

February 19, 2013

Ms. Chris Lehnertz
Regional Director
Pacific West Region
National Park Service
333 Bush, Suite 500
San Francisco, CA 94104

Dear Ms. Lehnertz:

The National Park Service (NPS) is violating the Wilderness Act at Death Valley National Park. The NPS has allowed continued use and occupancy of wilderness-designated park lands for a commercial enterprise – a microwave tower, owned and operated by AT&T on Mormon Peak.

Public Employees for Environmental Responsibility (PEER) and Wilderness Watch confirmed this violation after reviewing the NPS' December 18, 2012 response to our Freedom of Information Act (FOIA) request sent in October 2012. It is ironic that while the NPS, thanks to Secretary Salazar and Director Jarvis, has removed one nonconforming, commercial enterprise in designated potential wilderness at Point Reyes, Death Valley has perpetuated another commercial enterprise within already designated wilderness.

Prior to designation of the lands as wilderness, the Bureau of Land Management (BLM) issued a right-of-way (ROW) under the Federal Land Policy and Management Act, Title V (43 U.S.C. 1761, *et seq.*). The ROW was originally issued to PacBell. The ROW expired under its own terms when Congress designated the area as wilderness and transferred the public lands to the NPS on October 31, 1994. Even under the most generous interpretation, the BLM issued right-of-way expired on its 30th anniversary – i.e. May 26, 2012! Any “private existing right,” under this ROW did not continue past that date.

Our FOIA request of October 2012 specifically asked for “[A]ny record that the NPS has issued any right-of-way or any other authorization of occupancy or use to the right-of-way owner since the expiration of the existing 1982 right-of-way.” NPS supplied documents do not contain any that reveal that the NPS either issued or otherwise extended this ROW.

Renewing or extending a ROW for a commercially-operated communication tower (a “structure” in the meaning of the Wilderness Act, section 4(c)), in designated wilderness

would be the first such action committed by any Federal agency that administers any wilderness. To authorize a commercially-operated communication structure in wilderness without public notice or comment would violate a number of Federal laws as well as the NPS Management Policies (2006) (6.4.8).

We seek your firm assurance that this ROW has not been re-issued, renewed or extended, and will not be.

The NPS prepared a Minimum Requirement Assessment (MRA) to cover the servicing and site work on the Mormon Peak Microwave facility by AT&T. A simple reading of the Wilderness Act shows that the “necessary to meet minimum requirements for the administration of the (wilderness) area” exception may apply to landing of aircraft to service the site, or to the structure itself. But that exception DOES NOT apply to a “commercial enterprise.” Thus, the operation of the Mormon Peak Tower is qualitatively and materially different from radio repeater sites operated by the NPS to serve Rangers on patrol in wilderness. Superintendent Sarah Craighead signed this misguided MRA on May 24, 2012.

We recognize the extreme difficulty facing the NPS at Death Valley. The Mormon Peak Tower carries all phone communications from the Furnace Creek area of Death Valley both for the NPS and for the resorts that operate as businesses on private inholdings within the park. But if that situation justified commercial communication towers in wilderness, then our nation’s wilderness would soon be festooned with such towers.

We have been very patient while the NPS crafts a solution. On June 6, 2002, PEER, Wilderness Watch, the National Parks and Conservation Association and The Wilderness Society wrote to then-Superintendent James T. Reynolds warning him of the Mormon Peak Tower. A copy of this letter is attached. Yet, more than 10 years later, the NPS has taken no action to remove this structure, operated by an indisputably commercial enterprise, from wilderness. This is inexcusable. Please advise us how you propose to remedy this issue.

Cordially,

Jeff Ruch
PEER Executive Director

A handwritten signature in black ink that reads "George Nickas". The signature is written in a cursive, flowing style.

George Nickas
Wilderness Watch Executive Director

Attachment

cc: Acting Superintendent, Death Valley National Park