

ATTACHMENT B



Robert D. Rosenbaum
+1 202.942.5862 Direct
Robert.Rosenbaum@arnoldporter.com

February 21, 2019

David Smith, Superintendent
Joshua Tree National Park
74485 National Park Drive
Twentynine Palms, CA 92277-3597

Re: Freedom of Information Act Request

Dear Superintendent Smith:

Pursuant to the Freedom of Information Act (“FOIA”), and on behalf of National Parks Conservation Association (“NPCA”), I request that you provide me with the documents described below. As set forth below, a waiver of all fees is also requested.

Background

In January 2018, the Department of the Interior (the “Department”) and National Park Service (“NPS”) adopted a Contingency Plan to apply in the event of a lapse of Congressional appropriations to the Department (the “2018 Contingency Plan”). Under that plan, units of the National Park System would remain accessible to visitors throughout the shutdown, notwithstanding that most of NPS’s staff was furloughed. That plan was in contrast to the Department’s previous plan, dated September 26, 2013, which provided that the National Park System would be closed during a lapse in appropriations.

In January 2018 and again in December 2018, there were lapses in Congressional appropriations for the Department. The 2018 Contingency Plan was then implemented by the Department. NPS opened Joshua Tree National Park (“JOTR”) to public visitors. The media reported that NPS sought to close JOTR’s campgrounds to visitors but nevertheless opened them to visitors. In January 2019, the Department adopted an updated contingency plan (the “2019 Revised Plan”), including the provision that

“Parks that collect fees under the Federal Lands Recreation Enhancement Act (FLREA) will utilize available retained recreation fees balances to provide basic visitor services in a manner that maintains restrooms and sanitation, trash collection, road maintenance, campground operations, law

Arnold & Porter

David Smith, Superintendent
February 21, 2019
Page 2

enforcement and emergency operations, and staffing entrance gates as necessary to provide critical safety information.”¹

Other Definitions and Requests

Some terms used in this letter are defined in text above and below. In addition, the following definitions apply:

The word “Department” includes both the Department of the Interior and NPS and all employees or officials of either of them.

“FLREA” means the Federal Lands Recreation Enhancement Act.

The word “communication” means a communication or correspondence in whatever form and any document reflecting or recording or otherwise relating to any such communication.

When “(s)” follows a word, the word applies either in the singular or the plural.

The word “document” is defined for purposes of this letter as any and all records to which FOIA relates in the possession or control of JOTR, including electronically transmitted or stored documents. For responsive records, please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions.

If any document is withheld in whole or part, please identify all such documents with specificity and provide all the information required under 15 C.F.R. § 4.4 and 43 C.F.R. § 2.24. In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. *See* 5 U.S.C. § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot

¹ *National Park Service's Revised Contingency Plan*, <https://www.doi.gov/sites/doi.gov/files/2018-01-nps-contingency-plan.pdf> (Jan. 2019).

Arnold & Porter

David Smith, Superintendent

February 21, 2019

Page 3

reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Document Requests

1. All records containing or documenting or otherwise relating to communications between or among NPS personnel at JOTR or between such personnel and NPS or Department personnel located elsewhere concerning
 - a. the 2018 Contingency Plan or the 2019 Revised Plan,
 - b. the manner in which NPS should operate JOTR under either plan,
 - c. discussions or reports or requests relating thereto,
 - d. any request that JOTR or any portion or function thereof be closed to public visitors and any response thereto,
 - e. impacts on JOTR resources or values or on its visitors of opening JOTR to public visitors without a full complement of NPS personnel on duty,
 - f. off-road vehicle damage,
 - g. a damage assessment report, and/or
 - h. any other documents relating to any of the foregoing.

The search period for this request is January 1, 2018, to the date of search.

2. All records containing, documenting, reporting or otherwise relating to any impacts of visitor access to JOTR during a lapse in funding on the resources or values of JOTR and/or relating to any impact of reduced staffing on visitor safety, including by way of example and not of limitation media reports, incident reports, reports to or from NPS officials orally or in writing, reports from any other person bringing to the attention of the NPS any impact during a lapse in appropriations and documents reflecting NPS and or the Department's consideration of such reports and assessment of whether or not to continue to allow visitor access to

Arnold & Porter

David Smith, Superintendent

February 21, 2019

Page 4

JOTR or any portion or function thereof and/or, if so, what changes to make in response to information about such impacts. For the sake of clarity, this request includes among other things all documents relating to email, texted or conference or other telephone discussions between or among NPS or Department officials at JOTR, the NPS regional office, the NPS Washington office, the Department or elsewhere concerning developments and/or situations and/or conditions at JOTR and/or whether JOTR should be opened or closed in whole or in part to visitors or whether other steps should be taken to address such developments, conditions and/or situations. The search period for this request is January 1, 2018 to the date of search.

