

FILED
SEP 20 2004
By *[Signature]*
DEPUTY CLERK

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

CITIZENS FOR THE PRESERVATION OF
THE FOREST OF NISENE MARKS STATE
PARK, et al.,
Petitioner,
vs. Case No.: 03CS01366
CALIFORNIA DEPARTMENT OF PARKS
AND RECREATION, et al.,
Respondent.

Case No. 03CS01366

**ORDER DIRECTING ISSUANCE OF
ALTERNATIVE WRIT OF
ADMINISTRATIVE MANDAMUS AND
ISSUANCE OF STAY.**

**TO THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION AND
THE STATE PARK AND RECREATION COMMISSION:**

Good cause appearing from the verified Petition for a Writ of Mandamus and after preliminary briefing, argument and hearing before the Court, the Court having found that Respondents are unlikely to prevail on the merits and the public interest will not suffer,

YOU ARE HEREBY COMMANDED that immediately on the service of this Alternative Writ and Stay, you shall refrain from engaging in any activity and/or proceeding with the implementation of any plan pursuant to the adoption of the Preliminary and/or Final General Plan/Final EIR approved by the State Park and Recreation Commission on August 22, 2003 with respect to the Forest of Nisene Marks State Park until further order of this Court.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 This Alternative Writ and Stay is issued in that the Court has found that Respondents
2 have failed to consider and act in compliance with the intent of the donors, the Marks family,
3 that 9000 acres of the park shall be preserved for use limited to camping, nature study, hiking
4 and associated activities. Under these and other terms of the various grant and gift deeds, there
5 shall be no mountain biking within that portion of the Nisene Marks State Park as provided for in
6 the relevant grant and gift deeds.

7 This Alternative Writ and Stay is effective until the Court has rendered a written ruling
8 on the deeds and on the appropriate remedy regarding the Preliminary Plan/EIR in light of the
9 Court's interpretation of the grant deeds. The parties have been ordered to brief for the Court the
10 limited issue only of their respective positions on the extent of the remedy regarding the
11 Plan/EIR in light of the Court's interpretation of the relevant deeds.

12 The matter is hereby continued to November 12, 2004, at 10 a.m., in Department 16.
13 Respondents California Department of Parks and Recreation and State Park and Recreation
14 Commission shall file a supplemental brief on October 1, 2004 by 5 p.m., Petitioners shall a brief
15 in response by October 20, 2004 by 5 p.m., and Respondents shall file a reply by November 1,
16 2004 by 5:00.

17 This order shall be personally served on Respondents by Petitioner.

18 Dated: 9/20/04.

19
20
21 By: 

JUDY HOLZER HERSHER
Judge of the Superior Court

Case Title: CITIZENS FOR PRESERVATION OF THE FOREST
OF NISENE MARKS STATE PARK v. CA. DEPT. OF PARKS AND RECREATION.

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(3))

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing ORDER DIRECTING ISSUANCE OF ALTERNATIVE WRIT OF ADMINISTRATIVE MANDAMUS AND ISSUANCE OF STAY, by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

MARY HACKENBRACHT
Senior Assistant Attorney General
P.O.Box 944255
Sacramento, CA 94244-2550

WILLIAM P. PARKIN
Witter Parkin, LLP
147 S River St., Ste.221
Santa Cruz, CA 95060-4540

I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: 9/21/04

Superior Court of California, County of
Sacramento

By: N.SMITH
Deputy Clerk

ORIGINAL

FILED
ENDORSED
MAY - 3 2004
Deputy Clerk

1 BILL LOCKYER, Attorney General
of the State of California
2 MARY HACKENBRACHT
Senior Assistant Attorney General
3 TERI H. ASHBY (SBN 114624)
Deputy Attorney General
4 P.O. Box 944255
Sacramento, California 94244-2550
5 Telephone: (916) 327-4254
Facsimile: (916) 327-2319

6 Attorneys for Respondent
7 California Department of Parks and Recreation

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SACRAMENTO

11 Case No. 03CS01366

12 CITIZENS FOR THE PRESERVATION OF THE
13 FOREST OF NISENE MARKS STATE PARK, an
unincorporated association,

14 Petitioners,

15 v.

16 CALIFORNIA DEPARTMENT OF PARKS AND
RECREATION; STATE PARK AND
17 RECREATION COMMISSION; and DOES 1
through 15,

18 Respondents.

19
20 STIPULATION AND
[PROPOSED] ORDER SETTING
BRIEFING SCHEDULE AND
HEARING DATE

Date: August 13, 2004
Time: 10:00 am
Dept.: 16
Judge: Hon. Judy Holzer Hersher

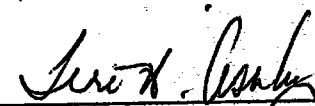
21 Respondents/Defendants, California Department of Parks and Recreation and
22 State Park and Recreation Commission and Petitioners/Plaintiffs, Citizens for the Preservation of
The Forest of Nisene Marks State Park and Sandy Henn, (collectively "Parties"), by and through
23 their attorneys stipulate as follows:

- 24 1. Hearing on this matter was originally set for June 11, 2004.
25 2. Petitioners/Plaintiffs' opening brief has been filed and the Administrative
Record has been lodged with the court.
26 3. At the request of Resondents/Defendants, the parties agree to modify the
27 present briefing schedule and change the hearing date.
28

- 1 4. Respondents/Defendants shall file and serve their opposition brief no later
2 than May 26, 2004.
- 3 5. Petitioners/Plaintiffs shall file and serve their reply brief no later than June
4 21, 2004.
- 5 6. The hearing on the petition/complaint shall be held in Department 16 on
6 August 13, 2004 at 10:00 a.m.
- 7 7. Respondents/Defendants shall file and serve their response to the Second
8 Amended Petition for Writ of Mandamus and Complaint for Declaratory Relief no later than May
9 5, 2004.
- 10 8. This stipulation may be executed in counter parts and filed with facsimile
11 signatures.

12 Dated: April 28, 2004

BILL LOCKYER
Attorney General of the State of California



TERI H. ASHBY, Deputy Attorney General
Attorneys for Respondent
California Department of Parks and Recreation

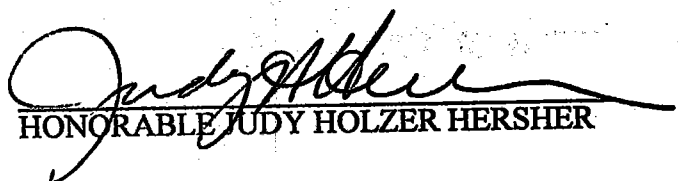
18 Dated:

WITTWER & PARKIN, LLP

ANDREA M. KENDRICK
Attorneys for Petitioner
Citizens for the Preservation of the Forest
of Nisene Marks State Park

25 IT IS SO ORDERED.

26 Date: MAY - 4 2004



HONORABLE JUDY HOLZER HERSHER

JUDY HOLZER HERSHER

DECLARATION OF SERVICE

Case Name: Citizens for the Preservation of the Forest of Nisene Marks State Park v.
California Department of Parks & Recreation

Court No.: Sacramento County Superior Court Case No. 03CS01366

I declare that I am employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. My business address is 1300 I Street, Sacramento, California 95814. I am readily familiar with the business practice, at my place of business, for the collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the postal service in the ordinary course of business on the same day on which it is placed for mailing.

