

The Groom Lake Desert Rat

"The Naked Truth from Open Sources."

Area 51/Nellis Range/TTR/NTS/S-4?/Weird Stuff/Desert Lore

An on-line newsletter.

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A Land Grab Argument

The Battle for Freedom Ridge will be coming to a head in the next few weeks when the local BLM office completes processing of the Air Force withdrawal application and submits it to Washington for a decision. A letter writing campaign could be effective now, but only if the letters focus on technical weak points in the application, not on the broader social implications of the withdrawal.

When we recently reviewed the application case file at the Las Vegas BLM office, we found it packed with passionate letters denouncing the withdrawal. The bulk of these made a government accountability argument: If the military closes the land, citizen oversight will be lost over the "nonexistent" Groom facility. Essentially, these letters are asking BLM and the Dept. of Interior to evaluate social priorities and defense needs and make a value judgment about what is most important.

No matter how compelling this kind of argument may seem to an average citizen, it probably won't go very far in the bureaucratic world. The Dept. of Interior isn't qualified to make judgments outside the realms of land use and environment impact. It cannot, for example, evaluate national security needs; it simply does not have the qualifications or resources in this area. If forced to make a value judgment about defense priorities, it will simply follow the recommendation of the only government entity that does have the resources and expertise--the Department of Defense.

More effective challenges are subtle procedural ones, which only a few people have presented so far. These require an understanding of how the system works and the sort of things that the Dept. of Interior is qualified to deal with. The most promising kind of challenge is to find a flaw in the application itself or the way it was processed. One could challenge the Environmental Assessment and show that it is somehow incomplete or inappropriate. One could look for inconsistencies between this land action and some obscure planning document. One could gum up the proceedings with FOIAs, appeals and nuisance lawsuits.

There are many possible procedural challenges, but the one that we find most appealing is elegantly simple. It appeals to common sense and does not stray far from the government-accountability issues that are our true motivation. To appreciate this argument, we must first understand the basic structure of our government and how this withdrawal fits in.

Fundamentals Of Government

There could be no more inept form of government than a pure democracy. Imagine a country where every national decision was put to a popular vote and every citizen was entitled to an equal say in everything their government did. Nothing would get done! There are too many decisions to be made, and no citizen has the time or interest to remain informed on all of them. In an ideal nation run by talk show hosts where each day's government policy was wired directly to public opinion polls, the mercurial whining, sentiment and hysteria of the audience would soon cripple every institution and bring to a halt all public services.

Thank God in our own semi-democratic society the people are kept at bay. Aside from occasional state referenda on isolated issues, the citizenry has the ultimate say in only a single kind of decision: that of who to elect to represent them for a given period of time. The people do not participate in every new law drafted by Congress; they are only empowered to choose senators and representatives who, once in office, are allowed to exercise their own personal judgment.

The people delegate to their congressional representatives the authority to make major decisions about their country's future, but Congress does not have the time to oversee every decision the government makes. Instead, it drafts the broad outline of what must be done, and then delegates to the Executive Branch the power to fill in the missing regulations and decide on specific actions within the law.

The Executive Branch of government is the massive bureaucracy that is charged with carrying out the laws and programs authorized by Congress. All the "public services" the government provides, including national defense and public land management, fall within this hierarchical structure. At the top of the organizational tree is the President. He is the manager we hire every four years to oversee the bureaucracy and make the thousands of day-to-day operating decisions that Congress couldn't be bothered with. The sheer volume of these decisions would overwhelm the man himself, so he hires a staff of specialized managers to handle specific areas. This is his Cabinet and the politically appointed cadre of undersecretaries, diplomats, federal attorneys and miscellaneous high-level bureaucrats. They all represent, in essence, the arms of the President. They are appointed by him, and he is ultimately accountable for their performance as they carry out the instructions of Congress.

Various laws and standards have evolved over the years to define which actions Congress must approve and which others can be left to Executive discretion. In the case of transfers of public land between government agencies, the boundary is specific: The Engle Act of 1958 decrees that congressional approval is required for new defense-related withdrawals of 5000 acres or more. Since the Freedom Ridge withdrawal is only 4000 acres, the decision about whether to approve it need not be referred to Congress.

The lingering question is, if Congress does not make the decision on this withdrawal, then who does? And on what basis do they make it? Is it possible that the decision HAS ALREADY BEEN MADE by the Executive Branch and that the application process is only a formality? Maybe NO ONE makes a decision: Is the mere fact that the Air Force has asked for the land sufficient reason for it to be granted?

