradation of natural and cultural resources in Mojave.

Alternative 3

This alternative would be nearly as effective as Alternative 1 in realizing the provisions of the national environmental policy goals in Section 101 of NEPA. The primary differences are in the desert tortoise recovery actions, Kelso Depot rehabilitation, hunting and facility development. This alternative would allow hunting of all legal species under State law from July through January. This action would negatively impact more native wildlife species and continue to affect the non-hunter visitor experience year-round. This alternative also places an emphasis on the development of more administrative and visitor facilities. While these facilities would likely improve the visitor experience, they would also impact park resources more than in alternative 1. Kelso Depot, a nationally significant cultural resource, would not be rehabilitated under this alternative. Instead, the building would be stabilized

and protected from earthquakes and fire. Alternative 1 would generate more beneficial impacts on the Depot by fully rehabilitating it and making it accessible to the public as a visitor center. Finally, a few recovery actions for the desert tortoise could potentially be more beneficial than alternative 1, but their implementation is questionable (see discussion under Basis for Decision). Overall, the negative impacts of selecting alternative 3 would be slightly higher than those described under Alternative 1.

Summary

The National Park Service has determined that the environmentally preferable alternative is Alternative 1. While some specific actions under other alternatives may achieve similar or in some cases greater levels of protection for certain cultural resources, natural resources, and/or visitor experience than under Alternative 1, in aggregate, this alternative best achieves the six conditions prescribed under Section 101 of NEPA. While many of the actions in other alternatives may be similar to Alternative 1 in their effect and consequence, Alternative 1: (1) provides a high level of protection of natural and cultural resources while concurrently attaining the widest range of neutral and beneficial uses of the environment without degradation; (2) maintains an environment that supports diversity and variety of individual choice; and (3) integrates resource protection with opportunities for an appropriate range of visitor uses.

MEASURES TO MINIMIZE ENVIRONMENTAL HARM

The National Park Service has investigated all practical means to avoid or minimize environmental impacts that could result from implementation of the selected action. The measures have been incorporated into Alternative 1, and are presented in the *Revised Draft EIS/GMP and Abbreviated Final EIS/GMP*.

A consistent set of desert tortoise mitigation measures would be applied to actions that result from this plan (see Appendix E in Revised DEIS/GMP). Monitoring and enforcement programs will oversee the implementation of mitigation measures. These programs will assure compliance monitoring; biological and cultural resource protection; traffic management, noise, and dust abatement; noxious weed control; pollution prevention measures; visitor safety and education; and other mitigation measures.

Mitigation measures will also be applied to future actions that are guided by this plan. In addition, the National Park Service will prepare appropriate compliance reviews (i.e., National Environmental Policy Act, Endangered Species Act, National Historic Preservation Act, and other relevant legislation) for these future actions.

PUBLIC AND INTERAGENCY INVOLVEMENT

The Notice of Intent for this effort was published in the *Federal Register* (FR 46132) on September 5, 1995 announcing the beginning of the planning process. Throughout the planning process, the planning team gathered public input on issues, proposed actions, and alternatives. The scoping process included meetings, public workshops, Advisory Commission meetings, newsletters, and the development of a homepage. These were used to identify the issues, alternatives, and impact topics to be considered for planning and to keep the public informed and involved throughout the planning process.

Scoping

The planning team conducted 20 public scoping meetings in September 1995 and April 1997 to gather public input on the management direction for the parks and BLM lands. In addition, a number of agency scoping meetings were also held. From this input and meetings with interested parties (such as county departments, special interest groups, state agencies, Native American tribes, etc.) and discussions with NPS and BLM staff, proposed management plans were developed.