On April 30, 2004, I served the following documents:

STIPULATION AND [PROPOSED] ORDER SETTING BRIEFING
SCHEDULE AND HEARING DATE

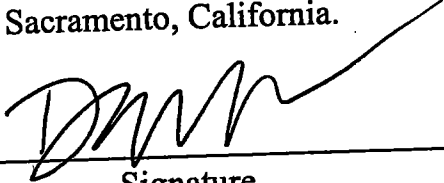
on the parties in said action as follows:

XX (REGULAR MAIL) by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system, addressed as shown below:

ANDREA M. KENDRICK
Wittwer & Parkin, LLP
147 South River Street, Suite 221
Santa Cruz, CA 95060

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on April 30, 2004, at Sacramento, California.

DONNA CAROLO
Name


Signature

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE/TIME : MARCH 4, 2004
JUDGE : MICHAEL G. VIRGA
REPORTER : NONE

DEPT. NO : 26 / 47
CLERK : C. SCHELLENGER
BAILIFF : NONE

CITIZENS FOR THE PRESERVATION OF THE FOREST
OF NISENE MARKS STATE PARK, et al.,
Petitioners,

COUNSEL OF RECORD:
WILLIAM P. PARKIN

VS. Case No.: 03CS01366

CALIFORNIA DEPARTMENT OF PARKS AND
RECREATION, et al.,
Respondents.

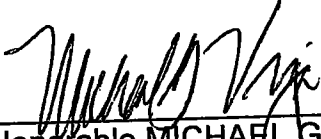
TERI ASHBY

Nature of Proceedings: ORDER REASSIGNING PETITION FOR WRIT OF MANDATE
FOR ALL PURPOSES

As a result of Judge Burger-Plavan taking on other assignments, effective May 1, 2004, Petitions for Writs of Mandate previously assigned to the Honorable Trena H. Burger-Plavan are reassigned to the Honorable Judy Holzer Hersher. Therefore, this matter is hereby reassigned to Department 16 for all purposes, and the hearing set for **June 11, 2004** will be heard in **Department 16** at 10:00 a.m.

All subsequent documents in this cause shall be filed with the clerk of **Department 16** located on the third floor of the courthouse. These documents include, but are not limited to Answers, Memo of Points and Authorities, Demurrers, any pre-hearing motions, and lodging of Administrative Records. **Please provide one courtesy copy of each document filed in this action.** For those documents requiring payment of a fee (i.e., Answers, Motions, and Demurrers), the fee shall be paid to the cashier located in Room 102 of the courthouse before filing in **Department 16**.

Dated: MAR - 8 2004


Honorable MICHAEL G. VIRGA,
Judge of the Superior Court of California,
County of Sacramento

BOOK : 26 / 47
PAGE :
DATE : MARCH 4, 2004
CASE NO. : 03CS01366
CASE TITLE : CITIZENS VS. CALIF. DEPT. PARKS

Superior Court of California, County of
Sacramento

BY: C. SCHELLENGER,
Deputy Clerk

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(3))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

William P. Parkin, Esq.
WITTWER & PARKIN, LLP
147 South River Street, Suite 221
Santa Cruz, CA 95060

Teri Ashby
OFFICE OF THE ATTORNEY GENERAL
1300 "I" Street
Sacramento, CA 95814

Dated: **MAR - 9 2004**

Superior Court of California,
County of Sacramento

By: 
C. SCHELLENGER
Deputy Clerk

**ORDER ASSIGNING PETITION FOR WRIT OF MANDATE
TO ONE JUDGE FOR ALL PURPOSES**

CASE NAME: Mavis State Park vs. CA Dept of Public and Rec, et al
Citizen for the preservation of The forest of Nisene

CASE NUMBER: 03CS01366

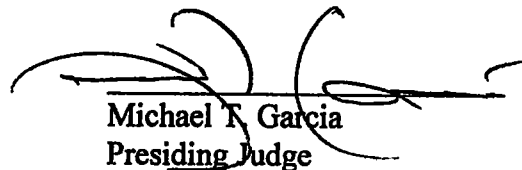
This matter is hereby assigned to the **Honorable Trena H. Burger-Plavan**, of Department 26 for all purposes.

All subsequent documents in this cause shall be filed with the clerk of Department 26 located on the fourth floor of the courthouse. These documents include, but are not limited to: Answers, Memoranda of Points and Authorities, Administrative Records, Demurrers, and any prehearing motions. For those documents requiring the payment of a fee (i.e. Answers, Motions, Demurrers), the fee shall be paid to the cashier located in Room 102 of the courthouse before filing in Department 26.

The petitioner in land use and environmental actions, at the time of the deadline for the response to the petition, shall prepare and lodge with the assigned department a notice form for the court's signature inviting mediation pursuant to Government Code section 66031, subdivision (b). A sample form may be obtained from the clerk in the assigned department.

A copy of this order shall be served on the respondent by the petitioner.

Dated: SEP 18 2003


Michael T. Garcia
Presiding Judge

If you have any questions, please refer to the Sacramento Superior Court Procedures for Executing Petitions for Writ of Mandate available in Room 102 of the courthouse, as well as in Department your case has been assigned.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE/TIME : AUGUST 13, 2004 10:00 A.M.
JUDGE : JUDY HERSHER
REPORTER : C. SWITZER, #2112

DEPT. NO : 16
CLERK : D. AHEE
BAILIFF :

**CITIZENS FOR THE PRESERVATION OF THE FOREST
OF NISENE MARKS STATE PARK, et al.,**
Petitioner,

PRESENT:
WILLIAM P. PARKIN

VS. Case No.: 03CS01366

**CALIFORNIA DEPARTMENT OF PARKS AND
RECREATION, et al.,**
Respondent.

TERI ASHBY

Nature of Proceedings: PETITION FOR WRIT OF MANDATE

The above-entitled matter came on calendar this day with the above named parties present as indicated.

Both counsel made arguments to the Court.

