

This is being written in rebuttal to a petition that will be put before the California Fish and Game and the Mojave National Preserve:

PETITION FOR RULEMAKING
UNDER ADMINISTRATIVE PROCEDURE ACT

RE: Nature Of the regulation requested: This petition asks for the closing of all rabbit and varmint hunting on the Mojave National Preserve (MNP) and calls for no hunting on the preserve for seven months out of the year. This petition also asks that no firearms be allowed on the preserve during the seven month hunting closure. Additionally this petition will prohibit the use of dogs for the pursuit of any mammals and prohibit the use of spotlights in connection with varmint hunting. This petition is using the Desert Tortoise (DT) as the reason for such closures and additional restrictions.

In part, the petition states that these regulations are necessary to bring the California Department of fish and game(CD&G) into compliance with the laws of the State of California that protect endangered or threatened species of wildlife, namely the Mojave population of the DT.

I am going to go through this petition and try to express my opinion and quote some reliable biologist with pertinent information regarding the DT. After you read my thoughts you will be able to draw your own opinion regarding this petition and its relevance.

First off, I would like to ask these groups: If your organizations are so concerned about the wildlife on the MNP, then why are you sitting back and allowing the ranchers water to be removed from the preserve? A vast amount of wildlife on the MNP has been dependant on these artificial water sources as their only life support for over fifty years. By allowing this water to be removed, the overall number of wildlife on these 1.6 million acres will be reduced by over half of what existed when the MNP was created in 1994. This is robbing all future generations from viewing the wildlife in the same manner as all past generations and is a needless waste of a once bountiful natural resource.

Quoting from the petition “The National Park Service (NPS) has the power to promulgate such rules for reasons of public safety, administration, or compliance with provisions of applicable laws.”

“Public Safety”: This to me would mean accidental shootings. In over 30 years of using this area for recreation and sport hunting, I have never heard of one accidental shooting. Public safety was already being administered and enforced by the Bureau of Land Management (BLM) and the CDF&G before the park service took over.

“Administration”: This would mean to close off hunting and firearm discharge in areas around campgrounds and public gathering sites. This was already in effect before the NPS took over.

“Compliance with provisions of applicable law”: This means that the Endangered Species Act (AES), regarding the DT, has a bearing on an individual’s right to carry a firearm and conduct the hunting of non game species during the proposed seven month closure.

I ask for the REASON. What science or statistics, only involving the land in question, have been produced to warrant these new laws? By whose standards do these new laws make the MNP a better place to visit and/or promote DT recovery?

Quoting again from the petition: “DT populations continue to decline in the MNP and throughout its range in California. The population decline is due to a variety of reasons, some of which are human-related.”

Here this petition states the DT decline is due to a variety of reasons. It was stated at a Desert Council Advisory Board meeting on December 8, 2001, in El Centro, CA by three BLM scientists that their studies of the DT “showed that 3% or less of the demise of the DT is due to human intervention.” Additionally these scientists also said they would need to make a 20 year study of the DT in order to come to any credible scientific conclusion about its endangerment. After this statement, I ask why this petition **centers** on human intervention, and why mainly the hunter?

In addition to the above, it has been brought to my attention that the above statement regarding a “decline in population” could be false. A study by Jerome E. Freilich, Kenneth P. Burnham, Christopher M. Collins and C. Ann Garry published in “The Journal of the Society for Conservation Biology”, volume 14, Number 5, October 2000 contradicts the claim of declining tortoise populations. This study states that over six consecutive years (1991-1996) a population estimate showed three times as many DT that reported in a 1978 survey of the same site in Joshua Tree National Park. Study data confirmed that DT is likely to be undercounted during dry years which calls into question earlier studies conducted during droughts. **IN** short, this study found the United States Fish and Wildlife Service’s data to be unsubstantiated. In addition, serious questions exist about the historic densities; i.e., there is no data to support a claim of declining populations as there are no historical records detailing populations.

“In addition to direct mortality caused by illegal take and unintentional strikes by motor vehicles, the DT suffers from the indirect negative effects of competition for food by feral burros and grazing livestock and the crushing of burrows.”

