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April 18, 2013 Yosemite National Park Superintendent, Attn: Merced River Plan/DEIS
P.O. Box 577 Yosemite, CA 95389
Sent via US Mail and the Internet

Dear Wilderness Planning Team:

These are comments on the Merced Wild and Scenic River Draft Comprehensive Management Plan and Environmental Impact Statement from Wilderness Watch. Wilderness Watch is a national nonprofit wilderness conservation organization dedicated to the protection and proper stewardship of the National Wilderness Preservation System. We have some serious concerns with the proposed management plan, which we address in these comments.

We also refer you to our earlier comments on the scoping for this plan (February 4, 2010) and incorporate those comments, by reference, into this comment. Simply put, many of the issues we discussed in that letter have not been addressed. The following comments address questions and issues of adequacy under the Wilderness Act, the National Environmental Policy Act (NEPA), the Wild and Scenic Rivers Act (WSRA), and the Organic Act for the Park Service (OA).

NEPA

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The DEIS is massive making it virtually impossible for the public to digest. How does such a massive document meet the CEQ regulations and other NEPA requirements for length and readability? There appears to be problems with including the appropriate information in the appropriate chapter. Chapter 5 includes much information about the affected environment lacking in Chapter 9, even though Chapter 9 (in volume 2) is both the affected environment and environmental consequences section. For example, Chapter 9 includes no specific information on the condition of the meadows in the wilderness portion of the upper Merced River. Chapter 5 includes some of that information, though it is not adequate (see elsewhere in this comment).

Environmentally Preferred Alternative

How can the DEIS conclude that it's preferred alternative--one that retains the High Sierra Camp at Merced Lake--is the environmentally preferred alternative given the analysis in Chapter 9? How can this be the environmentally preferred alternative when grazing will continue in East Merced meadow (administrative use) when the area is in unacceptable condition?

Wilderness Character and High Sierra Camps

We are discussing these two issues together because the High Sierra Camps have a significant negative influence on wilderness character of the area. There are serious problems with the DEIS, particularly in its conclusions which are rarely supported by the analysis.

By way of introduction, the DEIS only analyzes the Merced River camp. This presents a problem in terms of water pollution as the other camps--Vogelsang, May Lake, and Sunrise--also drain into the Merced River. The NPS has been presented with information documenting water pollution from these camps as well as from pack stock use.

The DEIS analysis seems confused. It notes harmful impacts from the camp at Merced Lake, but the preferred alternative is to keep the camp, albeit at a slightly reduced capacity (42 people versus 60) and to install composting toilets. How does this solve the big issue of whether the camp is compatible with the NPS OA, the WSRA and the Wilderness Act, let alone issues such soil compaction, helicopter access and trail use?

In terms of biological impacts, the DEIS seems to claim (erroneously) there is little or no difference between the preferred alternative and the options that eliminate the Merced River camp when comparing the summary of impacts. However, Chapter 9 does show, albeit inconsistently, major difference between options regarding wilderness character, which include biological factors. This creates confusion for a decision-maker.

For example, that the DEIS indicates the Merced camp has minor impacts to soil resources (see, for example page 9-24)? How is "minor" quantified? It apparently does not include impacts to the trail and moving visitors through the wilderness to the doughnut hole that constitutes the Merced River camp. This is only one example where the DEIS understates impacts from the camp.

In terms of wilderness character, the DEIS seems to do only a slightly better job of analyzing impacts from the camp and other activities. Nevertheless, this section of the DEIS has problems of inconsistent analysis.

For example, the DEIS clearly shows major impacts to wilderness character from the Merced camp. They are termed "major." At the same time, the DEIS claims that the preferred alternative (alternative 5) would have impacts that are "long term, negligible to minor, and beneficial." Why is there this inconsistency? There is no question that the camps have major negative impacts of the wilderness character of the area.

Congress has recognized the problems with the camps and anticipated they would eventually be eliminated. That is why these doughnut holes in the Yosemite National Park Wilderness are designated as potential wilderness.

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In addition to violating NPS policy regarding potential wilderness, the Merced Camp also violates the Wild and Scenic Rivers Act. The WSRA defines a wild river as one with watersheds or shorelines essentially primitive and waters unpolluted. Regulations implementing the law state wild rivers will be "essentially free of structures." Courts have held that structures like those at Merced Camp are incompatible with wild river designation management.

