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16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA
18 FRESNO DIVISION

19 FRIENDS OF YOSEMITE VALLEY,)
20 et al.)
21 Plaintiffs)
22 v.)
23 DIRK KEMPTHORNE, in his)
24 official capacity as Secretary of)
25 the Interior, et al.,)
26 Defendants.)

Case No. CV-F-00-6191 AWI DLB
DECLARATION OF
DR. NIKI STEPHANIE NICHOLAS IN
SUPPORT OF DEFENDANTS'
REPLY BRIEF FOR MOTION OF
STAY PENDING APPEAL
DATE: March 5, 2007
TIME: 1:30 p.m.
PLACE: Courtroom 2
JUDGE: Hon. Anthony W. Ishii

26 I, Dr. Niki Stephanie Nicholas, declare as follows:

27 1. I have served as the Chief of Resources Management and Science in Yosemite
28 National Park since 2004 and oversee a staff of more than 100 cultural and natural resource

1 science professionals including (but not limited to) park archeologists, historical landscape
2 architects, hydrologists, geologists, ecologists, botanists, wildlife biologists, and ecological
3 restoration specialists. I have a Bachelor's degree in Biology from Northwestern University, a
4 Master's degree in Ecology from The University of Tennessee, and a Doctorate in Forest
5 Biology from Virginia Tech. I have more than 25 years of experience in ecological assessment
6 and research and am one of approximately 250 individuals with the certification of Senior
7 Ecologist by the Ecological Society of America.

8 2. I have reviewed the plaintiffs' Memorandum in Opposition to the Motion for Stay
9 Pending Appeal (Opposition Memo, Doc. 391) and supporting declarations (Docs. 392, 393,
10 394). The purpose of this declaration is to provide information about why a vital sewer line
11 replacement project enjoined by the U.S. District Court must be allowed to proceed while the
12 NPS prepares a new Merced Wild and Scenic River Comprehensive Management Plan (Merced
13 River Plan).

14 3. The East Yosemite Valley Utilities Improvements Project (Utilities Project) must
15 move forward in order to allow for the ecological restoration of Yosemite Valley's wet
16 meadows. Right now, there is a spaghetti-like network of deteriorated sewer lines of different
17 ages through meadows and other sensitive habitats in the Valley. These lines act as a conduit,
18 draining the meadows and negatively impacting groundwater flow. The lines are old, and if left
19 in place and in continued use, will require constant maintenance and repair. In the long-term, the
20 action of digging up lines to repair them is significantly more damaging to the meadows and
21 wetland areas than the relocation of the lines out of these very ecologically sensitive areas.
22 Before natural process can be restored to these areas, which is the goal of ecological restoration,
23 these lines need to be removed or collapsed in place and plugged. The short-term effect of
24 relocation is the only way to achieve long-term benefits and restore natural processes. The
25 overall goal of the Utilities Project is to replace deteriorated utility lines and remove them from
26 these sensitive resource areas.

27 4. Underground utility lines compromise the health of meadows and wetlands in a
28 number of ways. Cracked sewage pipes not only leak, but they can collect water and act as a

1 conduit to move groundwater down-gradient, which moves water *out* of meadows and wetlands.
2 Ultimately, the water that seeps into pipes ends up at the sewage treatment plant instead of
3 staying in the meadows. Late-season, high water tables are the most important environmental
4 factor necessary to maintain meadows in Yosemite Valley. During high water season, in excess
5 of 200,000 gallons per day arrive in the El Portal sewage treatment plant than would be
6 otherwise expected given the amount of domestic water that is used in the Valley. The
7 quantitative difference is most likely due to infiltration of water from wetlands and meadows into
8 leaky and cracked sewer pipes at times of inundation. Thus, those sewage pipes are contributing
9 to the drying out of the meadows. Removal of leaky sewer pipes will keep groundwater in the
10 meadows, avoid possible release of contaminated waters, and remove the risk of altered water
11 tables in meadows and wetlands.

12 5. The litigants' position promoting repeated emergency repair of the sewage lines
13 would result in a two-fold degradation of the ecologically sensitive meadows and wetlands. Not
14 only would there continue to be significant risk of further leakage occurring elsewhere in these
15 fragile areas, but also there would be potentially unlimited repeated considerable ground
16 disturbance to these sensitive resource areas.