3. Records sufficient to show
 - a. The number of NPS personnel and contractors working at JOTR in the absence of a lapse in appropriations, and the number normally working on any particular day;
 - b. The number of NPS personnel and contractors working at JOTR during the December 2018 to January 2019 lapse in appropriations, and the number normally working on any particular day;
 - c. The amount of money set aside by or for JOTR under FLREA before the 2019 Revised Plan and the purpose(s) for which that money had been set aside or NPS's intended use of that money at JOTR;
 - d. The amount of money described in the preceding item (c) which was used pursuant to the 2019 Revised Plan for purposes, whether at JOTR or at other National Park System units, other than those described in response to the preceding item (c);
 - e. The likely or expected impact of the use of FLREA funds as described in response to the preceding item (d) on the projects described in preceding item (c) for which those funds had been set aside or for which NPS intended to use those funds;
 - f. Any plans of NPS to restore those funds used as described in preceding item (d) so the replaced funds may be used as originally intended as described in preceding item (c).

Arnold & Porter

David Smith, Superintendent
February 21, 2019
Page 5

Fee Waiver Request

On behalf of NPCA, I request a waiver of search and copy fees related to this request. Such a waiver is required when disclosing the information is in the public interest because it is likely to contribute significantly to public understanding of government operations or activities, and not primarily in the requester's commercial interest. 15 C.F.R. § 4.11(l); 43 C.F.R. § 2.45(a). This request qualifies under those requirements for such a waiver.

First, NPCA has no commercial interest in the requested information. NPCA is a national non-profit organization that advocates for national parks. *See* www.npca.org.

Second, the information requested above meets the "likely to contribute" test. NPCA has demonstrated repeatedly that information it obtains will contribute to the understanding of the public at large concerning issues relating to the National Park System. NPCA has more than 1.3 million members and supporters to whom it regularly sends email updates and alerts about issues affecting the National Park System. NPCA also publishes and sends to its members and others such hard copy publications as a periodical magazine and brochures, which also cover developments and issues relating to the parks. NPCA's website provides further information about those matters. *See* www.npca.org.

In order to determine if a request is in the public interest, the Department must consider:

- How the records concern the operations or activities of the Federal government,
- How disclosure is likely to contribute to public understanding of those operations or activities . . .;
- How disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding . . .; and
- How the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure.

43 C.F.R. § 2.48(a); *see also* 15 C.F.R. § 4.11(l)(2). Here, NPCA's request for disclosure of the above information is in the public interest because it will significantly contribute to the public's information about the events leading up to the Department's 2018 NPSCP and the 2019 Revised Plan.

Arnold & Porter

David Smith, Superintendent

February 21, 2019

Page 6

Second, NPCA has been actively engaged in addressing the 2018 Contingency Plan and the 2019 Revised Plan. *See* attached press statements released by NPCA and published on Twitter. As there reported, NPCA has written the Inspector General of the Department asking that she investigate the Department's decision to keep the National Park System open to visitors without appropriations and with funds diverted under FLREA.

Disclosure of the requested information is likely to contribute to public understanding of the operations or activities of NPS because disclosure will provide NPCA members and interested members of the public with valuable information concerning the Department's decisions at issue here. 43 C.F.R. § 2.48(a)(2). For this factor, Department regulations outline additional sub-factors to consider, including:

- How the contents of the records are meaningfully informative;
- The logical connection between the content of the records and the operations or activities;
- How disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding;
- Your identity, vocation, qualifications, and expertise regarding the requested information and information that explains how you plan to disclose the information in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding; and
- Your ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject (for example, how and to whom do you intend to disseminate the information). *Id.*

NPCA has the ability, qualifications, and expertise to understand and process this information through its staff who are familiar with this issue and to provide wide-spread dissemination of the information, as discussed above. Disclosure of the requested information will therefore significantly contribute to the understanding by a reasonably broad audience of interested persons. NPCA has demonstrated a long-standing – indeed one hundred years' -- commitment to the protection of the National Park System and has often disseminated and will continue to disseminate information to the interested public concerning that issue. The contents of the requested records will be meaningfully

Arnold & Porter

David Smith, Superintendent

February 21, 2019

Page 7

informative about, among other things, the Department's analysis of the impacts of the decisions at issue on units of the National Park System and their visitors.

