

The California Desert Protection Act

by Annette Feldman

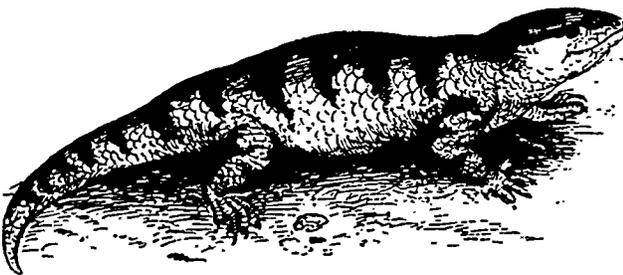
The California Desert Protection Act (CDPA) is arguably the most extensive and ecologically significant environmental legislation Congress will consider in 1993. Under the stated purpose of providing "lasting protection for the beauty and wildness of public lands in the California desert" (S.21 102d Cong., 2d Sess. Sec. 2 (1992)), the CDPA encompasses and affects over 7 million acres of mostly federally-owned Southern California desertland. The Act designates three new national parks and over 4.4 additional million acres of protected wilderness area. Although political controversy has plagued the CDPA, Democratic victories in the November 1992 election should expedite the Act's passage in 1993, seven years after Sen. Alan Cranston (D-Ca) first introduced the Act in 1986.

The California Desert

The CDPA protects three geologically and ecologically unique desert ecosystems. Two of these, the "low" Colorado Desert and the "high" Mojave Desert, are unique to Southern California. The third, part of a greater western "inland sea", is the Central Californian "cold" Great Basin Desert.

The major desert biological communities to be protected are: blackbrush scrub and sagebrush scrub (Great Basin); shadscale scrub (Great Basin and Mojave); Alkali sink (all three Deserts); Joshua Tree woodland (Mojave); cactus scrub, saltbrush scrub, desert wash, and palm oasis (Colorado); and Creosote bush scrub (Mojave and Colorado). "King Clone", a 67 ft.-diameter Creosote Clone finds its home in the Mojave Desert and is one of the Earth's oldest living organisms, having been carbon-14 dated at 11,700 years old.

Desert ecosystems are a rich and invaluable source of biologic information. Plants, animals, and microorganisms that inhabit desert communities have evolved unique adaptive



strategies to an extremely harsh environment. Insects, reptiles, and desert birds, like the road runner, exhibit ingenious metabolic and behavioral methods of water conservation and reclamation. Desert plants can teach us much about plant genetic resistance to drought, high salinity, and excessive heat.

Desert communities themselves are well-adapted to their physical and climatic environment. For example, in response to the extensive spring rains (which follow very dry summers and winters), winter-dormant perennials and large numbers of annuals undergo tremendous growth and reproductive activity. Foraging species, such as the desert bighorn sheep, the desert tortoise, and the kangaroo rat, depend on this overabundance to replenish stores of energy depleted during the winter. Short-lived species of reptiles and insects, which are the rule in the desert, depend on this annual productivity for the energy to reproduce the next generation.

Desert ecology also provides insight into both evolutionary history and processes, and biological community structure and dynamics. For example, sand dune fields, such as Kelso

Dunes and Eureka Dunes (the oldest--10,000 yrs., and highest--680 ft. in North America) are an excellent study in biogeographic "island" ecosystems.¹ Each "island" may contain many dune-endemic plant and animal species, such as the endangered Eureka Dunegrass, Eureka Valley Evening Primrose, and the Mojave Fringe-Toed Lizard. Biologists use "island" communities to study community structure and evolution, species dispersal, and the process of speciation.

Desert plant and animal species have successfully endured fluctuating seasonal temperatures, high alkaline soils, high winds, unpredictable flooding, and extended periods of drought for centuries. But desert ecosystems are fragile. The very traits which have helped desert species thrive in their harsh environment, have made them particularly susceptible to destruction by humans. Of the 750 wildlife species found in the California desert, the U.S. Fish and Wildlife Service lists 25 as rare or endangered. There are an estimated 2000 plant species in the California desert, including 200 endemics. The Native Plant Society lists over 300 desert species as threatened, rare, or endangered.