Thereafter, the Court ordered this matter continued to November 19, 2004 at 9:00 a.m. in this department for further argument. The Court set a briefing schedule as stated into the record.

BOOK : 16
PAGE :
DATE : AUGUST 13, 2004 10:00 A.M.
CASE NO. : 03CS01366
CASE TITLE : CITIZENS VS. CALIF. DEPT. PARKS

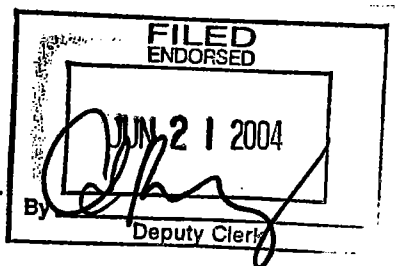
**Superior Court of California, County of
Sacramento**

BY:  D. AHEE,
Deputy Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

William P. Parkin, State Bar No. 139718
Andrea M. Kendrick, State Bar No. 225688
WITTWER & PARKIN, LLP
147 South River Street, Suite 221
Santa Cruz, California 95060
Telephone: (831) 429-4055

Attorney for Petitioners
CITIZENS FOR THE PRESERVATION OF THE FOREST
OF NISENE MARKS STATE PARK



SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

CITIZENS FOR THE PRESERVATION OF
THE FOREST OF NISENE MARKS STATE
PARK, an unincorporated association, and
SANDY HENN, a Citizen Resident of the
County of Santa Cruz, acting individually and
on behalf of all others similarly situated

Petitioners,

vs.

CALIFORNIA DEPARTMENT OF PARKS
AND RECREATION; STATE PARK AND
RECREATION COMMISSION;
and DOES 1 THROUGH 15,

Respondents,

No. 03CS01366

BY FAX

PROOF OF SERVICE

Date: August 13, 2004
Time: 10:00 a.m.
Dept: 16
Judge: Hon. Judy Holzer Hersher

Filed By
One Legal

PROOF OF SERVICE BY MAIL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I certify and declare as follows:

I am over the age of 18, and not a party to this action. My business address is Wittwer & Parkin, LLP, 147 South River Street, Suite 221, Santa Cruz, CA 95060, which is located in Santa Cruz County where the mailing described below took place.

I am familiar with the business practice at my place of business for the collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 21, 2004, the following document(s):

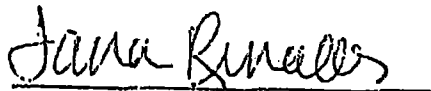
- 1. PETITIONER'S REPLY BRIEF
- 2. PETITIONER'S OBJECTION TO DECLARATIONS OF KARL KNAPP AND THOMAS P. WARD IN SUPPORT OF STATE PARK'S OPPOSITION
- 3. PETITIONER'S OBJECTION TO RESPONDENTS' MOTION FOR REQUEST FOR JUDICIAL NOTICE
- 4. REPLY TO RESPONDENTS' OBJECTION TO EVIDENCE SUBMITTED BY PETITIONER IN SUPPORT OF COMPLAINT FOR DECLARATORY RELIEF AND SECTION 1085 WRIT OF PETITION FOR MANDAMUS

was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully paid to:

Teri Ashby
Attorney General of the State of California
1300 I Street
Sacramento, CA 95814

I certify and declare under penalty of perjury that the forgoing is true and correct.

Dated: June 21, 2004

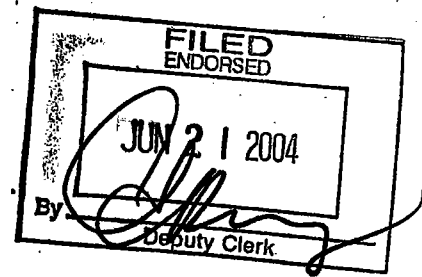


Jana Rinaldi

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

William P. Parkin, State Bar No. 139718
Andrea M. Kendrick, State Bar No. 225688
WITTWIER & PARKIN, LLP
147 South River Street, Suite 221
Santa Cruz, California 95060
Telephone: (831) 429-4055

Attorney for Petitioners
CITIZENS FOR THE PRESERVATION OF THE FOREST
OF NISENE MARKS STATE PARK



SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

BY FAX

CITIZENS FOR THE PRESERVATION OF
THE FOREST OF NISENE MARKS STATE
PARK, an unincorporated association, and
SANDY HENN, a Citizen Resident of the
County of Santa Cruz, acting individually and
on behalf of all others similarly situated

No. 03CS01366

Petitioners,

**REPLY TO RESPONDENTS'
OBJECTION TO EVIDENCE
SUBMITTED BY PETITIONER IN
SUPPORT OF COMPLAINT FOR
DECLARATORY RELIEF AND
SECTION 1085 WRIT OF PETITION
FOR MANDAMUS**

vs.

CALIFORNIA DEPARTMENT OF PARKS
AND RECREATION; STATE PARK AND
RECREATION COMMISSION;
and DOES 1 THROUGH 15,

Date: August 13, 2004
Time: 10:00 a.m.
Dept: 16
Judge: Hon. Judy Holzer Hersher

Respondents,

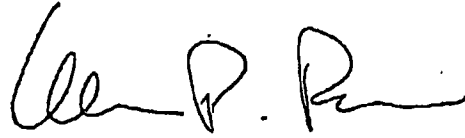
_____)

**Filed By
One Legal**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Petitioners Citizens for the Preservation of The Forest of Nisene Marks State Park's and Sandy Henn's ("Petitioners") use of the statement of Herman Marks' niece to show the intent of the grantors is proper because it is part of the administrative record. The use of the statement of Herman Marks' niece in Petitioners' Opening Brief (page 10, lines 18-19) is proper because it is part of the record upon which State Parks' made its decision to allow mountain biking within The Forest of Nisene Marks State Park. (See also Petitioners' Reply Brief, p.16, lns. 10-12).

WITTWER & PARKIN, LLP



By: William P. Parkin
Attorney for Petitioners
CITIZENS FOR THE
PRESERVATION OF THE
FOREST OF NISENE MARKS
STATE PARK and SANDY HENN

Dated: 6/21/04

1 William P. Parkin, State Bar No. 139718
2 Andrea M. Kendrick, State Bar No. 225688
3 WITTWER & PARKIN, LLP
4 147 South River Street, Suite 221
5 Santa Cruz, California 95060
6 Telephone: (831) 429-4055

FILED
ENDORSED
JUN 21 2004
By *[Signature]*
Deputy Clerk

7 Attorney for Petitioners
8 CITIZENS FOR THE PRESERVATION OF THE FOREST
9 OF NISENE MARKS STATE PARK

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SACRAMENTO

12 CITIZENS FOR THE PRESERVATION OF
13 THE FOREST OF NISENE MARKS STATE
14 PARK, an unincorporated association, and
15 SANDY HENN, a Citizen Resident of the
16 County of Santa Cruz, acting individually and
17 on behalf of all others similarly situated

No. 03CS01366

BY FAX

PETITIONER'S OBJECTION TO
DECLARATIONS OF KARL KNAPP
AND THOMAS P. WARD IN SUPPORT
OF STATE PARK'S OPPOSITION

Petitioners,

18 vs.