* * *

If you have any question about this matter, please call me at 202-942-5862.
Thank you in advance for your assistance.

Very truly yours,

/s/ Robert D. Rosenbaum

Robert D. Rosenbaum

Rosenbaum, Robert D.

From: Theresa Pierno, NPCA <takeaction@npca.org>
Sent: Friday, January 25, 2019 5:21 PM
To: Rosenbaum, Robert D.
Subject: [MARKETING] BREAKING: Shutdown ending, parks will reopen!

To ensure delivery to your inbox, please add us to your address book: takeaction@npca.org



Dear Robert,

As of this afternoon, the longest-ever government shutdown is coming to an end, temporarily at least. The news of an agreement to fully reopen the federal government and put 800,000 men and women -- including park rangers -- back to work is welcome.

Thousands of park supporters like you spoke out against the damage being done to parks and communities. THANK YOU for raising your voice!

In the coming days, we'll be working to make sure that parks aren't left vulnerable by another shutdown.

Now that the shutdown is over, we're getting in touch with parks to find out how and when they'll need volunteers. [Sign up here](#) to get notified if there are volunteer opportunities in your area.

Thanks again for all you do for our national parks.

Sincerely,

Join a park cleanup!



100 YEARS

Join a park cleanup!

Show less information



America's national parks have been hit hard by the government shutdown, and Americans want to help.

Trash kept piling up, wildlife was disrupted by careless visitors, and park staff went without paychecks... it's clear that parks are going to need help returning to normal.

Sign up now to find out about cleanup activities in your area! When rangers are back on duty to guide cleanup crews and make decisions about where help is most needed, NPCA will send text alerts to park volunteers with more information.

Sign up using the form on this page, and don't forget to check the box giving us permission to send you text alerts!

Sign up now!

Title ▼

Full Name *

Address

Zip * city and state not required

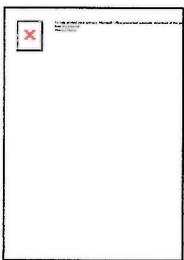
Phone *

Email *

Submit →

- Yes, I want to receive emails from NPCA.
- Yes, I want to receive text alerts from NPCA.

© 2019. All rights reserved. Subject to [Privacy Policy](#).

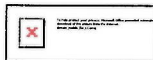


Theresa Pierno
President and CEO

NPCA | 777 6th Street, NW | Suite 700 | Washington, DC 20001
800.NAT.PARK | [npc a@npc a.org](mailto:n pca@npc a.org)

This message was sent to robert.rosenbaum@apks.com by the National Parks Conservation Association.

[Click here to change your email preferences.](#)



Can't see this message? [View it on the NPCA Website.](#)



[nonprofit software](#)



100 YEARS

PRESS RELEASE Jan 10, 2019

Acting Interior Secretary's Directive to Keep Parks Open Without Resource Protection Violates Century-Old Bedrock Law

Share



This action blatantly disregards the fundamental duties of park staff who have dedicated their careers to ensuring our nation's most precious natural and historic places are enjoyed not only today, but for years to come.

A campground closure notice due to the January 2019 government shutdown at Joshua Tree National Park in southern California.  NPCA

Background: Despite multiple reports of unruly behavior and damage to Joshua Tree, from cutting down the namesake Joshua Trees to carving roads into sensitive wilderness areas, the park has announced that it will remain open to the public under the administration's **revised NPS contingency plan** to use money collected from visitor fees to do so. Acting Interior Secretary David Bernhardt instructed park managers across the country to use those fee dollars to bring on additional staff to clean restrooms, remove trash, patrol the parks and open areas that have been closed during the shutdown. However, under the directive, Superintendents are not permitted to use the fee money to bring on extra staff to address resource protection. NPCA believes this direction has and will result in direct negligence of park resources and therefore violates the fundamental mission outlined in the National Park Service Organic Act, the founding law that governs the National Park System.

