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August 22, 2014

Woody Smeck, Superintendent
Sequoia and Kings Canyon National Parks
Attention: Wilderness Stewardship Plan
47050 Generals Highway
Three Rivers, CA 93271

Re: Wilderness Stewardship Plan and Draft Environmental Impact Statement – Sequoia Kings Canyon National Parks (June 2014), Reply to U.S. Department of the Interior Communication 1.A.1. and Notice of Availability 70 Fed. Reg. 37346 (July 1, 2014).

Comments from High Sierra Hikers Association

Dear Superintendent Smeck:

I. Introduction

The High Sierra Hikers Association (“High Sierra”) is a nonprofit public-benefit organization that educates its members, public officials, and the public-at-large about issues affecting hikers and the Sierra Nevada, and that advocates the protection of park values and preservation of wilderness character in the Sierra for the public benefit. High Sierra represents thousands of citizens living throughout the United States who use and enjoy the designated wilderness areas within Sequoia and Kings Canyon National Parks for hiking, backpacking, climbing, mountaineering, cross-country skiing, wildlife viewing, photography, and other recreational pursuits, as well as to seek solitude, quietude, and spiritual refreshment.

This letter transmits High Sierra's Comments on the above-referenced Wilderness Stewardship Plan and its accompanying Draft Environmental Impact Statement (hereafter "WSP/DEIS"). Scoping comments and the supporting documentation previously submitted by High Sierra dated August 31, 2011 and November 19, 2012 are hereby incorporated by reference and should be already included in your project record. Please contact us at the letterhead address if either of these two important background documents or their supporting document is not already in your project record.

II. The Wilderness Act "Extent Necessary" Determination Does Not Engage in the Required Detailed Balancing of the Impacts of Commercial Stock Use on Wilderness Character

The Wilderness Act of 1964 was enacted to preserve wilderness for the American people in such a manner as will leave the wilderness areas "unimpaired for future use and enjoyment *as wilderness*." 16 U.S.C. § 1131(a) (emphasis added). Further, the agencies responsible for administering the Wilderness Act are to provide for the protection of the lands that fall under the Act and the preservation of their wilderness character. *Id.* The Wilderness Act provides that "the designation of any area of any park, monument, or other unit of the national park system as a wilderness area pursuant to this chapter *shall in no manner lower the standards evolved for the use and preservation* of such park, monument, or other unit of the national park system . . .". 16 U.S.C. § 1133(a)(3) (emphasis added). To that end, the Wilderness Act strictly limits certain activities in wilderness. Sequoia and Kings Canyon National Parks ("SEKI"), however, is currently 93.3% wilderness and it may increase to 97% wilderness (WSP/DEIS at iii), so that any activity authorized in the parks can affect virtually the entire park. The purpose of the Act includes ensuring that "increasing population...expanding settlement... do[] not occupy and modify all areas ... leaving no lands designated for preservation and protection in their natural condition..." 16 U.S.C. § 1131(a). High Sierra is concerned that the WSP/DEIS proposals do not meet these conditions and violate the Act.

The Wilderness Act defines "wilderness" as:

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which

- (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable;
- (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation;
- (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and
- (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

16 U.S.C. § 1131(c).

A natural mandatory limitation in the Act that stems from the definition above is that commercial activities are not allowed within wilderness. 16 U.S.C. § 1133(c) (“there *shall be no commercial enterprise...within any wilderness area...*”) (emphasis added). Commercial services are *only* allowed (1) “as necessary to meet *minimum requirements* for the *administration* of the area for the purpose of this chapter (including measures required in emergencies involving the health and safety of persons within the area)” (16 U.S.C. §§ 1133(c)), and (2) “to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.” 16 U.S.C. § 1133(d)(5). The specific “commercial services” that are the subject of High Sierra’s comments on the WSP/DEIS are commercial trips using pack animals.

Prior to using its discretion to circumvent the statutory mandate of “no commercial services,” the agency must make a specialized finding *and* show that the amount of activity to be allowed is no more than necessary to achieve the goals of the Act. *HSHA v. Blackwell*, 390 F.3d 630, 646 (9th Cir. 2004). The Act requires a finding of “necessity” before authorizing any commercial services in wilderness areas. 16 U.S.C §§ 1133(c), (d)(5); *HSHA v. Blackwell* 390 F.3d at 646. The agency is required to articulate in its finding why the *extent* of such services is necessary, not only the reasons behind the agency’s determination that the commercial service itself is necessary. *HSHA v. Blackwell*, 390 F.3d at

646. However, such a finding is not alone sufficient ground to permit commercial services in a wilderness area. *Id.* at 647. Agencies can only meet the statutory obligation to protect and preserve wilderness areas by conducting a mandatory balancing of competing interests. *Id.* This mandatory balancing test requires the agency to consider relevant factors in relation to each other. In the face of conflicting values (defined as “imped[ing] progress toward goals on another factor,” *Id.*), the agency “must determine the most important value and make its decision to protect that value.” *Id.* Failing to balance the impact of commercial activity on the wilderness character of the land is a direct contravention of the requirements of the Act. *Id.*

These requirements of the Wilderness Act and its application are essential to High Sierra’s comments on the WSP/DEIS because the finding of necessity must document the impacts that the commercial activity will have on the wilderness area. *Id.* Where damage to the wilderness character is shown, the agency must then take steps to actually protect those areas by lowering the usage allowed. *Id.* The balancing of the factors and potential consequences in permitting continued commercial activity is essential because the primary responsibility is to protect the wilderness, not cede to commercial needs. *Wilderness Watch, Inc. v. USFS*, 629 F.3d 1024 (9th Cir. 2010); *see also High Sierra Hikers Ass’n v. Blackwell*, 390 F.3d at 647 (agency elevated recreational activity over the long-term preservation of the wilderness character of the land). The responsibility to protect the wilderness can only be overridden if it first engages in a “comparative and qualitative analysis where the variables are considered in relation to one another and the interests at stake are weighed.” *Id.* at 1025. The ultimate obligation is for the agency to conduct a sufficient comparative and qualitative analysis balancing the values supported by the Act. *Id.* Here, in the WSP/DEIS, the NPS did not satisfy the mandatory requirements under the Wilderness Act. It must reconsider the legal requirements it is subject to in preparing its Final Environmental Impact Statement (“FEIS”).

A. NPS Must Apply Meaningful Criteria to Determine the “Necessity” of Commercial Stock Services in Wilderness

The Extent Necessary Determination (“END”) issued by the NPS in the WSP/DEIS falls short of

the explicit statutory requirements, and of the Ninth Circuit’s interpretations of the Act. The END claims that commercial services are “necessary” to facilitate stock use in wilderness areas for multiple reasons. WSP/DEIS Appx. B-18. These reasons can be generally described as the logistical challenges private individuals may face when bringing into and utilizing private stock in SEKI. What this means is that SEKI’s WSP/DEIS conflates the stringent “extent necessary” preservation language of the Wilderness Act with the public’s wishes to take trail rides; their difficulties as individuals — versus large groups — in obtaining stock to use on SEKI’s wilderness trails; the support that accompanies stock use on wilderness trails (such as caring for, feeding and maintaining stock); and the public’s general lack of skill and knowledge in riding and using stock in the wilderness. None of these categories is a proper foundation from which to analyze whether commercial stock use is “necessary” in wilderness areas. SEKI’s approach to the issue applies improper criteria, is not meaningful, minimizes the sacred protections of the Wilderness Act, and simply caters to commercial interests. SEKI’s approach does not truly balance the impact of the commercial activity with its impacts on wilderness.

In addition to SEKI’s faulty approach, the facts do not support a finding of necessity. Private stock is less than 20% of recreational stock use. The NPS uses this figure to attempt to demonstrate a “need” for commercial services to facilitate this recreational activity. WSP/DEIS Appx. B-18. The NPS is not tasked with facilitating recreational activity desired by a small percentage of users at the extreme environmental cost of degrading the wilderness and negatively impacting the experience of other park visitors. The great majority of visitors to SEKI (93%) enjoy the park on foot. Yet, by referring to cost and individual difficulty as the primary reasons for the need of commercial stock services, the NPS continues to treat stock use as an accepted and favored activity in the parks that will continue simply because of its historical use in SEKI. Additionally, the current trailhead quota system has the undesired consequence of allowing those individuals who are denied access via the regular quota, and who can afford the tariff, to gain access to wilderness by hiring commercial stock.

