

Back Country Horsemen of America



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April 30, 2013

Superintendent
Attn: Merced River Plan
P.O. Box 577
Yosemite, CA 95389

Dear Superintendent Neubacher:

Backcountry Horsemen of America ("BCHA") is pleased to submit this comment letter regarding the Merced Wild and Scenic River Draft Comprehensive Management Plan and Environmental Impact Statement ("DEIS"). It is the mission of BCHA to perpetuate the common sense use and enjoyment of horses in America's back country and wilderness and to ensure that public lands remain open to recreational stock use. A large part of our mission includes assisting the various government and private agencies in the maintenance and management of public trails and horse camps, and to educate, encourage and solicit active participation in the wise use of the back country resource by horsemen and the general public commensurate with our heritage. BCHA works in cooperation with government agencies to help clear trails, maintain historic sites, construct new facilities, sponsor educational seminars and clinics, and assist with service projects as requested. BCHA members contribute thousands of volunteer hours each year helping maintain trails on federal, state and private lands.

BCHA greatly appreciates and values the recreational experience provided to horsemen and users of recreational pack and saddle stock in Yosemite National Park and its unparalleled landscapes. We take very seriously our responsibility to demonstrate BCHA's ethic and commitment to preserving wilderness character. This includes BCHA's *Leave No Trace* Stock Users Education Program.¹ The program aims to educate, encourage, and solicit active participation in the wise and sustained use of back country resources by horsemen and the general public. BCHA has become the primary trainer of stock users in *Leave No Trace* principles and practices nationally through our *Leave No Trace* Master's Education Program. The program is a partnership between BCHA, state and affiliate members, the U.S. Forest Service and *Leave No Trace, Inc.*

The use of recreational stock has played an important role in American culture. There is a long tradition of using pack and saddle stock not only in Yosemite National Park but throughout the West, and BCHA carries on this tradition in modern times. With this use comes the responsibility and obligation to care for our public lands in order to ensure their use for future generations. It is for these reasons that we are greatly concerned with aspects of the draft Merced River plan and DEIS which seek to reduce commercial stock use in Yosemite National Park.

Our specific comments follow.

¹ See: http://www.backcountryhorse.com/Leave_No_Trace.html

Wild and Scenic River Plan not the appropriate context to develop restrictions on commercial stock use in Wilderness

The DEIS is flawed because management plans for Wild and Scenic rivers, such as the current proposals for the Merced and Tuolumne rivers within Yosemite National Park, are not the appropriate vehicle by which to develop and implement restrictions for commercial pack and saddle stock use in designated Wilderness. The rationale for why a Wild and Scenic plan is not an appropriate vehicle for such restrictions are elaborated upon below and include: 1) the fact that the Park currently is in the process of developing a Wilderness Stewardship Plan for all Yosemite Wilderness; 2) Administrative stock use comprises a significant portion of all stock use in Yosemite Wilderness, yet is not proposed to be regulated via the current Wild and Scenic River plans; 3) the Merced and Tuolumne Wild and Scenic River corridors comprise only a small fraction of all designated Wilderness in Yosemite National Park; 4) the plan does not represent an appropriate venue by which to regulate commercial services in Wilderness; and 5) the DEIS attempts to regulate wilderness use beyond the boundaries of the Wild and Scenic River corridors. The following represents our rationale for these claims.

The DEIS' attempt to regulate commercial stock use in Wilderness represents an improper segmentation under the National Environmental Policy Act

The DEIS notes in numerous locations the Park Service's concurrent development of a Yosemite Wilderness Stewardship Plan/EIS that "...will address land management issues within the Yosemite Wilderness, including visitor use; vegetation associations; air resources; noise issues; watershed; soils; cultural landscapes; and other natural, cultural, and social resource variables" (see, for example, DEIS, pp. 9-895, 9-897, 9-898 and 9-902). Further, the DEIS in multiple locations lists as a "Present Action" the Wilderness Stewardship Plan/EIS that is "currently underway that may have an effect on wilderness character" (DEIS, pp. 9-897, 9-902 and 9-918). Clearly, this parallel and concurrent planning process (i.e., the Wilderness Stewardship Plan) is best suited to provide the necessary review of user capacities and analysis of commercial pack stock use within the Park's designated Wilderness areas. The current wild and scenic river plans are not appropriate venues for such analyses as they relate to Yosemite National Park's vast acreage of designated Wilderness.

Indeed, the DEIS makes the following two admissions. Appendix L, Determination of Extent Necessary, states:

The most appropriate framework for completing an assessment of an Extent Necessary Determination for commercial services in wilderness **is in the park's wilderness stewardship plan**, where commercial services will be addressed **comprehensively** for Yosemite's entire wilderness. Yosemite National Park has appropriated funding for updating its Wilderness Stewardship Plan, and has begun the initial steps in the planning process. The plan, however, will not be ready for public review for several more years. Rather than await the development of a new Wilderness Stewardship Plan, **the park has elected to analyze commercial services in the wilderness portions of the Merced Wild and Scenic River corridor at this time** and provide the public with an opportunity to comment (Appendix L, p. L-1, emphasis added; note also that the DEIS fails to disclose the fact that wilderness portions of the river corridor comprise only 2.6% of the park's designated Wilderness).

Limits adopted in this Extent Necessary Determination will be revisited as part of the planning process for the **Wilderness Stewardship Plan, which will determine the extent of commercial services necessary throughout all of Yosemite's designated Wilderness...This Extent Necessary Determination is neither a formal element nor a required component of the Wild and Scenic Rivers Act** as addressed in the Merced Comprehensive River Management Plan... This Extent Necessary Determination therefore tiers from the capacity determinations in the (Merced River Plan)" (Appendix L, p. L-2).

One wonders why the NPS would develop two parallel and obviously redundant processes to address commercial services in the Merced River corridor. The answer appears in the Merced River Plan/DEIS. It states:

The *Yosemite Wilderness Stewardship Plan/EIS* will use direction from the Merced River Plan in developing its Merced River corridor component. It may prescribe actions that are more restrictive than the Merced River Plan in

order to preserve wilderness character. ***The Wilderness Stewardship Plan cannot prescribe actions that are less restrictive than the Merced River Plan*** or the actions may fail to protect river values. (DEIS, pp. 9-897, 9-902 and 9-918; emphasis added).

