



SAVE OUR FOREST AND RANCHLANDS

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November 13, 2009

Bureau of Land Management
Palm Springs-South Coast Field Office
1201 Bird Center Drive
Palm Springs, CA 92262

Re: Environmental Assessment for the La Posta Mountain Warfare Training Facility

Dear Bureau of Land Management:

Save Our Forests and Ranchlands ("SOFAR"), an organization dedicated to progressive land use planning and the protection of vital natural resources is writing in response to the Environmental Assessment ("EA") for the La Posta Mountain Warfare Training Facility ("La Posta MWTF"). This EA evaluates a Proposed Action ("action"), which proposes various expansions, enhancements, land use changes, and the transfer of administrative jurisdiction over the current La Posta MWTF from the Bureau of Land Management ("BLM") to the Department of the Navy ("DON") so that this land can serve as an improved facility to train DON personnel. As described in further detail below, the EA is inadequate because it (1) does not provide adequate justification for the purpose and need of the action, (2) does not provide sufficient analysis of alternatives to the action, and (3) does not thoroughly analyze adverse biological impacts that may occur as a result of the action.

The National Environmental Policy Act ("NEPA") requires DON to prepare an Environmental Impact Statement ("EIS") for all "major federal actions significantly affecting the human environment." 42 U.S.C. § 4332(2)(C). In particular, DON's environmental analysis must demonstrate that the agency took a "hard look" at the environmental impacts of the action. See *The Steamboaters v. Fed. Energy Regulatory Comm'n*, 759 F.2d 1382, 1393 (9th Cir. 1985); *Foundation for*

North American Wild Sheep v. U.S. Dept. of Agriculture, 681 F.2d 1172, 1178 (9th Cir. 1982). Moreover, where DON concludes that the impacts of an action are less than significant, it must include a “convincing statement of reasons why potential impacts are insignificant.” *The Steamboaters*, 759 F.2d at 1393 ; see also *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1211 (9th Cir. 1998) (“An agency’s decision not to prepare an EIS will be considered unreasonable if the agency fails to supply a convincing statement of reasons why potential effects are insignificant.”) (internal citations omitted). The EA prepared for this action fails to comply with NEPA’s mandate, as demonstrated below. Because “substantial questions [are raised]...as to whether an action...may cause significant degradation of some human environmental factor,” DON must prepare an EIS. *Ocean Advocates v. Army Corp. of Engineers*, 402 F.3d 846, 864 (9th Cir. 2004) (internal citations omitted).

Purpose and Need for the Proposed Action

Section ES-3 of the EA states that as a result of the September 11, 2001 terrorist attack there is an increased demand for Special Operations Forces (SOF) and for Naval Special Warfare (NSW) training and operations in cold weather and mountain warfare environments. In conjunction with this statement, the EA justifies the action by stating that proposed improvements to the pre-existing La Posta MWTF would offer the proper training conditions and facilities necessary to test and train SOF for its duties, including its designated role as a supported combatant commander in the Global War on Terror (GWOT).

To casually begin the EA with such unsupported claims about the rationale and aim of the GWOT, and then to say that, without the La Posta MWTF, DON personnel could court “mission failure” is to assume without reason what needs to be explained. For example, a cursory look at the facts provides us with overwhelming evidence that the so-called problem with terrorism is NOT a military problem, but rather a diplomatic problem. Indeed, authoritative studies and expert opinion have found that treating the current situation in Iraq and Afghanistan as a military problem not only is ineffective, but actually increases terrorism and makes the United States less secure.

A 2008 study conducted by the RAND Corporation identifies the following issues with treating the current situation as a war on terrorism:

Calling the efforts a war on terrorism raises public expectations — both in the United States and elsewhere — that there is a battlefield solution. It also tends to legitimize the terrorists' view that they are conducting a jihad (holy war) against the United States and elevates them to the status of holy warriors. Terrorists should be perceived as criminals, not holy warriors.¹

An article by the New York Times, which examines a report produced by the National Intelligence Estimate, echoes the aforementioned information:

*A stark assessment of terrorism trends by American intelligence agencies has found that the American invasion and occupation of Iraq has **helped spawn a new generation of Islamic radicalism** and that the **overall terrorist threat has grown since the Sept. 11 attacks**².*

Further evidence for this argument can be demonstrated by Matthew Hoh, a U.S. Official and former combat veteran who resigned in September of 2009 because he no longer felt the war was justified. His statement is outlined below within excerpts from his resignation letter:

¹ Jones, Seth G., Libicki, Martin C., & Rand Corporation. 2008. *How terrorist groups end: lessons for countering Al Qa'ida*. Santa Monica, CA: 2008.

