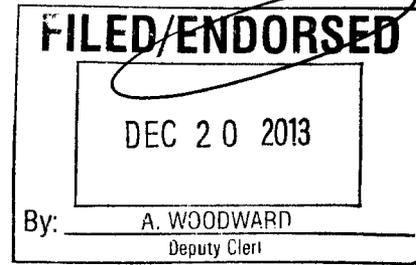


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8 ENVIRONMENTAL RESPONSIBILITY and
9 DESERT PROTECTIVE COUNCIL FOUNDATION

10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SACRAMENTO

12 PUBLIC EMPLOYEES FOR
13 ENVIRONMENTAL RESPONSIBILITY, a)
14 non-profit corporation; DESERT)
15 PROTECTIVE COUNCIL FOUNDATION, a)
16 non-profit corporation,)

16 Petitioners,)

17 v.)

18 CALIFORNIA DEPARTMENT OF PARKS)
19 AND RECREATION, an agency of the State)
20 of California; DIVISION OF OFF-)
21 HIGHWAY MOTOR VEHICLE)
22 RECREATION, a division of the California)
23 Department of Parks and Recreation;)
24 CHRISTOPHER C. CONLIN, in his official)
25 capacity,)

24 Respondents,)

25 CALIFORNIA OFF-ROAD VEHICLE)
26 ASSOCIATION, a California corporation,)

27 Intervenor.)
28

Case No.: 34-2013-80001495

FIRST AMENDED VERIFIED PETITION
FOR WRIT OF MANDATE

[Code Civ. Proc. §§ 1085, 1087]

Date: N/A
Time: N/A
Dept.: 29
Judge: Hon. Timothy P. Frawley
Trial Date: None
Action Filed: May 21, 2013

1 Public Employees for Environmental Responsibility (“PEER”) and the Desert Protective
2 Council (“DPC”) hereby petition this Court for a Writ of Mandate pursuant to California Code of Civil
3 Procedure (“CCP”) Sections 1085 and 1087 ordering the California Department of Parks and
4 Recreation, the Division of Off-Highway Motor Vehicle Recreation (“OHMVR”) and responsible
5 officials in their official capacities (collectively Respondents”), to immediately cease and desist
6 Respondents’ ”open” off-road vehicle driving policy currently being implemented at the Ocotillo
7 Wells State Vehicular Recreation Area (“Ocotillo SVRA”) and to take all necessary actions to restrict
8 all vehicle use at the Ocotillo SVRA to the trails specifically identified on the Ocotillo SVRA’s trail
9 map (attached and incorporated by reference as Exhibit A), in order to bring the SVRA into
10 compliance with the Off-Highway Motor Vehicles Recreation Act of 2003 (“OHMVRA”), Public
11 Resources Code (“PRC”) § 5090.35 *et seq.*

14 INTRODUCTION

15 1. The OHMVRA imposes on Respondents a mandatory duty to “promptly repair and
16 continuously maintain areas and trails, anticipate and prevent accelerated and unnatural erosion, and
17 restore lands damaged by erosion to the extent possible.” PRC § 5090.35(a). “Restoration” is defined
18 as the closure of a unit or portion of a unit and the restoration of land to the contours, plant
19 communities, and plant covers comparable to those on surrounding lands or those that existed prior to
20 off-highway motor vehicle use. *Id.* at § 5090.11.

22 2. Respondents’ own records reveal that no maintenance work of any kind has been
23 performed on any of the hundreds of miles of user-made trails and open riding areas. Yet, under the
24 OHMVRA, the Department is required to maintain *all* areas and trails, including user-created trails
25 which have not been officially designated and named as trails by the Division, and open riding areas.
26 The plain language of the OHMVRA clearly provides that the duty to “promptly repair and
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1 continuously maintain” applies to both “*areas* and trails.” PRC § 5090.35(b) (emphasis added). Under
2 the 1991 Soil Guidelines, “trail” is defined as being “[a]ny route that is not designated as a road.”
3 OHMVR recognizes that user-created trails must be maintained pursuant to the statute. The
4 environmental audit done in 1997 states that “[t]he law governing the application of soil standards and
5 erosion control is to be applied to ‘each area of the system’ where ‘system’ is defined as ‘the areas and
6 trails within the state park system.’ As such, all trails, regardless of their origin (i.e. designated or
7 volunteer), are to be treated equally in the application of the soil standard.” Audit Report for Off-
8 Highway Motor Vehicle Division, at 6 (1997). Thus, user-made trails are trails within the meaning of
9 the OHMVRA, and Respondents therefore have a mandatory statutory obligation to “promptly repair
10 and continuously maintain” user-made trails. As Respondents’ own records show, Respondents have
11 failed and continue to fail to fulfill this mandatory obligation, since these records show that no
12 maintenance work of any kind has been performed on user-made trails and open riding areas.

15 3. According to the 2011 Off-Highway Motor Vehicle Report (“2011 Commission
16 Report”), the Commission responsible for overseeing the OHMVRA program found that “natural
17 resources appear to be degrading” at Ocotillo Wells SVRA “sampled habitats have sustained
18 substantial loss in vegetation, soil and general habitat integrity,” and that “OHV recreation may be
19 causing a lack of plant recruitment and loss of annual seedbank,” which is “particularly apparent in
20 areas of intense motorized use.” California State Parks, Off-Highway Vehicle Commission, 2011
21 Program Report, at 84 (2011). Loss of vegetation has negative impacts on the species that depend on
22 vegetated areas for habitat such as the Flat-Tailed Horned Lizard and other desert wildlife, as well as
23 increasing erosion.