While we understand the need to protect river values of the Merced and Tuolumne rivers in Yosemite National Park as required by the Wild and Scenic Rivers Act, we believe the current river plans would unnecessarily constrain the scope of management options available in crafting the park-wide Wilderness Stewardship Plan. In addition, the National Environmental Policy Act (NEPA) and related case law requires that parts of proposals which are inter-related must be analyzed in the same impact statement. This would not be the case under the current Merced and Tuolumne Wild and Scenic river management plans/DEIS.

The DEIS is flawed by its attempt to regulate commercial stock use within the small portion of Yosemite Wilderness occurring within the Wild and Scenic River corridor

As stated in the DEIS, "Yosemite Wilderness encompasses an area totaling 706,624 acres, which is approximately 95% of the total park area" (DEIS, p. 9-881). Of the Park's 800-mile wilderness trail system, only 31.8 miles (or 4%) occur within the Merced River corridor (DEIS, Table 9-147). The DEIS further notes that "within the (Merced Wild and Scenic) river corridor, there are 18,677 acres of wilderness" (DEIS, p. 9-882). Thus, the river corridor under study and the scope of the agency's authority under the Wild and Scenic Rivers Act represents merely 2.6 percent (2.6%) of Yosemite Wilderness while comprising just 4% of the Park's wilderness trail system. The DEIS nonetheless proposes restrictions on wilderness group size and commercially guided stock use that the NPS justifies as enhancing "wilderness character" via the current Merced River Plan, despite the fact that over 97 percent (97%) of designated Yosemite Wilderness lies outside the river corridor. This appears to represent a significant overreach in, if not abuse of, agency discretion and provides another example of how the current DEIS violates NEPA.

Significant changes proposed in the DEIS to Wilderness management, such as instituting a quota system for day hikers or reducing commercial use, should be addressed in the forthcoming Wilderness Stewardship Plan and not in the current piecemeal fashion via both the Tuolumne and Merced Wild and Scenic River management plans. Only through the comprehensive Wilderness Stewardship Plan can such changes can be considered in order for the context and their impacts, including cumulative impacts, be appropriately analyzed.

The DEIS is flawed in its attempt to regulate commercial stock use, which accounts for about half of overnight stock use in Yosemite Wilderness

The DEIS makes the following distinction about the percentage of overnight stock use (i.e., horse and mules) by each of four major categories of user groups:

"Throughout the Yosemite Wilderness, commercially guided pack trips account for approximately 50% of the total overnight stock use, with stock use by private individuals accounting for less than 5% (as informally tracked by the Yosemite Wilderness Office)...The remaining 45% of overnight stock use is for NPS Administrative Use and concessioner High Sierra Camp supply trips" (DEIS, Recreational Values, p. 2.2-16).

Administrative and concessioner (i.e., Delaware North Corporation) stock use clearly comprises a significant portion of all stock use in Yosemite Wilderness. Yet the Merced River Plan/DEIS does not address these two major users of pack and saddle stock even though they represent approximately 45 percent (45%) of all stock use in Yosemite Wilderness. The distinction between the four major stock user groups in most cases is not clear to the recreating public. That is, most hikers, backpackers, etc., in Yosemite Wilderness would likely be unable to discern the difference between administrative, concessioner, commercial or private use of pack stock encounters either along the trail or at a particular campsite. Moreover, with the exception of the Merced Lake High Sierra Camp and the Merced Lake Ranger Station, the DEIS fails to make a distinction between existing and potential environmental impacts associated with these differing stock user groups in Yosemite Wilderness. The best available science is not able to discern the impacts associated with one group or another. Nonetheless, the DEIS

attempts to propose regulations only on the commercial guide subgroup in terms of group size (limited to eight in lieu of the current 15, and limited to two groups per wilderness zone per night; DEIS, Appendix L, p. L-16). Given the relative percentage of use by other stock user groups (approximately 50% of all overnight stock use), efforts in the DEIS to regulate commercially guided pack trips appear arbitrary. The arbitrary nature of the DEIS' proposal to regulate commercial guides is compounded by the fact that the park currently is in the process of preparing a comprehensive Wilderness Stewardship Plan, which the NPS admits is "the most appropriate framework" and "where commercial services will be addressed comprehensively for Yosemite's entire wilderness."

In effect, the DEIS proposes to place new restrictions on only *half* of overall stock use (i.e., commercial use) within 2.6% of Yosemite Wilderness. This approach appears inconsistent with NPS Management Policies (2006) regarding Recreational Pack and Saddle Stock Use which state:

Planning for recreational stock use should be conducted in the context of visitor use planning to address social, biological, and physical carrying capacity considerations, and to make allocation decisions that minimize potential conflicts between and among user groups (Management Policies, Section 8.2.2.8, p. 103).

We interpret the appropriate "context of visitor use planning," in this case, to be inclusive of all Yosemite's Wilderness and not the narrow ribbons of land and water that comprise the Merced and Tuolumne river corridors within the park's designated Wilderness.

The DEIS is flawed by attempting to regulate commercial stock use in Wilderness beyond the Wild and Scenic River corridor

Of the eight segments of the Merced River addressed in the DEIS, portions of seven occur within Yosemite Wilderness. Only two river segments (Segments 1 and 5) lie entirely (i.e., 100%) within designated Wilderness (DEIS, Table 9-147: Acres of Wilderness in River Corridor by Segment). Three percent (3%) of Segment 3 is located in Wilderness, as is 18% of Segment 2, 22% of Segment 7, and 88% of Segment 6. Segment 7 of the Merced River corridor under study contains no designated Wilderness. Yet remarkably, and despite the agency's disclosure that a Wilderness Stewardship Plan (WSP) "is currently underway" (as noted above), the scope of the current DEIS has been expanded in an unprecedented and alarming fashion. The DEIS makes the following claim:

As part of the Merced River Plan, the NPS reevaluated the wilderness zone capacities within the Merced River Corridor in light of the Wild and Scenic Rivers' Act mandate to protect and enhance Outstandingly Remarkable Values and the river's free-flowing condition. The zone capacities adopted for the river corridor guided the Extent Necessary Determination process [for commercial stock use]. ***For six of the eight [wilderness] zones that include the Merced River corridor, the zone is much larger than the corridor. This extent necessary determination is for the full geographic extent of all eight [wilderness] zones rather than just the [Wild and Scenic River] corridor.*** In addition to the use limits set by the trailhead quota system additional limits that relate to wilderness will be in place under the Merced Wild and Scenic River Plan. DEIS (Appendix L, p. L-5).