Executive Power

BLM does not decide. It seems primarily concerned with processing the application itself. BLM is like the secretary in a college admissions office who receives applications in the mail, creates folders for them, verifies transcripts and collates SAT scores. The steps that BLM must follow are defined in excruciating detail in federal regulations and its own established procedures. It must require the completion of certain environmental reports--and officials agonize over which ones. It must collect public comments, and search through these for any possible environmental or land use implications. It must verify that the proposed action is consistent with land management framework plans and other obscure bureaucratic documents. Like the secretary in the admissions office, BLM can sideline the application if certain paperwork is not properly completed, but it does not make any judgment about the material it is processing. BLM's job is to prepare the case file for submission to a higher deciding authority.

According to Federal Code, "The Federal Land Policy and Management Act of 1976 (43 USC 1714) gives the Secretary of the Interior general authority to make, modify, extend or revoke withdrawals." In short, Secretary Bruce Babbitt is responsible for the final decision on the Freedom Ridge withdrawal. Babbitt is a political appointee of the President. He

exercises some of the President's discretion to make day-to-day operating decisions without referral to Congress.

Babbitt, it might appear, can do anything he wants. He does not have to obtain the approval of the American people or even the President before granting the withdrawal. It does not matter if his decision is unpopular. He is a manager who has been entrusted with the power to do these things, and managers have to upset people sometimes. He can weigh the pros and cons of an action and use his own judgment to decide what is best. His word is the final say.

In reality, though, Babbitt's discretion is much more constrained than it seems. He cannot make a decision, as we suggested in [DR#13](#), "by voodoo and sorcery, by studying the entrails of sacrificed animals." Only Congress can do that. As the nation's highest lawmaking body, Congress can make a decision for any reason it chooses, a prerogative it exercised in 1987 when it approved the 89,000 acre Groom Range withdrawal. Just because Congress accepted the vague reasons given by the AF back then does not mean that the same reasons are sufficient for the Secretary of the Interior now.

Unlike Congress, every Executive agency is constrained by a million different laws, rules and ethical guidelines. Because the Executive Branch has so much power that could be easily abused, enormous rule-making effort has been expended over the years in assuring that every decision made by an Executive agency at least APPEARS to be fair and objective. Hence all the explicit rules that BLM must follow when processing the withdrawal application. The aim is to assure that all the relevant evidence has been collected before the Secretary makes his decision. When he does make a decision, a lot of people are bound to be unhappy, and having followed the established guidelines allows the Secretary to claim that he was at least working from a solid base of data.

The Secretary is allowed to make unpopular decisions, but he cannot make ones that are "arbitrary and capricious"--that is, which are made without a basis in some sort of data. Fundamental to government ethics is the openness of that data. In accordance with this country's open records laws, any citizen should be able to inspect the same files and evidence that the Secretary bases his decision upon, at least to assure that there isn't some obvious conflict of interest or an error in the data. The Secretary has a right to make bad decisions or decisions that favor his political philosophy, but he cannot make decisions from a secret pool of information that is not available to the general public. If he does, he and his decision will be legally and politically vulnerable.

There are only a few exceptions to the openness requirement, and one of these is "national security." The Executive Branch regularly makes decisions based on classified information. If the U.S. invades Haiti, for example, how and when the invasion occurs will depend to a large extent on secret intelligence about defenses there. Because revealing the details of this data might jeopardize its source, the military need not make it public.

At first glance, the Freedom Ridge withdrawal might seem to fall into the same category. The existence of the Groom base is classified and its continued secrecy is--in the minds of the military--essential to national security. If the public release of any information about the base would, in military eyes, compromise the safety of the nation, it is possible that this information can be presented to the Secretary of the Interior in secret. Even though the public does not have access to this data, the Secretary can still use it as the basis for his decision.

Such a provision does indeed exist in the law governing withdrawals. According to 43 CFR 2300.1-2, the withdrawal application must specify....

"(7) The public purpose or statutory program for which the lands must be withdrawn. If the purpose or program for which the lands would be withdrawn is classified for national security reasons, a statement to that effect shall be included..."

Unfortunately, the Air Force failed to include that statement in its application. Their full and only written response to Item #7 is...

"(7) The purpose of the withdrawal is to ensure the public safety and the safe and secure operation of activities in the Nellis Range Complex."

