

August 7, 2012

BY EMAIL

Pedro Ramos, Superintendent
Big Cypress National Preserve
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Ochopee, FL 34141-1000

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Attorney-Advisor
Department of the Interior
Office of the Regional Solicitor,
Southeast Region
75 Spring Street, SW — Suite 304
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Dear Superintendent Ramos and Mr. Stevens:

I am writing on behalf of John Adornato, a member of the Preserve's Off-Road Vehicle Advisory Committee ("ORVAC" or the "Committee"). The reason for my writing is to ask on his behalf that NPS provide the Committee with analyses of the implications for its work of Judge Steele's July 10, 2012 rulings concerning trails in the Preserve and that the August meeting of the ORVAC be postponed until those analyses have been provided.¹

As you know, on July 10, 2012, Judge Steele issued his ruling in the Bear Islands litigation. In that unit of the Preserve, NPS had opened primary and secondary trails on the basis of the 2000 ORV Management Plan and Environmental Impact Statement (the "2000 Plan"). National Parks Conservation Association ("NPCA") and others challenged that action in court. On July 10, 2012, Judge Steele ruled for plaintiffs.

Judge Steele ruled, among other things, that the Preserve had violated NEPA by designating and opening ORV trails without undertaking a supplemental environmental impact statement in compliance with NEPA, in part because those trails reflected substantial changes from what was set forth in the 2000 Plan. In addition, the Court ruled that the Preserve had violated the Organic Act, the Preserve Enabling Act and Executive Orders 11644 and 11989 in the designation and reopening of those Bear Island trails. Judge Steele found, among other

¹ As you know, my clients are contending in Court that the makeup of the ORVAC violates the Federal Advisory Committee Act, among other things, and is asking the Court to enjoin ORVAC's further operations until it has been reconstituted in compliance with legal requirements. That suit also seeks an injunction against NPS's implementation of ORVAC's decisions and/or recommendations adopted before such reconstitution. NPS has chosen to proceed with ORVAC operations without regard to that suit. By this letter, however, my clients do not waive their positions taken there.

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things, that NPS had used the “secondary trails” designation in a manner that permitted trails to be opened that were functionally the equivalent of primary trails, thereby opening more primary trails in the unit than had been provided for in the 2000 Plan. He ruled that a trail is not “secondary” if it is not designed for limited use, branching off a primary trail to connect to a specific nearby location such as a camp site. And, he ruled, a hunting destination is not such a specific location for this purpose because everywhere in the Preserve could be considered such a location; if that were an appropriate destination for a secondary trail, there would be no limit on the extent of such trails. Based on these rulings, the Judge ordered that NPS close about 24 miles of ORV trails.

These rulings clearly have significant implications for the trails on which the ORVAC has worked and on which it is still working. Among other things, over Mr. Adornato’s frequent objections, trails have been labeled “secondary” trails that are long and that are not limited by the factors discussed above. Instead, many trails have been designated in the Original Preserve that run afoul of legal requirements every bit as much as those in the Bear Island unit ordered closed by Judge Steele. Over the years, NPS has provided no authoritative guidance to the Committee concerning the limitations on its work, instead providing incorrect lay opinions in that regard or letting the ORVAC itself decide these legal issues.

On July 21, Mr. Adornato attended a meeting of an ORVAC subcommittee on which he serves, at which the objective was to make recommendations to the full ORVAC about Stairstep and Corn Dance unit trails. At that meeting, subcommittee members (other than Mr. Adornato) raised significant issues about the implications of that ruling on the past, present and future work of the ORVAC, including concerning the trail recommendations the subcommittee was discussing at that meeting. Some of the discussion became quite contentious.

Under these circumstances, it could be counterproductive and would certainly be a poor use of everyone’s time and energies for the ORVAC to proceed with the August meeting as currently scheduled. Before that meeting convenes, we ask the following:

- (i) The Office of the Solicitor of the Department of the Interior should provide the ORVAC with a legal analysis based on Judge Steele’s ruling, setting forth the requirements and limitations to be followed in ORVAC’s recommendations concerning trails in the Original Preserve. That analysis should also provide the ORVAC with guidance concerning the requirements of the Organic Act, the Enabling Act, the NPS regulation at 36 C.F.R. § 4.10, Executive Orders 11644 and 11989 and the 2006 NPS Management Policies. The analysis should provide

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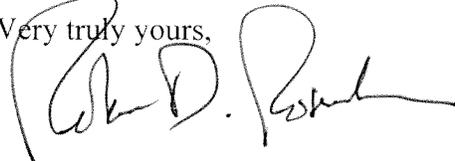
the ORVAC with clear guidance on what it may and what it may not do under these various authorities in connection with trails.

- (ii) Based on that analysis, the Preserve should provide the ORVAC with information as to which specific trails previously designated or recommended by the Committee are clearly not permissible under those requirements or limitations and which other trails are at least questionable in that regard.

The August meeting should be postponed for a reasonable period of time after these analyses have been provided to the ORVAC, to give its members time to digest the analyses. If NPS nevertheless decides to proceed with that meeting as scheduled, we ask that the agenda not include any issues relating to trails.

I would appreciate your letting me know how you intend to proceed in this regard.

Very truly yours,



Robert D. Rosenbaum

cc: David Vela, Regional Director
National Park Service

Jonathan B. Jarvis, Director
National Park Service

Rachel Jacobson, Acting Assistant Secretary,
Fish and Wildlife and Parks

Delia Clark, ORVAC Facilitator