

**Testimony of David P. Hubbard, Esq., of
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Regarding the Proposed
CALIFORNIA DESERT PROTECTION ACT OF 2010
S. 2921
(Introduced by Senator Dianne Feinstein, D. California)**

Introduction

Since 2001, I have been legal counsel for a host of organizations that engage in off-highway vehicle (OHV) recreation throughout the western United States. Among the venues visited by my clients, the deserts of California, especially those managed by the federal government, are the most popular. Every year, my clients and their members, along with millions of other OHV enthusiasts, recreate in the California deserts, pumping close to a billion dollars into local and regional economies.

But the last two decades have taken a toll on OHV recreation and other outdoor activities that depend on OHVs for safe access to remote locations. While OHV sales have increased, and while the number of OHV users continues to rise, the areas available for OHV recreation and camping have diminished sharply in both number and size. Hundreds of thousands of acres formerly open to OHV use have been closed in the last 10 years alone. This has forced OHV users onto smaller parcels with fewer trails, resulting in more concentrated impacts on natural and cultural resources. It has also devalued the wilderness experience for those families who travel to the desert to ride their motorcycles and quads in a safe and uncrowded environment.

The Process of Developing the “California Desert Protection Act of 2010”

The trend of closures is a sad and disturbing one for my clients. Not only do they consider themselves good stewards of the land, they view OHV recreation as one of those rare activities that allow families to spend time together outdoors – away from the television and video games, and away from the drugs and crime and violence which, unfortunately, characterize life in many California cities and suburbs.

So it is with great skepticism that my clients receive news of a fresh piece of legislation seeking to “protect” the California Desert. Such statutes almost always cause further erosion of recreational access to the public lands of the state. My clients are never consulted, their interests are disregarded, and they are forced to do more with less.

But every once in awhile, there is something new under the sun.

The bill currently under review – the “California Desert Protection Act of 2010” – represents a radical departure from the way desert land use legislation has typically been developed. Rather than shove the bill down our throats, Senator Feinstein’s staff asked for our input early and often, and then did the same with other stakeholders, including key conservation organizations, energy interests, and the Department of Defense. The big surprise was not that we had disagreements on some issues and on the wording of certain provisions. We all kind of expected that. The big surprise was that we had so much in common.

Let me give you some examples.

- We agreed that OHV use and camping in the California Desert are important recreational activities that warrant federal recognition and protection.

- We agreed that there are some places in the California Desert where such activities are appropriate and can be enjoyed with relatively minor environmental impacts.
- We agreed that there are some places in the California desert where OHV use is not appropriate, where the potential for damage to natural and cultural resources is simply too high to allow vehicle access.
- We agreed that new National Monuments and New Wilderness Areas could be created without reducing existing OHV routes and use areas.
- We agreed that renewable energy exploration, while important to the nation and feasible in certain parts of the desert, must not trump conservation efforts and recreational use.
- We agreed that renewable energy project projects deserved a streamlined permitting process.
- We agreed that, with creative land use strategies, the expansion of the Twenty-Nine Palm Marine Corps Base, which is vital to our nation's security, could be accomplished without significant loss of recreational opportunity or natural resources.

These “agreements” did not come easy. Nor did they come cheap. Everybody had to bend. Everybody had to compromise. There were hurt feelings, bruised egos, and internal feuds within each stakeholder camp. Yet we kept it together. We kept moving forward, making progress – largely because of the excellent leadership of the legislative staff and the open-mindedness of the groups involved.

Are there members of the OHV community who oppose this bill? Sure. There are some who hate it, who view it as a travesty and a betrayal. You will hear from some of them today. But as much as I respect their opinion, I think they are missing the point. Worse, they are missing a great opportunity to recast the old debate between OHV recreation and environmental protection, and advance the somewhat more recent debate between public access and renewable energy development. In short, they are missing the chance to shape land use in the California Desert for the next 50 years. They want to fight the same old battles, using the same arguments and tactics which, in the past, have failed to produce enhanced recreational access, improved environmental protection, or a sound alternative energy policy. The current bill represents a new step forward – a paradigm shift that is long overdue.