If the Air Force had made the statement that the purpose was classified, then the Secretary could presumably make use

of classified information in his decision. The Air Force could present its case to Babbitt in secret; Babbitt could make his decision based upon it, and citizens who objected might be powerless to appeal.

However, as it stands, there is no hint in the application that there is any classified information or facilities involved. The Air Force can't have it both ways. It can't choose to pursue an open process and still expect the Secretary to consider classified information. The Air Force's position presented in the application is the same as it is in public: They know nothing about any classified facility, and even if it exists it has nothing to do with this withdrawal. Bound by ethical constraints to act only the data actually found in the application, the Secretary must respect the Air Force's public position and cannot consider the Groom Lake base at all.

The Burden Of Proof

This land, along with all other public lands in this country, has been designated by Congress for the purpose of "public multiple use." The public is ENTITLED to access to this land unless a solid case can be presented that some other purpose is more important. The decision of whether a certain military purpose is more important than public use is a discretionary judgment by the Secretary, but there still has to be a well-defined purpose, supported by some kind of data. The Secretary cannot simply rubber-stamp whatever request the Air Force makes; that would be "arbitrary and capricious." He has to make a real, active decision about whether this withdrawal makes sense, and he has to make it based on the public information actually presented in the application.

Has the Air Force presented a strong case to justify its need for this land? Has it presented a compelling set of data? What evidence has the Air Force presented that the "public safety" is currently at risk? The Air Force has not presented even a SINGLE INCIDENT where a person's safety has been placed in danger by visiting those hills. If the Air Force has other definitions of "public safety" in mind, it has not presented any data in support of these either.

What evidence has the Air Force presented that leaving the land public jeopardizes the "safe and secure operation of activities in the Nellis Range Complex"? The most informative statement in this regard was made by Col. Bennett at the Caliente hearing:

"When someone is on White Sides and other nearby areas, altitude and route changes have to be made by aircraft to avoid harming people and to prevent disclosure of operational matters. Some missions have to be delayed or canceled. This impacts the effective use of the Nellis Range Complex."

This could indeed be a valid argument for the withdrawal if it was backed up by concrete examples. Unfortunately, the Air Force has not been able to produce even a SINGLE CASE where some flight was delayed or rerouted due to visitors being on the ridge. It has not even presented a POSSIBLE case where a flight might be so affected in the future.

In short, the Air Force has presented no data whatsoever. In support of its application, the AF has submitted only some vague and general arguments about the importance of a strong national defense and the value of the Nellis Range in training pilots. It has presented only empty words, expressing noble emotions but conveying no information. It seems to have assumed the role of defendant who is "innocent until proven guilty," who need present no argument in his defense as long as the prosecution can't prove its case against him "beyond a reasonable doubt." No opponent has been able to prove that the withdrawal will have a significant environmental impact. It won't. No opponent has been able to prove that the Air Force's reason for withdrawing the land is NOT valid--but that's because the AF has presented no specific argument that could be refuted. The Air Force is playing coy and pretending that the responsibility is on the citizen to prove it wrong, when, in fact, the burden is the other way around.

Is the Air Force entitled to any block of public land simply because it asks for it? The logical answer has to be no. If it can take the Freedom Ridge parcel without a supported reason, THEN IT CAN TAKE ANY 5000 ACRE PARCEL ANYWHERE IN THE COUNTRY. If the military takes only one or two blocks of land in each Western state, the total could amount to over 100,000 acres in aggregate, and the taking doesn't have to stop there. By attaching a variety of different nonsense reasons to Item #7 of the applications, the Air Force could conceivably withdraw ALL PUBLIC LANDS IN THE COUNTRY, without the approval of Congress and without being required to provide any evidence of

need.

Why the AF wants the land is no mystery to the world: It wants to keep visitors off the viewpoints that overlook its unacknowledged Groom Lake base. It feels that sensitive operations at the base would be jeopardized if their existence is made public. This may indeed be a valid and supportable reason, but it has never been presented. The Secretary of the Interior and his staff have probably read the many news reports about Groom Lake and from this have a good idea why the military wants the land, but as far as the application is concerned, this is only unconfirmed rumor and hearsay--no more admissible here than in a court of law. If the AF wants the problems of the Groom Lake base to be considered in the Secretary's decision, it must present this data explicitly. The Secretary of the Interior cannot be required to "read minds," and his ethics are suspect if he does. If he chooses to rely, without public notice, on secret data the public cannot challenge, he has stepped outside the boundaries of his authorized discretion.