The NPS must apply meaningful criteria in the FEIS to meet the Act’s narrow exception for commercial services. Criteria that should be met regarding necessity have been outlined in our past comments and are detailed once again here. To be meaningful, the criteria must refer to the *physical*

needs of persons wishing to explore wilderness, not to provide a means for those who are circumventing trailhead quotas, who use stock to haul unnecessary items into the backcountry, or who are seeking convenience and ease. These uses of commercial stock do not constitute necessity. The criteria should include: 1) the potential commercial client must be physically incapable of hiking and/or carrying a backpack of his or her own; 2) the potential client must need stock support to facilitate wilderness dependent activity, not simply desire convenience or comfort; 3) the potential client must be willing to travel with the minimum necessary gear — that normally carried by a backpacker. As stated above, the NPS must balance competing interests while always keeping in mind that its primary purpose is to protect wilderness, not to cede to commercial interests. *Blackwell*, 390 F.3d at 647. The FEIS must apply criteria that properly adhere to this requirement, and the criteria proposed by High Sierra accomplish this goal.

In applying the above criteria the FEIS must take into account that in reality, the majority of the stock use is not utilized by the young, the old, or the disabled as commercial stock interests claim. *See*, High Sierra Comments, Enclosures 27-29 (Aug. 31, 2011). Both young and old people travel in SEKI without stock support. *Id.* In fact, commercial packers “generally decline to provide accommodation” for people with disabilities due to insurance and lack of experience, lack of qualified staff, or lack of the necessary equipment. *See* High Sierra Comments, (Aug. 31, 2011) Enclosure 39, Sept. 26, 2000 SEKI email from D. Graber to S. Spain and others (p. 1). Among the various requirements of commercial packing outfits are “Client must be in good physical condition” and “Client must be able to mount and dismount from a horse unaided.” Thus, this justification for why commercial stock services are “necessary” is baseless. *See* WSP/DEIS Appx. B-18.

The NPS cannot engage in a comparative and qualitative analysis that will balance the values specified by the Act without acknowledging the disconnect that exists between its stated need for commercial stock services, and administrative stock use, and the actual practices. With such a faulty basis, NPS cannot make the specific finding required under the Act, or analyze the issue under the competing interests test. The FEIS must include these factors in its “necessity” analyses.

B. The NPS Must Truly Weigh the Impact of All Relevant Factors and Potential Consequences of Permitting Commercial Stock Use on Wilderness Character and Preservation

Despite the lack of adequate findings, if one applies the competing interests tests, the END fails. For example, the END further fails in its attempt to properly weigh competing interests by failing to address the denial of permits to hikers while there exist, at some popular trailheads, special quotas for commercial stock users. Pack stock are utilized much less for wilderness travel than travel by those who go on foot, yet the END does not take this into account when it determines that commercial services are necessary to facilitate wilderness travel. WSP/DEIS at 334 (wilderness stock use permits average about 2% of total permits issued each year by the NPS and the USFS). The quota system under the Preferred Alternative commonly causes the denial of access to hikers in order to allow for use by commercial pack services. *See* High Sierra Comments (Aug. 31, 2011), Enclosure 26, Inyo National Forest memos re: Trail Crest and Cottonwood P.S. dated 5/13/08 & 4/19/04. This dysfunctional quota system and the small scale on which pack stock commercial services are actually utilized in relation to hiking demonstrates that commercial stock services are almost irrelevant to facilitating the recreational purposes of the Act, and therefore the preservation of wilderness values must prevail.

Due to the advent of lightweight hiking gear in the 1960s and 1970s, and the ever-increasing availability of lightweight backpacking equipment, the public has increasingly elected to decrease stock use in favor of other ways to access the wilderness (i.e., on foot). Yet, the NPS ignores this fact in its proposed alternative. There is not now, nor has there ever been in the entire history of these parks, a numeric limit to stock use. Stock use was once a heavily desired and utilized practice in the park (WSP/DEIS Appx. B-10), primarily because stock animals were needed to transport heavy and bulky gear and supplies. This is no longer true. Virtually anyone can now access wilderness with affordable and ultra-lightweight backpacking equipment and supplies. Yet NPS fails to connect the dots by concluding the obvious: the significant decline in stock use demonstrates to the NPS that commercial service days (“CSDs”), stock quotas, and group size limits for stock parties should be reduced, not continue unchanged and certainly not be increased. For the NPS to propose now to *increase* stock use

based on this information is far from “necessary” under the Act, and appears to be arbitrary and capricious under the Administrative Procedures Act. 5 U.S.C. §§ 701 *et seq.* Specifically, the WSP/DEIS demonstrates that the average CSDs set in Alternative 1, the no action alternative, is listed as 2,677, with a high of 3,110. Appx. B-36. The Preferred Alternative makes it appear that, for the first time, there will be a numeric limit to stock use. But the “limit” is set at a much higher figure than the average use of recent years, and is even higher than the highest figure in the “No Action Alternative” during those years. In effect, stock use will continue to be unlimited, since the reasonable expectation is that the new “limit” will never be reached. Should the FEIS still contain this manipulation of numbers, there can be no qualitative and comparative analysis as required under the Act to show that commercial services are required, or for what amounts. For all practical purposes, stock would be permitted to an unlimited extent under the Preferred Alternative. This cannot be consistent with the Wilderness Act.

The practical irrelevancy of stock use to recreational values does not in the slightest mean that pack stock is not extremely relevant to the degradation of wilderness throughout the SEKI. As has been shown throughout the entire process of the WSP/DEIS formation, and as confirmed by the courts, stock use has serious consequences for water quality, soil quality, vegetation, aesthetics, and wildlife. *See, e.g., ABBOT, ET AL. Analysis of residual biomass monitoring program in Sequoia and Kings Canyon National Parks.* Unpub. Report for SEKI, Department of Animal and Range Sciences, New Mexico State University, Las Curces, NM 88003 (2003); CLOW, ET AL., *Effects of stock use and backpackers on water quality in wilderness in Sequoia and Kings Canyon National Parks, USA.* 57 Environ. Manage. 1400-1414 (2013); *see also* NEPA Discussion *infra*. The impacts on the resources of the park are well documented, *id.*, yet the WSP/DEIS failed to adequately assess and make known to the public the impacts of stock use. With these faults in raising issues, specific findings cannot be made, the required balancing between wilderness values and commercial services cannot be conducted, and subsequent reliance by the NPS on the END is wholly deficient.

C. The WSP/DEIS Extent Necessary Determination Does Not Apply and Does Not Evaluate the Correct Criteria For Determining Whether an Activity is Proper Under the Wilderness Act

The National Park Service (“NPS”) must first determine whether the activity itself is proper under the Act, before it can make a determination regarding the extent to which that activity is necessary. As discussed above, the Wilderness Act’s rule is that “there *shall be no commercial enterprise...within any wilderness area...*” 16 U.S.C. § 1133(c) (emphasis added). Under the Act, commercial services are *only* allowed (1) “as necessary to meet *minimum requirements* for the *administration* of the area for the purpose of this chapter (including measures required in emergencies involving the health and safety of persons within the area)” (16 U.S.C. §§ 1133(c)), and (2) “to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.” 16 U.S.C. § 1133(d)(5).

1. Management Policy Criteria

The National Park Service’s 2006 *Management Policies* states that wilderness-oriented commercial services that contribute to public education and visitor enjoyment of wilderness values or that provide opportunities for primitive and unconfined recreation may be authorized if the activities conform to Wilderness Act. NATIONAL PARK SERVICE, MANAGEMENT POLICIES, 6.4.4, COMMERCIAL SERVICES, WILDERNESS PRESERVATION AND MANAGEMENT (2006). Additionally, the 2006 *Management Policies* states that the recreational uses of wilderness are to be of a nature that: enable the areas to retain the primeval character and influence; protects and preserves natural conditions; leaves the imprint of man’s work substantially unnoticeable; provide outstanding opportunities for solitude or primitive and unconfined types of recreation; and preserves wilderness in an unimpaired condition. *Id.*

The WSP/DEIS’s END conflates these advisory qualities with the notion that an activity proper under the statute is one which is “ ‘subject to sufficient management control so as to preserve wilderness character.’ ” 16 U.S.C. 1311(c). This however, builds in the unlawful assumption that an activity will be proper if managed, and does not account for an analysis of whether the activity itself is proper in wilderness. The logic is twisted and designed to meet a certain end. The Act already requires that *all*

activity within the wilderness area be managed to preserve the wilderness character of an area. Simply using the determination that an activity *can be* managed to conclude that an activity is proper under the Act does not provide a comparative and qualitative analysis of the factors stated in the Management Policies, or any other meaningful factors. The FEIS must analyze actual factors, including the criteria proposed by High Sierra, *supra*, not twisted criteria designed to reach the desired conclusion, to determine whether stock use is a proper activity in SEKI wilderness. In addition, High Sierra refers to its previously-submitted Comments addressing this issue. *See* High Sierra Comments (Aug. 31, 2011); High Sierra Comments (Nov. 19, 2012).

