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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[Docket No. NPS-2018-0008; NPS-DEVA-25759; PPWONRADE2, PMP00EI05.YP0000]

RIN 1024-AE48

Death Valley National Park; Designation of Airstrip

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service revises the special regulations for Death Valley National Park to designate the Saline Valley Warm Springs Airfield, commonly known as the Chicken Strip, within the Saline Valley Warm Springs Area as a location available for the operation of aircraft.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kelly Daigle, National Park Service, Environmental Quality Division, (303) 987-6897, kelly_daigle@nps.gov.

SUPPLEMENTARY INFORMATION:

Background

Saline Valley is a large desert valley located in the northwest portion of Death Valley National Park (the park). The Saline Valley Warm Springs Area is approximately 1,100 acres of backcountry surrounded by wilderness. This Area is distinctive, both in the setting of the site and in its geology. Saline Valley is a closed basin, which means that the water does not flow to

another body of water. Water in closed basins only leaves the system by evaporation or diversion. The Saline Valley Warm Springs are among the highest-flow springs in the park. The mountain ranges surrounding this valley, Saline Range, Last Chance Range, and Inyo Range, have elevations ranging from 7,000 feet to over 11,000 feet, which result in spectacular views from the Saline Valley Warm Springs at an elevation of around 1,000 feet in the valley floor.

The Timbisha Shoshone Tribe (the Tribe), whose homelands encompass the entirety of the park, has a deep affinity for the Saline Valley Warm Springs Area due to the existence of long-lived historical and ethnographic connections. The Timbisha Shoshone Homeland Act of 2000 (Homeland Act; Public Law 106-423) specified designated special use areas. Saline Valley is part of one of these special use areas. The waters of the warm springs in Saline Valley are a source of *puha* for the Tribe, a life force energy. Although the development of the Area by Euro-Americans degraded *puha* and other ethnographic resources, Tribal leaders still seek these cultural connections from historic times until the present and will continue to do so in the future.

The Saline Valley Warm Springs Area has not been formally or systematically developed for use by the NPS but does have a number of user-developed and user-maintained structures and facilities. Visitors enjoy backcountry camping and soaking tubs created by diverting water from natural source springs. Visitors use the Saline Valley Warm Springs Area throughout the year but the cooler months, October to May, receive the highest use; holidays are times of especially heavy use. The Lower Spring area is the most developed and includes the following features: Cool Pool, Sunrise Pool, Crystal Pool, Children's Play Tub, communal fire pit, library, shower, bathtub, sink for dishwashing, maintained lawn, settling pond, auto shop, and the camp host site. It is the site of many communal activities, such as group fires, communal dinners, and singing. The site contains heavy feral burro concentration and use, and invasive species such as palm

trees and Bermuda grass.

Chicken Strip Airstrip

There is a small, unimproved landing strip to the west of Lower Spring, referred to as the Chicken Strip. The formal name of the airstrip is the Saline Valley Warm Springs Airfield. The airstrip is located at latitude N 36° 48.41', longitude W 117° 46.90'. In past years, there were up to three landing strips for small planes in this Area. Two have been decommissioned.

Historically, the landing strips were used by miners and prospectors to access Saline Valley. The Chicken Strip is the only remaining active landing strip within the Saline Valley Warm Springs Area. It is approximately 1,400 feet long and 35 feet wide. The strip has a tie-down area large enough to accommodate five small planes. Features of the airstrip include a windsock, painted rocks lining the strip, and two airplane tie-downs. Visitors who fly into the Saline Valley Warm Springs Area via the Chicken Strip often camp next to their airplanes.

The Chicken Strip surface is maintained by the community of recreational pilots who use it. The Recreational Aviation Foundation (RAF), an organization of private pilots, is active in the promotion of the continued use of the Chicken Strip. In 2017, the NPS renewed a memorandum of understanding (MOU) with the RAF that allows the RAF to maintain the Chicken Strip under the supervision of NPS staff at no cost to the NPS. Maintenance activities include leveling and packing the surface and removing stones and debris.

