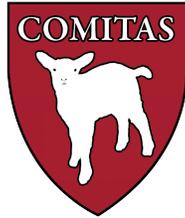


HARVARD LAW SCHOOL
ANIMAL LAW & POLICY PROGRAM

KRISTEN A. STILT
Professor & Faculty Director

CHRISTOPHER D. GREEN
Executive Director

CEALLAIGH REDDY
Program Administrator



KATHERINE A. MEYER
Clinic Director

NICOLE E. NEGOWETTI
Clinical Instructor

SARAH PICKERING
Communications Manager

August 31, 2020

Sent by Electronic Mail

Carey Feierabend
Acting Superintendent
Point Reyes National Seashore
Point Reyes Station, CA 94956

Margaret Everson
Acting Director
National Park Service
1849 C Street, N.W.
Washington, D.C. 20240

David Bernhardt Secretary
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Re: Immediate Action Needed to Ensure Protection of the Tule Elk

Dear Ms. Feierabend, Ms. Everson, and Secretary Bernhardt:

On behalf of the Center for Biological Diversity and its many members who enjoy observing, studying, and photographing the Tule elk who live in the Point Reyes National Seashore, we are writing to express our grave concerns regarding the status of the Tomales Point elk. We request that you immediately take all necessary actions to carry out your legal—and moral—responsibilities to ensure that any elk that are unnaturally confined to the Tomales Point peninsula have access to sufficient water to prevent them from dying of thirst.

As you undoubtedly know by now, there is evidence that the majority of the limited water sources upon which these fenced elk depend have already become dry or may become dry in the immediate future due to drought. It appears that at least six elk have recently died on Tomales Point, of unknown causes but under similar drought conditions to 2012-2014. The last time the Tomales Point elk were faced with this kind of dire situation—during the drought of 2012-2014—nearly half (more than 250 of the 540 elk) of the Tomales Point elk population died from

a lack of water, and their inability to migrate to find water due to the elk fence which the Park Service maintains.

We therefore request that you:

- 1) Immediately publicly release information and provide evidence confirming whether or not adequate water sources exist throughout the Tomales Point peninsula to maintain all existing elk throughout the remainder of the dry season; and provide a comparison of current water sources and quantities available to elk versus what was available in 2012-2014. The Park Service should also perform necropsies on the elk that have already died this summer and publish the causes of death.
- 2) If water sources on Tomales Point are less than they were in 2012-2014, or there is not adequate water to maintain all elk on the Tomales Point peninsula, the Park Service must immediately remove sections of the Tomales Point elk fencing to allow the confined elk to roam to find water, or begin trucking in water to ponds in Tomales Point, as necessary to ensure that elk do not die from a lack of water.
- 3) We request that you re-open the comment period for the Draft Point Reyes National Seashore Management Plan Amendment currently under consideration to include this important Tomales Point elk management issue, including all the information about the 2012-2014 die-off and the current situation with Tomales Point water sources, and to allow the public to comment on it.
- 4) The Park Service must begin a process to permanently remove the elk fence that unnaturally prevents Tomales Point elk from roaming to find adequate water sources.

If you do not take these—or equivalent—steps to ensure that these elk have sufficient access to sources of water, we believe you will be in contravention of your statutory duties to “conserve” this legally protected wildlife as required by the National Park Service Act, 54 U.S.C. § 100101(a) (formerly 16 U.S.C. §1), and the Congressional Resolution requiring “the protection and maintenance” of Tule elk, Pub. L. No. 94-389.

We understand that the Park Service takes the position that regardless of the many dry ponds there remains adequate water available to the elk via e.g., seeps in the area. However, the Park Service’s credibility on this issue is understandably suspect in light of the fact that the agency failed to inform conservation groups and the general public of the elk die-off in 2012-2014 until well after the deaths of more than 250 elk, and also made statements to the media denying that the elk fence and lack of water played any role. The Park Service has also published misinformation about the Tule elk on its website and in the Draft Environmental Impact Statement for the Management Plan Amendment, as well as refused to respond to questions and issues raised regarding elk during the formal environmental review process for the Management Plan Amendment. The Park Service has an obligation to provide immediate information to the public regarding that status of the health of the elk, especially as it relates to the elk confined at Tomales Point having access to adequate water supplies.

According to recent photo documentation by locals, the situation for the four Tomales Point elk herds is as follows:

The South Herd: The two ponds normally used by this herd—South Pond I and South Pond II—are completely dry and have been for a while. *See* Photo of South Pond I attached to August 23, 2020 press release (taken on August 7, 2020).

The North Herd: Of the two ponds normally available to the elk, North Pond I is now completely dry; North Pond II has some water, but it is way below capacity. *See* Photos attached to August 23, 2020 press release (taken on August 21, 2020 and August 16, 2020, respectively).

The Plateau Herd: of the two ponds normally available to this herd, Central Pond I is already completely dry; Central Pond II is very close to dry. *See* Photos attached to August 23, 2020 press release (taken on August 21, 2020).

The White Gulch Herd: There do not appear to be any ponds available to this herd, and it is not currently ascertainable whether the seep normally used by this herd (that drains toward the Tomales Bay) is running.

Tule elk depend largely on former stock ponds in the Tomales Point Tule Elk Reserve to survive the dry summer and fall seasons. Tomales Point elk are prevented from naturally migrating to reliable water sources in the summer and fall by the 8-foot fence erected and maintained by the Park Service. The fence prevents Tomales Point elk from gaining access to forage and water used by livestock owners who lease adjacent public land in the National Seashore for their cattle. Thus, although the *cattle* have access to water sources south of this fence, the Tule elk—who, unlike the cattle, are required by federal law to be “conserved”—are denied such access by the National Park Service. This conflicts with the statutory mandate to conserve the elk.

After half the Tomales Point elk herd died during the 2012-2014 drought, the Park Service took the position that this was *not* due to a lack of water, but rather was the result of other “natural causes” or population fluctuations. In fact, during the same time period as the Tomales Point herd die-off, the *free-ranging* elk populations in the Drakes Beach and Limantour herds which were *not* restrained by fencing actually *increased*. This comparison strongly suggests that the prior die off of Tomales Point elk was in fact due to artificial restriction of movement and a lack of ability to access water. In any event, the dispute about why so many elk died during that time period only heightens the need for necropsies on the elk who have recently died.

As this matter is extremely urgent, we request that you provide us with your response to this letter as soon as possible, and by no later than the end of the day Wednesday, September 2, 2020. If we do not hear from you by that date, we will assume that the requested actions are not being taken and will proceed accordingly.

Sincerely,



Katherine A. Meyer Director
Animal Law & Policy Clinic
Harvard Law School

/s/

Eric R. Glitzenstein
Director of Litigation
The Center for Biological Diversity