“Illegal take”: This was and continues to be a problem. I have found articles from my local newspaper (1993) showing that DT was being collected for consumption. In just two articles thirty-two DT were removed from the desert surrounding the Barstow area.

One article stated that three of the DT that were confiscated came from a BLM study plot. I did not find any article stating that hunters were shooting the DT.

“Unintentional strikes by motor vehicles”: This is a problem that should be addressed by the NPS but yet they are spending over \$6.5 million dollars of taxpayer’s money to develop and restore the Kelso Train Station (KTS). The KTS is located in the center of critical DT habitat but yet the NPS is promoting tourism to this location. Most tourists will visit the KTS once, never to return. While enroute they will be traveling 50-60 miles of highway through critical DT habitat. A large number of these visitors will be from other countries so their concerns about the endangered DT will be slim. I guess the NPS is not too concerned about the taxpayer’s money or the DT when it comes to promoting their own agenda. It is stated that the preserve will increase its visitation by over 200,000 people per year within the next twelve years. There will not be an increase in hunters; as a matter of fact there will be fewer hunters visiting the preserve. So any increase will be mainly from the NPS promoting tourism. What would be the difference between a **traversing** tourist who are not concerned about the DT versus a hunter who is very concerned about conservation, nature and its wildlife including the DT?

“Competition for food by feral burros and grazing livestock and the crushing of burrows.”: These statements continue to be used by many environmental groups. I ask why? The NPS states that they have removed over 3000 feral burros **and 8000 cattle** thus reducing their impact on the DT and at this time there is only one rancher left on the preserve and approximately half of this ranch is located outside the DT habitat. I ask **for** the science that shows burros and cattle are in direct competition with **the DT** when it comes to their food source. Where is the proof for this statement? What does this have to do with hunting on the preserve?

In the 60’s, 70’s and 80’s there was cattle grazing, burros roaming free and the DT coexisting, in large numbers, with both of these so called competitors.

“Predation of young by ravens and natural disease also take their toll”: These **are** two statements that I agree with you can surely take to the bank. I have taken pictures of the baby tortoise shells under power poles where the ravens roost and feast on young DT. I have articles from the BLM which state ravens will eat a DT up to five years of age. What I do not have in my possession is evidence showing progress being made towards obtaining a predation permit to help lower the raven population or any documents showing progress towards a cure of the respiratory disease or the shell disease. Why, I ask, can’t we focus our time and money on these two major causes of DT decline instead of trying to rid the MNP of rabbit and varmint hunting?

“Diets lacking in nutritional quality or quantity”: Some more irrelevant jabber. We have had a normal rainfall in the desert this year 2003 (which has not been seen in several years) and the DT have been able to enjoy this spring with plenty to eat and I have personally seen numerous DT around the Needles, CA area. Nutritional quality and

quantity has nothing to do with rabbit and varmint hunting or the right to carry a firearm on the preserve.

“Human caused environmental stress may exacerbate the intensity and accelerate severity of epidemic disease”: I am just a little lost over this one. Are we talking about the tourists that drive around the preserve? Are we talking about the rock climbers or the hikers? Are we talking about the park rangers who drive around patrolling the preserve? Are we talking about the restoration of the KTS? Are we talking about the equestrian folks? Are we talking about the railroad which runs through critical DT habitat twenty-four hours a day, seven days a week **blasting their whistle at each crossing?** Or are we just trying to say that only hunters are the ones who cause this environmental stress? Then we have the word MAY in this petition. If this sentence would read something like “..does exacerbate,” “...will exacerbate,” or “..... Has exacerbated” then you would be making a valid statement, but MAY does not carry too much knowledge, experience or fact.