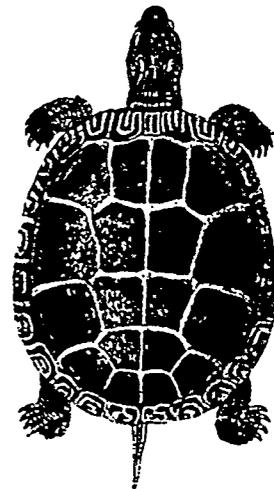
There are four major human threats to desert biology:

1. Livestock Grazing

Ranchers truck in domestic cattle and sheep to take advantage of new spring plant growth. Cattle and sheep grazing not only reduces the food supply of an entire community (see discussion supra); it also reduces the vigor of native plant species, which may be out-competed by invading exotics.

2. Off-road vehicles

Off-road vehicle (ORV) use may be the greatest direct cause of damage to fragile desert ecosystems. A thin crusty layer of top soil known as 'desert pavement' is produced by a unique combination of wind, occasional flooding, and compaction. This layer of soil both depends upon and protects sparsely distributed desert plants whose characteristically shallow root systems are established with difficulty and are easily destroyed. Tires tear into the desert's vulnerable root-soil foundation. One motorcycle event can destroy hundreds of acres of desert habitat in a matter of hours.² In addition, ORVs collapse burrows, an almost ubiquitous dwelling of desert wildlife, and indiscriminately crush individual animals. ORV users have singled out the California Desert Tortoise as an easy target. Shells of the threatened species can occasionally be seen strapped to a motorcycle like a hood ornament.



3. Mining

Cyanide leach mining³ destroys large areas of primary habitat by stripping and heaping acres of top soil. Pumping of massive volumes of water from underground desert springs for the leaching process lowers the water table to a level where even drought tolerant plants cannot survive. Resulting contamination can cause thousands of individual wildlife deaths.

4. The Military

Contamination from weapons testing and use is a continuing source of habitat destruction. In addition, noise from low-flying jets can disrupt critical predator-prey relationships and courtship rituals of nocturnal desert species whose survival and reproductive strategies depend upon aural cues and acuities.

In addition to their importance as biological communities, desertlands are a valuable resource for the study of the pre- and paleohistories of the American West. Low humidity and negligible annual rainfall have preserved much of the Desert's rich geologic and paleobiologic record. Billion-year-old metamorphic rock formations, extinct Miocene volcanos, 600 million-245 million-year-old Paleozoic shales and sandstones containing trilobite fossils, and 30 million-year-old Cenozoic mammalian fossils

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number among the facinating and significant discoveries.