On August 31, 1995, a public notice describing the purpose of the planning effort was mailed to the public, media, agencies, and other organizations on the Bureau of Land Management California Desert District's mailing list (about 6,000 names). The schedule for the first round of public scoping meetings was included in the notice. The formal public scoping period for the planning effort began with the September 5, 1995 *Notice of Intent* to prepare an environmental impact statement. Public scoping workshops were held from September 21 through 27, 1995 at 10 locations throughout the planning area and in nearby areas where users live. These workshops were held in Pasadena, San

Bernardino, Barstow, Baker, Needles, Ridgecrest, Independence, Lone Pine, and Furnace Creek, California, and in Las Vegas, Nevada. About 250 people attended the workshops. These workshops were used to identify issues and concerns that the team should address in preparing a management plan for the area.

Newsletters and Website

The first newsletter in February 1996 was sent to about 6,000 names on the Bureau of Land Management mailing list for the California desert. It included a summary of planning issues identified at the public meetings and statements of purpose and significance for Death Valley National Park, Mojave National Preserve, and BLM-managed lands within the planning area. The original mailing list was subsequently replaced with a planning project mailing list developed from agency lists and scoping participation.

In late April 1997, a second newsletter was sent out to about 500 names on the Northern and Eastern Mojave Planning Effort mailing list to inform the public that there would be a second round of scoping workshops to discuss alternatives. It contained a planning update, a schedule of alternative scoping workshops, general descriptions of conceptual alternatives, and an outline of issues for which alternatives could be developed. The newsletter was also posted on the homepage. Both newsletters included a one-page mail-back form for receiving comments. A press release was mailed to local media in and near the planning area. Some local newspapers and radio stations informed the public about the workshops. The schedule for these workshops was included in this notice and on the Northern and Eastern Mojave Planning Effort homepage. Ten public workshops were held from April 14 through 24, 1997 at Las Vegas, Nevada, Needles, Furnace Creek, Bishop, Lone Pine, Barstow, Pasadena, San Bernardino, Baker, and Ridgecrest, California. Each workshop began with a 20-minute presentation about the planning effort given by Northern and Eastern Mojave Planning Effort team leader Dennis Schramm. After the presentation the team would set up three stations for natural resources, cultural resources, land use, and visitor experience. At these stations, the team gathered comments and alternatives and wrote them down on the flipcharts. About 330 people attended the workshops.

In February 1997, a website for the three California desert planning efforts (West Mojave, Northern and Eastern Colorado, and Northern and Eastern Mojave) went online on the BLM California server. It contained detailed information about each planning effort, background information about the Mojave Desert, and the desert tortoise, pertinent legislation and maps and photographs. In April 1998 the Northern and Eastern Mojave Planning Effort homepage was moved to the NPS server so that the planning team would have direct access. The link to this homepage is found in Mojave National Preserve's homepage (www.nps.gov/moja/planning/nemo.htm).

A third newsletter was sent out to the public in April 1998 to update readers on the planning effort. The newsletter explained that three separate draft environmental impact statements for each area (Mojave National Preserve, Death Valley National Park, and the BLM public lands within the Northern and Eastern Mojave planning area) would be produced instead of one comprehensive draft environmental impact statement. A revised planning schedule and comment form for receiving the documents were also provided in the newsletter. This newsletter also served as the initial announcement that a draft EIS/GMP would be released shortly and sought input from the list regarding preferences on receipt of the draft document. The document was available in printed form, at public libraries and agency offices, over the Internet or on CD-ROM.

In August 2000, the fourth planning newsletter was sent to the planning mailing list (about 3,500) announcing release of revised draft EIS/GMP. This newsletter provided a list of locations and dates for eleven scheduled public workshops and locations where the document could be viewed at public libraries and agency offices. It also announced the intended 90-day public review period. This initial review period was eventually extended to 127 days.

In June 2001, the fifth planning newsletter was sent to the planning mailing list (about 3,600) announcing release of an *Abbreviated Final EIS/GMP*. This newsletter provided some background data on the planning effort and other information about how to obtain copies of the document, or where to view it online or at public libraries and agency offices. It also explained the 30-day no action period.

