United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

HIGH SIERRA HIKERS ASS'N. et al.,

Plaintiffs,

v.

BRADLEY POWELL, et al.,

Defendants.
_____/

No. C-00-01239-EDL

AMENDED ORDER GRANTING INJUNCTIVE RELIEF

I INTRODUCTION

On April 10, 2000, Plaintiffs High Sierra Hikers Association, et al. ("Plaintiffs") filed this action for declaratory and injunctive relief against Defendants Bradley Powell, et al. ("Defendants"). The complaint alleges that Defendants violated the National Forest Management Act ("NFMA"), 16 U.S.C. §§ 1600-1687, the Wilderness Act, 16 U.S.C. §§ 1131-1136, the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4370d and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706.

Plaintiffs are nonprofit entities dedicated to conservation, education and wilderness protection. Each organization has members who use the Ansel Adams and John Muir Wilderness Areas for various recreational activities. Defendants are the United States Forest Service itself and the Chief of the United States Forest Service as well as a Regional Forester and two Forest Supervisors. Intervenors are packers who operate commercial pack stations in the Inyo and Sierra National Forests and the Ansel Adams and John Muir Wilderness Areas and their associations, the National Forest Recreation Association and the High Sierra Packers Association.

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In a June 5, 2001 Order, the Court dismissed as moot Plaintiffs' claims under NFMA and one of Plaintiffs' claims under the Wilderness Act. In addition, the Court granted in part and denied in part Plaintiffs' Motion for Summary Judgment and Defendants' Motion for Summary Judgment. Specifically, the Court found that the Forest Service violated NEPA by failing to assess, in advance, the environmental impact of issuing special use permits to commercial operators in the wilderness. Thereafter, on June 29, 2001, Plaintiffs moved for injunctive relief. Defendants and Intervenors separately opposed Plaintiffs' motion and Plaintiffs timely replied.

One hour before the July 30, 2001 hearing, Defendants filed objections to the declarations submitted with Plaintiffs' reply brief. At the hearing, the Court ordered Plaintiffs to respond to Defendants' objections by August 2, 2001. The Court also ordered the parties to submit, by August 6, 2001, short briefs regarding the effect, if any, of the operating plans on Plaintiffs' claim for relief.

On July 31, 2001 and August 6, 2001, Defendants filed the 2001 operating plans for the pack stations at issue. On August 6, 2001, the parties submitted their briefs regarding the operating plans.

On September 4, 2001, the Court permitted Defendants and Intervenors to file declarations responsive to Plaintiffs' reply declarations. Defendants and Intervenors filed these supplemental declarations on October 1, 2001.

On September 24, 2001, the Court sought further briefing regarding proposals for injunctive relief. Defendants and Intervenors filed their proposals on October 3, 2001. Plaintiffs filed their proposal for injunctive relief on October 10, 2001. Pursuant to the Court's Order of October 15, 2001, Defendants and Intervenors filed supplemental briefs regarding injunctive relief on October 19, 2001. Upon consideration of the parties' submissions, the arguments at the hearing, the relevant authorities and the record in this case and good cause appearing, the Court enters the following Order.

II BACKGROUND FACTS

The facts of this case are set forth at length in the Court's June 5, 2001 Order. Briefly, the two wilderness areas at issue here, Ansel Adams and John Muir, are located within the Inyo National Forest and the Sierra National Forest. Commercial pack stations that operate in the wilderness areas must obtain special use permits to do so. The Forest Service issued special use permits to these commercial pack stations without assessing the environmental impacts in advance as required by NEPA. These violations of NEPA form the basis of Plaintiffs' request for injunctive relief.

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On April 20, 2001, the Forest Service issued the Final Environmental Impact Statement ("FEIS"), Record of Decision ("ROD") and Wilderness Management Plan for the two wilderness areas. In the ROD, the Forest Service decided to adopt a plan that "replaces the existing wilderness plans for the Ansel Adams (formerly Minarets), John Muir, and Dinkey Lakes Wildernesses and . . . will mak[e] non-significant amendments to the [Land Resource Management Plans] for the Sierra and Inyo National Forests." ROD, April 2001, at 1.