26 4. Respondents have also violated their mandatory duty to protect archeological sites
27 which are present within the Park. The OHMVRA requires the division to monitor and protect cultural
28

1 and archeological resources. PRC § 5090.35(f). According to the 2011 Off-Highway Vehicle
2 Commission Program Support (at 93), there are no less than 1,272 archeological, cultural and historical
3 sites within the Park. Respondents have provided protection to only a small handful of those sites.
4 More than a thousand archeological sites are completely unprotected, and are constantly vulnerable to
5 damage because Respondents have imposed no restrictions on off-road vehicles riding on or over
6 them.

8 5. Respondents have been, and will continue to be, in violation of their mandatory duties
9 under the OHMVRA and such unlawful acts constitute an abuse of discretion. Unless a writ is issued
10 by this Court ordering Respondents to apply their discretion in a manner that complies with the
11 agency's mandatory duties within the Park's open riding areas and on user-created trails and, in the
12 interim, to prohibit drivers of off-road vehicles from wherever they wish, creating new routes where
13 none existed, driving on user-created trails or open riding areas, Respondents' continued decision to
14 allow open riding without promptly repairing, continuously maintaining these areas, and monitoring
15 and protecting cultural resources, is violating the OHMVRA.

17 **Beneficial Interest of Petitioners; Capacity of Respondents**

18
19 6. Petitioner PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY is a
20 national, non-profit corporation based in Washington, D.C. with chapters throughout the United States,
21 including California. California PEER has a field office in Georgetown, California. PEER represents
22 current and former federal and state employees of land management, wildlife protection, and pollution
23 control agencies who are frustrated by the failure of governmental agencies to enforce or faithfully
24 implement the environmental laws entrusted to them by Congress or States. PEER has thousands of
25 members living across the country, including members who live, recreate and work in the immediate
26 vicinity of the Ocotillo Wells SVRA. Members of PEER reside on lands in the Ocotillo Wells area.
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1 They use and enjoy desert lands in and around the Ocotillo Wells SVRA for observation, research,
2 aesthetic enjoyment, and other recreational, scientific, and educational activities. PEER members have
3 visited Ocotillo Wells SVRA and observed large areas of damaged and eroded desert soils at the site
4 and indications that OHV riders using the Park are not limited to designated trails but instead are
5 allowed to travel any terrain their vehicles can maneuver within the SVRA.
6

7 7. PEER members observe air-borne dust within the Ocotillo Wells SVRA from areas
8 where riding off designated trails is occurring and observed OHV riders creating new trails over fragile
9 desert habitats and on the sides of fragile sandstone structures. PEER members' use and enjoyment of
10 Anza-Borrego Desert State Park has been adversely affected by the presence of OHV drivers driving
11 into the Park from open areas within Ocotillo Well SVRA. PEER members have observed OHV riders
12 entering Anza-Borrego Desert State Park and crushing plants in the park. PEER members' observation
13 and experience of these incidents diminishes their recreational use and enjoyment of the Ocotillo Wells
14 and experience of these incidents diminishes their recreational use and enjoyment of the Ocotillo Wells
15 SVRA, Anza-Borrego Desert State Park, and other nearby lands.
16

17 8. The interests of PEER's members have been, are being, and will continue to be
18 adversely affected by Respondents' failure to comply with the OHMVRA. The relief sought herein
19 will redress the harms to PEER caused by Respondents' failure to comply with the OHMVRA.
20

21 9. Petitioner DESERT PROTECTIVE COUNCIL FOUNDATION is a non-profit public
22 benefit corporation founded in 1954. Its mission is to safeguard and preserve for this and succeeding
23 generations the scenic, historical, spiritual, natural, cultural and recreational values of the southwest
24 deserts and to educate children and adults to a better understanding of the deserts. The DPC works
25 through education, land stewardship and advocacy. The DPC has participated in land use planning
26 efforts across the American southwest deserts for decades, including supporting the initial creation of
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1 the Ocotillo Wells SVRA in order to assure that OHV recreation in this area would be controlled and
2 protect desert resources from further damage to the desert environment.

3 10. Members of DPC enjoy visiting and recreating on lands in the Ocotillo Wells area. The
4 DPC's board, staff and members use the lands and waters within and in the vicinity of the Ocotillo
5 Wells SVRA, including trails adjacent to open areas that Respondents have not maintained within the
6 SVRA, for recreation, photography, scientific research, aesthetic pursuits, and spiritual renewal. DPC
7 members regularly visit the Ocotillo Wells SVRA. During those visits, DPC members have observed
8 large areas of damaged and eroded desert soils at the site and indications that OHV riders using the
9 Park are not limited to designated trails but instead are allowed to travel any terrain their vehicles can
10 maneuver within the SVRA. DPC members have observed large dust clouds rising from these areas of
11 erosion, obscuring visibility within the Park and on adjacent highways. In northern sections of the
12 Park, DPC members have documented user-created vehicular tracks criss-crossing ancient Native
13 American foot trails and over 10,000 year-old desert pavement. DPC members have observed OHV
14 riders creating new trails on the sides of fragile soft sandstone formations. DPC members have
15 observed OHV drivers travel on user-created tracks into adjacent Anza-Borrego Desert State Park and
16 crushing plants within the State Park. DPC members' observation and experience of these incidents
17 diminishes their recreational use and enjoyment of the Ocotillo Wells SVRA, Anza-Borrego Desert
18 State Park, and other nearby lands, as well as their use and enjoyment of their homes. The interests of
19 DPC's members have been, are being, and will continue to be adversely affected by Respondents'
20 failure to comply with the OHMVRA. The relief sought herein will redress the harms to DPC caused
21 by Respondents' failure to comply with the OHMVRA.
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26 11. Respondent CALIFORNIA PARKS AND RECREATION is now, and at all times
27 mentioned in this petition, has been, a state agency under the laws of the State of California.
28

1 12. Respondent DIVISION OF OFF-HIGHWAY MOTOR VEHICLE RECREATION, a
2 division of the California Department of Parks and Recreation, was created by the OHMVRA. PRC §
3 5090.30. The Division’s duties and responsibilities include monitoring the conditions of soils and
4 wildlife habitat within the Ocotillo SVRA and conserving and restoring lands in the Ocotillo SVRA
5 required by the OHMVRA.