Agency and Native American Consultation

An interagency meeting was held in Barstow, CA on August 23, 1995, to discuss the issues to be addressed in this planning effort. Forty-three staff attended the meeting from the National Park Service, the Bureau of Land Management, and the U.S. Fish and Wildlife Service.

The NPS sent a letter formally notified the California State Historic Preservation Officer in April 1996 of the planning effort. A response letter offering suggestions was received from the state historic preservation officer in May 1996. A planning team member met briefly with the state historic preservation officer in June 1996 and offered a briefing on the planning effort. Participation by the SHPO after that point was by comment letter. A final letter was sent to the SHPO on June 13, 2001 seeking their concurrence with the proposed action as expressed in the *Abbreviated Final Environmental Impact Statement/General Management Plan*.

Following public alternative scoping workshops in April 1997, a two-day interagency meeting was held in Barstow, California to discuss the alternatives and comments heard at the workshops. Twenty-eight staff members from the National Park Service, the Bureau of Land Management, the U.S. Fish and Wildlife Service, the California State Parks, and San Bernardino County attended the two-day meeting. Comments were gathered on the first day and alternatives were developed on the second day.

On April 23, 1996, Dennis Schramm and BLM archeologist Rolla Queen met with the chairmen and tribal members of the Chemehuevi tribe at their reservation on the Colorado River. A follow up meeting was held with the Chemehuevi on May 19, 1997 at their office. An initial meeting with the Ft. Mohave Indian Tribe chairperson also was held on May 19, 1997 at their offices in Needles. The purpose of these meetings was to initiate government-to-government relationships for the planning effort. The tribes were briefed on the scope and status of the planning effort and discussed issues.

An intertribal meeting of the Fort Mohave, Timbisha Shoshone, Chemehuevi, and San Manuel tribes was held on July 11, 1997 at the Fort Mohave Reservation's Avi Hotel and Casino in the Laughlin, Nevada area. The purpose of the meeting was to discuss Native American issues and alternatives. Invitation letters were sent to 13 tribal offices and to NPS and BLM staff. Seven representatives for the tribes and nine agency staff attended the meeting. Mr. William "Bill" Mungary (an intertribal leader) facilitated the meeting.

The Endangered Species Act of 1973, as amended (16 USC 1531 et seq.), requires all federal agencies to consult with the U.S. Fish and Wildlife Service (USFWS) to ensure that any action authorized, funded, or carried out by the agency does not jeopardize the continued existence of listed species or critical habitat. The National Park Service signed a Project Agreement at the beginning of the planning effort with the BLM and USFWS. USFWS initially provided a staff biologist to the planning team who prepared the list of species that may be potentially affected by the proposed action. On August 28, 1998, the NPS submitted a letter to the USFWS Ventura Field Office requesting initiation of consultation on the proposed action as identified in the 1998 draft EIS/GMP. The DEIS was submitted with the request in lieu of a biological assessment. In February 2000, the NPS notified the USFWS that it wanted to re-initiate its consultation and advised them that they were preparing a revised DEIS/GMP. The USFWS acknowledged our request to re-initiate consultation in a letter dated April 25, 2000. On July 6, 2001, the USFWS signed a Biological Opinion (1-8-00-F-36) on the Abbreviated Final EIS/GMP.

Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands) direct federal agencies to enhance floodplain and wetland values, to avoid development in wetlands and floodplains whenever there is a practicable alternative, and to avoid impacts associated with the occupancy or modification of floodplains or wetlands to the extent possible. A Floodplain Statement of Findings for the Kelso Depot rehabilitation and partial restoration was prepared to provide a description of flood hazards, analyze comparative risks among alternatives, describe potential effects on floodplain values, and describe and evaluate mitigation measures. The Floodplain Statement of Findings was released for public and agency review as part of the 1998 *Draft EIS/GMP and the 2000 Revised Draft EIS/GMP*. The final signed copy is attached to this Record of Decision.