Based on visitor registration logs at the Chicken Strip, approximately 440 people visited Saline Valley via airplane from 2008 to 2012, averaging 88 visitors per year. Of the aircraft reported, approximately two-thirds were Cessna models. Other types of planes included various models of Pipers, Maules, and Beechcraft. The largest number of people recorded in one aircraft was six. The Chicken Strip is the last backcountry airstrip remaining in the park and provides a

unique and challenging aviation experience. Retaining use of the airstrip will benefit visitor use and experience for those visitors who seek this type of recreation, or those visitors who enjoy watching the aircraft fly into the Saline Valley Warm Springs Area.

Final Rule.

This rule designates the Chicken Strip airstrip as available for use by aircraft. This action implements part of the preferred alternative identified in the May 2019 Saline Valley Warm Springs Management Plan and Environmental Impact Statement (FEIS). On June 14, 2019, the Regional Director for the Pacific West Region signed a Record of Decision identifying the preferred alternative as the selected alternative. The airstrip has been in use since before the NPS began managing the Saline Valley Warm Springs Area in 1994. This rule codifies the continued use of the airstrip. National Park Service (NPS) regulations at 36 CFR 2.17(a)(1) prohibit the operation or use of an aircraft on lands or waters other than at locations designated pursuant to a special regulation.

This rule also removes references to “Death Valley National Monument” and “Monument” in § 2.17 and replaces them with references to “Death Valley National Park” and “Park”. This reflects the abolishment of Death Valley National Monument and the establishment of Death Valley National Park in 1994. 16 U.S.C. 410aaaa-1.

Summary of Public Comments

The NPS published a proposed rule in the Federal Register on September 20, 2018 (83 FR 47587). The NPS accepted public comments on the proposed rule for 60 days via the mail, hand delivery, and the Federal eRulemaking Portal at <http://www.regulations.gov>. Comments were accepted through November 19, 2018. A total of 461 comments were submitted and reviewed. A summary of the pertinent issues raised in the comments and NPS responses are

provided below. Several comments on the proposed rule addressed the NPS's evaluation of the environmental impacts of the preferred alternative in the Saline Valley Warm Springs Draft Management Plan/Environmental Impact Statement (DEIS). These comments are not addressed in this final rule. The NPS evaluated the environmental impacts of each alternative in the FEIS and explained the reasons for selecting the preferred alternative in the ROD. After considering the public comments and after additional review, the NPS did not make any changes to the rule.

1. Comment: Several commenters expressed concern that designation of the Chicken Strip for use by aircraft will lead to increased use, and the related noise pollution will negatively impact the remote character and quietude of Saline Valley and surrounding wilderness, thus altering and ultimately diminishing the experience of visitors who are seeking respite from such intrusion. Other commenters expressed concern that the rule imposes no constraints on the number and frequency of flights that can land at the Chicken Strip. One commenter suggested establishing a permit system to manage use.

NPS Response: There is no evidence to suggest, and the NPS does not anticipate, that the designation of the Chicken Strip will lead to increased aircraft use at the Saline Valley Warm Springs Area. The use of the airstrip is technically demanding even for the most experienced pilots and is therefore somewhat self-regulating due the size of the landing area—1,400 feet long and 35 feet wide. From 2008-2012, 235 planes landed at the Chicken Strip, averaging 47 planes per year. More recent data collected from 2017 and 2018 documented 74 planes which landed at the Chicken Strip during this time, averaging 37 landings per year. Given the current use levels, there is no plan for establishing a permit system for aircraft at the Chicken Strip at this time, though this could be reconsidered if use significantly increases.

