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Fox, Lori

From: Cyndy_Holda@nps.gov
Sent: Tuesday, April 08, 2008 3:46 PM
To: undisclosed-recipients
Subject: Message from R Fisher and T Broili re: Carrying Capacity

Cyndy,
Please forward the attached status report on carrying capacity to the Reg Neg Committee. Committee members should contact me (Robert Fisher) with any questions or comments.
Thanks,
Robert Fisher

April 8, 2008

TO: Reg Neg Committee
FROM: Thayer Broili, CAHA
SUBJECT: Carrying Capacity

As we committed at the last ORV Reg Neg Meeting, below is what has occurred during the delay.

Sandy Hamilton and I were concerned that we did not have enough time to research and consider what the requirements of NPS agency-wide are for carrying capacity. We wanted to avoid asking the work group members to spend time and energy on something that might not "past muster" when it came to Committee recommendations and the preparation of the ORV EIS. We have done a couple of things to assure ourselves of the direction that needs to be taken. These are:

- Review of the recent Merced River Case (Yosemite v. Norton) including discussion with more knowledgeable NPS staff, to see if there were any issues that would be problematic for our effort.
- Discussion with NPS staff regarding appropriate approach in the EIS to avoid legal problems.
- Discussion with NPS staff to get a feel for any requirements for justification of standards.

While our conclusions are not absolutely definitive, our tentative conclusions on these items are:

- If we proactively address the issue in the EIS and the public process, it will go a long way toward avoiding part of the basis of the Merced River case which found, in part, that NPS did not proactively address the issue. Also, the basis for the case was partially on statutes not at work in our situation, namely the Wild and Scenic Rivers Act.
- We have not absolutely determined if the EIS must address the issue "globally" in all of its alternatives or if it may be contained in one or more (but not all) alternatives. We're leaning toward the first of these options.
- As long as any standards are logically related to the plan's objectives for ORV management, they should be acceptable and don't necessarily require extensive social science research or special studies.

We will provide additional background/reference materials we find to Robert for distribution. We are continuing to look at carrying capacity issues to develop a sufficient comfort level and proposed approach.