Public Workshops and Comment Opportunities

In September 1998 the first *Mojave National Preserve Draft Environmental Impact Statement /*

General Management Plan (DEIS/GMP) was released for public review and comment. Approximately 450 printed copies of the DEIS / GMP were distributed for review. In addition, about 100 CD-ROMs were also sent. The entire draft plan was also posted on the Internet with links from the park's homepage and the Northern and Eastern Mojave planning page. The notice of availability for the DEIS was published in the *Federal Register* by the Environmental Protection Agency on September 11, 1998 (FR 48727). Written comments were accepted from September 11, 1998 through January 15, 1999, a period of 127 days. Eleven public meetings were held in October 1998 throughout the planning region of southern California and southern Nevada. In addition, the planning team attended and participated in numerous meetings of the Mojave Advisory Commission to obtain their feedback, concerns, and direction regarding the development of the general management plan. Mojave received approximately 390 comment letters from government agencies, tribes, interest groups, and individuals. In addition, members of environmental groups (National Parks and Conservation Association, The Sierra Club, and The Wilderness Society) sent in approximately 1,800 identical postcards. Several additional letters and postcards were received after the closing date for public comments.

Due to the large number of substantial changes required as a result of public comment on the 1998 draft, the National Park Service decided to rewrite the draft document. In September 2000, a *Revised Draft Environmental Impact Statement / General Management Plan* was released for 92 days of public review. Responses to written public comments on the 1998 draft plan were addressed in a separately bound report. The Environmental Protection Agency published a notice of availability in the *Federal Register* on September 6, 2000 (FR 54064-54065). Eleven more public meetings on the revised draft plan were held in southern California and southern Nevada during October and November 2000. During the public comment period, a total of 202 written comments were received. All substantive comments were addressed in a separate document that was made available concurrent with the revised DEIS/GMP.

After consideration of public comments on the revised DEIS/GMP, the National Park Service decided to prepare an *Abbreviated Final Environmental Impact Statement / General Management Plan*, dated June 2001. The Environmental Protection Agency published a Notice of Availability announcing the release of this abbreviated FEIS in the *Federal Register* on June 22, 2001 (FR 33538). The abbreviated format was used because the changes to the revised draft document are minor and confined primarily to factual corrections, which do not modify the analysis. Use of this format is in compliance with the 1969 National Environmental Policy Act regulations (40 CFR 1503.4[c]). This abbreviated format requires that the material in this document be integrated with the *Revised Draft Environmental Impact Statement / General Management Plan* to describe the final plan, its alternatives, all significant environmental impacts, and the public comments that have been received and evaluated. All substantive comments received on the revised draft were addressed in the abbreviated final EIS/GMP.

During the No Action Period, which began on June 22, 2001, numerous written comments were received. About 25 letters (several identical) and copies of about 200 duplicate letters sent to Secretary Norton signed by different individuals were received opposing the hunting proposal. In addition, the NPS received copies of petitions supporting retention of hunting opportunities. The NPS also received a few letters and about 1,000 emails supporting the elimination of predator hunting. Two of the letters received were from Congressional offices and stressed the importance of meeting with California Fish and Game (CDF&G) regarding the hunting proposal before issuing a Record of Decision. As a result of these letters the superintendent met with the Deputy Director and Director of CDF&G on August 1, 2001. In addition, several park staff met with CDF&G staff from the Bishop office and USFWS staff from Barstow on August 2, 2001 to discuss the hunting proposal. During this meeting the NPS clarified its intent to allow hunting of upland game birds, primarily chukar, quail and mourning dove. The NPS also clarified its intent to exclude furbearers and non-game species (predators) from hunting.