19 CALIFORNIA DEPARTMENT OF PARKS
20 AND RECREATION; STATE PARK AND
21 RECREATION COMMISSION;
22 and DOES 1 THROUGH 15,

Date: August 13, 2004
Time: 10:00 a.m.
Dept: 16
Judge: Hon. Judy Holzer Hersher

23 Respondents,
24
25
26
27
28

Filed By
One Legal

1 Petitioners Citizens for the Preservation of The Forest of Niseno Marks State Park and
2 Sandy Hena ("Petitioners") object to the Declaration of Karl Knapp and the Declaration of
3 Thomas P. Ward and exhibits attached to the Ward Declaration in State Parks' Opposition to
4 Mandamus because the declarations and the exhibits pertain to Petitioners' cause of action under
5 the California Environmental Quality Act. Petitioners also object to State Parks' use of personal
6 statements from the pages attached to the Ward Declaration and the use of a statement from "an
7 anonymous mountain biker" which was contained in the Ward Declaration. Opposition Brief,
8 page 5.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Declarants are Available to Testify As Witnesses

Both the Knapp Declaration and the Ward Declaration are inadmissible as hearsay and Petitioners have had no opportunity to cross-examine the declarants. Both Karl Knapp and Thomas P. Ward are State Parks personnel, as explained in their declarations, and both were, therefore, available for trial.

The Evidence Code Section 240 defines "unavailable as a witness" as a declarant who is any of the following: (1) exempted on the grounds of privilege; (2) disqualified from testifying to the matter; (3) dead or unable to attend because of physical or mental illness or infirmity; (4) absent from the hearing and the court is unable to compel his or her attendance by its process; or (5) absent from the hearing and the proponent of his or her statement has exercised reasonable diligence but has been unable to procure his or her attendance by the court's process. Evidence Code Section 240. It is improper to do so now.

2. Statements On Page Five of the Opposition Brief Are Hearsay

State Parks offers three quotes on page five of their Opposition Brief to show that mountain bikers come to state and federal parks and other undeveloped areas to experience and enjoy nature. Statements one and two are taken from articles on the website of the International

1 Mountain Biking Association which promotes the sport. Copies of the articles are attached as
2 exhibits to the Ward Declaration. (Opposition Brief, p. 5, lns. 8-11). The third statement is
3 contained in the Knapp Declaration and recites a statement from an anonymous mountain biker.
4 (Opposition Brief, p. 5, ln. 12). The statements are not relevant as to whether mountain biking
5 should be allowed in Nisene Marks State Park. See Evidence Code Section 210. The statements
6 are hearsay, pursuant to Evidence Code Section 1200 and the exceptions relied upon by State
7 Parks, Evidence Code Sections 1221 and 1230 do not apply.

8 Evidence Code Section 1221 is inapplicable to all three statements. This exception is the
9 adoptive admission exception and deals with situations in which a statement is offered against a
10 party and with knowledge of the statement, the party manifests his or her adoption of the
11 statement. It must be assumed that State Parks offers the statements against Petitioners.
12 Petitioners have had no knowledge of the statements prior to the Opposition Brief and have not
13 in any way shown adoption of the belief of the statements. The exception is inapplicable here.

14 Evidence Code Section 1230 only applies to declarants who are unavailable as witnesses
15 and the statements when made must be "so far contrary to the declarant's pecuniary or
16 proprietary interest, or so far subjected him to the risk of civil or criminal liability, or so far
17 tended to render invalid a claim by his against another, or created such a risk of making him an
18 object of hatred, ridicule, or social disgrace in the community, that a reasonable man in his
19 position would not have made the statement unless he believed it to be true." Evidence Code
20 Section 1230. There is no indication that State Parks, the proponent of the statement, attempted
21 to procure the declarants of any of the statements. Even if State Parks argues that the third
22 statement was made by an anonymous declarant, Evidence Code Section 1230 is inapplicable to
23 all three declarants because there is nothing about any of the statements which are contrary to a
24 declarant's pecuniary or propriety interest, or which put any of the declarants at a risk of social
25 disgrace. Therefore, this exception does not apply.

26 These statements offered by State Parks on page five of the Opposition Brief are hearsay
27

1 and no exception applies.

2
3 **3. Extra-Record Evidence is Inadmissible in Administrative
Mandamus**

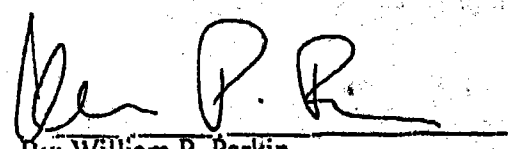
4 The Respondents are attempting to augment the administrative record with testimony
5 from State Parks Manager for the Recreation Unit, Thomas P. Ward and State Parks District
6 Maintenance Chief for the Sierra District, Karl Knapp and pages from a website attached as
7 exhibits to the Ward Declaration. Because this testimony is outside the administrative record, it
8 should be excluded from consideration. "Extra record evidence" and evidence which was not
9 before the agency when it made its decision is not admissible in this proceeding. *Western States*
10 *Petroleum Association v. Superior Court* (1995) 9 Cal.4th 559, 572-573.

11 "[C]ourts generally may not consider evidence not contained in the administrative record
12 when reviewing the substantiality of the evidence supporting a quasi-legislative administrative
13 decision under Public Resources Code section 21168.5." *Western States Petroleum Association v.*
14 *Superior Court of Los Angeles* (1995) 9 Cal.4th 559, 565. In addition, "extra-record evidence is
15 generally not admissible to show that an agency 'has not proceeded in a manner required by law'
16 in making a quasi-legislative decision." *Id.*

17 The exception does not apply and the declarations are not admissible because, both
18 declarants are State Parks personnel and were, therefore, available to submit statements on
19 mountain biking during the administrative process. If State Parks wanted to refute the evidence in
20 the record that mountain biking causes erosion and inflicts more impact to trails than hikers,
21 loggers, and other trail users, it could have done so during the administrative review process.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WITWER & PARKIN, LLP



By: William P. Parkin

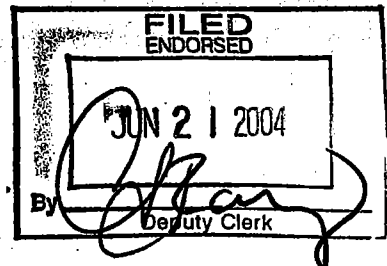
Attorney for Petitioners
CITIZENS FOR THE
PRESERVATION OF THE FOREST
OF NISENE MARKS STATE PARK
and SANDY HENN

Dated:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

William P. Parkin, State Bar No. 139718
Andrea M. Kendrick, State Bar No. 225688
WITTMER & PARKIN, LLP
147 South River Street, Suite 221
Santa Cruz, California 95060
Telephone: (831) 429-4055

Attorney for Petitioners
CITIZENS FOR THE PRESERVATION OF THE FOREST
OF NISENE MARKS STATE PARK



SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

CITIZENS FOR THE PRESERVATION OF
THE FOREST OF NISENE MARKS STATE
PARK, an unincorporated association, and
SANDY IFENN, a Citizen Resident of the
County of Santa Cruz, acting individually and
on behalf of all others similarly situated

Petitioners,

vs.