If we interpret the above statement correctly,² it appears the DEIS is providing justification for proposed restrictions on commercial stock use, for example, in Segment 3 of the Merced River corridor that would in fact apply beyond the river corridor to the remaining 97% of Wilderness in the corresponding wilderness management zone. In other words, with only 3% of river Segment 3 coinciding with a zone of designated Wilderness, the DEIS nonetheless proposes to apply the "extent necessary determination" for commercial services in Wilderness within the entire coinciding wilderness zone. If correct, this would appear to represent a vast overreach in application of the extent necessary determination that would expand the scope of the Wild and Scenic River plan to tens of thousands of designated Wilderness acres beyond the Wild and Scenic corridor. If so, we again assert that the current DEIS is not the appropriate vehicle for such analyses and any Extent Necessary Determination must be made instead via the forthcoming comprehensive Wilderness Stewardship Plan.

² Please provide clarification, preferably prior to issuing a Record of Decision, as we very much wish to be proven wrong.

The current scope of the DEIS would mean that methodology applied in the forthcoming comprehensive plan for Yosemite Wilderness (i.e., the WSP) would be both confined and driven by decisions made via the Merced and Tuolumne river plans. Yet the geographic scope of the river plans is prohibitively narrow when compared to the larger landscape to be addressed in the WSP. In fact, the “Yosemite Wilderness (is)...bounded by the Emigrant Wilderness to the north, the Hoover Wilderness to the east, and the Ansel Adams Wilderness to the south” (DEIS, p.9-881). This means that the actual study area contemplated in the WSP will, by necessity, encompass considerably more than the Park’s 706,624 acres of designated Wilderness. A broad study area would be needed to ensure consistency and continuity in wilderness- and recreation-related policies among these adjacent units of the National Wilderness Preservation System managed by the U.S. Forest Service. In sharp contrast stand the current Merced and Tuolumne Wild and Scenic River plans, which if approved as drafted, would prompt Yosemite National Park to structure its otherwise “comprehensive” wilderness planning effort with a myopic view of refining wilderness-related policy that was initiated with a focus from the “inside (i.e., Wild and Scenic rivers) working outward.” The current approach contemplated in the DEIS does not square with the regional and sweeping scope necessitated by current practitioners of wilderness ecosystem planning.

The DEIS is flawed in that it does not represent the appropriate NPS process by which to regulate commercial visitor services

NPS Management Policies (2006) state that “Commercial visitor services planning will identify the appropriate role of commercial operators in helping parks to provide opportunities for visitor use and enjoyment” (10.2.2 Commercial Visitor Services Planning). The policies require that “A park commercial services strategy must be in place to ensure that concession facilities and services are necessary and appropriate, financially viable, and addressed in an approved management plan.” It is our understanding that Yosemite National Park has not updated its Concession Services Plan since 1992. Even if there is a more current concession plan, we believe the most appropriate venue by which the Park is to address issues such as wilderness-related commercial services is via a commercial services strategy or the forthcoming Wilderness Stewardship Plan. We understand that the decision by the U.S. Court of the Appeals for the Ninth Circuit in the case *High Sierra Hikers Assn v. Blackwell*, and similar legal challenges directed at Sequoia-Kings Canyon National Park, is driving the NPS thought process in this regard. However, we feel strongly that a Wild and Scenic River plan does not represent the appropriate venue for a “necessary and appropriate” test for commercial services throughout Yosemite Wilderness.

The DEIS fails to provide a scientific basis for proposed restrictions of commercial stock use in Wilderness

In addition to our perspective regarding the appropriate venue by which the park must address the Extent Necessary Determination for commercial services in Wilderness, the Merced River Plan/DEIS fails to disclose the scientific basis for proposed restrictions of commercial stock use. Nowhere in the DEIS or its numerous appendices could we find documentation, for example, on the extent or severity of reported conflicts between recreational stock use and other Wilderness visitors. We also searched the Merced River plans approved in 2000 and 2005, yet nowhere could we find documentation regarding the nature and extent of this alleged conflict.

The DEIS fails to document adverse impacts to park natural resources associated with commercial pack stock use in Wilderness

The DEIS is devoid of information that would imply a need to restrict use of commercial pack stock in Yosemite Wilderness or the Merced Wild and Scenic River corridor.³ Restrictions to commercial stock use in park Wilderness proposed in the DEIS are unjustified. There is no evidence in the DEIS of significant, let alone moderate, adverse

³ With exception given to concessioner use of the Lake Merced High Sierra Camp and the portion of the stock trail to Happy Isles north of the Merced River between Clark’s Bridge and the Concessioner Stable.

impacts as a result of recreational stock use on natural resources such as soils, vegetation, wetlands and wildlife. Quite the opposite, the DEIS makes the following claims that point to a lack of significant commercial stock-induced impacts:

- “In (the soils resources) analysis, negligible adverse impacts were identified in areas where human visitation and pack stock use occur” (DEIS, p. 9-12).
- A 2011 study conducted as part of the Merced River planning process found that “Alpine meadows exhibited...no presence of non-native species, and little to no impacts from visitor use or pack stock” (DEIS, p. 9-192).
- “Pack stock impacts were absent or uncommon in most subalpine meadows, with the exception of Merced Lake–East,” which is adversely affected by the Park’s administrative use of pack stock” (DEIS, p. 9-195).
- “Five subalpine meadows had some informal trails present, with Merced Lake–East having the most, likely due to its proximity to Merced Lake High Sierra Camp. The study could not differentiate between human and equine trailing on those sites with pack stock use” (DEIS, p. 9-198).