“The cause of the population decline of the DT are neither fully known nor understood but the decline is certainly the result of cumulative and multiple impacts”: Part of this statement you can take to the bank! “Neither fully known nor understood”, yet this petition calls for numerous and unwanted restrictions on hunting which appear to be more of a personal agenda and is pure speculation rather than a recipe for a DT recovery plan. The Desert Management Group(DMG) who are experts in the fields have spent twelve years, a lot of hard work and in excess of \$100,000,000 of our taxpayer’s money and they still do not have a viable plan for the DT recovery or concrete reasons for its overall demise. We do not have a cure for the respiratory and shell disease, predation permits to control raven or a large breeding program to repopulate the desert. I question the assumption the “... decline is certainly the result of cumulative and multiple impacts...” This is speculation. Studies have determined that there is more DT during wet years as opposed to dry years. That does not prove that the population is in decline, growth or stable. Again, it is an assumption to state that the DT is in decline as **there** is no historical data to support the claim. **DELETE and current data appears to refute the claim.** It is known that the environmental conditions (drought vs. rain), Predation and disease have an impact on DT populations. Man has the ability to apply controls to predation and disease.

“Discharge of weapons is an established threat to DT populations/shooting of weapons have both direct impacts on mortality levels through illegal take of the species but also an indirect impact”: Where has this threat been established? What proof do you have to back up this outrageous statement? This statement again is a combination of speculation and assumptions. Neither is supported by data through studies or anecdotal observations. At this time I would like to quote from wildlife biologist Jim Sechrest, <http://www.peak.org/~jimsec/tortoise.html> wherein he states “In one area of Ft. Irwin that had been recently bombed, biologist found one of the highest concentrations of living DT on the base soon after. Go figure.” It would seem that your statement that “discharge of weapons is an established threat to DT populations”

appears to be not too established and I question this statement along with many others in this petition.

“Under current NPS regulations, the possession and discharge of weapons on the Federal Lands with the MNP is legal only in connection with authorized sport hunting. Thus, to limit the periods of time when hunting may legally occur effectively limits the periods of time when weapons may be possessed and/or discharged within most of the preserve.” This first statement is true as there is no target practice or plinking allowed on the preserve. The second half of this statement starts to get to the core of this petition. What it means is that the DT is not the only reason for this petition. Here these groups want to limit your rights to even possess a firearm on the preserve during certain times of the year. I take this to even include carrying a pistol for protection while you are camping, hiking, horseback riding, or just driving through the preserve. This would seem to me to be another form of gun control using the ESA and DT for an excuse. This next paragraph I quote from this petition will help you understand why I mention gun control.

“Responsible and law-abiding hunters would not gratuitously shoot a DT. However, persons who carry a weapon and shoot a tortoise are able to operate under the cover of legitimate hunting. If hunting were limited by the state as we petition (or alternatively, by the NPS) to reduce seasons, the MERE possession of a weapon on the Federal Lands in the preserve during seasons closed to hunting would constitute a violation of NPS rules. In short, confining hunting to the tortoise inactive season will reduce the opportunity for vandals to shoot tortoises.”: The phrase “operate under the cover of legitimate hunting” sounds to me to be fairly short sighted and about as far out in left field as you can get. I cannot even imagine a person taking the chance of shooting a DT on purpose, incurring the huge fine and/or jail time that would be levied and thinking that they could “operate under the cover of legitimate hunting.” Additionally, (and this is another statement you can take to the bank) if a legitimate hunter were to witness this despicable act, the perpetrator would be turned in to the authorities.

It appears to me that what these groups are trying to accomplish is that rather than apprehending and prosecuting those that break the law, they would rather make a sweeping, all encompassing bunch of regulation that would punish the legitimate hunter and law abiding public. Now the law abiding public becomes a criminal if he or she does not check-in with the NPS each time they visit the preserve because the laws might have changed and/or the hunting season may have changed and the firearm they might be carrying for personal reasons will instantly make them a criminal.

I would like to take the opportunity to list a few internet sites to visit and I am going to quote a few statements about the DT that were contained in these sites.

www.tortoise-tracks.org/gopherus/torques.htm

<http://www.tortoise-tracks.org/goherus/torques.htm>

This site has commonly asked questions about the DT and answers by Dr. Kristen Berry (who was quoted in the petition by the petitioners).

