

JOHN McCAIN
ARIZONA

CHAIRMAN, COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
COMMITTEE ON ARMED SERVICES
COMMITTEE ON INDIAN AFFAIRS

United States Senate

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SUITE 200
TUCSON, AZ 85701
(520) 670-6334

ARIZONA STATE OFFICE
BUREAU OF LAND MANAGEMENT

January 31, 2000

FEB -7 '00

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TELEPHONE FOR HEARING IMPAIRED
(202) 224-7132
(602) 952-0170

Ms. Denise P. Meridith
Bureau of Land Management
222 N. Central Ave.
Phoenix, Arizona 85004-2203

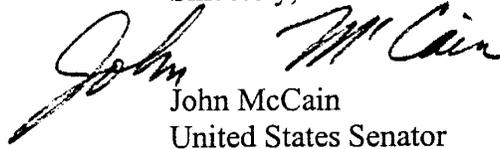
Dear Denise:

I wish to bring to your attention the matter concerning my constituent, Ex. 6 who has encountered a problem with the Bureau of Land Management's new policies at Lake Havasu. Please investigate, within the existing rules, regulations and ethical guidelines, the statements made in the enclosed letter and return the response to me with the enclosures.
MARK ALL CORRESPONDENCE TO:

Attn: JOE LEGROS
Office of Senator John McCain
450 W. Paseo Redondo
Suite 200
Tucson, Arizona 85701

The response you provide will be most appreciated and will be forwarded to my constituent. If you should have any questions in the meantime, you can reach my office at (520) 670-6334. I look forward to your reply at your earliest convenience.

Sincerely,


John McCain
United States Senator

JM/tjl
Enclosures

12/29/99

JAN 05 2000

John McCain, Senator

Senator McCain,

I hope you will care about an 83-yr-old gentleman who fought in a war to keep us free, and who wants to spend 14 days of each month (November thru March) on Lake Havasu fishing for the big one.

The BLM has forced him out!

If you do care, please read the enclosed.

Thank you.

Ex. 6

Ex. 6

February, 2000

Michael A. Ferguson, in the office of
Denise Meredith, State Director
BLM Arizona State Office
222 North Central Avenue
Phoenix, AZ 85004-2203

DATE	EB	U	2000
SD/ASD	_____		
NAM/AZXT	_____		
AZ-911	_____		
AZ-912	_____		
AZ-930	_____		
AZ-950	_____		
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AZ-050	_____		
AZ-060	_____		
AZ-070	_____		
Action	_____		

Regarding: 8300 (931)

Mr. Ferguson:

Ex. 6 and Ex. 6 asked me to pursue this matter.

Your response to Ex. 6 Letter of December 22, 1999, is an explanation of the BLM's position without regard to the facts.

The Violation No. 013075 was written as: "offense charged- 43CFR 8365.2-3, Dev. Rec. area."

43 CFR 8365.2 States: "Developed Recreation sites and areas. The rules governing conduct and use of a developed recreation site or area shall be posted at a conspicuous location near the entrance to the site or area."

Our evidence is that the Take Off Point ^(TOP) site has never been posted with any rules other than what you see in the enclosed pictures.

The "Attention Boaters" sign gives no clue that the BLM Shoreline Campsite users will be ticketed for leaving their vehicles and boat trailers at TOP parking for over 72 hours.

.../

Feb. 2, 20

Michael Ferguson

page 2

43 CFR 8365.2-3 Occupancy and Use states:

"(C) Leave personal property unattended for more than 24 hours in a dayuse area, or 72 hours in other areas."

This information is not posted at TOP, — to post it at TOP would be contrary to the use of Shoreline Campsites.

The definition of "attend" is: to take care of. Therefore, "unattended" is: not take care of. Unlike the Shoreline Campsite users (who have not been ticketed*), Ex. 6 always "attended" his property. He checks his vehicle and trailer daily.

Please note the picture showing the TOP sign. It does not say "day use", it clearly shows boat ramp, picnic, fishing and restroom. There is no indication that an individual using the ramp to launch a boat, a house boat, or a barge, could not leave their vehicle and trailer at TOP parking for the entire time they choose to stay on the water.

* Don Ellsworth's check of the records proved no other '72-hour unattended property' violations were written in the past two years

---/

Feb. 2, 2008

Michael Ferguson

Page 3

The facts are — TOP is not posted, nor has it ever been posted as a limited parking area. (To post it as a limited parking is in contradiction with the Shoreline Campsite user plan.) The Havasu BLM office inappropriately applied a rule contrary to the written planned use of TOP, in order to ticket Ex. 6 and chase him out.