Portions of the ROD and the FEIS are particularly relevant to Plaintiffs' complaint and the parties' proposals regarding injunctive relief. Specifically, the ROD establishes a five-year phase-in period for implementation of commercial trailhead quotas, allowing 150% of the quota in the first year and gradually reducing the percentage by ten percent each year for five years. ROD, April 2001, at 10. The ROD also establishes new service day allocations to be implemented in 2002 based on the average of the highest two years' use from the last five years. ROD, April 2001, at 12; FEIS, April 2001, at App. I:11-13. Under the ROD, the target completion date for NEPA compliance for all permittees is 2008, although most environmental analyses will be completed by at least 2005. ROD, April 2001, at 36. There is no deadline for completion of a cumulative environmental analysis.

The FEIS also includes a table providing the limiting factors for each trailhead and giving each trailhead a rating of "green," "yellow/green," "yellow," "yellow/red" or "red." FEIS, April 2001, at App. D:20-24. These ratings correspond to the level of resource concern at the trailhead. In "red" areas, there are very strong resource concerns and the current use of the area is affecting resource quality. In "yellow" areas, there are resource concerns, but none where reducing use would affect the concern. Finally,"green" areas have no known resource concerns. Stock use is expressly cited as a factor affecting the rating in three of the "red" and "yellow/red" areas, although stock use may actually be a factor in additional areas as the cited factors are not necessarily all-inclusive. The ROD also requires the Forest Service to approve all wilderness permits "to assure equity in access among users and for the proper administration of the quota system." ROD, April 2001, at 13. The ROD also contains Forest Orders which were targeted for completion within one year of the ROD. ROD, April 2001, at 35.

III DISCUSSION

To determine whether injunctive relief is appropriate in the context of environmental litigation, courts apply a traditional balance of harms analysis. Amoco Prod. Co. v. Village of Gambell, 480 U.S. 531, 541-42

(1987) ("In each case, a court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief . . . ."); National Parks & Conservation Ass'n v. Babbitt, 241 F.3d 722, 737 (9th Cir. 2001); Forest Conservation Council v. United States Forest Serv., 66 F.3d 1489, 1496 (9th Cir. 1995). This balancing focuses on irreparable injury and inadequacy of legal remedies. See Amoco, 480 U.S. at 542; Alaska Wilderness Recreation & Tourism Ass'n v. Morrison, 67 F.3d 723, 732 (9th Cir. 1995); Oregon Natural Desert Ass'n v. Singleton, 75 F.Supp.2d 1139, 1141 (D. Or. 1999).

"Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable." Amoco, 480 U.S. at 545; Sierra Club v. United States Forest Service, 843 F.2d 1190, 1195 (9th Cir. 1988); Singleton, 75 F.Supp.2d at 1141. "If such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment." Amoco, 480 U.S. at 545; Sierra Club, 843 F.2d at 1195; Singleton, 75 F.Supp.2d at 1141.

In the NEPA context, irreparable injury flows from a failure to evaluate the environmental impact of a major federal action. See Thomas v. Peterson, 753 F.2d 754, 764 (9th Cir. 1985); American Motorcyclist Ass'n v. Watt, 714 F.2d 962, 966 (9th Cir. 1983) ("The premise for relaxing the equitable tests in NEPA cases is that irreparable damage may be implied from the failure of responsible authorities to evaluate thoroughly the environmental impact of a proposed federal action."). The harm at stake when the government fails to comply with the NEPA procedures "is a harm to the *environment*, but the harm consists of the added *risk* to the environment that takes place when governmental decisionmakers make up their minds without having before them an analysis (with prior public comment) of the likely effects of their decision upon the environment." Sierra Club v. Marsh, 872 F.2d 497, 500 (1st Cir. 1989) (emphasis in original). While an injunction does not automatically issue upon a finding that an agency violated NEPA, "[t]he presence of strong NEPA claims gives rise to more liberal standards for granting an injunction." American Motorcyclist, 714 F.2d at 965.

In determining whether to issue an injunction, courts also consider the public interest. See Amoco, 480 U.S. at 542; Singleton, 75 F.Supp.2d at 1141; see also Seattle Audubon Soc'y v. Evans, 771 F.Supp. 1081, 1096 (W.D. Wash. 1991) (where an administrative agency fails to comply with a statute, "this invokes a public interest of the highest order: the interest in having government officials act in accordance with the law."). Here, the environmental impact is upon two wilderness areas. Therefore, the strong public interest in maintaining

pristine wild areas unimpaired by man for future use and enjoyment which Congress recognized in the Wilderness Act,[1] weighs in favor of an injunction.