6
7 13. Respondent Christopher C. Conlin is the deputy director of the Division. The deputy
8 director has no responsibilities other than directing and managing the division and the OHV program.
9 Respondent Conlin is named in his official capacity.

10 **Jurisdiction and Venue**

11 14. This Court has jurisdiction pursuant to California Code of Civil Procedure Section
12 1085. Section 1085(a) provides that “[a] writ of mandate may be issued by any court to any inferior
13 tribunal, corporation, board, or person, to compel the performance of an act which the law specially
14 enjoins, as a duty resulting from an office, trust, or station. . . .” Venue is proper in this court pursuant
15 to Code of Civil Procedure Section 395(a) because all of the Respondents have their headquarters or
16 otherwise reside in Sacramento County.

17
18 15. PEER and the DPC have exhausted all administrative remedies that may be available to
19 them. There is no discernible administrative procedure within the Division which Petitioner could
20 employ to remedy the violations encompassed by this Petition. In lieu of any available administrative
21 procedure, on March 7, 2013, PEER sent Respondents DPR, Division, and individual managers a letter
22 requesting that the Division and those officials comply with the OMHVR Act by putting an end to the
23 open riding policy at the Ocotillo Wells SVRA so as to help bring them into compliance with the
24 OHMVRA. Exhibit B (letter from Kathryn Douglass *et al.* to Anthony Jackson *et al.* (March 7, 2013)).
25 In the letter, PEER also notified the Division and its managing staff of PEER’s intent to file a petition
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1 for writ of mandate to enforce the requirements of the OHMVRA should the Division and its managing
2 staff continue to violate this Act. On April 15, 2013, Petitioners sent a follow-up letter to those
3 Respondents as well as Respondent Christopher C. Conlin, reiterating their concerns, identifying the
4 violations of the OHMVRA alleged in this petition, requesting immediate action, and notifying
5 Respondents of PEER's and DPC's intent to file this petition for writ of mandate. Exhibit C. On April
6 30, 2013, in following up to Petitioners' letters, PEER and DPC met with Respondent Conlin. During
7 the meeting, Petitioners again reiterated their concerns and the OHMVRA violations and requested
8 immediate action. Respondents, through Respondent Conlin, did not agree with Petitioners and made
9 no commitments that would resolve Petitioners' claims.
10

11 16. This petition is timely filed within the four-year statute of limitations pursuant to CCP
12 Sections 1109 and 343.
13

14 **Statutory Background**

15 **The Off-Highway Motor Vehicle Recreation Act**

16 17. The Off-Highway Motor Vehicle Recreation Act, PRC §§ 5090.01-5090.70, is the
17 primary state law regulating off-highway motor vehicles, the Division of Off-Highway Motor Vehicle
18 Recreation (the "OHMVR Division" or "Division"), and the state vehicular recreation areas.
19 Originally adopted in 1988, through the OHMVRA the Legislature declared "that effectively managed
20 areas and adequate facilities for the use of off-highway motor vehicles and conservation and
21 enforcement are essential for ecologically balanced recreation." PRC § 5090.02(b). Seeking to control
22 the "indiscriminate and uncontrolled use of those vehicles" that "may have a deleterious impacts on the
23 environment, wildlife habitats, native wildlife, and native flora," the Act's legislative intent is to
24 maintain motor vehicle recreation areas for "sustained long term use." PRC § 5090.02(a)(3); (c)(1)-
25 (2). The Act provides that "[w]hen areas or trails or portions thereof cannot be maintained to
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1 appropriate established standards for sustained long-term use, they should be closed to use and
2 repaired, to prevent accelerated erosion. Those areas should remain closed until they can be managed
3 within the soil conservation standard or should be closed and restored.” *Id.*, § 5090.02(c)(4).

4 18. The OHMVRA created the OHMVR Division to administer many aspects of the
5 operation of the state vehicular recreation areas and the Off-Highway Motor Vehicle Recreation
6 Program. *Id.*, §§ 5090.30 – 5090.38.

8 19. With respect to the OHMVR Division’s role in managing the state vehicular recreation
9 areas, the OHMVRA states that “[t]he protection of public safety, the appropriate utilization of lands,
10 and the conservation of land resources are of the highest priority in the management of the state
11 vehicular recreation areas; and, accordingly, the division shall promptly repair and continuously
12 maintain areas and trails, anticipate and prevent accelerated and unnatural erosion, and restore lands
13 damaged by erosion to the extent possible.” PRC § 5090.35(a). “Repair,” under the OHMVRA,
14 “means to fix, mend, make new, or revitalize to the condition that existed prior to the unauthorized
15 OHV use and related damage.” 14 C.C.R. § 4970.01(mm). “Conservation” means activities, practices,
16 and programs that sustain soils, plants, wildlife, and their habitat in accordance with the standards
17 adopted pursuant to Section 5090.35. PRC § 5090.10. “Restoration” means, upon closure of the unit
18 or any portion thereof, the restoration of land to the contours, the plant communities, and the plant
19 covers comparable to those on surrounding lands or at least those that existed prior to off-highway
20 motor vehicle use. PRC § 5090.11.

