

October 6, 2011

Mr. Ed Armenta, Forest Supervisor
Inyo National Forest
351 Pacu Lane, Suite 200
Bishop, CA 93514

APPEAL OF NEPA COMPLIANCE PURSUANT TO 36 CFR 215
IMPLEMENTATION OF ALTERNATIVE 5 WITHOUT COMPLETION OF 36 CFR 220 REQUIREMENTS
MT WHITNEY HUMAN WASTE MANAGEMENT ENVIRONMENTAL ASSESSMENT

Mr. Armenta,

In a memo dated December 15, 2006, former District Ranger Garry Oye issued a decision implementing Alternative 5 of the Environmental Assessment - Management of Human Waste on Mt. Whitney, dated January 2004. Mr. Oye's memo is not described as a NEPA decision document for this Environmental Assessment (EA), nor does it meet basic requirements for a decision document pursuant to 36 CFR 220.7(c). Most notable is the omission of any reference to a Finding of No Significant Impact (FONSI), a basic requirement for completing NEPA through the EA process, unless an Environmental Impact Statement is required. In addition, the memo indicates the project had already started with the prior removal of existing toilets at Outpost Camp. There is no mention of how other alternatives were considered or how public comments were addressed, as required for a decision document. Furthermore, all documentation including the EA is no longer locatable on the internet.

For the purposes of conforming to 36 CFR 215.14 (b) (4), which outlines the appeal process, Garry Oye is named as the Responsible Official and December 15, 2006 is presumed to be a decision date, although the memo does not meet basic requirements of 36 CFR 220. The format for the remainder of this appeal will closely follow Section 215.14(b) (6-9) in the interest of completeness and organization.

(6) Any specific change(s) in the decision that the appellant seeks and rationale for those changes

Implement Alternative 1 of the EA - install new solar-powered toilets as originally planned. Toilets have been recognized as a necessary component of a human waste management program for Mt Whitney for five decades. The previous toilets suffered from serious design and maintenance flaws, but there are proven designs and maintenance methods that have been used successfully in very similar high elevation conditions with similar heavy usage. As one example, a 2010 report has been submitted to you entitled, "Performance Evaluation of Backcountry Solar Toilets," by the Park Engineer for Rocky Mountain National Park, CO. The report documents 28 years of a successful backcountry toilet program under very similar conditions to Mt Whitney with historical detail, engineered drawings, and cost estimates. The construction cost per toilet is reported as \$22,400, which is less than 10% of the annual fees collected from the 17,000 Mt Whitney hikers, each paying \$15. Please note one of the key success factors for the National Park Service system of backcountry toilets, the use of private contractors to perform routine maintenance, thereby freeing up the Rangers from this burden.

(7) Any portion(s) of the decision with which the appellant disagrees, and explanation for the disagreement

The decision to implement a pack-out human waste program Alternative 5 was made without completing a FONSI, EIS, or decision document per 36 CFR 220. The potential impacts described in the EA for this Alternative 5 are indeed occurring to some degree. Hiker noncompliance with this program seems inevitable given the undesirable task of carrying packaged human waste up and down a 22-mile strenuous trail. This unfortunate fact is conceded in the EA as an unavoidable condition of human nature. Consequently, a significant number of plastic bags full of human waste litter the trail on a daily basis during peak hiking season and must be hauled off the mountain by Rangers and volunteers. This unsightly condition negatively impacts the hiking experience and leads to other litter problems as some hikers assume litter to be acceptable. Plastic bags full of human waste are also found hiding off trail, and human waste is being excreted directly on the ground, sometimes very near water sources. Luckily no significant impacts to water quality have been reported to date.

(8) Why the appellant believes the Responsible Official's decision failed to consider the substantive comments

This section (8) of the appeal format asks for an opinion of why this happened, which is speculative by nature of the question, but required. The response is based on numerous discussions with people involved. The Responsible Official, former District Ranger Garry Oye (now with the National Park Service), was warned in writing and verbally of the potential impacts of requiring hikers to carry their packaged human waste on this trail. The warnings in these substantive comments are similar to the potential impacts described in the EA, and they have been realized to some extent, as described in 7) above. The disregard for the NEPA process and avoidance of public scrutiny may have been driven by zealousness of some form, or perhaps it was simply bad judgment. In any case, and for whatever reason, the failure to follow NEPA is inexcusable and puzzling.

It is believed that Mr. Oye implemented Alternative 5 with well-intended zealousness to expand the use of pack-out human waste programs as a general solution for wilderness areas , and Mt. Whitney would have been a high profile demonstration of its effectiveness. He appears to be strongly against the concept of toilets in a wilderness area and appears to have been misled, and misled others, into thinking that toilets were not a viable solution. Questionable research into solar toilets was conducted, but the largest manufacturer, with a GSA preapproval, received just one brief phone call. Apparently, the success at Longs Peak was misrepresented in terms of number of similar toilets required for Mt Whitney. The Mt. Whitney Rangers probably also influenced his decision because of the horrible burden they experienced maintaining an obsolete defective toilet system of bad design. Mr. Oye would have been justifiably concerned for the plight of the Rangers after years of this extremely difficult situation maintaining defective toilets. Private contractors are recommended for this task, and the failure of the previous toilets does not mean all toilet systems fail. There are proven designs with long track records of successful operation in similar conditions.

(9) How the appellant believes the decision specifically violates law, regulation, or policy

NEPA Environmental Law was violated by implementing Alternative 5 of the subject EA without completing either a FONSI or an EIS and the appropriate Decision Documentation with mandatory public notice for this action, detailed in 36 CFR 220, and enforced by the Council on Environmental Quality.

National Forest Service Regulations were violated by failure to comply with the intent and protocol promulgated in Forest Service Handbook 1909, specifically:

FSH 1909.15.43.1 "If the responsible official determines that the proposed action may have a significant effect on the quality of the human environment, publish a notice of intent to prepare an EIS (ch. 20) in the *Federal Register*. Otherwise, prepare a FONSI. A FONSI may be a separate document or included as part of a decision notice."

National Forest Service Policy was violated by failure to comply with the intent and protocol promulgated in Forest Service Manual 1900, specifically:

FSM 1900 - PLANNING

CHAPTER 1950.3 POLICY – ENVIRONMENTAL POLICY AND PROCEDURES 1950.41.8 "Complete the environmental document review before making a decision on the proposal."

In addition, White House Executive Order 12862 demands customer service be considered, surveyed, and planned for across federal agencies. Is there any question about which choice a majority of permit paying hikers would choose if asked, "Would you prefer the privacy and convenience of a modern solar powered toilet, or publicly collecting your human waste in a plastic bag only to carry it for many hours up and down a 22-mile strenuous trail shared by up to 200 other people?" Of course some people will prefer a pack-out program and they might voice their opinion strongly, but if there is any doubt, then a fair survey should be conducted with all options clearly stated. There are appropriate places for a pack-out program for human waste when there is no other practical choice, but the heavily impacted Mt. Whitney Zone is not one those areas because toilets are feasible, affordable, and preferable.

Please complete the environmental process, make all documents publically available, reopen public input into the process, and seriously consider the original direction that was intended to solve this problem: Alternative 1 - replace the defective toilets with new ones, preferably maintained by a private contractor. Toilets provide the highest level of environmental protection, the best experience for hikers, and relief for Rangers picking up human waste bags on the trail and in hiding areas. At the very least, consider a phased approach by installing new toilets at Outpost Camp on a trial basis.

Sincerely,

Name:

Address:

Phone Number: