UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 18 2007

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

Ms. Sue Mills, Project Manager
NPS Benefits-Sharing EIS
P.O. Box 168
Yellowstone National Park, WY 82190

Dear Ms. Mills:

In accordance with our responsibility under the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4321, et.seq., and Section 309 of the Clean Air Act, 42 U.S.C. Section 7609, the U.S. Environmental Protection Agency (EPA) has reviewed the programmatic Draft Environmental Impact Statement (EIS) for Servicewide Benefits-Sharing (CEQ No. 20060378).

This Draft EIS analyses the potential environmental impacts of benefits-sharing, or the sharing of monetary and/or non-monetary benefits, from commercial ventures through formal agreements between National Parks and researchers. The document evaluates three alternatives that the NPS believes promote fair and equitable benefit-sharing which can be used to protect park resources. Alternative A (No Action) proposes that no benefits-sharing agreements be implemented and research would continue without the establishment of a standard benefits-sharing agreement. Alternative B proposes to implement benefits-sharing agreements and offers three variations specific to the disclosure requirements: B-1 proposes mandatory disclosure of all terms and conditions; B-2 offers optional disclosure of all terms and conditions, adhering to standard confidential business protocols; and B-3 proposes no disclosure of any royalty rate or related proprietary information. Alternative C proposes to prohibit research specimen collection for any commercially related research and only non-commercial research would take place. The document identifies B-2 as the preferred alternative.

The Draft EIS discusses the authorities that affect the management of natural resources and ensure their protection within the Parks, including the NPS's 1916 Organic Act. The document clearly identified the NPS mandate, to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations". Further, the National Parks Omnibus Management Act authorized the NPS to enter into benefits-sharing

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agreements with researchers and defined Parks as federal laboratories within the definition of the Federal Technology Transfer Act (FTTA). The type of benefits sharing agreement that is being considered by the NPS is termed a Cooperative Research and Development Agreement (CRADA). Additionally, the Draft EIS states that appropriate site-specific NEPA documents will be prepared for each future permit to collect research specimens.

EPA supports implementing the preferred alternative under existing authorities combined with full disclosure of CRADA information within confidential business information protocols. However, we suggest that the Final EIS establish mechanisms to ensure proceeds are focused on protecting natural resources in the Parks, and develop adequate enforcement protocols to ensure the terms of permits are followed so that natural resources would not be significantly impacted. In addition, EPA suggests that the Final EIS include information to clarify the range of research that has been permitted over the last 5-10 years. Lastly, we suggest including a sample permit in the Final EIS to clarify what types of information are required for issuing research permits.

Based on our review we have assigned a rating of Lack of Objections (LO) to the preferred alternative in the document. A copy of EPA's rating system is enclosed for your reference.

Thank you for the opportunity to review this Draft EIS. If you have any questions regarding EPA's comments, please contact me at 202/566-5400, or Elaine Suriano, of my staff, at 202/5640-7162.

Sincerely,

Anne N. Miller

Anne Norton Miller
Director
Office of Federal Activities

Enclosure: EPA Rating System for Draft EISs

U.S. Environmental Protection Agency Rating System for Draft Environmental Impact Statements

Definitions and Follow-Up Action*

Environmental Impact of the Action

LO - - Lack of Objections: The Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC - - Environmental Concerns: The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO - - Environmental Objections: The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU - - Environmentally Unsatisfactory: The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 - - Adequate: EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 - - Insufficient Information: The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new, reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 - - Inadequate: EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment February, 1987.