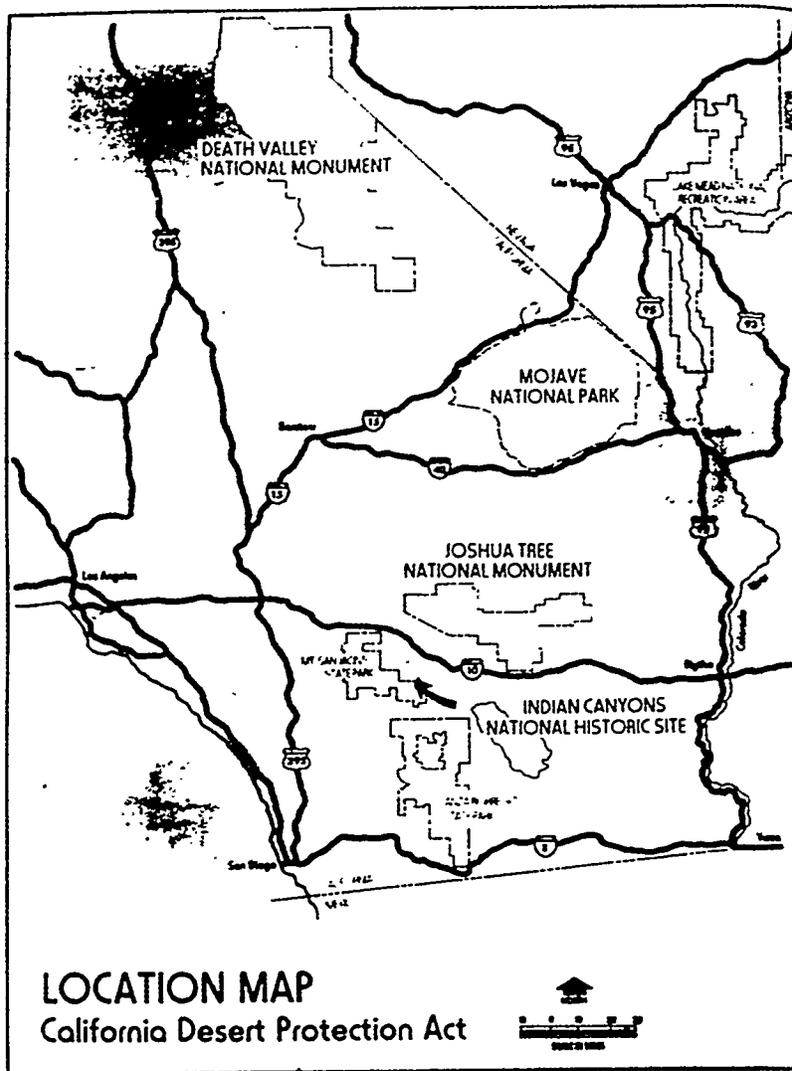
The California desert also holds the archaeological remnants of early western and indigenous human cultures. Evidence of early Spanish and western settlements, 19th century mining operations and Chinese railroad worker encampments are scattered throughout. Intaglios, or ancient Native American rock art etched and scraped into desert rock surfaces, are abundant. Some sites are estimated to be up to 10,000 years old, dating back to the earliest human migration to North America. In all there are an estimated 100,000 archaeological sites within the areas protected by the CDPA.

Developmental History of CDPA

The Department of the Interior's Bureau of Land Management has been charged with the administration and stewardship of public land in the California Desert since 1946. Historically, the BLM's philosophy and land-use policies have promoted industrial, agricultural, and recreational uses of desertland. By the late 1960's and early 70's, there was increasing evidence of serious environmental damage in the California Desert due in large part to these existing BLM policies.

In response to growing awareness of the fragility of desert ecological systems, and concern for habitat and species preservation, Congress established the California Desert Conservation Area pursuant to the 1976 Federal Land Policy & Management Act. The Act required the BLM to "prepare and implement a comprehensive long-range plan for the management, use, development, and protection" (Federal Land Policy & Management Act, Sec. 601(d) (1976)) of the California Desert. The Conservation Area covers a vast 25 million acres of Southern California desertland, and is the second largest single land-use management project in U.S. history.⁴

In 1980, the BLM began implementation of its long-awaited California Desert Conservation Act Plan. This plan identified Areas of Critical Environmental Concern (ACECs), and established the East Mojave National Scenic Area as a "showcase of multiple-use management". The Desert Plan intended to balance the demands of ranchers, mining interests, and off-road vehicle (ORV) users with the needs of an ecologically and asthetically threatened desert.



In 1986, the U.S. General Accounting Office conducted a study of BLM desert management policies. The GAO cited BLM's "failure to consistently screen mining claims, [] failure to restrict livestock grazing and mining that endanger wildlife, and failure to prohibit motorcycle races and other ORV traffic in tortoise habitat".

W. Douglas Kari, co-founder of Desert Survivors,⁵ makes three salient points in a critical analysis of the BLM's Desert Plan management of the California desert⁶:

First, while the Desert Plan establishes a "seemingly sophisticated system" of use classes (*intensive, moderate, controlled, limited*), its management guidelines are "vague", often misconstrued, and do not adequately of effectively protect target resources. Kari cites the 54,000 acre Algodones Dunes as an

example. These dunes are part of the Imperial sand dunes, the "largest sand ecosystem in California". At risk are six endemic plant and two animal species listed as either rare, threatened, or endangered. The BLM antithetically designates this area a "limited use" zone, and allows indiscriminate ORV use that has "significantly reduced the biota" of the South Algodones Dunes. The California Department of Fish and Game has "concluded that BLM's measures to protect [South Algodones] are inadequate".⁷

