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11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

16 JACK GESCHEIDT,  
LAURA CHARITON,  
17 SKYLER THOMAS,  
and ANIMAL LEGAL DEFENSE FUND,

18 Plaintiffs,

19 v.

20 DEB HAALAND, Secretary of Interior,  
21 SHAWN BENGE, Acting Director  
National Park Service, and  
22 CRAIG KENKEL, Superintendent,  
Point Reyes National Seashore,

23 Defendants.  
24

Case No. 21-4734

COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF

**INTRODUCTION**

1  
2           1.       Plaintiffs challenge the National Park Service’s failure to revise the 1980 General  
3 Management Plan for the Tomales Point portion of the Point Reyes National Seashore, where  
4 approximately 293 Tule elk live confined behind an eight-foot-high fence that was erected  
5 decades ago to prevent the elk from competing for forage and water with the cattle that are  
6 permitted by the Park Service to graze on the park land outside the fence. For many years now,  
7 due to climate change and other factors, the drought conditions in this area have become  
8 extremely dire and, as a consequence, the elk—who were re-introduced in this area and are  
9 required by law to be protected—have been unable to obtain access to sufficient food and water  
10 to survive and are dying by the dozens of dehydration and/or starvation. **Last year,**

11 *approximately 152 more elk—more than a third of the total Tomales Point elk population of*  
12 *445—died.* During the previous drought, 183 elk died in 2013 and another 71 elk died in 2014.

13           2.       Plaintiffs also challenge the failure of the Park Service to update and revise the  
14 1998 Tule Elk Management Plan, mandated by Congress in 1976 “for Tule elk restoration and  
15 conservation,” 16 U.S.C. § 673g (2018), “to provide for the protection of the elk.” 1998 Tule Elk  
16 Management Plan and Environmental Assessment.

17           3.       Plaintiffs further challenge recent decisions by the Park Service not to remove any  
18 portion of the Tomales Point fence that is preventing the elk from accessing adequate food and  
19 water, as well as the Park Service’s decision not to provide the elk with any supplemental food,  
20 and its very recent decision to provide water to some, but not all, of the elk at Tomales Point—in  
21 other words, its decision to continue to allow this protected wildlife to die of starvation and  
22 dehydration.

23           4.       As a result of the Park Service’s failure to revise these two relevant management  
24 documents, and its decisions not to undertake measures to ensure that the elk are provided  
25 adequate food and water, this precious natural resource, one that millions of visitors come to the  
26 Point Reyes National Seashore to observe and enjoy, is dying a slow and horrific death that could  
27 be prevented.



1 result of Defendants' unlawful actions, Mr. Gescheidt has personally seen an elk at Tomales Point  
2 who was dying of either starvation or dehydration—an experience that causes him great anguish  
3 and aesthetic injury. In an effort to aid the elk, Mr. Gescheidt has tried to bring them  
4 supplemental water so that they will not continue to die such horrific deaths, but the Park Service  
5 confiscated the water and refused to let him, and others, bring water to the elk.

6 10. Defendants' unlawful actions as described herein are depriving Mr. Gescheidt of  
7 the ability to enjoy Tomales Point in the manner in which he has been accustomed to in the past,  
8 causing him much emotional and aesthetic injury. He is now faced with the untenable decision to  
9 either continue visiting this area and risk seeing dead or dying elk or refrain from visiting this part  
10 of the park that he so loves.

11 11. Mr. Gescheidt's injuries will be redressed if Plaintiffs prevail in this action  
12 because it will mean that the Park Service will have to revise the 1980 General Management Plan  
13 with respect to Tomales Point and figure out how to manage the elk in a *humane* way that does  
14 not result in this wildlife continuing to die horrific and painful deaths from starvation and  
15 dehydration. Should Plaintiffs prevail in this action, Mr. Gescheidt will again be able to visit his  
16 beloved Tomales Point and the elk who live there without seeing them, or being confronted with  
17 the possibility of seeing them, in such inhumane conditions.