The DEIS demonstrates bias in its treatment of commercial stock use and is inconsistent with NEPA requirements

Only the Purpose and Need section of the DEIS declares a rationale for the need to address hiker/stock conflicts; see Table 2-2, Issues Identified in Public Scoping (DEIS, p. 2-16). The table lists, among 90 other issues listed as “within the scope” of the Merced River Plan/DEIS, the following: “The NPS should remove or reduce hiker-stock conflicts on trails.” Listing of this issue is followed in Table 2-2 by the issue: “The NPS should continue to allow horseback riding in the Merced River corridor.” Presumably the two comments would be analyzed equitably in the DEIS. It is clear they were not, as the DEIS demonstrates overt bias by the fact that each action alternative (Alternatives 2 – 6) proposes to limit commercial stock use while failing to explore other measures to mitigate perceived conflicts, documented or not.

The DEIS therefore fails to document concerns of significant conflicts between hikers/backpackers and horse/stock users that form the basis for proposed restrictions in commercial stock use. The issue appears based primarily on anecdotal evidence and is blown out of proportion. As such, it does not begin to approach the threshold of “significance” under NEPA that triggers a need for mitigation.

The proposal in the DEIS to restrict commercial stock use in Wilderness is all the more puzzling when such use is reported to be very low relative to other type of overnight visitation. For example, the DEIS states (page 2.2-16) “recreational use of stock animals within the Merced River corridor by commercially guided pack trips and private individuals is low” and that from 2004 to 2010 “commercially guided pack trips averaged only 48 stock-use nights, which represents less than 3% of all the guided pack trips that occurred in Yosemite Wilderness areas.” We assume these figures do not include concessioner-operated trips to, and operation of, the Merced Lake High Sierra Camp. If correct, the DEIS fails to justify how its proposed restrictions on commercial stock use in Wilderness portions of the Merced River corridor are both prudent and necessary, particularly when such use appears to represent a small fraction of all such use.

The DEIS is deficient because Appendix L, Determination of Extent Necessary (for commercial services in Wilderness) clearly was crafted in isolation from the rest of the DEIS—if not as an afterthought. As pointed out below in this comment letter, the Appendix in many places contains information that conflicts with information regarding the proposed alternatives and conclusions found in the remainder of the DEIS. Moreover, its proposals to restrict commercial use in Yosemite Wilderness appear to have occurred in a vacuum and are not reflected in any detail in the EIS’ analysis of environmental impacts of alternatives. Appendix L represents a near-carbon copy of the similar appendix found in the DEIS for Tuolumne Wild and Scenic River Management Plan (Appendix C: Determination of Extent Necessary for Commercial Services in the Wilderness Segments of the Tuolumne Wild and Scenic River Corridor). For example, the Merced River DEIS Appendix C is nearly identical to the Tuolumne River DEIS Appendix C, with one notable exception: the Tuolumne River appendix makes reference to the alternatives analyzed in the DEIS (Table C-1) and contains maps specific to the Tuolumne River segments being

analyzed. The Merced River appendix fails to make reference to alternatives analyzed via its respective DEIS and does not include Merced River-specific maps. With one exception (p. L-15, mention of High Sierra Camp), the Merced Plan appendix fails to invoke the DEIS alternatives, let alone specifics. In the single reference to any DEIS alternative analyzed, only the preferred alternative is invoked.

The DEIS' omission of key underlying scientific studies supporting the proposed limit of 2 overnight commercial pack stock groups per zone/per night in Wilderness and no more than 2 day groups per trail per day prevents meaningful public comment

We repeat the argument below, as we did in our 18 March 2013 letter to the Yosemite National Park Superintendent regarding the Tuolumne Wild and Scenic River Draft Comprehensive Management Plan and EIS, because the Merced River DEIS repeats (nearly verbatim) the same unsupported logic to restrict overnight commercial stock use.

Appendix L of the DEIS states that all action alternatives would “restrict commercial use to no more than 2 overnight groups per zone per night and no more than 2 day groups per trail per day” (p. L-16) . The Appendix states that there are three reasons for this proposal, all of which appear to be essentially variations on the same reason. However, as discussed below, each of these reasons is entirely invalid. The first reason is that, because guides and the visitors traveling with them have been banned from many areas under the proposed restrictions, they *may* congregate in other areas and cause physical harm. *Id.* at L-16. However, no such evidence is provided to support this wholly speculative conclusion. Nor is there any basis to conclude that the restrictions already in place would not prevent any such outcome. The second reason is that, because guides and the visitors traveling with them have been banned from many areas under the proposed restrictions, they *may* congregate in other areas which could result in “crowding.” *Id.* This potential “crowding” might then “detract[] from the wilderness experience of other visitors sharing a zone with such groups.” *Id.* We demonstrate elsewhere in this comment letter that application of the criterion “crowding” in this sense has not been adequately supported in the DEIS. Again, no such evidence is provided in the DEIS to support this wholly speculative conclusion. Nor is there any basis to conclude that the restrictions already in place would not prevent any such outcome. The third reason given is that, because guides and the visitors traveling with them have been banned from many areas under the proposed restrictions, they *may* dominate other, less desirable areas. The analysis in Appendix L concludes that, if this were to occur, having guides and the visitors traveling with them in these less desirable areas will result in the “excessive commercialization of wilderness.” *Id.* at L-16. However, given that these visitors are doing the exact same things as visitors who are present without guides (camping, hiking, fishing, *etc.*), it is nonsensical to assert that these visitors will somehow “commercialize” the Park. Visitors who rely upon guides to visit and enjoy a National Park should not be treated as second-class citizens; however, that is *exactly* the bias demonstrated by NPS in both the DEIS and Appendix L.