Thus far you have failed to explain that contradiction in applying 43CFR 8365.2-3 to TOP. You have failed to consider the full facts of this case.

In reviewing 43CFR 8365.2 and its subsections, and in viewing the posted signs at TOP, I would not be in violation if I put my boat in and stayed on the water for weeks, while leaving my vehicle and boat trailer parked at TOP parking.

The facts indicate the BLM erred in its verbal warning and in ticketing Ex. 6, and the BLM would be in error in ticketing anyone else at TOP for that ^{same} violation. It appears the Havasu BLM office targeted Ex. 6 in an attempt to ~~limit his~~ unfairly deter his use of public lands. They selectively imposed regulations to TOP parking use for a single purpose.

.../

Feb. 2, 2007
Michael Ferguson
page 4

The BLM plans for TOP Shoreline Composite use and the imposition of rules against parking vehicles and trailers over 72 hours is such a Contradiction, that the conclusion can only be that Ex. 6 was treated unfairly and unjustly. The ticket issued to him was done so in violation of your own BLM codes. And, now your office has disregarded the information given out by Ex. 6, and disregarded the requirement of 43 CFR 8365.2 to post site use rules in Developed Recreation Areas at a conspicuous Location.

Both you and I need answers to these questions:

1. Knowing that users of Shoreline Campsites leave their vehicles and trailers parked at TOP for many days, why, over the past two years, were no other tickets issued for violation 43 CFR 8365.2-3(c)?
2. Given the plan for TOP Shoreline camp sites, why would the BLM ever limit TOP parking? (where do you expect these people to park?)

.../

Feb 2, 2000
Michael Ferguson
page 5

3. Who are the complainants against Ex. 6? Are the complaints written documents? (He is entitled to know who made the complaints about his use of TOP.)

4. Why is your office accepting that a BLM employee ticketed Ex. 6, when in fact, no rules under which the violation was written were ever posted at TOP? (During ~~a~~ phone conversation on Feb 1st, 2000, with Ex. 6 in the Phoenix Field Information Office, he was asked under what circumstance a BLM agency could circumvent 43 CFR 8365.2. He said that he is not aware of any exception to 43 CFR 8365.2. (which requires the BLM to post use rules in a conspicuous location at the Developed Recreation Sites.)

5. Why shouldn't Ex. 6 come back and spend his two weeks on the water while his vehicle and trailer are parked at TOP parking? .../

Feb. 2. 20
Michael Ferguson
Page 6

5. (continued)

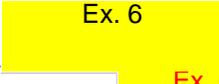
The facts show he would not be in violation of any rule, (and never was). Even if you should post TOP so that you could legitimately ticket the vehicles and trailers of those Shoreline Composite users, you could not legitimately ticket Ex. 6. He attends his property daily. Never has his property been "unattended".

6. If Ex. 6 returns to TOP, parks his vehicle and trailer in the boat ramp parking area for 14 days while he is on the water, tends his vehicle and trailer daily, as he always has, are you, knowing the facts of 43 CFR 8365.2, ~~the BLM~~ going to allow the Havasu office to ticket him?

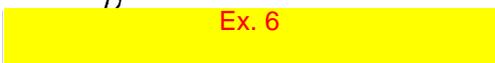
Based on the facts, it seems to me the BLM owes Ex. 6 an apology and an immediate invitation to return to TOP, the Havasu office owes Ex. 6 an apology, the BLM should rescind the violation and return the 25⁰⁰ fine,

... /

Feb 2, 2010
Michael Ferguson
Page 7

and, Ranger  Ex. 6 should be counseled
about ticketing  Ex. 6 for a violation of rule
that did not apply to TOP.

I eagerly await your immediate
response to this letter and ^{specific} answers
to my questions.

In fact, I welcome a call from you
so we can further discuss this
matter.  Ex. 6

Sincerely,

 Ex. 6

enclosures - 2 pictures

cc: John McCain, Senator Arizona
Arizona Republic, Phoenix

~~1/2~~ 1/2/00 - Happy New Year

Ex. 6

for you - a copy of the letter I
sent to Denise Meredith.

Also sent copies to
Senator John McCain
The Arizona Republic
The Parker Pioneer
The Havasu Herald

It may not do much good, but
I feel better!