The Organic Act, signed into law by President Woodrow Wilson in 1916, established the fundamental duties of the National Park Service to manage our parks and "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." More than 16,000 park staff are currently furloughed, leaving only a skeleton crew to protect more than 80 million acres of the National Park System. Instructing parks to remain open without adequate staff to keep park resources "unimpaired" violates the fundamental stewardship principles defined in the Organic Act.

Statement by Theresa Pierno, President and CEO for National Parks Conservation Association

"Acting Interior Secretary David Bernhardt's directive to keep parks open while failing to provide staff for cultural and natural resource protection is not only dangerous, it violates the Organic Act. During this administration's last shutdown, we saw the kinds of

unnecessary damage to our natural resources that can occur when park staff are limited, and **this time around is no different**. In Joshua Tree alone, there have been reports of cut down Joshua Trees, overflowing trash and human waste and illegal off-road activity on fragile wilderness areas. It's clear that without adequate staff, our natural resources cannot be properly protected.

"More than a century ago, the Organic Act was signed into law, establishing the Park Service and guidance for forever protecting our nation's most treasured places. Now, this administration is ordering parks to remain open without adequate staff, putting the future of our parks in jeopardy. The political pressures being put on our park managers are forcing them to follow an irresponsible, shortsighted plan. This action blatantly disregards the fundamental duties of park staff who have dedicated their careers to ensuring our nation's most precious natural and historic places are enjoyed not only today, but for years to come.

"The Trump administration and Congress must come to an agreement to fund our government and fully reopen our national parks with adequate staff. Until then, superintendents should be given the authority to close their gates unless their park and its visitors can be protected with minimal staff. Visitor safety and the protection of our most precious cultural, historic and natural resources must be a top priority."

FOR MEDIA INQUIRIES

Angela Gonzales

Communications Manager

✉ agonzales@npca.org ☎ 202-419-3712

ISSUES

Ensuring Park Funding

RECENT POSTS

10 National Park Cameos in Movies

Jan 18, 2019



Unfit to Serve: Why NPCA Opposes Andrew Wheeler as EPA Administrator

Jan 17, 2019



Trump Administration Moves Forward with Oil and Gas Development, Despite Government Shutdown

Jan 17, 2019



Preserving Our Past. Protecting Our Future.

DONATE

777 6th Street NW
Suite 700
Washington DC 20001-3723

800.NAT.PARK
800.628.7275

NEWS & RESOURCES

[Blog](#)

[All News](#)

[Magazine](#)

[All Resources](#)

**100 YEARS****PRESS RELEASE** Jan 11, 2019

Groups Claim Keeping Parks Open Without Adequate Staff During Shutdown is Illegal, Demand Inspector General Investigate Trump Administration's Reckless Decision

Share



Acting Interior Secretary Bernhardt is violating the law, and we implore the Inspector General to investigate this matter before our parks, visitors, local communities and wildlife suffer any longer.

A dramatic sunset over the Joshua trees and monzogranite rocks at Joshua Tree National Park. 
Photo © Namolik/Dreamstime.

Washington DC— Today, Democracy Forward and National Parks Conservation Association (NPCA) demanded that the Office of Inspector General of the Department of the Interior (DOI) **open an investigation** into DOI's reckless decision to keep U.S. national parks open without adequate staffing and services during what is currently approaching the longest shutdown in American history. DOI's decision, apparently made as a result of political pressure to lessen public opposition to the shutdown, endangers lives and is illegal, violating at least four separate provisions of federal law.

Since the December 22, 2018 lapse in appropriations, NPS has furloughed nearly 16,000 of its employees and suspended most of its maintenance and visitor services, but has left two-thirds of our national parks partially open without adequate staff. As has been widely **reported**, this decision has **adversely affected** public health and visitor safety within our parks and poses substantial risks for the protection of natural and cultural resources. In the absence of adequate federal staffing, park visitors face **greater risk** of personal injury, and the Park Service has warned that staff shortages could lead to search-and-rescue delays. DOI's decision also creates unsafe conditions for federally protected species and their habitat, as well as cultural and historic sites. For example, despite multiple reports of damage to Joshua Tree National Park - from cutting down the namesake Joshua Tree to illegal off-roading - the park has announced that it will remain open to the public under the administration's **revised NPS contingency plan**, which unlawfully diverts visitor fees to fund skeletal operations.

