

Point by Point Comparison of Petition to NPS and Their Response

On August 5, 2013, The Washington Humane Society, In Defense of Animals, and a coalition of D.C. residents petitioned the National Park Service (NPS) to halt all further killing of deer in Rock Creek Park based on new information that there is no need to kill deer to protect native plants (“petition”). A cover letter requested a meeting with Director of the NPS Jonathan B. Jarvis and Superintendent of Rock Creek Park Tara D. Morrison about these matters as soon as possible. On September 27, 2013, we received a response in the form of a letter from Stephen E. Whitesell Regional Director of the National Capitol Region, NPS (“NPS response”).

The Petition presented new scientific information and evidence not available when the Park Service made its May 2012 decision to kill the deer, and asked the Park Service to stop the killing in light of the new information, the relative stability of the deer population, and the need to cut back much more important services under the sequester. The new information included: (1) a recent analysis by a leading forest ecologist of the scientific studies relied on by the Service as a basis for reducing the deer population; (2) the need to deal with the critical exotic invasive plant species in the Park; (3) the negative impact killing this native wildlife has on visitor use of this Park; and (4) new information about the effectiveness of fertility control as a more humane and effective means of controlling urban deer populations.

The NPS response stated that the agency did not have to respond to the petition because it was not connected to a rule and the Final Environmental Impact Statement (FEIS) is less than five years old. The Agency did not address any of the scientific arguments presented in the petition or deal with the information in any substantive way.

(1) The most important part of that information is an analysis by Dr. Oswald Schmitz, the Oastler Professor of Population and Community Ecology within Yale University’s School of Forestry and Environmental Studies and Director of the Yale Institute for Biospheric Studies, of a pivotal study underlying the NPS rationale for killing deer. The NPS claimed that the study shows deer are interfering with forest regeneration. Dr. Schmitz’s analysis makes it quite clear that the study really shows the opposite – although the deer do consume tree seedlings, there is no effect on the amount of cover after a certain height. In effect, the deer remove seedlings that would have to die in any case because there is not room for all the seedlings that sprout to develop into mature trees.

The NPS responded that because Dr. Schmitz’s analysis was based upon data already in the FEIS, it was not “new”. Yet the whole point of the analysis is that it seriously questioned the way the NPS used its own data – ignoring some results that clearly contradicted the conclusions that the deer are interfering with forest regeneration and reducing biodiversity. The NPS response did not present any defense of its interpretation or in anyway contradict the conclusions drawn by Dr. Schmitz that the deer in fact are having no effect on forest regeneration and little or little or no biologically significant effect upon the Park’s flora.

The NPS response also claimed that “many of the conclusions” of Dr. Schmitz’s analysis “simply repeat arguments already rejected by the district court”. But the response did not provide any

specifics to back this up. In fact there is no mention in the Courts Opinion of the fact that the study the Park relied upon to show impacts on forest regeneration actually shows no effect. It is apparent from the Opinion that the Court simply assumed the NPS data supported the NPS conclusions.

(2) The petition presented evidence that the much more serious threat to the Park's native vegetation is the increase in invasive exotic plants that need to be removed. This invasion leaves little native vegetation so that deer are forced to leave the Park in search of food, resulting in car collisions and damage to neighboring landscaping.

The NPS response did not address the issue of exotic plants.

(3) The Petition cited overwhelming public concern that killing deer with guns and archery will change the traditional character of this very special national park so that it is no longer a place of peace and tranquility.

The NPS response did not address the evidence of public concern about killing deer.

(4) The petition presented new information about the effectiveness of fertility control as a more humane and effective means of controlling urban deer populations and cited increased use of nonlethal fertility control in other parts of the country as an effective way to control overpopulations of wildlife.

The NPS response acknowledged that the petition provided a new study and other information about reproductive controls and that the study showed one of the reproductive agents to be longer lasting. However, the NPS took the position that the agent does not meet all of the criteria and that they already provided for the use of reproductive controls in the FEIS. The NPS did not provide any substantive answer as to how this new information, singly or in combination with the other new information, would or would not impact a decision to use reproductive controls instead of lethal ones. It also failed to explain how lack of compliance with the stringent NPS criteria would in any way make the agent inappropriate for Rock Creek Park given the park's particular circumstances and goals.

In short, the NPS took the position that it cannot be forced to consider the scientific merits of the information provided by the petition or its impact upon the conclusions reached in the FEIS. It did not deal with the information substantively or explain why the agency does not have any obligation to do so.

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