Since the criteria used in the END do not fit within the mandates of the Wilderness Act, the FEIS/WSP should examine the factors in the NPS Management Policies, as well as additional factors, to determine whether stock use is proper within wilderness areas, such as those proposed by High Sierra *supra*. The END should be informed by modern studies regarding the impacts of pack-stock use in wilderness, many of which High Sierra has already submitted to the record, and which are resubmitted herewith and with the comments of Jon Rhodes. Both comments and supporting materials are incorporated by reference herein. These studies provide the current background upon which to base an evaluation of the criteria provided in the *Management Policies*. The WSP/DEIS itself provides a cursory analysis of the impact of stock use on wilderness areas, and yet the END does not create a connection between stock impacts and the crucial issue of whether stock use is proper in SEKI wilderness, other than to repeatedly assert that insufficient management controls of stock will *somewhat* reduce the impacts. Moreover, the documented range of impacts from stock use supports the need for a detailed analysis of whether the activity is proper *on its own*, regardless of management controls, as the Act requires.

2. “Solitude” Criteria

The END emphasizes in the Desired Conditions for Wilderness Character the need to encourage and facilitate “outstanding opportunities for solitude and unconfined recreation,” going on to say that “visitors would have opportunities to participate in a variety of primitive recreation activities, characterized by . . . reliance on personal skill.” END, Appx. B-8. The use of pack stock is described as

a primitive form of recreation, but the type of commercial services that the END deems necessary for pack stock use emphasizes the difficulty of an individual or private wilderness user to engage in the activity without the assistance of a commercial stock service. The NPS is to emphasize primitive activities characterized on reliance on personal skill, yet this END determines that pack stock use is an activity that is too costly, dangerous, and difficult to be engaged in on any meaningful level *without* commercial assistance. END, Appx. B-18. The END's conclusions do not flow from the criteria utilized to arrive at them, and the FEIS must be rectified in order to comply with the requirements of the Act.

3. “Historical” Criteria

The END improperly uses historical pack use as a prime factor for the determination that stock use is a proper activity in wilderness. Nowhere in the Act, the regulations, or in the Management Policies are “historical” or “traditional” uses provided as factors that are to be given the substantial weight accorded to them in the END. High Sierra acknowledges that stock use has been allowed and utilized in wilderness areas in the past, and that some SEKI users believe using stock adds to the enjoyment of their park experience. Not all agree. *See* WSP/DEIS at 32-33 (“...these facilities can adversely affect the undeveloped quality of wilderness” and can attract “larger numbers of visitors.”) However, consistent utilization and enjoyment of a method of travel does not equate to that activity being proper in the wilderness as required by the Act, where the requirements are that an activity be “necessary.” In light of the continuing negative impacts from stock use in SEKI and the evident difficulty of engaging in the activity on a private level, the reliance on traditional and historical utilization of stock to travel in wilderness is not a proper substitute for an analysis of whether the activity is compatible with wilderness in its present condition, and “necessary” under the Act.

D. Conclusion

The Wilderness Act requires the preservation of wilderness, prohibiting commercial activities with only narrow exception. The NPS has not met its obligations under the Act in the Extent Necessary Determination issued in the WSP/DEIS. The NPS failed to apply meaningful criteria to determine the necessity of commercial stock services in SEKI. Further, the NPS did not truly weigh the impact of all relevant factors and potential consequences of permitting commercial stock services in SEKI. Lastly, the

NPS did not apply and evaluate the correct criteria for determining whether stock use is a proper recreational activity under the Act. The NPS will continue to be in violation of the Act until it seriously accounts for the deficiencies outlined above.

III. FEIS Must Provide a Preventative Rather Than *ad hoc* Approach to Managing Stock Use in SEKI Wilderness

A. Background

The Wilderness Act establishes a “National Wilderness Preservation System.” 16 U.S.C. § 1131(a). Preservation is the core goal of the Act. Preservation requires, necessarily, prevention of further harm or remediation of harm caused. As to the physical and organic impacts of stock animals on SEKI Wilderness, the WSP/DEIS attempts to utilize a system of current monitoring programs to determine when an area within SEKI has been over utilized by stock use/grazing. *See, e.g.*, WSP/DEIS pg. 366, pg. 373; *see also* WSP/DEIS Appx. D. This system, however, is faulty. It allows for the degradation of wilderness and encourages a pattern of attempted restoration rather than preservation. *See id.* (the monitoring procedures described in the Stock Use and Meadow Management Plan in Appendix D referred to in the Alternatives is a reactive strategy and describes a system of damage and restoration, rather than protection). The negative and permanent impacts caused by ongoing stock use have already been thoroughly documented. *See, e.g.*, ET. AL; CLOW ET. AL., *supra*. The FEIS must provide analysis and alternatives that actually *preserve* wilderness values as mandated by the Act, not continue to place undue reliance on monitoring schemes that allow for continued grazing and stock use despite the documented impacts. The NPS has the responsibility under the Wilderness Act to “preserve wilderness for the American people in such a manner as will leave them unimpaired for future use and enjoyment.” 16 U.S.C. § 1131(2)(a). Preservation of wilderness requires the NPS to address and limit stock use to levels appropriate to ensure such preservation, not require management action only when degradation has already occurred. Ninth Circuit opinions interpreting other statutes’ applications with similar “preservation” language have critiqued agencies’ “reactive” approach. *See, e.g., Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024,1034 (9th Cir. 2008). High Sierra points NPS to at least three

examples, listed below, of how practices under the WSP/DEIS do not uphold the “preservation” requirements of the Wilderness Act.

B. Example One – “Opening Dates”

The SEKI WSP/DEIS continues to use “opening dates” as an attempt to curb stock trampling impacts, but the method has been ineffective at preventing significant, adverse impacts to meadows, streambanks, lakeshores, and wetlands. NEUMAN, M.J. *Accomplishments of the stock use and meadow monitoring program*. Unpubl. Rep., 1991b, USDI National Park Service, Sequoia & Kings canyon NPs, Three Rivers, CA (1991); NEUMAN, M.J. *Report of the stock use and meadow monitoring program*. Unpubl. Rep., 1994b, USDI National Park Service, Sequoia & Kings Canyon NPs, Three Rivers, CA (1994). Stock trampling in high elevation meadows results in long-term negative impacts to meadow health. *Id.* Trampling and grazing cause increased ground soil compaction and contribute to streambank erosion, sedimentation, widening and shallowing of channels, elevated stream temperatures, and physical destruction of vegetation. *See, Id.* Meadows are susceptible to these impacts at all times of the year, and delaying the time at which stock is permitted to enter does not proactively address the damage. *Id.* The extreme pressure generated by a horse’s hoof can result in numerous deep hoofprints, broken sod, plant pedestalling, increased erosion, shifts in species composition, and lowering of water tables. This damage has been documented by SEKI staff and show the persistent, ongoing damage caused by stock animals throughout a year. *See* SEKI “Case Incident reports” #200835, 200836, 200842, 20149.

In light of the documented damage to fragile soils throughout the year, the “opening dates” do not provide effective, proactive methods for dealing with the degradation of wilderness. The preservation of wilderness requires proactive management strategies and the FEIS must provide strategies to guide the NPS in ensuring that the SEKI is protected from the adverse impacts of stock use.

