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December 29, 2010

NPS Washington Administrative Program Center
attention: Correspondence Control Unit (CCU)
1201 Eye Street NW
Washington, DC 20005

**Re: Complaint About Information Quality: Big Cypress National Preserve
Addition Wilderness Eligibility Assessment – April 2010**

Dear Sir or Madam:

Public Employees for Environmental Responsibility (PEER) hereby submits this Information Quality Complaint (“Complaint”) pursuant to the Data Quality Act of 2000¹, the Office of Management and Budget (“OMB”) *Guidelines for Ensuring and Maximizing the Quality, Utility, and Integrity of Information disseminated by Federal Agencies* (“OMB Guidelines”)², Director’s Order #11B: Ensuring Quality of Information Disseminated by the National Park Service³ and the U.S. Department of Interior Information Quality Guidelines⁴.

PEER respectfully requests that the National Park Service (NPS) rescind the Big Cypress National Preserve Addition Wilderness Eligibility Assessment – April 2010 or re-issue it in draft form subject to rigorous peer review in order to allow public involvement as stipulated in NPS Management Policy 6.2.1.3.

¹ Section 515 of the Fiscal Year 2001 Treasury and General Government Appropriations Act, Pub.L. 106-554

² Office of Mgmt. & Budget Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452 (Feb. 22, 2002).

³ [HTTP://WWW.NPS.GOV/POLICY/DORDERS/11B-FINAL.HTM](http://www.nps.gov/policy/dorders/11B-FINAL.HTM)

⁴ <http://www.doi.gov/ocio/guidelines/515Guides.pdf>

Background

Congress mandated that the NPS study for wilderness the lands added to Big Cypress National Preserve on April 29, 1988.⁵ Pursuant to that statutory mandate and Management Policies of the NPS, the Superintendent of Big Cypress National Preserve forwarded to the Southeast Regional Office a wilderness suitability assessment for the Big Cypress Addition on June 12, 2002. That analysis determined that approximately 120,000 acres of the 147,000 acre Addition were eligible as wilderness under all applicable criteria. Subsequently, as part of the wilderness study undertaken with the Draft General Management Plan for the Big Cypress Addition, in May 2009, the NPS concluded that 111,000 acres were eligible. That number was smaller but does not significantly vary from the 2002 determination.

On April 20, 2010, Regional Director David Vela agreed to a new determination made by Pedro Ramos, Superintendent of the Preserve, that only 71,000 acres were eligible. Allegedly the much reduced number of eligible acres resulted from a re-analysis conducted by the Park, the Region and the Washington Office. Thus, the number of acres eligible for wilderness at Big Cypress Addition shrunk from 120,000 acres in 2002 to 71,000 acres in the above referenced decision of 2010.

As outlined in this complaint, PEER contends that this wilderness eligibility reassessment or reanalysis was without informational integrity and performed for the sole purpose of accommodating more routes for off-road vehicles.

A. DESCRIPTION OF CHALLENGED “INFORMATION” THAT NPS “DISSEMINATES” TO THE PUBLIC

The challenged information (Big Cypress National Preserve Addition Wilderness Eligibility Assessment – April 2010) is a wilderness eligibility assessment that was developed by

⁵ 16 U.S.C. 6981

NPS personnel for purposes of administering the Wilderness Act⁶ and was disseminated to the public by NPS as Appendix B of the Final Environmental Impact Statement for the Big Cypress National Preserve Addition – Final General Management Plan/Wilderness Study/Off-Road Vehicle Management Plan (October 2010). In addition, NPS displayed this document on the official web site of the Big Cypress National Preserve (BICY).⁷

Moreover, the nature of this information is clearly “influential” within the meaning of the Department of Interior (DOI) Informational Quality Act guidelines (which are incorporated by reference in the NPS Information Quality Guidelines) in that “the information will have or does have a clear and substantial impact on important public policies...” in that the purpose of the document is to declare the wilderness eligibility or ineligibility of specified Big Cypress Addition Lands – a determination which will affect allowed uses of eligible lands and BICY management policies.

