

STATEMENT OF
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Before the Subcommittee on Forests and Forest Health
Committee on Resources
U.S. House of Representatives

Concerning H.R. 359
The Emigrant Wilderness Preservation Act of 1999

February 23, 1999

Thank you for the opportunity to present the Administration's views on H.R. 359, a bill to require the Secretary of Agriculture to continue to provide for the maintenance of 18 concrete dams and weirs that were located in the Emigrant Wilderness at the time of its designation.

The Department of Agriculture opposes enactment of H.R. 359. The bill would require the Secretary of Agriculture to continue to provide, through a cooperative agreement with a non-Federal entity, for the maintenance and operation of 18 concrete dams and weirs that are located in the Emigrant Wilderness on the Stanislaus National Forest in the State of California at the time the wilderness area was designated. This bill presents technical concerns which I will discuss later in my testimony. The Administration is also concerned about recovering all costs of maintenance of the dams and weirs, including the costs of complying with laws such as the National Historic Preservation Act and the National Environmental Policy Act.

Background

A variety of water control structures exist within the Emigrant Wilderness. Most were constructed in the 1920's and 1930's to enhance recreational fisheries. Several other structures were built as late as 1951. The original function of most structures was to augment stream flows for fish habitat enhancement in downstream areas, and not necessarily to promote lake fisheries. Fish were introduced into the Emigrant area during the late 1920's by stockmen. Prior to this period, these high elevation lakes were barren of fish.

The Emigrant Wilderness was designated by P.L. 93-632 (Section 2(b)) on January 3, 1975. At the time of wilderness designation, 18 water control structures existed within the wilderness boundary. The legislative history of P.L. 93-632 indicates the Congress was aware these structures existed at the time of designation. Although the Congress was aware the structures would be included within the wilderness boundary, neither the original legislation in 1975 nor a subsequent enactment in 1984 (P.L. 98-425) providing for some minor wilderness additions specifically addressed these structures, or provided an exception to the general prohibition on structures in Section 4(c) of the 1964 Wilderness Act. The Forest Service has attempted to address the issue of these structures within the wilderness since the area was designated.

The first effort was development of an "Emigrant Wilderness Management Plan" that was approved August 15, 1979 by the Regional Forester. This plan contained a requirement for a study to determine "....the condition, value and cost-effectiveness of the various [water control structures] as well as their effects on the natural hydrological processes."

That study of the 18 water control structures in the Emigrant resulted in an Environmental Analysis, and a decision was issued in 1989. That decision was appealed and the Regional Forester directed the Stanislaus Forest Supervisor to conduct additional analysis. The Forest Supervisor initiated a "Emigrant Wilderness Management Direction, Forest Plan Amendment," in 1993.

Current Condition and Status of Structures

There are over 100 natural lakes in the Emigrant Wilderness, which is one of the highest ratios of lakes per unit in the Sierra Nevadas. Of the original 18 water control structures, only 15 are associated with lakes.

Three types of water control structures exist in the Emigrant Wilderness. There are **12 streamflow augmentation dams**, whose purpose is to increase downstream flow during dry seasons in late summer or early fall. These dams raise the height of natural lakes about 6 to 10 feet (the exception is one 25-foot high dam which inundates a former meadow). Each of these dams has a small gate valve to regulate streamflow. Operation of the streamflow valves results in a draw-down of the impounded lake levels.

There are **3 lake-level dams**, which add about 3 feet of storage height to existing natural lakes, but are not intended to regulate flow.

There are **3 meadow-maintenance dams**, which are small, non-regulating structures located in stream channels at the lower end of meadows. Their purpose is to raise the water table to sub-irrigate the meadows.

The dams are composed mostly of rock and mortar, with the exception of one earth-fill dam.

Many of the dams have deteriorated over time as maintenance levels have declined. Seven structures are in poor condition and are leaking significantly or have washed out and no longer function.

The remaining eleven are in fair to good condition. Because of the age and theme of some dams, seven are now eligible for listing on the National Register of Historic Places.

During the 1970's and 1980's, maintenance was shared between the Forest Service and the California Department of Fish and Game (CDFG). The last permit issued to CDFG for maintenance and operation was issued in 1975 and included the 11 structures that remain in fair to good condition. CDFG declined to participate in maintenance of the other seven structures. Past operation of the dams for streamflow augmentation releases has been primarily by CDFG. During the development of the EIS, CDFG indicated that they would no longer maintain or operate these structures. This is a statewide policy change due to decreasing budgets and workforce, and potential liability for structural safety.

Emigrant Wilderness Management Direction Revision Status

The Stanislaus National Forest began the environmental analysis process to establish direction for management of the Emigrant Wilderness in 1993. A Draft Environmental Impact Statement (DEIS) was issued in February of 1996. During the public review period of the DEIS, 145 responses were received, 74 of which directly addressed concerns and suggestions for the water control structures. Comments ranged from full retention of all 18 structures, retention of some of the 18, to no retention. Extensive discussion with the California Department of Fish and Game provided additional information and considerations.

Public participation throughout this planning process was extensive. A total of 22 public meetings were held prior to issuance of the draft. Fifteen direct mailings were sent to the project mailing list which averaged about 250 individuals, agencies, organizations, and elected officials from throughout California and the nation.

The Final EIS and Record of Decision establishing the Emigrant Wilderness Management Direction was released on April 8, 1998. The Forest Supervisor's decision considered more than 400 substantive comments received during public scoping and DEIS public review. The appeal period closed on August 21, 1998. Fourteen appeals were filed, ten of which addressed the dams. The appeal positions range from continued maintenance and operation of all 18 structures to no maintenance of any of them.

The environmental analysis in the EIS considers each of the water impoundment structures in the context of its condition, purpose, function and the cumulative effects of the various structures on natural processes. The decision allows for the maintenance of 8 dams and ten will be allowed to deteriorate naturally over time. Except for "Y" Meadow Lake (which has no fish), no lakes will be eliminated due to the eventual deterioration of these 10 structures. In some cases deterioration may take up to 50 years or more.

Administration Concerns with H.R. 359

The bill requires the NFE to pay for "the costs associated with the maintenance and operation of the dams and weirs." It does not clearly provide for the Federal government to recover other costs associated with the operation and maintenance, including the costs of complying with the National

Environmental Policy Act (NEPA), National Historic Preservation Act and other applicable environmental laws.

The bill also does not anticipate certain potential events. For example, it does not address whether, or for how long, the Secretary would be obligated to continue to seek other NFEs to maintain and operate the dams and weirs should a cooperative agreement entered into under this Act be terminated for noncompliance.

Finally, the bill would require the maintenance and operation of 18 dams, 4 of which are no longer in existence.

Thank you for the opportunity share the Administration's views on H.R. 359, Madam Chairman. I would be pleased to answer any questions the Subcommittee may have.