18 12. Plaintiff Laura Chariton, also a resident of California, has been visiting the Point  
19 Reyes National Seashore since 1974 and would like to continue to do so. She uses Tomales Point  
20 for recreational, educational, and aesthetic enjoyment, and very much enjoys observing the Tule  
21 elk who live there. She so loves Tomales Point that she and her husband celebrate important  
22 events in their lives there, including her birthday, which she has celebrated in the park with  
23 friends for many years. She loves the Tule elk and loves observing them in their natural state. She  
24 is so enamored of the elk that for many years she served as a Tule elk docent on behalf of the  
25 National Park Service, teaching visitors about the biology, ecosystems, and lives of the Tomales  
26 Point elk. Unfortunately, because she loves this area and the elk who live there, Ms. Chariton has  
27 also recently personally observed elk who were emaciated and dying from a lack of food and  
28 water – a sight that haunts her every single day.

1           13.     The Park Service’s failure to revise the 1980 General Management Plan for this  
2 portion of the Seashore, its failure to update the 1998 Elk Management Plan, and its decisions to  
3 deny the elk access to adequate food and water injures Ms. Chariton’s aesthetic and recreational  
4 interests because the Park Service is failing to manage the elk in a way that ensures their  
5 protection and survival, and its decisions therefore mean that the elk will continue to suffer  
6 horrible deaths from starvation and dehydration. To avoid these injuries, Ms. Chariton is faced  
7 with the untenable decision to either forgo visiting her beloved Tomales Point or continue to go  
8 there and be subjected to the horrific scene of elk either dying or dead from a lack of food and  
9 water because they cannot get past the fence that the Park Service maintains on the southern  
10 border of their habitat.

11           14.     Ms. Chariton’s injuries will be redressed if Plaintiffs prevail in this action because  
12 it will mean that the Park Service will have to revise the 1980 General Management Plan with  
13 respect to Tomales Point and devise measures for managing the Tule elk in a *humane* way that  
14 does not result in the elk continuing to die horrific and painful deaths from starvation and  
15 dehydration. Thus, Ms. Chariton will again be able to visit Tomales Point and the elk who live  
16 there without fear of seeing them in such inhumane conditions.

17           15.     Plaintiff Skyler Thomas is a resident of California. He is a wildlife photographer  
18 and videographer. He has been visiting the Point Reyes National Seashore, and specifically  
19 Tomales Point, on a regular basis since 2016, and would like to continue to do so. He enjoys  
20 hiking there and taking photographs and videos of the wildlife, particularly the Tule elk. He is  
21 spiritually inspired by Tomales Point and has fallen in love with this beautiful place and the elk  
22 who live there. Unfortunately, because he so frequently visits the area, he has also recently been  
23 confronted with the sight of elk dead from a lack of water and forage. Through no effort on his  
24 own to see such carnage, he has already personally seen as many as fifteen emaciated dead elk—  
25 an experience that horrifies him and a sight that he cannot get out of his mind. Because of this  
26 situation, he is now faced with the deplorable choice of either refraining from visiting this area  
27 that he loves so much to avoid again seeing dead or dying elk or continuing to go there only to be  
28 confronted with these horrible scenes.

1           16. Mr. Thomas’ aesthetic, recreational, and photographic injuries are being greatly  
2 impaired by the Park Service’s unlawful actions as described herein because the Park Service is  
3 failing to manage Tomales Point and the elk who live there in a way that does not cause them  
4 such suffering.

5           17. Mr. Thomas’ injuries will be redressed if Plaintiffs prevail in this action because  
6 this will mean that the Park Service will have to revise the 1980 General Management Plan with  
7 respect to Tomales Point and figure out how to manage the Tule elk in a *humane* way that does  
8 not result in the elk continuing to die horrific and painful deaths from starvation and dehydration,  
9 and Mr. Thomas will again be able to visit Tomales Point and the elk who live there without the  
10 fear of seeing them in such inhumane conditions.