In summary, by keeping the High Sierra Camps, the preferred alternative fails to meet the Wilderness Act, Park Service Policy on potential wilderness, the Wild and Scenic Rivers Act (both in terms of structures in a wild river and the failure to limit commercial uses in wild river corridor), the California Wilderness Act of 1984 (timely removal of the camps given their impacts), and the OA for the national parks.

The DEIS documents increasing recreation use for the years under study (see table 9-146). However, the analysis of impacts does not take these increases into account in terms of wilderness character. Why not?

The DEIS also fails to quantify day use impacts in the wilderness segments of the Merced and South Fork Merced Rivers. It doesn't consider whether adjustments in numbers would obviate the need for trail reconstruction or relocation. In fact, there is almost no discussion of the impacts of trails on wilderness character. There is no finding that relocated or reconstructed trails are indeed the minimum necessary and if so, what standards of work are the minimum necessary. There is no explanation of outfitting allocation, with stock or without, versus self-guided parties and how impacts may vary between the different groups. Lastly, there is no clear analysis of impacts from diverting wilderness use from one place to another (see ES-21).

Meadow Condition in the Wilderness/Merced Wild River Corridor

In spite of its excessive length, the DEIS lacks crucial information about carrying capacity and current use in the meadows along the wild river corridor of the Merced and South Fork Merced. There is inadequate information about the East Merced Meadow which is used by administrative stock use. However, the DEIS presents no information on current utilization, carrying capacity and only preliminary guesses about conditions based upon an unorthodox methodology (bare soil) that is very new.

What is the carrying capacity of the wilderness sections of the wild rivers in terms of number of stock? In any case, does maximum carrying capacity, which is generally a process to determine livestock grazing capacity on lands under multiple-use mandates, even apply to a National Park? In other words, shouldn't the National Park Service first determine what condition the meadows should be in, after public involvement, and then determine what kind of pack stock use, if any, might be compatible, in the meadows?

Unfortunately, just as the multiple-use agencies default to the status quo, which is almost always an over allocation, the NPS here defaults to current use patterns without exploring a range of alternatives, as required by NEPA. The only difference is at least the multiple-use agencies have information on current grazing use and the amount of forage consumed annually by livestock. The NPS has had years to do this information, yet this DEIS is disappointing in that most of that information is lacking.

The DEIS focuses exclusively on the meadows near the administrative site near Merced Lake. However, don't all pack stock graze in meadows when traveling to and from destinations in the wilderness regardless of whether palletized feed is being used for or not? Does this plan only apply to that single meadow in terms of pack stock use? If so, why? Does the proposed plan take into account grazing along the route or only allocated grazing at destinations? If the latter, what are those destinations other than the administrative site?

Given these questions and concerns, we find it hard to believe the DEIS could be considered adequate by NPS managers. The DEIS, rather than projecting numbers, leaves it up to future monitoring that would occur on an

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infrequent 3 to 5 year basis, to come up with a carrying capacity. Even the multiple-use land management agencies monitor livestock allotments on an annual basis to ensure that the annual operating plans or their equivalent are being followed.

Before addressing the methodological adequacy of the bare soil method, it is instructive to look at research dealing directly with pack stock grazing as opposed to traditional livestock grazing. Indeed, the DEIS is not explicit whether the research done on the national forests in California and referenced extensively in the DEIS was done on livestock like cattle and sheep or pack stock. Research from Montana State University notes: Also, management objectives of wildland areas may be very different from those of livestock production systems. Management mandates of these areas may be to maintain species diversity or to protect specific organisms. The ideal may be to manage for no change, yet limits of acceptable change should be defined (Krumpe and McLaughlin 1987). Grazing management research in wildland areas needs to address how these areas respond to use, and which community responses can be used to indicate acceptable or unacceptable change. Our objective was to determine the level of packstock grazing that a dry subalpine meadow can tolerate without changing ground cover, soil compaction, and plant growth. Such information will help land managers develop guidelines for packstock grazing. (see Olson-Rutz, et al., undated, Packstock grazing impacts on soil compaction, plant growth, and ground cover of a high altitude meadow, online at <http://www.animalrangeextension.montana.edu/Articles/Equine/Packstock.htm>)

This study and a related report (Olson-Rutz, et al., undated, Final Report: The effects of packstock grazing on a dry, high elevation meadow, online at <http://animalrangeextension.montana.edu/Articles/Equine/Final/Finalreport.htm>) detail a few key factors the NPS should consider, other than the differences in policy regarding pack stock grazing versus livestock grazing noted in the quotation above. These are the desirability of changing the timing of grazing seasonally from year to year (something not addressed in the DEIS and something that would likely never occur due to the heavy and continual use during summer), the impacts of soils compaction in wet meadows (something inadequately addressed in the DEIS) and that unacceptable changes in plant communities may occur over time even with moderate use. What constitutes moderate use in Montana's Lee Metcalf Wilderness would almost certainly be light use in a heavily used wilderness like Yosemite National Park.

