



## WILDERNESS ACT COMPLIANCE AND COMMERCIAL SERVICES EVALUATION SEQUOIA-KINGS CANYON AND JOHN KREBS WILDERNESSES

### Introduction

The purpose of this document is to describe how Sequoia and Kings Canyon National Parks (SEKI) will assess whether commercial services are to be performed or allowed in the Sequoia-Kings Canyon and John Krebs wildernesses, and to invite public comment on this issue. If such services are ascertained to be appropriate, a determination of the amount of such allowed commercial services will be established. Any commercial services allowed must further the purposes for which these wildernesses were established. This “Extent Necessary Determination” (END) will be incorporated into the Wilderness Stewardship Plan (WSP).

### The Wilderness Act

The Wilderness Act (16 USC 1131-1136; PL 88-577) secured for our nation an enduring resource of wilderness. Wilderness areas included in the National Wilderness Preservation System are to 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, and to ensure that the wilderness character of these areas is preserved.

In order to achieve these goals, the Wilderness Act includes a series of prohibitions related to particular activities. These prohibitions relate to mining, road construction, motorized equipment, landing of aircraft, installation of structures, and commercial services. With regard to commercial services in wilderness, §4(d)(5)<sup>1</sup> of the Wilderness Act states, “Commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.” The “purposes” referred to in §4(d) (5) are those enumerated in §4(b). Section 4(b) provides that “...wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.”

In addition to the Wilderness Act, the National Park Service’s (NPS) management of wilderness areas is guided by NPS *Management Policies 2006* (Chapter 6) and *Director’s Order: 41(DO: 41)* (1999)<sup>2</sup>. NPS *Management Policies* state that commercial services such as guiding that “...contribute to public education and visitor enjoyment of wilderness values or provide opportunities for primitive and unconfined types of recreation may be authorized if they meet the “necessary and appropriate” tests of the National Park Service Concessions Management Improvement Act of 1998 (16 USC 5951-5966); PL 105-391) and §4(d)(5) of the Wilderness Act..., and if they are consistent with the wilderness management objectives contained in the park’s wilderness management plan, including the application of the minimum requirement concept.” (§6.4.4) The application of the “minimum requirement” concept to commercial services is reemphasized in *Director’s Order: 41* (1999). *DO: 41* also provides that allocations between commercial and non-commercial uses will be subject to public comment through a public planning process (§ C.12).

### Activities That May Be Considered For Commercial Support

- Guided hiking trips (foot or stock supported)\*
- Guided stock trips – visitors ride stock\*
- Stock support for hikers – stock provide “spot”(people and gear delivered to specific location and dropped off) or “dunnage” (gear delivered to specific location) service\*
- Stock support for administrative functions (maintenance and research)\*
- Backpacker support for hikers – foot based dunnage service\*

<sup>1</sup> The Wilderness Act as passed in 1964 had the “extent necessary” clause as §4(d) (6), but in the subsequent Boundary Waters Canoe Act of 1978, the original §4(d) (5) was rescinded and the extent necessary clause was changed from §4(d) (6) to §4(d) (5). From here forward in this document this section will be referenced as 4(d) (5).

<sup>2</sup> Director’s Order 41 was last issued in 1999. It has recently been revised and is awaiting final approval. It is anticipated that an updated DO 41 will be issued late in 2012 or early 2013. At that time, any changes in the new version will be incorporated in the WSP and its accompanying documents and analyses.

- Guided fishing trips (foot or stock supported)
- Guided photography trips (foot or stock supported)
- Guided mountaineering\*
- Guided ski trips\*

\* = *these activities are currently allowed under commercial use authorizations or concessions permit.*

**Purposes for which the Sequoia-Kings Canyon and John Krebs Wildernesses were established**

Section 4(d)(5) of the Wilderness Act states, “Commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the *recreational or other wilderness purposes of the areas*” (emphasis added.) Section 4(b) of the Act further provides that “...wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.”

The Sequoia-Kings Canyon Wilderness (722,983 acres) was designated in 1984 by the California Wilderness Act (PL 98-425) and expanded (by 45,129 acres) in 2009 by the Omnibus Public Land Management Act of 2009 (PL 111-11). The John Krebs Wilderness (39,967 acres) was designated in 2009 by PL 111-11. Each of these two acts indicated that designated lands were to be managed “In furtherance of the purposes” and “In accordance with” the Wilderness Act (PL 88-577), and were established for recreational and other purposes, which include scenic, scientific, educational, conservation, and historical. PL 111-11 also states that: “Nothing in this subtitle precludes horseback riding in, or the entry of recreational or commercial saddle or pack stock into, an area designated as wilderness by this subtitle” (§1903 (e)).