² <http://www.nytimes.com/2006/09/24/world/middleeast/24terror.html>

*I have doubts and reservations about our current strategy and planned future strategy, but my resignation is based not upon how we are pursuing this way, but why and to what end. To put simply: **I fail to see the value or the worth in continued U.S. casualties or expenditures of resources in support of the Afghan government in what is, truly, a 35-year old civil war....**I have observed that the bulk of the insurgency fights not for the white banner of the Taliban, but rather against the presence of foreign soldiers and taxes imposed by an unrepresentative government in Kabul...The United States military presence in Afghanistan **greatly contributes to the legitimacy and strategic message of the Pashtun insurgency....**We are mortgaging our Nation's economy on a war, which, even with increased commitment, will remain a draw for years to come. Success and victory, whatever they may be, will be realized not in years, after billions more spent, but in decades and generations. The United States does not enjoy a national treasury for such success and victory....Thousands of our men and women have returned home with physical and mental wounds, some that will never heal or will only worsen with time. The dead return only in bodily form to be received by families who must be reassured their dead have sacrificed for a purpose worthy of futures lost, love vanished, and promised dreams unkept. I have lost confidence such assurances can anymore be made. As such, I submit my resignation.*³

In addition, retired Army Lieutenant General William Odom stated, "The invasion of Iraq I believe will turn out to be the greatest strategic disaster in U.S. history." In his article titled *Victory is not an Option*, Odom elaborated on this statement by saying:

*The first and most critical step is to recognize that fighting on now **simply prolongs our losses and blocks the way to a new strategy. Getting out of Iraq is the pre-condition for creating new strategic options.** Withdrawal will take away the conditions that allow our enemies in the region to enjoy our pain. It will awaken those European states reluctant to collaborate with us in Iraq and the region...We must acknowledge that most of our policies are actually destabilizing the region. Spreading democracy, using sticks to try to prevent nuclear proliferation, threatening "regime change," using the hysterical rhetoric of the "global war on terrorism" -- all undermine the stability we so desperately need in the Middle East.*⁴

The very nature of the action—expanding DON facilities so as to increase training of personnel to fight in the GWOT—is therefore on the face of it highly suspect, because this action could actually increase international violence rather than quell it. In this regard, it is absolutely necessary to dispassionately look at the actual, on-the-ground social, environmental, and cultural consequences of militarizing the conflict in the Mideast.

All are agreed that the humanitarian costs due to the invasion of Iraq are catastrophic. A short-list of such humanitarian costs includes:

- The four million refugees displaced from their homes has caused massive social disruption;⁵
- Death and injuries to innocents, especially children, has been monumental. The destruction continues to afflict innocent, unborn children, who are born sick from chemical exposure due to the war;⁶
- Extreme damage to infrastructure and services such as healthcare, education, and the basic amenities of running water and sewer have crippled daily life throughout Iraq;⁷ and
- Catastrophic damage to the environment.⁸

³ <http://www.washingtonpost.com/wp-srv/hp/ssi/wpc/ResignationLetter.pdf?sid=ST2009102603447>

⁴ http://www.washingtonpost.com/wp-dyn/content/article/2007/02/09/AR2007020901917_pf.html

⁵ <http://www.washingtonpost.com/wp-dyn/content/article/2007/02/03/AR2007020301604.html>

⁶ <http://www.npr.org/news/specials/tollofwar/tollofwarmain.html>

⁷ http://www.nytimes.com/2008/06/26/opinion/26kristof.html?_r=1

- Daily economy of Iraq is shattered with unemployment running as high as 68%;⁹
- Cultural destruction to archaeological treasures represents an irretrievable loss to human history and marks the first time that a war “has brought us an entirely new and different horror--the destruction of an entire past.”¹⁰¹¹

The consequences of falsely militarizing the GWOT have also had the following disastrous consequences at home:

- It is estimated that since 2001, United States taxpayers have spent an estimated 930 billion dollars on the GWOT with an estimated 698 billion on the War in Iraq and over 230 billion on the War in Afghanistan, and there is no end in sight;¹²
- Breaking the Geneva Convention in the use of torture has severely damaged international relations;¹³
- Using torture to gather false evidence about the connection between al-Qaida and Iraq as a means to justify the United States invasion of Iraq has deeply undermined trust of our government;¹⁴ and
- Unwarranted spying of United States citizens has furthered that mistrust.¹⁵

