

## **Santa Rosa Island: Hunting and Non-Native Wildlife in a National Park**

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We examine events, actors and policy choices associated with the existence, and persistence of commercial hunting on Santa Rosa Island in Channel Island National Park. The continuation of hunting within the Park boundaries following acquisition of this island provides an opportunity to observe influences on decision making within the Park Service as well as the linkage of issues specific to the park with broader national policy agendas. Data for this analysis are drawn from documentary material contained in the archival record as well as through interviews with individuals who were involved in the policy making process and management of the park.

Channel Islands National Park was established as the 40<sup>th</sup> national park in the U. S. National Park System (NPS) by a statute signed into law by President Jimmy Carter on March 5, 1980 (Public Law 96-199). Its biodiversity made this park a unique addition to the nation's system of national parks. The difficulties of transitioning Santa Rosa Island, which had long been operated for cattle ranching and game hunting, from private to public ownership, touch important questions related to the management of public lands. Events over the course of the twenty five year period between the purchase of Santa Rosa Island and the conclusion of private operations on the island serve to highlight challenges in managing public lands in the face of competing interests and illustrate how local management issues can be tied to larger, national policy agendas. This paper examines both internal policy choices and conflicts within the NPS, the role of powerful interests, and the linkage of local issues to larger policy agendas. As the protracted struggle over the management of Santa Rosa Island played out it also became the setting for one of the most unusual parliamentary maneuvers in Congressional history which was initially intended to fundamentally change the management of this park unit.

The authorizing legislation for Channel Islands National Park (CINP) created a park consisting of five (out of the eight) islands located off the southern California coast – Anacapa, Santa Barbara, Santa Cruz, Santa Rosa and San Miguel – and the surrounding one nautical mile of marine waters. These islands are known for their significant natural and cultural resources including 145 species unique to the islands, and cultural artifacts dating back over 10,000 years. The natural resources are so significant that the Channel Islands are often referred to as the “Galapagos of North America”. Two of these islands (Anacapa and Santa Barbara) were part of Channel Islands National Monument created by President Franklin Roosevelt in 1938 under the

authority of the Antiquities Act.<sup>1</sup> San Miguel Island, was (and continues to be) owned by the U.S. Navy, but is now managed by the Park Service. Two of the islands in the park, Santa Cruz and Santa Rosa, were entirely privately owned at the time of park establishment. At the time, these two islands contained significant numbers of non-native mammals (sheep and pigs on Santa Cruz; cattle, pigs, deer and elk on Santa Rosa). This study examines how the management of Santa Rosa Island by the Park Service established the conditions that supported several legislative efforts to redirect the purposes and management objectives of the Park Service to favor the private commercial users and perpetuate maintenance and hunting of non-native deer and elk on Santa Rosa.

#### The Creation of the National Park and Purchase of Santa Rosa Island

In some ways the creation of Channel Islands National Park may be similar to that of other parks. It took decades from the introduction of the first proposals until the creation of the park was realized and much of the credit for enacting the enabling legislation can be attributed to the efforts of a small number of policy entrepreneurs (Frisch and Wakelee). However, by the time the enabling legislation was approved, despite some concerns, there was widespread support for the new park. The concerns most pertinent to this paper are those of the private owners of Santa Rosa Island, the Vail & Vickers partnership. By examining the purchase of Santa Rosa Island, the initial management actions of the National Park Service (NPS), and the information provided to staff and the public regarding the purchase, we can

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<sup>1</sup> Anacapa and Santa Barbara had previously been controlled by the Department of Commerce's Lighthouse Service. The National Park Service agreed to assume ownership of the Islands only after repeated attempts by the Commerce Department to cede ownership of the isolated islands (Rothman 1989, 170).

better understand how the NPS and Santa Rosa Island later became a pawn in larger national political battles and ideology.

Santa Rosa Island, at 53,364 acres, was a privately owned land-grant that had been a sheep ranch in the late 1800s. In 1902, the island was purchased by the Vail & Vickers Company and was converted to a cattle ranch. In addition, deer and elk were imported to the island and a commercial hunting operation developed in the mid-1900s. When the final version of the legislation to create Channel Islands National Park began to move through Congress, Vail & Vickers expressed its opposition. There were efforts, led by Senator S. I. Hayakawa (R-CA), to amend the legislation to exclude Santa Rosa Island. However, those efforts were unsuccessful and there was recognition that Santa Rosa Island was critical to conservation of the Channel Islands.

The legislation that ultimately passed on March 5, 1980 included several important provisions regarding private land in the park. Santa Rosa Island, at the behest of Vail and Vickers, was identified as the highest priority for acquisition and Vail and Vickers actively worked to direct Park Service land acquisition funds towards Santa Rosa Island (Latham & Watkins 1983). They voluntarily sold the island in 1986 to the National Park Service for \$29.6 million (Wilkinson, et al).

Prior to a sale of their land, Vail and Vickers considered a less than fee simple sale that would maintain their right to continued ranching and hunting on the island for a number of years, as was allowed under Section 202(d) of the park legislation<sup>2</sup>. The NPS undertook the

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<sup>2</sup> 202 (d)(1) The owner of any private property may, on the date of its acquisition and as a condition of such acquisition, retain for himself a right of use and occupancy of all or such portion of such property as the owner may elect for a definite term of not

appraisal of the property to meet the statutory mandate to pay fair market value for all property acquisitions. The island appraisals also evaluated the cost to Vail & Vickers to maintain reservations of use and occupancy island-wide in order to continue their ranching and hunting operations (MacDonald, 1986a).<sup>3</sup> The NPS, at the request of Vail & Vickers, also appraised the fair rental value of a lease for the commercial operation. The appraisal supplement indicated that the annual rent for this type of lease was approximately \$300,000 per year (MacDonald, 1986b). This was not acceptable to Vail & Vickers. Nonetheless, Vail & Vickers opted to sell the island to NPS prior to the end of 1986 to avoid the potential cost of “several millions of dollars as a result of the elimination of the capital gains rate by the Tax Reform Act of 1986” (Latham & Williams, 1986). Vail & Vickers chose not to secure a reservation of use and occupancy or a lease for their commercial operations; instead they only retained a limited non-commercial reservation of use and occupancy to 7.6 acres for a period of 25 years (Wilkinson, et al). The offer to purchase from the National Park Service stipulated that the Vail and Vickers commercial operations would be authorized for three months, after which the ongoing negotiations would determine if there would be a lease or operations terminated (Haberlin 1986).