The NPS sent a letter to the USFWS on September 7, 2001 asking that they amend the Biological Opinion to include small game hunting (cottontails and jackrabbits only) as a covered activity. On September 19, 2001, USFWS issued such an amendment. Therefore, the NPS decided to modify the hunting proposal to add some small game (cottontails and jackrabbits only) back on the list of species that may be hunted, and to seek an adjustment in the seasons to allow their hunting only from September through January. The NPS informed CDF&G that the NPS would seek special regulations for Mojave through the California Fish and Game Commission to implement the proposed hunting changes, as consistent with the Recovery Plan; and that the NPS might also seek to promulgate special regulations in 36 CFR. The NPS also decided to drop the proposed one mile safety zone around

developed areas (except for Kelso and Kelso Dunes) based on CDF&G information that the 150 yard safety zone has proven effective.

The NPS also received several letters and about 1,400 identical emails criticizing the proposal for failing to comply with the Desert Tortoise Recovery Plan. No new information was provided in these letters and the signing of a Biological Opinion by the U.S. Fish and Wildlife Service on July 6, 2001 reflects that the proposal adequately implements the Recovery Plan. . No changes were made to the document as a result of these letters. One letter was received on the burro proposal reiterating previous comments made on both the draft EIS and the revised draft EIS. No new factual information was provided and therefore no changes were made. Two letters were received from a landowner in the Preserve providing factual information regarding mistakes in the Land Protection Plan dealing with their property and water rights. Appropriate corrections were made (see Decision - Selected Action) based on the evidence submitted. One letter was received from the California Department of Transportation, District 9, stating that they have no comments because there appears to be no significant impacts to safety or operation on State highways as a result of the proposal. One letter was received supporting the range monitoring proposal, but requested a series of specific ecological standards be developed and included in the GMP. Such specific standards are appropriately addressed in a grazing management plan and will be deferred to that planning effort. This letter also asked for a reference inadvertently omitted from the FEIS. The reference is provided in the Decision - Selected Action section of this record.

CONCLUSION

Alternative 1 provides the most comprehensive and proactive strategy among the alternatives considered for meeting the National Park Service's purposes, goals, and criteria for managing Mojave National Preserve in accordance with Congressional direction, federal laws and NPS management policies. The selection of Alternative 1, as reflected by the analysis contained in the environmental impact statement, would not result in the impairment of park resources and would allow the National Park Service to conserve park resources and provide for their enjoyment by visitors.

Approved:


John J. Reynolds, Regional Director
Pacific West Region, National Park Service

9.21.01
Date

**MOJAVE NATIONAL PRESERVE
GENERAL MANAGEMENT PLAN
FLOODPLAIN STATEMENT OF FINDINGS**

The National Park Service owns the historic Kelso Depot. The depot is one of the significant cultural resources within Mojave National Preserve. Construction on the building was completed in 1925 and served the Union Pacific Railroad by providing housing and meals to employees and meals to the public until it was closed and abandoned in 1985. The architectural integrity of this 2-story building remains relatively intact. The depot contains approximately 11,600 square feet. The depot sets within the town of Kelso that is located within the heart of the preserve. Kelso contains remnants of other historic structures and a few modern structures that house an estimated 30 residents. The depot property is located just south and east of the junction of the Kelbaker Road and Kelso-Cima roads and north of the Union Pacific railroad tracks.

The *Revised Draft Environmental Impact Statement / General Management Plan* for Mojave National Preserve is recommending that this building be restored to its period of historic significance and adaptively used as a major museum and interpretive facility for Mojave National Preserve. The National Park Service completed a historic structure report in 1998 for the Kelso Depot that provides an analysis of requirements for treatment of a historic resource for preservation and use.

JUSTIFICATION

Because of the historic significance of the Kelso Depot, the National Park Service has requested funding to stabilize and protect this building from further deterioration. Public comments and scoping meetings held during the general management planning process were overwhelmingly in support for restoration of and public use of the depot. The public interest and opportunities for interpreting this historic structure and cultural landscape are high. The San Bernardino County Board of Supervisors formally passed a resolution on February 24, 1998, recommending that the U.S. Department of the Interior fund the stabilization and restoration of the Kelso Depot.