11           18. Plaintiff Animal Legal Defense Fund (“ALDF”) is a national nonprofit animal  
12 protection organization founded in 1979 and headquartered in Cotati, California. ALDF uses  
13 education, public outreach, legislation, and litigation to protect the lives and advance the interests  
14 of animals, including the Tule elk who live in Tomales Point at Point Reyes National Seashore.  
15 ALDF has more than 300,000 members and supporters nationwide, including members who  
16 reside in Marin County, California. Since 2018, ALDF has advocated for sound management of  
17 the Tule elk. The organization and its members and supporters have provided public comment on  
18 numerous issues related to captive elk within the Point Reyes National Seashore, and in 2020,  
19 ALDF members and supporters urged the National Park Service to provide food and water to the  
20 captive Tule elk at Tomales Point.

21           19. ALDF members, supporters, and staff derive substantial recreational, aesthetic,  
22 and conservation benefits and enjoyment from visiting Tomales Point, and observing the Tule elk  
23 who live there, and would like to continue to engage in all of these activities. However, their  
24 aesthetic and recreational interests in enjoying this part of the National Seashore, and especially  
25 the Tule elk, are greatly impaired by Defendants’ unlawful actions as described herein, because  
26 those actions are causing Tule elk at Tomales Point to live in inhumane conditions and to die of  
27 starvation and dehydration because they cannot obtain access to adequate food and water.  
28



1           25.     As to its duty to leave the wildlife in national park units “unimpaired” for the  
2 enjoyment of future generations, the Park Service defines “impairment” as an impact that “would  
3 harm the integrity of park resources or values, including the opportunities that otherwise would be  
4 present for the enjoyment of those resources or values.” 2006 NPS Management Policies, § 1.4.5.

5           26.     Even where resources and values are not at risk of impairment, the Park Service  
6 must fulfill the “fundamental purpose” of the National Park System, which is “to conserve park  
7 resources and values” and provide “for the enjoyment of park resources and values by the people  
8 of the United States.” 2006 NPS Management Policies § 1.4.3. When a conflict arises between  
9 “conserving resources and values and providing for enjoyment of them, conservation is to be  
10 predominant.” *Id.*

11           **B.     Point Reyes National Seashore**

12           27.     In 1962, Congress enacted legislation to create the Point Reyes National Seashore  
13 as part of the National Park System “to save and preserve, for purposes of public recreation,  
14 benefit, and inspiration, a portion of the diminishing seashore of the United States that remains  
15 undeveloped . . . .” Act of September 13, 1962, Pub. L. No. 87-657, 76 Stat. 538 (1962) (codified  
16 at 16 U.S.C. § 459c *et seq.* (2018)) (the “Point Reyes Seashore Act”).

17           28.     The Point Reyes Seashore Act authorized the Secretary of the Interior to acquire  
18 the lands, waters, and other property within the bounds of Point Reyes Peninsula in Marin  
19 County, California. The statute further provided that “the property acquired by the Secretary . . .  
20 shall be administered by the Secretary without impairment of its natural values, in a manner  
21 which provides for such recreational, educational, historic preservation, interpretation, and  
22 scientific research opportunities as are consistent with, based upon, and supportive of the  
23 maximum protection, restoration, and preservation of the natural environment within the area.”  
24 *Id.*

25           29.     On October 20, 1972, the Park Service officially established the Point Reyes  
26 Seashore. Point Reyes National Seashore, Calif., 37 Fed. Reg. 23,366 (Oct. 20, 1972).

27           30.     This National Seashore is located on a coastal peninsula in Marin County,  
28 California, encompassing approximately 71,000 acres and 80 miles of coastline. It is surrounded



1 by the Pacific Ocean on its north, west, and southwest sides, and Tomales Bay on a portion of its  
2 east side, including Tomales Point. It contains stunning and diverse landscapes, including rolling  
3 grasslands, forests, sandy and rocky beaches, and coastal cliffs. Its natural resources are among  
4 the most geologically and ecologically diverse in the National Park System.

5 **C. Preservation of the Tule Elk**

6 31. Tule elk are majestic ungulates endemic to California. For centuries, they freely  
7 roamed the Point Reyes Peninsula until they were extirpated from the area by the mid-nineteenth  
8 century by uncontrolled hunting and removal from their natural habitat to accommodate private  
9 livestock ranching.