Ex. 6

Ex. 6

and me and
and Cynthia, too.

Ex. 6

FEB 22 2000

December 22, 1999

Denise Meredith, State Director
BLM Arizona State Office
222 North Central Avenue
Phoenix, AZ 85004-2203

Re: Violation No. 013075 issued to Ex. 6

My name is Ex. 6. I'm writing you to protest a determination made by the BLM office at Lake Havasu City regarding the above violation, and to challenge the newly imposed (but unposted) regulations for Take Off Point that precipitated the issuance of the "violation notice".

Here is the story, from my perspective, as briefly as I can possibly tell it: For over 19 years my friend Ex. 6 has been coming to Take Off Point on Lake Havasu to spend the first 14 days of every month from November through March each season, to fish and enjoy the lake. He puts his boat in the water, and leaves his vehicle and trailer parked. He lives on the water. It is well known that Take Off Point has been a 14-day BLM area for many years. It has never been posted to the contrary.

In November 1999 this is what happened. Ex. 6 did the usual. During the first week on the water, Ranger Ex. 6 advised Ex. 6 that there had been complaints against him and he was in violation of a 72-hour rule, that he would have to move his vehicle and boat trailer from Take Off Point parking lot or risk confiscation as "unattended property". Being quite surprised by the sudden imposition of this rule (that was not posted), Ex. 6 asked questions about who complained, and about the regulations. Pittman refused to identify the complainants, and repeated that there was a "72-hour unattended property rule". Ex. 6 packed up his boat and left the area.

When I arrived for the season on November 10th, Ex. 6 was not on the water as usual. I called him at his home to check on him and he told me what had transpired between he and Ranger Ex. 6.

Because I walk to Take Off Point and back every other day, and had never seen a sign posting of new rules I also was quite surprised at what the Ranger told Ex. 6. On November 26th I drove to the BLM Lake Havasu office to double check the rules. About 11:15 a.m. on that day I spoke with Ex. 6. I explained to them that a Ranger had informed Ex. 6 about a 72-hour rule and told him he had to leave. I wanted to check it out versus the original 14-day BLM policy. They both said "Oh no, it was still a 14-day area and always had been." I told them I would tell Ex. 6 that should a Ranger approach him again, to get his badge number and the number of the specific code he was citing. I then left the BLM office.

I later called Ex. 6 and told him about the BLM office conversation. He decided he would come back to Take Off Point for his usual December 14 days. On December 1st Ex. 6 did his usual. Put his boat on the water, left his rig parked at Take Off Point. On December 9th a citation for "72-hour violation" was left on his vehicle. Ex. 6 called the BLM office to find out why he was cited. He talked with Ex. 6 who said his boss, Don Ellsworth, was out of the office until Monday 12/13, and he would get the information then. Ex. 6 checked on Monday. No information was available at that time. Tuesday 12/14, Ex. 6 went back to a phone and called the BLM Lake Havasu office. He was told the office was standing by the Ranger's citation and that the \$25 fine would stand. Ex. 6 drove to the BLM office to personally discuss the situation with Don Ellsworth. Don said the violation would stand. Ex. 6 asked why the "72-hour rule" wasn't posted considering that Take Off Point had always been 14-day. Don said the area had been posted but the signs were torn down.

On the morning of the 15th I took my walk to Take Off Point and encountered Ex. 6 boat loaded and ready to pull out. He told me the story. I got the ticket from him, since I feel very responsible based on what Ex. 6 told me.

I made an appointment with Don Ellsworth for 2 p.m. that day. I explained the full story to Don, what Ex. 6 told me, and that I had passed that information along to Ex. 6. I asked that the ticket to Ex. 6 therefore, be forgiven. Don said he would review the situation and get back to me.

On December 20th, 3:40 p.m., I received a call from Don Ellsworth. He said he would not void the ticket because Ex. 6 had been warned by the Ranger about Take Off Point being a 72-hour area. I reminded him of the information I got from his office, yet he chose not to consider that in his determination.