History demonstrates and the current evidence shows that mischaracterizing a threat to our security and misidentifying the so-called “enemy” can have fatal consequences for the security of a nation. We must finally say that this political failure does a great disservice to the military and to its tradition of sacrifice to protect the principles of this nation and its Constitution. The delusionary path of aggressively battling mythical enemies of a nation is not a new phenomenon, but rather has been demonstrated throughout history. In his book *A Study of History*, under the section “Suicidalness of Militarism” Arnold Toynbee describes the decline of the Assyrian Empire by saying, “their ruin came because their aggressiveness exhausted them- besides rendering them intolerable to their neighbors.”¹⁶ In this regard, our reckless desecration of the sacred sites and cities of Mesopotamia, the cradle of civilization, as documented in the “Rape of Mesopotamia” and “Catastrophe” cannot but remind us with profound irony of the tragedy “The Persians” by Aeschylus. In “The Persians”, Aeschylus describes how Persia, the wealthiest and greatest power then on earth, blinded by pride and arrogance desecrated Athens in their attack on mainland Greece only to be brought to utter defeat by the wily Athenians in the historic battle of Salamis. May we, in this dangerous moment, heed the advice of General Odom by referring to these immortal words of Aeschylus on the downfall of Persia: “For Delusion, with semblance of fair intent, lureth man astray into her snares, whence it is not possible scatheless to escape . . . For presumptuous pride when it has burgeoned, bears as its fruit a crop of calamity, whence it reaps a plenteous harvest of tears.”¹⁷

Failure to Consider Adequately Alternatives to the Proposed Action

NEPA requires that an EA consider a reasonable range of alternatives to the proposed action that would achieve the action’s purpose. See 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1508.9(b); see also *Center for Biological Diversity v. National*

⁸ United Nations Environment Programme, *Afghanistan: Post-Conflict Environmental Assessment*, Switzerland: 2003.

<http://postconflict.unep.ch/afghanistan/report/afghanistanpcajanuary2003.pdf>.

⁹ http://www.iraquupdates.com/p_articles.php/article/2171

¹⁰ Rothfield, Lawrence. 2009. *The Rape of Mesopotamia*. The University of Chicago Press, Chicago: 2009.

¹¹ Emberling, Geoff and Katharyn Hanson. 2008. *Catastrophe! Looting and Destruction of Iraq’s Past*. Oriental Institute Museum Publications, Chicago: 2008.

¹² <http://costofwar.com/>

¹³ <http://www.amnesty.org/en/campaigns/counter-terror-with-justice/issues/no-justification-for-torture>

¹⁴ <http://pubrecord.org/torture/5645/judges-ruling-confirms-innocent-gitmo/>

¹⁵ Holly E. Ventura, J. Mitchell Miller, and Mathieu Deflem. 2005. *Governmentality and the War on Terror: FBI Project Carnivore and the Diffusion of Disciplinary Power*. *Critical Criminology* 13(1):55-70.

¹⁶ Toynbee, Arnold Joseph, and Somervell. 1946. *A study of history by Arnold J. Toynbee; abridgement of volumes I-VI by D.C. Somervell*. Oxford University Press, London: 1946.

¹⁷ *Aeschylus with an English Translation* by Herbert Weir Smyth. 1924. *Classical Philology*, Vol. 19, No. 1 (Jan., 1924).

Highway Traffic Safety Admin., 538 F.3d 1172, 1217 (9th Cir. 2008) (“NEPA requires that alternatives be given full and meaningful consideration, whether an agency prepares an EA or an EIS.”) (internal citations omitted); *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 813 (9th Cir. 1999) (agency must evaluate reasonable alternatives that would achieve the stated purpose of the proposed action); *Environmental Def. Fund, Inc. v. U.S. Army Corps of Eng’rs*, 492 F.2d 1123, 1135 (5th Cir. 1974) (“ . . . no major federal project should be undertaken without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means.”). Furthermore, DON is required to take a “hard look” before rejecting proposed alternatives. See *Klamath-Siskiyou Wildlands Center v. U.S. Forest Serv.*, 373 F. Supp. 2d 1068, 1088–89 (E.D. Cal. 2004) (agency arbitrarily and capriciously rejected all proposed alternatives where it rejected any reduction in timber harvest but provided no analysis of amount of revenue lost from each alternative or other economic analysis). In rejecting alternatives, DON must also address whether any other means of environmental protection are available. See *Muckleshoot Indian Tribe*, 177 F.3d at 813 (rejection of alternative abuse of discretion where nothing in the record demonstrated agency consideration of other means of achieving increased protection proposed by alternative).

The EA identifies six existing military facilities as potential alternatives to the action, but then eliminates all of these facilities except for the La Posta MWTF for failing to meet selection criteria for the action. Elimination of the existing military facilities was based on six criteria, which all had to be met within one existing facility for this facility to be considered. However, the analysis provided in the EA was conclusory, and in particular the EA did not address why the selection criteria need to be fulfilled within one facility alone. DON failed to take the requisite “hard look” at the proposed alternatives, and it failed to address whether other means of environmental protection were available. For a more thorough analysis of alternatives to the action, it is necessary to evaluate the reasonable option that more than one existing facility could fulfill the selection criteria for the action.