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more than twenty-five years... Any such right retained pursuant to this subsection with respect to any property shall be subject to termination by the Secretary upon his determination that such property is being used for any purpose which is incompatible with the administration of the park or with the preservation of the resources therein...

(2) In the case of any property acquired by the Secretary pursuant to this title with respect to which a right of use and occupancy was not reserved by the former owner pursuant to this subsection, at the request of the former owner, the Secretary may enter into a lease agreement with the former owner under which the former owner may continue any existing use of such property which is compatible with the administration of the park and with the preservation of the resources therein.” (Public Law 96-199, 94 Stat 74)

<sup>3</sup> The NPS appraised the value of several less than fee options that would vary the amount of land sold, the length of use and occupancy, and/or the amount of land under use and occupancy. The more rights to land that the owners retained, the less the income from their sale to the government.

## Management of Santa Rosa Island by the National Park Service

The commercial operation of Vail and Vickers was not terminated within three months of the sale of the island and a lease was not negotiated. We examine the sequence of events and evolution of information regarding the sale of Santa Rosa Island, which resulted in the continuation of the ranching and hunting operations of the former private owners following the purchase by the National Park Service. Over time, the purchase of the island was re-characterized to a less-than-fee sale that provided the continued rights of Vail & Vickers to continue their commercial operations for 25 years on a not-to-interfere basis by the National Park Service.

Following completion of the island's sale correspondence was generated by two members of Congress encouraging the NPS to permit Vail & Vickers to continue operations on the island under favorable terms (Lagomarsino, 1987a and Wilson, 1987a).<sup>4</sup> The park's first Superintendent Bill Ehorn wrote a confidential memo to the NPS Regional Director stating that Vail & Vickers were interested in leaseback of the entire island and that he anticipated a period of from five to ten years (Ehorn, 1987). Discussions between NPS and Vail & Vickers failed to produce a lease despite significant concessions by the government.<sup>5</sup> Within three weeks of

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<sup>4</sup> 1987, Jan 28. Senator Pete Wilson described the "Fair Market Rental Value Appraisal Report of the islandwide lease as a "serious disincentive to Vail and Vickers". He requested it "...in the interest of the government to provide the incentive for Vail & Vickers to continue their operations for the short term, five to ten years, and to phase out their cattle operations during that tenure." NPS and Vail & Vickers were not able to negotiate a lease or agree to termination within three months of the sale, as stipulated at the time of sale. Wilson and Lagomarsino again wrote the Secretary of Interior, sending rebuttal information from Vail & Vickers regarding the fair market value of the island, and saying it would be in the interest of the NPS to allow Vail & Vickers to phase out ranching over a five to ten year period (Wilson 1987b).

<sup>5</sup> 1987 March 24. Letter Director Mott to Representative Lagomarsino. Director Mott describes the "extensive analysis of comparable livestock ranching and grazing rental properties" that had been conducted by an independent appraiser and approved by the Chief Appraiser of the NPS. Less than a month later, Director Mott wrote a second letter to Representative Lagomarsino stating "The previous owners have objected to the appraisal of the fair market rent" and "We have, therefore, decided to refine our approach..." in pursuit of a fair market rent "acceptable to the previous owners" (Mott 1987).

Ehorn's memo to the Region Director, and one year after the NPS purchased the island from Vail & Vickers, a five year Special Use Permit was issued. As a result of decisions by the NPS the cost to Vail & Vickers of continuing their operation on land purchased by NPS was substantially lower than the appraised fair market value that had been reported by the NPS staff or contractors.<sup>6</sup>

Beginning with Ehorn, park superintendents granted a series of five-year special use permits to Vail and Vickers which allowed cattle ranching and hunting to continue. The park staff improved the island infrastructure, expanded scientific monitoring and research, and opened opportunities for public use. However, the guidance of non-interference with the private commercial operations of the former landowners was the overriding policy for NPS management of the island. Ehorn later pointed to testimony and discussion in the Congressional Record as justification for this approach (Ehorn 2007). However there was no statutory authority to support this approach. These Special Use Agreements, along with informal understandings about appropriate management approaches related to ranching and hunting on the island set the stage for extended conflict over management of the island.

Who owns Santa Rosa Island?

The National Park Service purchased Santa Rosa Island. However, the agency acted as if the former landowners still had rights to continue their operation. Following acquisition of the island a public narrative was advanced by Ehorn, subsequent superintendents, politicians, and

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<sup>6</sup> The first Special Use Permit capped payment by Vail & Vickers at \$80,000 per year (i.e. up to \$400,000 over its 5 year life). This compares to Use and Occupancy that was appraised at \$1,600,000 for 5 years (MacDonald 1987).

Vail & Vickers that the prior owners retained the right by deed to continue their ranching and hunting operation on Santa Rosa Island. The veracity of this story and the management of Santa Rosa was becoming “increasingly difficult to explain or justify” as noted in a memo from Superintendent Shaver to the NPS Regional Director (Shaver 1992). This interpretation was challenged when the first 5 year Special Use Permit came up for renewal and park staff began looking at the deed and park files to substantiate the next Special Use Permit. When substantiating evidence was not forthcoming the story became that there had been an “understanding”, a “gentleman’s agreement”, or “congressional intent” concerning “continued rights to conduct ranching and commercial hunting operations on the island, without unreasonable interference, by permit for 25 years from purchase, as long as these activities are compatible with park purposes” (1992 memo from Superintendent Shaver to Western Region Regional Director). Park staff began to search to “find a way around” established policies and laws in order to retain the status quo on the island<sup>7</sup>. The sentiment that if the government were not to honor this “agreement” there would be a breach of trust set a tone for future discourse about management of the island (Ehorn 1997). This assertion ran counter to the initial descriptions of acquisition of Santa Rosa Island that were clear that the area of use and occupancy was a small area at Bechers Bay and that ranching would be phased out over five to ten years (Ventura County Star Free Press 1987).

