McGREGOR SCOTT 1 United States Attorney 2 ORIGINAL KIRK E. SHERRIFF Assistant U.S. Attorney FILED 3 3654 Federal Building 1130 "O" Street MAY 2 1 2004 4 Fresno, California 93721-2201 Telephone: (559) 498-7272 CLERK, U.S. DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA 5 Facsimile: (559) 498-7432 6 DEPUTY CLERK THOMAS L. SANSONETTI **Assistant Attorney General** United States Department of Justice 7 Environment & Natural Resources Division 8 CHARLES R. SHOCKEY, Attorney D.C. Bar # 914879 9 United States Department of Justice Environment and Natural Resources Division 10 **Natural Resources Section** 501 "T" Street, Suite 9-700 Sacramento, CA 95814-2322 11 Telephone: (916) 930-2203 12 Facsimile: (916) 930-2210 Email: charles shockey@usdoi.gov 13 Attorneys for Defendants 14 IN THE UNITED STATES DISTRICT COURT 15 FOR THE EASTERN DISTRICT OF CALIFORNIA 16 FRESNO DIVISION 17 FRIENDS OF YOSEMITE VALLEY, Case No. CV-F-00-6191 AWI DLB 18 et al. 19 Plaintiffs. DECLARATION OF MICHAEL J. TOLLEFSON 20 v. IN SUPPORT OF DEFENDANTS' MOTION TO MODIFY INJUNCTION GALE NORTON, in her official 21 capacity as Secretary of the Interior, et al., 22 DATE: JUNE 21, 2004 TIME: 2:30 P.M. Defendants. COURT: 23 **COURTROOM 3** HONORABLE ANTHONY W. ISHII 24 I, Michael J. Tollefson, declare as follows: 25 26 1. I have served as the Superintendent of Yosemite National Park since January 2003.

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2. I have submitted two previous declarations in this matter, dated February 23, 2004 and April 15, 2004. Prior to preparing this declaration, I reviewed the Order from the United States Court of Appeals for the Ninth Circuit filed April 20, 2004, *Friends of Yosemite Valley v. Norton*, and the Opinion of the United States Court of Circuit for the Ninth District filed October 27, 2003.

#### L NPS ISSUED STOP WORK ORDER ON APRIL 20, 2004

3. Upon learning of the order of the Court of Appeals on April 20, 2004, I issued a stop work order for all projects in the Merced River corridor. (Exhibit 1.) The current status of those projects is as follows: El Portal Office Building Annex: A stop work order has been issued on the contract. East Yosemite Valley Utilities Improvement Plan: A stop work order has been issued on the contract. Curry Village Employee Housing: No construction contract has been advertised or issued; debris-flow data collection halted. Curry Village and East Yosemite Valley Campgrounds Improvements: No construction contract has been advertised or issued; a stop work order was issued for tree removal that was in progress at Upper Pines Campground; all logging equipment and downed trees have been removed; stumps remain which must be removed. Yosemite Lodge Area Redevelopment: No construction contract advertised or issued; a stop work order was issued for the tree removal that was in progress in the Lodge area; all downed trees and logging equipment have been removed; stumps remain which must be removed. Yosemite Village Parking and Transit Improvements: No construction contract advertised or issued; data collection for wetlands delineation and geotechnical investigations halted; preliminary work continues for preparation of an environmental assessment. Camp Wawona Redevelopment and Proposed Land Exchange: All NPS planning and compliance activities associated with the project have been discontinued. Lower Yosemite Fall Project: All work was stopped on this project on April 20th, but was resumed on May 17th after agreement was reached with Plaintiffs and this Court approved the parties' stipulation. South Fork Bridge Replacement: A stop work order was issued on the contract. Cascades Diversion Dam

Removal: A stop work order was issued on the project on April 20th, but work resumed May 17th after agreement was reached with plaintiffs and this Court approved the parties' stipulation.

Removal of Cascades Houses: This project was also covered by the parties' stipulation and work will begin this summer. Shuttle Bus Stop Improvements: A construction contract has been issued with a stipulation that no work is to occur unless and until this court allows this project to proceed. Ecological Restoration in East Yosemite Valley: A stop work order was issued for data collection.

### II. THE NPS WILL REVISE THE COMPREHENSIVE MANAGEMENT PLAN

- 4. The National Park Service proposes to revise the Merced Wild and Scenic River Comprehensive Management Plan (MRP) and Final Environmental Impact Statement (FEIS) by developing a revised MRP and a Supplemental Environmental Impact Statement (SEIS). The revised MRP/SEIS will focus on the two deficiencies identified in the Ninth Circuit Court opinion dated October 27, 2003 and the Order dated April 20, 2004. To address these two deficiencies, the NPS will (1) adopt specific limits on user capacity consistent with both the Wild and Scenic Rivers Act and the Instructions of the Secretarial Guidelines that such limits describe an actual level of visitor use that will not adversely impact the Merced River's Outstandingly Remarkable Values (ORVs) and (2) redetermine the river area boundaries in the El Portal Administrative Site pursuant to the Wild and Scenic Rivers Act (WSRA) protection and enhancement mandate.
- 5. The SEIS will be prepared pursuant to the requirements of the National Environmental Policy Act (NEPA), the Implementing Guidelines from the Council on Environmental Quality (CEQ) for NEPA, NPS Director's Order 12 (which provides policy within the National Park Service for NEPA actions), the Wild and Scenic Rivers Act, and other pertinent laws and regulations. The revised MRP/SEIS will undergo extensive public involvement consistent (including comments on a draft SEIS) with the requirements of NEPA. The revised MRP/SEIS will adopt guidelines for the kinds and amounts of public use which the river area can sustain while protecting and enhancing identified ORVs. The revised MRP/SEIS will also address the

revision of the boundary for the El Portal Administrative Site and will be based on an analysis of ORVs in this area.

6. The NPS is prepared to launch the MRP/SEIS planning process shortly. A reasonable and appropriate schedule will be adopted pursuant to all NEPA and other statutory requirements, and the NPS expects to complete the revised MRP/SEIS and its Record of Decision within one year.

#### III. DATA COLLECTION AND WORK THAT IS PROCEEDING

- 7. Plaintiffs and defendants met on May 3, 2004 and later came to a formal agreement that the following projects can proceed while the comprehensive management plan (CMP) is being revised: Lower Yosemite Fall Project, Cascades Diversion Dam Removal, and Removal of Cascades Houses. The Court's Order approving the joint stipulation and modifying the injunction was entered on May 17, 2004.
- 8. When the Order from the Ninth Circuit Court of Appeals was issued on April 20, 2004, the NPS acted conservatively and stopped many types of activity in the Merced River corridor to avoid any possibility of acting contrary to the injunction. Upon further review of the Ninth Circuit's Order, the NPS has determined that data collection, scientific studies, and certain types of activities that do not change the status quo or have any bearing on the MRP are proceeding (see paragraphs 9-13).
- 9. Rockfall Debris-Flow Data Collection: The NPS plans to continue with this scientific data collection effort which will assess the potential degree of rockfall hazards from debris flows in the area of the proposed Curry Village Employee Housing. The NPS has contracted for an investigation which would entail the digging of four exploratory test pits. Each pit would be excavated up to 10 feet in length and to a depth of approximately 5 feet in areas where site features are planned. The pits would be located to avoid cultural resources, existing utilities, and biological resources. Soils from each exploratory test pit would be recorded by researchers. After excavation, the area will be methodically restored. Recommencing these data

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collecting activities will help the park gather baseline data regarding resource values. This data is not reliant on the MRP or the deficiencies in the plan regarding user capacity, as expressed in the Ninth Circuit's Orders. This scientific effort will not change the long-term status quo in the area.