Plaintiffs have demonstrated the need for injunctive relief. As the Court held in its June 5, 2001 Order, the Forest Service violated NEPA by failing to assess environmental impacts before issuing numerous special use permits to commercial pack station operators in the wilderness areas. The Court found that the Forest Service was required to comply with NEPA to address the cumulative impacts of the numerous special use permits because those impacts "significantly affect[ed] the quality of the human environment." 42 U.S.C. § 4332(2)(C) (1994); see also June 5, 2001 Order at 20:23-25 ("At a minimum, the Forest Service was obligated to prepare an EA, and it seems likely that an EIS would be required in light of the cumulative impacts of the numerous permits.").

The Court also found that Plaintiffs had shown disturbing evidence of environmental degradation flowing from stock usage that raised serious concerns. June 5, 2001 Order at 16:18-17:3. Thus, environmental injury is not only "sufficiently likely" in the Ansel Adams and John Muir wilderness areas, but it has already actually occurred. See Amoco, 480 U.S. at 545. Indeed, environmental injury continues to occur as the permittees conduct business during the busy summer/fall season and will be compounded with each successive season in the future while the NEPA violation continues.

This is not to say, however, that the Court concludes that the Intervenors are irresponsible "bad guys" who are wantonly trampling the environment. The Court understands that the packers are small, often family owned and run businesses operated more out of love for the area and tradition than commercial motives, and that packers generally care about the environment. The Court realizes that packers also provide valuable services in the wilderness, including waste removal, rescue operations and education. Rather, as the record demonstrates, heavy four-legged animals carrying additional weight in the form of riders and supplies, as stock animals do, almost inevitably have some impact on sensitive wilderness environments.

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[1] Congress enacted the Wilderness Act "to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition." 16 U.S.C. § 1131(a) (2000). The Act established a National Wilderness Preservation System composed of "wilderness areas" which "shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness. . . ." Id. The Act defines wilderness "in contrast with those areas where man and his own works dominate the landscape, . . . as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain." 16 U.S.C. § 1131(c) (2000).

Indeed, Plaintiffs presented evidence that the increased risk to the wilderness that has resulted from the issuance of special use permits without NEPA compliance has already materialized in damage to sensitive species. In conjunction with other grounds, damage to sensitive species has been found to support injunctive relief. See Leavenworth Audubon Adopt-A-Forest Alpine Lakes Protection Society v. Ferraro, 881 F. Supp. 1482, 1493-94 (W.D. Wash. 1995). In particular, the mountain yellow-legged frog, previously abundant in the Inyo and Sierra National Forests, has declined in number in the past five decades. See Declaration of Jeff Miller ("Miller Decl.") at ¶¶ 4, 5. Miller attributes the decline of the yellow-legged frog to various factors, including livestock activities. See Miller Decl. at ¶¶ 6, 15. In addition, the Yosemite Toad has suffered in the Inyo and Sierra National Forests. See id. at ¶¶ 10-11. Livestock activities are cited as a factor in the decline of the Yosemite Toad. See id. at ¶ 12; see also Administrative Record ("AR"), volume 3, at 587-88. While other factors also contribute to the decline of these species, the evidence shows that stock use is a contributing factor.

The record also contains evidence that intensive pack stock use has also contributed to vegetation loss and other damage to sensitive meadows. See AR, volume 3, at 95, 883-84, 1166, 1203. High alpine meadows are particularly vulnerable because of their short growing season and fragility. A Cascade Valley ranger describes a meadow below third crossing in his area as "the most overused and abused place in my area" and attributes the damage to pack groups. AR, volume 3, at 95; see also AR, volume 3, at 1166 ("Closing meadows without limiting the number of stock is just moving the problem up to 3rd crossing, where we have heavy grazing, dead trees and near-Range wars between pack outfits."). A District Ranger reports that a meadow damage assessment found that "85% of a one-acre meadow section was devoid of vegetation due to intensive use by pack stock." AR, volume 3, at 883. Heavy accumulations of manure and exposed tree roots were similarly noted at a campsite. AR, volume 3, at 884. Significant vegetation loss and soil compaction were noted in a packstock camp by a forest soil scientist. AR, volume 3, at 1203.