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<sup>7</sup> Chief Ranger Fitzgerald instructed the Chief of Resources Management (Author) Faulkner that “we need to have EA for SRI address grazing/hunting as compatible uses.” (Fitzgerald 1991). The National Environmental Policy Act specialist in the National Park Service Western Region rescinded his earlier opinion that the new Special Use Permit required an Environmental Assessment based on knowing “how Stan [Regional Director Albright] feels...have to play a political game...cut our losses” (Faulkner 1992). The park’s Superintendent and Chief of Operations also weighed in on various justifications that could be cited to avoid preparation of an Environmental Assessment for the Special Use Permit (Shaver 1992) (Setnicka 1992).



Serious issues between NPS and Vail & Vickers began brewing in the early 1990s. The first Special Use Permit, which had been issued by Ehorn, expired at the end of 1991. By this time there had been several significant staff changes at the Channel Islands, most significantly the Superintendent and the Chief of Resources Management. Staff began to look for the documents to support a new permit to allow continuation of non-native cattle, deer, and elk, and the associated ranching and hunting operations, within a national park. The first permit was thought to have a supporting Environmental Impact Statement. The Chief of Resources Management (Author Faulkner), responsible for compliance with the National Environmental Policy Act (NEPA), conducted a search of park records but did not locate supporting information in the files. The Regional NPS National Environmental Policy Act (NEPA) coordinator reversed his earlier assessment that permitting of the ranching operation required an Environmental Assessment in recognition that he “knows how Stan [NPS Regional Director Stan Albright] feels” and we “have to play a political game” (Faulkner 1992). Superintendent Shaver struggled to find some rationale for an Animal Unit Month charge that was acceptable to Vail & Vickers (Shaver 1992).<sup>8</sup> Shaver eventually turned over most dealings with the Vails and authority to negotiate the new Special Use Permit to Chief of Operations Tim Setnicka who enthusiastically embraced a mandate from Regional Director Stan Albright to make the Vails happy.<sup>9</sup> Setnicka negotiated an even lower rental rate for Vail & Vickers than what they had enjoyed in the prior

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<sup>8</sup> “Comparables for private grazing permits and leases are in the \$10,00 range. The Department of Defense charges from \$6.00 to about \$8.00...Channel Islands presently is charging \$1.43. this rate was arrived at through an appraisal, using comparables, then applying various reductions for operational considerations relating to island an park operations. These reductions are somewhat difficult to explain or justify” (Shaver 1992).

<sup>9</sup> Setnicka was appointed the next Superintendent of Channel Islands National Park in 1997 as one of the last actions of the departing NPS Regional Director Albright.

5 years.<sup>10</sup> In addition, former Superintendent Ehorn and then-Superintendent Setnicka took the side of Vail & Vickers in the dispute and continued to insist that there was a purchase Agreement (Ehorn, 1997). The story of the Purchase Agreement was often repeated with little evidence from either side (Vail, 1997).<sup>11</sup> It is important to note that the Vail family had a history of significant ranching activities in the western United States and maintained political connections to Republican elected officials.<sup>12</sup> In the years following the purchase of Santa Rosa Island the family retained the services of well-connected lobbying firms, including the Alpine Group, to advocate on its behalf in Washington. After Ehorn's move to a new position as superintendent of Redwood National Park in 1989 the park moved into an increasing confrontational relationship with Vail & Vickers over management practices. NPS Director Jon Jarvis (at the time NPS Western Regional Director) observed

“They’ve got a great deal. They’ve got paid millions of dollars when they first came in, they got to stay in these incredible exclusive places, all to their own and it’s about to be over. So they put up a fight and they put up every possible way that they fight it. Public forum, in the media, they fight it with lobbyists, they fight it politically with members that they have. They attack us on our science, they attack us on our policies. They use every possible way to keep the Park going. And as a public servant in this role, these unique pieces of the public estate, these units of the National Park system are for everybody. They’re not for individuals to continue on these special little uses and we at some point have acquired from them...” (Jarvis 2007).

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<sup>10</sup> Although all comparables were significantly higher than the \$1.43 per AUM that the park charged Vail & Vickers (and generally higher than the fair market value as determined in 1986 of \$6.79 per Animal Unit Month), the AUM rate was further reduced to \$1.00 in the second five year Special Use Permit (MacDonald 1986)

<sup>11</sup> “Santa Rosa Island was acquired by the National Park Service in 1986 against the desire of V&V, who wished to continue their ranching operations. Nonetheless, with few options available to V&V and under threat of condemnation, they agreed to sell the island to the federal government for inclusion in Channel Islands National Park...To ease in the transition, part of the island’s sale included an important provision to allow the V&V cattle and wildlife operations to continue within the Park through the year 2011” (Vail 1997).

<sup>12</sup> Nita Vail, is currently the executive director of the California Rangeland Trust and previously served as assistant secretary of Agricultural and Environmental Policy in the California Department of Food and Agriculture during the administration of Governor Pete Wilson.

Beginning in the early 1990s, the staff of biologists at the park expanded and they began to inventory and monitoring the flora and fauna of Santa Rosa Island. It became apparent that the cattle, deer, and elk were having substantial impacts on the island. The U.S. Fish and Wildlife Service (FWS) published a proposed rule under the Endangered Species Act (ESA) that would list 11 species of plants on SRI as endangered species. The FWS' proposed rule identified soil loss, habitat alteration, predation caused by cattle grazing and elk and deer browsing, and competition with alien plant taxa as threats to the continued viability of the proposed plant species (Fish and Wildlife Service 1995). The Central Coast Regional Water Quality Control Board also issued a Cleanup or Abatement Order (CAO) to the NPS. The order stated that the NPS' authorization of the ranch operation was causing violations of state water quality standards (California Central Coast Regional Water Quality Control Board 1995). When NPS planned to construct a fence to keep cattle off a beach that was important habitat for threatened western snowy plovers several members of the House of Representatives voiced opposition to the action (Radanovich 1995, Seastrand et al 1995).

In May 1997, Representative George Radanovich (R-CA) introduced legislation stating:

“notwithstanding any other provision of law, the National Park Service shall reissue Special Use Permit Number WRO-8120-2600-001 with an expiration date of 2011” (Radanovich, 1997).