If the Air Force had presented almost ANY plausible data in support of the application, then the Secretary could cite it as a basis for his decision, and the withdrawal could go through. With no evidence at all presented, the Secretary cannot possibly approve the withdrawal without seeming "arbitrary and capricious"- -doing it only because the Air Force asked. Logically, he has no choice in the matter, and no value judgment is involved: The withdrawal application cannot be approved as it stands now.

What Now?

About a month from now, in mid-Sept., the Las Vegas BLM office is expected to issue its findings in the limited areas it is qualified to evaluate. It will probably conclude that this withdrawal presents no significant environmental or land use impacts. If this were a less contested action, we sense that the "No Significant Impact" finding would have been the equivalent of an approval recommendation. The state and national BLM directors would have rubber-stamped the application, and Babbitt would have authorized the withdrawal with little more than a cursory examination of what he was signing.

We don't want that to happen in this case. "No Significant Impact" does not imply that the decision-making process is over. It has, in fact, only just begun. We want to make it clear to Babbitt that a real decision now rests on his shoulders. Normally, the application would likely be approved, because that's the easiest thing for the Secretary to do. Not approving it could create inter-agency tensions and internal dissent within the Cabinet. To counteract this natural tendency toward approval, we must make sure there is equivalent pressure from the outside to hold back. We want Babbitt to understand that approving the application as it is will create political tensions and legal burdens from outside the Executive Branch that will fall squarely on Interior, not on the Air Force where they belong.

Through its own bad decisions about how to handle Area 51, the Air Force has painted itself into a corner. Scandals are brewing here that could drag on for years, and the AF has placed itself in a position where it cannot adequately defend itself. It has trapped itself into supporting an absurdity, and its public relations and congressional rapport may suffer as a result. If Interior approves the application, it will, in effect, be volunteering to share the Air Force's burdens. It, too, must defend the absurdity, and it could be vulnerable for its decision in ways that the Air Force isn't. Handling the inevitable protests and appeals and justifying its action to the press and members of Congress could soak up valuable resources that are needed to fight Interior's own battles. Interior has no interest in secret bases. It is preoccupied with contentious land reform battles in the West, and this tiny but highly publicized withdrawal only fans the flames and makes it harder to get things done.

Where To Write

There's no sense wasting any more of your toner cartridge on BLM. The most effective pressures on Babbitt cannot come from below, they have to come laterally, from the only people who can make the Secretary sweat. Now is the time to write to some key senators and congressmen.

Maybe you've written to them before. Each member of Congress must receive dozens or hundreds of letters a day, most

of which probably generate a courteous reply and then are promptly filed in the "Wacko" bin. Most letters are ignored because most people don't make realistic requests. If the letters received by BLM are any gauge, most are rambling, impassioned harangues without a clear goal and with little understanding about the political process and what it is the recipient can act upon.

The most effective letters to Congress focus on a simple, well- defined problem and request a specific action from the congressman that he can reasonably carry out. In this case, it is probably not productive to dwell on government accountability, defense priorities or other complicated issues. Don't ask the congressman to try to reform the military; that is unrealistic. Keep your letter short, courteous and very limited in scope, something like this...

"Dear Representative Smith,

"I am concerned about the pending Air Force land withdrawal at Groom Lake, Nevada, and its implications for military land use in our own state. The military may indeed be justified in taking this land, which overlooks their secret air base. My main concern is the vague and unsubstantiated purpose they have given for this withdrawal: 'For the public safety and the safe and secure operation of activities.' I am worried that if the military is granted this land for this vague reason, then it could easily expand its bases in our state in the same manner, without having to demonstrate need.

"Interior Secretary Babbitt will be making a decision on the withdrawal within the next few weeks. The military is pressuring the Dept. of Interior to approve the current application without change. I hope that you can contact Babbitt's office as soon as possible to apprise yourself of the situation. We must be sure that this withdrawal is approved only within the bounds of established ethical guidelines and reasonable expectations of proof."

If you live in a Western state, where most public lands are located, the dangers of unsubstantiated military withdrawals should be of direct interest to your congressman. If you live in an Eastern state, your congressman will probably be indifferent. In that case, it is better to write to the members of congressional land use committees.

The addresses for senators and representatives are...

The Honorable John Q. Smith
U.S. Senate
Washington, DC 20510

("Dear Senator Smith...")

