

1 ALISON M. TUCHER (CA SBN 171363)
(Email: ATucher@mofo.com)
2 WILLIAM F. TARANTINO (CA SBN 215343)
SHAYE DIVELEY (CA SBN 215602)
3 GEOFFREY R. PITTMAN (CA SBN 253876)
MORRISON & FOERSTER LLP
4 425 Market Street, 32nd Floor
San Francisco, California 94105-2482
5 Telephone: (415) 268-7000
Facsimile: (415) 268-7522

6 Attorneys for Plaintiff
7 HIGH SIERRA HIKERS ASSOCIATION

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 CV 09 4621

11 HIGH SIERRA HIKERS ASSOCIATION,

12 Plaintiff,

13 v.

14 UNITED STATES DEPARTMENT OF THE
15 INTERIOR, NATIONAL PARK SERVICE,
SEQUOIA AND KINGS CANYON NATIONAL
16 PARKS, KENNETH L. SALAZAR, in his official
capacity as Secretary of the Interior, JONATHAN
17 B. JARVIS, in his official capacity as Director of
the National Park Service, PATTY
18 NEUBACHER, in her official capacity as Acting
Regional Director of the National Park Service,
19 and CRAIG C. AXTELL, in his official capacity
as Superintendent of Sequoia and Kings Canyon
20 National Parks

21 Defendants.

Case No.

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF

E-filing

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FILED

SEP 30 2009

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

INTRODUCTION

1. Sequoia and Kings Canyon National Parks are widely recognized as a crown jewel of the Sierra Nevada and of the entire national park system. California's tallest peaks dominate the landscape, and the parks' vast wilderness areas form the core of the largest contiguous wilderness in California.

2. To better protect this landscape and its native plants and animals, the National Park Service adopted a management plan as far back as 1971 that called for strict limits on the use of horses and other livestock. Specifically, the 1971 Master Plan for the Sequoia and Kings Canyon National Parks called for phasing out the use of stock in the sensitive higher elevation areas of the backcountry and for eliminating open grazing parkwide. The National Park Service set this direction because of its concern over "the damage resulting from livestock foraging for food and resultant trampling of soils, possible pollution of water, and conflict with foot travelers." (Master Plan, Sequoia Kings Canyon National Parks, California, 1971 (attached as Exhibit 1), at 24.)

3. Today, livestock continue to graze in the Sequoia and Kings Canyon National Parks, including in the parks' unique and sensitive high elevation meadows. Pursuant to permits issued by park management, commercial outfitters run pack and saddle stock throughout the parks, where the animals continue to trample soils, pollute the water, and provoke numerous complaints from park visitors. Due to advancements in environmental science, it is clearer now than in 1971 that there are serious adverse consequences to the environment resulting from this lax regulation of stock use. Yet the National Park Service recently issued a new General Management Plan and Final Environmental Impact Statement for the Sequoia and Kings Canyon National Parks without even considering the environmental consequences of failing to rein in excessive stock use and outdated stock management practices.

4. This action challenges certain administrative actions and land management practices with respect to stock use for the Sequoia and Kings Canyon National Parks by the United States Department of the Interior, National Park Service, Sequoia and Kings Canyon National Parks, Kenneth Salazar (in his official capacity), Jonathan Jarvis (in his official

1 capacity), Patty Neubacher (in her official capacity), and Craig Axtell (in his official capacity),
2 collectively referred to as “Defendants.”

3 5. Plaintiff High Sierra Hikers Association (“High Sierra”) seeks injunctive and
4 declaratory relief, in particular a court order (1) requiring Defendants to cease issuing or renewing
5 permits to commercial pack stock enterprises that operate within Sequoia and Kings Canyon
6 National Parks, without first undertaking the required environmental review and imposing
7 conditions necessary to protect the parks’ wilderness character; and (2) setting aside as not in
8 accordance with federal law the December 2007 General Management Plan and Record of
9 Decision adopting that plan for the Sequoia and Kings Canyon National Parks.¹

10 6. Such relief is proper because Defendants’ continued issuance and renewal of
11 permits allowing commercial (*i.e.*, for-profit) stock operations in the parks, without appropriately
12 finding that such activity is “necessary” or proper to realize the wilderness purposes of the areas
13 and without preparing an environmental impact statement (“EIS”), violates both the Wilderness
14 Act and the National Environmental Policy Act (“NEPA”). Similarly, the General Management
15 Plan allowing stock use at least “up to current levels” and the Record of Decision adopting the
16 General Management Plan violate the Wilderness Act and NEPA. The planning process included
17 no finding that stock use at current levels was a necessary commercial activity. It proceeded
18 without analyzing a range of reasonable alternatives to the proposed stock use, and it failed
19 adequately to disclose and analyze the environmental consequences of adopting the General
20 Management Plan.

21 7. Further, because stock use at current levels in the parks has and will continue to
22 result in significant adverse impacts to the scenery, natural objects, and wildlife in the parks,
23 Defendants’ management actions under the General Management Plan and through its continued
24 issuance of commercial stock permits violate the National Park Service Organic Act’s mandate to

25 ¹ High Sierra does not seek invalidation of existing permits, but requests that appropriate
26 limits and controls be placed on commercial stock use for a short period of time to give
27 Defendants an opportunity to comply with the National Environmental Policy Act and other
28 federal laws.

1 leave such resources “unimpaired for the enjoyment of future generations.” 16 U.S.C. § 1. And
2 Defendants’ failure to comply with the Wilderness Act, NEPA, and the Organic Act constitute a
3 violation of the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* (“APA”).

4 JURISDICTION

5 8. This lawsuit alleges violations of the Wilderness Act, 16 U.S.C. §§ 1131 *et seq.*,
6 the Organic Act, 16 U.S.C. §§ 1 *et seq.*; NEPA, 42 U.S.C. §§ 4321 *et seq.*, and the APA, 5 U.S.C.
7 §§ 701 *et seq.* The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. The
8 Court may issue declaratory relief pursuant to 28 U.S.C. §§ 2201, and may issue injunctive relief
9 pursuant to 28 U.S.C. § 2202, 5 U.S.C. § 705, 5 U.S.C. § 706(1), and 5 U.S.C. § 706(2)(A) &
10 (D).

11 VENUE

12 9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because this civil
13 action is brought against agencies of the United States and officers of the United States acting in
14 their official capacities and under the color of legal authority, Plaintiff High Sierra’s headquarters
15 is located in Berkeley, California (which is located within the Northern District of California),
16 and a substantial part of the events or omissions giving rise to the claims occurred within the
17 Northern District of California, as the National Park Service’s Pacific West Region office is
18 located in Oakland, California.

19 PARTIES

20 10. Plaintiff High Sierra is a non-profit corporation registered in California that
21 educates its members, public officials, and the public-at-large about issues affecting hikers and
22 the Sierra, and that seeks to improve management practices on federal lands in the Sierra Nevada
23 for the public benefit. On behalf of its members, High Sierra is committed to the preservation,
24 protection, and defense of the environment, its wildlife, and natural resources. High Sierra is
25 headquartered in Berkeley, California, and has more than 600 members, many of whom regularly
26 use and enjoy the Sequoia and Kings Canyon National Parks for activities that include hiking,
27 backpacking, horse packing, climbing, mountaineering, cross-country skiing, wildlife viewing,
28 photography, nature study, and spiritual and aesthetic enjoyment.

1 11. High Sierra's members have suffered and will continue to suffer harm related to
2 their use and enjoyment of the Sequoia and Kings Canyon National Parks because of the type,
3 levels, and methods of commercial stock use approved by the General Management Plan. The
4 types of harm suffered by High Sierra's members due to commercial stock use include but are not
5 limited to: damage to trails, compacted and eroded meadows, polluted water, and aesthetic harm
6 related to grazing impacts and to waste produced by stock animals.

7 12. The aesthetic, recreational, and scientific interests of High Sierra and its members
8 have been and will continue to be adversely affected and irreparably injured if the Defendants
9 continue to act and fail to act as alleged herein and to affirmatively implement the actions that
10 Plaintiffs challenge herein. The injuries to High Sierra and its members are actual and concrete
11 and caused by Defendants' violations of their duties under federal law, as alleged in this
12 Complaint. These injuries would be redressed adequately by the relief sought in this Complaint.

13 13. Defendant United States Department of the Interior (the "Department") is an
14 agency of the federal government of the United States of America. As a federal agency, the
15 Department is responsible for ensuring compliance with NEPA and other applicable federal laws.