CALIFORNIA DEPARTMENT OF PARKS
AND RECREATION; STATE PARK AND
RECREATION COMMISSION;
and DOES 1 THROUGH 15,

Respondents,

No. 03CS01366

BY FAX

PETITIONER'S OBJECTION TO
RESPONDENTS' MOTION FOR
REQUEST TO JUDICIAL NOTICE

Date: August 13, 2004
Time: 10:00 a.m.
Dept: 16
Judge: Hon. Judy Holzer Hersher

Filed By
One Legal

Petitioners Citizens for the Preservation of The Forest of Nisene Marks State Park and

Sandy Herin object to Respondents' Request for Judicial Notice in support of their Opposition Brief. Respondents requested Judicial Notice pursuant to Evidence Code Sections 451(f), 452(g), and 452(h) of material obtained from the following websites:

- (1) The Somatic Systems Institute at <<http://somatics.org/training/students/area/attractions/outdoors-land.html>>.
- (2) Hampshire College at <<http://hampshire.edu/sms/index/php?id=713>>.
- (3) An Outdoors Club at <<http://www.productivity.net/outdoorsclub2.htm>>.
- (4) BackToTheWoods.com, at <http://www.backtowoods.com/chapter_blue_book.htm>.
- (5) KIDO, an Ecological Research Station at <<http://kido.optsoftware.com/ecotours/hiking.html>>.
- (6) BlueRidgePictures.com at <<http://www.cafeshops.com/blueridge>>.

As a general rule of law, only relevant matters may be entered into evidence. Evidence Code Section 350. When considering which materials may be admitted through judicial notice, this same general rule applies. While Evidence Code Sections 452 and 453 allow a court to judicially notice a variety of matters, only relevant material may be noticed. *Mungini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063. Relevant evidence is "evidence, including which has "any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." Evidence Code Section 210. Admission of the material from the requested websites would be irrelevant for the purposes that the Respondents seek to have it judicially noticed.

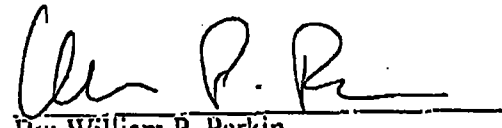
State Parks' Opposition Brief cited the websites in support of its claim that biking is associated with hiking and camping. This material merely lists different outdoor activities and does nothing to prove that biking is "associated" with hiking and camping. One page for which Respondents request judicial notice sells T-shirts and lists hiking, biking, camping, golfing, and karting together. (State Parks' Request for Judicial Notice, Exhibit F). Exhibits A and B are the exact same material, but from different websites which list different outdoor activities in the Hampshire Area. (State Parks' Request for Judicial Notice). Another page is from an Outdoors

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Club which was created for those who "love kayaking, hiking, bicycling, rock climbing,
snowboarding, or other activities." This material is irrelevant as to whether mountain biking is
an activity associated with hiking, camping, and nature study as the term "associated" is used in
the Marks family deeds conveying Nisene Marks State Park to the State.

Dated: 6/21/04

WITWER & PARKIN, LLP



By: William P. Parkin
Attorney for Petitioners
CITIZENS FOR THE
PRESERVATION OF THE
FOREST OF NISENE MARKS
STATE PARK and SANDY HENN



ORIGINAL

1 **BILL LOCKYER**, Attorney General
of the State of California
2 **MARY HACKENBRACHT**
Senior Assistant Attorney General
3 **TERI H. ASHBY** (SBN 114624)
Deputy Attorney General
4 P.O. Box 944255
Sacramento, California 94244-2550
5 Telephone: (916) 327-4254
Facsimile: (916) 327-2319
6

FILED
ENDORSED
JUL 19 2004
By [Signature]
Deputy Clerk

7 Attorneys for Respondent California
Department of Parks and Recreation
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SACRAMENTO**
11

12 **CITIZENS FOR THE PRESERVATION OF THE**
13 **FOREST OF NISENE MARKS STATE PARK**, an
unincorporated association, and **SANDY HENN**, a
14 **Citizen Resident of the County of Santa Cruz**,
acting individually and on behalf of all other
15 similarly situated.

16 **Petitioners/Plaintiffs,**

17 **v.**

18 **CALIFORNIA DEPARTMENT OF PARKS AND**
RECREATION; STATE PARK AND
19 **RECREATION COMMISSION; and DOES 1**
through 15,
20

21 **Respondents/Defendants.**

Case No. 03CS01366

STATE PARKS' REPLY TO
PETITIONERS/PLAINTIFFS'
OBJECTIONS TO
DECLARATIONS OF KARL
KNAPP AND THOMAS P.
WARD; NOTICE OF
AVAILABILITY AT TRIAL AND
REQUEST FOR JUDICIAL
NOTICE

Date: August 13, 2004
Time: 10:00 am
Dept.: 16
Judge: Hon. Judy Holzer Hersher

22
23 **Petitioners/Plaintiffs object to the declarations of Karl Knapp and Thomas P. Ward on the**
24 **grounds that they are hearsay, contain hearsay statements and are extra-record evidence**
25 **inadmissible in administrative mandamus. The declarations are not hearsay as they are being**
26 **offered for trial on August 13, 2004 in opposition to Petitioners/Plaintiffs' complaint for**
27 **declaratory relief and the declarants will be available for cross examination on August 13, 2004.**
28 **Moreover, petitioners/plaintiffs have brought a traditional mandamus action challenging State**

1 Parks' informal administrative action in 1989 that opened the deed restricted portion of Nisene
2 State Park to biking and extra-record evidence is properly admitted. (*Western States Petroleum*
3 *Association v. Superior Court* (1995) 9 Cal.4th 559.) Finally, the hearsay statements contained
4 in the Ward declaration are relevant to determine whether biking is "associated" with camping,
5 hiking and nature study as set forth in the grant deeds and therefore an acceptable activity under
6 the grant deeds.