Question #16: What predators eat tortoises? “The type of predator varies depending on the age and size of the tortoise. There are egg predators such as the Gila Monster, kit foxes, bobcats, badgers, coyotes and probably the spotted skunk. The larger the tortoise, the more likely it will be able to resist predation. Large tortoises may be eaten by kit foxes, badgers, bobcats, coyotes and golden eagles. The large mammalian predators are not likely to eat tortoises unless other food sources, such as rabbits and rodents are in short supply. Coyotes and kit foxes **may** dig tortoises out of their burrows to eat. These predators can eat the tortoise without breaking open the shell.”

Why Dr. Berry did not mention feral dogs, humans and ravens as predators escapes me. Dr. Berry also failed to mention hunters. Why? Could it be that hunters are not a threat to the DT? Additionally it would appear that predator hunters have been doing the DT some good by keeping the predator populations in check. These are the very hunters this petition is trying to eliminate.

www.nwf.org/wildalive/tortoise/sciencefacts.htm

<http://www.nwf.org/wildalive/tortoise.sciencefacts.htm>

Estimate Population: “This number is not available because the tortoise is highly dispersed throughout their range.” (USFWS). (Amazing to me that after ten years of research and \$100 million that they cannot give some kind of estimate.)

Habitat Type: “Desert tortoises inhabit semiarid grasslands, gravelly desert washes, canyon bottoms and rocky hillsides BELOW 3530 feet.” This elevation is also quoted on the web site desertusa.com, **the Defenders of Wildlife web site and the (USFW) Nevada Fish and Wildlife office web site**. The majority of hunting on the MNP is done at, or above this elevation, so how can restrictions on hunting have any positive effect on the DT. Again the primary purpose of this petition is irrelevant.

Primary Threats: “Primary threats to the DT include illegal collection and vandalism by humans; off-road vehicles, which crush tortoises and destroy their burrowing holes; urban area expansion that has destroyed habitat and increased the numbers of ravens (which prey on young tortoises); upper respiratory tract disease; and loss of forage plants due to competition with grazing livestock and replacement by invasive species.”

Where is hunting mentioned in this statement? There is no off-road travel allowed on the MNP. I can't stop urban expansion but we can help control the raven population. Grazing livestock, again I point out that in the 60's, 70's, and 80's the DT was thriving right along side of the cattle, burros and other grazing animals. Again, hunting was not mentioned in this report.

www.nps.gov/moja/planning/tort.htm

<http://www.nps.gov/moja/planning/tort/htm>

Threats: “The primary reasons for listing the Mojave population include deterioration and loss of habitat, collection for pets or other purposes, elevated levels of PREDATION, disease, and the inadequacy of existing regulatory mechanisms to protect tortoise and their habitat.”

The deterioration of habitat can surely be caused by the ten year drought. Collection for pets or other purposes (eating) is a very real threat to the DT. The Nevada USF&WS stated to me at a DMG meeting held on March, 2003 in Palm Springs that they estimated over 50,000 DT are in people’s homes in the town of Las Vegas. “Elevated level of predation is another major cause for DT decline.” The raven population needs to be controlled along with other mammalian predators. But yet this petition wants to eliminate predator hunting in DT habitat. This does not make sense.

There appears to be plenty of laws to help the DT recover, but it seems special interest groups and the agencies empowered to protect the DT keep working on the lesser causes of mortality instead of making a direct attack on the disease, predation control and a large breeding program to help off-set natural losses.

Per the quote from the 1994 Desert Tortoise Recovery Plan (DTRP) (Mojave population) in this petition: “Mortality of the desert tortoise due to gunshot wounds and off highway vehicles is common in parts of the Mojave region, particularly near cities and towns where people and DT more frequently come in contact. For example, between 1981 and 1987, 40% of the DT found dead on a study plot in Fremont Valley, California, were killed by gunshot or vehicles traveling cross-county or on trails (Berry, 1990, as amended). Berry (1986a) reported that nearly 15% of 635 DT carcasses that were examined from several California study sites showed signs of gunshot.” This statement obviously relates to areas in close proximity to towns and/or populated areas. (This petition deals with the MNP which is located in a very remote area as I will discuss later.)