Of the aircraft reported, approximately two-thirds were various models of Cessna or

Vistaliner airplanes, averaging a decibel (dB) level of less than 80dB when flying over at 1,000 feet (Federal Aviation Administration 2001 and 2012) which is quieter than the sound of a garbage disposal but at a level that could interrupt speech (Purdue University 2000). Although the NPS acknowledges that reactions to sound are different for every visitor, sound from recreational aircraft using the Chicken Strip will be infrequent and short in duration. For this reason, the continued use of the airstrip is not expected to degrade the quietude more than the use of vehicles to access the Saline Valley Warm Springs Area. Additionally, some visitors feel that the frequent military overflights, which are much louder, have a larger impact on the surrounding area than the sounds from small private planes.

2. *Comment:* A number of commenters objected to the designation of the airstrip because although it improves accessibility for one recreational activity, it does not maximize the visitor experience for the broader visiting public and favors a small group of stakeholders over other recreationists.

NPS Response: The NPS recognizes that visitors use the Saline Valley Warm Springs Area for a variety of recreational experiences. Designation of the Chicken Strip ensures that the Saline Valley Warm Springs Area is open and accessible for recreational pursuits by all visitors. The airstrip will allow accessibility for recreational flyers and visitors that cannot access the site by vehicle. Use of the airstrip will not prohibit nor impede access to the Area for other recreational uses including soaking, sightseeing, camping, hiking, backpacking, and biking. Some visitors have said they enjoy watching the aircraft land at the Chicken Strip.

3. *Comment:* One commenter suggested that rather than designate the Chicken Strip as available to aircraft, the NPS should better manage the existing dirt road and emphasize other recreational activities to provide for alternative, more affordable means of visitor access than

private aviation, with nominal environmental harm.

NPS Response: Most visitors access the Saline Valley Warm Springs Area via Saline Valley Road, from either the north (North Pass) or the south (South Pass). Inyo County maintains the road from the southern access point at California Highway 190 to Big Pine Road at the northern access point. The NPS maintains the other roads nearby the Saline Valley Warm Springs Area according to the park's standards for backcountry roads. Aircraft are just one of several motorized means of accessing the Area for recreational purposes. The designation of the Chicken Strip does not preclude other recreational activities from occurring at the site, nor does it hinder access by other means of transportation (foot, vehicle, motorcycle, etc.). Both routine road maintenance by Inyo County and airstrip maintenance by the RAF in accordance with an existing MOU have the potential to displace soils and impact vegetation conditions; however, the impacts at the Saline Valley Warm Springs Area are largely driven by visitors participating in recreational activities after they have arrived at the springs.

4. Comment: Some commenters questioned whether the NPS or the Federal Aviation Administration (FAA) have conducted safety assessments of the Chicken Strip and dispute the need for a "challenge" airstrip inside the park when other nearby airstrips – for example the airstrip at Furnace Creek – can accommodate aircraft.

NPS Response: The FAA is not required to and has not conducted a safety assessment of the Chicken Strip. 49 U.S.C. 44708. The airstrip is serviced by the NPS through the MOU with the RAF. This MOU addresses maintenance such as leveling and packing the surface, removing rocks and debris, and maintaining runway markers. The RAF assists the NPS in many ways to improve safety, including replacing wind socks and arranging work days, often with the help of park personnel, to make repairs. The NPS has recurring needs for maintenance at the Chicken

Strip due to rainstorms. When a storm event is severe enough, the NPS will temporarily close the airstrip until repair work can be completed.

Although the NPS is not designating the Chicken Strip for the challenge it provides to recreational flyers, the NPS acknowledges that the Chicken Strip presents a challenge. The intent is to maintain air access for a variety of experiences for pilots of small aircraft. Users have been accessing the Saline Valley by aircraft before it was managed by the NPS and most use the airstrip to access recreational activities in the Saline Valley. Although recreational flyers may access nearby airstrips such as Furnace Creek, Stovepipe Wells, or Lone Pine, access to the Saline Valley Warm Springs Area requires an additional 3-4-hour drive from any of these other airstrips, and pilots would need to arrange vehicle transport in advance to travel to Saline Valley from these locations. The experience one gets by visiting the Saline Valley Warm Springs Area by landing at the Chicken Strip is completely different than the experience one has at Furnace Creek. Furnace Creek is a highly developed area that sees over 1.7 million visitors per year, while the Saline Valley Warm Springs Area is extremely remote and primitive, offering more opportunities for solitude and more primitive forms of recreation.