7 A. **The Ward and Knapp Declarations Are Properly Admitted As Evidence in**
8 **Petitioners/Plaintiffs' Complaint for Declaratory Relief and Their**
9 **Traditional Mandamus Claim Challenging State Parks Decision to Allow**
10 **Biking in the Deeded Portions of Nisene Marks Park**

11 The Ward and Knapp declarations are offered as extrinsic evidence to show that the grant
12 deeds' patently ambiguous phrase "associated activities" includes biking. Extrinsic evidence is
13 allowed for this purpose. (*Winet v. Price* (1992) 4 Cal.App. 4th 1159; *Scrubby v. Vintage*
14 *Grapevine Inc.* (1991) 37 Cal.App.4th 697, 702.) As such, it is properly admitted in
15 petitioners/plaintiffs' mandamus action and at trial of petitioners/plaintiffs' complaint for
16 declaratory relief on August 13, 2004. The declarants will be available on that date for cross-
17 examination.

18 In addition, the Ward and Knapp declarations are properly admitted as extra-record
19 evidence in petitioners/plaintiffs' traditional mandamus action against State Parks claiming that
20 allowing biking within the deed restricted areas of Nisene Marks State Park is in contravention of
21 the grant deeds. Petitioners/plaintiffs make this claim in addition to their CEQA challenges and
22 request the court to order that "there shall be no mountain biking within that portion of Nisene
23 Marks State Park as provided for in the Grant and Gift Deeds." (Second Amended Petition for
24 Writ of Mandamus and Complaint for Declaratory Relief, p. 12, lines 13-15.) Extra-record
25 evidence is allowed in traditional mandamus actions challenging ministerial or informal
26 administrative actions where the facts are in dispute. (*Western States Petroleum Association v.*
27 *Superior Court* (1995) 9 Cal.4th 559, 576.) This is because there is often little or no
28 administrative record in such cases. (*Western States Petroleum Association, supra*, 9 Cal.4th at p.

1 575.) State Parks first allowed biking within the deeded portions of Nisene Marks State Park in
2 1989. (3 AR 1588.) That policy continues today and petitioners/plaintiff are challenging that
3 policy. That decision was an informal administrative action. No record other than the actual
4 policy (see 3 AR 1588) exists. Now, fifteen years later, petitioners/plaintiffs challenge the policy
5 on the grounds that it was and continues to be an *ultra vires* act in contravention of the grant
6 deeds. State Parks contends that the grant deeds allow biking; disputes petitioners/plaintiffs'
7 interpretation of the term "associated activities" and is entitled to present evidence in support of
8 its position on this disputed issue. (*Western States Petroleum Association*, *supra*, 9 Cal.4th at p.
9 576.)

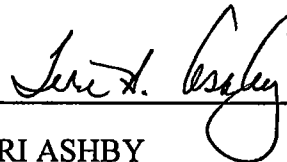
10 **B. The Hearsay Statements Contained in the Ward Declaration Are**
11 **Admissible**

12 Statement of the anonymous biker is admissible under section 1240 of the Evidence Code
13 and is relevant to show whether biking is an associated activity. The statements of the other
14 bikers set forth in articles found on the World Wide Web are admissible under section 452
15 subsection (h) of the Evidence Code and State Parks requests that the Court take Judicial Notice
16 of the articles and the statements made about why bikers want to ride in natural surroundings.

17 Dated:

Respectfully submitted,

18 BILL LOCKYER
19 Attorney General of the State of California

20
21 

22 TERI ASHBY
23 Deputy Attorney General

24 Attorneys for Respondent
25 California Department of Parks and Recreation

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **CITIZENS FOR THE PRESERVATION OF THE FOREST OF NISENE MARKS STATE PARK, an unincorporated association v. CALIFORNIA DEPARTMENT OF PARKS AND RECREATION; STATE PARK AND RECREATION COMMISSION; and DOES 1 through 15**

No.: **03CS01366**

I declare:

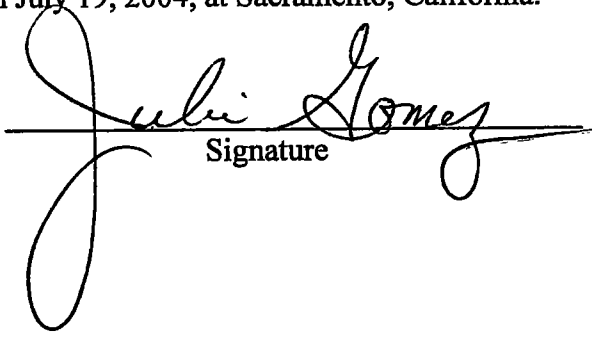
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550.

On July 19, 2004, I served the attached **STATE PARKS' REPLY TO PETITIONERS/PLAINTIFFS' OBJECTIONS TO DECLARATIONS OF KARL KNAPP AND THOMAS P. WARD; NOTICE OF AVAILABILITY AT TRIAL AND REQUEST FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

Andrea M. Kendrick
Wittwer & Parkin, LLP
147 South River Street, Suite 221
Santa Cruz, CA 95060

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 19, 2004, at Sacramento, California.

Julie Gomez
Declarant



Signature

10069913.wpd

EXHIBIT A

EXHIBIT B

EXHIBIT C

Exhibit D

Exhibit E

ORIGINAL

1 **BILL LOCKYER**, Attorney General
of the State of California
2 **MARY HACKENBRACHT**
Senior Assistant Attorney General
3 **TERI H. ASHBY** (SBN 114624)
Deputy Attorney General
4 P.O. Box 944255
Sacramento, California 94244-2550
5 Telephone: (916) 327-4254
Facsimile: (916) 327-2319

FILED
ENDORSED
MAY 26 2004
Clerk

6 Attorneys for Respondents California
7 Department of Parks and Recreation and
8 State Park Recreation Commission

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SACRAMENTO**

11
12 **CITIZENS FOR THE PRESERVATION OF THE**
13 **FOREST OF NISENE MARKS STATE PARK, an**
14 **unincorporated association,**

15 **Petitioners,**

16 **v.**

17 **CALIFORNIA DEPARTMENT OF PARKS AND**
18 **RECREATION; STATE PARK AND**
19 **RECREATION COMMISSION; and DOES 1**
20 **through 15,**