16 14. Defendant National Park Service (the "Park Service") is an agency within the
17 Department and is responsible for managing all national parks in the United States, including the
18 Sequoia and Kings Canyon National Parks. The Park Service issued the General Management
19 Plan challenged in this action. As a federal agency, the Park Service is responsible for ensuring
20 compliance with NEPA and other applicable federal laws. The Park Service's Pacific West
21 Region office ("Regional Office") is located in Oakland, California, and the Regional Director of
22 the Park Service's Regional Office signed and approved the Record of Decision approving the
23 General Management Plan on September 14, 2007.

24 15. Defendant Sequoia and Kings Canyon National Parks ("SEKI") is the
25 administrative branch of the Park Service responsible for managing Sequoia National Park and
26 Kings Canyon National Park. The two parks are contiguous, and are managed as a single unit of
27 the national park system and are commonly referred to as "SEKI." SEKI prepared the General
28 Management Plan challenged in this action and is responsible for the implementation of the plan

1 to allow stock use up to at least current levels. SEKI is also responsible for issuing and renewing
2 commercial permits for stock use in the parks. SEKI acted in both of these matters without
3 conducting an adequate NEPA analysis or making a finding of necessity under the Wilderness
4 Act. SEKI's office is located in Ash Mountain, California, and its mailing address is located in
5 Three Rivers, California.

6 16. Defendant Kenneth Salazar is the Secretary of the Interior and is sued in his
7 official capacity. As Secretary of the Interior, Mr. Salazar is responsible for ensuring compliance
8 with NEPA and other applicable federal laws.

9 17. Defendant Jonathan Jarvis is the Director of the Park Service and is sued in his
10 official capacity. As Director of the Park Service, Mr. Jarvis has supervisory responsibility for
11 Park Service activities, including the preparation and approval of environmental impact
12 statements and management plans. In his former capacity as the Regional Director of the Park
13 Service's Regional Office, Mr. Jarvis signed and approved the Record of Decision approving the
14 General Management Plan on September 14, 2007.

15 18. Defendant Patty Neubacher is the Acting Regional Director of the Park Service's
16 Regional Office and is sued in her official capacity. As Regional Director of the Park Service's
17 Regional Office, Ms. Neubacher has supervisory responsibility for Park Service activities in the
18 region, including the preparation and approval of environmental impact statements and
19 management plans.

20 19. Defendant Craig Axtell is the Superintendent of SEKI and is sued in his official
21 capacity. As Superintendent of SEKI, Mr. Axtell is responsible for management activities within
22 SEKI, including the preparation of environmental assessments, environmental impact statements,
23 and management plans, and for the implementation of the General Management Plan's direction
24 to continue and likely expand stock use in the parks.

25 **FACTUAL AND LEGAL BACKGROUND**

26 20. Sequoia National Park was established in 1890 for the "preservation from injury"
27 of its natural resources and wonders, and to retain park resources "in their natural condition."
28 16 U.S.C. §§ 41, 43. In 1926, an act of Congress enlarged Sequoia National Park and again

1 instructed the Secretary of the Interior to ensure the “preservation from injury or spoliation” of its
2 natural resources and wonders, and “preservation of said park in a state of nature.” 16 U.S.C.
3 §§ 45a, 45b. Congress created Kings Canyon National Park in 1940. 16 U.S.C. § 80. Since then,
4 Sequoia and Kings Canyon National Parks have been jointly administered. The administration,
5 protection, and development of all national parks, including Sequoia and Kings Canyon National
6 Parks, are specifically subject to the provisions of the Organic Act. 16 U.S.C. § 1.

7 21. In 1964, Congress enacted the Wilderness Act, thereby establishing a National
8 Wilderness Preservation System to be composed of federally owned areas designated by
9 Congress as “Wilderness Areas.” These areas must be administered for the “use and enjoyment
10 of the American people in such manner as will leave them unimpaired for future use and
11 enjoyment as wilderness and so as to provide for the protection of these areas, [and] the
12 preservation of their wilderness character” 16 U.S.C. § 1131(a). The Wilderness Act
13 defines wilderness as an area where “the earth and its community of life are untrammelled by man,
14 where man himself is a visitor who does not remain,” and has “outstanding opportunities for
15 solitude or a primitive and unconfined type of recreation” 16 U.S.C. § 1131(c).

16 22. More than 83 percent of SEKI’s backcountry was added to the National
17 Wilderness Preservation System on September 28, 1984.

18 23. SEKI’s wilderness areas comprise more than one-third of the entire wilderness
19 area of the central and southern Sierra Nevada. The parks are the core of the largest area of
20 contiguous designated wilderness in California, and the second largest in the lower 48 states.
21 Mount Whitney (the highest peak in the contiguous United States) and most of the other peaks
22 above 14,000 feet in the Sierra Nevada are located within these national parks, as are the
23 headwaters of the Kern, Kings, and Kaweah rivers, as well as the South Fork of the San Joaquin
24 River. The parks are home to magnificent and imperiled wildlife, including some of the last
25 remaining bands of Sierra Nevada bighorn sheep. In recognition of the parks’ exceptional and
26 singular qualities, the United Nations has designated the parks as an “international biosphere
27 reserve.”
28

1 **The Adverse Impacts of Stock Use on National Park Resources are Well Established**

2 24. Stock animals are not native to the Sierra Nevada, and were primarily introduced
3 by loggers, sheep- and cattle-grazers, miners, explorers, and surveyors for uses that have long
4 since faded into history. Horses, mules, burros, and llamas are not native to California or even to
5 North America. Currently, the most significant use of stock animals in mountain areas is for
6 recreation, usually via commercial for-profit enterprises that provide riding animals, pack
7 animals, guides, wranglers, cooks, and gear to cater vacation activities for park and wilderness
8 visitors.

9 25. This use can result, and has resulted, in a number of significant adverse
10 environmental impacts, including: (a) overgrazing and trampling of fragile wetlands and meadow
11 areas; (b) damage to soils and vegetation through trampling, root shearing, compaction, erosion,
12 and the introduction of non-native plant species leading to shifts in species composition; (c)
13 contamination of water resources by stock manure and urine, with the resulting pollution and
14 threat to public health; (d) increased levels of sedimentation, nutrients, bacteria, and turbidity in
15 the parks' water resources; (e) harm to native animal populations, including a number of species
16 such as the mountain yellow-legged frog and the Yosemite toad, as a result of habitat impairment
17 and the depletion of food sources; (f) stream bank shearing and erosion; (g) introduction of non-
18 native weeds that invade meadows, crowd out native plants, and require costly eradication efforts
19 that also harm the parks' wilderness character; (h) trail widening and erosion; (i) negative impacts
20 on opportunities for solitude and spiritual refreshment; and (j) significant aesthetic impacts to the
21 experiences of other wilderness users due to the grazing of meadows and to the manure, urine,
22 increased presence of flies, and dust created by stock use in the parks.

23 26. The Park Service and SEKI have long recognized that the use of stock animals
24 disrupts and adversely affects the natural ecosystems and processes in the Sierra Nevada.
25 The 1971 Master Plan for SEKI, in recognition of these adverse impacts, directed park managers
26 to eliminate the use of stock animals in sensitive higher elevation areas of the backcountry
27 "[b]ecause of the damage resulting from livestock foraging for food and resultant trampling of
28 soils, possible pollution of water, and conflict with foot travelers" (Exhibit 1 at 24.)

1 The 1971 Master Plan also directed SEKI staff to eliminate “open grazing on park lands” in order
2 to reduce the harmful effects of stock use. (*Id.*)

3 27. Despite the clear programmatic direction provided by the 1971 Master Plan to
4 significantly limit the harmful impacts of stock use in the parks, SEKI finalized a Stock Use and
5 Meadow Management Plan (“SUMMP”) and a Backcountry Management Plan (“BMP”) in 1986
6 that allowed stock use, including commercial stock services, to continue at existing levels
7 throughout all areas of the parks’ backcountry. Both of these plans were accompanied by very
8 brief environmental assessments that were completed in 1983 and 1984 respectively (before large
9 segments of SEKI were designated as wilderness), and both plans recognized the significant
10 adverse impacts caused by stock use.

11 28. Neither the SUMMP nor the BMP made any finding with regard to the necessity
12 of allowing commercial stock operations in the wilderness areas of the parks, as is required under
13 the Wilderness Act.

14 29. While the SUMMP expressed an intention that the 1971 Master Plan would be
15 revised to alter its programmatic direction to eliminate stock use from the higher elevations of the
16 parks and to prohibit grazing park-wide, this proposed revision to the parks’ Master Plan never
17 occurred.