The Benefits of the Proposed Bill

So what did we achieve? Let me highlight a few key provisions that answer this question. The bill, if approved, would:

- Establish the Mojave Trails National Monument and the Sand-to-Snow Monument. Existing OHV trails in the monuments would be preserved, but no new trails would be created.
- Add Wilderness areas to the Death Valley National Park (59,264 acres), the San Geronio Wilderness (7,141 acres), and the Bowling Alley Wilderness (30,888 acres).
- Establish new Wilderness Areas in the following areas:
 - o the Avawatz Mountains (86,614 acres)
 - o Golden Valley (21,633 acres)

- o Great Falls Basin (7,871 acres)
 - o Kingston Range (53,321 acres)
 - o Soda Mountains (79,376 acres)
- Release Wilderness Study Areas (WSAs) in the Cady Mountains, in Great Falls, and in the Soda Mountains, so that they can be planned and managed for other purposes consistent with the “multiple use” mandate of the Federal Land Policy and Management Act.
- Establish a Special Management Area in Vinagre Wash (75,595 acres) that safeguards natural and cultural resources, respects the OHV access needs of existing residents, and protects Navy SEAL training areas.
- Add land to Death Valley National Park (40,740 acres), the Mojave National Preserve (29,246 acres), and the Joshua Tree National Park (2,904 acres).
- Establish OHV Recreation Areas at
 - o El Mirage (25,600 acres)
 - o Johnson Valley (180,000 acres minus USMC expansion of Twenty-Nine Palm training base)
 - o Rasor (24,170 acres)
 - o Spangler Hills (56,198 acres)
 - o Stoddard Valley (38,931 acres)

It is important to note that OHV use is currently permitted in each of these newly-designated Recreation Areas. The new designations would merely codify the status quo; no new OHV routes or use areas would be created. However, the bill does instruct the Secretary of the Interior

to conduct studies to determine whether more land might be added to the OHV Recreation Areas, provided the proposed acquisitions would not result in resource conflicts.

Renewable Energy, Military Preparedness, and OHV Use

The proposed bill also addresses two other difficult land use issues in the California Desert – renewable energy development and military base expansion. With regard to the first, the bill would improve and streamline the federal permit process for renewable energy facilities. It also would create a rational method for distributing the income derived from solar and wind energy projects located on federal land. Finally, it would allow renewable energy projects to utilize programmatic Environmental Impact Statements and Land Use Plans, thus making compliance with NEPA and FLPMA easier, faster, and more cost effective.

Contrary to what some people have stated, the bill would not preclude renewable energy development in the OHV Recreation Areas. Instead, the bill simply requires that energy projects proposed in such areas be compatible with OHV use. This is not an exceptionally difficult hurdle to overcome, if the project applicant is willing to work with the OHV community and BLM. It does, however, operate as a deterrent to energy speculators who wish merely to tie up desert land in hopes of “flipping” it for a profit.

So please, review the text of the OHV and energy provisions closely. The bill does not sacrifice renewable energy development at the altar of OHV recreation; but neither does it allow the recreating public to be run over by those who want a cheap ride on the renewable energy bandwagon.

With respect to military base expansion, the bill defers to the Secretary of the Navy to determine how much land must be added to the Marine Corps training facility at Twenty-Nine

Palms. Indeed, it is very likely that a significant portion of the newly-designated Johnson Valley OHV Recreation Area will be lost to the expansion of the base. This is a substantial impact to the OHV community; but my clients – many of whom are or were members of the armed services – recognize that when it comes to preparing American Marines for battle, recreational interests must yield to those of national security. In addition, the Marine Corps has worked hard to integrate existing OHV uses into its land planning vision. As a result, the proposed bill includes a “joint use” provision. Under this provision, the Marine Corps and the recreating public would both have access to certain areas within Johnson Valley. Given the challenges that currently face our military, my clients consider this an acceptable compromise.

Conclusion

In its 178 pages, the proposed bill covers a lot of ground and tackles many issues that are fraught with conflict. Yet the bill succeeds because it respects and honors both sides of these long-standing debates, without getting bogged down in them. Instead, it builds a new land management regime on a platform of shared interests. The California Desert is a natural resource, an economic opportunity, a recreational haven, and a military asset. Senate Bill 2921 allows the Desert to play each of these roles simultaneously, while minimizing clashes between them. For that reason, it has earned my clients’ support. We hope it earns yours as well.

Thank you.

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