5. *Comment:* One commenter raised concerns that the rule will necessitate the provision of related concessions, such as fuel, water, and food amenities, that will further disrupt the solitude of the area.

NPS Response: At this time, the NPS is not considering additional concessions or amenities, and any future provision of commercial services would require additional public outreach and environmental analysis. The limited services currently available for vehicles at the Saline Valley Warm Springs Area are provided free of charge by a volunteer and will be phased out with the implementation of the FEIS.

6. *Comment:* Several commenters supported decommissioning the Chicken Strip and restoring the site to natural conditions to ensure the Area is managed in a manner that is consistent with conservation and backcountry qualities and experiences.

NPS Response: The Saline Valley Warm Springs Area is managed as a backcountry campground for backcountry qualities and experiences. The Chicken Strip is considered a backcountry feature and is maintained in a way that is in keeping with backcountry experiences. It offers no commercial services. Visitors to Death Valley National Park will continue to enjoy a wide range of backcountry activities in the Saline Valley Warm Springs Area. For some visitors, being able to access the Chicken Strip via aircraft is a valued and important backcountry experience. The NPS evaluated the environmental impacts of five alternatives in the FEIS, including a restoration alternative, and explained the reasons for selecting the preferred alternative in the ROD. The FEIS and ROD can be found online at <http://parkplanning.nps.gov/SalineValleyWarmSprings>, by clicking on the link entitled "Document List."

7. *Comment:* Numerous commenters questioned whether the NPS consulted with impacted tribes and were concerned that official designation of the Chicken Strip is contrary to the interests of the Timbisha Shoshone Tribe.

NPS Response: The NPS sought comment from the Timbisha Shoshone Tribe, the Big Pine Band of Owens Valley, the Bishop Paiute Tribe, the Fort Independence Community of Paiute, the Kern River Paiute Council, and the Lone Pine Paiute Shoshone Reservation during the scoping phase, alternatives development phase, and DEIS phase of the project. The tribes, other than the Timbisha Shoshone Tribe, declined to provide formal comment. The NPS formally invited the Timbisha Shoshone Tribe to participate as a cooperating agency on the

Saline Valley Warm Springs Management Plan and Environmental Impact Statement (Plan/EIS) process. The Tribe accepted the offer, and since 2012, has had the opportunity to participate on issues and alternatives development, including alternatives that would designate the Chicken Strip, internal document review, and review and response to public comments. Consultation under the National Environmental Policy Act and Section 106 of the National Historic Preservation Act was completed through the Plan/EIS process. Additionally, the NPS commissioned an assessment of the eligibility of the Saline Valley Warm Springs Area as an ethnographic site eligible for listing on the National Register of Historic Places. This determination of eligibility (DOE) considered the potential significance of the site from the perspective of the Tribe. The NPS found that historic properties in the Area will not be adversely affected by the implementation of the selected alternative, which includes the designation of the Chicken Strip. The NPS evaluated this rule separately under Executive Order 13175 and, utilizing the Department of Interior's tribal consultation policy, determined that additional tribal consultation is not required because the rule will not have a substantial direct effect on federally recognized tribes.

8. *Comment:* One commenter stated that the rule sets a poor precedent and expressed worry that other units of the National Park System will similarly begin to allow activities that are incompatible with the values of the NPS.