#### Lawsuit brings an end to the Ranch Era

In 1996, the National Parks and Conservation Association (NPCA) filed a federal lawsuit over the environmental impact of ranching on the island. The complaint included 13 causes of

action, virtually all of which challenged the NPS' issuance of the 1993 SUP. This lawsuit altered the trajectory of island use. The lawsuit moved the dispute from the political to the legal arena and brought new players and attention to park management policies related to the island. Through the early 1990s the NPS developed sufficient knowledge of the impacts of the ongoing ranching and hunting operation to aware that there was a substantial conflict between the stewardship mandates of the NPS and the continuing commercial operations of the former landowner. Political pressure caused the NPS to overlook these impacts until the suit expanded the scope of conflict over island management.

Vail & Vickers countersued NPS alleging that the Purchase Agreement precluded NPS from interfering with their operation. Jarvis noted, that contrary to the assertion that the Vail's were forced into a this relationship, they willingly entered into an arrangement that only guaranteed their use of seven acres in the historic ranch district

The lawsuit included a request for an injunction that would prevent the NPS from rescinding the 1993 Special Use Permit. The Judge denied this request and wrote "the express language of CINPA [Channel Islands National Park Act] – the statute under which the United States purchased the Island – is at odds with the Vail and Vickers argument that they were guaranteed the right to continue hunting and ranching no matter what" (Rea, 1997). The court found "plaintiffs' contention of a guarantee hard to believe in view of the fact that plaintiffs themselves and their supporters seem to have been under the impression that a guaranteed twenty-five years continuance did not exist", based on documents written at that time (Rea, 1997).

In December 1997, a Settlement Agreement was reached in the lawsuit filed by NPCA. Signatories to the Agreement were NPS, Vail & Vickers, and NPCA. The U.S. Fish & Wildlife Service and the State of California Water Quality Control Board were also involved in the negotiations. The Settlement Agreement dictated the removal of all cattle from Santa Rosa Island by the end of 1998 (Rea 1997, NPS 2003). Pursuant to the Settlement Agreement, all cattle were removed from SRI. The settlement agreement also called for deer numbers to be reduced, for the eventual end of hunting operations and removal of deer and elk by December 2011 (Rea 1997).<sup>13</sup>

#### Hunting and Conflict over Deer and Elk Management

Commercial and recreational hunting is generally not allowed in the national park system, except where it is specifically permitted by statute, such as in some Alaskan units. Although commercial hunting occurred on Santa Rosa beginning in the 1970's, the end of ranching operations due to the settlement agreement marked a shift in Vail & Vickers revenue to hunting. This also shifted the focus of conflict to management of the island's population of imported ungulates. Santa Rosa Island became the only location where commercial hunting occurred within a national park without specific legislative approval. Commenting on claims that NPS unfairly limited Vail & Vickers hunting and other activities Jon Jarvis observed,

I think we have been, as an agency, extraordinarily fair to the Vails that they've had a much longer run than policies should have allowed on the islands and our goal here is bring it to an end in 2012. (Jarvis 2007).

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<sup>13</sup> The settlement agreement confirmed that the deer and elk were the personal property of Vail & Vickers.

Hunting focused on elk and mule deer imported to the island in the early 20<sup>th</sup> century. These animals were variously reported as having been imported by Vail & Vickers in 1909 (elk), 1929 (deer) (Ehrlich 2000), and during the mid-1920's "to provide species diversity to the island and to provide for personal enjoyment" (Vail 2007). Although Vail & Vickers directly managed cattle ranching operations in Santa Rosa hunting arrangements were handled by Multiple Use Managers based in Santa Barbara beginning in 1979. Hunters were flown to the island and housed in facilities associated with the former ranching operation. Through the commercial hunting activities on Santa Rosa, hunters were charged between \$4,800 and \$16,500 to participate in hunts of deer and elk (Multiple Use Managers 2005). Prior to the end of Vail & Vickers term on Santa Rosa Island Jarvis commented on the situation created but the private hunting operation,

I don't blame them - they're making money, they've got the island to themselves, they make a lot of money off this, they have exclusive clientele. But we've got to remember Santa Rosa is a National Park and it was set aside by Congress with taxpayers' dollars for the American public. And also you look at the Channel Islands are our Galapagos. They are absolutely incredible unique are probably one of the only places (at least in the Pacific that I'm aware of) that have a real chance of real ecological restoration. (Jarvis 2007).

As the NPS struggled to integrate Santa Rosa Island into the national park it was forced to close large portions of the island to the general public for several months of each year to accommodate hunting operations. In his testimony against the repeal of legislation dealing with Santa Rosa Island, described in a later section of this paper, Tim Vail questioned NPS visitor management during hunting activities stating "This transparent stratagem by the Park Service allows them to say that the public is denied visitation to significant portions of SRI" (Vail 2007). Conflicts between NPS and Vail & Vickers also impacted scientific research activities and other

management functions of the park. In the settlement agreement that set 2011 as the date for hunting to end, the court also prescribed specific annual goals for reductions in the island ungulate population.<sup>14</sup> Vail & Vickers argued that NPS lacked the authority to independently count deer and elk (Galipeau 2009a). Even the methodology for counting the ungulate population was a contested issue between the Vail's and park officials who had substantially different estimates of the number of animals remaining on the island (Galipeau 2009b).