18 **SEKI’s Existing Monitoring Program Under the SUMMP and BMP is Insufficient to**
19 **Mitigate Against the Myriad Adverse Impacts Caused by Stock Use**

20 30. In an attempt to mitigate the known adverse impacts of stock use in the parks, the
21 final version of the SUMMP established a rudimentary monitoring system and prescribed specific
22 management practices for stock animal use and meadow resources in the backcountry and
23 wilderness areas of SEKI. These management practices included setting opening dates for all
24 meadows to try to prevent unacceptable damage to soil and vegetation, as well as a monitoring
25 program that would allow use levels to be changed based on observation. Both the BMP and the
26 SUMMP limited stock party sizes to 20 stock animals to attempt to control the adverse impacts of
27 stock use, and the SUMMP provided that increases in stock use would be allowed only if
28 information from the monitoring program so indicated.

1 31. On information and belief, to date, that monitoring program has not indicated any
2 ability to tolerate an increase in the types, locations, or amounts of stock use at SEKI. Further,
3 the Park Service has acknowledged on numerous occasions that the SUMMP and its monitoring
4 program are outdated, and are thus incapable of adequately monitoring the myriad known impacts
5 of stock use on the parks' resources. Thus, any current reliance on this outdated monitoring
6 program to protect against the adverse impacts of stock use is improper.

7 32. In the early 1990s, SEKI park managers and park managers from other national
8 parks and national forests in the Central Sierra proposed to increase the allowable number of
9 stock animals per party in the parks from 20 to 25 stock animals. The specific proposal set the
10 maximum party sizes at 15 people and 25 stock animals. Despite SEKI's assurances to the public
11 that the proposed increase in stock use would not be implemented until a full NEPA analysis was
12 completed for a new Wilderness Management Plan, SEKI promulgated a separate environmental
13 assessment ("EA") in 1993 addressing only the proposed increase in stock party size limits,
14 without any accompanying Wilderness Management Plan. The 1993 EA did not address the
15 resource and ecosystem impacts of stock use, reserving such analysis for the as-yet-to-be-
16 completed Wilderness Management Plan.

17 33. Despite the environmental data, the known adverse impacts, and the high profile of
18 the issue, the Park Service concluded in the 1993 EA that the stock limit increase was "not a
19 major federal action that would significantly affect the human environment" and therefore no EIS
20 would be necessary. It reached this conclusion despite the fact that other Central Sierra forest
21 land managers acknowledged at the time that scientific analysis as required by NEPA would lead
22 to a maximum stock party size considerably *lower* than the proposed amount. (*See Exhibit 2.*)
23 ("if we take [the proposed stock party limit increase] through NEPA the numbers will, in all
24 likelihood, come out lower, and all of our packers will be significantly impacted.")

25 34. On October 11, 1994, High Sierra filed a lawsuit in this Court to enjoin the stock
26 limit increase. The Court granted summary judgment in favor of High Sierra, finding that: (i) the
27 Park Service and SEKI's decision not to prepare an EIS violated NEPA; (ii) the mitigation
28 measures contained in the 1993 EA were inadequate, in violation of NEPA; (iii) the 1993 EA

1 violated NEPA by failing to consider impacts on threatened species; and (iv) the public
2 controversy over the issue of increased stock limits required an EIS. (Exhibit 3 at 17-31.)

3 35. In finding that the proposed mitigation measures under SEKI's existing meadow
4 management plan were insufficient, the Court recognized that SEKI's meadow management
5 program under the SUMMP and BMP allowed unacceptable impacts to the parks' natural
6 resources, even with the 20 stock animal limit in place. (*Id.* at 23.) The Court further found to be
7 wholly unpersuasive SEKI's argument that any environmental damage caused by stock use could
8 be successfully mitigated through discretionary actions taken by SEKI's Superintendent: "the
9 evidence demonstrates that SEKI management's discretion may be too heavily impacted by
10 political factors to have a predictable ability to protect the environment." (*Id.* at 26.) On those
11 bases, the court issued an injunction preventing the Park Service and SEKI from implementing
12 the increased stock limits without completing an EIS. On March 26, 1996, the Court issued an
13 order vacating the injunction and approving a stipulated settlement between the parties that set
14 aside the 1993 EA and required the Park Service to perform an EIS if it decided to increase stock
15 party size limits in the future.

16 36. This previous litigation makes clear that as far back as 1992, SEKI was making
17 promises that a Wilderness Management Plan would be promulgated to replace the outdated
18 management policies set forth in the SUMMP and BMP.

19 37. SEKI has made attempts over the years to supplement the SUMMP's antiquated
20 monitoring system, but it has done so in an *ad hoc* fashion, usually without inviting public
21 comment and without addressing the many serious impacts of stock use that have been raised by
22 High Sierra and others, including by SEKI's own staff. SEKI has also delayed consideration of
23 known problems by downplaying – and even discontinuing – its monitoring projects when harm
24 caused by stock use has come to light.²

25 ² For example, a "hoofprint impact study" conducted by SEKI scientists in the 1990s
26 documented the significant and widespread impacts of deep hoofprints created by horses and
27 mules in SEKI's sensitive high-elevation wetland meadows. The documented impacts included
28 soil loss, declines in species diversity, and shifts in plant species composition. (An excerpt from a
report about the hoofprint impact study is attached as Exhibit 4.) But the study was abruptly and
inexplicably discontinued even after SEKI's Meadow Management Specialist concluded that

(Footnote continues on next page.)

1 38. Instead of conducting a public NEPA process, SEKI has – without public notice or
2 opportunity for public comment – supplemented the SUMMP’s monitoring provisions with a
3 “residual biomass monitoring” scheme. Residual biomass monitoring is a range management
4 technique originally developed for production (*i.e.*, agricultural) livestock management. It is not
5 capable of properly capturing the ongoing impairment of wilderness character and of national
6 park resources due to stock use at SEKI. Monitoring “residual biomass” does not address the
7 significant aesthetic impacts of stock grazing on the scenery and natural beauty of the parks’
8 meadows, nor environmental issues such as water quality or species diversity that are not
9 measured by the volume of plant growth. The residual biomass monitoring program even fails by
10 its own terms, as the only external academic reviewer to analyze the efficacy of the program has
11 concluded that it did not produce sufficient information to develop grazing capacities, even under
12 SEKI’s own criteria. Thus, the residual biomass program is insufficient to satisfy the parks’
13 duties under the Organic Act to prevent impairment of the parks’ resources.

14 39. Despite the existence of SEKI’s meadow monitoring program, numerous reports
15 written by SEKI’s own rangers have documented the significant adverse impacts caused by stock
16 use in the parks. For example, these reports indicate that stock use has resulted in trampling of
17 sensitive alpine meadows, severe damage to vegetation, the creation of unwanted stock trails and
18 roll pits, stream bank erosion, mechanical (hoof print) damage to meadows and lake shores, water
19 contamination, shearing of soils, and significant dust and manure pollution. Of particular concern
20 to several rangers has been the significant damage caused by stock grazing in the sensitive higher
21 elevations of the parks. Several rangers have recommended that grazing be prohibited in these
22 areas due to damage caused to fragile lake shores and contamination of lakes and streams by
23 stock animals. (*See* Exhibit 5: Rae Lakes/Monarch Year End Report ’06 at 9-10, 14; Bench Lake
24 Year End Report ’01 at 27-29; *see also* Tyndall Creek End of Season Report ’96 at 41
25

26 (Footnote continued from previous page.)

27 impacts were “undeniably a negative change in the meadow that can be considered permanent.”
28 (*Id.* at 31.)

1 (recommends banning grazing in the Kern Drainage above 10,500’).) The Park Service and SEKI
2 have yet to act on these recommendations to prohibit grazing in SEKI’s sensitive higher
3 elevations.

4 40. The ranger reports have documented significant damage caused by overgrazing of
5 meadows despite compliance with existing regulations. (LeConte Year End Report ’97 at 1
6 [attached as Exhibit 6].) Additionally, several ranger reports containing recommendations to
7 close meadows to grazing have gone unheeded despite repeated requests from multiple rangers
8 that a particular meadow be closed to grazing. (Exhibit 7: McClure Ranger Station End of Season
9 Report ’94 at 1-2; McClure Ranger Station End of Season Report ’95 at 5; McClure Ranger
10 Station End of Season Report ’96 at 13 (“restore McClure Meadow to alpine garden status”);
11 McClure Ranger Station End of Season Report ’99 at 24; and McClure Ranger Station End of
12 Season Report ’07 at 40.) These reports demonstrate the inefficacy of SEKI’s monitoring
13 program.