10 32. The elk are mixed grazers and browsers—i.e., they feed on both ground-level  
11 herbs and grasses and on woody shrubs and trees. Their life expectancy is approximately 8-12  
12 years, but they can live much longer, and they give birth to their young between April - June.

13 33. In 1976, Congress declared that “the protection and maintenance of California’s  
14 tule elk in a free and wild state is of educational, scientific, and esthetic value to the people of the  
15 United States,” and therefore required the Secretary of the Interior to “develop a plan for the Tule  
16 elk restoration and conservation, including habitat management,” and to make land under the  
17 jurisdiction of the Secretary “reasonably available for the preservation and grazing of Tule elk,”  
18 16 U.S.C. §§ 673e, 673g (2018) (“the Tule Elk Statute”). Congress also designated more than  
19 33,000 acres encompassing forests, grasslands, beaches, and coastlines as wilderness and  
20 potential wilderness. *Id.*

21 34. In furtherance of these objectives, in 1978, the California Department of Fish and  
22 Wildlife took ten tule elk from an existing heard in the San Luis National Wildlife refuge and  
23 placed them in a small, 2600 acre preserve at the northern end of the Seashore called Tomales  
24 Point.

25 35. Although initially the reintroduced population of elk failed to thrive, the elk  
26 population increased dramatically after the existing cattle were removed from Tomales Point, and  
27 the comeback of the elk was heralded by the Park Service as a stunning wildlife reintroduction  
28 success.

1           36.     Those elk dispersed, and today, there are four herds of fenced-in Tule elk at  
2 Tomales Point (the North Herd, Plateau Herd, White Gulch Herd, and South Herd). The Park  
3 Service manages two additional free-roaming herds in the Limantour and Drakes Beach areas at  
4 the Seashore.

5                     **D.     The 1980 General Management Plan**

6           37.     In 1978, Congress also enacted legislation requiring the National Park Service to  
7 prepare and revise general management plans for the preservation and use of all national parks  
8 and other lands within its jurisdiction. National Parks and Recreation Act of 1978, Pub. L. 95-  
9 625, § 604(3), 92 Stat. 3518. Congress has since affirmed that such “[g]eneral management plans  
10 for the preservation and use of each System unit . . . shall be prepared and revised *in a timely*  
11 *manner* by the Director.” 54 U.S.C. § 100502 (2018) (emphasis added).

12           38.     The statutory requirement that the Park Service revise all General Management  
13 Plans applies to all portions of the Point Reyes National Seashore.

14           39.     A General Management Plan (“GMP”) “shall include,” *inter alia*, “measures for  
15 the preservation of the area’s resources.”

16           40.     Park Service Management Policies explain that to comply with Congress’s  
17 directive that such plans be revised “in a timely manner,” such plans will be prepared and revised  
18 “to keep them current,” and that, accordingly, the Park Service will review a GMP “every 10 to  
19 15 years” or “sooner if conditions change significantly.” 2006 NPS Management Policies §  
20 2.3.1.12.

21           41.     In 1980, the Park Service issued a GMP for the National Seashore that established  
22 general management objectives and strategies for future management of the Seashore. The 1980  
23 GMP states that “[r]estoration of historical natural conditions (such as reestablishment of Tule  
24 elk) will continue to be implemented when such actions will not seriously diminish scenic and  
25 recreational values.”

26           42.     In 1980, pursuant to a Memorandum of Agreement with the California Department  
27 of Fish and Game, the Park Service erected a three-mile long, eight-foot high woven-wire fence  
28

1 along the southern border of Tomales Point to separate the elk from 18,000 acres of Seashore  
2 lands south of the fence where the Park Service permitted livestock ranchers to graze their cattle.

3 **E. The 1998 Elk Management Plan**

4 43. In 1982, the Park Service issued an Interim Tule Elk Management Plan, pending  
5 completion of the final Management Plan required by the Tule Elk statute. The Interim Plan  
6 stated that the Park Service planned to “[r]e-establish a healthy, tule elk population on a range  
7 which has returned to a natural successional regime as if elk were always present.”