The conflict over hunting on Santa Rosa was not limited to disagreements over management practices between park managers and Vail & Vickers. The issues on Santa Rosa appear to have provided opportunities for interest groups and legislators to advance broader policy issues against the backdrop of hunting Santa Rosa's deer and elk. Santa Rosa was used as a setting for those seeking to expand hunting on public land, and on national park land in particular. At various times the National Rifle Association (NRA) and other groups encouraged their members to contact members of Congress to extend hunting and prevent the removal of deer and elk from Santa Rosa Island. Several organizations, including the NRA, worked together to urge Congress to make legislative changes to prevent removal of deer and elk and permit these animals to be "managed for the enjoyment of the public and not be eradicated from the island" (Congressional Sportsmen's Foundation, et al 2006). Regarding the removal of deer and elk under the 1997 settlement agreement, this coalition wrote to the chair and ranking member of the Senate Environment and Public Works Committee to express their concern about "... what seems to be National Park Service eagerness to assist in such an eradication plan. Their

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<sup>14</sup> January 1998 was the first joint count of deer and elk following the Settlement Agreement. Elk were thought to be under the limit of 800 animals. Deer were more than double the permitted 700 deer and the Vails reported that they were in the process of eliminating the hundreds of excess animals.

advocacy seems to be out of line with the public interest and conservation goals”

(Congressional Sportsmen’s Foundation, et al 2007). These efforts resonated with members of Congress such as Don Young (R-AK) who sought to open parks to hunting. When asked about hunting on Santa Rosa Island Jon Jarvis noted that Young “. . . is interested in the bigger issue, hunting in general and hunting in parks” (Jarvis 2007). The efforts by the NRA and others to extend hunting on Santa Rosa coincided with a 2007 executive order directing the departments of Agriculture and Interior to “facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitat” (Bush 2007).

While the NPS and Congress faced pressure to facilitate hunting and preserve the ungulates on Santa Rosa beyond the 2011 date stipulated in the settlement agreement, there was also pressure to reduce the number of ungulates. The U.S. Fish and Wildlife Service pressed to reduce the numbers of deer noting,

“The NPS required Vail & Vickers to have no more than 425 deer and 740 elk in December 2000. We believe that deer continue to have a significant effect on island flora, including an endangered plant, and recommend that the NPS substantially reduce the number of deer allowed by the adaptive management plan to allow listed plants a greater opportunity for recovery” (Fish & Wildlife Service 2001).

In a 2006 letter to park superintendent Russell Galipeau NPCA Pacific Regional Director Ron Sundergill expressed concern about the condition of the federally endangered Santa Rosa Island Manzanita and requested that the number of deer on the island be reduced in order to limit browsing in compliance with the 1997 settlement agreement. The letter expresses concern over the discovery of an injured bald eagle suffering from lead poisoning and suggests that the NPS use its authority to ban lead shot on the island. Sunderhill points out that “the settlement agreement does not require that the deer and elk be hunted in order to comply with the terms



– it only requires that deer and elk be removed from the island. Whether they are hunted or not is at the discretion of Vail & Vickers” (Sundergill 2006).<sup>15</sup>

### The Larger Context and Bigger Agendas

On December 28, 1973 President Richard Nixon signed the Endangered Species Act (ESA) into law. One can hardly imagine a more bipartisan piece of major legislation; the bill passed the House on a vote of 355-4 and was approved in the Senate by a voice vote. The passage of ESA followed enactment of a string of landmark environmental statutes (National Environmental Policy Act 1969, Clean Air Act 1970, Clean Water Act 1972) all with considerable bipartisan support and all enacted by a legislature controlled by the Democratic Party and a Republican president. Spurred on by the rapidly growing environmental movement, focusing events such as the 1969 Santa Barbara oil spill, and a political decision on the part of President Nixon that environmental protection could not become a political cause dominated by the Democratic Party, environmentalism became a politically powerful force leading to the passage of strong legislative measures.<sup>16</sup>

Yet within a decade, the cause of environmental protection clearly became an issue that divided the political parties. The backlash against these and other policies designed to promote environmental protection came from core constituencies within the Republican Party, and the election of Ronald Reagan in 1980 marked a clear turning point in the county’s environmental history. The national Republican Party went from mostly supportive of these

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<sup>15</sup> At the time of its lawsuit and subsequent settlement agreement NPCA sought to remove cattle from the island but did not pursue removal of deer and elk prior to the end of Vail & Vickers 25 year use and occupancy period.

<sup>16</sup> Public land policy had long been a bipartisan affair, with western members of Congress often dominating policy making. The Wilderness Act of 1964 for example passed the House on a 373-1 vote.

laws to skeptical if not openly hostile to the implementation of each. Conservative and libertarian think tanks such as the Heritage Foundation, the Cato Institute and the Marshall Institute took the lead in pushing free market economic policies and advocating rolling back environmental protections (Conway and Oreskes 2010). In the west the so-called sagebrush rebellion took off, pushing against government environmental policies that limited use of the lands and natural resources and activities such as logging, mining and grazing.

With the Republican congressional victory in the 1994 election came a whole new wave of national Republican elected officials led by fierce advocates of free markets, supporters of development and extractive industries, and opponents of many forms of regulation. House leaders in particular – Newt Gingrich (R-GA), Dick Armey (R-TX) and especially Majority Whip Tom DeLay (R-TX) sought to use the legislative process to overturn many of the policies enacted in the 1970s. The Endangered Species Act in particular became a source of frustration for congressional conservatives. The Act's provisions were seen by many on the right as a convenient excuse for environmentalists to have large tracks of land declared critical habitat for endangered species and removed from consideration for possible development of resources. When the Endangered Species Act was up for Reauthorization in 1992, tremendous differences between the parties prevented reauthorization, and the legislation remains unauthorized to this day.

It was within this national context that controversy could be expected to arise over the fate of Channel Islands National Park. Channel Islands National Park was authorized by legislation signed into law by Jimmy Carter in 1980, just as the bipartisan consensus on environmental policy was breaking down. However, the path from authorization of the park to

implementation of the idea was difficult in part because the park became a pawn in the larger partisan wars being fought out on the national government stage on issues of environmental protection and related fights over private property rights and gun control. As Frisch and Wakelee (2011) have argued, the authorization of Channel Islands National Park occurred at the end of a window of opportunity for environmental legislation. However, the land acquisition for the park and the conversion of the Islands into parkland took place in a much different climate, when partisanship and polarization marked national politics and national battles were being waged in various locales. The key issues confronting the park as the period of private ownership of Santa Rosa and Santa Cruz Islands ended and purchased land was scheduled to be under the control of the Park Service were in many ways intertwined with this national issues on the policy agenda, giving the park added visibility as a front in the ongoing environmental battles.

The early years of the transition from private land to park were marked by controversies described above and in Frisch and Wakelee (2011). The issues that confronted land use on Santa Rosa Island in particular appeared to be resolved with the settlement agreement in 1998 which ended the period of cattle ranching at stipulated that the former owners of the Islands must remove their property, including the non-native deer and elk by the end of 2011.