14 41. In addition to the ranger reports, numerous field studies conducted by SEKI’s
15 scientists and natural resource specialists also document the significant adverse environmental
16 impacts of stock use and make recommendations that have not been acted upon by SEKI. (*See,*
17 *e.g.,* Charlie Schelz, *Production & Residual Biomass Monitoring of Wilderness Meadows* (Nov.
18 8, 1996) at 20-21 (SEKI plant ecologist recommended more than a decade ago that all meadows
19 above 9,700 feet should be closed to grazing) [attached as Exhibit 8].) For example, SEKI has
20 recently acknowledged that since 2005, stock use has caused the spread of velvet grass and other
21 noxious weeds within the parks. (*See, e.g.,* Exhibit 9.) The spread of non-native weeds as a
22 result of stock use in SEKI, and the need to use chemical herbicides to control them, are
23 significant adverse environmental impacts of stock use that were not considered in the SUMMP
24 or BMP, and pose a serious threat to the native plant and animal species within the parks.

25 42. Independent academic experts have also documented the significant adverse
26 impacts of stock use at SEKI. For example, researchers from the University of California have
27 recently documented that stock use in SEKI and other Sierra Nevada wilderness areas has led to
28 the presence of harmful microbial organisms such as *E coli* in the lakes and streams of SEKI and

1 other Sierra Nevada wilderness areas. (Derlet & Carlson, *Coliform Bacteria in Sierra Nevada*
2 *Wilderness Lakes and Streams: What is the Impact of Backpackers, Pack Animals, and Cattle?*
3 (2006) [attached as Exhibit 10].) The study conducted by these researchers found *E coli* strains in
4 twelve of the fifteen samples taken from areas frequented by stock animals. (*Id.* at 17.)
5 Conversely, in areas only used by backpackers, the study found that only one in fifteen samples
6 contained coliform bacteria. (*Id.*) A more recent study by the same researchers confirmed that
7 there is a strong correlation between the presence of harmful coliform bacteria in water and stock
8 use. (Derlet & Carlson, *Risk Factors for Coliform Bacteria in Backcountry Lakes and Streams in*
9 *the Sierra Nevada Mountains: A 5-Year Study* (2008) [attached as Exhibit 11].) This new
10 scientific evidence demonstrates that stock use can lead, indeed has led, to the pollution of
11 SEKI's water resources with disease-causing microbial organisms.

12 43. Thus, as demonstrated by SEKI's own ranger reports and scientific studies and by
13 the work of other experts, continued stock use at SEKI under the existing monitoring program is
14 causing harm to the wilderness character of the parks and is resulting in the impairment of
15 national park resources. The significant environmental and aesthetic impacts of continued stock
16 use are not avoided or adequately mitigated by SEKI's antiquated SUMMP, or by SEKI's *ad hoc*
17 attempts to supplement the SUMMP.

18 **Stock Use Continues Unabated**

19 44. Despite the undeniable evidence of adverse environmental impacts caused by
20 stock animals in the parks and SEKI's significant activity over the past fifteen years to develop a
21 new general management plan for the parks, stock use continues without any significant change
22 to the parks' stock management practices.

23 45. On April 19, 2002, SEKI's then-Superintendent, Richard Martin, wrote a letter to
24 High Sierra admitting that the Park Service had not conducted any environmental review for its
25 permitting program for commercial stock operators in the parks and that it was "clear" that
26 environmental compliance must be conducted as part of renewing these permits. (Exhibit 12.)
27 SEKI confirmed in two subsequent letters to High Sierra, dated June 27, 2002, and September 5,
28 2002, that no NEPA documentation had been prepared for the existing commercial stock permits

1 and that the Park Service intended to complete the “necessary environmental compliance” by
2 December 31, 2005 (attached hereto as Exhibit 13 and Exhibit 14 respectively). SEKI informed
3 High Sierra that during the time-period when the Park Service was conducting its NEPA analysis,
4 commercial stock permits would be reissued on an annual basis under a categorical exclusion
5 from NEPA. (Exhibit 12 at 2.)

6 46. On April 26, 2004, the Park Service published its notice of availability of a *Draft*
7 *Environmental Impact Statement for General Management Plan* (“Draft GMP”) for the parks in
8 the Federal Register (attached hereto as Exhibit 15). The Draft GMP, among other things,
9 proposed to replace the 1971 Master Plan’s programmatic direction on stock animal use, which
10 had been to phase out stock use in the higher elevation areas of SEKI and to prohibit open grazing
11 on park lands. While making an affirmative decision to continue stock use in the parks, the Draft
12 GMP stated that “specific types of restrictions, limits, regulation, and monitoring would be
13 covered within [a] resource management plan (both a backcountry/wilderness management plan
14 and a meadows management plan.)” (Draft GMP, Vol. 1 at 35.) The Draft GMP failed to
15 consider a “no grazing” alternative or an alternative that would have prohibited stock use in
16 higher elevations in the parks, despite the fact that such reasonable alternatives were well known
17 to the Park Service from the 1971 Master Plan. Moreover, they were specifically suggested for
18 consideration in the new General Management Plan as early as March 30, 1998, when High Sierra
19 submitted its scoping comments for the anticipated new General Management Plan (attached as
20 Exhibit 16.)

21 47. High Sierra actively participated throughout the Park Service’s process for
22 developing the General Management Plan, and relayed its concerns at public hearings, private
23 meetings with staff and managers from the Park Service, and in written comments including, but
24 not limited to, detailed letters to the Park Service dated March 30, 1998, April 9, 1998, October 5,
25 2004, November 19, 2004, July 13, 2005, and March 28, 2006. Copies of these letters (without
26 their accompanying exhibits) are attached as Exhibit 17.

27 48. On May 25, 2005, more than three years after telling High Sierra that it would
28 conduct a complete NEPA analysis for its continued issuance of commercial stock permits, SEKI

1 informed High Sierra that it was retracting its commitment to evaluate the commercial stock
2 permits under NEPA, and instead would rely on the EAs conducted in preparation of the SUMMP
3 and BMP in the early 1980s. A copy of this letter is attached as Exhibit 18. The letter also stated
4 that SEKI would stand by its previous commitment not to issue any new commercial stock
5 permits until an environmental analysis was completed along with the development and
6 implementation of a "Wilderness Stewardship Plan." (*Id.*)

7 49. However, in May 2006, High Sierra learned that SEKI had initiated a process to
8 issue three ten-year permits to allow commercial stock use within the parks without conducting
9 any NEPA scoping or analysis. A copy of High Sierra's May 2, 2006 letter to SEKI expressing
10 its concerns is attached as Exhibit 19. On July 24, 2006, SEKI sent a response letter indicating
11 that it had "tabled" its plans to award three 10-year permits to stock operations within SEKI and
12 that the existing concessioner would continue operating under a one-year extension. A copy of
13 this letter is attached as Exhibit 20.

14 50. On November 20, 2006, the Park Service published the proposed *Final General*
15 *Management Plan and Comprehensive River Management Plan/Final Environmental Impact*
16 *Statement for Sequoia and Kings Canyon National Parks and Middle and South Forks of the*
17 *Kings River and North Fork of the Kern River* (hereinafter, the "GMP" or "GMP/EIS") in the
18 Federal Register (Vol. 71, No. 223, Page 67158) (attached hereto as Exhibit 21). Like the Draft
19 GMP, the GMP proposed to replace the 1971 Master Plan's programmatic direction to phase out
20 stock animal use in the higher elevation areas of SEKI and to prohibit open grazing on park lands.
21 The GMP also made an affirmative decision to continue stock use in the parks up to at least
22 current levels, although it delayed consideration of the "social, physical, and biotic impacts" of
23 stock use in the parks until the development and implementation of a Wilderness Stewardship and
24 Stock Use Plan. (GMP, Vol. 1 at 36.)