I have personally paid the \$25 for the violation notice issued to Ex. 6 as I feel the information I got from the BLM office is the reason he got the ticket. I trusted the information I received from Ex. 6. Ex. 6 If that information is wrong, they should not be blamed. As an example of the confusion over the regulations, read on. On December 20th at 10 a.m., on my walk to Take Off Point, I encountered Ex. 6. Ex. 6 He identified himself as being in charge of the Shoreline Project. I asked him about time limits for the area. He said there was no limit at the shoreline campsites as long as the money was paid, and that it was 14 days at Take Off Point parking. About then, Ex. 6 identified as a BLM employee who also works as a part-time BLM Ranger, pulled up in a boat to pick up Ex. 6. I asked Ex. 6 about the time limits at Take Off Point and he said he had been informed by Ranger Ex. 6 that it was a 24-hour limit. Obviously the interpretations of the regulations are inconsistent and confusing even to the BLM employees. The BLM office boss should be held responsible for the information given to the public. And, most of all, what Ex. 6 told me should have been considered in determining the legitimacy of the "violation notice" to Ex. 6.

I have names and addresses of individuals who frequent Take Off Point and will testify that never has it been posted 72-hour limit, and that vehicles and trailers are parked there over a weeks time while the owners are enjoying vacation at the BLM Shoreline Campsites.

The investment of hundreds of thousands of dollars in the BLM Shoreline Project is in conflict with setting the boat ramp parking area time limit to less than the time limit at the campsites. I would like you to explain that. I would like you to explain to me why anyone who chooses to put in a boat at Take Off Point can't leave their vehicle and trailer parked there while they are on the water.

I have very strong feelings that the BLM has chosen to selectively enforce a "72-hour" parking rule at Take Off Point in order to drive out a gentleman whose boat on the water isn't the prettiest, and isn't considered to be aesthetically pleasing to those above the cove.

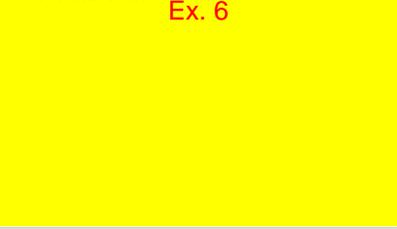
The BLM has a job to manage our public lands for our benefit. The dedication placque at Take Off Point reads: Dedicated February 15, 1994 by the Honorable Bruce Babbitt, Secretary of the Interior. "Take Off Point fulfills the objectives of the Lake Havasu Fisheries Improvement Program by increasing accesses for boating and non-boating anglers." That objective should include the convenience of a parking lot for an 83-year-old man who fought a war for our freedom, and who can no longer afford the price to camp at even public fee sites, let alone commercial parks. The season he uses the Take Off Point site is November through March, a time that in no way conflicts with heavy site use.

December 22, 1999

Page 3

I will appreciate a response from you regarding the BLM Lake Havasu office determination on the violation without considering the information given by **Ex. 6** and your response about the sudden change in the parking rules at Take Off Point.

Thank you, **Ex. 6**



12/31/99 – P.S. The afternoon of December 23rd I again met with Don Ellsworth at his office in Havasu to explore the reason for the Shoreline Project campsites without providing a parking area for longer than 72 hours, and to get a count of the number of 72-hour violations written at Take Off Point. (Earlier in our discussions, Ellsworth said 72-hour violations had been written to others at Take Off Point.) He implied he was working on the idea for a longer-term parking area at the Point, above the boat ramp level. A spot that could serve well as parking space for individuals who are on the lake or at the campsites for over 72 hours. He suggested the area could be a lot for vehicles and boat trailers for up to 14 days.

He assured me he would let me know by December 29th if he could designate a long-term parking area at Take Off Point, and he would provide a count of the 72-hour violations written. For that reason I chose not to mail the above letter.

At 1 p.m. on 12/29 he did call me. He said his records show that no other "72-hour violation" ticket was written at Take Off Point during the past two years. Regarding the 14-day parking, he said he could not provide a spot at this time, that he did need to address a long-term parking limit for users of the Shoreline campsites, and it would take 3 to 4 months to get that done. I asked for a variance under "43 code of Federal Regulations" for winter visitors to park vehicles and trailers longer than 72 hours. He admitted he had the authority to write a variance to the code, but he would not do it.

Because **Ex. 6** had said there were complaints against **Ex. 6** because no other "72-hour violation" tickets have been issued at Take Off Point, and because there has been significant contradiction in the information from individual BLM Havasu office employees, I strongly believe Don Ellsworth and **Ex. 6** have targeted **Ex. 6**, and discriminated against him by ticketing him for a violation they have never enforced against anyone else who parks over 72-hours at Take Off Point.

Earlier in this letter I requested answers from you regarding this matter. I eagerly await your reply.