21 **Respondents.**

Case No. 03CS01366

STATE PARKS' OBJECTION
TO EVIDENCE SUBMITTED IN
SUPPORT OF COMPLAINT
FOR DECLARATORY RELIEF
AND SECTION 1085
MANDAMUS

Date: August 13, 2004
Time: 10:00 am
Dept.: 16
Judge: Hon. Judy Holzer Hersher

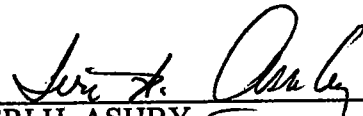
21 State Parks objects to statement from Herman Marks niece (4 AR 2892) offered by
22 Petitioners to show the intent of the grantors at the time the property was granted to State Parks.
23 The statement is included as part of the record because petitioners presented it along with,
24 additional information at the hearing when State Park and Recreation Commission approved the
25 General Plan. The statement is hearsay, (Evid. Code, § 1200); not relevant (Evid. Code, § 210)
26 to any decision or finding made by State Parks in developing and approving the General Plan;
27 and not relevant (Evid. Code, § 210) to show intent of the grantors. The prime rule for
28 interpreting deeds is to determine the objective, and not the subjective, intent of the parties by an

1 examination of the deed. (See Civ. Code, §§ 1066, 1105, 1636-1639; *City of Manhattan Beach v.*
2 *Superior Court* (1996) 13 Cal.4th 232, 238, 240.)

3 Dated: May 26, 2004

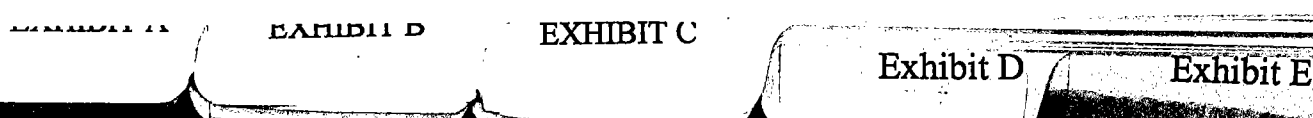
Respectfully submitted,

4 BILL LOCKYER
Attorney General of the State of California

5
6
7 
TERI H. ASHBY
Deputy Attorney General

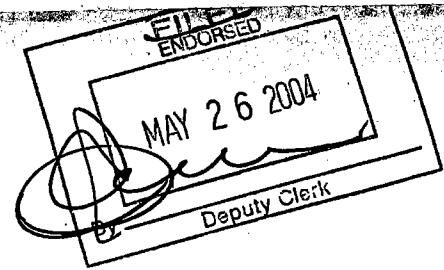
8 Attorneys for Respondent
9 California Department of Parks and Recreation

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



ORIGINAL

1 **BILL LOCKYER**, Attorney General
of the State of California
2 **MARY HACKENBRACHT**
Senior Assistant Attorney General
3 **TERI H. ASHBY** (SBN 114624)
Deputy Attorney General
4 P.O. Box 944255
Sacramento, California 94244-2550
5 Telephone: (916) 327-4254
Facsimile: (916) 327-2319



6 Attorneys for Respondents California
7 Department of Parks and Recreation and
State Park Recreation Commission

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SACRAMENTO**

10
11 **CITIZENS FOR THE PRESERVATION OF THE**
12 **FOREST OF NISENE MARKS STATE PARK, an**
unincorporated association,

13 **Petitioners,**

14 **v.**

15 **CALIFORNIA DEPARTMENT OF PARKS AND**
16 **RECREATION; STATE PARK AND**
17 **RECREATION COMMISSION; and DOES 1**
18 **through 15,**

19 **Respondents.**

Case No. 03CS01366

DECLARATION OF THOMAS
P. WARD IN SUPPORT OF
STATE PARKS' OPPOSITION
TO PETITIONERS'
COMPLAINT FOR
DECLARATORY RELIEF AND
SECTION 1085 WRIT PETITION

Date: August 13, 2004
Time: 10:00 am
Dept.: 16
Judge: Hon. Judy Holzer Hersher

20 1. I, Thomas P. Ward, declare that I am the Manager for the Recreation Unit for the
21 California Department of Parks and Recreation ("Department"). I have worked in this capacity
22 since 2000. As Manager of the Recreation Unit I am responsible for assisting State Park
23 managers and staff in maximizing quality outdoor recreation for the public. From 1993 to 2000,
24 I was the Manager for Performance Measurement and Strategic Planning for the Department. In
25 this capacity I worked in all facets of the Department's mission including natural and cultural
26 resource protection, public safety, education and interpretation.

27 2. The mission of the California Department of Parks and Recreation is to "provide for the
28 health, inspiration, and education of the people of California by helping to preserve the State's

1 extraordinary biological diversity, protecting its most valued natural and cultural resources, and
2 creating opportunities for high-quality outdoor recreation." Providing recreation opportunity for the
3 public is inherent in the mission, and as recreation manager, I work with and am knowledgeable of
4 all forms of recreation activities that take place in the State Park System. I regularly visit our park
5 units, which are spread throughout the state from the Oregon border to Mexico, and from east to west
6 from the coastline to the Nevada and Arizona borders. I converse with our field staff on recreation
7 issues and opportunities and ways to manage the ever-increasing numbers of people coming to state
8 parks. I am also in constant interaction with other land managers, federal, state, and regional to keep
9 abreast of best practices in the management of recreation opportunities and issues. I regularly assess
10 the potential and appropriateness of various forms of recreation in cultural and historic parks, natural
11 areas, beaches and urban areas. I conduct extensive literature searches in the recreation field to
12 ascertain recreation trends, opportunities, and environmental and social impacts. I am also
13 extensively involved in meeting with various park user groups to respond to their requests and
14 demands for a variety of different park experiences. This involves the mediation and arbitration of
15 various perspectives in the attempt to achieve equity in recreation opportunity for all park users.
16 Forms of recreation are constantly changing which necessitates my ongoing involvement with
17 recreation interests such as equestrians, mountain bikers, rock climbers, backpackers, hikers,
18 adventure racers, campers, RVers, bird watchers, trail runners, surfers, and boaters. I also take time
19 to experience the state park system and frequently involve myself in hiking, rock climbing, biking
20 and camping throughout the Park System.

21 3. Mountain biking is a relatively new form of outdoor recreation having become
22 popular in the 1980's when lighter, stronger and more efficiently geared bicycles came on the market.
23 These new bicycles allowed people to maneuver more easily over rough terrain and over longer and
24 steeper inclines, thereby providing access to scenic areas which, before, would have necessitated
25 motorized vehicles, horses, or much longer periods of hiking. Since the 1980's, mountain biking
26 has become widely popular in America and particularly California which has numerous scenic areas,
27 good weather and a populace that places a high importance on outdoor recreation and physical
28

EXHIBIT A

EXHIBIT B

EXHIBIT C

Exhibit D

Exhibit E

1 exercise.