This quote was from a report by Dr. Berry twenty years ago and what proof do we have that says these tortoises died from a vehicle, hiker or hunter’s gunshot. Each and everyone of the DT may have died from disease or attack from predators (Berry: “Coyotes and kit foxes may dig tortoises out of their burrows to eat. These predators can eat the tortoise without breaking open the shell.”) The shells will last up to ten years in the dry desert and during these ten years of lying around shells could be run over by vehicles, picked up by the hiker or shot at by some unknowing fool. You find a shell that is smashed and say it was kill by an off-road vehicle or see a shell with a hole in it and say a hunter killed this DT. Do you see what I am trying to say? Shells last up to TEN years. All kinds of mishaps could happen to these shells. Please go back to my reference of the web sites and reread the sections about “Threats” and “Predation” on the DT. Nothing was mentioned about gunshots.

Additionally, regarding this quote from the DTRP, what does this statement have to do with the MNP? (A) The preserve is located at least 60 miles from any type of residential area with over 500 people, and (B) what type of proof can be offered that would show that a gunshot actually killed a tortoise? A misguided soldier/vandal that is not a “hunter” may have used a shell for target practice twenty years ago. There are always in place on the MNP that prevent target practice or “plinking” with firearms. As far as know, there has never been a citation written by the MNP for illegal killing of a tortoise by a hunter’s gunshot. Off-road vehicle use is not permitted, nor has it been permitted for at least three decades on the 1.6 million acres that make up the preserve. Fatality by driving on dirt roads and gunshots should not be considered a hazard to the DT when it comes to the MNP. This is not to say this may not have been a problem somewhere else, such as “near cities and towns.” Frankly, I feel these two categories as a basis for your petition are irrelevant. Additionally, please remember that over 50% of the MNP is not in DT habitat.

Again, quoting from the DTRP, page 6, “A study done in the West Mojave between 1972 and 1982 reveals that as many as 28.9% of dead tortoises in a given site had died from gunshots.” This 30 year old study is being used as a basis for your argument showing that tortoises have died as a result of gunshots. It also stated “the number of visitors to the preserve continues to grow, and so the need for proper regulation of hunting and weapons discharge there is also urgent.” I agree with the statement regarding “... the number of visitors continues to grow” because they are being encouraged to visit by the NPS. The NPS is refurbishing the KTS and want this to become a major tourist attraction. Do you truly feel that the majority of visitors that come to the preserve will be carrying firearms? Hunters are NOT being encouraged to visit. I might add that because of the removal of the rancher’s water which has all but destroyed the vast number of wildlife in existence when the NPS took over, the number of hunters will continue to decline. So what we have here is obvious. We have a decline in conservation minded hunters and a rise in uniformed tourists that are encouraged to visit by the NPS. The prize visitation area will be the KTS which may have up to 100,000 visitors per year traversing 50-60 miles of highway through critical DT habitat. They will be unknowing and unseeing. Even if you have a DT exhibit and awareness display at the KTS, they will have already traveled one way on the road in order to get there. So again this particular part of your petition is irrelevant. The hunter can hardly be considered a tourist in the eastern Mojave and they should not be considered as part of a “growing number of visitors.” As far as “tortoises dying as a result of gunshots,” I ask for proof in the way of citations issued, prosecutions, etc. I have traveled this area for over thirty years and have NEVER seen a DT that has been shot.

More quotes from the petition quoting the DTRP, page 6.

“In addition to the direct killing of tortoises by gunshots, other hunting-related factors impact DT mortality rates. First, hunting can increase the local population of ravens, which are drawn by the existence of carcasses. This is even more relevant when hunters kill inedible non-game species whose carcasses are often left to rot. The USF&WS cited

this subsidiary impact in its July 6, 2001 Biological Opinion on the Mojave General Management Plan as a reason for stricter regulation of hunting within the preserve.”

This statement “direct killing” has to have some sort of proof to back it up and if there was such direct killing, what % of DT mortality on the MNP are we talking about? How many DT on the preserve has been killed by (a hunter’s) gunshot? Let’s also ask how many DT may have been smashed by vehicles traversing the highway to the KTS, how many have died because of drought, how many have died because of predation, how many have died because of upper respiratory/shell disease or how many have died because of the overall influx of tourists (not hunters) to the preserve? Let’s answer these questions before we start a direct attack on the hunter.