21 20. PRC § 5090.35(b)(1) provides that, if soil conservation standards are not being met, the
22 Division must either temporarily close the noncompliant portion to repair it such that it satisfied the
23 conservation standards, *id.* § 5090.35(b)(2); or if the conservation standards cannot be met through
24 repairs, the Division must completely close and restore the noncompliant portion. *Id.*, § 5090.35(b)(3).
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1 21. The OHMVRA also requires the Division to “monitor and protect cultural and
2 archaeological resources within the state vehicular recreation areas.” PRC § 5090.35(f). “Cultural
3 resources” include, *inter alia*, things that “have yielded or be likely to yield, information important in
4 prehistory or history,” as well as “any object, building, structure, site, area, [or] place” that “is
5 historically significant.” 14 C.C.R. § 4970.01(h). Cultural resources are “historically significant”
6 within the meaning of the OHMVRA if they meet the criteria of the California Register of Historical
7 Resources. *Id.*

9 22. In addition to Respondents’ duty to protect cultural resources, where off-highway motor
10 vehicle use results in damage to any natural or cultural values, appropriate measures shall be taken to
11 protect these lands from any further damage. These measures may include the erection of physical
12 barriers and shall include the restoration of natural resources and the repair of damage to cultural
13 resources. PRC § 5090.43(c).

15 23. The 2008 Soil Conservation Standard and Guidelines instruct that “[c]ultural and
16 historical resources within or adjacent to an OHV project should be identified so that the OHV project
17 can be designed to minimize potential impacts to the features.” The Guidelines further instruct that
18 “[o]pen-ride-area OHV activity may need to be limited in vegetated areas.”

20 24. Respondents have a mandatory duty under the OHMVRA to “promptly repair and
21 continuously maintain [all] areas and trails” within the OWSVRA, as well as to “monitor and protect
22 cultural and archaeological resources within” the park.

24 25. Respondents’ ongoing decision to manage vast portions of the Ocotillo Wells SVRA as
25 an open riding park is an abuse of discretion because it violates the duties imposed by the OHMVRA
26 to “promptly repair and continuously maintain the areas and trails” and “monitor and protect cultural
27 and archeological resources.” The land conservation principles codified in the OHMVRA are intended
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1 to apply on a park-wide basis. Since current and ongoing management practices at Ocotillo Wells
2 SVRA only allow for minimal protection of certain designated trails and areas, the vast majority of the
3 park is not being managed pursuant to the OHMVRA requirements. Such management practices have
4 and are allowing for the wholesale destruction of the park's resources and constitute an abuse of
5 discretion.

6
7 26. Due to the open riding policy, Respondents have and are perennially failing to perform
8 these clear and affirmative duties which the OHMVRA imposes; and, unless a writ is issued by this
9 Court, will continue to operate the Ocotillo Wells SVRA in violation of their mandatory duties under
10 the OHMVRA, which constitutes an abuse of discretion.

11 **Factual Background**

12 **A. Respondents Have Not Conducted the Required Prompt Repairs and Continuous** 13 **Maintenance of Areas and Trails.**

14
15 27. The Ocotillo Wells SVRA includes approximately 85,000 acres of desert habitat located
16 east of Anza Borrego Desert State Park and about four miles west of the southern tip of the Salton Sea.
17 The SVRA is criss-crossed by numerous washes and contains a variety of soil types and terrains. The
18 SVRA is habitat for numerous threatened and sensitive desert plant and animal species, including the
19 Flat-tailed Horned Lizard (*Phrynosoma mcallii*), Peninsular Bighorn Sheep (*Ovis canadensis nelsonii*),
20 Pierson's pincushion (*Chaenactis carphoclinia var. piersonii*), Orcutt's woody aster (*Xylorhiza*
21 *orcuttii*), Mecca woody aster (*Xylorhiza cognata*), California fan palm (*Washingtonia filifera*), Salton
22 milk-vetch (*Astragalus crotalariae*), Prairie falcon (*Falco mexicanus*), Golden eagle (*Aquila*
23 *chrysaetos*), Le Conte's thrasher (*Toxostoma lecontei*), and the Colorado fringed-toed lizard (*Uma*
24 *notata*). Through a memorandum of agreement with the United States Fish & Wildlife Service, DPR
25 has designated 8,936 acres of the Ocotillo Wells SVRA as the Ocotillo Wells Flat-tailed Horned Lizard
26 Research Area to be managed in accordance with that memorandum of agreement to conserve the
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1 species. This research area does not appear on the SVRA map available to SVRA users. These
2 species and other wildlife depend upon the health of vegetation communities within the SVRA,
3 including mesquite, ironwood, desert willow, smoketree, and Palo Verde woodlands, creosote and
4 badland bush scrub, four-winged saltbush and other vegetation communities. Other recreational
5 activities including hiking, biking, horseback riding, and camping, in addition to OHV riding, are
6 available at the SVRA.
7

8 28. Based on habitat monitoring and assessment, in general, natural resources appear to be
9 degrading at the Ocotillo Wells SVRA. Some sampled habitats have sustained substantial loss of
10 vegetation, soil, and general habitat integrity.
11

