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Testimony before the Sub Committee on Public Lands and Environmental Regulation

"Public Impacts of Closing Amenities at Yosemite National Park"

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I am Peter T. Hoss, a native of Yosemite, retired attorney, and author of a book entitled "Born in Yosemite" published in 2011, discussing 75 years of human history in Yosemite since 1934. I am a founding member of a group known as Yosemite For Everyone, consisting of persons with long experience in Yosemite from diverse backgrounds. Among our founders are a retired superintendent, a retired ranger now an attorney, a retired Federal Magistrate and his wife, the founder of the Yosemite Renaissance art program, the retired 20 year CEO of the principal Yosemite concessioner, and a long time resident and representative of gateway communities and horse owner and backcountry enthusiast.

The Mission Statement of Yosemite For Everyone (Exhibit 1) is to protect the right of the general public to enjoy Yosemite, as provided in the original grant to the general public in 1864 and the Organic Act of 1916, creating National Parks. Yosemite For Everyone does not consider our real opponent in this matter to be the National Park Service (NPS), although we are critical of some of their actions. Our real opponents are two local organizations based in Mariposa California, who call themselves "Friends of Yosemite Valley" (FOYV) and "Mariposans for Environmentally Responsible Government" (MERG), Their apparent mission is to remove or seriously limit visitation by the general public to Yosemite Valley in order to "restore" Yosemite Valley to a wilderness it never was. They have twice filed lawsuits to overturn plans drafted by the NPS. In neither lawsuit were they joined as plaintiffs by nationally recognized environmental organizations such as the Sierra Club, the Wilderness Society or the National Parks and Conservation Association

In Chapters 18, 19 and 20 of my book, after research, I followed and researched the history of the litigation by FOYV and MERG as it developed. I discussed the litigation in detail with two superintendents involved at important times and two of the plaintiffs.

The argument made by FOYV and MERG is based on the premise that the more recently enacted Wild and Scenic Rivers Act (WSRA) imposes new regulations on the NPS when the

rivers in question are in a National Park already under regulation by the NPS. In some cases, as in Yosemite Valley in particular, the regulations are contradictory.

Any attempt to impose guidelines under the WSRA intended for rivers in a pristine undeveloped state on an river such as the Merced River in Yosemite Valley which has been devoted to recreational use for almost 150 years will necessarily pose a dilemma for the agency charged with managing the area for the enjoyment of visitors, in this case the NPS.

The WSRA recognizes this dilemma and has created a "recreational" designation for a river classified as wild and scenic. The Merced River flowing through Yosemite Valley and other recreational areas in Yosemite National Park has been properly recognized as "recreational."Certain portions of the other major river which flows through Yosemite National Park, the Tuolumne River, have also been classified as recreational. A separate master plan for the Tuolumne River is in process.

The joint resolution applying the WRSA to rivers flowing through Yosemite National Park operates prospectively, not retroactively, and pertains only to future development The NPS, driven by fear of future lawsuits by FOYV and MERG, has violated this directive and has attempted to apply WRSA guidelines to existing infrastructure, historic bridges, and traditional recreational activities in place long before the WSRA was enacted. The current Draft Plan goes too far in this direction.

This adds up to a Draft Plan fatally flawed and grounded on the false premise that WRSA guidelines supersede and nullify the terms of the original grant of Yosemite for the enjoyment of the general public and future generations, and the Organic Act of 1916, which reaffirms this objective. This is certainly true when WSRA guidelines are applied to areas classified as "recreational" areas. An overlay of conflicting regulations will only lead to controversy and future litigation, which may come from a different direction if the NPS insists on forcing an unpopular Draft Plan on the general public.

We would like to point out two ways by which the NPS can resolve this dilemma, avoid continuing litigation and move on to more urgent matters requiring their attention. These measures can be taken under the existing WSRA without changing the law. A change in the law would be desirable but more difficult. We appear before you to urge you to exercise your influence to encourage the NPS to take these steps, and if the NPS refuses to respond, take these measures for them by amending and clarifying the impact of WRSA on rivers within Yosemite and other National Parks:

1) The NPS is required by the National Environmental Protection Act (NEPA) to include a "no action" alternative in any master plan. In this case this would mean that no new WSRA

requirements are needed or warranted. Infrastructure and traditional activities remain (see exhibit 4 for a definition of the impact of the decision to elect "no action" on this plan)

2) Yosemite Valley and areas designated "recreational" should be excluded from the current Draft Plan and any future plan in the same manner as the existing Hetch Hetchy Dam on the Tuolumne River is excluded from a plan for a river which is supposed to be free flowing under the WSRA. What is there stays there. This action would permit the NPS to complete a plan required by the WSRA as written by applying it only to areas of the river which are truly wild and scenic and have already been classified as wilderness by the NPS, comprising 95% of Yosemite National Park.