NPS Response: The NPS does not believe that designating the Chicken Strip will be precedent setting, nor is it incompatible with the values of the NPS. Backcountry airstrips have a long history on public lands, including on lands managed by multiple units of the NPS, and are not considered incompatible with the values of Death Valley National Park. Backcountry airstrips allow visitors to access remote areas to enjoy recreational activities. The Chicken Strip

is one of three airstrips currently used within Death Valley National Park. Both Death Valley Airport and Stovepipe Wells Airport have special regulations allowing for their use. The Chicken Strip has been in continuous use for decades, pre-dating management of the Area by the NPS. This rule will formalize its continued operation as a backcountry airstrip. Additionally, 36 CFR 2.17 prohibits the operation or use of aircraft on lands or waters other than at locations designated pursuant to special regulations. In order for other NPS units to allow this activity, notice and comment rulemaking, and compliance with other laws, Executive Orders, and Departmental policy, is required.

Compliance with Other Laws, Executive Orders and Department Policy.

Regulatory Planning and Review(Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this rule in a manner consistent with these requirements.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

Enabling regulations are considered deregulatory under guidance implementing E.O. 13771 (M-17-21). This rule designates an airstrip for the recreational use and enjoyment of the public that would otherwise be prohibited.

Administrative Procedure Act

The NPS recognizes that rules ordinarily do not become effective until at least 30 days after their publication in the Federal Register. The NPS has determined, however, that this rule shall be effective upon immediately upon publication. The NPS provided a 60-day public comment period for the proposed rule (83 FR 47587). The NPS has determined that any further delay in implementing this rule would not be in the public interest. The Chicken Strip has been in continuous use for decades, pre-dating the management of the Area by the NPS. This rule will formalize its continued operation as a backcountry airstrip and therefore does not impact the public in terms of requiring lead time for compliance. For this reason, the NPS finds good cause under 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information in the report entitled “Cost-Benefit and Regulatory Flexibility Threshold Analyses: Special Regulations for Designation of Airstrip at Death Valley National Park” which is available online at <http://parkplanning.nps.gov/SalineValleyWarmSprings> by clicking on the link entitled “Document List.”

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule only affects use of federally-administered lands and waters. It has no outside effects on other areas. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to

eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. The NPS has evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and has determined that tribal consultation is not required because the rule will not have a substantial direct effect on federally recognized Indian tribes, although consultation with the Timbisha Shoshone Tribe under the National Environmental Policy Act and the National Historic Preservation Act was completed. The NPS invited the Tribe to become a cooperating agency on the DEIS on April 3, 2012. The NPS has since conducted formal consultation with the Tribe and invited their participation on issues and alternatives development and internal document review. In addition to formal consultation, the NPS commissioned an assessment of the eligibility of the Saline Valley Warm Springs Area as an ethnographic site eligible for listing on the National Register of Historic Places under Criterion A. This assessment was submitted to the State Historic Preservation Office in early 2018. The NPS found that historic properties in the Area will not be adversely affected by the implementation of the selected alternative, which includes the designation of the Chicken Strip.

Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. The NPS

may not conduct or sponsor and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969 (NEPA)

This rule is part of a larger planning process for Saline Valley Warm Springs that constitutes a major Federal action significantly affecting the quality of the human environment. NPS has prepared the FEIS and ROD under the NEPA. The FEIS and ROD can be found online at <http://parkplanning.nps.gov/SalineValleyWarmSprings>, by clicking on the link entitled “Document List.”

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

References Cited

A complete list of all references cited in this proposed rule is available at <http://www.regulations.gov> at Docket No. NPS-2018-0008.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and Recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10-137 and D.C. Code 50-2201.07.

2. Amend § 7.26:

- a. By revising the section heading;
- b. In paragraphs (a) through (d), wherever it occurs, by removing the word “Monument” and adding in its place the word “Park”; and
- c. By adding paragraph (e)(3).

The revision and addition to read as follows:

§ 7.26 Death Valley National Park.

* * * * *

(e) * * *

(3) Saline Valley Warm Springs Airfield, latitude N 36° 48.41’, longitude W 117° 46.90’.

Rob Wallace
Assistant Secretary
for Fish and Wildlife and Parks.
[FR Doc. 2019-17714 Filed: 8/16/2019 8:45 am; Publication Date: 8/19/2019]