C. Example Two – Resource Extraction of Meadows

Another major problem with the proposed alternatives vis-a-vis the “preservation” goal of the Wilderness Act is the unfettered resource extraction caused by stock use. Resource extraction activities are strictly limited and must be performed in manners compatible with the preservation of the wilderness environments. 16 U.S.C. §1133(d)(2), (3). While grazing established before 1964 continues under

“reasonable regulations” pursuant to 16 U.S.C. § 1133(d)(4)(2), grazing of commercial pack stock does not appear to be subject to similar regulation. While the WSP/DEIS suggests that all stock users carry their own feed, only Alternative 4 would *require* stock users to carry their own feed. Even if this requirement were adopted under Alternative 4, there is no method provided by SEKI to enforce the requirement. Thus, there is a chance that stock would continue to consume the grasses and sedges of SEKI’s meadows even if stock users were required and strongly encouraged to carry their own feed. The lack of enforceability of these regulations render the “encouragement” meaningless.

D. Example Three – Administrative Stock Use

In the FEIS, NPS must take into account that the issue of administrative stock as discussed in the WSP/DEIS does not satisfy the core policy of the Wilderness Act. 16 U.S.C. § 1131(a) (wilderness areas “shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character...”). Much of the administrative stock use in SEKI is unnecessary and harmful to SEKI and the wilderness areas, and goes well beyond what is needed to support a project. There are two primary examples of this unnecessary and harmful use: (1) packtrains that re-supply trail crews, and (2) “holiday” trips for NPS staff.

First, NPS packtrains that re-supply trail crews remain in the wilderness to graze. Not only does this grazing deplete natural resources, but appears to be a preferred practice for NPS because it saves on the cost of feed for packtrain stock. High Sierra supports the decrease, or stoppage, of leaving administrative stock in the wilderness for extended periods of time to graze to reduce NPS feed costs. Packtrains ride into wilderness, drop supplies to a trail crew, then stay in the mountains often for a week or more until its time to leave for another load. All of that grazing and trampling that occurs during the stay is wholly unnecessary. NPS packtrains should do the reverse: drop the load of supplies, then immediately (same day or next day if it’s late) leave the wilderness, be stabled and fed outside wilderness, and return only when it’s time for another load.

Second, unnecessary “junkets” or “boondoggles” such as “squad trips,” SOARARSIS trips, and other junkets where no real NPS work is performed are unnecessary and harmful to the park and

wilderness areas. They operate in essence as luxury paid vacations for NPS staff and administration. *See* High Sierra Comments p. 5-6 (Nov. 19, 2012).

Building from these examples and the purposes of the Wilderness Act, the NPS 2006 *Management Policies* also emphasize that “economic efficiency and convenience” cannot trump the minimum requirements language of the statute. *See* WPS / DEIS at 215. This applies to NPS administration as well as commercial users. SEKI’s administrative stock use comprised 40% of total stock use in SEKI in 2013 (WSP/DEIS, pg. 348), yet the WSP/DEIS fails to address whether the purposes behind the administrative use of stock can be accomplished through alternative means. Park administration uses stock for “packing supplies in and out of wilderness and for ranger patrols” (*Id.*), however the great majority of ranger patrols are conducted on foot. The WSP/DEIS does not discuss other options with lesser impacts that could be used in administrative situations, and that should be used to promote total compliance with the Wilderness Act. High Sierra does not favor the use of any mechanized forms of transport over stock because such a position is not in keeping with the letter or intent of the Act. The Act allows NPS to use forms of transport other than stock (including mechanized forms), but only when *minimally necessary* to administer the area (16 U.S.C. § 1133(c)), and NPS therefore must, as one key factor in its analysis, openly and objectively evaluate the known and potential harms caused by each alternative form of transport as it balances the harms and decides which form of transport to favor/use. In fact, some of SEKI’s methods of performing management functions in wilderness seem to be the product of a 19th and early 20th century mindsets. The use of stock animals is an anachronism, and a relic of more than 70 years ago. By doing some elementary research, staff at SEKI could soon become educated as to more advanced, more environmentally-friendly methods. How could NPS justify employing ground and/or air vehicles/devices when it is so easy to identify other methods more appropriate to the goals of the Act? *See, e.g.* WSP/DEIS at 349 (stating “primitive” methods are the first preference in accomplishing projects and tasks in the wilderness). Though it may be more *convenient* and consistent with current methods to utilize stock services in certain circumstances, convenience and consistency do not translate to *necessary*. The NPS must begin to think outside of the “business as usual” mentality in order to fulfill the Wilderness Act’s mandate that it utilize

stock animals only as necessary to meet minimum requirements.

IV. The WSP/DEIS Does Not Meet the Requirements Under the National Environmental Policy Act and the NPS Must Account For the Shortcomings In the FEIS.

A. NEPA

The purpose of the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, is, inter alia, “[t]o declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation.....”. 42 U.S.C. § 4321. NEPA is a procedural statute that provides the public with the right information and the right of participation in environmental decision-making. “The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” 40 C.F.R. § 1500.1(c). NEPA uses process to enable decision-makers to “identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.” 40 C.F.R. § 1500.2(e). The degree of an agency’s NEPA review must satisfy the court that the agency has taken a “hard look” at the environmental consequences of the decision. *Ilioulaokalani Coalition v. Rumsfeld*, 464 F.3d 1083, 1094 (9th Cir. 2006).

B. EIS

Here, the agency is under a legislative directive to prepare a Wilderness Stewardship Plan and an Environmental Impact Statement (“EIS”). *See* Sequoia and Kings Canyon National Parks Backcountry Access Act, § 2(b), (c). An EIS is required for all actions which significantly affect the quality of the human environment. 42 U.S.C. § 4332(2). The primary purpose of an EIS is:

to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment... Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

40 C.F.R. § 1502.1

An EIS must include a comprehensive discussion of all substantial environmental impacts and inform the public of any reasonable alternatives which could avoid or minimize these adverse impacts. 40 C.F.R. § 1502.1. In assessing the adequacy of an EIS, courts apply the “rule of reason standard” to determine whether the EIS contains “a reasonably thorough discussion of the significant aspects of probable environmental consequences.” *HSHA v. U.S. Dep’t of Interior*, 848 F.Supp.2d 1036,1048-1049 (N.D. Cal. 2012) (citations omitted); *Kern v. U.S. Bureau of Land Management*, 284 F. 3d 1062, 1071 (9th Cir. 2002). The process “is almost certain to affect the agency’s substantive decisions.” *Oregon Natural Desert Ass’n v. Bureau of Land Management*, 625 F.3d 1092, 1099 (9th Cir. 2010). NEPA requires a process that ensures “the most intelligent, optimally beneficial decision will ultimately be made,” and “ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts.” *Id.* NEPA’s purpose is to foster excellent action. *Id.* at 1099.

The EIS must “provide full and fair discussion of significant environmental impacts and inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” *Id.* The alternatives analysis is “the heart of the environmental impact statement” and the NPS must “rigorously explore and objectively evaluate all reasonable alternatives and briefly discuss reasons for eliminating any alternatives from detailed study.”

Id.; 40 C.F.R. § 1501.14. “The existence of a viable, but unexamined alternative renders and environmental impact statement inadequate.” *Oregon Natural Desert Ass’n*, 625 F.3d at 1099.

Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made. 40 C.F.R. § 1502.2(g). High Sierra’s conclusion is that the WSP/ DEIS’s NEPA analysis is wholly lacking, will rubber-stamp existing practices, and allow for “business as usual” as it lacks the requisite analysis to reach any meaningful action.

As a preliminary matter, High Sierra reminds the NPS that the CEQ regulations encourage agencies to limit the length of their NEPA documents. 40 C.F.R. § 1502.7; 43 C.F.R. § 46.405. At 1,234 pages, this WSP/DEIS is extraordinarily and unnecessarily long and not within the “normal” page limits of 300 pages. The length of this WSP/DEIS is not explained away by clear reasoning, plain language, or arguments or in-depth analysis. High Sierra believes that the WSP/DEIS contravenes the CEQ regulations on this point. *See* 40 C.F.R. §§ 1500.2, 1502.8, 1502.2(a). Thus how the WSP/DEIS can be utilized by the NPS to “plan actions and make decisions” (40 C.F.R. § 1501.1) and fulfill the NEPA requirements (*see* 40 C.F.R. § 1502.9(a) (regarding draft statements)) is difficult to comprehend. The WSP/DEIS does not reasonably inform the public of what that means for the wilderness environment.

As a logistical matter, High Sierra noticed that the Sequoia National Park Stock Access and Grazing Map for Alternative 1 (WSP/DEIS at 87) was reprinted on page 137 where the caption identified it as the Alternative 2 map. There is no real Alternative 2 Access and Grazing map anywhere, and this caused a lot of confusion in High Sierra’s efforts to review the NPS’s proposal.