We submit the following points in support of our position.

1. Tony Coehlo, who introduced the bill requesting the Merced River to be designated under the WSRA in the House of Representatives, did not intend it to be applied to Yosemite National Park at all (see Exhibit 2), letter from former Congressman Tony Coehlo to Jon Jarvis) His intention was modified by the Senate but only as applied to future action (see Exhibit 3, letter from Peter T. Hoss to the Mariposa Gazette)

2. At present there is no law or court order which obligates the NPS to adopt any of the proposed alternatives other than "no action." The governing document is a 2009 settlement agreement which superseded the now vacated and dismissed action in the Federal District Court, appealed to the 9th Circuit Court of Appeals. This is a complex 21 page document with numerous exhibits (see exhibit 4; summary of the most important provisions)

3. In the settlement agreement the NPS, in exchange for the dismissal of the legal action, agreed to pay plaintiffs' attorneys $1,025,000 of taxpayers' money which they were not ordered to pay, and to undertake a new comprehensive master plan, which they were not obligated to undertake. Attorneys for plaintiffs' recommended "experts" from outside Yosemite to draft the plan. (see exhibit 5, a letter from Julia Olsen attorney for plaintiffs') This letter is full of references to WSRA guidelines. Many of the recommendations from plaintiffs" attorneys were inserted in the settlement agreement. The plaintiffs , FOYV and MERG speak only for themselves, not the unrepresented general public, who paid the bill for the plaintiffs' attorneys and the comprehensive plan. (See exhibit 4) The NPS chose to add details beyond anything requested by plaintiffs.

4. As far as we can determine Congress did not appropriate to the funds to pay plaintiffs' attorneys or to pay for the cost of preparing the comprehensive master plan. Congress did appropriate funds to repair extensive 1997 flood damage to Yosemite Valley infrastructure. We understand that an accounting of the flood repair funds has been demanded by Congressman Tom McClintock. We believe this should be pursued.

5. No actual degradation of the Merced River has been demonstrated. The elimination of many traditional recreational activities which bear no relationship to the protection of the river have been recommended (bicycle rental, daily horseback rides, ice skating, raft trips, swimming pools) with no compensating benefit to visitors. Wendy Brown Berry will provide more details.

6. The undefined phrase "restrict commercial activities" appears in proposed alternatives. It is clearly aimed at restricting concessioners for charging fees for providing visitor services. If this is not the case, why is it acceptable to bring one's own bike, raft or horse but not to rent one? There is no logic behind this distinction. Concessions from the private sector have served National Park visitors since the inception of the NPS. They are regulated down to the price of a candy bar by a whole separate body of law. Restrictions on visitor service do not belong in this plan and should be stricken.

7. We are not able to cite numbers, but we are aware of overwhelming objection to all alternatives other than "no action" from the general public. This large number of complaints induced Congressman Tom McClintock to write a strong letter of protest against the Draft Plan (exhibit 6)

CONCLUSION As above stated, we request that Congress exert its influence to aid the NPS in closing the door on further litigation by adopting the "no action" alternative. The effect of a "no action vote is explained in (Exhibit 7) FOVY and MERG received what they bargained for in the settlement, a comprehensive draft plan not required by law or funded by Congress. They are certainly not entitled to dictate which of five unacceptable alternatives the NPS must select. Moreover, they are committed to a mediation procedure before they can sue (see exhibit 4) Others displeased with the plan who have not been represented are not committed to mediate before suing.

We also request that Congress exert its influence on the NPS to exclude areas designated "recreational" within Yosemite National Park from this draft plan or any future draft plan.

If the NPS does not avail itself of this opportunity to extricate itself from the damned if you do, damned if don't dilemma in which it finds itself, we request that Congress do the job for it by amending and clarifying the WRSA as applied to rivers flowing through National Parks. Also, if the Park Service refuses to follow the will of the general public by adopting any alternative other than "no action" we request that any such Draft Plan not be approved or funded by Congress.

There are many other undesirable features in this Draft Plan as well as some which are helpful. However, they are all thrown together in a 2500 page document. The good cannot be separated from the bad, so "no action" is the only common sense solution. On behalf of

Yosemite For Everyone and a great silent majority who want to keep enjoying Yosemite I urge your serious and thoughtful consideration of these suggestions.

Respectfully submitted

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