The DEIS fails to document the views of respected service-oriented trail organizations regarding recreational stock use in Yosemite Wilderness

We assume the degree of reported and documented visitor conflict in Wilderness as inferred in the DEIS is low and that such reports, if any, were made by visitors unfamiliar with horse/stock use and its long history within Yosemite National Park. We submit the attached letter from the Pacific Crest Trail Association (PCTA) as evidence of the relative lack of documented conflicts between hikers/backpackers and stock users in Yosemite Wilderness.⁴ The PCTA, a leader among the Nation’s service-oriented trail organizations, is recognized as the federal government’s major partner in the management and operation of the Pacific Crest National Scenic Trail, which traverses Yosemite National Park. In their recent letter to Yosemite’s Superintendent, the PCTA states:

⁴ Letter dated 19 April 2013 to Yosemite National Park Superintendent from Mike Dawson, Director of Trail Operations, Pacific Crest Trail Association.

Use of saddle and pack stock is a historic use within Yosemite National Park, the Sierra Nevada, and throughout the Park's designated Wilderness areas...The preference not to encounter stock parties is not shared by the PCTA, as it ignores the historic roots of stock use and the ongoing efforts of organizations like BCH(California) to promote, protect and maintain wilderness trails—often to great benefit to hikers and backpackers...The PCTA is not aware of significant social conflicts that exist between hikers and stock users on trails in the Yosemite Wilderness. In cases where documented conflicts exist, we would expect to see the agencies undertake visitor education efforts prior to proposing regulations to restrict one user group or another.⁵

The Final EIS and Record of Decision for both the Merced and Tuolumne Wild and Scenic River management plans must acknowledge the fact that “the preference not to encounter stock parties is not shared by the PCTA,” which is one of the Nation’s premiere service-oriented trail organizations.

The DEIS is flawed by its reliance on a single criterion as a surrogate for what defines a quality Wilderness experience

With respect to realizing opportunities for solitude in wilderness areas, the DEIS incorrectly applies the following criterion:

Visitor experience is influenced by the number of other groups encountered during a given time period. Actions that increase crowding are considered adverse, while those that reduce crowding are considered beneficial. In high-use wilderness areas such as Segment 1 of the Merced River corridor, solitude is determined to be an area free from crowding (DEIS, p. 9-890).

This line of logic is flawed and ignores the mandate of the Wilderness Act, which directs that Wilderness provide “outstanding opportunities for solitude *or* for a primitive and unconfined type of recreation” (emphasis added). The word “or” means that an area only has to possess one or the other. The area does not have to possess outstanding opportunities for both elements, *nor does it need to have outstanding opportunities on every acre*. In addition, an area can possess outstanding opportunities for solitude even if there is variation in the degree of solitude spatially. Use of the solitude criterion alone is inconsistent with the Wilderness Act, subsequent case law, and appears to ignore fact that “the Yosemite Wilderness (is) one of the most highly visited Wilderness areas in the nation” (DEIS, p. 5-120). In perpetuating this false choice, the DEIS fails to evaluate the degree to which the Merced River corridor (at least that portion located in Wilderness) provides outstanding opportunities for solitude or for a primitive and unconfined type of recreation.

The DEIS further fails to acknowledge that variation in the degree of solitude experienced in Wilderness can be temporal in addition to spatial. For instance, an area that is popular on summer weekends but during the rest of the year has little visitation can possess outstanding opportunities for solitude. The DEIS fails to make such distinctions and the fact that an area can possess outstanding opportunities for solitude even if there are spatial and temporal variations in solitude.

The DEIS is flawed in its application of the existing social science research

Another example of bias in the DEIS against commercial stock use is demonstrated by the use of cherry-picked citations from the social science literature to support the conclusion to restrict stock use. This is particularly apparent in Appendix L, Determination of Extent Necessary (in this case, an analysis of the degree to which the use of commercial pack stock is considered necessary and appropriate in the small portion (2.6%) of Yosemite Wilderness that occurs within the Merced Wild and Scenic River corridor). For example, the DEIS claims: “Recent *empirical research* on visitor experience in the Yosemite Wilderness has documented a *visitor preference* not to encounter stock parties and large campsites” (DEIS, Appendix L, Determination of Extent Necessary, footnote 30,

⁵ *Ibid*

page L-16; emphasis added).⁶ This empirical research stands in contrast to the statement in the DEIS that claims “no formal surveys documenting visitor satisfaction, perceptions of crowding, or encounter rates had been conducted” (DEIS, p. 5-120). In addition, the above reference to “empirical research” contradicts the following statement found elsewhere in the DEIS that claims Yosemite Wilderness visitors (i.e., hikers and backpackers) do *not* feel that current levels of recreational stock use in park Wilderness contribute significantly to perceptions of “crowding” or “loss of solitude. The DEIS states:

The 2001 (Newman & Manning) wilderness study indicated two indicators of environmental quality: signs of human use at campsites and signs of stock or stock use. In this study, more than half of the participants surveyed indicated that signs of human use were extremely to very important to them and their decision to recreate in that area of wilderness. Regarding stock use, this study reported that **visitors reported seeing less stock and signs of stock use than they had expected to see, and would tolerate mildly more stock use before they would consider not returning to that hiking trail** (DEIS, Recreational Values, p. 2.2-17; emphasis added).

Yet the apparent acceptance and tolerance of Wilderness visitors for recreational stock use, as noted in the scientific literature above, is not carried into the DEIS’ Determination of Extent Necessary (Appendix L). As such, the DEIS appear to be in conflict with itself—more so than its inflated claim of conflict between hikers and horsemen. Consequently, the analysis of commercial services in Wilderness contained in the DEIS (Appendix L) is inadequate because its conclusion to limit commercial horse/stock use on the basis of “preferences” allegedly reported by backcountry visitors is flawed, biased and not supported by the available scientific literature.

We turn next to the context of the Newton, Manning, et. al., 2005 study cited in Appendix L, Determination of Extent Necessary, in order to demonstrate its misuse in the DEIS. It should be noted that the data interpreted in the 2005 study drew upon a database developed by these same researchers in interviews with backpackers prior to their Wilderness excursion in Yosemite National Park during the 2001 - 2002 season.