#### An "Air Drop" on Santa Rosa Island

Then, in the spring of 2005, House Armed Services Committee Chairman Duncan Hunter (R-CA) claims that he came up with an idea that would add another interesting chapter

in the course of the Park's history. In an often repeated story, Hunter (Hunter 2007) claimed that while on a congressional recess in California: "I was driving south with a bunch of marines, some guys fresh back from Iraq and one of them said, there's Santa Rosa Island and they're going to close it and they're going to wipe out the entire deer and elk herd."

Hunter, an avid sportsman who had frequently organized hunting trips for wounded members of the armed services and veterans decided that he wouldn't let that happen. He came up with the idea of turning control of Santa Rosa Island over to the Navy and using it as a hunting retreat for "members of the armed forces and official guests" (Hunter 2006). Hunter's enthusiasm for hunting and gun ownership was not matched with a similar enthusiasm for environmental protection and government regulation. Consistent with the direction of his party, he was often in opposition to legislation favored by environmentalists, earning a lifetime voting score from the League of Conservation Voters of a 9 (out of a possible 100). He had earned the particular ire of environmental groups by working with his Senate counterpart John Warner to carve out exemptions from the Endangered Species Act for the military bases and property.

As Chairman of one of the most important congressional committees, Hunter had the power to make his ideas reality well beyond those of typical rank and file members of Congress. Committee Chairmen have extraordinary power over the content of bills within their committee's jurisdiction, and sometimes as this case indicates, outside of the boundaries of the normal committee jurisdictional lines. The Armed Services Committee produces the National Defense Authorization Act (NDAA) each year which is comprehensive legislation authorizing budgetary expenditures in the Department of Defense and the national security programs of

the Department of Energy. There is considerable urgency and political pressure surrounding the passage of an NDAA each year in order to maintain stability in the programs necessary for national defense and security. This is especially true during times of war. Once a provision is included in the text of the bill, stripping it out is very difficult, especially when the committee Chairman objects.

On May 16, 2005, Congressman Hunter had placed the Santa Rosa Island provision in his committee's bill. When House Democrats learned about Hunter's plans, they immediately objected. House Armed Services Committee Member Vic Snyder (D-AR) and his staff notified Representative Lois Capps (D-CA) of Hunter's plan, as Capps's district includes Channel Islands National Park and the two Democrats submitted statements opposing the transfer. The early strategy in opposition to the plan appears to have been to frame it as an attempt by Hunter to gain access to prime hunting for himself and other politicians like disgraced former congressman Duke Cunningham (R-CA). Unlike future attempts by Hunter to alter the course of Santa Rosa Island, this first attempt did not single out veterans or disabled veterans and therefore was easily criticized as a giveaway to members of Congress and other high placed officials.

It initially appeared that this would be a successful opposition strategy, as Hunter's provision did not appear in the NDAA that originally passed the House. In addition, House Rules clearly would have required that the portion of the bill dealing with Channel Islands National Park also be referred to the Resources Committee which has jurisdiction over National Parks

had it been included in the original bill.<sup>17</sup> However, as several insiders pointed out, this was an issue that would not go away. Hunter used his authority as Committee Chairman to “air drop” a provision dealing with Santa Rosa Island into the bill after it had passed both the House and Senate and was in conference, the stage of the legislative process where differences between the bills passed by the two chambers are ironed out. Air dropping<sup>18</sup> refers to the now banned practice of including new language in the conference bill and report that has not been subject to consideration by either chamber. Air-dropped language has the benefit for its sponsor of not necessitating referral to other related committees.

The original language was inserted by Hunter into the conference bill on December 8, 2005. The Conference on the NDAA was the issue that kept Congress in session in 2005 after all of the other business had been done. There were two issues left at the end of the discussions that could not be resolved – Santa Rosa Island and the dispute between the administration and Hunter over torture. After a group of Senators led by John McCain (R-AZ) were able to reach a compromise with the administration and Hunter on torture, the fate of Santa Rosa Island remained the only issue unsettled. When the Senators heard that Santa Rosa was going to be included in the conference report, the Democratic Senators withdrew their signatures. That was December 15, 2005. And so when the conference met on December 16, Hunter offered the amendment and withdrew it and that appeared to be the end of the issue. However, the Associated Press (2006) claimed that Hunter at that time secured a deal that if he withdrew the

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<sup>17</sup> And potentially the Committee on Veterans Affairs had the provision designated the islands for use by military veterans.

<sup>18</sup> One of the changes provided for enhanced enforcement of an existing Senate rule (Rule XXVIII), prohibiting the “airdropping” of items into conference reports. “Air drops” are measures or matters inserted into conference reports without first being enacted by the House or Senate. Under current rules, these are considered violations of “*scope*,” a parliamentary principle which also applies to the House. However, air drops were consistent with House Rules when Hunter employed one in 2005.

provision from the NDAA and reintroduced a stand-alone bill the following Congress, California Democratic member of the Armed Services Committee Ellen Tauscher (D-CA) would support the stand-alone legislation. Hunter's willingness to delay enactment of the bill needed to fund the entire Defense establishment over this largely unrelated provision dealing with Channel Islands National park is striking and indicative of a level of persistence that many observers claimed was consistent with Hunter's personality.