Next, Kari notes the BLM's own inconsistent interpretation of Desert Plan language. A case in point: the official purpose of the Desert Plan ACEC designation is "to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural processes". In practice, the BLM construes language meant to *limit* "compatible uses...to the extent they do not conflict with " such objectives, as meaning "compatible uses should be *provided for* in ACECs". Kari cites two designated ACECs along Lake Cahuilla, where BLM-permitted gravel and sand excavations have "irrevocably destroyed" important archaeological and historical finds.⁸

Finally, BLM's designation of the East Mojave as a Scenic Area has not significantly protected the resource. Kari cites the "colossal" open-pit heap leach gold mine at Castle Mountain for which the BLM has repeatedly issued permits. Conservation activists have succeeded in only temporarily delaying operation of the mine. The "infamous" Barstow-to-Las

Vegas motorcycle race (supra, note 2), is another example of BLM mismanagement of the East Mojave Desert. As recently as 1989, the BLM allowed race organizers to set a route through "miles of crucial desert tortoise habitat and nine cultural resource sites".⁹

It was against this backdrop that Sen. Alan Cranston (D-Ca) introduced the California Desert Protection Act to Congress for the first time in 1986. In his comments to the Senate on January 30, 1992, Sen. Cranston states that over the past decade "the BLM has permitted excessive construction of new roads, granted destructive free play to ORVs [including another

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1,500 miles of unauthorized trails in 1991 alone] in quiet wilderness study areas, approved two open-pit cyanide leach gold [mines] in the East Mojave Scenic Area, and has overseen the destruction of half the desert tortoise population." Proponents of the CDPA expect the Act to succeed in providing a legislative standard of resource protection where the BLM's Desert Plan has failed.

Opposition

Several special interest groups oppose the CDPA because it will curtail or prohibit certain desertland uses. Off-road vehicle (ORVs--motorcycles, all-terrain vehicles, and dune buggies) users and manufacturers want continued access to the sand dunes and unpaved areas that they enjoy under BLM management. They have responded to efforts to abolish the Barstow-to-Las Vegas cross country motorcycle race with an anti-environment backlash movement.¹⁰

Mining companies predict the loss of jobs¹¹ and restricted access to gold, mineral, and rare-earth deposits important to high-tech industry. Proponents of the CDPA say these fears are largely unjustified.¹² At least one mining company, Viceroy Resource Corporation, is cooperating with environmentalists to restore used mine sites, and to protect desert wildlife habitats.¹³

The Defense Department maintains three large desertland installations in the concerned area: China Lake Naval Air Station, the Chocolate Mountains Aerial Gunnery Range, and Twenty-Nine Palms Marine Corps Base. Edwards Air Force Base is located nearby, directly to the South of China Lake and West of Twenty-Nine Palms.

Military use of the California desert began as far back as World War II when General Patton conducted desert training for his North African Campaign. Tracks left by Patton's tanks can still be seen across the 'desert pavement' of the eastern Colorado Desert. Operation Desert Storm fighter pilots trained throughout the Mojave and Colorado Deserts in 1990 and 1991. Current military operations include research and development of state-of-the-art defense technology, weapons testing, and mock aerial battles.

The Department of Defense opposes CDPA provisions restricting low level overflights. The Military emphasizes that overflights are necessary to keep up with advances in flight technology, and to maintain preparedness. Drafters of the CDPA and the Department of Defense, the Navy in particular, have reached several major compromises concerning these issues (discussed infra).

A small group of approximately ten ranch families has also vocally opposed the Act. The CDPA proposes to restrict access to lands for which these ranchers currently hold BLM-use permits. Several utility companies and railroads have also criticized the CDPA, voicing their concern over continued access to tracks, utility corridors and gas pipelines.