- 10. Geotechnical Investigations and Wetlands Delineation: In the southern part of Yosemite Village, the NPS will resume studies to help delineate wetlands and determine soil conditions (including depth of non-native soils, percolation rates, hydrogeological attributes, lithography, compaction and load bearing characteristics, and depth of groundwater). Although this data will assist the formulation of design alternatives for possible future Yosemite Village Parking and Transit Improvement Project, the data will be beneficial to increase our understanding of the natural resources regardless of whether or not this project goes forward. These studies will be accomplished through the digging of eight test pits and six test borings. The wetlands delineation fieldwork in the area will consist of identifying vegetation indicator species and then verifying that wetland soils and hydrology are present in the area. The only ground disturbance associated with this field work will be shallow test pits dug to evaluate the morphological characteristics of the soil. The test pits are typically no more than 20 inches deep and are approximately 8 inches by 12 inches at the surface and become smaller as they get deeper. It is estimated that up to 60 test pits could be required over the 30-acre project site. Again, data collection of this nature is neither dependent on the MRP, nor will it prejudice our ability to pursue user capacity issues in response to the Ninth Circuit's Order. These studies do not change the long-term status quo in the area.
- 11. Ecological Restoration in East Yosemite Valley: One critical project for which preparatory work has been suspended following the Ninth Circuit's Order of April 20 is Ecological Restoration in East Yosemite Valley. Ultimately, this restoration project will be presented for public review in an environmental assessment, but before an EA can be prepared, the NPS must better understand the area vegetation and water flow processes that existed in these areas in the late 1800s. In order to develop strong restoration alternatives for the environmental compliance document, research and data collection must continue. Some research efforts can take

up to two years to complete and the Park intends to move forward with this work. When completed, the Ecological Restoration project will restore approximately 175 impacted acres in Yosemite Valley to prime floodplain and riparian habitat. The restoration area will include portions of North Pines Campground, the former Group Camp, and Housekeeping Camp, as well as the former Upper and Lower River Campgrounds and a portion of Lower Pines Campground.

12. The NPS has hired a university research team to begin a two-year project to gather data on ground water, surface hydrology, soil profiles, and vegetation. On April 19, 2004, these researchers began to install 110 ground water monitoring wells and soil pits to capture this year's high water data.¹ After the Ninth Circuit Court's injunction was issued on April 20, the NPS directed this work to stop as a precautionary measure. The purpose of the wells is to determine whether water is flowing from the Valley cliffs and moving toward the river or if ground water is moving from the river and into surrounding meadows. Understanding the direction of water flow will help locate any diversions of water and help the NPS develop alternatives for restoring natural drainages. Tree core samples will also be collected on approximately 100 trees using standard hand tree bores.² The information collected will help determine what groups of trees were standing at the time of Euro-American settlement. These studies do not alter the long-term status quo within the river corridor, nor do they relate to deficiencies identified in the MRP.

13. In further preparation for the full ecological restoration of these areas, the NPS will

¹At each monitoring well location, a soil pit will first be dug at the well site to provide data about any unnatural fill in the area, the soil profile, and the history of alluvial deposits. To learn about ground water movement and the vegetation that can be supported by ground water level, research will require the installation of no more than 100 ground water monitoring wells. The wells will consist of PVC pipe -- 8' in length and 3" in diameter — which will be placed in each soil pit when the pit is dug. Immediately after the soil analysis is completed and each monitoring well is installed, each pit will be filled in. The numbers and sizes of soil pits will be: floodplain areas - about 40 pits that are 2' wide X 8' long X 8' deep; meadow areas - about 40 pits that are 2' wide X 8' long X 8' deep; upland areas - about 20 smaller pits. All efforts will be made to install the wells so they are not visible. In meadows, the wells are virtually invisible, disguised by surrounding vegetation (there is currently a network of hydrologic monitoring wells installed in Cook's Meadow). The monitoring wells in the vicinity of visitor use areas will be capped. The wells will be monitored for several years and then removed after the study is completed.