Again, I state that these statements and quotes have very little to do with the DT recovery and are irrelevant. This petition is a direct attack on the firearms owner, hunting public and the pet owner.

“The elimination of small game hunting May reduce the availability of carcasses upon which common ravens can feed. The reduction in this source of food COULD reduce the attractiveness of the MNP to common ravens and thereby reduce the levels of mortality that this species inflicts upon DT in the region.”

Here again we are using the words MAY and COULD which means there is no science or facts that say these actions will have a significant impact on the DT recovery. When “MAY” and “COULD” are used this appears to be just wishful thinking at the public’s expense.

Let us just say that some people went out and shot a rabbit and left it to rot. Someone tell me what would be the odds of a raven finding this small carcass when this raven would only have to fly to the nearest road and eat a rabbit that was run over by a tourist and left to rot. There is only two non-game species that we are talking about that would be coyotes and jackrabbits. Of all the years of traveling about the MNP, I have never come across the carcass of a dead coyote or jackrabbit that was left by a hunter. But, if this were to happen on a large enough scale to support raven populations, then I guess it would be better to have these ravens eat the rotting carcasses than the little DT. What must be done is control the number of ravens, not the so-called hunter who leaves all these carcasses rotting on the preserve.

From petition, Biological Opinion 1-8-00-f-36, pp. 39-40

“Second, increases in vehicular traffic as a result of hunting during the tortoise’s active season add to the risk of tortoises being crushed. The USDWS in an Amendment to BO 1-8-00-f-36, dated September 19, 2001, raised this point:”

“Desert tortoise could be at additional risk from increased human use of the Mojave National Preserve by hunter specifically traveling to the area to hunt Audobon cottontails and black-tailed jack rabbits.”

Are we reaching out for something in these statements? Again, the use of the word COULD, means there is no concrete proof of what is stated will happen. These statements are strictly one sided and show direct prejudice against the hunter. First off, considering the new, expanded Visitor's Center at Hole-in-the-Wall, Soda Springs and the Kelso Train Station and the promotion of these sites by the NPS, these statements regarding hunting are ludicrous. As I said earlier in this rebuttal, the hunters are on the decrease because of the destruction of the wildlife from the removal of water sources. The one time, unknowing tourist is on the rise. Why don't we call for all visitations to be halted during this seven month period??? I do not know where USFWS received their traffic counts but how did they distinguish between a hunter's auto and a tourist's auto. As far as "traveling to the area to hunt Audubon cottontails...", the whole MNP consists of rabbit hunting areas which is obviously the same areas that tourists are being encouraged to visit. Why is the hunter singled out as the reason for "additional risk from increase use of the MNP?" Again, this statement is prejudicial to the hunter and I feel is a direct attack. This statement should read "DESERT TORTOISE COULD BE AT ADDITIONAL RISK FROM INCREASED HUMAN USE" period.

From petition quoting BO 1-8-00-f-36 dated 8/19/03 p. 2

"Third, shooting CAN lead to the accumulation of trash and the possibility of stray bullets causing wildfires within tortoise habitat during the hottest and driest portions of the year when fires are most likely to occur and find most favorable conditions for spreading."

Again, we have the word CAN—shooting to means plinking or target practice, which is outlawed on the preserve. There is a big difference between shooting and hunting. Why would shooting create any more trash than a hiker, camper, tourist, equestrian or park ranger? Maybe we should outlaw smoking on the preserve during this period of time. I have never heard of a case where a stray bullet has caused a wildfire, especially on the MNP. Here again, we have a direct attack on a firearm without any shred of evidence or truth. What these statements are saying is that if you are a shooter you accumulate trash and start wildfires. Wait a minute, if you are a shooter you MAY accumulate trash and you MAY start wildfires. To me these are both false insinuations. Can I make this statement read "tourist/visitors/park personnel/firefighters/game wardens/campers/hiker/equestrians MAY accumulate trash and MAY start wildfires. If this be the case, then we need to close the preserve to everyone not just the "littering, fire starting" hunter. Where is this petition to the courts calling for all visitation to the preserve be terminated in order to protect the endangered desert tortoise?