12 29. The official map of the Ocotillo Wells SVRA depicts certain designated trails open for
13 riding within the SVRA. In addition to the designated trails depicted on the SVRA map, OHV users
14 have created thousands of undesignated, user-created trails. Ocotillo Wells is managed primarily as
15 open riding areas. For the eastern third of the SVRA as well as a small portion at the northern reach of
16 the SVRA, Respondents purport to restrict riders to designated trails and roads. In practice, however,
17 there are numerous trails contained in these areas that have been created by OHV riders and that are
18 not depicted on the SVRA map. Evidence of user created trails in this area has increased in the last
19 few years and in some cases is extensive. In practice, Respondents do not cite or otherwise prevent
20 OHV riders from riding on these user-made trails. Throughout the rest of the SVRA, OHV riders are
21 not limited to designated trails and roads. OHV riders may travel throughout the Ocotillo SVRA in
22 these areas, including travelling off designated routes. In effect, the Ocotillo Wells SVRA is managed
23 as an open riding area.
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1 30. On September 5, 2012, PEER sent a request for documents to Respondent DPR
2 pursuant to the California Public Records. The request sought the following categories of documents
3 for the Ocotillo Wells SVRA:

- 4 a. All records of maintenance for designated and non-designated routes in the
5 OWSVRA since January 1, 2008;
- 6 b. All inventories of designated roads and/or trails in the Ocotillo Wells SVRA;
- 7 c. All inventories of non-designated (i .e., user-created, “social,” “volunteer”) roads
8 and trails;
- 9 d. Budgets for road and trail maintenance since January 1, 2008;
- 10 e. Records of deferred maintenance on designated and undesignated roads and trails
11 since January 1, 2008;
- 12 f. All records of archaeological surveys performed in the Ocotillo Wells SVRA,
13 including total number of acres surveyed;
- 14 g. Any and all records reporting on archaeological site condition or disturbance;
- 15 h. Any and all records indicating measures taken to protect known archaeological
16 sites, and;
- 17 i. Any and all citations issued in the Ocotillo Wells SVRA for running over
18 perennial plants, for damage to archaeological sites, or for riding or driving off
19 designated routes.
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24 31. On October 29, 2012 and January 11, 2013, Respondent DPR provided responsive
25 documents to PEER’s September 5, 2012 document request. That documentary evidence, including all
26 records pertaining to trail maintenance and repair at the Ocotillo Wells SVRA, shows that Respondents
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1 are not complying with their affirmative duty under the OHMVRA to “promptly repair and
2 continuously maintain [all] areas and trails.”

3 32. Respondents keep maintenance/repair logs for trail maintenance and repair work
4 conducted within the Ocotillo SVRA. The maintenance/repair logs document the type of work
5 performed, the location of the work, the date the work was performed, the level of staff that performed
6 the work, the number of hours spent on the work, and the type of tools and equipment operated to
7 perform the work. Respondents have performed no trail maintenance work of any kind on any of the
8 undesignated trails and open riding areas within the Ocotillo Wells SVRA. Respondents have not
9 filled out any maintenance/repair logs for any work conducted on any of the unnamed trails or open
10 areas. Additionally, according to citation records received by PEER in its public records request,
11 Ocotillo Wells SVRA has never issued a citation for driving off the designated routes in the portion of
12 the park that is designated routes only.
13
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15 **B. Respondents Have Not Protected Cultural Resources in the SVRA.**

16 33. The Ocotillo Wells SVRA is home to at least 1,272 archeological and cultural sites.
17 2011 Commission Report, p. 93. No other SVRA comes close to rivaling the Ocotillo Wells SVRA
18 with respect to the number of archeological or historical sites it houses. According to the 2011
19 Commission Report, the Hungry Valley SVRA, which has the second-largest number of archeological
20 sites, has only 99. *Id.* The Ocotillo Wells SVRA is the home of so many archeological sites due its
21 “rich and varied history. Native peoples lived and traveled throughout the region for centuries. Early
22 Spanish explorers trekked across the land leading scouting parties in search of an overland route to
23 Alta California.” *Id.* at 40.
24
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26 34. Respondents are not complying with their duty under the OHMVRA to “monitor and
27 protect cultural and archaeological resources within the state vehicular recreation areas.” Petitioners
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1 are informed and believe that Respondents have only surveyed about five to ten percent of the SVRA
2 for the presence of archaeological sites. Petitioners are informed and believe that only a handful of the
3 1,272 archeological and cultural sites, which include many Native American burial sites, within the
4 Ocotillo Wells SVRA have been fenced off to prevent OHV riders from driving on or over them.
5 Thus, no fewer than 1,268 archeological sites within the Ocotillo Wells SRVA are unprotected and are
6 constantly under the threat of damage owing to their lack of protection and the Division's "open
7 riding" policy.
8

9 **CLAIMS FOR RELIEF.**

10 **FIRST CAUSE OF ACTION.**

11 **(Petition for Writ of Mandate for Abuse of Discretion for Failure to Comply**
12 **with the OHMVRA's Mandatory Duties)**

13 35. The allegations of paragraphs 1-34 are incorporated by reference as though fully set
14 forth herein.

15 36. By allowing OHV riders to create trails at will and maintaining an open riding area
16 policy for most of the Ocotillo Wells SVRA, Respondents have allowed large areas of the SVRA to be
17 left unmaintained with accelerated and unnatural erosion. Respondents do not conduct any
18 maintenance of user-made trails or open areas at the SVRA. Because Respondents do not continuously
19 maintain user-made trails and open areas at the SVRA, Respondents have and continue to abuse their
20 discretion by failing to promptly repair and continuously maintain areas and trails within the SVRA as
21 required by law. Because Respondents do not continuously maintain user-made trails and open areas
22 at the SVRA, Respondents have and continue to abuse their discretion by failing to anticipate and
23 prevent accelerated and unnatural erosion, and restore lands damaged by erosion to the extent possible
24 within the SVRA. The OHMVRA cannot properly be interpreted to permit compliance with the duty
25 to promptly repair and continuously maintain areas and trails by allowing riding in most of the SVRA
26 without any repair or maintenance at all.
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1 adequate management actions and demonstrated sufficient capability to monitor and protect cultural
2 and archaeological resources within the SVRA's open riding areas and on or near user-created trails;