<sup>&</sup>lt;sup>2</sup>Tree core samples will be taken on approximately 100 trees using standard hand tree bores. This sampling poses no risk to the trees; bore size is 5.15 mm.

move forward on work this summer to remove flood-damaged facilities in the former Upper and Lower River Campgrounds and Group Camp. Currently, the area is visible from the road where visitors may view the chunked-up asphalt, along with dilapidated, abandoned restrooms. The NPS will to remove the restrooms, as in their current state they pose a safety hazard for visitors, present an eyesore in an otherwise scenic area, and constitute an attractive nuisance for vandals. Asphalt roads and parking pads have already been removed from the flood-damaged west end of Lower Pines Campground. This clean-up effort is in no way reliant on the MRP, nor does it in any way affect user capacity or the deficiencies identified in the MRP.

## IV. ENJOINED PROJECTS NOT INCLUDED IN PLAINTIFFS' REQUEST FOR INJUNCTIVE RELIEF THAT SHOULD PROCEED

- 14. There are two projects which have been stopped that were not included in the Plaintiffs' request for an emergency injunction to the Ninth Circuit. The NPS feels strongly that these projects should not be included in the injunction and should be allowed to move forward. None of these projects have any effect on user capacity in the river corridor (the only outstanding CMP issue in sections of the river where these projects are proposed). These include South Fork Bridge Replacement, Ecological Restoration in East Yosemite Valley, and Shuttle Bus Stop Improvements.
- 15. South Fork Bridge Replacement: The bridge, located in Wawona, serves one of the park's main roads (Wawona Road/California State Highway 41). It is critical for park operations and visitor access, particularly for visitors traveling from Fresno and other points to the south. The project in no way affects user capacity in the river corridor; it merely replaces an old, damaged bridge with a new one. In addition to serving as a primary artery to Yosemite Valley, the bridge provides the main link to visitors between the main grocery store, Wawona Hotel, and the campground. The NPS would like to proceed with this project because the original bridge is damaged beyond repair, and the route is currently serviced by a temporary bridge that has been in place since April 1998. In addition, the abutments of the original bridge lie within the river

channel and adversely affect the free flow of the river. The original bridge remains in place and still supports active high voltage electrical, water, and sewer lines. Each year during periods of high water, scouring continues around abutments, putting the bridge at risk for sudden and uncontrolled collapse. If the condemned bridge were to fail, not only would public safety and the health of the river be compromised, but the active utility lines attached to the old bridge would be severed. The temporary bridge that travels parallel to the condemned bridge was put in place in 1998 and has served beyond its original purpose. Each year the Park is faced with accelerated maintenance and repair on a structure that was intended to be a short-term solution. The new bridge would replace the condemned structure and the temporary bridge (both obstructions in the river) with one that is a clearspan, containing no impediments to the free-flowing condition of the South Fork. A contract was issued on this project on December 18, 2003, and the contractor had originally planned to mobilize to start work the week of April 26, 2004.

assessment (EA). Due to safety concerns (in addition to public comments received during the EA scoping and review periods), the NPS designed the new bridge to be wider than the original. The original, old bridge is 134 feet long and has two traffic lanes – each 12 feet wide – with 24-footwide approach roads. The proposed bridge is 153 feet long with two 12-foot traffic lanes. There will be a 4-foot shoulder on each side for bicyclists and equestrians. There will also be a 5-footwide pedestrian walkway on one side of the bridge. The added width would allow the bridge to safely accommodate bicycle and equestrian traffic as well as a sidewalk. During the Environmental Assessment process, only two comments were received (both from the same person) regarding the width of the proposed bridge; these comments advocated widening the bridge to accommodate emergency vehicles, pedestrians, bicycles, and equestrians. The EA process included a September 20, 2002, Public Scoping Notice mailing to 7,724 individuals, groups, or organizations. A public scoping meeting was attended by 131 individuals. During the 30-day public scoping period, 10 letters were received; during the public review period 11 letters, emails, and faxes were received. None of these comments expressed concerns about the width of the

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bridge. A Finding of No Significant Impact was approved on July 24, 2003. (Exhibit 2.) The plaintiffs did not request to stop work on this project.