Intervenors have submitted numerous declarations attesting to the potential harm, ranging from adverse financial impacts on the packers and the local economy to loss of wilderness programs for school children, that would result if the Court curtailed pack station use through an injunction. See Intervenors-Defendants' Opp'n to Pls.' Mot. for Injunction Relief Ex. 1 (Affidavit of Brad Meyers) at ¶ 7; Ex. 2 (Affidavit of Paul Rich) at ¶ 8; Ex. 3 (Declaration of Lee & Jennifer Roeser) at ¶¶ 3-6; Ex. 4 (Declaration of Mark Dymkoski) at ¶¶ 2-3; Ex. 6 (Affidavit of Donald Dinan) at Exs.6-6-26; Ex. 7 (Affidavit of Tom Wheeler) at ¶¶ 3-4; Ex. 8

(Declaration of Dave Dohnel) at ¶¶ 5-8; Ex. 9 (Declaration of Lauren Knapp) at ¶¶ 2-6; Ex. 10 (Declaration of James Arasion) at ¶ 2; Ex. 11 (Declaration of Mike & Tess Anne Morgan) at ¶ 8; Ex. 12 (Declaration of Robert Tanner) at ¶¶ 5, 11; Ex. 14 (Declaration of Craig London) at ¶¶ 3, 5-21; Ex. 15 (Declaration of Linda Acrularius) at ¶ 11; Ex. 16 (Declaration of David Patterson) at ¶ 7; Ex. 17 (Declaration of Marily Reese) at ¶¶ 11-12. Several declarants also make conclusory assertions that curtailment of pack station operations would violate the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101, *et seq.*, because persons with disabilities would not be able to access the wilderness. They offer only limited anecdotal evidence of disabled people using their services, however, without any showing that a significant percentage of their services are devoted to disabled people. See Intervenors-Defendants' Opp'n to Pls.' Mot. for Injunctive Relief Ex. 2 (Declaration of Paul Rich) at ¶ 4; Id. Ex. 3 (Declaration of Lee & Jennifer Roeser) at ¶ 6; Id. Ex. 12 (Declaration of Robert Tanner) at ¶ 7; Id. Ex. 14 (Declaration of Craig London) at ¶ 21. Nor could stock services assist those with disabilities that render them unable to hike or to ride horses or mules. In any event, this legal issue is not properly before the Court and none of the declarants are qualified to draw the legal conclusion that the ADA would be violated by curtailing their services as a remedy for a proven violation of NEPA, a legal conclusion that the Court does not share.

While the Court sympathizes with the concerns of the packers regarding an injunction's impact on their finances and the economic health of the community, the potential economic harm has to be viewed in perspective. The gross receipts of the pack stations in the Inyo National Forest were $906,665.00 in 1993, $1,091,652.00 in 1994 and $1,044,989.00 in 1995. AR, volume 3, at 1083. In the eastside counties, pack stations account for 0.1% of the two-county wage and salary income. FEIS, April 2001, Ch. 3, p. 43. In the westside counties, pack stations account for less than 0.01% of two-county wage and salary income. Id. Further, the pack stations are responsible for 0.5% of two-county employment in the eastside counties, although pack stations account for higher percentages in individual towns. Id. In the westside counties, pack stations are responsible for less than 0.01% of two-county employment. Id. Furthermore, Intervenors' declarants seem to assume, without adequate support, the worst-case scenario that the injunction will completely shut down operations.

The Court has attempted to craft a fair and balanced injunction that provides interim relief for the environment pending compliance with NEPA without drastically curtailing the packers' operations. Economic harm does not outweigh damage to the wilderness environment caused by the issuance of special use permits

without NEPA compliance. See National Parks & Conservation Ass'n v. Babbitt, 241 F.3d 722, 738 (9th Cir. 2000) ("the loss of anticipated revenues, however, does not outweigh the potential irreparable damage to the environment"). Further, as in National Parks, the packers had notice of the fact that the Forest Service had not conducted the required NEPA analysis. The balance of harms and the public interest favor the issuance of an injunction to prevent further harm to the environment.

The Court does not enjoin all packer operations, even though technically the pack stations, with the exception of D&F Pack Station and High Sierra Pack Station,[2] have no valid authorization to operate in the wilderness areas until compliance with NEPA is achieved. Instead, the Court adopts a combination and refinement of remedies that have been proposed by the parties at the hearing and in their post-hearing submissions. The purpose of the remedies is to mitigate the impact on the environment pending compliance with NEPA.

