Western Watersheds Project * Resource Renewal Institute * ForELK Center for Biological Diversity * Save Point Reyes National Seashore * Vital Actions The Coexistence Initiative * WildCare

April 9, 2021

Craig Kenkel, Superintendent Point Reyes National Seashore 1 Bear Valley Road Point Reyes Station, California 94956

Dear Superintendent Kenkel:

Pursuant to 5 U.S.C. § 555(e), Western Watersheds Project, Resource Renewal Institute, ForElk, Center for Biological Diversity, Save Point Reyes National Seashore, Vital Actions, WildCare, and The Coexistence Initiative petition the National Park Service ("NPS") to:

- 1. Immediately breach the Tomales Point Elk Reserve elk enclosure fence in multiple sections at intervals no more than 0.25 mile apart along its entire length, in a manner enabling safe passage of tule elk out of and into the reserve, and
- 2. Due to the urgent nature of the Tomales Point elk herd's situation, we respectfully request that you respond to this Petition within two weeks of its receipt, and
- 3. Within 6 months, dismantle and remove the Tomales Point elk enclosure fence in its entirety.

Two days ago, NPS issued a press release¹ disclosing a population decline in the Tomales Point elk herd, from 445 animals to 293 animals. This loss of 152 elk occurs in the midst of a prolonged drought. The ultimate cause of this die-off (and previous die-offs) is the confinement of the Tomales Point elk herd behind the fence, on lands that do not reliably provide for all of this elk herd's survival needs.

While NPS attributes this recent elk die-off in its press release to "poor forage quality," and asserts "there is no evidence that the population decline is due to dehydration and a lack of water," NPS is well aware of the scarcity of fresh water on the Tomales Point peninsula. Elk die-offs on Tomales Point occurred between 2012 and 2015, resulting in the death of 250 elk that

¹ <u>https://www.nps.gov/pore/learn/news/newsreleases_20210331_tule_elk_census_2020.htm</u>, site last visited 4/1/21.

were attributed to a lack of fresh water by NPS personnel in April of 2015.² This news story characterized the Park Service position as drought being the suspected cause of the elk death, drying ponds and grasses, the latter of which became inedible, and quoted NPS biologist Dave Press as stating, "While we were out on the range conducting our annual census, we observed the ponds had gone dry." (Later, after a public outcry over the fact that the Park Service had allowed the old stock ponds in the enclosure to go dry, the Park Service changed its story, and in August 2015 officially denied that the lack of available water had played a role in the elk die-off).³

This denial is in spite of the fact that the biologists who wrote the 1998 Point Reyes National Seashore Tule Elk Plan expressed concern that the ponds were a factor in determining the ability of the elk enclosure to support its population:

The peninsula of Tomales Point ranges from a narrow tip to over a mile and a half wide at the fence line enclosing the elk range. There are no natural year-round streams. The natural streams have significant flows only during the rainy winter months. From late spring to late autumn, only spring-fed seeps would provide water for elk if not for the existence of eight water impoundments originally built for cattle. Elk regularly use these impoundments, but it is unknown to what extent they may supply the population with an artificially high water source. The elk range does receive significant moisture in the form of summer fog and condensation during the dry season. The impoundments are considered as a possible means to manage tule elk under this plan. The water impoundments are a factor in determining the ability of the elk range to support its population. While clearly an artificial water sources does not impact other species of special concern. Otherwise, a return of the elk range to its native condition of seep-fed springs is considered desirable to maintaining viable populations.

https://www.nps.gov/pore/learn/management/upload/planning_tule_elk_mp_ea_1998.pdf at 12. (Emphasis added.)

In the context of the National Environmental Policy Act (NEPA) process for the General Management Plan being prepared to govern Point Reyes National Seashore and Golden Gate National Recreation Area, numerous commentors called NPS's attention to the lack of fresh water available to elk on Tomales Point during drought conditions. In August of 2020, after ponds dried up on Tomales Point, a group of volunteers brought in water for the elk to address concerns about dehydration.⁴ Photographs of elk that died in the mud of dried-up watering holes

² Drought likely culprit in die off of tule elk herd on Tomales Point, by Mark Prado, Marin Independent-Journal, April 16, 2015; online at <u>https://www.marinij.com/2015/04/16/drought-likely-culprit-in-die-off-of-tule-elk-herd-on-tomales-point/</u>, last visited 4/1/21.

³ Tomales Point tule elk have sufficient water supply, federal park says, by Mark Prado, Marin Independent-Journal, Aug. 16, 2015; online at <u>https://www.marinij.com/2015/08/16/tomales-point-tule-elk-have-sufficient-water-supply-federal-park-says/</u>, site last visited 4/2/21.