17. Shuttle Bus Stop Improvements: To better serve shuttle passengers, this project calls for improving 11 existing shuttle bus stops in the east end of Yosemite Valley by constructing handicapped accessible waiting platforms, seating, and small shelters, along with bus braking pads, fencing, trash cans, and way finding signs. (Rothell declaration, Exhibits 5-9.) Eight of the shuttle stops (Sentinel Bridge, Housekeeping Camp/LeConte, Happy Isles, Mirror Lake, Curry Village West, The Ahwahnee, and two partially in the corridor at the Village Store) are within the Merced Wild and Scenic River corridor. Improving these stops will not change the capacity of the shuttle system. They do, however, benefit the park's resources by concentrating individuals to the platform areas and thereby reducing impacts to surrounding natural areas. The stops will also improve shuttle system operations by facilitating improved queuing and shuttle stop delineation; visitors will be better able to identify stop locations. By making the shuttle system a more appealing option to visitors who might otherwise drive around the Valley in search of parking spaces, the Park can work toward reducing problems of congestion and parking. Halting this project will impact the experience of over 3 million annual visitors who use the Valley's shuttle system each year. Nine of the 11 shuttle stops will have utility connections, including electrical service for lighting, which will be enough to illuminate the area beneath the shelter. Also, conduit will be installed for a possible automated message board; however, there are no plans in the foreseeable future to create such a system. The stop at Mirror Lake will not have utility connections, and improvements at the Sentinel Bridge stop will only require connecting existing conduit to the electrical system.

### V. NPS WILL NOT CONTEST THE INJUNCTION FOR SOME PROJECTS UNTIL A REVISED CMP IS COMPLETED

18. Until a revised CMP is completed, the NPS will not move forward with three major projects on the plaintiffs' list of seven projects that they sought to enjoin, as well as a portion of a

fourth project: Yosemite Lodge Area Redevelopment (including the reroute of Northside Drive); release of an environmental assessment for Yosemite Village Parking and Transit Improvements; the Camp Wawona Redevelopment and Proposed Land Exchange; or removal and partial replacement of cabins for park visitors at Curry Village (a component of the Curry Village and East Yosemite Valley Campgrounds Improvement Project).

# VI. ENJOINED PROJECTS, ON PLAINTIFFS' LIST TO NINTH CIRCUIT, THAT NPS REQUESTS BE ALLOWED TO CONTINUE BY MODIFYING THE INJUNCTION

- 19. There are several projects that have been enjoined by the Ninth Circuit which have such substantial benefits to the environment and to visitor experience in Yosemite Valley or improvements to Park operations. The NPS requests modification of the injunction to allow these projects to proceed. These projects are (1) East Yosemite Valley Utilities Improvements, (2) the El Portal Office Building, (3) Curry Village Employee Housing, and (4) the camping components of the Curry Village and East Yosemite Valley Campground Improvements. The NPS would also like to remove the stumps of trees that were cut in the Yosemite Lodge and Upper Pines Campground areas following this Court's March 26 Order denying the plaintiffs' request for injunctive relief, but before the Ninth Circuit's April 20 Order.
- 20. East Yosemite Valley Utilities Improvement Plan (Utilities Plan): The single most important project that will protect and enhance ORVs in Yosemite Valley has been halted -- making improvements to utilities systems in east Yosemite Valley. Implementation of the Utilities Plan is a necessary precursor to ecological restoration in the East Yosemite Valley. Without it, true restoration of wetlands, meadows, and the river system can not be fully realized. Currently, utility lines (which have been installed piecemeal over the decades) cris-cross the Valley through meadows and wetlands, making 13 crossings of the Merced River. The Park is under a Cleanup and Abatement Order issued by the Regional Water Quality Control Board to make necessary repairs to the antiquated sewer system. Without a consolidated approach (as outlined in the East Yosemite Valley Utilities Improvement Plan, halted by the current injunction), these repairs would

continue to be made unmethodically, resulting in greater adverse impacts to ORVs and highly valued resources in Yosemite Valley.