8 44. In 1998, the Park Service issued its final Tule Elk Management Plan. The purpose  
9 of the Plan was to “guide management, monitoring, and research of the tule elk.” The Park  
10 Service explained that the Plan was needed “to provide for the protection of the elk that is  
11 consistent with scientifically sound principles, takes into account the interests of the public, and  
12 meets the objectives for which the Seashore was established.”

13 45. In the 1998 Elk Management Plan, the Park Service observed that elk help reduce  
14 fires by eating grass and shrubs and have a positive impact on vegetation.

15 46. The Park Service further explained that because “Tule elk play an important role in  
16 the function of the Seashore ecosystem[,]” the Plan’s principal “mission” was to “[a]daptively  
17 manage elk as a natural component of the dynamic ecosystem of Point Reyes.” Toward that goal,  
18 a second “mission” of the Service was “[m]aintenance of the remaining genetic diversity . . . as an  
19 important objective for elk preservation.”

20 47. The Service’s stated management “goals” therefore included maintaining “viable  
21 populations of tule elk at Point Reyes,” noting that “[a] healthy herd is one that does not suffer  
22 disease or mortality due to artificially induced or human caused impacts.”

23 48. The Service stated that another goal was to “[m]anage tule elk using minimal  
24 intrusion to regulate population size, where possible, as part of natural ecosystem processes.”

25 49. The Service explained that if the Tule elk at Tomales Point “are to remain as part  
26 of the Seashore’s fauna and ecological processes, they should eventually become free-ranging  
27 throughout most of the Seashore’s natural zones where conditions allow,” and hence another  
28 stated goal of the 1998 Management Plan was to “[p]rovide for a free-ranging elk herd by 2005.”

1           50.     When the 1998 Plan was issued by the Park Service, there were approximately 465  
2 elk in the Tomales Point herd. However, the Park Service was already concerned about the  
3 genetic viability of the Tule elk population at Tomales Point, explaining that it already had the  
4 “lowest level of genetic variation” of all the tule elk herds in the state. The agency acknowledged  
5 that if the population were reduced too much this could further impair genetic diversity and lead  
6 to inbreeding. To address this concern, the Park Service recommended the addition of 2-3 female  
7 elk every elk generation to maintain genetic variation within the population, and further  
8 recommended that the first addition of new elk “should be made as soon as possible.”

9           51.     On information and belief, the Park Service has never brought in any new elk to  
10 Tomales Point since 1978.

11           52.     The 1998 Plan explained that NPS “policy” is to “maintain wild populations [of  
12 elk] within natural habitats,” and that “maintaining captive herds for the enjoyment of visitors”  
13 was anathema to this policy.

14           53.     Noting that the total elk population at Point Reyes could grow to 1000 before  
15 carrying capacity was reached, the Service proposed an interim population of 350-450 elk at  
16 Tomales Point and stated that the agency would consider using immunocontraception to control  
17 the population should it begin to exceed that number. Indeed, the Park Service explained that the  
18 public was very much opposed to reducing the population by killing the elk by public hunting or  
19 agency sharpshooters, and that “[t]he preferred technique to limit growth is  
20 immunocontraception, which allows treated individuals to breed after contraception is stopped.”

21           54.     In the 1998 Plan, the Park Service also acknowledged that removing or opening  
22 the fence at Tomales Point would allow the existing elk herd to disperse, and that any impairment  
23 to the elk habitat from cows could be reduced by installing elk gates or fence openings designed  
24 to allow passage of elk, but not cattle.

25           55.     In the 1998 Plan, the Park Service also considered relocating the existing fence  
26 further south to provide more useable habitat for the elk at Tomales Point.

27           56.     The Park Service further acknowledged that it could reduce or eliminate ranching  
28 permits under its existing authorities and observed that removal of the fence that restricted the

1 movement of the elk would be considered if the Service eliminated ranching on the adjacent  
2 lands.