The following year, 2006, Hunter again sought to influence the course of Santa Rosa Island through the NDAA, the must pass legislation authorizing defense programs rather than the stand-alone law that is typical for policies dealing with National Parks. He redrafted the language and placed new text in the bill through the Chairman's mark the point where the House begins formal consideration of a bill. This time the element of a surprise "air-drop" was no longer an option, so a bill needed to pass containing the provision from introduction. At this point therefore, the Resources Committee would need to weigh in on the proposal, as clearly National Park policy falls squarely within their jurisdiction. Historically, congressional committees aggressively seek to defend and enlarge their turf and often there is conflict between standing committees over questions of jurisdiction (King, 1997). Entrepreneurial committee chairs will seek to increase the scope of their committees at the expense of other committees, and it could be expected that the Resources Committee Chair would fight aggressively to preserve units of the National Park system. However, the tide of national politics intervened. In this case the newly elected chairman of the House Recourses Committee Richard Pombo (R-CA) willingly turned over jurisdiction as Pombo was an advocate of developing public lands. In a letter dated, May 3, 2006, Pombo informed Hunter (Pombo 2006)

“I understand that the Committee on Armed Services is considering adding language to the fiscal year 2007 Department of Defense Authorization Act which would affect the management of elk and deer in the Channel Islands National Park, as well as the park ecosystem. The national park is a popular designation for recreation, including hunting for disabled veterans.” ... “Like you, I strongly support recreation activities for disabled veteran and other Americans on our public lands. While your proposed language may raise issues regarding ecosystem health, recreational access and private property rights I will not delay House consideration of the 2007 Department of Defense authorization bill in a time of war by requesting referral.”

Pombo’s actions were not consistent with expectations of prevailing theory where Chairmen of congressional committees aggressively guard their turf. However, Chairman Pombo’s willingness to cede jurisdiction are understandable in the context of the larger policy debates and the partisan polarization that had developed over environmental issues. When the Resources Committee chair position became vacant in early 2006, Pombo made an aggressive push for the job, even though it he was only the sixth most senior Republican on the Committee. In a multi-candidate race for the position, Pombo prevailed. His success was largely attributed to three factors: 1) his close relationship with Majority Leader Tom Delay; 2) His success at raising money for House Republicans from many of the businesses that have interests before the Resources Committee; and 3) His past efforts at taking the lead on several issues of importance to extractive and land interests including opposition to the Endangered Species Act, promotion of gun owner rights and advocacy of private property.

The *Denver Post* editorialized on the selection of Pombo as Resources Committee

Chair:

“We feared the committee would pick a southerner, Rep. John Duncan, R-Tenn., to head the committee that oversees public lands and environmental protection in the West. We never dreamed it could be worse. Want to know how far right Pombo leans? Duncan, who once compared an environmental campaign to Nazi propaganda, was actually considered a more moderate consensus candidate. The House Resources Committee takes the legislative lead on endangered-species protection, wetlands



preservation, wildfire response, drought mitigation and water-supply allocation. Pombo, a California rancher, wants to gut the Endangered Species Act. His selection was immediately hailed by property-rights advocates and those who want to develop federal lands” (Denver Post 2003).

True to his reputation, Pombo looked out for the interests that helped elevate him to committee chair when he held the gavel. His opposition to the Endangered Species Act was the reason why he became involved in politics. In describing the Endangered Species Act, Pombo and co-author Joseph Farrah (Pombo and Farrah 1996, p.35) claim:

“In theory, the ESA saves species from the depredations of humankind and restores them to viable populations. In actuality, it violates property rights and has arguably resulted in the recovery of no species. It has cost the United States billions of dollars – not only in direct costs, but in lost opportunity for economic growth. What is worse, the authorization for the act expired on 30 September 1992. Since that time, property rights have been abrogated under an expired law.”

Once it was clear that the committee Chairman with oversight responsibility over National Parks was more than willing to allow Hunter to control the agenda, Hunter again tried to insert language in the NDAA, this time attempting to tailor the legislation to create hunting opportunities for disabled veterans, a target population that would garner more public sympathy than had been the case under the original proposal.<sup>19</sup>

However, problems with this plan soon became apparent when representatives of the Paralyzed Veterans of America (PVA) were invited to visit the Island, and it was obvious that the remote conditions and difficult terrain of Santa Rosa were not well suited for access by the severely disabled members of this group. On July 26, 2006, Douglas Vollmer of the PVA wrote to Congressman Snyder saying: “While PVA applauds the efforts by Chairman Duncan Hunter to open hunting and outdoor venues for our members, other disabled veterans and current

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<sup>19</sup> On the importance of target populations in the policy process, see Ingram and Schneider 1993.

service members we have come to the conclusion that the Santa Rosa Island initiative is not viable” (Vollmer 2006).

When the NDAA was considered by the Armed Services Committee in markup, Congressman Snyder introduced an amendment and Hunter countered with legislative language is what eventually passed into law. Far from the original language that transferred ownership of Santa Rosa to the Navy, the enacted provision was poorly drafted and vague. Although Hunter thought that the language would halt the removal of the non-native ungulates from the Islands, and allow the continuation of hunting, the legal interpretation put forward by the Bush Administration Interior Department concluded that the only impact of the provision would be to prevent the Department from assisting with the final removal of animals from the Island in compliance with the settlement agreement.

The enacted language, Section 1077(c) of P.L. 109-364, was a far cry from the language Hunter had planned to introduce in the previous Congress, transferring control of the Island to the Navy or even the original language from the chairman’s mark which sought to allow for hunting by disabled veterans. The text of the provision reads:

RECREATIONAL ACTIVITIES ON SANTA ROSA ISLAND.—The Secretary of the Interior shall immediately cease the plan, approved in the settlement agreement for case number 96-7412 WJR and case number 97-4098 WJR, to exterminate the deer and elk on Santa Rosa Island, Channel Islands, California, by helicopter and shall not exterminate or nearly exterminate the deer and elk.

In addition, the conference report that accompanied the legislation claimed that the provision would:

...require the Secretary of the Interior to cease the plan to exterminate deer and elk on Santa Rosa Island, California by helicopter, and prohibit the Secretary of the Interior from exterminating or nearly exterminating the deer and elk on the island. H.R. Conf. Rep. No. 109-702, at 820 (2006).

The Solicitor of the Department of Interior issued an interpretation of this provision on March 30, 2007. The key passage indicates that the law was being interpreted in a way that did nothing to undo the Settlement Agreement's requirement that the Vickers and Vail partnership's obligation to remove the deer and elk by the date specified.

One question of interest is how did Hunter's language become so watered down as to be almost meaningless and in no way approaching his stated goals? Part of the answer lies in the work of Congressman Vic Snyder and his staff, who opposed Hunter and ultimately negotiated compromise language that was not effective in altering the status quo.