C. Adequacy of EIS

NEPA requires an EIS to have sufficient information to fully assess environmental impacts that should be avoided in order to fully protect the environment. Counsel of Environmental Quality, A

Citizen's Guide to the NEPA, pg. 36 (December 2007). The identified information, data, analyses or discussion should be included in the final EIS. *Id.* A reasonably thorough discussion of the significant aspects of probable environmental consequences will ensure a proper analysis. *See Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1071 (9th Cir. 2002). This adequacy requirement ensures that an agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts. *Oregon Natural Desert Ass'n*, 625 F.3d at 1099. NEPA “[r]equires that a federal agency consider every significant aspect of the environmental impact of the proposed action and inform the public that it has indeed considered environmental concerns in its decisionmaking process.” *Ilioulaokalani Coalition*, 464 F.3d at 1093. To accomplish the goals of NEPA, NEPA requires the agency to take a “hard look” at environmental consequences. *Id.* High Sierra believes the WSP/DEIS is inadequate in the following areas:

- Purpose and need improperly caters to one kind of visitor
- Proposed alternatives
- Analysis of stock and grazing impacts
- Proposed mitigation measures

High Sierra does not believe that NPS’s WSP/DEIS is adequate to satisfy the requirements of NEPA.

D. Purpose and Need

Under 40 C.F.R. § 1502.13, an EIS “shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” Similar to the discussion High Sierra raised in its comments *supra* on the Wilderness Act, the proposed purpose of Preferred Alternative 2 does not match the goals of that Act, nor does it match the NPS’s stated need. *See also* WSP/DEIS at 16.

The stated purpose and need for the Preferred Alternative 2 is also not satisfied by the reasoning stated in the Planning Framework or Relationship With Other Planning Sections of the WSP/DEIS. *See* WSP/DEIS at 8-14, 19-22.

The NPS does not deny that *something* must be done regarding commercial stock use in SEKI wilderness areas; however, the approach NPS has taken focuses too strongly on visitor use of the park, and caters to a certain kind of visitor that requires commercial services (WSP/DEIS at v), and not enough on preservation of wilderness and park natural characteristics. Some of the issues NPS plans to address through the WSP/DEIS will be contraindicated by commercial stock use, namely (WSP/DEIS at vi):

- Preserve ecological, geological, scientific, educational, scenic, and historical values of wilderness, including culturally significant resources and paleontological resources within wilderness, as important and prominent values, consistent with the Wilderness Act, California (stock can destroy river banks and meadows, bring in invasive or unwanted plant species through their manure, destroy pristine landscapes, and do not have historical value of the degree NPS believes);
- Wilderness Act, and applicable planning guidance from the GMP.
- Leave No Trace minimum impact practices (stock manure will remain on the trail, on meadows, enter water);
- Increasing commercial stock use may encourage people who are not self reliant to enter the backcountry without being personally fully equipped to support themselves in the case of emergencies or delayed returns to base.

The NPS's purpose and need thus does not satisfy the "rule of reason" standard, and NPS must, in the FEIS, provide a thought-out reasoning to solidify its justifications for the proposed action.

E. Alternatives

As main points, High Sierra is disappointed that the WSP/DEIS does not address its prior comments and efforts on alternatives, some of which were raised through successful litigation against NPS, were not incorporated into NPS's WSP/DEIS. Also the NPS's Preferred Alternative 2, WSP/DEIS at x, will not preserve wilderness character, it will open the door for further degradation. (Alternative 2's "goal is to encourage wilderness use and minimize restrictions while preserving wilderness character.") See WSP/DEIS at x.

1. Preferred Alternative 2

Party Size — It is unclear whether the number of stock users proposed is cumulative or total. For Recreational Stock Users, WSP/DEIS at xiii, Alternative 2's proposed party size actually decreases from Alternative 1's No Action / Status Quo option, but the number of stock allowed is still too high for what the recreational stock visitor numbers support. WSP/DEIS at xiv. If there is a decreasing number of recreational stock users, it does not make sense for NPS to permanently adopt party size numbers for certain areas.

Stock Use — Alternative 2 would slightly decrease the miles of trail open to camping with stock, but it would simultaneously increase the miles of trail available to stock. WSP/DEIS at xv. It also would increase the off-trail use around campsites. WSP/DEIS at xvi.

Grazing and Structures — Alternative 2 would continue to allow grazing within 0.5 mile of campsites, and in off-trail travel areas. It would eliminate grazing along designated unmaintained routes. However, High Sierra believes that as a preliminary matter a no-grazing alternative should be pursued by NPS. High Sierra notes that NPS's current policy, regardless of the alternative, is that "visitors are given preference for limited grazing resources." WSP/DEIS at 116. Secondly, if stock is allowed they should be required to bring their own certified weed-free feed. High Sierra prefers Alternative 4, which would remove all hitch rails and drift fences. To maintain the true wilderness character, stock users should be required to set up low impact temporary high lines.

Animal Waste — there are very few provisions in any of the alternatives discussing one of the biggest problems of stock use — manure. For all alternatives, manure in corrals is to be removed from parks (WSP/DEIS at 219) however, the WSP/DEIS does not provide any information on this point. Namely, the estimated pounds of manure generated each year in corrals by stock, whether the corrals are constructed to avoid runoff or seepage into groundwater or wetland or riparian areas or surface waters,

how the corrals are cleaned of manure (e.g. whether they are scraped down), how manure is transported out of the park and the impacts of different methods, the effects of a concentrated manure source on wildlife near the corral areas, the effect of excess nutrients on nearby soils, and potential germination of seeds in stock manure. In fact, NPS dismissed the idea of manure bags (WSP/DEIS at 221) but did not address other ways stock users should be *responsible* for animal waste. This approach is totally contrary to the “leave no trace” principles and a violation of the pristine character of the wilderness.

Additionally, the NPS recognizes stock manure as a potential source of bacteria, including *E. Coli*, however NPS’s approach to this source of bacteria is dismissive and does not propose any preventative measures. *See, e.g.*, WSP/DEIS at 282-283, 392, 401-402. The NPS is well aware that encounters with stock, or manure, on the trail is displeasing to other visitors and users of the park. WSP/DEIS at 336. In a NPS 2011 survey, park users named horse manure as the biggest problem. WSP/DEIS at 337. Yet, the WSP/DEIS refuses to make any changes to the plan to address this. It is clear from this information that NPS’s efforts are more for the development of commercial purposes than for truly preserving the wilderness character.

Despite the problems cited above, and below, High Sierra believes that Alternative 4 holds the most promise. The “overarching idea behind alternative 4 is that the WSP would focus on emphasizing the undeveloped and noncommercial qualities of the parks’ wilderness. Removal of development and reduction of commercial services would increase opportunities for solitude and encourage self-reliance in wilderness recreation.” WSP/DEIS at xx.

2. NPS Failed to Analyze a Reasonable Range of Alternatives

High Sierra believes that the failure to include a “no stock” alternative among the five alternatives violates NEPA. NEPA requires an analysis of an appropriate range of alternatives necessary to permit an agency to make a reasoned choice. *High Sierra Hikers Ass’n v. U.S. Dept of Interior*, 848 F.

Supp. 2d 1036, 1051 (N.D. Cal. 2012). NPS is already well aware, from High Sierra's many prior comments over the course of the last decade, that there are other alternatives at its disposal. *See, e.g.*, High Sierra Comments (Nov. 19, 2102) at p. 5-9 and specifically the alternatives presented on p. 7. The scope of reasonable alternatives that an agency must consider is shaped by the purpose and need statement articulated by the agency and alternatives that are not too remote or speculative to accomplish the project's purpose are considered reasonable. *High Sierra Hikers Ass'n*, 848 F. Supp. 2d at 1051. Reasonable alternatives are those that are viable, feasible, meet the stated goals of the project, or are reasonably related to the purposes of the project. *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992). Neither did NPS address in a meaningful way why the "no stock" alternative, previously presented to NPS in High Sierra Comments, was not included amongst the alternatives. A "no stock" alternative was present in the General Management Plan; yet NPS fails to explain why the WSP/DEIS, which tiers off the GMP, ignores an option previously presented to the public. High Sierra also reminds NPS that more than 40 years ago, the 1971 SEKI Master Plan called for phasing out all stock in SEKI's sensitive higher elevations. Despite High Sierra's efforts to pursue this alternative, in various reasonable forms, the NPS wholly ignores its prior planning decisions. This failure may also constitute Administrative Procedure Act violations.

