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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 JOEL I.
WAGNER_IN SUPPORT OF
DEFENDANTS' OPPOSITION
TO PLAINTIFFS' MOTION
FOR RELIEF

DATE: October 10, 2006
TIME: 1:30 p.m.
PLACE: Courtroom 3
JUDGE: Hon. Anthony W. Ishii

26 I, Joel I. Wagner, declare as follows:

27 1. I earned an undergraduate degree in biology in 1974 and a Master of Science in
28 Environmental Science in 1980 (both from Indiana University - Bloomington). I have 26 years

1 of work experience in wetland hydrology, restoration, policy, and regulatory issues with the
2 National Park Service (NPS). From 1980-1987, I was a hydrologist at Everglades National Park
3 working on restoration and management of the park's wetland systems. In 1988, I took a
4 hydrologist position with the NPS Washington Office, Water Resources Division (WRD). Since
5 1990, I have served as the WRD Wetland Program Leader, with Servicewide responsibility for
6 wetlands policy and technical issues. I have written and administered NPS wetland policies and
7 regulatory procedures and authored 39 technical reports, articles, and papers in the wetland,
8 riparian, and water resource fields. I have had formal training in Corps of Engineers wetland
9 delineation procedures and in the Cowardin wetland classification system. I have delineated
10 wetlands for national parks, taught NPS wetland delineation courses, and reviewed numerous
11 wetland delineation reports in my capacity as the NPS Wetland Program Leader. I am certified
12 as a Professional Wetland Scientist (#000219) by the Society of Wetland Scientists.

13 2. With respect to Dr. Robert Curry's declaration for this case, I want to clarify NPS
14 policy and guidance regarding use of the 1987 Corps of Engineers Wetlands Delineation Manual
15 and the Cowardin wetland definition and classification system (Cowardin et al. 1979). The NPS
16 uses the Cowardin wetland definition to identify wetlands that are subject to the Service's
17 wetland protection procedures (NPS Director's Order #77-1: Wetland Protection and NPS
18 Procedural Manual #77-1: Wetland Protection). In my experience, the relationship between the
19 two documents is sometimes misunderstood, so I provide the following clarification.

20 3. The Cowardin definition, like the 1987 Corps Manual, utilizes 3 parameters (wetland
21 hydrology, hydrophytic vegetation, and hydric soil) to identify wetlands. The Cowardin
22 definition includes all Corps wetlands (all 3 parameters present), but also recognizes that there
23 are some additional sites with wetland hydrology that may be missing the hydric soil or
24 hydrophytic vegetation parameters due to physical factors (e.g., where wave action or currents
25 prevent vegetation from establishing, such as in river channels or active shorelines) or chemical
26 factors (e.g., playas or mudflats where high salinity excludes plant life). Such unvegetated or
27 non-soil sites are still considered to be wetlands under the Cowardin definition. The Cowardin
28 definition does not call for a simple, single-parameter approach where the presence of any of the

1 three parameters automatically qualifies a site as a wetland. For example, drained hydric soils
2 that no longer have wetland hydrology or support wetland vegetation are not wetlands, even
3 though relic hydric soil indicators may exist (p.3, Cowardin et al., 1979).

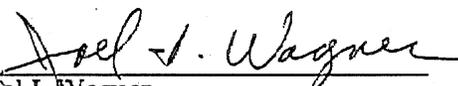
4 4. To clarify appropriate delineation procedures, the NPS advised Jones & Stokes to use
5 the following protocols for identifying wetlands subject to NPS policies and procedures:

6 a. For vegetated sites, use the procedures found in the 1987 Corps Manual
7 (as amended).

8 b. For delineating all other wetland types (e.g., unvegetated or non-soil
9 wetlands such as many mudflats, streambeds, intertidal portions of beaches, etc.),
use the boundaries and limits of wetland systems as described in Cowardin et al.
(1979).

10 5. Therefore, I disagree with the implication in paragraph 7 of Dr. Curry's declaration
11 that in using the 1987 Corps Manual "...Jones and Stokes used a more stringent set of criteria to
12 determine the presence or absence of wetlands than would be required for NPS sites and
13 policies." As explained above, proper application of the 1987 Corps Manual for vegetated sites,
14 supplemented by the Cowardin approach for unvegetated or non-soil sites, yields satisfactory
15 wetland delineations on NPS lands. Chapter 2 of the *Final Yosemite Lodge Area - Delineation*
16 *of Waters of the United States, Including Wetlands, and River Protection Overlay of the Merced*
17 *River, Yosemite National Park, California* (Jones & Stokes, 2003) indicates that the contractors
18 applied both methods and properly delineated wetlands in the project area for Yosemite Lodge.

19 I declare under penalty of perjury that the foregoing is true and correct. Executed on
20 September 20, 2006, at Lakewood, Colorado.

21
22 
23 Joel I. Wagner