

1 McGREGOR W. SCOTT
2 United States Attorney
3 Eastern District of California

3 KIMBERLY GAAB
4 Assistant U.S. Attorney
5 2500 Tulare Street
6 Suite 4400
7 Fresno, California 93721
8 Telephone: (559) 497-4000
9 Facsimile: (559) 497-4099

7 MATTHEW J. MCKEOWN
8 Acting Assistant Attorney General
9 United States Department of Justice
10 Environment & Natural Resources Division

10 CHARLES R. SHOCKEY, Attorney
11 D.C. Bar #914879
12 United States Department of Justice
13 Environment and Natural Resources Division
14 501 "I" Street, Suite 9-700
15 Sacramento, CA 95814-2322
16 Telephone: (916) 930-2203
17 Facsimile: (916) 930-2210
18 Email: charles.shockey@usdoj.gov

14 Attorneys for Defendants

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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
ELEXIS J. MAYER IN
SUPPORT OF DEFENDANTS'
REPLY BRIEF FOR MOTION OF
STAY PENDING APPEAL

DATE: March 5, 2007
TIME: 1:30 p.m.
PLACE: Courtroom 2
JUDGE: Hon. Anthony W. Ishii

26 I, Elexis J. Mayer, declare as follows:

27 1. I received a Bachelor of Science degree in Natural Resources Planning from
28 Humboldt State University in 2002. I have worked for the National Park Service (NPS) since

1 2005, and served as the lead Compliance Specialist for the Yosemite Valley Loop Road
2 Rehabilitation Project. I have served as a member of numerous Yosemite National Park project
3 planning and environmental compliance teams since 2003, and have extensive experience in
4 coordinating design review and evaluation of environmental impacts. I am currently the lead
5 Compliance Specialist and Deputy Project Manager for the Tuolumne Wild and Scenic River
6 Comprehensive Management Plan/Environmental Impact Statement. I am a second generation
7 National Park Service (NPS) employee and was raised in Yosemite National Park and
8 Everglades National Park. I worked seasonally for the NPS in Yosemite and Grand Teton
9 National Parks during my college tenure.

10 2. As the lead Compliance Specialist for the Yosemite Valley Loop Road Environmental
11 Assessment (Loop Road EA) and Finding Of No Significant Impact (FONSI), my
12 responsibilities included insuring compliance with the legal and procedural requirements
13 associated with the National Environmental Policy Act and the National Historic Preservation
14 Act, as well as obtaining all necessary permits required for construction from the California
15 Regional Water Quality Control Board and Army Corps of Engineers. I am extensively and
16 intimately familiar with the Loop Road Project's affected environment; the proposed action
17 alternative; design elements associated with each stage of development; environmental impacts;
18 mitigation measures and Best Management Practices to be followed prior to, during, and post
19 construction; as well as all of the interests that arose from public scoping and public review and
20 comment periods.

21 3. The purpose of this declaration is to address the following issues and present the facts
22 regarding: 1) Connection between the Utilities Project (CIP Phase 2 and IUMP Phases 2 & 3)
23 and the Loop Road Project; 2) Roadway Design and Engineering Decision Making Process; 3)
24 Public Availability of Roadway Design Drawings; 4) Raising Roadway Elevation vs. Four and
25 one-half New Inches of Asphalt; 5) Culvert Headwall Placement and Location; and, 6) Selective
26 Roadside Pullout Improvements. I have reviewed the plaintiffs' Memorandum in Opposition to
27 the Motion for Stay Pending Appeal (Opposition Memo Doc. 391) and supporting declarations
28 (Docs. 392, 393, 394).

1 **4. Connection between the Utilities Project (CIP Phase 2 and IUMP Phases 2 & 3)**
2 **and the Loop Road Project.** There is absolutely no connection between the Capital
3 Improvements Plan (CIP) Phase 2 and Integrated Utilities Master Plan (IUMP) Phases 2 and 3
4 projects and work called for in the Loop Road project, except for the fact that some utilities that
5 were improved lie beneath the Loop Road. As such, utility repairs beneath sections of roadway
6 (which usually result in a strip of missing asphalt where a trench was dug) must be repaved in
7 order to provide for a safe and travelable roadway surface. In general, this repaving is considered
8 temporary, until a time when the entire roadway can be properly rehabilitated in a
9 comprehensive manner (as called for in the Loop Road Project). More recent repaving activities
10 associated with utilities work, such as the repairs noted along Northside Drive, (Kerr
11 Declaration, Exhibit A, Doc. 393) addressed neither the drainage deficiencies nor the
12 substructure of the surrounding roadway pavement. Moreover, the utility work description in the
13 Loop Road EA, page II-6 under “Actions Common to All Action Alternatives” and further
14 clarified in the Loop Road FONSI’s Errata Sheets, was provided in order to explain the
15 ideal/appropriate timing between two separate actions that were related in terms of sequencing.
16 As described in both the Loop Road EA and FONSI, it would be far less beneficial if new utility
17 conduits (e.g., one requiring trenching) were to be constructed beneath the roadway, *after* the
18 roadway had been rehabilitated.