The depot is at a prime location for visitor contact - next to a highway junction that receives visitor traffic from four out of the six major highway entrances. A visitor study conducted in April 1997, and traffic counter data from 1997, indicated that an estimated 90% of all visitors who enter Mojave National Preserve, pass through this highway junction. The depot is about 250 feet from the junction and very visible to travelers. The preserve has over 1.6 million acres with six primary highway entrances. Locating the visitor center next to the railroad could provide options for an alternative mode of transportation for visitors coming to the preserve.

Section 512 of the California Desert Protection Act of 1994, calls for the general management plan to "evaluate the feasibility of using the Kelso Depot and existing railroad corridor to provide public access to and a facility for special interpretive, educational, and scientific programs within the preserve." The planning effort has evaluated the feasibility of using the depot as a visitor contact center and museum. This proposal is justified by a strong need to restore, protect and interpret this historic structure. This need is driven by strong support from the general public and local county government. The depot is also an excellent location from which to contact visitors. We believe that the combination of these factors provides strong justification for creating a visitor facility within a floodplain, despite the potential threat of flooding. We also believe that the application of recommended mitigation measures can substantially reduce the threat to life or government property.

INVESTIGATION OF ALTERNATIVE SITES

Alternative locations for a visitor contact facilities within the preserve include: land south of Baker California along the Kelbaker Road, land south of the Nipton road junction on Ivanpah Road, and north of interstate highway 40 on Kelbaker Road. Each location would require construction on previously undisturbed ground and the extension of power and telephone lines for a least 1-mile to each site. This would create a visual intrusion on each open landscape that presently may only have visual intrusions such as the road, a barbed wire fence, or cattle corral to distract from the scenery. Each alternative location would only capture up to 33% of the total, current, traffic flow and require many visitors to drive for over 1 hour to reach the visitor center from the other entrances. There is the possibility of leasing a building within the town of Baker for use as a visitor contact facility. The advantages of this location include the potential for a high number of people that may be attracted off of

interstate 15 traffic. There are also easily available public utilities and lower impact on land than may occur at alternative sites. The disadvantages of a Baker site include the fact that it would be off the main flow of visitor traffic and many people may not make the effort to travel to Baker to get information on the preserve. In 1997 and 1998, visitation data indicate that the natural and cultural features within the preserve are stronger attractions to visitors than the existing visitor information center in Baker. This situation occurs, despite the fact that the center is frequently advertised on a local radio station.

DESCRIPTION OF SITE SPECIFIC FLOOD RISK

The National Park Service Water Resources Division conducted a floodplain study for the Kelso Depot during the spring of 1998. Results of the study indicate that the elevation of the 100-year flood is below the existing levee elevation. However, the existing levee does not provide adequate long-term protection due to its fine-grained, non-reinforced material, which will undoubtedly fail when subjected to prolonged flooding. With no levee protection, the basement of the depot could be expected to receive water on the average of about every five years. Furthermore, flooding of the first floor could be expected about every ten years. The 100-year flood could subject an unprotected depot to several feet of inundation with associated velocities in excess of 10 feet per second. This scenario should be considered very hazardous and appropriate mitigation should be implemented. If the levee were to partially fail upstream of the depot, flood waters could access the Kelso-Cima road, and discharge would be contained between the remaining portion of the levee and the railroad grade, putting the depot in the direct path of the flood. Modeling results indicate that during this scenario, it would require only about 10-20 percent of the 100-year flood to reach the foundation of the depot. Associated velocities would likely exceed 5 feet per second, and should be considered hazardous.

In summary, flood hazard at the site of the Kelso Depot ranges from fairly frequent nuisance water to infrequent, but potentially devastating floods. Consequently, occupation of this site will require appropriate mitigation.

MITIGATION OF POTENTIAL FLOOD HAZARDS

Flood protection would be provided for the property by reinforcing and repairing the existing levee to contain the 100-year flood. This levee would have a height at least 9.3 feet above the channel bottom. This configuration would contain the predicted 100-year flood elevations and provide an average of 2 feet of freeboard. In addition to the design height, the levee would be armored at critical points with material large enough to withstand velocities of 12-13 feet per second. Other sections would be repaired and thickened with local material to increase the level of protection. A levee maintenance program would be established.

A warning and evacuation plan would also be implemented to protect human life in the case of extreme floods. Flood warning would occur by developing communication with the National Weather Service in the area and requesting that they notify the park during extreme storm events. In the case of an extreme storm, park visitors and employees would evacuate the Kelso Depot via the Kelso-Cima road.

SUMMARY

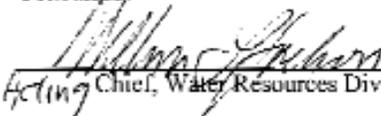
There are several factors that contribute to the need to protect and use the Kelso Depot. The Kelso depot is one of the significant cultural resources found within Mojave National Preserve and needs to be protected from potential threats. The depot's location along an active railroad line and a primary highway make it an ideal location from which to provide the public with information and interpretive services. Despite the continued threat of flooding, it is believed that the depot and human life can be protected by implementing a combination of proposed and other mitigating actions. The levee would be rebuilt and protected at sections where water flows have significantly cut into the levee. Other sections of the levee would be repaired as needed with fill material to increase or maintain the desired thickness and height of the levee. The storm channel located adjacent to the north side of the levee, would be improved and maintained to reduce the potential for impact on the base of the levee from small flows. The levee would be inspected on an annual or more frequent basis, depending upon the intensity and frequency of storms to determine appropriate maintenance work needed to maintain the levee. Using available technology, a communication link would be established with the National Weather Service to establish provide an early warning system for staff and visitors at the depot.

It is recognized that a threat to life and property exists as a result of the location of the depot within a flood plain, but that the threat can be mitigated by taking appropriate actions. It is proposed that the depot be occupied and used for visitor and NPS administrative functions, and that initial and continuing mitigating efforts be taken to protect life and property.

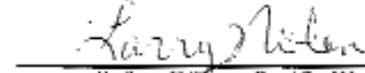
Recommended:



Superintendent 7-5-01
Date

Concurred:


Acting Chief, Water Resources Division 7-19-01
Date

Concurred:


Safety Officer, Pacific West Region 7/24/01
Date

Approved:


Regional Director, Pacific West Region 9.21.01
Date

APPENDIX C. NORTHERN AND EASTERN MOJAVE PROJECT TIME LINE

October 31, 1994	California Desert Protection Act signed redesignating Death Valley and Joshua Tree National Monuments as National Parks and creating Mojave National Preserve.
September 5, 1995	Notice of Intent for planning effort published in Federal Register. Planning team stationed at Mojave headquarters.
September 21-27, 1995	Ten public scoping meetings to identify issues were held in southern California and in Nevada.
April 14-24, 1997	Ten public scoping meetings to identify alternatives were held in southern California and in Nevada.
September 11, 1998	Notice of Availability for Death Valley National Park and Mojave National Preserve Draft Environmental Impact Statements / General Management Plans. Plans released for 127-day public review, ending January 15, 1999.
October 1998	Eleven public meetings to comment on the draft plans were held in southern California and Nevada.
September 6, 2000	Revised Draft Environmental Impact Statements / General Management Plans released for 92-day public review due to substantial changes required as a result of public comment on the 1998 draft.
Oct. 27-Nov. 17, 2000	Eleven public meetings to comment on the revised draft plans were held in southern California and Nevada.
June 22, 2001	Abbreviated Final Environmental Impact Statements / General Management Plans released and notice published in Federal Register by EPA.
September 21, 2001	Record of Decision on Mojave's Final Environmental Impact Statement / General Management Plan signed.
April 10, 2002	Federal Register Notice of Record of Decision Approval published