The DEIS fails to clarify that Wilderness “visitors” surveyed in the Newman, Manning, et. al., 2005 study consisted solely of backpackers

The DEIS further demonstrates bias against horse/stock use by failing to clarify that the group of Yosemite Wilderness “visitors” whose perspectives were summarized in the 2005 study were comprised only of backpackers. The single-user questionnaire stands in contrast to a study where more than one user group is queried, including persons participating in concession-lead stock trips to the Merced Lake High Sierra Camp, persons using the services of a commercial outfitter (be they hikers or use stock) and private horse owners/stock users venting into Yosemite Wilderness.

The questionnaire is also of limited value in this case, as it sought information about visitor valuations of a hypothetical nature, that is, being relevant to how respondents *might be* affected during their pending visit to Yosemite Wilderness. Such an approach stands in contrast to questionnaires that reflect actual user attitudes either while within, or upon departing, the Wilderness as such responses are relevant to how respondents *were* affected during their visit. In the latter, research has shown that negative attributes (such as conflicts with stock use) are less-frequently mentioned, with interviewees often downplaying negatives, noting that “they weren’t that big a deal.”⁷ As other research suggests, experience quality can be enhanced by the overcoming of conditions

⁶ The footnote includes the following citation: Newman, P., Manning, R. E., Dennis, D. F., & McKonly. (2005). Informing carrying capacity decision making in Yosemite National Park, USA using stated choice modeling. *Journal of Park and Recreation Administration*, 23(1), 75-89.

⁷ Wilderness Visitor Experiences: A Review of 50 Years of Research. David N. Cole and Daniel R. Williams. In: Cole, David N., comp. 2012. Wilderness visitor experiences: Progress in research and management; 2011 April 4-7; Missoula, MT. Proc. RMRS-P-66. Fort Collins, CO: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station. 219 p. USDA Forest Service Proceedings RMRS-P-66. 2012.

that are unexpected or even undesirable.⁸ Another insight from experienced-based interviews suggests why negative attributes seldom are judged to be much problem in retrospect, regards the temporal distribution of positive and negative influences. Typically, wilderness visitors are perpetually surrounded by substantial positive influences, the natural environment, peace and quiet, engaging in enjoyable activities and interacting with other group members, while negative influences are generally confined to isolated instances.⁹ The DEIS fails to cite such scientific literature.

Roggenbuck and others (1993)¹⁰ asked visitors about their experiences while either on the trail or in camp in Wilderness areas in Arkansas, Georgia and Montana. With the exception of “number of wild animals” seen, they focused on negative attributes. Yet the most important attributes were site impacts, particularly litter and tree damage at campsites, and human caused noise. Wild animal sightings were also important, and encounters with other groups were less important. Even in some of the most heavily-used wildernesses in the Nation, there is little support from visitors to see use limits imposed; visitors are also more likely to support restrictions for the purpose of limiting environmental impacts than to protect visitor experiences.¹¹

The research referenced above would lead one to believe that reducing the number of encounters that hikers/backpackers have with stock/horses, by reducing stock use in Yosemite Wilderness, would do little to improve the overall experience of both user groups. The DEIS is inadequate in its limited use of available science to explore the issue of visitor conflict in Wilderness and, importantly, how such conflict is best mitigated.

The DEIS misrepresents available scientific literature in its attempt to restrict commercial stock use

Not only does Appendix L contain unsupportable statements regarding interpretation of the social science literature collected from wilderness “visitors,” the DEIS (Appendix L) conflates the relative strength of negative views held by backpackers with respect to stock use. Not stated in the DEIS is that fact that the backpackers queried in 2001-2002 as reported by Newton, Manning, et. al., (2005) held stronger views on five of one dozen other indicators of Wilderness quality, beyond the stated preference “not to encounter stock parties.”¹² In other words, the preference not to encounter stock parties was ranked in the middle of the dozen indicators. Yet, the DEIS fails to clarify this fact in Appendix L, giving little credence to its cited “empirical evidence.” In sharp contrast, the DEIS’ analysis of Recreation Values more accurately sums up the study in question by stating the following:

Respondents from the 2001-2002 wilderness [sic] survey (Newman & Manning) reported that ***their wilderness experience was most affected*** by the ability to obtain a wilderness permit and the availability of opportunities for camping away from other users. Other important factors included the variety of campsite choices and the extent of previous human use of the campsites. In addition, respondents indicated that signs of stock and human use (such as campsite impacts) as well as encounter rates with other hikers also influenced the quality of their wilderness experience (DEIS, Recreational Values, page 2.2-17; emphasis added).

The interpretation provided in the Recreational Values analysis in the DEIS is more consistent with the aforementioned study. Upon reviewing the entirety of the 2005 study, we were struck by the fact that its

⁸ Patterson, Michael E.; Watson, Alan E.; William, Daniel R.; Roggenbuck, Joseph R. 1998. An hermeneutic approach to studying the nature of wilderness experiences. *Journal of Leisure Research*. 30: 423-452.

⁹ *Ibid*, Cole and Williams, 2012

¹⁰ Roggenbuck, Joseph W.; Williams, Daniel R.; Watson, Alan E. 1993. Defining acceptable conditions in wilderness. *Environmental Management*. 17: 187-197.

¹¹ Cole, David N; Hall, Troy E. 2008a. Wilderness visitors, experiences, and management preferences: How they vary with use level and length of stay. Research Paper RMRS-RP-71. Fort Collins, CO: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station. 61 p.

¹² In fact, respondents whose views are summarized in the 2005 study held stronger views regarding signs of human use at campsites and encounters of more than 15 other groups a day while hiking, irrespective of whether the signs of use or encounters were the result of fellow backpackers or stock use. Nonetheless, Appendix L hinges its proposals to restrict stock use by interpreting the study to emphasize that Wilderness “visitors” stated a preference “not to encounter stock parties.”

executive summary emphasized only that “Results suggest signs of human use at campsites was the most important indicator of those used in the study.” We noted the absence, both in the summary and elsewhere in the report, the statement used in Appendix L of the DEIS for a “visitor preference” not to encounter stock parties. Irrespective of this misinterpretation of available science in the Appendix L, we believe that a perceived lack of tolerance among a portion of Wilderness visitors should not be employed as a primary rationale to propose restrictions that reduce or curtail either hiking/backpacking or horse/stock use in wilderness. The DEIS is deficient in this regard, as is the DEIS for the Toulumne Wild and Scenic River Comprehensive Management Plan, as proposals to restrict hiking and stock use in either plan should not hinge on the inferred bias of a single user group.