Although not directly affected by the Channel Islands provision as his congressional district was thousands of miles away from the National Park and not someone who had every visited, Representative Vic Snyder (D-AR) learned about the Hunter provision, objected, and decided to involve himself in the issue. There are several reasons why Snyder, a Representative from Arkansas who also served on the Armed Services Committee became a leading opponent of Hunter's plan. Snyder was a life-long supporter of the parks since his days as a boy visiting Oregon's Crater Lake National Park, and he believed that parks should be set aside for the enjoyment of all, not just a single powerful group. In addition, Snyder felt that this issue had no place being included in the defense bill; in his opinion jurisdiction for issues relating to a National Park belonged squarely in the Committee on Resources, not the Armed Services Committee, and he believed that Chairman Hunter was violating regular order and wasting the time of the Armed Services Committee on an extraneous issue in a time of war. Snyder also had what he described as a "prickly" relationship with Hunter, and he was willing to challenge him when he did not agree with the Chairman's sometimes unorthodox ideas.

Finally, Snyder also felt that the interests of the member whose district included Channel Islands National Park (Democrat Lois Capps) were not being considered. It was Snyder who first notified Capps of Hunter's plan. Snyder felt that this was a violation of the way that congress should operate, that the interests of the member representing a district should be consulted on any issue involving that district. In some ways Snyder and his staff, as well as the Democratic staff on the Armed Services Committee helped to negotiate language that left the course of Santa Rosa on the trajectory set by the settlement agreement.

In November 2006, the Democrats took back control of the both the House and Senate. One would assume that the Committees of Jurisdiction would assume control of the policy and attempt to overturn the Hunter language. However, the internal dynamic of the committees in the House was such that the Resources Committee could not produce a stand-alone bill repealing the provision. The ranking member of the Resources Committee was Alaskan Don Young as Richard Pombo was defeated in his reelection bid. Like Pombo, Young's opposition to the Endangered Species Act was well known as was his leadership on the issue of allowing guns and hunting in National Parks.

At the start of the 110<sup>th</sup> Congress, Lois Capps was able to secure a seat on the Resources Committee, largely to have access to the committee of jurisdiction on park matters, Senators Boxer and Feinstein introduced stand-alone legislation in the Senate that was referred to the Senate's Energy and Natural Resources Committee. Similar language had passed the Senate in the lame duck session following the 2006 election, but was never taken up by the House. However, Young's strong opposition meant a difficult battle getting a stand-alone bill through

the House Resources Committee, and he signaled his intent to contest the matter in a confrontational hearing of the National Parks, Forests and Public Lands subcommittee.

According to Collins (2007) at the hearing, "Young also complained that the anti-hunting movement has created a management problem in a lot of national parks. And he questioned government spending on a program to re-establish what he referred to as the red-tailed cat, or whatever it is." In addition, Young's former chief of staff Mike Henry was involved in the issue as a lobbyist working on behalf of the Vail family.

Young's opposition posed a serious roadblock. In the words of one former committee staffer:

"He would support hunting in any NPS unit. He is very pro hunting. He is also very anti Endangered Species Act – he has opposed efforts to eradicate the cows and pigs. He thinks that the ESA is ludicrous and opposes anything to return land to its original state. I don't think it has anything to do with personal interest, I think that he is philosophically opposed to what the Park Service wants to do with the islands and would use his position to block anything coming up in the full committee."

Capps and other Democrats seeking to repeal the Hunter language realized the challenge of overcoming Young's objections, and allowed the Senate Appropriations Committee to take the lead. While legislating on an appropriations bill is considered a violation of the rules of both the house and Senate, it is routinely done. In fact, some scholars (Buhl, Frisch and Kelly 2013) claim that the Appropriations Committees of Congress have assumed a dominant role in the legislative process through the use of policy (limitation) riders that prevent action by denying funding to a given activity.

In the case of repealing the Hunter amendment, Senator Feinstein, who was then Chair of the Military Construction Subcommittee of Senate Appropriations took the lead in inserting a

provision into the subcommittee bill for Fiscal Year 2008. Each year the Congress must pass 12 (at that time 13) appropriations bills that fund different parts of the government. These must-pass bills are some of the only major pieces of legislation that have to be signed into law every year and they therefore become targets for all sorts of legislative provisions (known as riders) that would not make it through the legislative process as stand-alone bills.

Senator Feinstein was perfectly placed as a key member of the Appropriations Committee to add language overturning Hunter's provision. Appropriations Subcommittees Chairs are extremely powerful, so much so that they are often referred to as "Cardinals." The language was originally included in the text of the Military Construction Bill that she authored and was passed by her subcommittee, and the final provision repealing the Hunter provision was included in the Omnibus Appropriations Bill for Fiscal Year 2008 that was signed into law by President Bush.

#### Discussion

Were Duncan Hunter's motives as simple as he claims, or was there an organized interest or interests pushing Hunter to try to prevent the removal of the non-native deer and elk from Santa Rosa? We have found no concrete evidence to this point that Hunter's motivations were anything other than as he claims. Tim Vail submitted testimony to the Subcommittee on National Parks of the Senate Energy and Resources Committee in which he claimed that the former owners of Santa Rosa Island played no role in the prompting Hunter: "V&V played no role in this language and was not consulted by Congressman Hunter in any way

regarding it. It is not our intention to advocate for the continuation of our wildlife management program past the year 2011” (Vail 2007).

Hunter’s unusual behavior on this issue appears to be consistent with his personality and previous actions. Descriptions of Hunter in the mainstream media and among inside observers range from idiosyncratic to wacky. Hunter once floated a proposal to lead a congressional delegation to the African Nation of Chad where the members of Congress would hunt wild wildebeest that would be used to help feed refugees from the crisis in neighboring Darfur. As there are no wildebeest in Chad, and the government of Chad does not allow hunting of large mammals, the plan fell through. Hunter then contacted other African countries to inquire about the possibility of hunting for wildebeest (Daily Kos 2006).

Hunter was a big supporter of the military, a big proponent of hunting, and a strong opponent of The Endangered Species Act. All three of these policy positions are consistent with the Republican platform. An ambitious politician who would soon launch a campaign for the presidency in 2008, Hunter sought to press this issue of Hunting on Santa Rosa, an issue that could potentially pay political dividends among the base of the Republican electorate.

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