CC: Senator John McCain, Arizona
Arizona Republic, Phoenix



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Arizona State Office
222 North Central Avenue
Phoenix, AZ 85004-2203



In reply refer to:

1781/8370 (931)

Honorable John McCain
United States Senate
450 West Paseo Redondo, Suite 200
Tucson, Arizona 85701

Dear Senator McCain:

I am writing in response to your letter of January 31, 2000, from your constituent, Ex. 6 concerning the Bureau of Land Management (BLM) policies at Lake Havasu.

We also received letters dated December 22, 1999, from Ex. 6 and the letter of February 2, 2000, which Ex. 6 forwarded to you from his wife, Ex. 6, on behalf of their friend Ex. 6.

Enclosed is our response to Ex. 6.

We hope this information is helpful.

Sincerely,

Denise P. Meridith
State Director

Enclosure

cc: Your Washington Office

OFFICIAL COPIES:

CF

SD

GROUP

AUTHOR

DL Act 2/29/00
M. Ferguson 2/29/00
OES 3/1/00

1781/8370 (931)

MAR 2 2000

Ex. 6

Dear Ex. 6

Thank you for your letters of December 22, 1999, and February 2, 2000, on behalf of Ex. 6. We have looked into the questions raised in your letter and offer the following responses:

Question #1:

The Bureau of Land Management (BLM) has been managing the shoreline camps for the past two years. During that time, no vehicles other than Ex. 6 have been documented to have violated the 24-hour standard rule for day use areas, or the 72-hour standard rule for other recreation sites at Take-Off Point. In spite of Ex. 6 allegations, BLM is not aware of any campers that parked at Take-Off Point for two weeks. The average Length-of-Stay at BLM shoreline camps is 1.69 days, based upon user data collected from 1,305 recorded camping visits during fiscal year 1998. The longest recorded stays were: 6 days (5 parties); 7 days (1 party); and 8 days (1 party). None of these parties are known to have parked at Take-Off Point.

Question #2:

Ex. 6 refers to a "plan for Take-Off Point Shoreline Campsites." No such plan exists. Take-Off Point was redeveloped by the BLM in cooperation with other partners of the Lake Havasu Fisheries Improvement Project during 1993-1994, and dedicated by Department of the Interior, Secretary Babbitt, as a fishing access site in 1994. BLM did not assume management of shoreline camping until 1997, following relinquishment of a lease for the camps by Arizona State Parks. Take-Off Point was intentionally not developed to provide access to shoreline campers, but instead it was provided to allow short-time access to the lake at no charge, primarily for day-use boaters and fishermen. It is much too small to provide parking to accommodate all the visitors with boat trailers to the over 100 shoreline campsites. Long term boating access to the lake, with secure parking areas and

designated boat ramps, is provided by two Arizona State Parks, the Chemehuevi Indian Reservation marina, a Chemehuevi Indian Reservation concession marina, an Arizona State Lands concession marina, two private camping resorts, a City of Lake Havasu boat launch, two BLM concession resort marinas, and a hotel resort. Should the need for even further access and parking become a public issue, BLM will certainly entertain providing such access if funding is available for such development and a suitable location for such a facility can be found through a public land use planning process.

Question #3:

BLM rangers are delegated law enforcement officers. They are not limited to responding to complaints. Their duties also include protection of public resources and visitor education.

Question #4:

It is true that the Rules of Conduct are not posted at Take-Off Point. It is precisely for this reason that the officer verbally advised Ex. 6 of the rules, rather than issuing a citation at the time of the initial violation.

Question #5:

Ex. 6 is more than welcome to come back and spend two weeks on the water. However, he *should not* leave his vehicle and trailer parked at Take-Off Point because it violates the 72-hour unattended property rule. Such rules exist to assure that space is available for others to enjoy the public facilities as well. His need for a secure, supervised parking area for long periods of time can be met at one of the providers mentioned. In response to Question 2, Ex. 6 also uses a definition of “attend” differently from the definition used in the Code of Federal Regulations, which is: “to go or stay with, to be present with, accompany, or to be present at.”

Question #6:

It is the duty of the local offices and their representatives to enforce the rules fairly, equally, and consistently to the best of their abilities to do so. If Ex. 6 knowingly violates the same rule again, it would only be fair to cite him again. Otherwise, BLM would be treating him with special favor over other members of the public.

We hope this information is helpful.

Sincerely,

/s/ Denise P. Meridith

Denise P. Meridith
State Director

Tosullivan/ct/02-29-00

R:\931\REC\ Ex. 6 ltr.wpd