Keeping national parks open with inadequate staffing during the shutdown violates multiple laws including:

- **The Antideficiency Act**, which specifies that federal agencies are barred from obligating funds in the absence of an appropriation by Congress except in rare circumstances in

which such obligation is necessary to prevent an imminent threat to human life or property; and

- **The National Environmental Policy Act**, which requires an environmental impact statement for “major federal actions significantly affecting the quality of the human environment”; and
- **The Endangered Species Act**, requiring that DOI ensure its actions are “not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species;” and
- **The Federal Lands Recreation Enhancement Act**, which only permits the use of visitor fee funds for six enumerated purposes related to improving visitor experiences—not as a general purpose operating fund.

“During the government shutdown, we’ve seen terrible and sometimes irreversible damage to our national parks, including cut down trees, stolen artifacts, overflowing trash and human waste and illegal off-roading on fragile wilderness areas,” **said Theresa Pierno, President and CEO for National Parks Conservation Association**. “Gates to parks have been open while thousands of park rangers have been sidelined. And the few rangers who are on duty are not enough to safeguard visitors and park resources the way they deserve to be protected and, in fact, the way they’re legally mandated to be protected. The Department of the Interior recklessly ignored laws put in place to protect our public lands and wildlife and continues to pressure park staff to keep their gates open without adequate staff. Acting Interior Secretary Bernhardt is violating the law, and we implore the Inspector General to investigate this matter before our parks, visitors, local communities and wildlife suffer any longer.”

“The Trump Administration is putting protection of our national parks and the safety of park visitors at risk, all as part of a transparent public relations maneuver to avoid blame for the shutdown,” **said Democracy Forward Executive Director Anne Harkavy**. “Across administrations, parks have closed during shutdowns because keeping them open but unstaffed for extended periods of time is dangerous and illegal. This Administration’s decision to ignore the law for the sake of political expediency warrants an immediate investigation.”

“America’s national parks are some of the most beloved places on earth and have been preserved for generations. These places deserve more than to be used as a bargaining chip in this administration’s political stunt,” **said Pierno.**

The government shutdown began on December 22, 2018. **The letter** was sent to the Inspector General today.

###

About National Parks Conservation Association: Since 1919, the nonpartisan National Parks Conservation Association has been the leading voice in safeguarding our national parks. NPCA and its more than 1.3 million members and supporters work together to protect and preserve our nation’s most iconic and inspirational places for future generations. For more information, visit **www.npca.org.**

Democracy Forward is a nonprofit legal organization that scrutinizes Executive Branch activity across policy areas, represents clients in litigation to challenge unlawful actions, and educates the public when the White House or federal agencies break the law.

FOR MEDIA INQUIRIES

Angela Gonzales

Communications Manager

✉ **agonzales@npca.org** ☎ **202-419-3712**

RECENT POSTS

Court Rules for Oil Refinery Over Clean Air Near Theodore Roosevelt National Park

Jan 24, 2019



6 Ways to Help During the Shutdown

Jan 23, 2019



10 National Park Cameos in Movies

Jan 18, 2019



Preserving Our Past. Protecting Our Future.

DONATE

777 6th Street NW
Suite 700
Washington DC 20001-3723

800.NAT.PARK
800.628.7275

NEWS & RESOURCES

All News

All Resources

Blog

Magazine

ISSUES

- Air
- Climate Change
- Energy
- History & Culture
- Landscapes
- Park Funding
- Visitor Experience
- Water
- Wildlife

PARKS

- Alaska
- Mid-Atlantic
- Midwest
- Northeast
- Northern Rockies
- Northwest
- Pacific
- Southeast
- Southwest
- Sun Coast
- Texas

GET INVOLVED

- Take Action
- Attend an Event
- Travel
- Share Your Story
- Donate

GIVE

- Join
- Renew
- Monthly Giving
- Gift Memberships
- Memorial & Tribute Giving
- More Ways to Give
- Partner with NPCA
- Trustees for the Parks
- Estate Planning

ABOUT US

- Our Story
- Our People
- Our Values
- Regional Offices
- Our Accountability
- Board of Trustees
- Next Generation Advisory Council
- National Parks Legal Defense Fund
- Corporate Partners
- Careers

Follow Us

Subscribe to National Parks Magazine now ›

© 2019 National Parks Conservation Association

[Contact Us](#) [Privacy Policy](#) [501\(c\)\(3\) Status](#)