Nor does the Court enjoin, as requested by Plaintiffs, all use of the most environmentally damaged wilderness areas, classified by the Forest Service as "red" and "yellow/red," even though continued use by stock is a serious issue in such sensitive areas. On the one hand, the Court recognizes that such an injunction would drastically curtail packer operations in some of the most beautiful areas that its customers most desire to visit. See Pls.' Second Mem. in Support of Mot. for Injunctive Relief at 3:24-25, 5:15-16 (discontinuation of packstock use in the "red" and "yellow/red" areas would reduce commercial packstock use by 43% on the eastside and 37% on the westside.). On the other hand, stock use is only one contributing factor to damage in these areas, and, by itself, the resting of such areas from stock use for a few years might not achieve its objective since damaged alpine areas take many years to recover. Instead, the Court orders a reduction of the allocated service days for overnight use with a proportionate reduction in the "red" and "yellow/red" areas, together with a reduction in the number of people and stock per overnight trip in the wilderness. See FEIS, April 2001, at App. D:20-24 (actual use and allocated use by commercial operators). Reduction of service day allocations for overnight use, rather than total closure of all "red" and "yellow/red" areas, will benefit all wilderness areas by reducing the amount of overall packstock use, without substantially curtailing pack station activities.

[2] The Forest Service previously completed environmental analyses for two pack stations, D&F Pack Station and High Sierra Pack Station.

Further, the ROD provides for a five-year phase-in period for trailhead quotas. ROD, April 2001, at 10-11. Defendants propose instead a three-year phase-in as an interim remedy pending NEPA compliance, while Plaintiffs request immediate implementation. The Court concludes that a phase-in period of two years will best balance the wilderness degradation concerns pending NEPA compliance with the need for an adjustment period.

Another disputed issue is the type of NEPA process to be completed, that is, whether a cumulative analysis in addition to site-specific analyses are required, and the timing of the process. Based on the Court's finding that the Forest Service violated NEPA and the Court's previously expressed concerns that the cumulative impacts of the permits may be substantial, with some packers operating in the same sensitive areas, the Court agrees that a cumulative environmental analysis is necessary and orders the Forest Service to complete a cumulative environmental analysis. The cumulative analysis should address several relevant issues, including limits on number of stock, limits on group size, trail suitability for various types of use and designation of campsites for use by pack stations. The purpose of requiring these specific considerations in the environmental analysis is to pinpoint issues that directly affect the degradation of the wilderness.

While Plaintiffs assert that the cumulative analysis can be completed by December, 2003, the Court is persuaded by Defendants that a somewhat longer period is necessary for accurate collection of data to assure that the Forest Service has adequate time to properly analyze the wilderness areas. Further, Plaintiffs suggest that the Forest Service have ten years to complete all site-specific analyses. The Court, however, is not persuaded that such a lengthy time period is necessary, particularly after the cumulative analysis is completed. As the Federal Defendants point out, and Plaintiff agrees, it is more appropriate and efficient for one cumulative analysis to occur prior to the site-specific analyses. In setting deadlines for the environmental analyses, the Court has made every effort to balance the need to achieve NEPA compliance in a reasonable amount of time so as to avoid further damage to the wilderness and the need to provide the Forest Service with sufficient time to do a proper analysis. No party will benefit from hastily-prepared analyses that do not adequately address the environmental impacts. Upon completion of the environmental analyses, the Forest Service will make any necessary adjustments in commercial services. The Forest Service shall not authorize the 3,000 additional service days provided for in the ROD until the environmental analyses are completed. See ROD, April 2001, at 12.

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Another issue raised by the parties is whether and how the Forest Service will issue all wilderness permits to better insure that use is in accord with permits. The ROD requires that the Forest Service approve all permits (ROD, April 2001, at 12-13), and the parties now are generally in agreement that the Forest Service should also issue all further permits. The Court agrees and concludes that issuance may be in person, by fax or electronically.