3 2. Award Petitioners their costs for this suit;

4 3. Award Petitioners their attorneys fees pursuant to CCP § 1021.5; and

5 4. Grant such equitable and legal relief that the Court considers just and proper.
6

7 Respectfully Submitted,

8 Dated: December 20, 2013

LOZEAU DRURY LLP

9 

10 Michael R. Lozeau

11 Attorneys for Petitioners Public Employees For
12 Environmental Responsibility and Desert Protective
13 Council Foundation
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VERIFICATION

I, Michael R. Lozeau, state that I am an attorney with Lozeau Drury LLP, the law firm representing Petitioners. I have read the foregoing First Amended Petition for Writ of Mandate and have personal knowledge that the matters set forth therein are true and correct, and on that basis allege them to be true and correct. I make this verification in accordance with California Civil Procedure Code section 446, subdivision (a) as Petitioners' counsel because the Petitioners are both absent from Alameda County, where I have my office, and the facts are within my knowledge.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification was executed on December 20, 2013, at Oakland, California.


Michael R. Lozeau

EXHIBIT A



State Vehicular Recreation Area Ocotillo Wells

5172 Highway 78, Box 10 • Borrego Springs, CA 92004 • 760.767.5391

Park Rules and Regulations

You are responsible for knowing park rules and regulations. All provisions of the California Vehicle Code are enforced. A copy may be found at: www.dmv.ca.gov/pubs/vctop/vc/vc.htm. If you have questions, please contact the park staff, stop at the Discovery Center, or call (760) 767-5393.

The term OHV means off-highway vehicle. Any motor vehicle operated off-highway is an OHV. A highway licensed vehicle is an OHV when operated off of the highway. Vehicles having green and red stickers are OHVs.

ALCOHOL: Open container and DUI laws apply off-highway just as they do on-highway. Don't drink and drive. Alcohol is only allowed in your campsite.

ATV LAWS: There are laws which apply specifically to the operation of ATVs only. (For more information, please see reverse page.)

LIGHTS: OHVs operated between sunset and sunrise must display at least one lighted white headlight and one lighted red taillight visible from 200 feet.

NOISE EMISSIONS: The law limits noise emissions from all OHVs. Noise emissions for most OHVs are limited to not more than 96 dBA when measured from a distance of 20 inches using standardized test procedures. For more specific information, go to: www.ohv.parks.ca.gov/noise_emissions.

REACH AND OPERATE ALL CONTROLS: All operators of off-highway vehicles must be able to reach and operate all controls.

REGISTRATION: When operating an OHV, you must display either a license plate or an OHV sticker. OHV stickers include "Green Stickers," "Red Stickers," California Nonresident OHV Use Permits, and OHV stickers from states that have an OHV program.

RED STICKER RIDING SEASON: Red stickers are allowed to operate in the SVRA from October 1st - May 31st. These dates are established by the California Air Resources Board (CARB) and are subject to change. Please call the park for updated information.

SPEED: Please follow posted speed limits throughout the park. In camping and developed areas, keep speeds to 15 mph or less. Never drive faster than is safe for conditions.

SPARK ARRESTERS: All vehicles operating off-highway must be equipped with either a street legal muffler or a spark arrestor maintained in effective working order.

SUSPENDED OR REVOKED LICENSE: Anyone whose driving privileges have been suspended or revoked is prohibited from operating any motor vehicle, on- or off-highway.

VEGETATION: It is illegal to run over vegetation.

Ocotillo Wells SVRA Map Legend

- Highway
- Local Streets
- Off-Highway Vehicle Trail
- Anza National Historic Trail
- Park Boundary
- No Camping, Alcohol, or Fires
- Travel on Trails and Roads Only
- State Lands
- Private Property
- Points of Interest
- Land Marks
- Amphitheater
- Call Box
- Fire Station
- Fuel
- Interpretive Display
- Ranger Station / Discovery Center
- Restrooms
- RV Dump
- Showers
- Training Track



Anza-Borrego Desert State Park

Salton Sea

Salton City

Dusty

Four Palms Spring

Badlands

4x4 Training Area

USN Microwave Tower

Pumpkin Patch

Imperial County Dump

Travel on Trails and Roads Only

Shell Reef

Devil's Slide

Barrel Springs

Gas Domes

Artesian Well

The Cove

Blowsand Hill

Holmes Camp

Old Commune Area

Discovery Center

Denner ATV Training Track

Hidden Valley Camp

Clay Flats

"C" Hill

Cell Tower

Locations of features are representations. Actual locations of some features may vary over time as a result of weather, maintenance, and other factors. Observe all signage, and use appropriate caution when traveling through the park.

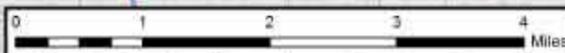


EXHIBIT B



California

Public Employees for Environmental Responsibility

P.O. Box 4057, Georgetown, CA 95634 Phone: (530) 333-2545

March 7, 2013

Major General Anthony Jackson, Director
California Department of Parks and Recreation
1416 9th Street, Rom 1405
Sacramento, CA 95814

By email: Anthony.Jackson@parks.ca.gov

Re: Ocotillo Wells State Vehicular Recreation Area

Dear Director Jackson:

As we discussed in our meeting on January 22, 2013, PEER and others interested in the sustainability of off-road use on our public lands have grave concerns regarding the way the Off-Highway Motor Vehicle Recreation (OHMVR) Division is managing fragile desert resources in the Ocotillo Wells State Vehicular Recreation Area (OWSVRA). We believe the time has long since passed when corrective actions should have been taken to curtail the permanent damage being done at Ocotillo Wells, and we now to urge you to do so without further delay.