19 **5. Roadway Design and Engineering Decision Making Process.** A cadre of Registered
20 Professional Engineers, hydraulic engineers, and NPS professional road maintenance and
21 resources management staffs served as the primary subject matter experts (SMEs) in the design
22 and engineering decision making process for the Loop Road Project. The NPS and the Federal
23 Highway Administration (FHWA) embarked on a year-long, interdisciplinary design
24 development process entailing 15%, 30%, 50%, 70%, and 95% design phases. At each of the five
25 phases of design development, an interagency and interdisciplinary team (including all the above
26 noted SMEs as well as hydrologists, botanists, archeologists, landscape architects and ecologists,
27 historic architects, wildlife biologists, and protection and traffic management rangers) would
28 take three full days to walk the entire Loop Road. During each field visit, the design drawings

1 and specifications were inspected for accuracy. As a result, each and every section of roadway,
2 drainage ditch, culvert, roadside pullout, and parking control features (such as curbing or boulder
3 stones) were reviewed and modified as warranted, based on best professional judgment by the
4 entire team.

5 6. In my best professional judgment, the plaintiffs' perceived condition of the roadway is
6 not entitled to equal weight with those determinations made by a Registered Professional
7 Engineer (see Flynn Declaration Doc. 381) regarding the necessity for roadway repairs. Mr.
8 Patrick Flynn has extensive experience in road evaluation and design, and his declaration is
9 supported by sound professional judgment and is based on the collective expertise from a group
10 of professionals with decades of roadway engineering and maintenance experience. Moreover,
11 the determinations made about the necessity for culvert repair, replacement, and the addition of
12 new culverts was based on the collective knowledge of the park's hydrologist, hydraulic
13 engineers, and career Yosemite Valley road maintenance staff. These determinations are based
14 on "in the field experience" and are demonstrably more accurate and credible than those of an
15 unlicensed "regular traveler." Plaintiffs' allegations as to whether or not the roadway warrants
16 rehabilitation is based solely on the personal opinion of a local resident with a background in
17 neither roadway design and engineering nor hydraulics. Based on my professional experience,
18 this clouded non-professional observation pales in comparison to the collective knowledge and
19 expertise of those with whom the NPS collaborated to determine the necessity for the long
20 overdue Loop Road maintenance and repair.

21 7. The plaintiffs have failed to provide a single substantive example in all previous
22 declarations of how the "outstandingly remarkable values of the Merced Wild and Scenic River"
23 would be adversely affected by the Loop Road project. Not once have the plaintiffs provided a
24 single supporting example in their comment letters on the project about how the project would
25 affect river values; only general and exaggerated allegations. It is notable that out of the 25
26 public comment letters received for the Loop Road EA, two were from Mr. George Whitmore
27 and one other from Friends of Yosemite Valley. Aside from the three letters contributed by the
28 plaintiffs, there was overwhelming support of the proposed roadway repairs, and the general

1 public had no problem understanding the proposed actions. Park staff has always been available
2 to discuss projects with the public in person, via the telephone or through email communications.
3 I contend, with absolute conviction that the actions called for in, and analyzed by, the Loop Road
4 EA, are clear, accounted for, and easy to understand.

5 8. The level of detail and information provided in the Loop Road EA and its analysis of
6 the alternatives clearly demonstrate the intent of the proposed action. The Loop Road EA
7 enumerates the beneficial impacts to natural and cultural resources (which include river values of
8 the Merced Wild and Scenic River). Conversely, under the No Action Alternative as presented in
9 Table II-3: Summary of Environmental Consequences from the Loop Road EA, the following
10 *adverse* impacts will continue to result if the roadway is not rehabilitated as proposed:

11 (a) Soils: localized, long-term, minor to moderate adverse impacts due to
12 poor/inadequate drainage facilities and informal roadside parking;

13 (b) Natural hydrologic process: localized, long-term, minor to moderate adverse impacts
14 due to overall functioning value of adjacent floodplain and meadow areas in addition to
15 continued river bank erosion in certain areas adjacent to the Merced River that would have
16 localized, long-term, minor adverse impacts to water quality;