In addition, the EA does not undertake a “full and meaningful” evaluation of the No Action Alternative. This alternative was eliminated from consideration because the La Posta MWTF would remain unchanged but, “the SEAL teams would still experience extreme pressure to increase their skills in a shortened training time due to the ongoing GWOT. This increased need, without suitable training facilities, could potentially lead to mission failure, and combat readiness may be compromised.” The EA justifies eliminating the No Action Alternative on the grounds that it would potentially jeopardize the preparedness of SEAL teams with regards to the GWOT. As outlined above, this justification is not valid, but rather there is considerable evidence that increasing combat with respect to the GWOT is only increasing terrorism and threatening security of the United States.

Failure to Analyze Adequately the Impact of the Proposed Action on Biological Resources

In determining whether the action will have a significant impact on the environment, the EA must consider the degree of impacts on endangered and threatened species. See 40 C.F.R. § 1508.27(b)(5), (9). “For purposes of NEPA, an action need not jeopardize the continued existence of a threatened or endangered species to have a ‘significant’ effect on the environment.” *Klamath-Siskiyou Wildlands Center*, 373 F. Supp. 2d at 1080. In addition, the adverse effect of an action on a species may affect the species’ recovery under the Endangered Species Act. See 16 U.S.C. § 1533(f) (recovery plans required for the “conservation and survival of endangered species”); see also 16 U.S.C. § 1532 (“conservation” means “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary”). “Cursory and inconsistent treatment” of these environmental effects that adversely impact species renders an EA inadequate. *Blue Mountains Biodiversity Project*, 161 F.3d at 1213–14.

Within the Biological Resources section of the EA, analysis regarding the impact of the proposed action on the endangered arroyo toad (*Bufo microscaphus californicus*) is inadequate. The EA determines that because there is no suitable breeding habitat for the arroyo toad within or adjacent to the proposed action area, there would be no indirect

temporary or permanent impacts due to the action. However, the EA's treatment of the adverse impact on the arroyo toad is "cursory and inconsistent." The EA fails to analyze potential impacts to non-breeding habitat for the arroyo toad, and the potential indirect impacts that could occur by impacting arroyo toad food sources. According to the Recovery Plan for the arroyo toad, the main threat to the survival of this species is not simply the loss of breeding habitat, but rather is habitat in general.¹⁸ Therefore, in order to fully analyze the action's potential impact on the arroyo toad, a more thorough analysis of this species' habitat within the Proposed Action area must be conducted.

Furthermore, the EA does not analyze the severe adverse impacts that could occur to the habitat in which the action would occur, which is known as the Peninsular Ranges Ecosystem (for further information regarding the Peninsular Ranges Ecosystem please refer to the attached document.) This habitat is known to support such species as the mountain lion (*Puma concolor*) and the golden eagle (*Aquila chrysaetos*), both of which the EA fails to mention or analyze within any part of its Biological Resources section. In addition, such a diverse and unique habitat has the potential to support many more rare and/or sensitive wildlife species, which are not analyzed within the EA in terms of potential direct or indirect impacts due to the action. Specifically, the EA fails to analyze how open-range shooting, sniper activity, and other general warfare training would cause potential indirect or direct impacts to any wildlife species within or surrounding the Proposed Action area.

The General Wildlife and Wildlife Corridors section of the EA mentions that, "Reptiles, migratory and resident birds, and mammals (particularly fossorial mammals) would be locally displaced and could potentially be killed as a result of the vegetation clearing activities (due to the action)." The EA then goes on to say that, "The loss of habitat availability in the area would **likely** not significantly reduce the population of known wildlife species in the region. Therefore, no significant impacts to functioning wildlife corridors are expected to occur from the Proposed Action." This rationale is unsound, unjust, and fails to give any further detail or mention as to WHY such activities would **likely** not significantly reduce wildlife populations.

In sum, BLM and DON have sidestepped their legal duties by preparing an EA instead of an EIS, and by proposing an "action" that is not only unnecessary, but will further the myth that a battlefield solution exists to solve the so-called Global War on Terror.

Sincerely,

Save Our Forest and Ranchlands

Duncan McFetridge

Attachment: Peninsular Range Wilderness Eco-System

¹⁸ U.S. Fish and Wildlife Service. 1999. Arroyo southwestern toad (*Bufo microscaphus californicus*) recovery plan. U.S. Fish and Wildlife Service, Portland, Oregon.