25 51. Moreover, although the GMP purports to authorize stock use at undefined "current
26 levels" (GMP, Vol. 1, at 122), it in fact provides programmatic direction to park managers to
27 enhance and expand facilities for stock users. In particular, the GMP envisions (i) constructing a
28 new campground for stock users at the North Fork of the Kaweah River; (ii) constructing and

1 improving trails, trailheads, and campgrounds for stock users throughout the Ash
2 Mountain/Foothills area; (iii) constructing a trailhead suitable for stock use at Dillonwood; and
3 (iv) re-establishing and relocating the long-closed former commercial pack stations at Mineral
4 King and Wolverton. (*See id.* at 156, 154, 168, 160, 122.) With this clear programmatic
5 direction to construct buildings, trailheads, and campgrounds that facilitate increased stock use in
6 the parks, the GMP thus appears disingenuous in characterizing its program as stock use at
7 “current levels.” Furthermore, many of these new and enhanced facilities for stock use would
8 expand development into the unique western foothills ecosystem in the parks, although the GMP
9 does not address the cumulative impacts of these proposed actions, which include but are not
10 limited to the introduction of non-native weeds into this vulnerable ecosystem.

11 52. Despite receiving several comment letters from High Sierra and others describing
12 significant deficiencies in the GMP, on December 20, 2007, the Park Service published its Record
13 of Decision for the Final General Management Plan in the Federal Register (Vol. 72, No. 244.
14 Page 72374) (the “ROD”) (attached hereto as Exhibit 22), which officially approved the GMP.

15 **The Types and Extent of Commercial Stock Use Allowed in SEKI’s Wilderness**
16 **Areas are Inconsistent With, and Not Necessary to, the Recreational and Other**
17 **Wilderness Purposes of those Areas**

18 53. All commercial pack stock operations based inside of SEKI must obtain a
19 concession permit, and those that are located outside of SEKI must obtain Commercial Use
20 Authorizations (formerly known as Incidental Business Permits) in order to lead guided stock
21 trips within SEKI. These permits will be collectively referred to as “commercial stock permits.”
22 SEKI’s continued issuance or renewal of commercial stock permits, which allow commercial
23 activity within the wilderness areas of the parks without the requisite Wilderness Act findings,
24 violates the Wilderness Act.

25 54. The Wilderness Act allows commercial services within wilderness areas only “to
26 the extent necessary for activities which are proper for realizing the recreational or other
27 wilderness purposes of the areas.” 16 U.S.C. § 1133(d)(5). This requires that agencies make a
28 finding that commercial services are allowed only to the extent necessary to realize the wilderness
purposes of the designated wilderness areas. On information and belief, the Park Service and

1 SEKI have failed to make this determination. In addition, to the extent that the GMP makes a
2 determination that the allowed levels, types, and locations of commercial stock use are “proper”
3 within the parks’ designated wilderness, such a determination is incorrect.

4 55. Indeed, in comments attached to the ROD, SEKI expressly states that a “needs
5 assessment *will be* conducted as part of the WSSUP³ process.” (Exhibit 22 at 20) (emphasis
6 added).) This admission strongly suggests that the Park Service has not yet made the requisite
7 finding of necessity for the issuance and/or renewal of permits authorizing commercial services
8 within SEKI’s designated wilderness areas. Moreover, on information and belief, Defendants
9 have not made the requisite finding that the existing level of stock use is necessary. No findings
10 justify the existing number of permits, or the fact that these permits allow: (a) stock use in the
11 sensitive and unique higher elevations of SEKI, (b) grazing rather than carried-in feed in the
12 SEKI Wilderness, or (c) commercial stock use without other significant restrictions to protect
13 natural resources and wilderness character. This violates the Wilderness Act.

14 56. In the alternative, even if Defendants have made a determination that recreational
15 and other wilderness purposes require the continued issuance of commercial stock permits in the
16 quantities and for the types of uses currently allowed, any such determination is unsupportable as
17 a matter of law. The well-documented damage that results from stock use at the current levels,
18 stock use in sensitive higher elevations, and grazing park-wide certainly damages the wilderness
19 character and detracts from the recreational and other wilderness purposes of SEKI. Thus, the
20 current issuance of commercial stock permits violates the Wilderness Act.

21 **The Final General Management Plan Did Not Consider a Range of Reasonable**
22 **Alternatives and Did Not Adequately Assess the Environmental Consequences of**
Stock Use

23 57. On December 14, 2006, High Sierra sent a detailed comment letter to SEKI
24 expressing its concerns regarding numerous aspects of the proposed GMP. A copy of this letter is
25 attached at Exhibit 23. The letter highlighted the following concerns:

26 ³ “WSSUP” is a new acronym for the still nonexistent “Wilderness Stewardship and
27 Stock Use Plan.”
28

- 1 • First, High Sierra objected that the GMP authorized a number of specific actions
2 that would result in significant adverse impacts to park resources and that would
3 substantially increase stock use. (*See* ¶ 56, *supra*.)
- 4 • Second, High Sierra expressed concern regarding the GMP's abrogation of the
5 directive in the 1971 Master Plan to eliminate the use of stock animals in the
6 sensitive, higher elevation areas of SEKI's backcountry, and to phase out all
7 livestock grazing throughout SEKI.
- 8 • Third, High Sierra objected that the GMP failed to address a range of reasonable
9 alternatives to maintaining or increasing the allowable number of stock animals, in
10 particular alternatives suggested by High Sierra such as: (i) retaining the current
11 Master Plan language to phase out all stock use in the sensitive higher elevations,
12 and to phase out grazing in the lower elevations; (ii) implementing "no grazing"
13 (park-wide) while still allowing stock use in the higher elevations; (iii)
14 implementing "no grazing" in the higher elevations to address the unique
15 sensitivity of the higher elevations, yet still allow grazing in the parks' lower
16 elevations; (iv) implementing "no grazing" (park-wide) by commercial or private
17 stock, with grazing allowed only for administrative stock; (v) removing all
18 commercial pack stations from park lands but still allowing commercial pack stock
19 based outside the parks to enter; and (vi) removing at least the former Mineral
20 King pack station, since it serviced particularly sensitive high-elevation areas.
21 Numerous groups and commenters that participated in the rulemaking process
22 supported the alternatives listed above.
- 23 • Fourth, High Sierra objected that the GMP considered an insufficient range of
24 alternatives with regard to commercial pack stations, and that the retention and
25 reconstruction of certain stock-related facilities, particularly the Mineral King and
26 Wolverton pack stations, will impair park resources.
- 27 • Fifth, High Sierra objected that a needs assessment regarding commercial services
28 in the wilderness areas should be conducted.

- 1 • Sixth, High Sierra objected that the GMP failed adequately to consider the
- 2 substantial adverse impacts of stock animal use on water quality, wetlands, and
- 3 endangered species.
- 4 • Seventh, High Sierra objected that the GMP did not contain adequate measures to
- 5 mitigate the impacts of stock use.
- 6 • Eighth, High Sierra objected that the GMP established inappropriate criteria for
- 7 the possible relocation of the Wolverton pack station.
- 8 • Ninth, High Sierra pointed out a number of flaws with the NEPA process prior to
- 9 issuance of the GMP, including mischaracterization of the public comments,
- 10 inadequate response to public comments, and failure to evaluate relevant
- 11 information.

12 58. On October 19, 2007, High Sierra sent a second comment letter to SEKI in which

13 it expressed four additional concerns regarding the proposed GMP. A copy of this letter is

14 attached as Exhibit 24. Along with this letter, High Sierra submitted additional documentation to

15 SEKI, containing detailed information regarding the adverse impacts of stock use in the Sequoia

16 and Kings Canyon National Parks. High Sierra also submitted copies of ranger reports containing

17 descriptions of the adverse effects of recreational livestock use in the parks and recommendations

18 for mitigating the impacts of stock use.

19 59. On November 14, 2007, High Sierra sent a third comment letter to SEKI in which

20 it attached two additional documents in support of its concerns regarding the proposed GMP. A

21 copy of this letter is attached as Exhibit 25. The first document was a June 27, 2005 comment

22 letter in which Russell Wilson, then the Acting Superintendent of SEKI, urged the Inyo National

23 Forest to “strongly consider” the concerns that SEKI had regarding the significant adverse

24 environmental impacts that would result from the increase in stock use being considered by the

25 Inyo National Forest at the time. The second document was an October 29, 2004 comment letter

26 in which Michael Tollefson, the Superintendent of Yosemite National Park, “strongly urge[d]”

27 the Inyo National Forest to address negative environmental impacts that appeared likely to result

28

1 from the increase in stock use being considered by the Inyo National Forest at the time. (Exhibit
2 25 at 8.)

3 60. The documents attached to High Sierra's November 14, 2007 letter demonstrate
4 that the Park Service (including Park Superintendents of both Yosemite and SEKI) had expressed
5 its awareness of the significant adverse environmental impacts that are likely to result from stock
6 uses similar to that authorized by the GMP.