The Reagan and Bush Administrations consistently have opposed desert protection legislation. Their policies have supported private and military claims to the desert, and have opposed the addition of potentially valuable private desert lands to federal holdings. Proposed Republican amendments to the CDPA would require the government to obtain permission from any desert property owner before acquiring land, and would establish a "No Net Gain of Federal Land" policy. This last provision would require the federal government to sell off some of its less valuable land to pay for any new acquisitions. California Senator John Seymour, who has continually opposed the CDPA, evinces the Bush Administration viewpoint when he characterizes ORV users, miners, ranchers, and the military as "the public", and environmentalists as "special interests".

The California Desert Protection Act

Sen. Alan Cranston introduced the most recent version of the California Desert Protection Act, S.21, to the Senate in January 1992. The Act pledges "to provide lasting protection of public lands in the California desert". (S.21 102d Cong., 2d Sess. Sec. 2 (1992).) The current CDPA designates over 4.4 million acres of BLM land as 81 wilderness area components of the National Wilderness Preservation System. It expands Death Valley and Joshua Tree National Monuments into current BLM land, and establishes them as 3.3 million acre and 800,000 acre national parks respectively. The Act also establishes a new 1.5 million acre Mojave National Park by transferring land from the BLM to the National Park Service. Wilderness areas are designated in all three parks. Finally, the Act expands Red Rock Canyon State Park, establishes the 1,920 acre Desert Lily Sanctuary, and establishes the Indian Canyon National Historical Site.

Major concessions to opposition interests include retention of 430,000 acres of BLM land as ORV play areas, and retention of 30,000 miles of roads and Jeep tracks directly around and between wilderness areas. The Act will also allow the continuation of mining operations within designated wilderness areas, but limits use to those operations already in existence. The Act withdraws 1.1 million acres and 227,000 acres,¹⁴ respectively, for China Lake Naval Weapons Center and the Chocolate Mountains Gunnery Range, with no limitation on military overflights or use of airspace over the California desert. The CDPA will also maintain various exclusions for utility corridors, gas pipelines, and railroad access. Finally, CDPA provisions will allow cattle grazing for existing permittees only, to be phased out over the next 25 years.

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Legislative History of S.21

Sen. Cranston introduced the California Desert Protection Act to Congress for the first time in 1986. He re-introduced the Act for the fourth time¹⁵ as S.21, in January 1992. The Senate Committee on Environment and Natural Resources held a public field hearing on April 1, 1992, in Palm Desert, CA. Most recently, the Public Lands, National Parks and Forests Committee held a public hearing on S.21 on April 30, 1992, after which the bill died.

Senate internal politics has played a large part in the bill's history. Tradition dictates deferring a vote until home-state Senators reach a consensus. For six years, Cranston, a Democrat, has been unsuccessful in his bid to pass the bill out of committee due to opposition

from former (Republican) California Senators Pete Wilson and John Seymour. Although Sen. Seymour has not been as fundamentally opposed to CDPA legislation as was predecessor Wilson, Seymour strongly disagreed with Cranston over specific language giving control of desertland to the federal government and the National Park Service.

The failure of S.21 to reach the Senate floor in 1992 especially frustrated supporters since both House and Senate support for the bill was approaching a veto-proof majority. As of April, 1992, S.21 had 28 sponsors in the Senate, including 3 Republicans. HR.2929, the House companion to S.21, passed 297-136 on November 26, 1991, for the first time in the history of the CDPA. In addition, the Bush Administration alternatives, S.2393 and HR.3066, and two Republican amendments to HR.2929, were defeated. Congressional support of the CDPA should continue to be strong in 1993.

Future of CDPA Legislation

Although sidelined by the home-state Senatorial stalemate, the California Desert Protection Act has steadily gained support among Californians. By January 1991, eleven hundred scientists and academics across the United States, including 136 scientists from UCLA and UC Berkeley,

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had endorsed the CDPA. By November of the same year, 15 California counties and 34 cities, including Los Angeles, San Diego, San Francisco, and Sacramento, and their major newspapers, had also endorsed the Act. A September 1992 Field Institute Study¹⁶ showed over 70% of Californians support some sort of desert protection, including establishment of Parks and Wilderness areas.

Environmental support for the CDPA continues to be strong. The Act is currently sponsored by the California Desert

Protection League, a coalition of 119 member organizations. The League is led by the Sierra Club, the Wilderness Society, and the National Audubon Society.

The outcome of the November 1992 election should have a decisive impact on the fate of the CDPA. The victories of two Democratic Senators from California, Dianne Feinstein and Barbara Boxer, should break up the 6-year political log-jam on the CDPA. Both Boxer and Feinstein have offered to sponsor a new version of S.21. The Act already has the majority support it needs for passage in both the House and the Senate. Finally, if true to his pledged support of environmental legislation, President Clinton will sign the California Desert Protection Act into law in 1993.

Conclusion

The California Desert Protection Act "is a visionary [Act] that would give meaningful protection to the fragile, nationally significant wildlands of the California desert".¹⁷ It will preserve the beauty, wildness, and ecological and historical richness of this very special part of California for generations to come. After 7 years of political opposition, debate, and negotiations, Sen. Cranston's dream of healing and revitalizing a fragile desert wilderness in California will very likely be realized in 1993.

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NOTES

1. For a general discussion of island biogeography, see E. O. Wilson, The Diversity of Life (1992), at 220-227, 255-258.
2. For example, the controversial Barstow-to-Las Vegas cross-country race draws hundreds of participants (1200 in 1988), and thousands of spectators. The course is 167 miles long, and cuts an indiscriminant swath up to one-half mile wide through desertland.
3. In a large open-pit heap mine, hundreds of acres of desert rock and top-soil are "stripped" and piled into huge "ore heaps". These heaps are then "leached" with cyanide solution and large volumes of water from local streams and underground springs to extract gold. The process not only destroys vast areas of plant and wildlife habitat, it also diminishes an already critical desert water supply and leaves poisonous cyanide residue throughout the area.
4. Congress set aside almost 104 million acres as national parks and wildlife refuges in the Alaska National Interest Lands Conservation Act of 1980, 16 U.S.C. §§ 3101-3233 (1988 & Supp. 1990).
5. Desert Survivors is a California non-profit corporation "dedicated to conservation, education and exploration activities relating to the California desert".
6. Kari's arguments are detailed in his testimony at the public hearing held on the CDPA held before the House Subcommittee on National Parks and Public Lands in Barstow, CA., November 11, 1989.
7. Id.
8. Id.
9. Id.
10. Sponsored by anti-environment crusader Rick Sieman's "Sahara Club", an annual "protest ride" is held on Thanksgiving weekend along a route organizers have pieced together from "legal" BLM ORV play areas. The Desert Protection League is monitoring the event.
11. A recent study found that over 20,000 mining-related jobs would be lost under S.21. Shirley Anderson, Ph.D., "Mineral Resources of teh California Desert and Their Significance to California's Economy," in Proc. of the March 1989 Desert Mineral Symposium, sponsored by the U.S. Bureau of Land Management.
12. However, according to an L.A. Times survey of mining companies based on BLM records, only "356 workers are employed by the 7 mining companies operating within the proposed boundaries of the CDPA". L.A. Times, March 20, 1992.
13. In "an unprecedented accord with the environmental community", Viceroy agreed to restore a 2800 acre mining site, build an enclosed cyanide leach system, and invest \$1.3 million in tortoise research and protected habitat. See Glenn Bunting, "Mining Yields Debate on Land Use," L.A. Times, March 20, 1992.
14. The original 1986 version of the CDPA encompasses over 9 million acres of desertland; the current version approximately 7 million.
15. Sen. Cranston re-introduced the CDPA as S.7 in 1988, and as S.11, from which it takes its current modified form, in 1989.
16. The Field Institute is a non-profit, non-partisan public polling organization. The present study of 1067 responses from San Bemardino, Riverside, and Imperial counties, was commissioned by the Wilderness Society.
17. From a comment made by Nancy Green, Director of the Wilderness Society's BLM program. See Patricia Barnes, "Wilderness Watch," Wilderness Magazine, Summer 1992, at 4-5.