The "no stock" alternative is something that cannot be dismissed under the rationale that stock are of historic use or cultural value in the park and wilderness areas. High Sierra has previously expressed its concerns with the use of stock. High Sierra has previously reminded the NPS that:

In order to honestly evaluate the impacts of stock animals, you must first acknowledge that horses and mules are non-native, domestic animals and are invasive species that cause environmental pollution and physical damage. Horses are not native to the Sierra, to California, or to North America. They are European animals. There were no horses or mules in what is now California until the summer of 1769, when the Portolà expedition explored northward along the coast and "discovered" San Francisco Bay in November of that year. Like any other non-native, invasive species, and like any other destructive practice (such as logging of the Big Trees, development in the Giant Forest, sheep

grazing in park meadows, and feeding bears for public amusement, all of which are now ended) horses and mules do not belong in national parks simply because their use is deemed “traditional” by some white Americans.

See, e.g., High Sierra Comments (Nov. 19, 2012) at 1-2.

The High Sierra decision from 2012 vacated portions of the GMP that relate to commercial stock use in SEKI’s wilderness areas; the NPS can no longer rely on those portions of the GMP to justify its “historical use” claim. NPS recognizes this (WSP/DEIS at 32), but its further attempts to provide a rationale for its “historical” argument fail. NPS’s specialized finding (WSP/DEIS Appx. B, the Extent Necessary Determination) attempts to shoehorn historic use with the concept of historic under the Wilderness Act by claiming that scientific and educational trips require stock use. WSP/DEIS App. B-15. This “historical use” argument fails under NEPA and under the Wilderness Act.

Ultimately, “the existence of a viable, but unexamined alternative renders an EIS inadequate.” *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985). The NPS’s exclusion of the no-stock alternative was improper because it is a viable, yet unexamined alternative and the NPS failed to provide any adequate justification for its exclusion. The courts excused the NPS from examining a “no-stock” alternative in the EIS for the GMP because the purpose of that document was not to provide a detailed assessment of stock management options. *High Sierra Hikers Ass’n*, 848 F. Supp. 2d at 1052. The court determined that the detailed assessment would be part of the “future WSPs.” *Id.* A “no-stock” alternative is well within the scope and purpose of the WSP/DEIS as articulated by the NPS, and without such an alternative the agency cannot make “most intelligent, optimally beneficial decision” that NEPA’s “reasonable alternative” requirement is designed to ensure. *See id.*

The articulated purposes of the WSP are to “implement[] the long-term vision for protecting wilderness character . . . enhance[e] established programs and actions for managing these areas as wilderness.” WSP/DEIS at 7. The WSP is needed to establish more specific goals and objectives for the

management of visitors and certain administrative activities within the parks' wilderness. *Id.* Further, the WSP is stated to address and analyze the types and levels of commercial stock services that may be performed in the wilderness, along with the impacts of stock grazing. *Id.* These goals can only be met by including a "no-stock" alternative to truly evaluate the impacts of any stock use in wilderness areas. Since such goals were articulated in the Purpose and Need statement of the WSP/DEIS a "no-stock" alternative clearly fits within the scope, is reasonable, and the NPS is legally required to analyze this alternative under the requirements of NEPA.

Additionally, a "no-stock" alternative is not only within the scope and purpose of the DEIS, but has been a serious consideration since the SEKI's Master Plan recognized the harmful impacts of stock use in 1971. The Master Plan called for a complete phasing out of all recreational stock use in SEKI's sensitive higher elevations, and the WSP/DEIS itself includes an alternative that includes no stock above certain elevations. The acknowledgement that a "no-stock" alternative in high elevations is necessary and the currently documented impacts of stock use throughout the SEKI show that a "no-stock" alternative covering the entire SEKI wilderness is not only a reasonable alternative, but one that was illogically and unlawfully excluded from consideration. Failure to consider a "no-stock" alternative here implies that NPS already made the decision, without any analysis, that stock use is acceptable in SEKI wilderness. Such a rationale for excluding an alternative is impermissible under NEPA.

3. Lack of Analysis Amongst Alternatives

Despite the opportunity to have five different ways to analyze the issue, NPS's identification and assessment of the five alternatives is lacking and violates NEPA. 40 C.F.R. § 1500.2(e). NPS attempts to justify this by saying that because of the "high standard for natural resource preservation" there is "little variation across the alternatives." WSP/DEIS at ix. NPS identifies the "differences" between the alternatives as lying in the "key elements of wilderness management — use levels, access and trails,

stock use and grazing, and infrastructure, both recreational and administrative.” *Id.* The focus of the alternatives is thus not to avoid or minimize impacts as is required. *See* 40 C.F.R. § 1502.1 (EIS “shall provide full and fair discussion of significant environmental impacts and shall inform decision- makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment...”). Instead it is to propose different ways for NPS to get what it wants, such as increased stock use in wilderness areas.

F. Effects: Direct, Indirect, Cumulative

1. The Analysis of the WSP/DEIS’s Probable Environmental Effects is Insufficient to Meet the Requirements of NEPA.

The FEIS must include more detailed analysis of the impacts of stock use in the SEKI than that provided in the DEIS. The analysis of the impacts on soil conditions and ecosystem hydrology is lacking in the detail and disclosure necessary under NEPA. These impacts have been repeatedly provided to NPS over the years, and are yet again submitted in connection with this WSP/DEIS. *See, e.g.* Comments of High Sierra submitted Nov. 19, 2012, Comments of High Sierra submitted August 31, 2011, and Comments of Jon Rhodes, August, 2014 (incorporated by reference). Additionally, the WSP/DEIS does not properly account for the impacts of pack stock activities on water quality. These deficiencies are explained in length in additional comments submitted.

Additionally, there is no meaningful differentiation between the Alternatives 2 and 3 in the discussion of the impacts of stock grazing. For each alternative the DEIS repeats the same paragraph regarding the impacts of stock grazing in meadows. *See, e.g.*, Alternative 2 and Alternative 3. WSP/DEIS at 373, 377. Further, there is no discussion of how the difference will affect meadows, only that more/less use will cause less impact.

2. Impacts Inadequately Identified and Analyzed

NEPA does not require an EIS be based on the best scientific methodology available, rather the

rule of reason involves ensuring that the agency followed a procedure that resulted in a reasoned analysis of the evidence before it, regardless of the outcome. *High Sierra Hikers Ass'n v. U.S. Dep't of Interior*, 848 F.Supp. 2d 1036, 1057 (N.D. Cal. 2012). Agencies shall, however, “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements.” 40 C.F.R. § 1502.24. High Sierra believes this is lacking from the WSP/DEIS, and as examples, cites to the issues below.

a. Frogs

The WSP/DEIS is substantially lacking in analysis of the impact of the proposed action on the Yosemite Toad (“YT”) and the Mountain Yellow Legged Frog (“MYLF”). (High Sierra separately addresses the frogs’ status under the Endangered Species Act, *see* Section V., *infra*). The YT and MYLF habitat is described in the WSP/DEIS, along with common stressors on the species’ well being. WSP/DEIS at 300-304. However, the WSP/DEIS is lacking meaningful analysis regarding the known impacts on the YT and the MYLF in regards to the alternatives discussed. Instead, it states conclusions and identifies general impacts without explaining them in relation to the proposed WSP/DEIS in any meaningful way. For instance, stock grazing is expected to occur in primary YT habitat (meadows) and recreation will likely overlap with all segments of YT habitat. WSP/DEIS at 302. This is the extent of the analysis of stock use on YT habitat. The DEIS is ridden with reference to impacts, trampling and habitat degradation, but reference does not equal analysis.

The description of the WSP/DEIS’s impact on the MYLF is similarly lacking. The NPS recognizes open lakes and gently sloping stream banks as the preferred habitat of the MYLF. WSP/DEIS at 302. The impacts of trampling and habitat degradation are again referenced, and yet the NPS does not explain that the preferred habitat for the MYLF, the wet meadows and gentle-slope stream banks, are impaired by stock use or explain how the level of stock use in the area would affect those characteristics.