17 (c) Wetlands: the overall effect on the connectivity, integrity, and size of wetlands and
18 aquatic habitats in Yosemite Valley would be long-term, minor and adverse. The localized
19 effects to wetlands would be long-term, minor and adverse due to continued improper hydrologic
20 connectivity of adjacent wetland and aquatic habitats;

21 (d) Wildlife: localized, long-term, minor adverse impacts due to continued expansion of
22 roadside parking onto sensitive habitats and disturbed hydrologic flows and unnatural erosion
23 regimes;

24 (e) Special-Status Species: localized, long-term, minor adverse impacts due to
25 degradation of habitat health and connectivity in areas resulting from informal parking and
26 poorly functioning drainages;

27 (f) Air Quality and Noise: short-term, negligible, adverse effects would result from
28 routine maintenance activities;

1 (g) Archeological Resources: continued road maintenance activities would have no
2 adverse effect to archeological sites. However; though indirect, continued informal roadside
3 parking on or adjacent to archeological sites would continue to increase with the potential for
4 adverse effects;

5 (h) Traditional Cultural Properties: no adverse effects would occur;

6 (i) Cultural Landscapes, include Historic Sites and Structures: no adverse effects would
7 occur under routine maintenance repairs in the short-term, however in the long-term
8 deterioration would have adverse effects to historic properties;

9 (j) Scenic Resources: routine maintenance operations would likely result in short-term,
10 adverse impacts;

11 (k) Visitor Experience and Recreation: long-term, moderate, adverse impacts due to
12 public safety and access; and

13 (l) Park Operation: local, long-term, adverse impacts would likely result due to
14 increasing costs associated with increase annual maintenance and operation needs.

15 **9. Public Availability of Roadway Design Drawings.** From the initiation of the 45-day
16 public scoping period for the Loop Road EA, through the release and distribution of the Loop
17 Road FONSI, the design drawings were publicly available. In fact, the 30% design drawings
18 were distributed at consecutive park Open Houses (a monthly public forum to discuss park
19 planning and construction projects) prior to and during the public scoping period for the project.
20 Both Mr. George Whitmore and Ms. Bridget Kerr attended over seven of these public meetings
21 and were provided extensive information at these meetings, in telephone conversations, and in
22 email, about the design plans for the Loop Road Project. This period of communication extended
23 after the Loop Road FONSI was released.

24 10. The Loop Road EA was produced after the 50% design development phase drawings,
25 which were also available to the public. At the 50% design phase, all of the design components
26 considered to be “common to all actions” had been developed and their effects could therefore be
27 analyzed. The timing between the Loop Road EA and 50% design development phase proved to
28 be ideal. Public comments generated during the public review and comment period on the Loop

1 Road EA were incorporated into the next phases of design development (i.e., 70% and 95%). In
2 other words, the suggestions from the public comment period, both overarching and specifically
3 related to design details, were incorporated into the next phase's refined design documents.

4 11. During the extended public review and comment period for the Loop Road EA, the
5 NPS Project Manager and I spent an entire afternoon with both Mr. George Whitmore and Ms.
6 Bridget Kerr of the Sierra Club's Yosemite Committee (Committee) in the field, walking
7 sections of the Loop Road and discussing actions called for in the environmental document. Our
8 field review focused on the proposed actions called for in the Loop Road EA, the ground-
9 truthing of roadway width, tree removal, and the appropriateness of paving and/or removing
10 specific roadside pullouts.

11 12. Mr. Whitmore and Ms. Kerr continue to make unfounded assertions that the Loop
12 Road project proposes to increase capacity through roadway widening and the addition of
13 parking. However, they fail to mention that design elements were changed as a result of their
14 suggestions to keep and widen one pullout adjacent to the river in the name of public access.
15 Further, the Committee has stood by and agreed with the NPS to pave specific roadside pullouts,
16 in order to curtail their further expansion into wetland features. Further, during this field review
17 with the Committee, numerous locations of existing roadway width were measured by Mr.
18 Whitmore. Using a measuring tape, he personally assessed the travel lane and shoulder widths in
19 several locations of the project area. This ground-truthing exercise resulted in the individual
20 members of the Committee, including Mr. Whitmore, agreeing that the existing road was much
21 wider than they originally had realized, and that standardizing lane widths to ten feet, with one
22 foot paved shoulders would not widen the road, when compared to existing conditions.