⁴ Another scuffle over Point Reyes elk population, this time over their water supply, by Nora Mishanec, San Francisco Chronicle, Sept. 1, 2020; online at <u>https://www.sfchronicle.com/bayarea/article/Another-scuffle-over-Point-Reyes-elk-population-15532010.php</u>; *As fire burns, activists sneak into Point Reyes to bring water to parched*

attest to the reality that scarcity of fresh water appears to be at least a contributing cause to elk mortalities on Tomales Point. Once again in 2020, Park Service officials denied that lack of fresh water was a factor in the die-off.⁵

As NPS is well aware, the soils on Tomales Point are deficient in key minerals needed by tule elk to survive and thrive. The Sheridan-Baywood soil type, associated with copper deficiencies problematic for tule elk, is known to dominate Tomales Point, according to the Park Service's own Tule Elk Management Plan.⁶ These soil deficiencies and the dietary problems they cause for tule elk at Point Reyes are so well-known that they have been documented in multiple scientific studies. Gogan et al (1988) reported antler deformities in elk on Tomales Point, which they related to copper deficiencies.⁷ Gogan et al. (1989) found that plants and soils at Tomales Point were deficient in copper (an essential trace element), molybdenum, and sulfur-sulfates, and that elk were showing "gross signs of copper deficiency," which may have been a contributing factor in the death of two elk in Spring of 1979.⁸ Cobb (2010) found that the most common cause of death for tule elk at Point Reyes was starvation, often accompanied with copper and selenium deficiencies.⁹

While NPS officials have repeatedly denied that scarcity of water on Tomales Point is a serious issue for the elk, this assertion is beside the point, and does not absolve the National Park Service of its culpability for mismanaging NPS lands and resources and directly causing this unnatural biological crisis. Regardless of whether the repeated elk die-offs on Tomales Point are caused by a lack of fresh water, by inadequate forage quantity, by dietary deficiencies related to the particular soil composition on Tomales Point, or some combination of these factors, the inevitable conclusion is the same: Resources available to the tule elk population confined on the 2,600 acre Elk Reserve at Tomales Point are often inadequate to sustain the captive population in a healthy state, particularly under drought conditions. If the NPS is going to hold wild animals captive (which the undersigned groups find inappropriate), NPS has an obligation to provide them adequate food, water and anything else they need to stay healthy.

NPS has an affirmative legal responsibility to conserve tule elk, as elucidated in a letter to the NPS of August 31, 2020, authored by Katherine Meyer, Director of the Animal Law and Policy Clinic at Harvard Law School.¹⁰ NPS also has an affirmative legal duty to provide wildlife and natural resources on Point Reyes National Seashore "maximum protection" and leave them

elk. Should They? by Susanne Rust and Anita Chabria, LA Times, Sept. 1, 2020; online at https://www.latimes.com/california/story/2020-09-01/fire-point-reyes-tule-elk-water-activists, site last visited 4/2/21.

⁵ Park refutes activists' claim that elk lack water, by Anna Guth, Point Reyes Light, Sept. 20. 2021; online at <u>https://www.ptreyeslight.com/article/park-refutes-activists-claim-elk-lack-water</u>; site last visited 4/2/21.

⁶ NPS. 1998. Point Reyes National Seashore Tule Elk Management Plan and Environmental Assessment.

⁷ Gogan, P.J.P., D.A. Jessup, and R.H. Barrett. 1988. Antler anomalies in tule elk. J. Wildl. Dis. 24: 656-662.

⁸ Gogan, P.J.P., D.A. Jessup, and M. Akeson. 1989. Copper deficiency in tule elk at Point Reyes, California. J. Range Manage. 42: 233-238.

⁹ Cobb, M.A. 2010. Spatial Ecology and Population Dynamics of Tule Elk (*Cervus elaphus nannodes*) at Point Reyes National Seashore, California. PhD Diss., U. Calf. Berkeley, 202 pp.

¹⁰ Letter online at <u>https://www.nationalparkstraveler.org/sites/default/files/attachments/final_cbd_elk_letter_8-31-20.pdf</u>, site last visited 4/1/21.

"unimpaired for the enjoyment of future generations." 16 U.S.C. § 459c-6(a); 54 U.S.C. § 100101(a). The enabling legislation for this Park Service unit specifies that this National Seashore was established "to save and preserve, for purposes of public recreation, benefit, and inspiration, a portion of the diminishing seashore of the United States that remains undeveloped...." Pub. L. No. 87-657, 76 Stat. 538 (1962). Interdicting the freedom of movement of native wildlife for the benefit and convenience of livestock operations that lease Park Service lands, resulting in large-scale die-offs of tule elk, violates these legal mandates.

Under NPS policy, "Natural resources will be managed to preserve fundamental physical and biological processes, as well as individual species, features, and plant and animal communities. ... By preserving these components and processes in their natural condition, the Service will prevent resource degradation and therefore avoid any subsequent need for resource restoration."¹¹ Furthermore, "Biological or physical processes altered in the past by human activities may need to be actively managed to restore them to a natural condition or to maintain the closest approximation of the natural condition when a truly natural system is no longer attainable."¹² Under the alternative adopted for the Point Reyes National Seashore Tule Elk Management Plan, "The Seashore will attempt to manage free-ranging herds using minimal interventions to achieve viable populations as part of dynamic ecosystem processes."¹³ Fence removal is necessary to restore the natural migrations and dispersals of tule elk on Point Reyes National Seashore, to maximize opportunities to achieve viable populations, and to restore dynamic ecosystem processes.