With respect to “influential” information, NPS is held to a higher, more rigorous standard, according to the DOI Information Quality Guidelines, of utilizing “the best available science and supporting studies conducted in accordance with sound and objective scientific practices, including peer-reviewed studies where available”.⁸

B. THE CHALLENGED INFORMATION DOES NOT COMPLY WITH THE GUIDELINES BECAUSE IT DOES NOT REPRESENT THE RELIABILITY, ACCURACY AND COMPLIANCE WITH LAWS, REGULATION AND POLICY CRITERIA REQUIRED BY NPS INFORMATION QUALITY GUIDELINES

On November 23, 2010, the NPS released the Final General Management Plan/Environmental Impact Statement (GMP/EIS) for the 1988 Addition to the Big Cypress National Preserve. Appendix B of that Plan contained the startling determination that only

⁶ The Wilderness Act of 1964 (Pub.L. 88-577)

⁷ <http://parkplanning.nps.gov/document.cfm?parkID=352&projectID=11164&documentID=37623>

⁸ DOI Information Quality Guidelines at II 4.

71,000 acres of the 147,000 Addition are eligible for wilderness. Of that, the NPS would propose only 47,000 acres as wilderness.

This new NPS wilderness determination was closely guarded until the release of the Final GMP in November 2010. It was much smaller than the NPS' determination that 111,600 acres were eligible for wilderness in Appendix B of the Draft GMP (May 2009). Responsible NPS officials (Superintendent Pedro Ramos and Regional Director David Vela) accomplished this reduction by orchestrating a "reanalysis" of the eligible lands in April 2010.

1. The Challenged Information Fails to Meet NPS Requirements for Reliability Because the Information Is Not Transparent and Is Not Based on Accepted Practices.

a. The Challenged Information Is Not Transparent

NPS Information Quality Guidelines require that covered information "be made transparent, to the maximum extent practicable, through accurate documentation, use of internal and external review procedures, consultation with experts and users, and verification of the quality of the information disseminated to the public".⁹

The challenged information is a 12-page reanalysis unaccompanied by any documentation. The reanalysis itself consists of a series of unsupported declarations without citing authority or data. Unlike the NPS wilderness review of 2006, the reanalysis did not result from a thoughtful meeting on site of park, regional office and Washington, D.C. NPS staff. The reanalysis lacks the meeting notes, site-specific discussions and ground-proofing that accompanied the NPS 2006 analysis.

Second, NPS did not "involve the public in the wilderness eligibility process" through notification of its intentions to conduct the assessment as required by NPS Management Policies at 6.2.1.3.

⁹ *Id.* at III A

A third and independent basis for violating transparency guidelines is the fact that the NPS did not make this re-analysis known, also as required by Management Policies at 6.2.1.3, where it provides: "Notification will include the issuance of news releases to the local and regional news media and publication of a final eligibility determination in the *Federal Register*. The final determination of an area's eligibility or ineligibility, for further study must be approved by the Director before publication...in the *Federal Register*." The NPS does not dispute that, after the May 12, 2010 approval by then-Deputy NPS Director Daniel Wenk, the NPS failed to publish the required notice in the *Federal Register*.

b. The Challenged Information Is Not Based on Accepted Practices

NPS Management Policies declare that the agency "will seek to achieve consistency in wilderness ...practices on both an agency and an interagency basis."¹⁰ The challenged reanalysis undermines this policy of consistency in several ways detailed below.

In overview, it is important to note that the challenged reanalysis reversed the NPS' own professional review conducted in July 2006, refined over a three year period for public release in May 2009. Nothing better illustrates this than to read the NPS wilderness eligibility determination at Appendix B of the Draft GMP (May 2009) and compare it to the Appendix B found in the Final Plan of November 2010.

The reanalysis achieved these starkly different results by skewing accepted assessment practices and standards:

i. Misapplies Roadless Standard

In the 2006 wilderness review, the NPS staff correctly applied the key standard from the Wilderness Act¹¹ which directs that the Secretary of the Interior "shall review every roadless area of five thousand contiguous acres or more...in units of the national park system...under his

¹⁰ At 6.3.3.

¹¹ 16 U.S.C. 1131(c)

jurisdiction on September 3, 1964...” The 1988 Act applies this review standard to Big Cypress Addition. Yet, all eligible areas the reanalysis eliminated are “roadless.” Most, if not all, when taken together with the remaining adjacent eligible lands, is part of contiguous land blocks of 5,000 acres or more.