- 21. The actions outlined in the Utilities Plan focus utilities improvements under strict resource protection measures. As noted in the Finding of No Significant Impact for this project, this comprehensive approach
  - "...would attain the widest range of beneficial uses of the environment by reducing utility infrastructure in environmentally sensitive areas, such as river- and creekbeds, floodplains, and wet meadows. The reduced number of river and creek crossings—from 13 to 3--would reduce risks to health and safety from utility failures in these areas. The proposed new utility corridors are sited to reduce undesirable and unintended consequences, namely, continued maintenance and repairs of utility facilities in environmentally sensitive areas. [Taking no action, however] would result in continued degradation of the environment and risk to health and safety due to the concentration of utility infrastructure in environmentally sensitive areas..." (Exhibit 12 to Tollefson First Declaration, dated February 23, 2004, p. 1-5.)
- 22. In my professional judgment, it is vital to move ahead with the unified improvements specified in the Utilities Plan rather than continuing to put the river's ORVs at risk with the current practice of reactive repairs. Antiquated utility lines currently cross the river 13 times; thus, there are a number of locations along the river within Yosemite Valley where there is the potential for a leak, spill, or critical service interruption. (Four spills have occurred in Yosemite Valley in the last two years.) During periods of low water, some utility lines on the river bed cause actual impediments to the free-flowing condition of the river. It simply does not make sense to repair these thirteen river crossings when implementation of the Utilities Plan would reduce river crossings to just three. The Utilities Plan also calls for relocating lines under the existing road corridors whenever possible, thus eliminating the continued presence of utility lines in meadows and other sensitive areas within the river corridor. If we repair utilities in their current location

and configuration, the full restoration of natural processes, and thus the protection and enhancement of ORVs, will be ineffective and impotent. Under the "as is" approach to repair, impacts to ORVs would be substantial, adverse, and completely irresponsible.

- 23. If utilities repairs are not allowed to occur in accordance with the Utilities Plan, the repair-in-place approach would continue to locate utility systems in meadows, wetlands, and sensitive river areas for the foreseeable future. I cannot stress emphatically enough that this method goes counter to the Park's goal of fully restoring these areas and protecting and enhancing ORVs. If the Park were to move forward with this approach, a number of long-term impacts to ORVs would be allowed to occur. For example, pipelines would continue to remain in meadows such as Ahwahnee and Cook's Meadows, and a concrete pipe encasement which crosses the river near Housekeeping Camp would be constructed on the riverbed, creating a low-lying dam. These measures would cause not prevent environmental degradation.
- 24. If the Utilities Plan is not completed as designed and described in the EA and FONSI, the ecological restoration of the meadow and river system in Yosemite Valley will not be realized. The Utilities Plan, as described in the EA and FONSI, is specifically designed to meet the mandate of the Cleanup and Abatement Order and to go beyond its directives by dramatically reducing resource impacts, specifically to ORVs. A prime example of the Utilities Plan going above and beyond the specific directives of the Cleanup and Abatement Order is the reduction of river crossings from 13 to three. As stated in the Finding of No Significant Impact, the project