The protocol for managing meadow grazing use (bare soil, page 5-29) is not the best method. The DEIS notes that plant utilization is better, but concludes such measures are too difficult. However, those are precisely the measures used in traditional livestock management. Just because the NPS does not currently have expertise in range ecology is no reason to exclude these measures. If the NPS had done what it should have done and gathered range condition and trend data, it would have a better idea of how to proceed.

Further, the narrative suggests that an adverse affect won't be considered until twice the bare soil that occurs in areas of low ecological condition are found (page 5-31? Please explain how this and triggering mechanisms will lead to change? Simply put, the status quo is the default position in the preferred alternative even though problems are documented.

The DEIS has little on weeds in meadows. What measures for preventing weed transmission by pack stock will be taken to prevent their establishment in the wilderness? The DEIS discusses some measures, but they are not discussed in context of a weed prevention program. A complete program would consider the following:

Require pelletized feed. There is a great deal of doubt that all certified hay is in fact weed free. Pellets are a simple and proven-effective remedy.

Prohibit stock grazing and/or use in areas that currently contain weeds until the weeds are eliminated. Stock grazing on weeds along trails or in meadows carry and deposit those weed seeds into other parts of the Wilderness. Even if stock are free of weeds when entering the Wilderness, they can still spread weeds if allowed

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to graze in areas that contain weeds.

Require that all assigned camp sites (outfitters) and administrative sites will be made weed free within 5 years, or those sites will be closed to public, commercial, and administrative use until they are certified as weed free. Failure to keep a weed-free site would result in an automatic permit revocation or airstrip closure.

Implement Wilderness-wide campsite standards that will eliminate bare ground that serves as a ready site for weed invasion.

Adopt policies that recognize that trail systems are weed vectors and act accordingly. Viewing wilderness through the lens of recreation-which includes attendant infrastructure-rather than emphasizing wilderness character, as the Wilderness Act requires, would be a huge step in preventing further weed spread.

Quarantine all animals for at least 48 hours prior to entering the wilderness. The quarantine facilities, as well as commercial stock-holding facilities, should be outside of the Yosemite National Park boundary.

Require an inspection of camping gear before entering the wilderness including boots, boats (canoes, kayaks, float tubes, etc.), and packs.

One last issue about pack stock use needs to be addressed. The DEIS uses the term cattle when it apparently means to use horses or mules. If this is not a mistake, why are cattle grazing in Yosemite National Park?

In summary, the analysis of meadows is long on verbiage and short on real data. The DEIS doesn't indicate current use of meadows, especially for pack stock passing through an area, doesn't delineate current carrying capacity, however the NPS may define such a standard to meet preservation mandates, and defers taking management decisions until problems arise rather than taking a more cautious approach.

Appendix L

One of the largest problems with the DEIS is Appendix L, a so-called needs assessment for commercial activity. Rather than following the intent of the Wilderness Act--which made only a very narrow exception for commercial services, understood at the time to be outfitting and guiding--Appendix L makes all sorts of unsupported assertions that are not consistent with the intent of the law. Is the intent of including this document in the Merced River Plan an attempt to pre-determine the range of alternatives in the future Wilderness Stewardship Plan? Alternatively, will the NPS be open to revising this assessment for the Merced River Corridor in the WSP?

We suggest Appendix L be scrapped as it is not an appropriate template for future NPS analyses of whether commercial services are both necessary and proper in wilderness. The prohibition on commercial enterprise is one of the most restrictive in the Wilderness Act. The reasons are many, they are not lost on Yosemite National Park officials, and were discussed at length at the recent "commercial outfitting and the Wilderness Act" conference at Stanford University in which Yosemite officials played a major role. Some of the problems with the assessment are detailed below.

The assessment of what is proper for recreation conflates legal with proper. Proper is a higher standard than merely legal. It comes with more constraints. Something may be legal but it may not be proper. For example, in a national forest wilderness commercial backcountry hunting trips in an area that already has high levels of backcountry hunting use may not be proper under the circumstances as it could cause conflicts between the outfitted and non-outfitted public. Another example would be activities that are not wilderness dependent. Photography is not a wilderness dependent recreation activity. At best, it is an activity that is associated by those engaged in another activity, such as wilderness camping. Thus, commercial services for photography in wilderness would not be proper. Similarly, drawing, painting, and scientific research are legitimate wilderness

activities, they are not appropriate in wilderness if conducted as part of a commercial enterprise.