The DOI regulations state: “*Roadless area* means a reasonably compact area of undeveloped Federal land which possesses the general characteristics of a wilderness and within which there is no improved road that is suitable for public travel by means of four-wheeled, motorized vehicles intended primarily for highway use.”¹² Thus, if the area is not usable by four-wheeled (not four-wheel drive) motor vehicles designed primarily for highway use it is “roadless”. In several cases, the reanalysis eliminated eligible lands that are roadless because there were traces of former dirt routes or imprints left by the passage of off-road vehicles (ORVs). These routes are not passable by motor vehicles designed primarily for highway use, and meet the regulatory definition of “roadless.”

ii. Misapplies Other Key Wilderness Criteria

Following NPS Management Polices (2001 and 2006) at 6.2.1.1, the 2006 NPS analysis also applied other characteristics when determining eligibility. The characteristics come from the definition of “wilderness” in section 2(c) of the Act¹³. In July 2006 (in stark contrast to the challenged 2010 reanalysis), the NPS concluded that the eligible lands were places:

- “...where earth and its community of life are untrammelled by man.” Trammel means to harness or tame (technically to insert a bit into a horse’s mouth). While humans have dwelled and lived in the vast reaches of the Big Cypress for centuries, the Big Cypress is not tamed. Compare the lands east of the Big Cypress a few miles to the

¹² 43 CFR 19.2(e)

¹³ 16 U.S.C. 1131(c)

Water Conservation Areas, crossed by canals, or to the north to groves of oranges. That is tamed and harnessed land.

- **“...where man himself is a visitor who does not remain.”** Even without wilderness designation, the NPS does not, indeed cannot, allow human habitation and residency on the federal lands of the Big Cypress Addition. The only persons who could reside there would be NPS employees, in the discharge of duties to conserve the park and manage wilderness and other resources.¹⁴ In Big Cypress, people are visitors who do not remain.
- **“...undeveloped...retaining their primeval character and influence, without permanent improvements or human habitation.”** In the continuum of development, the eliminated lands stand close to least developed in our national park system or the nation. Along a development continuum, places like the South Rim Village of the Grand Canyon National Park are not eligible. Big Cypress park headquarters at Ochopee area is ineligible, but not the areas eliminated by the reanalysis. The natural processes of primeval nature, such as plant succession and predation to name only two, are largely intact in the Big Cypress Addition. Congress itself recognizes this by charging the NPS to “assure their natural and ecological integrity in perpetuity...”¹⁵ No one, except a few seasonal in-holders with private property rights (whose property and access would be protected by the Wilderness Act) resides on the eligible lands, and even then on only a few acres.
- **“...generally appears to be primarily affected by the forces of nature.”** It is risible to conclude, as does the challenged reanalysis, that the 40,000 eligible acres eliminated from the 2009 assessment appear to be primarily affected by human activity. Even the

¹⁴ See “minimum requirement” exception to the Wilderness Act prohibitions at section 4(c) of the Act.

¹⁵ 16 U.S.C. 698i(a)

water flow regime in the Big Cypress is less disrupted by human intervention than in the neighboring Everglades National Park which is already designated as a wilderness.

c. Uses Unreliable Methodology Not Understandable to the Public

The challenged reanalysis eliminated areas from eligibility simply because there was some evidence of past human use. Any appearance of past or present human activity brought out the red pencil because the area failed the test that “...**the imprint of man’s works (were) substantially unnoticeable...**”

The reanalysis bases its conclusion on the assertion, for the first time in the history of NPS wilderness review, that “noticeability” is only determined from the viewpoint, not of the user or visitor, but of the manager, asserting that park managers are far more able to detect evidence of past human work, largely undetectable to the “common visitor”.¹⁶

The Wilderness Act does not specify from whose point of view “noticeability” is measured. But the structure of the Act is to preserve for the “American people...an enduring resource of wilderness.” Congress created wilderness for the people who visit our federal lands, not for managers’ sensibilities. Besides, the statutory guidance is only that human works be “substantially unnoticeable” – not “undetectable”. If this were the applicable standard, many wilderness areas Congress has designated would not qualify. The Secretaries of the Interior and Agriculture have recommended, and Congress has designated, wilderness areas with far more noticeable human works than in the Big Cypress Addition, e.g. trash piles and abandoned mine shafts in Joshua Tree wilderness, old homestead remains in Shenandoah wilderness, airboat paths in the Marjorie Stoneman Douglas Wilderness to name a few.

¹⁶ The reanalysis lists as one of its assumptions that “Whether the imprint of humans’ work is substantially unnoticeable was reviewed from the perspective of a land manager and not a common visitor. Man’s past work is, in many cases, substantially noticeable to a land manager, but may not be to the common visitor.” (at 2).