23 13. As stated in Mr. Whitmore's declaration, the Project Manager and I spent countless
24 hours discussing proposed actions in detail with him and other members of the public, consulting
25 the most up-to-date versions of design drawings. By the time the Loop Road FONSI was
26 released, the 70% design drawings were available to the public and were used in numerous
27 conversations with the Committee. Mr. Whitmore had been briefed at every stage of the design
28 process and had acknowledged he understood the scope of the design. The Project Manager and I

1 made ourselves available to Mr. Whitmore, and he was well aware that he could contact us at
2 any time if he had additional questions or concerns. The focus and primary objective of an
3 environmental assessment is to analyze a range of reasonable and feasible alternatives, none of
4 which have “significant” impacts on the human environment.

5 14. Mr. Whitmore’s assertion, that the NPS did not provide accurate or enough
6 information in order to determine the true intent and impacts of the proposed action, is simply
7 untrue. Further, it is a mischaracterization of the intense one-on-one effort undertaken by our
8 NPS team to engage his Committee in the planning process. The Loop Road EA contains
9 numerous figures and tables depicting site-specific actions, accompanied by station numbers
10 (i.e., numerical identifiers on the design drawings) so that a clear connection could be made
11 between the environmental document and the publicly available design drawings. Exhibit A
12 provides an example of a representative table from the Loop Road EA, page II-15, Table II-1:
13 Alternative 2 Parking Actions.

14 15. **Raising Roadway Elevation vs. Four and one-half New Inches of Asphalt.** The
15 issue of “raising the roadway elevation and grade” has been misrepresented by the plaintiffs’
16 members. I have had numerous detailed technical conversations with Mr. Whitmore and Ms.
17 Kerr regarding the difference between raising the entire roadway structure (i.e., base, sub-base,
18 and pavement) versus the addition of four and one-half new inches of asphalt. Notwithstanding,
19 the members of organizations affiliated with the plaintiffs, such as the Committee, have
20 continually miscommunicated, exaggerated, and provided false information in comment letters,
21 emails, and public meetings about this issue. Exhibit B provides an example from the Loop Road
22 EA page II-12, Figure II-5: Typical Proposed Cross-section for Southside Drive and Sections of
23 Northside Drive. This cross-section figure, lifted directly out of the design drawings, which have
24 been reviewed by Mr. Whitmore, clearly shows how four and one-half inches of new hot asphalt
25 concrete would be placed on top of the existing pavement.

26 16. In their opposition brief, the plaintiffs’ purposeful disconnect and their obvious
27 misrepresentation, between raising the entire roadway structure versus the addition of four and
28 one-half new inches of asphalt, is astonishing considering that on page II-24 of the Loop Road

1 EA “Change in Roadway Elevation” is identified as an “Alternative Considered But Dismissed.”
2 The Loop Road EA very clearly states that the type of reconstruction effort that would be
3 necessary to raise the roadway structure, requiring widening the roadway prism, is beyond the
4 purpose and need for this rehabilitation project. “Rehabilitation,” commonly referred to as a
5 “R3” project by FHWA standards consists of repairing, rehabilitating and resurfacing roadways.
6 This type of roadway project, such as the Loop Road Project, is distinctively different than a
7 “reconstruction,” or “R4” project which has the added component of reconstructing portions of a
8 roadway. Reconstruction activities include changes to a roadway’s base, sub-base, and
9 pavement. Examples of this type of work would be moving a roadway alignment, adding new
10 sections of roadway, or building a new road in a location where there previously was not one.
11 Absolutely, without a shred of doubt, it has been clearly communicated both verbally and in
12 design drawings, that none of these types of activities are proposed for the Loop Road Project.

13 17. Clearly, the plaintiffs are attempting to intentionally confuse the Court on this issue
14 by characterizing four and one-half new inches of pavement on top of the existing pavement as a
15 reconstruction type of activity.

16 18. **Culvert Headwall Placement and Location.** Collaboratively, the NPS and the
17 FHWA determined the appropriate length a culvert pipe should extend and the appropriate
18 location of a headwall. Because one of the objectives of rehabilitating the Loop Road is to
19 improve safety, numerous existing culvert pipes and headwalls were extended beyond their
20 current location in order to prevent snow plow damage to headwalls, as well as to create a safe
21 distance between the edge of the roadway pavement and the drop-off created by a headwall. The
22 NPS is rehabilitating the Loop Road in accordance with the EA and the design drawings. Mr.
23 Whitmore inspected portions of the work before it was completed and now has alleged this work
24 is intended to “anticipate the road widening.” (Whitmore Dec 4:25) Exhibit C provides a sheet
25 from the 95% design drawings depicting a classic set of instructions for replacing an existing
26 culvert pipe with a longer pipe between El Capitan Cross-over and Sentinel Drive, on Southside
27 Drive. Again, this information has been publicly available and reviewed by Mr. Whitmore
28 throughout the duration of the project.