7 **The Published Record of Decision and Final GMP are Inadequate as a**
8 **Matter of Law**

9 61. The ROD states that the "[u]se of stock continues" – a statement confirming that
10 the GMP intended to reverse the programmatic direction in the 1971 Master Plan to phase out all
11 open grazing (park-wide) and to phase out all stock uses in the most sensitive higher-elevations of
12 the parks. (Exhibit 22 at 2.)

13 62. The ROD defers consideration of the adverse environmental impacts of continuing
14 stock use at current levels until an unstated future time — supposedly until the development of an
15 apparently unfunded and unscheduled Wilderness Stewardship and Stock Use Plan ("WSSUP") –
16 a plan that SEKI began working on in the early 1990s, but apparently has not renewed work on
17 again, despite having promised to promulgate it since as early as 2003.

18 63. In choosing to defer consideration of the ecosystem impacts until the development
19 of a future plan, the Park Service and SEKI have acknowledged that continued stock use poses
20 significant risks to the environment, but have failed to analyze or disclose those impacts, which
21 actions are required by NEPA — actions that may occur in the future cannot serve as mitigation
22 for current decisions.

23 64. Further, as set forth above, SEKI cannot rely on its existing monitoring program to
24 effectively mitigate the current impacts of continued stock use in the parks. First, SEKI itself has
25 repeatedly admitted that its monitoring program under the SUMMP and BMP is "outdated" and
26 in "need [of] significant updating." (*See, e.g.,* National Park Service Briefing Paper: Wilderness
27 Management Plan Status – Sequoia and Kings Canyon National Parks (Feb. 21, 2002); National
28 Park Service: Status of Wilderness Management (Stewardship) and Stock Use Plan (Jan. 21,

2005).) Thus, any continued reliance on an admittedly outdated plan is improper. Second, in light of the significant new scientific information about the environmental impacts of stock use that was not known or analyzed in the previous EAs, SEKI had a legal duty to supplement its previous NEPA analyses. 40 C.F.R. § 1502.9(c). SEKI has not done this. Thus, Defendants cannot rely on the past EAs to justify their current conduct.

65. Further, the ROD's assertions that the GMP is only a programmatic plan, and that separate NEPA compliance will be completed before any actions designed to implement the GMP are taken, are belied by the fact that the GMP itself authorizes stock use to continue at current levels without adequate NEPA analysis. Indeed, the ROD provides that no "*new* commercial activities will be undertaken until after approval of this (the WSSUP) plan," thereby implicitly approving the *continuance* of all existing commercial stock use despite the known adverse consequences of such activities, and without adequate NEPA analysis. (Exhibit 22 at 2.)

66. The ROD fails to provide or cite any analysis to support the conclusion with respect to stock use that, "[a]fter analyzing the environmental impacts . . . the NPS has determined that implementation of the preferred alternative would not constitute impairment to Sequoia & Kings Canyon National Parks' resources and values." The ROD also fails to provide or cite any analysis to support the conclusion that "[t]he alternative will have beneficial effects on such resources as biotic communities, special status species, historical structures, and museum collections." (*Id.* at 9.)

67. The GMP and ROD fail to include, and are not based upon, any finding of necessity as required by the Wilderness Act for continuing the use of stock at current levels. Although the GMP contains provisions that, if implemented, will entrench stock use and the ROD allows stock use that is not "*new*," Defendants have not found (nor could they) that all such stock use is *necessary* for realizing the recreational or other wilderness purposes of SEKI's wilderness areas. Indeed, commercial stock use to the extent now permitted by the GMP is not necessary for realizing these recreational or other wilderness purposes.

68. If this Court does not set aside the GMP and ROD and condition the renewal and issuance of commercial stock permits on Defendants' compliance with NEPA and other federal

1 laws, the unique environmental qualities of these pristine areas of solitude and stunning beauty
2 will be damaged for generations to come, in direct contravention of the Defendants' duty to
3 "preserve the wilderness characteristics of the area" and "leave them unimpaired for the
4 enjoyment of future generations."

5 **SEKI Explicitly and Repeatedly Acknowledged the Need for NEPA Analysis Before**
6 **Renewing Permits for Commercial Stock Use, But Then Renewed the Permits**
7 **Without Undertaking NEPA Analysis**

8 69. SEKI's failure to prepare an EIS for the continued issuance and renewal of
9 commercial stock permits also violates NEPA. See *High Sierra Hikers Ass'n v. Blackwell*, 390
10 F.3d 630 (9th Cir. 2004) (in a similar case involving issuance and renewal of commercial stock
11 permits in the Ansel Adams and John Muir Wilderness surrounding SEKI, the Ninth Circuit held
12 that the Forest Service had violated NEPA by failing to prepare any NEPA analysis for the
13 permits).

14 70. As recounted in ¶ 45 and ¶ 48 above, SEKI has admitted on several occasions that
15 it never completed any environmental compliance for the parks' commercial stock permits under
16 NEPA. Indeed, as far back as 2004 a member of SEKI's staff admitted in an internal e-mail that
17 "[f]or some time [SEKI and the Park Service] have been stalling on the issue of environmental
18 compliance for commercial stock operations in these parks." (Exhibit 26.) Despite these
19 admissions, SEKI later abandoned these representations and reneged on its repeated assurances to
20 High Sierra that it would complete a NEPA analysis for all commercial packer permits by the end
21 of 2005. To date, no NEPA analysis has been conducted for the continued issuance or renewal of
22 commercial permits to stock operations within SEKI.

23 71. Despite stating in its letter to High Sierra on May 25, 2005, that current stock
24 permits are being validly issued pursuant to the NEPA analyses conducted in the 1980s for the
25 SUMMP and BMP, SEKI has acknowledged that its 1980s SUMMP and BMP are "outdated" and
26 in need of "significant updating." Further, as discussed in ¶ 49 above, SEKI's letter "tabling" its
27 plans to issue ten-year commercial stock permits implicitly acknowledged that an EIS had to be
28 prepared prior to the issuance of any such permits. Yet without legal authority and despite its
previous admissions that no NEPA analysis had been conducted, SEKI indicated that it would

1 continue to issue and renew commercial stock permits on an annual basis. The failure to analyze
2 the environmental consequences of the annually re-issued stock permits violates NEPA.

3 **Categorical Exclusions Do Not Allow SEKI to Issue or Renew Permits for**
4 **Commercial Stock Use**

5 72. SEKI continues to issue or renew commercial stock permits ostensibly under a
6 categorical exclusion from NEPA requirements. SEKI's letters to High Sierra, and its
7 commercial stock permits up through April 1, 2005, clearly indicate that SEKI is treating the
8 issuance or renewal of commercial stock permits as categorically excluded from compliance with
9 NEPA. SEKI's reliance on a categorical exclusion for these permits is improper.

10 73. The Park Service's own NEPA Guidance Handbook expressly provides that a
11 categorical exclusion cannot be relied on when activity will:

12 [H]ave adverse effects on such unique geographic characteristics
13 as . . . wilderness areas; . . . wetlands; . . . or ecologically significant
or critical areas;

14 [H]ave adverse effects on species listed or proposed to be listed on
15 the List of Endangered or Threatened Species, or have adverse
effects on designated Critical Habitat for these species;

16 [C]ontribute to the introduction, continued existence, or spread of
17 nonnative invasive species or actions that may promote the
introduction, growth, or expansion of the range of non-native
18 invasive species; or

19 [H]ave the potential to be controversial because of disagreement
over possible environmental effects.

20 NPS DO-12 Handbook at 40-42. Moreover, renewal or re-issuance of a commercial stock permit
21 may never occur by categorical exclusion when there is "potential for new environmental
22 impact." *Id.* at 36.

23 74. The continued issuance or renewal of commercial stock permits cannot be
24 supported by a categorical exclusion from NEPA compliance because each of the four exceptions
25 set forth above applies, and because of the potential for new environmental impacts. First, it is
26 undisputed that stock use has an adverse environmental impact on wilderness areas within SEKI.
27 *See supra* ¶ 25. Second, continued stock use potentially has adverse impacts on endangered,
28 threatened, and candidate species such as the mountain yellow-legged frog, the Yosemite toad,

1 the Sierra Nevada bighorn sheep, the valley elderberry longhorn beetle, and the vernal pool fairy
2 shrimp. Third, SEKI itself has recognized that stock use is a stressor that can contribute, and has
3 contributed, to the introduction and spread of non-native invasive plant species. For example,
4 since 2005, stock use has caused the spread of velvet grass and other noxious weeds within SEKI.
5 (*See, e.g.*, Exhibit 9.) Fourth, given the long history of contention between groups interested in
6 stock use in SEKI and previous litigation, it is clear that the continued issuance of commercial
7 stock permits is currently controversial because of actual disagreements over the possible
8 environmental effects of such activity. Finally, in recent years there has been an accumulation of
9 a large body of scientific evidence that graphically documents the type and severity of the impacts
10 caused by stock use at SEKI, which are far more numerous and serious than portrayed in SEKI's
11 outdated EAs. Therefore, it is improper for SEKI to renew or issue commercial stock permits
12 pursuant to a categorical exclusion. Absent proper NEPA analysis, the continued issuance or
13 renewal of commercial stock permits is unlawful.