In contrast to statements made in the DEIS, data derived by the University of Idaho for the Summer 2005 Yosemite National Park Visitor Study¹³ implies there is very little, if any, conflict between hikers/backpackers and horse/stock users on the Park’s trails. The survey documents the responses of over 780 front country and backcountry visitor groups who responded to a Park questionnaire. Of these respondents, 20 percent reported their primary purpose for visiting the Park was to day hike; 3 percent reported their primary purpose was to backpack overnight. Yet only 2 comments regarding user conflict, the nature of which was undefined, were noted among 327 documented comments regarding Park policies and management (*Id.*, p. 96). In fact, user conflict was listed lowest among the 24 topics regarding Park policy and management. Assuming the two comments were in reference to hiker/stock conflict, this is hardly evidence of the need for restrictions on stock use. It should be noted that user conflicts was tied for last place (only 2 comments) along with the topics of “Management change” (presumably directed at the Superintendent) and “Reestablish the fire fall display.” These are hardly the type of policy changes the Park would act upon as readily as the current restrictions proposed for commercial stock use in the DEIS.

The DEIS fails to document the perceptions of saddle and pack stock users

Nowhere does the DEIS attempt to document the preferences and desired experiences of recreational horse/stock users, whose views regarding encounters with other user groups in Wilderness might support or vary significantly from the views expressed by hikers/backpackers. Nor was the opinion of horsemen/stock users apparently sought in crafting the DEIS. For example, horse/stock users could have been queried about their preferences for encountering large parties of backpackers or how they feel about large campsites barren of vegetation as a result of overuse by both backpackers and stock users—much as the 2005 Newman, Manning, et. al., study explored these management issues with backpackers.

The DEIS notes, but not in Appendix L, that saddle and pack stock use is an acceptable and traditional mode of travel within designated Wilderness that in most cases predates extended trips undertaken in the backcountry and Wilderness by backpacking. Therefore, reliance in the DEIS upon the views expressed by a single user group, which does not include horse/stock users and misrepresents the available science, represents overt bias in the NEPA analysis. In sum, the NPS’ perception of a lack of tolerance among a subset of Wilderness backpackers when encountering other groups should not be employed as a primary criterion to reduce either pedestrian or equestrian use in one of the Nation’s most visited Wilderness areas.

The DEIS fails to consider alternative methods to minimize perceived visitor conflict associated with the presence of pack stock use in Wilderness

Not only does the DEIS cherry-pick the scientific literature in order to amplify the relevance of perceived conflicts between hikers/backpackers and recreational stock users, it fails to explore mitigation measures in proportion to the true magnitude and extent of the perceived conflict beyond its proposal to limit commercial stock use. Once invoking the topic of conflict, the DEIS makes an illogical leap to propose limitations on stock use as necessary to

¹³ Social Science Program, National Park Service, U.S. Department of the Interior, Visitor Services Project: Yosemite National Park Visitor Study, Summer 2005. Prepared by the University of Idaho Park Studies Unit. Visitor Services Project Report 168.

protect Wilderness and Wild and Scenic River values (i.e., Outstanding Recreational Values) of the Merced River corridor. Not only is the proposal to limit stock use made without adequate justification, the DEIS fails to consider alternative methods to minimize any perceptions of conflict held by the public (irrespective of whether the existence of conflict is widespread or not).

With regard to mitigating adverse impacts from or between park uses, NPS Management Policies (2006, Section 8.1.2) state:

In all cases, impacts from park uses must be avoided, minimized, or mitigated through one or more of the following methods:

- visitor education and civic engagement
- temporal, spatial, or numerical limitations on the use
- the application of best available technology
- the application of adaptive management techniques

Yet, as stated previously, the DEIS contains the following sweeping statement: “Overnight commercial trips are limited to two per zone per night...These limits apply in all zones at all times in addition to the other restrictions noted above” (Appendix L, p. L-16). The leap to mitigate perceived conflicts in the Merced River corridor by restricting commercial stock use in the current DEIS appears inconsistent with these NPS policies. The DEIS fails to invoke the option of visitor education to minimize perceived conflict. The DEIS fails to consider mitigation of a temporal or spatial nature. Nor does the DEIS propose adaptive management techniques to deal with visitor perceptions of conflict. Worse still, the DEIS proposes to adopt significant restrictions on stock use that would carry over into the forthcoming WSP.

NPS Management Policies (8.2.2 Recreational Activities) further state that “Restrictions placed on recreational uses that have been found to be appropriate will be **limited to the minimum necessary** to protect park resources and values and promote visitor safety and enjoyment” (emphasis added). Proposed restrictions on commercial stock use proposed by the NPS in the Merced River DEIS have not been documented to represent “the minimum necessary” as required by this policy. In addition, NPS Management Policies state the following:

Superintendents will **consider a wide range of techniques in managing recreational use** to avoid adverse impacts on park resources and values or desired visitor experiences. Examples of **appropriate techniques include visitor information and education programs**, separation of conflicting uses by time or location, “hardening” sites, modifying maintenance practices, and permit and reservation systems...**Any restriction of appropriate recreational uses will be limited to what is necessary** to protect park resources and values, to promote visitor safety and enjoyment, or to meet park management needs. To the extent practicable, **public use limits established by the Service will be based on the results of scientific research and other available support data**. However, an activity will be restricted or prohibited when, in the judgment of the superintendent, its occurrence, continuation, or expansion would (1) violate the criteria listed in section 8.2, or (2) conflict with the findings of a carrying capacity analysis **with no reasonable alternative that would avoid or satisfactorily mitigate the violation or conflict** (NPS Management Policies, 8.2.2, emphasis added)

Again, in sharp departure from NPS policy, the DEIS leaps to restrict a single user group (commercial outfitters), in the absence of verifiable data that a conflict in desired visitor experiences rises to a level of NEPA significance. This is all the more alarming when commercial outfitters currently represent no more than 3% of all overnight use in Yosemite Wilderness. The DEIS’ defense of mitigation necessary to protect Wild and Scenic River values is unsupported, adversely harms recreational stock users and is inconsistent with NPS management policies.