3 57. When the 1998 Elk Management Plan was issued, the Park Service stated that it  
4 had decided to “maintain the elk fence at Tomales Point and continue to separate tule elk from  
5 cattle.” The Park Service further stated that it will “continue monitoring tule elk and their  
6 environment to analyze trends and better understand tule elk population dynamics and ecology at  
7 Point Reyes,” and that “[t]he control of the Tomales Point elk population will be attempted  
8 through management techniques of contraception and relocation.”

9 58. On information and belief, the Park Service has not managed the Tomales Point  
10 elk population with contraception and/or relocation.

11 59. The Park Service has never updated or revised the Tule Elk Management Plan.

12 **F. Additional Facts Giving Rise to Plaintiffs’ Claims**

13 60. The National Seashore is the only National Park System unit where Tule elk can  
14 be seen, and their presence at the National Seashore is treasured by visitors, photographers,  
15 naturalists, and locals alike. Their image has been expressed in the local folk art, as well as  
16 numerous local and nationally published photographs.

17 61. However, the Tomales Point fence prevents the Tule elk who live on the north side  
18 of the fence from roaming to other areas of the National Seashore to find food/forage and water.

19 62. During a drought in 2013-2015, roughly half of the Tomales Point Tule herd—  
20 approximately 257 of the 540 elk—died from the lack of adequate forage and water and the elks’  
21 inability to get past traverse the fence on the southern border of their range, yet not one dairy cow  
22 on the other side of the fence was reported to have died from lack of water or forage. At the time,  
23 the Park Service denied to the public that the elk fence and lack of water played any role in this  
24 massive die-off of elk.

25 63. In 2016, a coalition of environmental organizations brought a lawsuit challenging  
26 the Park Service’s failure to issue a new or revised General Management Plan for the Point Reyes  
27 Seashore. *Res. Renewal Inst. et al. v. Nat’l Park Serv. et al.*, No. C 16-0688 SBA, 2016 WL  
28 11673179 (N.D. Cal. July 15, 2016). The parties settled that lawsuit with the Park Service

1 agreeing to issue an amendment to the 1980 General Management Plan that addressed and  
2 analyzed the environmental impacts of continuing to allow livestock grazing at the Seashore. The  
3 settlement agreement does not specifically address the Tule elk who live at Tomales Point.

4 64. Meanwhile, during the summer of 2020, the public became extremely concerned  
5 that drought conditions were once again causing the Tule elk at Tomales Point to die from lack of  
6 forage and water because, again, the elk cannot obtain access to forage and water on the other  
7 side of the eight-foot-high fence on the southern boundary of Tomales Point. Members of the  
8 public, including Plaintiffs, began to see emaciated and dying elk at Tomales Point, and urged the  
9 Park Service to take emergency measures to ensure that the elk were provided access to water.

10 65. Again, as during the 2013-2015 drought, the Park Service denied to the public that  
11 the elk were dying from a lack of water and insisted that there were adequate sources of water on  
12 the north side of the fence.

13 66. However, members of the public knew this was not true, because they had  
14 evidence that many of those water sources had gone dry. Therefore, some individuals, including  
15 some of the Plaintiffs, began a concerted effort to bring water to the elk on their own by carrying  
16 troughs and large containers of bottled water to several locations on Tomales Point. However, the  
17 Park Service prohibited the public from doing so by confiscating and removing these sources of  
18 water and continued to insist to the public and the media that the elk at Tomales Point had  
19 adequate access to water.

20 67. On August 31, 2020, an environmental group sent a letter to the Park Service,  
21 requesting that it take all necessary actions to carry out its legal and moral responsibilities to  
22 ensure that the elk who live on the Tomales Point peninsula have access to sufficient water to  
23 prevent them from dying. It explained that if the Park Service refused to do so it would be in  
24 contravention of its statutory duties to “conserve” this legally protected wildlife as required by the  
25 NPS Organic Act.