"...would maintain the existing wastewater treatment capacity at the El Portal Wastewater Treatment Plant, which is currently the limiting factor on the Valley's wastewater system capacity. Similarly, no alternatives change the capacity of the park's groundwater wells or the water storage tank used to provide potable water to Valley facilities. The utility relocations, improvements, and upgrades proposed in this project ensure that Valley utilities can efficiently serve existing facilities and those identified in the *Yosemite Valley Plan*. The *Yosemite Valley Plan* calls for a reduction of visitor and employee accommodations in the Valley and for a

reduction in facilities and infrastructure in the River Protection Overlay. The utility relocations, improvements, and upgrades are designed to meet these goals. The proposed improvements are not designed to increase overall utility capacity, nor to accommodate greater numbers of employees and visitors, but to improve park utility operations by upgrading and modernizing equipment and facilities to meet currently accepted engineering safety and reliability standards. None of these improvements are expected to increase the number of visitors or employees accommodated in the Valley river corridor." (Exhibit 12, Tollefson First Declaration, dated February 23, 2004, p. E1-5.)

25. The plaintiffs' interpretation of the Utilities Plan as expressed in their earlier court papers on this topic – that improvements will ultimately lead to greater user capacity – shows a lack of understanding of how the redesigned system will benefit the environment. Modern utility systems must be designed to handle *peak* periods. For example, a properly designed and constructed wastewater system will handle peak flows and avert sewage backups and spills. The directive to avoid spills and backups is the primary focus of the Cleanup and Abatement Order. The fact that the system must be designed to handle peak flows in days of highest visitor usage, however, does not mean that the system will be used to full capacity at all times. The improved water distribution system to certain areas of the Valley will enable the system to meet fire protection requirements for historic structures (ORVs) while also meeting code requirements for safe drinking water. As stated in the Finding of No Significant Impact, the project

"...would maintain the existing wastewater treatment capacity at the El Portal Wastewater Treatment Plant, which is currently the limiting factor on the Valley's wastewater system capacity. Similarly, no alternatives change the capacity of the park's groundwater wells or the water storage tank used to provide potable water to Valley facilities. The utility relocations, improvements, and upgrades proposed in this project ensure that Valley utilities can efficiently serve existing facilities and those identified in the *Yosemite Valley Plan*. The *Yosemite Valley Plan* calls for a

reduction of visitor and employee accommodations in the Valley and for a reduction in facilities and infrastructure in the River Protection Overlay. The utility relocations, improvements, and upgrades are designed to meet these goals. The proposed improvements are not designed to increase overall utility capacity, nor to accommodate greater numbers of employees and visitors, but to improve park utility operations by upgrading and modernizing equipment and facilities to meet currently accepted engineering safety and reliability standards. None of these improvements are expected to increase the number of visitors or employees accommodated in the Valley river corridor." (Exhibit 12, Tollefson First Declaration, dated February 23, 2004, p. E1-5.)

staff of the Division of Resources Management and Science, which is responsible for the Park's cultural and natural resources management, to be located together at one site. The new building will provide consolidated office and laboratory space for NPS employees who have been relocated out of Yosemite Valley. Currently these employees work out of five separate locations in El Portal, including temporary trailers and a converted home in the NPS housing area. The new annex will include laboratory facilities to allow staff to carry out regulatory-mandated analytical activities (such as air and water quality monitoring and archeological laboratory analysis) that are currently being done in kitchen and bathroom areas.

27. The annex is to be constructed on a previously disturbed parcel (currently a non-native, grass sod, landscaped lawn) immediately adjacent to the existing NPS maintenance/warehouse complex in the El Portal Administrative Site. (Rothell Declaration, Exhibits 1-4.) The site is now within the Merced WSR boundary and would remain so under any future boundary expansion scenario. The area is zoned 3C – Park Operations and Administration – and zoning would not change for this site even if the boundary is expanded. Additionally, any boundary modifications would not change the environmental analysis conducted to date nor would it prejudice a future decision on the river corridor boundary. When the annex is completed,

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temporary office trailers within the current WSR boundary will be vacated and returned to the vendor.