PL 111-11 (§1902 (2)) states that lands in SEKI managed as recommended or proposed wilderness prior to the law “shall continue to be managed as recommended or proposed wilderness, as appropriate.” This refers to the approximate 29,500 acres of lands on the southern Hockett Plateau which were not designated. In accordance with NPS *Management Policies 2006*, all lands that are recommended or proposed wilderness are to be managed in a manner that will not “diminish the wilderness eligibility of an area possessing wilderness characteristics,” and “management decisions will be made in expectation of eventual wilderness designation (§6.3.1).

The California Wilderness Act of 1984 (PL 98-425) and accompanying House Report 98-40, allow for the continued conduct of a “high-sierra camp” at Bearpaw Meadow and a winter ski-hut rental at Pear Lake (Ranger Station). These are allowed commercial enterprises within wilderness and classified as Designated Potential Wilderness Additions (DPWA) for these specific uses which are non-conforming with the Wilderness Act. Other DPWAs are also identified in the 1984 and 2009 Acts and provide for select power-line corridors and dams. DPWAs are afforded full wilderness status, save for the specified non-conforming use, and the NPS may administratively formalize designation of these lands as wilderness should the non-conforming activities end. The SEKI *General Management Plan (GMP)* (2007), supported the continuation of the non-conforming uses, but also stated that if the winter ski-hut operation at Pear Lake, the “high-sierra” camp operation at Bearpaw Meadow, and the two powerlines were to cease operations or use, SEKI would take administrative action to achieve designation of the specified DWPAs.

The Omnibus Public Land Management Act of 2009 (PL 111-11) also established DWPAs. These include four lakes with dams (111.5 acres total) operated by the Southern California Edison Company. The eventual disposition of the dams was not discussed in the GMP, only that the dams provide a visual scenic intrusion on the wilderness landscape. PL 111-11 allows for the continued maintenance and use of the dams and also states in §1902 (1)(c) “The potential wilderness additions shall be designated as wilderness and incorporated in the John Krebs Wilderness established by this section upon termination of the non-conforming uses.”

## **Potential Assessment Method for Commercial Services in Sequoia-Kings Canyon and John Krebs Wilderness Areas**

Sequoia and Kings Canyon National Parks propose to implement a multi-part assessment, or test, to determine whether specific commercial services should be allowed in the Sequoia-Kings Canyon and John Krebs wilderness areas. This proposed process reflects the requirements of the Wilderness Act, including §4(d) (5), and other law and policy.

Considerations and questions that may be asked to formulate the END include:

- What activities are proper for enabling visitors to realize the recreational and other purposes for which the Sequoia-Kings Canyon and John Krebs wilderness areas were established?
- Does the commercial service provide for the specific needs of a particular activity, i.e. special skills, equipment, safety issues, introductory experiences, etc.?
- Does the commercial service maintain or improve the preservation of wilderness character?
- Does the commercial service meet the “necessary and appropriate” criteria of the NPS Concessions Management Improvement Act of 1998?
- Are the public purposes of wilderness (recreational, scenic, scientific, educational, conservation, and historical use) being realized without commercial services?
- What types and amounts of commercial services might be appropriate to realize the public purposes of wilderness?
- Should appropriate commercial services be managed differently in different management zones?
- Would the commercial service fit within site-specific visitor carrying capacities? If not, the service would likely not be allowed.

### **Minimum Requirement Analysis**

NPS *Management Policies 2006* and *DO: 41* (1999) require that the minimum requirement concept be applied to commercial services in wilderness. The END for SEKI will include an analysis of commercial services in the context of minimum requirement and minimum tool considerations.

### **Conclusion**

This preliminary introduction to the END process is to generate public comment on what commercial services, if any, would be allowed, and to what level these services should be provided in the wilderness of Sequoia and Kings Canyon National Parks. The final management decision on the types and amounts of commercial services allowed in wilderness will be determined through a public process as part of the development of the WSP and its accompanying Environmental Impact Statement.