26 68. The four elk herds at Tomales Point depend on particular stock ponds located there  
27 to survive. The August 31, 2020, letter to the Park Service included evidence from people  
28

1 monitoring the area, including photographs taken at the time, demonstrating that these ponds were  
2 seriously depleted as follows:

3 **The North Herd:** As to the two ponds normally available to the Elk, North Pond I  
4 was completely dry; North Pond II has some water but was way below capacity.

5 **The Plateau Herd:** As to the two ponds normally available to this herd, Central Pond I  
6 was completely dry, and Central Pond II was very close to dry.

7 **The White Gulch Herd:** There do not appear to be any ponds available to this herd,  
8 and whether the seep normally used by this herd (that drains toward the Tomales Bay) was  
9 running was not ascertainable.

10 **The South Herd:** The two ponds normally used by this herd—South Pond I and  
11 South Pond II—were completely dry and had been for a while.

12 69. There is essentially no movement of individual elk from one herd crossing into  
13 the adjacent herd's home range. Cobb, McCrea, *Spatial Ecology and Population Dynamics of*  
14 *tule elk (Cervus elaphus nannodes) at Point Reyes National Seashore, California,*  
15 <https://escholarship.org/uc/item/2wt3h3rc>.

16 70. In September 2020, pursuant to the settlement reached in the prior case, the Park  
17 Service issued an Amendment to the 1980 GMP for the National Seashore. However, the Park  
18 Service asserted that “[t]he fenced elk population on Tomales Point is outside the planning area”  
19 for that Amendment. In other words, the new Amendment to the GMP, scheduled to become  
20 effective on or before July 14, 2021, does not address the Tomales elk and the fact that they are  
21 dying of starvation and dehydration from a lack of forage and/or water.

22 71. The Park Service states on its website that the Tule elk at Tomales Point are not  
23 considered as part of its Amendment to the General Management Plan.

24 72. Meanwhile, in the spring of 2021, the Park Service acknowledged that  
25 approximately 152 more Tule elk died during 2020 due to the fact that the elk cannot go beyond  
26 the artificial fence for sustenance.

1           73.     The only necropsies of elk that the Park Service have released to the public  
2 pursuant to the Freedom of Information Act demonstrate that in fact the elk died of starvation  
3 and/or dehydration. The necropsies show that the elk were completely emaciated when they died.

4           74.     Although the Park Service never sent a formal response to the letter it received in  
5 August 2020 about this matter, the agency recently announced on its website that in response to  
6 requests by the public to do something about this situation it has decided that it will not remove  
7 any portion of the fence at Tomales Point to allow the elk access to more food and water.

8           75.     The Park Service also recently announced that it will not provide the elk at  
9 Tomales Point any supplemental forage.

10          76.     Because there is currently a drought in this area of California, and there is  
11 expected to be less rain in 2021 than there was in 2020, more elk are dying and will continue to  
12 do so from a lack of forage and water.

13          77.     In light of the fact that more elk will die this year, coupled with the fact that 152  
14 elk died last year, and 257 died during 2013-2015, there are serious concerns about whether the  
15 Park Service can maintain the genetic diversity of this elk population—identified as “an important  
16 objective for elk preservation” in the 1998 Elk Management Plan.

17          78.     The Park Service recently admitted for the first time that the Tule elk at Tomales  
18 Point do not have sufficient access to water. Although the Park Service has begun to provide  
19 supplemental water to some of the elk, it has not provided water that can be accessed by all four  
20 herds of elk who live there, and, again, it is not providing *any* of the elk any supplemental forage,  
21 despite the fact that the Park Service has informed the public that the reason so many elk died last  
22 year is that they lack access to adequate forage.

23          79.     Over the last year and continuing to the present, members of the public, including  
24 some of the Plaintiffs, have seen dying and dead elk at Tomales Point, due to the lack of water  
25 and forage.

26          80.     The fence at Tomales Point was artificially erected and is maintained by the Park  
27 Service—i.e., it is not a *natural* boundary, and hence is not a natural barrier to food and water for  
28 the elk.





1 agency's specific obligation under the Point Reyes Seashore Act to administer this land "without  
2 impairment of its natural values."