In areas of known or documented resource conflicts or damage, the DEIS should consider alternatives beyond simply eliminating stock use. Such alternatives could include but not be limited to reroutes of trails, hardening of trail surfaces, and/or seasonal or biannual limitations to certain areas. Yet the DEIS fails to invoke any such mitigation measures. Significant changes proposed in the DEIS to wilderness management such as instituting a

quota system for day hikers or reducing commercial use should be addressed in the forthcoming Wilderness Stewardship Plan, not piecemeal via both the Tuolumne River plan and Merced River plan. It is only through the wilderness plan that such changes can be considered in context and their potential environmental impact, including cumulative impacts, be fully analyzed.

The DEIS fails to justify the need to eliminate guided day rides in Yosemite Valley

BCHA feels that the elimination of stables and commercial horseback rides originating from the Yosemite Valley is unnecessary and unjustified. These operations provides a recreational use that is historic and is proven to be a much desired aspect of the recreational experience for thousands of visitors to Yosemite National Park each year.

The DEIS fails to disclose information on visitors' enjoyment of guided day rides

The DEIS fails to disclose the popularity of guided day rides in Yosemite Valley and fails to document the number of people who participate in stock-assisted trail rides and the socioeconomic impacts of their elimination. The website of park concessionaire DNC Parks and Resorts of Yosemite claims the following with respect to the Yosemite Valley Stables: "Riding excursions are popular activities. Reservations are strongly recommended."¹⁴ Yosemite Valley Stables offers two exciting guided rides throughout the season. They include:

- The two-hour ride to Mirror Lake, which is perfect for beginners looking for unique photographic opportunities.
- The half-day ride, which takes the adventurous up to Clark's Point and offers excellent views of Vernal Fall.

The DEIS lacks discussion of the number of visitors who would be adversely affected by the proposed elimination of guided day rides in the Valley. In addition, the DEIS fails to describe the socioeconomic impacts of their elimination.

The DEIS fails to document the existence of threats to Wild and Scenic River values as a result of the conduct of guided day rides

Other than the proposed reroute of the stock trail to Happy Isles, the DEIS fails to qualify or quantify any threats to Wild and Scenic River values of the Merced River as a result of recreational stock use in Yosemite Valley. For example, Table 7-1 in the Facilities and Services Analysis (DEIS, p.7-4) indicates that the Curry Village Stables and the Commercial Horseback Day Rides in Yosemite Valley have no adverse effect on Wild and Scenic River values nor adverse Local Effect on Wild and Scenic River Values. The DEIS also states "Current water quality in all Merced River segments is high, with most water quality sampling results near natural background levels" (DEIS, p. 5-23). Table 5-3, Management Actions and Trigger Points to Maintain Desired Conditions for Water Quality, states: "If impacts result from stock use, redirect/ reduce/ limit stock use in certain areas." This implies that there currently exists no threat to water quality from commercial horseback rides.

In the absence of documentation of adverse physical impacts, the DEIS resorts to statements that appear not to be supported by science, much like those used in Appendix L, Determination of Extent Necessary, as described elsewhere in this comment letter. These unsupported statements include:

- "The Wawona stables would continue to offer day rides into the wilderness. This would continue to cause minor conflicts between stock and hikers and impact the quality of the trail due to stock urine, feces and flies" (DEIS, p.9-833); and

¹⁴ See: <http://www.yosemitepark.com/yosemite-valley-stable.aspx>, accessed 29 April 29, 2013.

- “All commercial stock day rides would be eliminated in Segment 2 under Alternatives 2-6...elimination of day stock rides would improve trail conditions by eliminating the dust, feces, flies and urine related to stock use on these trails. This would be a benefit to hikers whose visit is negatively affected by such conflicts” (DEIS, p.9-841).

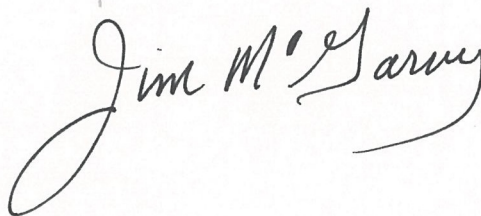
Again, the DEIS lacks documentation of the degree and severity of reported hiker/stock conflicts to date. Consequently, we can only assume that the Park Service is responding not to actual documentation of such conflicts but, rather, unsupported statements made during public scoping meetings or in other public venues. However, in areas of known or documented resource conflicts or damage, the DEIS should consider alternatives beyond simply eliminating stock use. Such alternatives could include but should not be limited to reroutes of trails, hardening of trail surfaces, and/or seasonal or biannual limitations to certain areas. Other than rerouting the stock trail to Happy Isles, the DEIS fails to explore such alternatives.

Conclusion

Thank you for this opportunity to submit public comments on the Wild and Scenic River plans for the Merced and Tuolumne rivers. BCHA welcomes renewed and thorough dialogue regarding the planning process for these plans among NPS personnel, the horseback-riding and stock-using community and other Yosemite National Park stakeholders. Our primary concern stems from the inconsistent manner in which the NPS has attempted to justify eliminating or restricting commercial stock users, who share a long history of trail use in the Yosemite Valley, Tuolumne Meadows and throughout the Yosemite Wilderness. Significant changes proposed to Wilderness management, such as reducing commercial stock use, should be addressed in the forthcoming Wilderness Stewardship Plan and not in the current piecemeal fashion as is being done via both the Tuolumne River and Merced River Wild and Scenic River comprehensive management plans.

We implore the NPS to seek every opportunity to include the pack and saddle stock community in these and similar planning efforts throughout the park. It is our belief that only through strong partnerships and effective collaboration can our mutual goals of creating sustainable and publicly-supported trail systems be achieved.

Sincerely,

A handwritten signature in black ink that reads "Jim McGarvey". The signature is written in a cursive style with a large, looping initial "J".

Jim McGarvey
BCHA Chairman

cc:
Senator Dianne Feinstein
Senator Barbara Boxer
Representative Tom McClintock
Representative Devin Nunes