The Court has also considered other proposals by the parties and concurs with some. First, the ROD requires compliance with certain Forest Orders within one year. ROD, April 2001, at 35. There seems to be no real dispute that the Forest Service is on schedule for completing those Forest Orders and therefore should be able to fully implement them by June 1, 2002. Second, Plaintiffs belatedly suggested that the term of wilderness permits be limited to five years, which Federal Defendants and Intervenors point out is contrary to the usual practice and to the economics of the industry. The Court does not adopt this proposal. Third, Defendants set forth interim criteria to approve or disapprove non-system trails by commercial operators pending compliance with NEPA. Federal Defs.' Brief Filed in Accordance with the Court's Orders Filed Sept. 24, 2001 and Sept. 27, 2001 Ex. 2. Plaintiffs did not oppose the interim criteria and the Intervenors either did not oppose them or believe interim criteria should be required.

IV INJUNCTIVE RELIEF

The Court orders the following injunctive relief:

1. The Forest Service shall complete the NEPA process analyzing the cumulative impacts of pack stock operations no later than December 31, 2005. In conducting the cumulative impacts analysis, the Forest Service shall consider limits on numbers of stock animals used in conjunction with commercial operators; limits on group size (both number of people and number of stock both on and off trial); trail suitability for various use types; and designation of campsites for use by commercial pack stations. No later than December 31, 2006, the Forest Service must complete site-specific environmental analyses under NEPA for each permittee.

2. Pending completion of the cumulative and site-specific analyses set forth in paragraph 1, above, and issuance, or denial, of special use permits to pack stations pursuant thereto, the following restrictions shall apply:

   A. The service day allocations for the "Packstock supported" category set forth in Table 2.1 of the FEIS, Chapter 2, page 17, shall be reduced by twenty percent (20%). This

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reduction applies to overnight use only. On the east side, a 20% reduction of the service day allocation of 13,300 in Table 2.1 results in a new service day allocation of 10,640. On the west side, a 20% reduction of the service day allocation of 3,000 in Table 2.1 results in a new service day allocation of 2,400. The reduced service days for each side shall be allocated among the pack stations on that side in proportion to their use of service days shown in the "High Two" column in the "Pack Stock Supported Overnight Use" category on pages 11 and 13 of Appendix I of the FEIS. The Forest Service and Intervenors shall use best efforts to reduce use of service days for overnight trips to the areas designated "red" and "yellow/red" in Appendix D of the FEIS proportionately, i.e., by 20%. In addition, the maximum party size for overnight trips supported by commercial pack stock shall be 12 people and 20 stock. D&F Pack Station and High Sierra Pack Station are exempt from this reduction because the Forest Service has already conducted environmental analyses for those pack stations.

B. Although the ROD provides for 3,000 extra service days, the Forest Service shall not authorize those additional days until the NEPA process is completed. See ROD, April 2001, at 12 (discussion of additional service days).

C. The Forest Service shall issue all wilderness permits for commercial uses of the Ansel Adams and John Muir Wilderness Areas. Facsimile copies, or electronic mail copies that can be printed out, of the completed Forest Service-issued permits may be provided by pack station operators to their clients.

D. Implementation of the trailhead quotas will be phased-in over a two-year period. For the first year, beginning in 2002, the trailhead quotas will not exceed 130% of the quotas listed on Table 1.5 in the Wilderness Management Plan at page 20. In 2003, the trailhead quotas will not exceed 115% of the quotas listed in the Wilderness Management Plan. In 2004, the trailhead quotas will not exceed 100% of the quotas in the Wilderness Management Plan. As stated in the ROD, the phase-in period does not apply to trailhead quotas that did not change. ROD, April 2001, at 10.

E. The Forest Orders listed in the ROD will be implemented by June 1, 2002.

F. The Forest Service shall use the interim criteria set forth in Exhibit 2 to Federal Defendants' October 3, 2001 brief to approve or disapprove non-system trail use by commercial operators until the individual pack station NEPA analyses are completed.

G. In the period before the Forest Service completes cumulative impacts and site-specific environmental impacts analyses of all commercial packstock uses of the wilderness areas and issues special use permits, commercial packstock operations cannot occur except under the terms and conditions of this Order, and under any Forest Service plans, permits or directives that are consistent with this Order.

H. Plaintiffs and Intervenors shall reserve their administrative appeal rights as to the new wilderness plans.

V CONCLUSION

To the extent described above, Plaintiffs' Motion for Injunctive Relief (docket number 126) is GRANTED.

IT IS SO ORDERED.

Dated: January 9, 2002

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ELIZABETH D. LAPORTE
United States Magistrate Judge

copies mailed to
counsel of record

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