

PEER

Public Employees for Environmental Responsibility

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FCC MAIL ROOM

Office of the General Counsel
(Corrected Copy)

June 7, 2001

Mr. Knox Mellon
State Historic Preservation Officer
Office of Historic Preservation
PO Box 942896
Sacramento, California 94296

Spencer Copy

BY FIRST CLASS MAIL

Re: *FCC Dkt. No. RM-9913 and Violations of Federal law within
Death Valley National Park*

Dear Mr. Mellon:

Public Employees for Environmental Responsibility (PEER) is concerned about undertakings by the National Park Service (NPS) and the Federal Communications Commission (FCC) that may affect properties eligible for listing on the National Register of Historic Places within Death Valley National Park.

In July 2000, PEER learned that the NPS authorized an aircraft landing by Pacific Bell in a remote area of Death Valley National Park housing a microwave facility on Mormon Peak. PEER and other citizens groups were, and remain, dismayed that on July 11, 2000, the NPS categorically excluded the decision to approve the aircraft landings and associated work on the microwave tower from review under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

It is not clear from the record how the decision to "categorically exclude" was made, whether it was pursuant to a rulemaking, and whether it was accompanying by an environmental assessment (EA).

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CA SHPO - Mormon Peak Letter

June 7, 2001

On September 21, 2000, NPS employees accompanied 12 Pacific Bell employees to the summit of Mormon Peak via helicopter. The NPS employees reported to the park administrators on September 28th that they found "Native American house rings ... just a few feet from the helicopter landing pads. Obsidian flakes, associated with a house ring, were found on a ridge northwest of the tower."

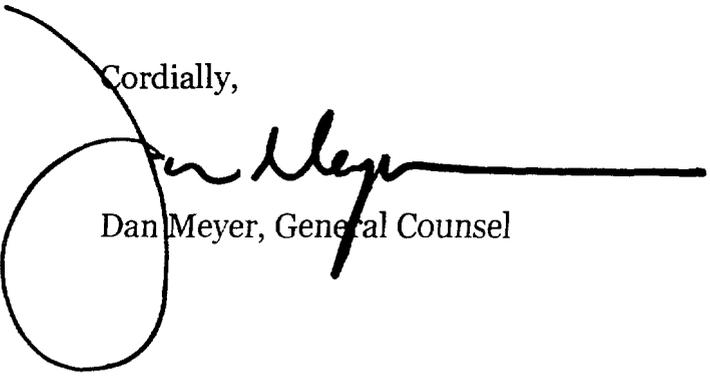
PEER asks if the NPS consulted under Section 106 of the National Historic Preservation Act (NHPA) with the State Historic Preservation Officer (SHPO) prior to approving Pacific Bell's activities. Perhaps such consultation is not needed under a programmatic memorandum of understanding between the SHPO and the NPS.

If so, please inform us.

PEER also believes that the FCC is remiss in its duty as primary coordinator for NEPA review and compliance. At some point, you should have been conferred with as a consulting agency in your role as the delegated authority for the administration of the Advisory Council on Historic Preservation (ACHP) regulations. On August 8, 2000 the FCC renewed Pacific Bell's license to operate and transmit over the federally owned spectrum from the Mormon Peak tower. FCC approval constitutes a federal agency undertaking. In its application for a license, FCC rules require Pacific Bell (or any applicant) to conduct environmental review if the facility may affect structures or objects listed or eligible for listing in the National Register or may affect Indian religious sites. (47 CFR 1.1307(a)(4) and 1.1307(a)(5).)

Such appropriate environmental review should include consultation with the SHPO under Section 106 of the NHPA, and if Indian religious sites were present, with the Timbisha Shoshone Tribe. Please inform us if the FCC or the applicant (Pacific Bell) engaged in consultation with the SHPO prior to FCC's August 8, 2000 approval. PEER believes, though we are not certain, that the Mormon Peak issue may be part of a larger failure of Agency compliance with federal law. Please inform us if the FCC or any applicants for FCC licenses have consulted under Section 106 for federally licensed wireless facilities in the State of California.

Cordially,



Dan Meyer, General Counsel

Cc: Attached Service List

National Jurisdictions

The Honorable Pauline Estes, Chairperson
Timbisha Shoshone Tribal Council
P.O. Box 206
Death Valley, CA 92328

Federal jurisdictions

The Honorable Gale Norton, Secretary
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Earl E. Devaney, Esquire
Office of the Inspector General
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

John D. Leshy, Esquire
Office of the Solicitor
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Mr. Ralph Minhan, Esquire
Office of the Field Solicitor
Department of Interior, Pacific West Region Office
600 Harrison Street
San Francisco, CA 94107-1372

Mr. Tom Mulhern, Chief
Division of Park Historic Preservation
Western Regional Office, NPS
600 Harrison Street — Suite 600
San Francisco, CA 94107

Mr. J.T. Reynolds, Superintendent
Death Valley National Park.
PO Box 579
Death Valley, CA 92328

Ms. Dinah Bear, Chair
Council on Environmental Quality ("CEQ")
722 Jackson Place, N.W.
Washington, D.C. 20503

Cathryn Buford Slater, Chair
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue - Suite 809
Old Post Office Building
Washington, D.C. 20004

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission (FCC)
Portals II - Suite TW A325
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Michael K. Powell, Chair
Federal Communications Commission (FCC)
Office of the Chair — Eighth Floor
445 12th Street, S.W.
Washington, D.C. 20554

Thomas J. Sugrue, Bureau Chief
Federal Communications Commission ("FCC")
Wireless Telecommunications Bureau ("WTB")
445 12th Street, S.W.
Washington, D.C. 20554

Mr. Dan Abeyta
Commercial Wireless Division (WTB)
Federal Communications Bureau ("FCC")
445 12th Street, S.W. - Suite 4A-236
Washington, D.C. 20554

Mr. Frank Stillwell
Federal Communications Commission ("FCC")
Wireless Telecommunications Bureau - CWD
445 12th Street, S.W.
Washington, D.C. 20554

State jurisdictions

Mr. Knox Mellon
California State Historic Preservation Officer
Office of Historic Preservation
P.O. Box 942896
Sacramento, CA 94296

Private parties

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Federal Regulatory
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Ms. Carol Tacker
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Mr. Frank Buono
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John Talberth, President
Forest Conservation Council
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Friends of the Earth (FOE)
P.O. Box 337
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