Stating that stock use would contribute to habitat degradation, without stating why, leaves the public in a “connect the dots” situation that defies the purpose of NEPA and hinders meaningful public participation. NEPA requires more than a statement that limiting stock access to areas that contain the MYLF will prevent trampling and habitat degradation. The impacts must be specifically explained in relation to the WSP/DEIS, not in a generalized manner, and there must be some analysis of what the removal or reduction of the impacts will and will not contribute to the overall health of the species in SEKI.

The NPS has made its description of the impacts on the YT and MYLF too convoluted for the public to ascertain. For instance, under Alternative 3 the NPS claims that the impacts to the MYLF and the YT would be localized and no measureable impacts would occur at the population level. WSP/DEIS at 378. This claim is not followed by any reasoned explanation as to why the localized impacts or impact on individuals are not expected to result in a measurable impact at a population level. Where there are impacts to the species, even if localized or individual, why would they not, when combined, have a measurable impact at a population level? The FEIS must explain this and not leave the public to filter through the convoluted material to try to determine the NPS’s reasoning.

The description of impacts on the YT and MYLF in Alternative 4 is equally difficult to follow. Stock grazing impacts meadows and gentle-slop stream banks, primary habitat for the YT and MYLF respectively. WSP/DEIS at 301. The NPS states however, that the impacts to the YT and MYLF would be due primarily to trampling. WSP/DEIS at 382. The FEIS must include a discussion of the impacts of stock grazing on the stream banks and meadows, not just a statement that there are impacts, in relation to the habitat of the YT and MYLF.

Finally, the WSP/DEIS makes the grave mistake of conflating what it terms “the scale of wilderness,” WSP/DEIS at 382, with the impact of the WSP/DEIS on the YT and the MYLF. The

statement that the WSP/DEIS's impacts on the toad would be "undetectable at the overall scale of wilderness" does not at all describe or analyze the impacts of stock use on the *species*.

High Sierra urges the NPS to seriously consider the effects of the proposed WSP/DEIS on the YT and the MYLF in the FEIS and its ultimate decision. It is not in keeping with the purposes or the requirements of NEPA to provide the cursory description of impacts contained in the WSP/DEIS.

b. Soil

Here, soil compaction issues are identified by the WSP/DEIS, *see* WSP/DEIS at 46, 391, and are recognized as linked to stock use and "the severity of impacts due to hoof traffic are potentially much greater than those resulting from foot traffic," WSP/DEIS at 392, and the impacts are "long term," WSP/DEIS at 393, but they are inadequately addressed in the EIS analysis and in fact are cursorily dismissed. The WSP/DEIS also recognizes that stock can increase erosion. For example:

- It cites only the McClaran and Cole study from 1993 regarding the impacts, which was a study of the impacts in the Bob Marshall Wilderness.
- There are multiple newer studies regarding the impacts and the lasting nature of even the slightest use by stock on wilderness soils. These studies, including the Viers et al. (2013) and the Beschta et al. (2013), show that lowered water tables from compaction contribute to stream incisement and loss of meadow functionality.
- The WSP/DEIS acknowledges that soil compaction can eventually lower the water table (WSP/DEIS, p. 490), but yet does not explain the connection between lower water tables and the lasting impact on meadow functionality and stream incisement that can result.
- Beschta et al. (2004) as well as USFS and USBLM reports state the enduring impact of soil compaction. Compaction persists for 5-80 years in most forest soils and still longer in soil with high clay content. This is a significant impact not reasonably disclosed in the WSP/DEIS.

The WSP/DEIS says that it does not need to consider these impacts because "[t]hese types of impacts are seen primarily in non-wilderness areas of the parks, and are mitigated through the establishment of trails, protective fencing, and visitor education." WSP/DEIS at 46. This statement does not hold true when it comes to stock use, however, because the WSP/DEIS is clearly allowing stock use in wilderness areas, and soil compaction is a major impact stock have. Also, the WSP/DEIS seems to ignore the role of stock in soil compaction. *Id.* For impacts on soil, please refer to Comments of Jon Rhodes,

Hydrologist, August 2014, incorporated herein by reference. These extensive comments are incorporated by reference into High Sierra's comments.

c. Water

Stock use impacts on water are numerous and well-documented. NPS claims that the impacts of animal waste on water quality in parks is "very small" and claims that water quality in animal use areas is "often better" than in other wilderness areas. WSP/DEIS at 282. These claims are unexplained. For impacts on water, please refer to Comments of Jon Rhodes, Hydrologist, submitted herewith. These extensive comments are incorporated by reference into High Sierra's comments. Of particular note:

- The DEIS does not reasonably analyze and disclose the impacts of allowed pack stock activities under the alternatives on ecosystem hydrology (quantity, pathways, and timing).
- The DEIS does not properly assess the impacts of allowed pack stock activities under the alternatives on water quality

d. Resource Extraction

Meadows are an important, irreplaceable mountain resource and should be protected. Grazing of stock animals is "generally allowed" in camping areas under all of the alternatives but for Alternative 4. Grazing is allowed within 0.5 miles of a campground, which allows stock access to a wide swath of area surrounding camping areas. *See* WSP/DEIS at xvi. While the WSP/DEIS states that grazing will be "managed", it does not explain other than the Stock Use and Meadow Management Plan ("SUMMP"), which NPS previously admitted is to be replaced by the WSP/DEIS. *See* WSP/DEIS at iii. This proposed management approach is confusing, seems circular, and guaranteed not to produce any management functions. It also further proceeds with a balancing test, stating that the managing will occur "to maximize protection of resources while allowing visitors traveling with stock continued access to forage." WSP/DEIS at 116.

The issue of resource extraction is particularly important for NPS to analyze under NEPA as an impact of the proposed project, because since 1986 "some level of use has been documented

in approximately half the meadows open to stock.” WSP/DEIS at D-10. NPS puts forth figures to claim that decrease in stock use of meadows decreases the impact, *id.*, but also admits the analysis may be based on observations of less sensitive species. *Id.* Additionally, because none of the alternatives but for Alternative 4 require certified weed-free feed or stock confinement, none of the proposals will limit the chances of meadows being used for grazing.

The NPS’s WSP/DEIS allows for unpermitted resource extraction from wilderness areas, and is impermissible under NEPA, the Wilderness Act, and may be an abuse of discretion under the APA.

3. SEKI Stream Poisoning Project

The WSP/DEIS ignores other ongoing projects in SEKI that may impact the WSP/DEIS proposed alternatives, particularly as to stock use. For example, High Sierra and others submitted comments (“Fish Comments”) to the Sequoia & Kings Canyon National Parks on December 17, 2013 regarding the “Restoration of Native Species in High Elevation Aquatic Ecosystems Plan and Draft EIS — Sequoia and Kings Canyon National Parks (September 2013)” (“Fish DEIS”). In its Fish Comments, High Sierra noted that undertaking the proposed rotenone treatments of high elevation waters would require a substantial crew to implement. Fish Comments at 18, citing Fish DEIS at 41, 44-45. High Sierra noted that NPS’s Fish DEIS did not adequately consider the impacts of stock on SEKI for this project. High Sierra also noted that the public may not enjoy seeing stock in SEKI connected with this project. Fish Comments at 20, citing Fish DEIS at 193. Lastly, the Fish DEIS proposes a multi-year project, and the WSP/DEIS improperly ignores the length of time, then length of potential stock use associated with this project.

4. Mitigation

Mitigation is rarely discussed in the WSP/DEIS. Where it is, it is vague and ambiguous. High

Sierra had to search for whether references to “mitigation measures” were in fact mitigation measures, or simply the anticipated impact from some. The general problem with the WSP/DEIS is that it does not even recognize things are a problem in the first place, so it can’t mitigate them. Mitigation measures must be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated. *Neighbors of Cuddy Mountain and Idaho Sporting Congress, Inc. v. U.S. Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998). A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion by NEPA. *Id.* An estimate of whether a measure could be adopted, or a reasoned explanation of why an estimate is not possible, is part of the NEPA analysis. *Id.* Broad generalizations and vague references to mitigation measures do not constitute the detail as to mitigation measures that would be undertaken, and their effectiveness, that agency is required to provide *Id.* Once adverse environmental impacts are identified, the agency must then describe what mitigating efforts it could pursue to off-set the damages that would result from the proposed action. *Id.* Here, the WSP/DEIS falls short. For example, NPS must properly disclose that areas closed to grazing will undergo some recovery in soil compaction and disclose the area affected. There is no discussion of the consequences this mitigation will actually be expected to result in. Without such a discussion, the proposed mitigation is too vague and does not provide the detail as to the measure’s effectiveness for dealing with the impacts of stock grazing in meadows. *Neighbors of Cuddy Mountain and Idaho Sporting Congress, Inc. v. U.S. Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998).