One other activity specifically mentioned as proper defies logic, that of commercial filming. The supposed justification for this comes from the educational component of wilderness in section 2(a). However, it is clear that it is the duty of the agency to administer these areas including disseminating information about those areas. The agency cannot privatize its duties to commercial interests, nor can it control (censure) the message of these private filmmakers. If any filming would be allowable, it wouldn't be proper for it to be done by commercial means. The primary purpose of commercial filming is to make money, not to experience Wilderness, and therefore it should not be allowed. As such, filming does not meet the test for commercial services.

In today's world, it is hard not to classify much scientific research as a commercial interest. Even public institutions act on behest of investors (called donors) who control research, largely directed at eventual commercial use. As such, the analysis of scientific research is outdated and flawed. While a legitimate use of wilderness, scientific research is not appropriate if conducted as part of a commercial enterprise.

Education is a commercial enterprise as per the definition on page L-6 Appendix L. While an educational experience or guiding provided by an educational institutional might be even more proper than one provided by a concessionaire, it remains an experience that is paid for by a fee. The inconsistency between pages 6 and 8 is stark. Additionally, on-site education, provided by instructors or guides, is much more appropriate in the Park's frontcountry. The self-reliance and discovery important to the wilderness experience is best met through self-discovery.

While many recreation and associated activities may be allowed in wilderness, not all are proper from the context of commercial services. For example, instruction on nature photography is not a wilderness dependent activity. Wilderness camping for a wilderness experience is such an activity. Thus, the list in the appendix is too long. What is proper for commercial services is narrower than what is legal.

The list of activities under education is far too long for commercial services. Many of these activities can be better learned outside of wilderness, are not wilderness dependent, or shouldn't be part of a commercial enterprise. Learning about Park ecology can occur in the frontcountry just as easily as the wilderness.

Regarding scenic values, the appendix notes:

As with the educational purpose, however, there is a more formal appreciation of scenery that is enjoyed by photographers and other artists. Commercial services provide necessary support for this purpose if they offer photography, painting, or even writing workshops that focus on appreciating and interpreting the scenery. Commercial filming, videography, audiography, and photography also realize the scenic purpose if they focus on wilderness scenery and soundscape.

This is an example of stretching a narrow exception for commercial services beyond recognition. Wilderness visitors don't need on-site instruction on how to appreciate natural beauty in the wilderness. This instruction can be more easily accomplished outside of wilderness. Again, this is not proper in wilderness, nor is it necessary.

Regarding conservation and historic uses, at least the agency recognizes it is primarily an agency responsibility. The same is true for administering the wilderness in context of disseminating information. "No commercial services are necessary for the realization of the historical purpose because its realization is congruent with the realization of the conservation purpose." The same is true of scenic uses and most recreational and educational uses.

Regarding the extent necessary, Appendix L tortures the Wilderness Act. The suggestion on page L-13 that recreation use must be above some minimum conflicts with the Wilderness Act itself and the outstanding opportunities for solitude. The "enjoyment" of wilderness need not even be on-site as many citizens appreciate

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that fact that wilderness exists. The same is true of the analysis of educational and scenic purposes.

The only part of the analysis that seems to make sense is whether something is wilderness dependent (see page (L-21). However, none of the previous assessments or allocations have gone through that screening criterion. If so, the document wouldn't look as it does now.

The stock allocation issue, be it for commercial or other purposes, is a problem and confusing. Rather than party size, a more appropriate measure may be by heart beats or better yet, feet/legs. A stock party of 15 people will cause much more damage because there would be up to 25 horses (15 riding stock and ten pack stock). However, the ratio shows 1 stock to very 1.5 visitors. Please explain this discrepancy.

Simply put, commercial use is only necessary if it fills a real need. If there is considerable use taking place in Yosemite's wilderness, and there is, there is no need for outfitters except possibly on rare instances to serve people with disabilities or those without skills and equipment.

Summary

In summary, the draft Merced River Plan and DEIS fail to meet the Wilderness Act, the Wild and Scenic Rivers Act, and the National Park Organic Act. It doesn't comply with agency direction in the Yosemite General Management Plan. It does not comply with the National Environmental Policy Act in terms of information.

Sincerely,

Gary Macfarlane
Board Member

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