2. **Challenged Document Is Contradictory.**

The challenged reanalysis eliminated many eligible acres because the lands did not afford “...outstanding opportunities for solitude or a primitive or unconfined form of recreation...” Many of the disqualified areas are visited by a scant handful of recreationists, including hikers, hunters or birdwatchers; a testament to their inaccessibility. Miles from any road, it takes hours or days to reach some of the eliminated areas by foot – and even then the hike is impeded by thick understory, sloughs and swamps.

The NPS’ own Final GMP belies the premise that these areas do not afford solitude or primitive recreation. The NPS Final GMP decided to pierce these remote areas with ORV routes precisely to overcome their limited accessibility, citing the need for balance to bring users into the little used and remote corners of the Addition.

The NPS cannot have it both ways. There will certainly be no primitive recreation when ORVs roar through these wild areas. But solitude reigns there now despite the claim to the contrary in the challenged reanalysis.

3. **Challenged Document Is Not In Compliance With NPS Policies or the Wilderness Act**

a. Public Improperly Shut Out

The challenged reassessment does not conform to the requirement in NPS Management Policies that the NPS “will involve the public in the wilderness eligibility assessment process through notification of its intentions to conduct the assessment [through] the issuance of news releases to local and regional news media...”¹⁷

Instead, the NPS reassessment and determination were kept under wraps until the release of the Final GMP/EIS on November 23, 2010 where it suddenly appeared as Appendix B.

¹⁷ At 6.2.1.3

b. Restoration of Disturbances Not Considered

NPS Management Policies at 6.2.1.3 provide that “in addition to the primary eligibility criteria, the following considerations should be taken into account in determining eligibility: ...if at the time of the assessment...their wilderness character could be maintained or restored through appropriate management actions.”

All four federal wilderness agencies have used their talents to restore an area’s wild character. When using existing human disturbance as a basis for disqualification, the reanalysis did not mention restoration, apparently presuming that restoration was neither needed nor wanted.

c. Challenged Reanalysis Circumvents Intent of the Wilderness Act

The April 2010 reanalysis applied statutory and policy standards so rigidly that it defies everything we know about wilderness review from law, regulations and congressional oversight.

No clearer indication of legislative intent can be found than the statement of Senator Frank Church, floor manager of the Wilderness Act upon its passage, when he said this: “In the absence of good and substantial reasons to the contrary – (wilderness) areas within national parks should embrace all wild land. There is no lawful policy basis for massive exclusions of qualified lands on which no development is planned.”¹⁸ In that hearing, Senator Church repeatedly told then-Assistant Secretary of the Interior Nathaniel Reed that NPS wilderness recommendations improperly eliminated too much land due to human works, such as boundary fences or patrol cabins. Mr. Reed directed the NPS to bring wilderness review into conformity with congressional intent.¹⁹

¹⁸ Pp. 59-60, Oversight Hearings on Preservation of Wilderness Areas, U.S. Senate, Subcommittee on Public Lands of the Committee on Interior and Insular Affairs, May 5, 1972

¹⁹ Memorandum of June 24, 1972

In this case, the challenged reanalysis for the Big Cypress Addition eliminated otherwise wilderness eligible lands in order to ensure corridors for ORVs. What makes the reanalysis so nakedly suspect is that the areas eliminated from eligibility also now appear as ORV corridors in the Final GMP. They fit together like a lock and key. This gross circumvention is without precedent in the history of NPS wilderness review.

E. STRUCTURED REVIEW PROCESS INAPPLICABLE

While the challenged reanalysis is part of a final National Environmental Policy Act (NEPA) document, as the appendix to the GMP/EIS, as noted above, the public was given no chance to review and comment on it as it appeared for the first time in the final EIS.

As a consequence, the public could not use the NEPA process for raising concerns about this reanalysis, as its existence was unknown and revealed only in the Final EIS. As noted earlier, NPS violates its own policies with respect to providing public notice of its intentions to reassess wilderness eligibility for the BICY Addition land or providing the public with a notice published in the *Federal Register*.

Moreover, the NPS released the Draft GMP/EIS for the Big Cypress Addition in July 2009. That document restated the determination that 111,601 acres of the Addition were eligible for wilderness. The NPS Preferred Alternative then called for a wilderness proposal of 85,862 acres. The reanalysis had not even been authorized at the time the public comments were submitted in September 2009 – so the public had no opportunity through the NEPA process or any other process to raise concerns about this reassessment. In fact, the public and agency comments were premised on the findings of the 2009 wilderness eligibility assessment.