V. Endangered Species Act

A. Biological Assessment

The NPS has failed to meet the requirements of the Endangered Species Act, (“ESA”) 16 U.S.C. § 1531 *et seq.*, and the California Endangered Species Act, Cal. Fish and Game Code § 2050 *et seq.*, in its evaluation of the impacts on both the Yellow Legged Mountain Frog and the Yosemite Toad. NPS

identified YT as threatened under the ESA and the MYLF as endangered under the Federal ESA in April 2014, effective June 30, 2014. *See* 79 Fed. Reg. 82,24256 (April 29, 2014). The MYLF was listed as endangered under the California Endangered Species Act in 2012. *California Fish and Game Commission: notice of findings. Southern mountain yellow-legged frog (Rana muscosa), Sierra Nevada mountain yellow legged-frog (Rana sierrae)*. (February 2012). High Sierra has stressed the impact stock use, particularly grazing in SEKI meadows, has on these species and is disappointed that no coherent biological assessment is present in the WSP/DEIS despite the status of these species at the time the WSP/DEIS was issued.

NPS is required to prepare a biological assessment for the SEKI WSP/DEIS to “evaluate the potential effects of the action on listed and proposed species and designated and proposed critical habitat and determine whether any such species or habitat are likely to be adversely affected by the action and to determine whether formal consultation or a conference is necessary.” 50 C.F.R. § 402.12(a). The requirement is present for Federal actions that are “major construction activities.” 50 C.F.R. § 402.12(b). A “major construction activity” includes an undertaking “which is a major Federal action significantly effecting the human environment as referred to in the National Environmental Policy Act.” 50 C.F.R. § 402.2. The WSP/DEIS is obviously a major Federal action under NEPA and as such the NPS is required to include a biological assessment in its environmental review.

Though the contents of the biological assessment are at the agency’s discretion, the NPS did not provide sufficient information to meet the purpose of the ESA and did not make a clear determination regarding the effects of the WSP/DEIS on the MYLF and the YT. The regulations suggest an agency include:

- 1) The results of an on-site inspection of the area affected by the action to determine if a listed or proposed species are present or occur seasonally;
- 2) The views of recognized experts on the species at issue;
- 3) A review of literature and other information;

- 4) An analysis of the effects of the action on the species and habitat, including consideration of cumulative effects, and the results of related studies;
- 5) An analysis of alternate actions considered by the Federal agency for the proposed action.

50 C.F.R. § 402.12(f).

At the very least, the NPS must make a coherent and discernable determination somewhere in the WSP/DEIS regarding the impacts of the proposed WSP/DEIS on the MYLF and YT. The WSP/DEIS identifies the MYLF and proposed habitat as present in popular areas of wilderness. WSP/DEIS, at 304. The WSP/DEIS also makes multiple determinations regarding the impacts of discrete issues on the MYLF, including determining that frog habitat may be adversely affected by trails and/or stock use. WSP/DEIS at 366. The NPS has data and impacts regarding the species strewn throughout the WSP/DEIS, but does not make a coherent and definitive determination regarding the overall effect of the proposed action. High Sierra understands that the ESA grants the agency discretion at the form its biological assessment may take, but it is impossible to discern by the manner the NPS presents the data in the WSP/DEIS what the overall impacts would be on the MYLF and the YT. Therefore, the data as provided, cannot serve as a proper biological assessment. The contents of the WSP/DEIS are far below what is required of biological assessments.

High Sierra urges the NPS to clearly delineate its determination regarding the effects of the WSP/DEIS on the MYLF not only to meet the requirements under the ESA, but to ensure that the public is informed in a manner that allows for meaningful participation in the decision-making as required by NEPA. If, however, the NPS chooses to issue its FEIS without a more coherent analysis of the impacts of the proposed WSP/DEIS on the MYLF and the YT, High Sierra asserts that the formal consultation requirement under the ESA must be initiated. Section 7 of the ESA imposes a substantive duty on federal agencies to ensure that their activities do not cause jeopardy to listed species or adverse modification to their critical habitat. 16 U.S.C. § 1536(a)(2). The ESA establishes an interagency

consultation process to assist federal agencies to comply with this duty. Under the ESA, “agency action” includes “all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies.” 50 C.F.R. § 402.02. An agency must initiate consultation with the expert agency under ESA section 7 whenever it takes an action that “may affect” a listed species, subject to limited exceptions. 50 C.F.R. § 402.14(a), (b). The threshold for such a determination is low. 51 Fed. Reg. 19,926, 19,949 (June 3, 1986) (stating that “[a]ny possible effect, whether beneficial, benign, adverse, or of an undetermined character, triggers the formal consultation requirement . . .”). Further, the ESA requires that federal agencies “confer with the [expert agency] on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed...” 16 U.S.C. § 1536(a)(4); *see also* 50 C.F.R. § 402.10.

In reviewing an agency’s determination regarding the effect of a project on a listed species, the court will be guided by the Administrative Procedure Act and must determine whether the agency’s actions were “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” *W. Watersheds Project v. BLM*, 632 F.3d 472, 475 (9th Cir. 2010). Deference will be given to the agency on scientific matters to respect the agency’s expertise, but the presumption may be rebutted if the agency’s decision is not reasoned. *Motor Vehicles Mnfs. Ass’n v. State Farm Mut. Auto Ins.*, 463 U.S. 29, 43 (1983).

B. Duty to Consult

The NPS has failed in its obligation to consult with the Fish and Wildlife Service and California agencies regarding the effect of the WSP/DEIS on the MYLF and the YT. The WSP/DEIS states that NPS did consult (WSP/DEIS at 551-552), but Appendix G to the WSP/DEIS does not provide any materials demonstrating a response from FWS or California agencies regarding the MYLF and the YT in connection with the WSP/DEIS. The WSP/DEIS lists multiple scenarios in the proposed WSP/DEIS

that would impact the MYLF and the YT. The MYLF populations in areas near trails would be disturbed and habitat may be adversely affected by trails and stock use under Alternative 1. WSP/DEIS at 366. Under Alternative 2 the NPS expects beneficial effects on the MYLF due to reduced potential for disturbance and trampling. WSP/DEIS at 374. Changes in hiker and stock use under Alternative 2 are not expected to cause significantly different impacts than those in Alternative 1. WSP/DEIS at 374. The impacts to YT and MYLF in Alternative 3 are similarly not expected to differ significantly from those in Alternative 1 and Alternative 2. WSP/DEIS at 378. However, the NPS asserts that the impacts would be localized or to individuals, and there would be no measurable impacts at a population level. The NPS does not provide any basis for this claim. There is no data cited or any actual analysis to support the conclusion. The NPS cannot state in one section that the species may be adversely affected, then in another make a conclusory claim that the impacts to individuals throughout the park would not have an impact on the overall population, without any analysis to back up the assertion.

Moreover, the WSP/DEIS states in the Summary of Impacts table that most alternatives would have a “beneficial effect” on the YT and MYLF. WSP/DEIS at 260 – 261. As stated above, *any effect*, even that which may be beneficial, triggers the formal consultation requirement. 51 Fed. Reg. 19,926, 19,949 (June 3, 1986). All alternatives, other than Alternative 4, would allow visitor use to continue at current or increased levels, leading to increased encounters. *Id.* The NPS’s statement that stock access and grazing restrictions would decrease these impacts and thus provide beneficial impacts does not relieve the NPS from its obligation to consult. It appears that the NPS has determined that the WSP/DEIS will have an effect on both the YT and the MYLF. Therefore, it is required to consult regarding the impacts of the WSP/DEIS under the ESA.

VI. CONCLUSION

High Sierra supports efforts to address wilderness stewardship in the Sequoia and Kings Canyon National Parks. The current WSP/DEIS, however, does not propose a viable solution to the commercial stock use problem, and NPS has not complied with the procedural requirements of NEPA in putting the document together. NPS must withdraw the WSP/DEIS and prepare an environmental analysis consistent with NEPA, the Administrative Procedures Act (5 U.S.C. § 552 *et seq.*), the Wilderness Act, and the Endangered Species Act, the California Endangered Species Act, and which does not propose effectuating the project while violating other important environmental laws.

Respectfully submitted,

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By their attorneys,

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Enclosures

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