- 28. The building annex site has been carefully surveyed and no outstandingly remarkable values (ORVs) for El Portal will be impacted. Assessment of the river segment's ORVs found that no further data is needed for assessment of geologic, cultural, biological, recreational, and hydrologic process ORVs. Archeological surveys have found no impacts to cultural resources will occur, and the building design has been carefully placed to avoid any impact on traditional gathering areas, which are outside the project area. Approximately three small trees would be removed but all are non-native landscape species that were planted when the warehouse complex was built in the mid 1990s.
- 29. Curry Village Employee Housing: Proceeding with this project is necessary in order to relocate concessioner employee housing from the river floodplain to areas better able to withstand development. Employees have been living in temporary housing since the 1997 flood. The temporary housing, comprised of trailers and small modular cabins, is located in parking lots and barren property and is devoid of a sense of community. These are also high visitor use areas, with employee living space and park visitors in close proximity. The extended duration of "temporary housing" for over six years impacts employee morale and the ability of the concessioner to recruit and retain quality employees. Since the river was designated Wild and Scenic, the number of beds available for concessioner employees in Yosemite Valley has been reduced by 310. This project would provide beds for 217 employees in new dormitory units for concession employees at Curry Village. This number is less than one full shift of employees necessary to serve visitor needs during the slow, winter season. Building these dorm units would not increase user capacity, but rather would shift the location of housing and provide acceptable living standards for employees. To further address any concern related to capacity in the Merced River corridor, the NPS will also commit to including removal of an equivalent number of dilapidated housing units from the Merced WSR corridor if construction of the new dormitories is allowed to proceed.

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30. Curry Village and East Yosemite Valley Campgrounds Improvements: Two components of this project – the new drive-in camping loop and the new walk-in sites at Upper Pines Campground – offer important benefits to visitors and should be allowed to proceed. The new drive-in campground loop at Upper Pines will provide 30 sites designed to accommodate recreational vehicles, providing electrical hookups to reduce the noise of generators for other campers in the campground. The new campground loop is to be constructed within the current footprint of the Upper Pines Campground, between an existing loop and the Happy Isles Loop Road. The 59 new walk-in sites that would be constructed at Upper Pines Campground would provide visitors with a unique camping experience in Yosemite Valley – the opportunity to camp in unshared walk-in campsites somewhat removed from cars. The construction of these sites in Upper Pines Campground would then allow for the eventual removal of sites and the ecological restoration of North Pines Campground. When the Merced River was designated Wild and Scenic in 1987, there were 809 campsites in Yosemite Valley. Today there are 475. The addition of 89 sites at Upper Pines Campground would allow for the removal of 86 sites in North Pines and other sites in the River Protection Overlay in Lower Pines Campground. There would be no impact on user capacity in permitting this project to go forward.

31. Stump removal: In response to the injunction of the Ninth Circuit, I immediately issued a stop work order for project-related tree cutting at Yosemite Lodge and Upper Pines Campground. Before the injunction was issued, about 500 trees (conifers and hardwoods) had already been cut over an area of approximately six acres as allowed by Orders of this court in effect prior to April 20. The stumps of those cut trees likely provide host sites for *Annosus* and *Armillaria* root diseases, which infect conifer and hardwood Sierra Nevada tree species. Stump infestation of both diseases can be reduced by mechanical treatment of removing or grinding stumps. Stump infection by *Annosus* can also be largely prevented by treating freshly cut stump surfaces with a light dusting of borate product (sodium tetraborate decahydrate or disodium octaborate tetrahydrate). While borate product application is most effective within a few days of cutting, the NPS is currently treating stumps in an effort to reduce the likelihood of *Annosus* 

infection in surrounding forest stands. The borate product is not biologically effective on Armillaria, however. Professional staff has concluded that it is far preferable from an ecological perspective to grind the stumps to reduce the probability of both Annosus and Armillaria infestation of the Valley forest. (Exhibit 3.) I declare under penalty of perjury that the foregoing is true and correct. Executed May 2/, DICE ARATION OF MICHAEL J. TOLLEFSON IN SUPPORT OF DEFENDANTS' MOTION TO MODIFY INJUNCTION CASE NO. CV-1:-00-6191 AWI DLB