3 90. The Park Service's failure to revise the General Management Plan with respect to  
4 Tomales Point and the Tule elk who live there has also resulted in its failure to address the  
5 continued genetic viability of the herd. Therefore, the agency's delay is particularly unreasonable  
6 in light of its overarching obligation to "conserve" this wildlife "in such manner and by such  
7 means as will leave them unimpaired for the enjoyment of future generations," and the agency's  
8 specific obligation under the Point Reyes Seashore Act to administer this land "without  
9 impairment of its natural values."

10 91. The Park Service's violations of law injure Plaintiffs in the manner described in ¶¶  
11 8-20 herein.

12 **Second Claim: Failure to Revise the Tule Elk Management Plan**

13 92. Plaintiffs reallege and incorporate by reference paragraphs 1 through 86 as though  
14 fully alleged herein.

15 93. By failing to update the 1998 Elk Management Plan for the Tule Elk at Tomales  
16 Point, and instead allowing the Tule elk to die of starvation and/or dehydration in contravention  
17 of the 1998 Plan, Defendants have also violated their statutory duty to develop a plan "for Tule  
18 elk restoration and *conservation*" as required by 16 U.S.C. § 673g, and unlawfully withheld and  
19 unreasonably delayed agency action required by law in violation of the Administrative Procedure  
20 Act, 5 U.S.C. § 706(1).

21 94. The Park Service's violations of law injure Plaintiffs in the manner described in ¶¶  
22 8-20 herein.

23 **Third Claim: The Park Service's Decisions to Forego Measures to Ensure that the**  
24 **Tomales Point Elk Have Access to Sufficient Water and Forage**

25 95. Plaintiffs reallege and incorporate by reference paragraphs 1 through 86 as though  
26 fully alleged herein.

27 96. The Park Service's recently announced decisions not to undertake measures to  
28 ensure that the elk at Tomales Point have access to adequate forage and water constitutes final

1 agency action that is arbitrary and capricious, an abuse of discretion and in violation of the Park  
2 Service’s statutory obligations to both “conserve” this wildlife, and to “provide for the  
3 enjoyment” of this wildlife “in such a manner and by such means as will leave them unimpaired  
4 for the enjoyment of future generations,” 54 U.S.C. § 100101(a), and the agency’s specific  
5 obligation under the Point Reyes Seashore Act to administer this land “without impairment of its  
6 natural values.” 16 U.S.C. § 459c-6(a). Accordingly, those decisions also violate the  
7 Administrative Procedure Act, 5 U.S.C. § 706(2).

8 97. The Park Service’s violations of law injure Plaintiffs in the manner described in ¶¶  
9 8-20 herein.

10 **WHEREFORE**, Plaintiffs respectfully request that this Court:

11 1. Declare that Defendants’ failure to revise the 1980 General Management Plan with  
12 respect to Tomales Point and the Tule elk who live there constitutes agency action unlawfully  
13 withheld and unreasonably delayed in violation of the Administrative Procedure Act, 5 U.S.C. §  
14 706(1);

15 2. Declare that Defendants’ failure to revise the 1998 Elk Management Plan with  
16 respect to the Tule elk at Tomales Point constitutes agency action unlawfully withheld and  
17 unreasonably delayed in violation of the Administrative Procedure Act, 5 U.S.C. § 706(1);

18 3. Declare that Defendants’ decisions not to undertake measures to ensure that the  
19 Tule elk at Tomales Point have access to adequate food and water is arbitrary and capricious, an  
20 abuse of discretion, and otherwise not in accordance with law within the meaning of the  
21 Administrative Procedure Act, 5 U.S.C. § 706(2);

22 4. Order Defendants to take immediate measures to comply with their statutory duties  
23 to revise the 1980 General Management Plan and 1998 Elk Management Plan with respect to the  
24 Tule elk who live in Tomales Point at the Point Reyes National Seashore;

25 5. Preliminarily and permanently enjoin Defendants from continuing to deprive the  
26 Tule elk at Tomales Point of adequate food and water;

27 6. Award Plaintiffs their costs and attorneys’ fees; and  
28