1 19. Mr. Whitmore's observations about the width of culverts occurred during the active
2 and ongoing process of construction. The NPS and FHWA will ensure that all culverts are the
3 appropriate distance from the roadway edge when the project is complete. Mr. Whitmore's
4 allegations about the culvert width are therefore premature. In the case referred to by Mr.
5 Whitmore, the NPS had already, prior to his submittal of his declaration, directed the contractor
6 to relocate certain culverts closer to the edge of the existing roadway pavement. The work being
7 conducted on the Loop Road *is* being implemented in accordance with the stated proposed
8 actions as called for in the Loop Road EA, and the NPS and FHWA will ensure that all actions
9 are correctly constructed.

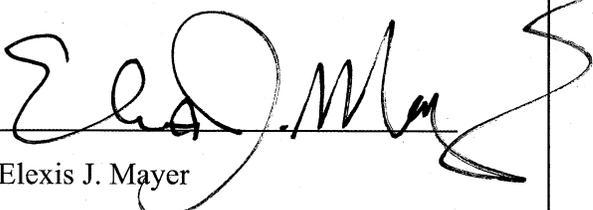
10 **20. Selective Roadside Pullout Improvements.** Exhibit D provides Figure II-6:
11 Alternative 2 Proposed Roadside Parking Actions from the Loop Road EA; the NPS has
12 provided a substantial amount of information regarding proposed actions to *existing* pullouts.
13 Both the table and figure work in tandem to present precise locations, the existing condition, and
14 the proposed actions called for in every single roadside pullout within the project area. Nothing
15 in the Loop Road EA or FONSI, nor in a single set of design drawings for this project, has *ever*
16 identified *new* areas for roadside pullouts. In fact, in a few areas, the NPS proposed removing
17 unsafe roadside pullouts, much to the objection of Mr. Whitmore and Ms. Kerr, who argued for
18 keeping these pullouts in order to preserve access. As presented in Exhibit E, which is page 4 of
19 the Yosemite Committee's comment letter on the Loop Road EA, the section entitled "VII.
20 TURNOUTS" requests that two specific roadside pullouts which are currently unpaved, be
21 paved (i.e., numbers 5 and 51). Further, Mr. Whitmore urges the NPS to keep and widen a
22 pullout that was proposed for removal (i.e., number 11) due to its interpretive value. As a result
23 of the field visit, the design drawings were changed to keep, rather than remove, pullout number
24 11. These changes were presented in the Errata Sheets of the Loop Road FONSI. The consistent
25 inconsistency with which Mr. Whitmore has approached these subjects is quite puzzling. The
26 non recognition of the extensive collaboration between the NPS and the public in numerous
27 aspects of the Loop Road Project is unfortunate and misleading to the court.
28

1 21. The NPS believes that making a few very popular and scenic roadside pullouts (such
2 as those along the area known as Bridalveil Straight) accessible to people with disabilities is a
3 requirement of the Americans with Disabilities Act as well as part of *our* mission. Consistently,
4 the NPS receives public comment letters requesting “uniform access for all,” and the Loop Road
5 Project provides opportunities to address these requests. Ironically, these improvements have
6 been viewed by the plaintiffs as somehow increasing capacity. Additionally, the actions
7 associated with improving parking controls (i.e., curbing and barrier stones) in order to curtail
8 the expansion of certain roadside pullouts into *sensitive* resource areas, is also being purported as
9 “expansion of roadside parking” and “increasing capacity,” even though the design drawings
10 clearly show that all work associated with roadside pullouts is to remain within the *existing*
11 footprint.

12 22. **Conclusion.** Public involvement has been a pillar of the Loop Road Project, and all
13 aspects of design have been publicly available and discussed numerous times with the plaintiffs.
14 Clearly, the plaintiffs are attempting to confuse and mislead the Court on a number of issues, and
15 about the process and the design aspects of the proposed action. The NPS will continue to ensure
16 that the implementation of the Loop Road Project is being conducted in accordance with those
17 actions, as identified and analyzed in the environmental document.

18 I declare under penalty of perjury that the foregoing is true and correct. Executed on
19 February 23, 2007, at Yosemite, California.

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Elexis J. Mayer