14 **CLAIMS FOR RELIEF**

15 **FIRST CLAIM FOR RELIEF**

16 **VIOLATION OF THE WILDERNESS ACT**

17 (In Violation of 16 U.S.C. §§ 1133, 1131)

18 74. High Sierra repeats the allegations set forth above as if stated fully herein.

19 75. The Wilderness Act requires agencies to administer designated "wilderness areas"
20 to preserve "the wilderness character of the area." 16 U.S.C. § 1133(b).

21 76. The Wilderness Act defines "wilderness" to mean "an area of undeveloped Federal
22 land retaining its primitive character and influence, without permanent improvements or human
23 habitation, which is protected and managed so as to preserve its natural conditions," and "where
24 the earth and its community of life are untrammelled by man." 16 U.S.C. § 1131(c).

25 77. The Wilderness Act prohibits commercial enterprises within wilderness areas, 16
26 U.S.C. § 1133(c), but authorizes commercial services "to the extent necessary for activities which
27 are proper for realizing the recreational or other wilderness purposes of the areas." *Id.*

28 § 1133(d)(5). The Wilderness Act further requires that "each agency administering any area

1 designated as wilderness shall be responsible for preserving the wilderness character of the area
2 and shall so administer such area for such other purposes for which it may have been established
3 as also to preserve its wilderness character.” *Id.* § 1133(b).

4 78. The vast majority of the land within SEKI has been designated as “wilderness”
5 within the meaning of the Wilderness Act. On information and belief, all or most of the
6 commercial stock permits issued or renewed by SEKI allows permit holders to guide stock trips
7 within SEKI’s wilderness areas.

8 79. On information and belief, SEKI has continued to issue or renew commercial
9 permits to stock operations and concessionaires without making the requisite finding that the
10 type, amount, and extent of commercial stock use allowed by such permits is proper and is no
11 more than necessary to meet the wilderness purposes of the areas. *Id.* §§ 1133(c) & (d)(5). This
12 failure constitutes a violation of the Wilderness Act.

13 80. Further, the GMP provides that stock use, including commercial services, should
14 continue up to at least current levels, but fails to adequately address whether the types and extent
15 of the commercial activity allowed under the GMP are necessary or proper. Therefore, the GMP
16 violates the Wilderness Act. *Id.* § 1133(d)(5).

17 81. The commercial stock permits and the GMP allow types and levels of stock use
18 within the parks’ wilderness areas that are not necessary per the Wilderness Act.

19 82. The continued renewal of stock permits and the issuance of the GMP have
20 therefore resulted in commercial activity in designated wilderness areas in a manner that is not
21 necessary or consistent with appropriate wilderness management. The extent, location, amount,
22 and intensity of commercial stock uses authorized by the commercial stock permits and the GMP
23 harm the wilderness character of SEKI.

24 83. Thus, Defendants have violated the Wilderness Act, 16 U.S.C. §§ 1131, 1133.

25 **SECOND CLAIM FOR RELIEF**

26 **VIOLATION OF THE ORGANIC ACT**

27 (In Violation of 16 U.S.C. § 1)

28 84. High Sierra repeats the allegations set forth above as if stated fully herein.

1 85. The Park Service's Organic Act requires Defendants to manage national parks so
2 as to "conserve the scenery and the natural and historic objects and the wildlife therein and to
3 provide for the enjoyment of the same in such manner and by such means as will leave them
4 unimpaired for the enjoyment of future generations." 16 U.S.C. § 1.

5 86. SEKI's issuance and renewal of commercial stock permits has resulted and will
6 result in impacts to the scenery, natural objects, and wildlife of SEKI, and will impair the
7 enjoyment of SEKI by future generations.

8 87. In light of the GMP's numerous admissions that the elimination of stock use
9 would result in averting significant environmental and aesthetic degradation to the parks' natural
10 and aesthetic resources, Defendants' conclusion that the adoption of an alternative allowing stock
11 use up to current levels would not result in an impairment of park resources is arbitrary and
12 capricious.

13 88. Thus, Defendants have violated the Organic Act. 16 U.S.C. § 1.

14 **THIRD CLAIM FOR RELIEF**

15 **VIOLATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT**

16 (Failure to Evaluate a Range of Reasonable Alternatives under 42 U.S.C. § 4332)

17 89. High Sierra repeats the allegations set forth above as if stated fully herein.

18 90. Defendants constitute "agencies of the Federal Government" within the meaning
19 of NEPA, and are thus bound by the regulations adopted by the Council on Environmental
20 Quality. 40 C.F.R. § 1500.3.

21 91. Under these regulations, an EIS must "inform decisionmakers and the public of the
22 reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of
23 the human environment." 40 C.F.R. § 1502.1. This requirement represents "the heart of the
24 environmental impact statement." 40 C.F.R. § 1502.14. The agency must therefore "[r]igorously
25 explore and objectively evaluate all reasonable alternatives, and for alternatives which were
26 eliminated from detailed study, briefly discuss the reasons for their having been eliminated."
27 40 C.F.R. § 1502.14(a); *see also* 42 U.S.C. § 4332(2)(C)(iii). The agency must also consider and
28

1 analyze mitigation measures not already included in the proposed action or alternatives.
2 40 C.F.R. §§ 1502.14(f), 1508.20.

3 92. In developing the alternatives in the GMP/EIS, Defendants improperly failed to
4 consider several reasonable alternatives that were suggested by High Sierra and others, including:
5 (i) “no-grazing” park-wide; (ii) no stock use and/or no grazing in the sensitive higher elevations
6 of the parks; and (iii) alternatives to the GMP/EIS’s decision to retain, maintain, relocate, or
7 reestablish commercial pack stations within the parks.

8 93. Each of these reasonable alternatives is well within the scope of the GMP, whose
9 statement of purpose and need expressly provides that the purpose of the GMP is to make
10 important decisions about the “kinds and levels” of visitor use in the parks, including stock use.
11 (*See* GMP, Vol. 1 at 5-8.)

12 94. Numerous groups and commenters that participated in the NEPA process
13 suggested and/or supported the reasonable alternatives listed above, and the 1971 Master Plan
14 itself expressly contemplated the “no grazing” alternative as well as the alternative that stock use
15 be prohibited in the sensitive, higher elevations of the parks. (Exhibit 1 at 24.) Therefore, the
16 reasonableness of the proposed, but unconsidered, alternatives is clear. This is especially true
17 given that each of the following western National Parks prohibits stock grazing: Crater Lake,
18 Glacier, Grand Canyon, Grand Teton, Lassen Volcanic, Mt. Rainier, and Rocky Mountain
19 National Parks.

20 95. Defendants failed to evaluate any of these reasonable alternatives (or others that
21 were suggested by other commenters), that would have allowed continued stock use with
22 meaningful restrictions to protect the environment. Of the five alternatives considered, the only
23 alternative that clearly would have reduced the type, amount, and extent of stock use in the parks
24 was a “no stock” alternative that would have entirely eliminated all stock use, including
25 administrative stock use, from the parks. Defendants improperly chose to include this straw-man
26 alternative instead of any of the more moderate alternatives suggested by High Sierra and others
27 that would have allowed stock use to continue but with proper restrictions to protect the
28 environment.

1 96. The GMP also failed to evaluate a range of reasonable alternatives for its decisions
2 to retain the commercial pack station at Cedar Grove and the stock corral at Grant Grove, and to
3 relocate or reestablish the long-defunct pack stations at Wolverton and Mineral King. Because
4 the GMP provides clear programmatic direction that these pack stations should remain in the
5 parks, without adequately analyzing other reasonable alternatives such as relocating the pack
6 stations outside of the parks or removing them entirely, the GMP fails to satisfy NEPA.

7 97. Thus, the GMP violates NEPA, 42 U.S.C. § 4332(2)(C)(iii).

8 **FOURTH CLAIM FOR RELIEF**

9 **VIOLATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT**

10 (Failure to Consider/Disclose Environmental Impacts in Violation of 42 U.S.C. § 4332)

11 98. High Sierra repeats the allegations set forth above as if stated fully herein.

12 99. In order to satisfy NEPA, an EIS must include a “full and fair discussion of
13 significant environmental impacts.” 40 C.F.R. § 1502.1. In doing so, agencies must consider,
14 analyze, and disclose the cumulative, individual, direct, and indirect environmental impacts of the
15 proposed action and alternatives to it. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502.1, 1508.7,
16 1508.8.

17 100. An adequate EIS may not consider a proposed action in isolation, but rather must
18 consider its cumulative impacts, including the “impact on the environment which results from the
19 incremental impact of the action when added to other past, present, and reasonably foreseeable
20 future actions.” 40 C.F.R. § 1508.7.

21 101. An adequate EIS must consider both direct and indirect environmental impacts of
22 the proposed action. 40 C.F.R. § 1508.8. Direct effects are caused by the action and occur at the
23 same time and place. 40 C.F.R. § 1508.8(a). Indirect effects are those caused by the action and
24 are later in time or farther removed in distance, but are still reasonably foreseeable. *See* 40 C.F.R.
25 § 1508.8(b). Both include “effects on natural resources and on the components, structures, and
26 functioning of affected ecosystems,” as well as “aesthetic, historic, cultural, economic, social, or
27 health [effects].” *Id.* The EIS must also consider the cumulative effects of the activity together
28 with other reasonably foreseeable future actions. 40 C.F.R. § 1508.7.

1 102. In preparing and issuing the GMP, Defendants failed adequately to analyze a
2 variety of environmental impacts that would directly and indirectly result from the continued use
3 of pack and saddle stock in SEKI up to at least current levels, including, but not limited to,
4 impacts of stock use in the sensitive higher elevations of the parks and wetlands, impacts of
5 grazing park-wide, impacts caused by maintaining current stock group sizes, water quality
6 degradation caused by stock use, aesthetic impacts, impacts on native plant species, impacts on
7 soil quality, and impacts to recreational wilderness uses. Further, the GMP also failed to consider
8 the cumulative impacts of its programmatic direction to retain, maintain, relocate, or reestablish
9 the pack stations within the parks, and the cumulative impacts of its direction to establish new
10 developments specifically for stock users in the western foothills of the parks. The failure to
11 conduct a cumulative impacts analysis of the combined effect of the activities authorized by the
12 GMP violates NEPA.

13 103. In issuing the ROD, Defendants improperly deferred consideration of the
14 ecosystem impacts of continuing stock use until the development of an as-yet-to-be-written
15 Wilderness Stewardship and Stock Use Plan (whose scope may or may not include the
16 environmental impacts of increased stock use now planned for several non-wilderness areas of the
17 parks, such as relocating and rebuilding closed pack stations and constructing new developments
18 to facilitate stock use in the western foothills areas of the park). The failure to analyze the
19 environmental consequences *before* approving the GMP through the ROD violates NEPA.

20 104. Further, as set forth above, SEKI cannot argue that the previous environmental
21 analyses conducted in connection with the SUMMP and the BMP are sufficient to disclose the
22 adverse environmental impacts permitted by the GMP's allowance of stock use up to current
23 levels in the parks. First, SEKI itself has repeatedly admitted that its monitoring program under
24 the SUMMP and BMP is "outdated" and in need of "significant updating." Thus, any continued
25 reliance on an admittedly outdated plan is improper. Second, in light of the significant new
26 scientific information about the environmental impacts of stock use that was not known or
27 analyzed in the previous EAs, SEKI had a legal duty to supplement its previous NEPA analyses.
28

1 40 C.F.R. § 1502.9(c). SEKI has not done this. Therefore, any reliance on the environmental
2 analyses conducted along with the SUMMP and the BMP is unlawful.

3 105. Thus, Defendants violated the requirements of NEPA, 42 U.S.C. § 4332(2)(C).

4 **FIFTH CLAIM FOR RELIEF**

5 **VIOLATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT**

6 (Failure to Analyze Environmental Impacts of Commercial Stock Permits in Violation of
7 42 U.S.C. § 4332)

8 106. High Sierra repeats the allegations set forth above as if stated fully herein.

9 107. NEPA requires federal agencies to prepare, consider, and approve an adequate EIS
10 for any major federal action significantly affecting the quality of the human environment.
11 42 U.S.C. § 4332(2)(C).

12 108. The issuance or renewal of commercial stock permits constitutes a major federal
13 action significantly affecting the quality of the human environment within the meaning of NEPA.
14 40 C.F.R. §§ 1508.18, 1508.27.

15 109. Therefore, SEKI's continued issuance or renewal of stock permits for commercial
16 operations in the Sequoia and Kings Canyon National Parks, each for a period of one year or
17 longer, without completing an environmental impact statement to analyze the environmental
18 effects of issuing such permits violates NEPA.

19 110. Defendants expressly acknowledged as early as 2002 that it was necessary to
20 conduct a full NEPA analysis for the issuance of such stock permits. (See Exhibits 12-14.) In
21 preparing and issuing the GMP and ROD, however, Defendants failed adequately to evaluate the
22 direct, indirect, and cumulative environmental impacts of issuing or renewing commercial stock
23 permits, despite earlier assurances that this analysis would take place by the end of 2005.

24 111. In failing to address the issuance of commercial stock permits in either the GMP or
25 an independent EIS, Defendants have improperly deferred consideration of the environmental
26 impacts of issuing the stock permits. Thus, Defendants have violated the requirements of NEPA,
27 42 U.S.C. § 4332, and its implementing regulations.

1 112. As set forth above, any contention that commercial stock permits are being
2 properly issued or renewed pursuant to a categorical exclusion is legally deficient under the Park
3 Service's own NEPA Guidance Handbook.

4 **SIXTH CLAIM FOR RELIEF**

5 **VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**

6 (In Violation of 5 U.S.C. § 706)

7 113. High Sierra repeats the allegations set forth above as if stated fully herein.

8 114. The APA provides that courts shall: "(1) compel agency action unlawfully
9 withheld or unreasonably delayed; and (2) hold unlawful and set aside agency action, findings,
10 and conclusions found to be — (A) arbitrary, capricious, an abuse of discretion, or otherwise not
11 in accordance with law. . . ." 5 U.S.C. § 706.

12 115. The violations of substantive and procedural law under the Wilderness Act, the
13 Organic Act, and NEPA constitute agency action unlawfully withheld or unreasonably delayed,
14 or agency action that is arbitrary, capricious, and not in accordance with law. 5 U.S.C. § 706(1)
15 & (2).

16 116. High Sierra has been adversely affected and aggrieved by Defendants' failure to
17 comply with federal law in issuing the GMP and continuing to issue commercial permits to stock
18 operations and concessionaires.

19 117. Defendants' failure to comply with federal law in issuing the GMP and in issuing
20 or renewing commercial stock permits has injured High Sierra's interests in improving
21 management practices on federal lands in the Sierra Nevada (including in SEKI) and constitutes a
22 violation of the Defendants' statutory duties under the APA.

23 **RELIEF REQUESTED**

24 WHEREFORE, Plaintiff High Sierra respectfully requests that this Court:

25 A. declare that the Defendants have violated the Wilderness Act, the Organic Act,
26 NEPA, and the APA for the reasons and in the manner described above;

27 B. issue an injunction setting aside the GMP and ROD and prohibiting the National
28 Park Service from authorizing activities under the GMP and ROD;

1 C. issue an injunction conditioning the renewal and issuance of commercial stock
2 permits on Defendants' compliance with NEPA and other federal laws;

3 D. award High Sierra its costs and reasonable attorneys' and experts' fees pursuant to
4 28 U.S.C. § 2412; and

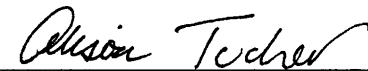
5 E. grant such other and further relief as the Court deems necessary and proper.
6

7 Respectfully submitted,

8
9 Dated: September 30, 2009

ALISON M. TUCHER
WILLIAM F. TARANTINO
SHAYE DIVELEY
GEOFFREY R. PITTMAN
MORRISON & FOERSTER LLP

12
13 By:



Alison M. Tucher

14 Attorneys for Plaintiff
15 HIGH SIERRA HIKERS ASSOCIATION
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