I am going to skip over about four paragraphs that I do not feel need attention and to this statement from the petition.

"The DTRP clearly requests that hunting be restricted within areas set up to protect the tortoise. Its specific recommendations was that the 'discharge of firearms, except for

hunting of big game and upland game birds from September through February' be prohibited because it is 'generally incompatible with desert tortoise recover'..."

The petitioners want to stop the discharge of firearms but don't forget that they also want the MERE possession of a firearm to be a criminal act, except for big game or upland game birds because it is GENERALLY incompatible with the DT. What in the world do we mean when we start using the word, generally? I guess the bombing done at Ft. Irwin range is incompatible with the DT but firearms discharge is GENERALLY incompatible with the DT. See what I mean? – doesn't make any sense. These statements are just another attack on the firearm owners and hunters.

Again, I am going to skip a couple of paragraphs and quote this statement from the petition.

"Banning hunting is not an option since it is explicitly mandated in the preserve under the California Desert Protection Act (CDPA). Nor do petitioners seek to ban hunting. Petitioners recognize that hunting, under certain limits and conditions, is a legitimate recreational pursuit within the preserve and may be conducted compatibly with tortoise recovery." The CDPA also stated that ranching and mining will continue. As of today there is only one rancher and I do not know any active mining left on the preserve even though it was mandated to continue. Hunting "limits and conditions" should only be determined by California Fish & Game as the regulating agency. These groups sponsoring this petition along with the majority of Park Rangers that I have spoken with would just as soon see no hunting on this preserve. They cannot remove hunting because it is mandated by Congress but they have attempted to remove the game by removing the available water. Now they want to impose restrictions on the time available for hunting by imposing restrictions supposedly to aid in the DT recovery when in fact there is no basis for their theories – only an opinion using the words COULD, MAY, CAN and GENERALLY.

The next two pages of the petition consist of the CDF&G dealing with the MNP. I have no comments to make on their inability to ascertain who is to make the rules and regulate the wildlife.

I would like to make comments on one last quote from the petition: "Petitioners urge that the Commission fulfill its responsibility to protect the fragile and imperiled wildlife resources that are held in trust by it for the people of the State of California." I agree. I feel that the petitioners should be urging the Commission and the MNP to protect the fragile and imperiled wildlife by ensuring that the water supply that has been in existence for over 50+ years and used by all species of animals and birds on the preserve continue to be made available. Additionally, I feel that the petitions must be unaware of what is really happening on the MNP or they would be focusing on the water removal problem rather than limiting hunting which has absolutely no bearing on the DT recovery.

Conclusion: I hope you can see that this petition is shortsighted in its overall view of the MNP. This petition is using the DT recover as a means to eliminate firearms and the hunter from the preserve because they have a personal distaste for both. I think I have pointed out the areas where their petition is not using relevant science and involves a lot of speculation. Much of the referenced information being used is outdated and generalities are being used and applied as facts when speaking of the MNP. They have proven nothing or even used common sense when applying their research to the hunter, the firearms own or pet owner.

I have used this desert for over 40 years and I know that thousands of other is walking in my shoes. I would welcome any proof that you can offer that I am wrong in what I have said and personally witnessed over these years.

I would like to specifically point out to all the groups interested in the outcome of this petition: Safari Club International, Foundation for North American Wild Sheep, Society for the Conservation of Wild Sheep, Quail Unlimited, California Deer Association, Mule Deer Foundation, National Rifle Association, U.S. Sportsmen's Alliance, California Rifle and Pistol Association and any other groups, that by supporting this rebuttal you would not be stating that you are uncaring about the DT recovery. All of us are very concerned about the recover of the DT as well as the recovery of any other threatened or endangered species. We feel this way because we are conservationists at heart and are truly stewards of the land. However, common sense and fact must prevail when we are making such everlasting and encompassing laws and regulations that so directly affect all of our daily lives along with future generations to come.

Please contact me if you have any questions.

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