It is our understanding the BICY Superintendent Pedro Ramos decided to move forward with this challenged wilderness eligibility reassessment as a fallback strategy, long after the NEPA process had closed. Initially, Superintendent Ramos sought a waiver from of NPS

Management Policies that constrained his flexibility in managing wilderness eligible lands. NPS Management Policies have long provided that the NPS manage wilderness eligible lands so as not to alter their eligibility until the review process is completed by Congress. Current Management Policies state: “The National Park Service will take no action that would diminish the wilderness eligibility of an area possessing wilderness characteristics until the legislative process of wilderness designation has been completed. Until that time management decisions will be made in expectation of eventual wilderness designation.” Further, “*For purposes of applying these policies, the term “wilderness” will include the categories of eligible, study, proposed, recommended, and designated wilderness. Potential Wilderness may be a subset of any of these five categories. The policies apply regardless of category except as otherwise provided.*”²⁰ (Emphasis added). Thus, under the latter directive, the NPS must manage lands it determines wilderness eligible as if it were wilderness, *as a matter of policy*.

Early in 2010, Superintendent Ramos and his supervisor, Regional Director Vela, met with the NPS Director Jonathan Jarvis in Washington, D.C., a meeting attended by several others. They requested that the Director use his authority to waive this provision of Management Policies. Their rationale was simple. If the NPS’ GMP preferred alternative ultimately decided to allow motorized use on lands also determined to be wilderness eligible, the park could not construct those trails and/or allow motorized use UNTIL the wilderness review process was completed by action of Congress. They did not wish to wait. Rather they wanted the ability to implement any ORV trail/use system upon signing of the Record of Decision for the GMP. Director Jarvis heard their request but denied it, refusing to issue a waiver of the Management Policies on interim wilderness management standards.

²⁰ Management Policies 6.3.1.

After Director Jarvis' decision not to waive Management Policies for them, Messrs. Ramos and Vela implemented a new strategy. If lands deemed eligible for wilderness stand in the way of their pending ORV decision, they would simply reanalyze the lands. They conducted a quick reanalysis. Mr. Vela submitted the re-analysis to the Director on April 20, 2010. Deputy Director Dan Wenk approved it on May 12, 2010.

This action short-circuited both the NEPA process and the integrity of NPS land management decision-making. The gaming of the system by NPS officials to reach a pre-determined result means that existing mechanisms under NEPA for raising concerns are not applicable.

F. PEER IS AFFECTED BY THE INFORMATION ERROR

PEER is a non-profit organization chartered in the District of Columbia with the mission to hold government agencies accountable for enforcing environmental laws, maintaining scientific integrity, and upholding professional ethics in the workplace. PEER is an "affected person" in that PEER 1) has been an active participant in the wilderness review and planning for the Big Cypress Addition; 2) PEER is the principal watchdog organization tracking NPS compliance with the Wilderness Act;²¹ and 3) on behalf of PEER members who are current and former NPS employees, PEER has a vital interest in ensuring that NPS comply with applicable laws, regulations and its own policies.

G. RECOMMENDATIONS FOR CORRECTION OF THE INFORMATION CHALLENGED BY THIS COMPLAINT

Accordingly, PEER respectfully requests NPS take the following steps to comply with the Data Quality Act:

²¹ <http://www.peer.org/campaigns/publiclands/wilderness/index.php>

1. Retract or rescind the Big Cypress National Preserve Addition Wilderness Eligibility Assessment – April 2010 from official publication and cease further distribution.
2. Issue a public statement, posted on official websites, that the Big Cypress National Preserve Addition Wilderness Eligibility Assessment – April 2010 has been withdrawn from publication and further official consideration due to violations of the Data Quality Act.
3. Undertake a new externally peer-reviewed wilderness eligibility assessment for BICY Addition Lands or publish a *Federal Register* notice that the 2009 assessment will remain in effect.

CONCLUSION

Based on the foregoing information, PEER respectfully requests that the NPS rescind or remove the Big Cypress National Preserve Addition Wilderness Eligibility Assessment – April 2010 from official publication and cease further distribution and correct its online and printed information on this matter. Since the challenged document is “influential” information, we urge NPS reviewers of this complaint to employ the more rigorous standard of review called for in the DOI guidelines. Regardless of the review standard employed, however, PEER does not believe that this challenged reanalysis exhibits the qualities of integrity, objectivity, reliability and utility required by the Data Quality Act as implemented by the NPS and DOI Guidelines.

Pursuant to the NPS Guidelines, I look forward to your response to this Complaint within 60 days. Thank you in advance for your prompt attention to this matter.

Sincerely,

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