Under the Point Reyes National Seashore Tule Elk Management Plan, "Their limitation to Tomales Point is an historical artifact of their reintroduction onto an area bounded by historic ranches arid the intent to restrict their movements to a protected preserve. If they are to remain as part of the Seashore's fauna and ecological processes, they should eventually become free-ranging throughout most of the Seashore's natural zones where conditions allow."¹⁴ More than two decades later, it is long past time for NPS to implement this goal of its own Tule Elk Management Plan. The Park Service's refusal to do so—along with increasing drought, die-offs, and the facts described herein—also constitutes significant new information about management of the Tomales Point herd that the agency must consider under NEPA. *See* 40 C.F.R. § 1502.9(d)(1); 40 C.F.R. § 1502.9(c)(1)(ii) (1978). To prevent an irreversible and irreversible commitment of resources while it analyzes this information, 40 C.F.R. § 1502.2(f), 1506.1(a), the agency cannot continue status quo management that causes another irreversible die-off of elk in the Tomales Point herd.

In last week's press release, the NPS references its Tule Elk Management Plan, and characterizes this year's elk die off as part of "a process called natural or self-regulation." However, the cause of these repeated die-offs of rare native wildlife is completely unnatural: the 8-foot tall fence across the width of Tomales Point, blocking the natural movements and migration of tule elk. This artificial barrier prevents elk from dispersing naturally to areas with more abundant surface

¹¹ NPS. 2006. Management Policies, at p. 36.

¹² *Ibid.*, p. 37.

 ¹³ NPS. 1998. Point Reyes National Seashore Tule Elk Management Plan and Environmental Assessment at p. 50.
¹⁴ *Ibid.*, at p. 40.



Tule elk fatalities, Tomales Point Elk Reserve, Point Reyes National Seashore, Sept. 2020. *Matthew Polvorosa Kline photos*



water, better forage quality, and/or adequate soils that support nutritionally appropriate vegetation. It is appalling that the Park Service is intentionally and artificially blocking the movements of native wildlife in a manner that results in their deaths. Furthermore, we are concerned that the periodic die-offs of tule elk that result from their artificial confinement on Tomales Point could result in this population dropping below minimum viable population thresholds. Elk are harem-breeders, with a few males doing most of the breeding, which skews the ratio of males to females contributing their genes to the following year's calves of the year. Tule elk on Point Reyes are known to have low genetic heterozygosity, making population viability a particular concern.¹⁵ Compounded by genetic bottlenecks, these unnatural, drought-induced die-offs, may also increase the Tomales Point herd's susceptibility to disease such as Johne's Disease, a cattle-borne illness found in nearby dairy operations.

The elk enclosure fence at Tomales Point Elk Reserve is an integral part of the Pastoral Zone landscape, which it borders, and it was designed explicitly to exclude elk from accessing Park Service lands leased for cattle grazing, for the convenience of ranching and dairying operations. This elk enclosure fence is out of compliance with Park Service policy, which states,

When the determination has been made through a planning process that it is appropriate for a facility to be constructed within park boundaries, all facilities will be integrated into the park landscape and environs with sustainable designs and systems to minimize environmental impact. Development *will not compete with or dominate park features or interfere with natural processes, such as the seasonal migration of wildlife* or hydrologic activity associated with wetlands.¹⁶

Emphasis added. Its removal is necessary to come into conformance with Park Service policy. Point Reyes National Seashore is a unit of the National Park Service, not a zoo or safari park, where animals are artificially confined in an unnatural or quasi-natural setting. Maintaining this captive herd at Tomales Point "runs counter to the NPS policy of not maintaining captive herds for the enjoyment of visitors but instead to maintain wild populations within natural habitats." 1998 PRNS Tule Elk Management Plan at 54.

The undersigned organizations hold that it is inappropriate for any agency to exclude native wildlife from suitable habitats on any public lands, least of all units of the National Park Service, on which the protection and preservation of native wildlife supersedes any and all commercial uses, including (and in this case, particularly) livestock production. With this letter, we petition the National Park Service to come into compliance with its statutory mandates requiring responsible wildlife stewardship, freeing the confined tule elk population on Tomales Point and allowing them the freedom to roam throughout Point Reyes National Seashore and Golden Gate National Recreation Area and engage in the natural process of seeking out adequate forage and

¹⁵ NPS. 1998. Point Reyes National Seashore Tule Elk Management Plan and Environmental Assessment; *see also* McCullough et al. 1996, From bottleneck to metapopulation: Recovery of the tule elk in California. Pp. 375-403 *in* Metapopulations and Wildlife Conservation, Island Press, Washington DC, 429 pp.

¹⁶ NPS. 2006. Management Policies, at p. 125.

water necessary for their survival. Due to the emergent mortality event currently underway, we urge NPS to provide a prompt response to this Petition, such that solutions can be applied to release the tule elk of Tomales Point from their unnatural confinement and maximize their chances of survival. We look forward to receiving your response.

Very sincerely yours,

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Signing on behalf of

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