As you may be aware, PEER has submitted a number of Public Records Act requests regarding the management of OWSVRA. The responses to those PRA requests, limited as they are, show current management of OWSVRA does not meet the standards mandated for resource protection as required by the Public Resources Code.

The open riding policy at Ocotillo Wells SVRA is the key problem causing resource destruction and violates the California Public Resource Code provisions.

The Off-Highway Motor Vehicle Recreation Act (“OHMVRA”) establishes a series of mandates for environmental protection within the SVRA’s. These mandates require the park to repair and continuously maintain areas, anticipate and prevent erosion, restore lands damaged by erosion, protect cultural and archaeological resources, and not allow park soils to degrade beyond restorability. *See* Cal. Pub. Res. Code §5090.35 *et seq.*

The Division is required by statute to “promptly repair and continuously maintain areas and trails, anticipate and prevent accelerated and unnatural erosion, and restore lands damaged by erosion to the extent possible.” Cal. Pub. Res. Code § 5090.35(a). “Restoration” is defined as the closure of a unit or portion of a unit and the restoration of land to the contours, plant

communities, and plant covers comparable to those on surrounding lands or those that existed prior to off-highway motor vehicle use. Cal. Pub. Res. Code § 5090.11.

Maintenance records we received from the Department confirm what our staff and others have long observed, that the maintenance required by statute is completely lacking on hundreds of miles of routes within the SVRA. Although our request was for records going back to 2008, the records provided actually start in 2010. There are many months throughout the year where no maintenance appears to be done. Moreover, the records demonstrate that “maintenance” is only being done on some of the named trails and not at all on the hundreds of miles of user-created trails at the park. This data comports with our observations that there is no maintenance of the user made trails. Also, as noted, it is not even clear that all of the designated routes are maintained, based on the map OWSVRA claims is their inventory of trails, in response to our PRA request: http://ohv.parks.ca.gov/pages/1170/files/ocotillomap_web.pdf

The SVRA is required to maintain all user-created trails. The plain language of the OHMVRA makes clear that the duty to “promptly repair and continuously maintain” applies to both “areas and trails”. Cal. Pub. Res. Code § 5090.35(b) (emphasis supplied). The Park’s Off-Highway Motor Vehicle Division recognized this fundamental principle in the trail audit done in 1997 stating that “[t]he law governing the application of soil standards and erosion control is to be applied to ‘each area of the system’ where ‘system’ is defined as ‘the areas and trails within the state park system.’” Audit Report for Off-Highway Motor Vehicle Division, at 6 (1997). Thus, the thousands of user-made trails at OWSVRA are trails within the meaning of the OHMVRA, and the division has an affirmative duty to “promptly repair and continuously maintain” them. The Division is clearly not complying with its statutory obligations, as the maintenance records PEER obtained through its Public Records request show that it has not conducted any repairs or maintenance on any of these user-made trails.

Moreover, the SVRA’s “maintenance” on many of the named trails that have had maintenance work performed consisted of grading, which actually accelerates soil erosion. This is of course contrary to the very purpose of the trail maintenance statutory requirement, which seeks to mitigate soil erosion. Cal. Pub. Res. Code § 5090.35(b).

In the 2011 Off-Highway Motor Vehicle Recreation Commission Report (“2011 Commission Report”), the Commission, responsible for oversight of the OHMVRA program, reports that “natural resources appear to be degrading,” that “sampled habitats have sustained substantial loss of vegetation, soil, and general habitat integrity,” and that “OHV recreation may be causing a lack of plant recruitment and loss of annual seedbank” which is “particularly apparent in areas of intense motorized use.” California State Parks, Off-Highway Motor Vehicle Recreation Commission, 2011 Program Report, at 84, (2011). At this time, resources staff recommended a designated trail system, in order to protect park resources from the ever-expanding damage that resulted from the open riding policy in place at OWSVRA.

The Division claims that it will address these issues in the ongoing General Plan formation process. Id. However, the law mandates that the park must continuously maintain and repair damaged areas, restore lands damaged by erosion, and protect and restore damage to natural or cultural values. The park thus has an affirmative duty right now to protect the land. It

appears the Off-Highway Motor Vehicle Recreation Commission found that the Division has failed and is failing to do so.

Ocotillo Wells has also violated the statutory and regulatory mandates to protect soils from erosion. The Division has established and updated Soil Conservation Guidelines and Standards, as required by statute. Cal. Pub. Res. Code § 5090.35(b)(1). Upon a determination that soil conservation standards are not being met, the Division must temporarily close the noncompliant portion to repair and prevent accelerated erosion, until the soil conservation standards are met. Cal. Pub. Res. Code § 5090.35(b)(2). If the standards cannot be met, the division must close and restore the noncompliant portion. Cal. Pub. Res. Code § 5090.35(b)(3).

The 2008 Soil Conservation Standard, established by the Off-Highway Motor Vehicle Recreation Division requires that: “Off-Highway vehicle (OHV) recreation facilities shall be managed for sustainable long-term prescribed use without generating soil loss that exceeds restorability, and without causing erosion or sedimentation which significantly affects resource values beyond the facilities. Management of OHV facilities shall occur in accordance with Public Resources Code, Sections 5090.2, 5090.35, and 5090.53. California State Parks, Off-highway Motor Vehicle Recreation Division, 2008 Soil Conservation Standards and Guidelines (2008). The open-riding policy is exacerbating erosion and soil loss and violating the law and soil standard.