The Honorable Jane R. Smith
U.S. House of Representatives
Washington, DC 20515

("Dear Representative Smith...")

Most members of Congress also maintain offices in the major cities of your state. Look up their name in the phone book for that address, then send your letter to both.

The address for the land use committees and the person to address are...

Subcommittee on Public Lands,
National Parks and Forests
SD-308 Dirksen Senate Office Building
Washington DC 20510

Chairman: Senator Dale Bumpers

Subcommittee on National Parks,
Forests and Public Lands
812 O'Neill House Office Bldg.
Washington, DC 20515

Chairman: Representative Bruce F. Vento

Here are some guidelines for an effective letter:

- Write to your OWN senators and congressman first, at least if you live in a Western state. Letters to out-of-state representatives are less effective, since they don't need your vote.
- Be courteous and observe the polite forms of address.
- Remember that your letter will be read by a tortured aide who is required to read dozens of others. To be noticed among all that rambling verbiage, the letter must be short and concise. IT SHOULD NOT EXCEED ONE PAGE.
- Do not express anger or outrage; it won't get you anywhere. Stick to the facts, and don't offer anything more than "concern."
- Make your comments specific to the person you are writing to. Point out how this land use case will directly affect his state. If you live in a Western state, you could mention a specific base within your state that might be expanded if the military is given carte blanche.
- Do not attack the military. Members of Congress generally support the military and tend to tremble and fold whenever the term "national security" is used. Don't bother with government accountability arguments either; they will only clog up your letter and dilute your message. Stick with this one specific land use problem.
- Do not ask your representative to tell Babbitt what to do. You are asking only that he "look into" the situation to be sure the proper procedures are followed. The withdrawal application is naturally weak and could fall apart on its own if only we can get enough eyes looking at it. If we draw enough congressional attention to this one simple issue, then they could catch on to the more complex accountability problems as well.

After you write to your own congressional delegation or the subcommittee chairman (or both), it doesn't hurt to write directly to Babbitt...

The Honorable Bruce Babbitt
Secretary of the Interior
Dept. of the Interior
1800 "C" St., NW
Washington, DC 20240

(Dear Secretary Babbitt...)

If you wish, you can contact us for a list of the individual members of the land use committees, who might also warrant a letter.

Intel Bitties

CAMPBELL ARRAIGNMENT DELAYED. Glenn Campbell's arraignment on obstruction charges has been postponed by the county District Attorney from Aug. 3 to Aug. 24. Campbell was arrested on July 19 for interfering in the warrantless seizure of a news crew's videotapes. KNBC-TV of Los Angeles still has not received their tapes back, although they insist they did not photograph the secret base. Campbell says he will plead "absolutely one hundred

percent not guilty," and he has already requested a jury trial.

AUG. 27-28 OUTING. The FREEDOM RIDGE/TIKABOO PEAK FREE- SPEECH ENCAMPMENT, as mentioned in [DR#13](#), is going ahead as proposed. It will be held Sat. and Sun., Aug. 27-28. (For those who cannot make it on this date, a similar event may also be held Sept. 3-4.) A notice about the camp-out has already been sent to DR subscribers, and detailed instructions will be sent out by email in a day or two. (Others may request this document by fax or mail.) The general plan is to meet at the Freedom Ridge trailhead at noon on Saturday, then spend the night on Freedom Ridge. On Sunday, there will be a optional hike to Tikaboo Peak, the more distant viewpoint that the AF isn't touching. An optional protest will also take place: Participants are invited to bring "cameras" to point at the base, although film is optional. The camp-out on Freedom Ridge does not require a lot of gear. All you really need is a sleeping bag, a ground cover and enough food and drink to last a day. More details will be provided in the instruction document.

[\[Later report on event in DR#15\]](#)

A GROOM PLAGUE? According to an article in the Aug. 9 Las Vegas Review-Journal, a sheet metal worker for the EG&G subsidiary REECo recently contracted hantavirus syndrome at an unspecified AF facility within the "Nellis Air Force Range Complex" in Lincoln County. It is apparently the first such case in Southern Nevada. Not to be confused with the popular FLESH EATING BACTERIA, hantavirus is the deadlier but less colorful disease that was first recognized on Indian reservations and that has killed 42 people so far. The virus is transmitted by contact with the saliva, urine or droppings of infected rodents. Makes you wonder: Could we have a bit of a SANITATION PROBLEM down there at the unspecified facility?

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