17 6. It is important to note that arguments in the plaintiffs' Opposition Memo strongly
18 support avoiding repeated disturbance of the meadow ecosystem. This inconsistency exists
19 throughout their characterization of the environmental assessment of the Utilities Project. The
20 litigants noted a number of times in their declaration that utility removals and abandonment
21 would result in overall long-term beneficial effects associated with the restoration of more
22 natural subsurface water flows in meadow and riparian areas, and would result in only localized
23 short-term minor impacts to only the specific construction site area (Opposition Memo 22-31).

24 7. In their brief at pages 18-31, the plaintiffs indicate that the Utilities Plan
25 Environmental Assessment (EA) supports their claim that implementation of the Preferred
26 Alternative (Alternative 2) in the Utilities Plan EA will degrade conditions in the river corridor
27 as compared to the No Action alternative. Instead the EA establishes that conducting sewer
28 repairs only in accordance with the CIP, which is what is described in the No Action alternative,

1 would lead to long-term damage and disturbance to sensitive ecological areas. By contrast,
2 conducting the work in the manner described in Utilities Plan Phases 2 and 3 will lead to long-
3 term *beneficial* impacts to wetlands, vegetation, and wildlife resources, to name just a few. For
4 example, at page 19 of their brief, plaintiffs cite to Pages IV-87 and IV-35 of the EA regarding
5 impacts to Wetlands from Alternative 2 and the No Action Alternative. Alternative 2 in the EA
6 clearly states that there would be “short-term, minor adverse effects to wetlands *and localized*
7 *long-term, minor beneficial effects to wetlands from reducing utility infrastructure in wetland*
8 *areas and allowing natural subsurface water flows to return.”* (Emphasis added.) The No
9 Action alternative, by comparison, would “retain utility infrastructure in wetland areas and other
10 ecologically sensitive areas. The continuing disruption of natural subsurface water flows would
11 result in local, *long-term minor adverse effects* on wetlands and aquatic resources.” A careful
12 reading of similar excerpts chosen by plaintiffs on page 20 of their brief reveals the same
13 conclusion; Alternative 2 is environmentally superior to the No Action alternative.

14 8. On a related matter, I need to point out that other EA excerpts relied on by plaintiffs
15 omits language proving that there are no adverse effects associated with select project areas in
16 Alternative 2. Here are a few examples related to Happy Isles area:

- 17 • Plaintiffs fail to cite language from the EA that clearly states that no wetland or
18 aquatic habitats exist in the Happy Isles area of the project (Brief at 25:3-5, EA page
19 IV-86).
- 20 • Plaintiffs fail to acknowledge that the EA says there will be no effect on habitat size,
21 integrity or connectivity, and no effect on wildlife populations or abundance
22 associated with Alternative 2 in the Happy Isles area (Brief at 25:11-16, EA page IV-
23 101).

24 9. I need to point out another example of the plaintiffs’ lack of understanding of the
25 science documented in the EA. Plaintiffs cite pages IV-76 (should be 77), IV-82-83, IV-87, IV-
26 95 and IV-101 of the EA for the proposition that Alternative 2 will adversely impact
27 approximately 50 acres soils, vegetation and habitat in the Ecological Restoration Area.
28 (Opposition Memo page 27) Nothing could be further from the truth. A careful reading of the

1 actual text of the EA (as opposed to plaintiffs' paraphrasing of that text) demonstrates that the
2 types of "effects" that would occur in the Ecological Restoration area are effects from the
3 removal or crushing of old, deteriorated sewer lines. For example, page IV-101 of the EA states
4 that "Utilities would be permanently removed and habitats would be restored over approximately
5 44.6 acres." As I explained in Paragraph 3 above, the NPS cannot fully restore wet meadow
6 hydrology and plant new vegetation until the old sewer lines are removed or collapsed in-place.
7 This is exactly what would happen if the utility work outlined in Alternative 2 for the Ecological
8 Restoration area is allowed to proceed.

9 10. Relocation of existing underground utilities out of the sensitive resource areas is the
10 first step toward restoration of meadow and wetland communities in Yosemite Valley.
11 Ecological restoration endeavors to restore the processes that sustain natural communities.
12 Ground water and flood flow regimes must be intact to truly restore the vegetation and wildlife
13 in natural areas.

14 I declare under penalty of perjury that the foregoing is true and correct. Executed on
15 February 26, 2007, at El Portal, California.

16
17 
18 Niki Stephanie Nicholas, Ph.D.