The records produced in response to PEER’s Public Records requests also indicate the Division is failing to protect the archaeological sites present within the park. The division has a statutory duty under the OHMVRA to monitor and protect cultural and archaeological resources. Cal. Pub. Res. Code § 5090.35(f). “Cultural resources” include, among other things, resources that “have yielded or may be likely to yield, information important in prehistory or history” and “any object, building, structure, site, area, [or] place” that “is historically or archaeologically significant.” 14 C.C.R. § 4970.01(h). Cultural resources are “historically significant” if they meet the criteria for listing on the California Register of Historical Resources. *Id.* The park references on their website that Native Americans and early settlers were present in the area, which has resulted in the establishment of a cultural preserve in parts of the park. According to the 2011 Strategic Report, there are 1272 cultural and historical sites within the SVRA. Commission Report at 93. Information received by PEER indicates that only a handful of these are receiving any protection. The others are constantly subject to damage because there are no restrictions on riding on, over, or through the sites under current management direction. Protecting a site would seem to require, at a minimum, that you limit the ability of park-goers to drive over and through it.

We understand the many challenges presented to you and your team when you accepted the position of Director of California State Parks. But we can no longer wait until it is convenient for the Department to act. Every day of delay is a day off-road vehicles are allowed to expand their damage to new areas. PEER believes that the ongoing resource destruction brought on by the open-riding policy at OWSVRA is a violation of the California Code. We have been bringing these issues to the attention of the Division for many months now and nothing has been done. If you do not take concrete and substantial action by halting the park’s

open-riding policy and ensuring it is enforced by March 29, 2013, then we intend to involve the court.

Cordially,

A handwritten signature in black ink, appearing to read 'Kathryn Douglass', with a long horizontal flourish extending to the right.

Kathryn Douglass
Staff Counsel

Karen Schambach
California PEER Director

Cc: Janelle Beland, Undersecretary, California Natural Resources Agency; Phil Jenkins, Division Chief, Off-Highway Vehicle Division; Garratt Aitchison, Supervisor, Ocotillo Wells State Vehicular Recreation Area

EXHIBIT C



California

Public Employees for Environmental Responsibility

P.O. Box 4057, Georgetown, CA 95634 Phone: (530) 333-2545

April 15, 2013

Major General Anthony Jackson, Director
California Department of Parks and Recreation
1416 9th Street, Room 1405
Sacramento, CA 95814

By Registered mail

Re: Ocotillo Wells State Vehicular Recreation Area

Dear Director Jackson:

On March 7, 2013, PEER sent you a letter detailing our concerns that the open riding policy at Ocotillo Wells State Vehicular Recreation Area (OWSVRA) was violating the Off-Highway Motor Vehicle Recreation Act (OHMVRA). In that letter, (Attachment A), we asked you to stop the open riding policy as it was destroying the desert environment and violating California law. We did not receive any acknowledgment or response to that letter.

PEER and the Desert Protective Council (DPC) are very concerned that the open riding policy destroys the fragile desert environment and archeological, cultural and historical sites at OWSVRA. Such a policy violates California law. Specifically, OWSVRA has not and cannot continuously maintain all the trails, roads and areas that it is required to do by law. Secondly, OWSVRA has done very little to protect the hundreds of cultural and historical sites at the park and allowing open riding merely compounds the problem. That is, if the sites are not protected from vehicle traffic and vehicles are allowed to go wherever they like, the park's cultural resources are not being protected.

By this letter, PEER and DPC hereby repeat that we intend to sue in state superior court the Off-Highway Motor Vehicle Recreation Division (OHMVR), the California Department of Parks and Recreation, OWSVRA, and relevant officials in their official capacities for their failure to comply with California law. In an attempt to not have to bring this matter before the court, we ask you to immediately remove all open area designations from the park, to terminate the open riding policy at OWSVRA, to enforce the removal of open area designations by forbidding any riders from driving off existing designated routes, as displayed on the attached map (Attachment B); by erecting clearly worded and prominently displayed signage and by citing and vigorously prosecuting those who drive off the park designated routes. We also ask you to take substantial steps towards protecting the cultural and historical sites at OWSVRA by

restricting access to the sites. We request that these actions be taken by April 29, 2013, and that we be promptly notified when this is accomplished.

Cordially,

Karen Schambach
California PEER Director

Also for

Terry Weiner
Desert Protective Counsel

Cc: Chris Conlin, Deputy Director, Off Highway Motor Vehicle Recreation Division;
Phil Jenkins, Division Chief, Off-Highway Motor Vehicle Recreation Division;
Garratt Aitchison, Supervisor, Ocotillo Wells State Vehicular Recreation Area

Attachments: PEER letter of March 7, 2013
Map of OWSVRA routes

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PROOF OF SERVICE

I, Stacey Osborne, declare as follows:

I am a resident of the State of California, and employed in Oakland, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 410 12th Street, Suite 250, Oakland, CA 94607.

On December 20, 2013, I served a copy of the foregoing document(s) entitled:

FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE

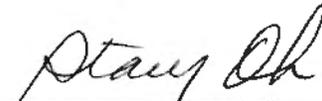
on the following parties in the above referenced case:

By placing the document(s) listed above in a sealed overnight envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a overnight express agent for delivery to the following persons:

Christina Bull Arndt
Supervising Deputy Attorney General
Baine P. Kerr, Deputy Attorney General
Office of the California Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Attorneys for Respondents California Department of Parks and Recreation, Division of Off-Highway Motor Vehicle Recreation, and Christopher C. Conlin

Daniel F. Gallery
Jesse W. Barton
Gallery & Barton
1112 I Street, Suite 240
Sacramento, CA 95814
Attorneys for Intervenor California Off-Road Vehicle Association

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed December 20, 2013 at Oakland, California.



Stacey Osborne