2 4. Responding to this new and popular outdoor recreation, State Parks, opened paved
3 and unpaved roads to biking in all State Parks as a general policy in 1989. Other trails were opened
4 at the discretion of District Superintendents. In the Forest of Nisene Marks State Park, the main
5 unpaved road that runs north and south through the Park, was opened to biking under the general
6 policy. At the same time, other trails (unpaved), below the steel bridge were also opened to biking.
7 Mountain biking has been allowed in The Forest Nisene Marks Park and numerous other State Parks
8 continuously since 1989. The Department accepts mountain biking as an acceptable form of trail
9 recreation within the State Park system along with hiking, jogging, backpacking, camping, and
10 horseback riding.

11 5. Over the years, I have interviewed many bikers riding the State Park trails, worked
12 with volunteer biking groups such as International Mountain Biking Association (IMBA) and have
13 ridden bikes myself in various Parks including Nisene. I have found from talking with bikers and
14 from my own experience that, generally, bikers seek out State Parks for the same reasons as hikers.
15 The connection to nature that mountain biking provides is very important to bikers. Jim Hasenauer,
16 a mountain biker and co-founder of IMBA describes the importance of this connection to nature in
17 a speech to the UCI Centenary Academic Symposium in Paris France on April 14, 2000. I obtained
18 a copy of the speech from IMBA's website and a true and correct copy is attached hereto as Exhibit
19 A. Another article from IMBA's website, *The Importance of Singletrack*, also provides a glimpse
20 into the mountain biker's reasons for wanting access to mountain trails. A true and correct copy is
21 attached hereto as Exhibit B. Especially telling is a conversation I had with two mountain bikers just
22 last month, on April 30, 2004 in The Forest of Nisene Marks Park. I stopped at the Sandpoint
23 Overlook to eat my lunch and enjoy the scenery. At that point a person can look west over beautiful
24 mountainous terrain all the way to the Pacific Ocean. While I was having lunch two mountain bikers
25 stopped to rest. We conversed briefly and I learned they were from San Francisco. I asked them what
26 brought them all the way from San Francisco and one of the bikers waived his arm towards the
27 Pacific and responded, "I come for the experience in nature. Just look at this scenery!"
28

EXHIBIT A

EXHIBIT B

EXHIBIT C

Exhibit D

Exhibit E

2 unusual to experience various forms of recreation conflict as each user type pursues their desired
3 experience. RVers with noisy generators conflict with tent campers, noisy snowmobiles annoy cross
4 country skiers, surfers argue over wave breaks with wave kayakers, and equestrians feel mountain
5 bikers spoil their trail experience. The irony is all these enthusiasts are pursuing the same goal - to
6 commune with the natural world. Yet, they come in conflict when they feel others impinge on their
7 experience. This phenomenon is what is taking place with the hikers and mountain bikers at The
8 Forest of Nisene Marks State Park. The hikers feel that bikers and their associated technologies are
9 out of place and don't belong in the natural area. They also perceive bikers to be a safety hazard for
10 other trail users, and additionally blame bikers for perceived environmental damage.
11 This is not a new conflict for state park managers; it is one that we deal with on an ongoing basis
12 in some areas in the state. The proven best practice approach is to not exclude a particular user, but
13 rather attempt to increase tolerance and responsibility on the part of users. This takes the form of
14 problem solving in three main areas: 1) Proper design and maintenance of the trails, 2) education and
15 training of trail users, 3) and regulation and enforcement. Within each area are numerous activities,
16 tailored to the specific park situation, to solve those conflicts. There are many parks where conflict
17 has been completely eliminated: in fact hiker-biker conflict is not an issue in the vast majority of
18 state park units. Examples of success in trail user relationships are places such as Annadel State
19 Park, Cuyamaca State Park, and Auburn State Recreation Area.

20 7. Mountain biking in state parks has grown tremendously over the past years to the
21 extent that in some parks, it's the largest single user group and in other parks rivals hikers in terms
22 of numbers. Yet even with these significant numbers, our staff across the state have not reported
23 increases in injuries between trail hikers and bikers. In a one time data sampling of injuries in the
24 Angeles District (1995-96), findings showed only five hiker-biker injuries during a period of over
25 two million visitors. This is significantly below the injury rates between other park users.
26 Additionally, in terms of safety of multi-use trails, Department policy makers avail themselves of
27 the extensive experience of other land managers (regional parks, other state parks, Forest Service,
28

EXHIBIT A

EXHIBIT B

EXHIBIT C

Exhibit D

Exhibit E

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

of perception than reality. The Department also relies on research on trail conflict to address trail safety such as the study titled: CONFLICTS ON MULTIPLE-USE TRAILS: Synthesis of the Literature and State of Practice, Sponsored by the Federal Highway Administration and The National Recreational Trail Advisory Committee. This collection of research shows that although some trail users may perceive safety to be an issue, there are a variety of proven ways to constructively deal with the problem, short of excluding a specific user group from the trail. A true and correct copy of excerpts from the study are attached hereto as Exhibit C.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed, May 25, 2004, at Sacramento, California.

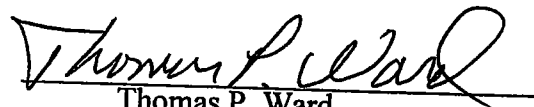

Thomas P. Ward

EXHIBIT A

EXHIBIT B

EXHIBIT C

Exhibit D

Exhibit E

ORIGINAL

1 MEL LOCKYER, Attorney General
2 of the State of California
3 MARY HACKENBRACHT
4 Senior Assistant Attorney General
5 THERI H. ASHBY (SBN 114624)
6 Deputy Attorney General
7 P.O. Box 944255
8 Sacramento, California 94244-2550
9 Telephone: (916) 327-4254
10 Facsimile: (916) 327-2319

FILED
ENDORSED
MAY - 5 2004
By _____
Deputy Clerk

11 Attorneys for Respondent California
12 Department of Parks and Recreation

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF SACRAMENTO

15 CITIZENS FOR THE PRESERVATION OF THE
16 FOREST OF NISENE MARKS STATE PARK, an
17 unincorporated association,

18 Case No. 03CS01366

19 v.

20 Petitioners/Plaintiffs,

21 RESPONDENTS/DEFENDANTS'
22 ANSWER TO
23 PETITIONERS/PLAINTIFFS'
24 SECOND AMENDED PETITION
25 FOR WRIT OF MANDAMUS
26 AND COMPLAINT FOR
27 DECLARATORY RELIEF

28 CALIFORNIA DEPARTMENT OF PARKS AND
RECREATION; STATE PARK AND
RECREATION COMMISSION; and DOES 1
through 15,

Date: August 13, 2004
Time: 10:00 am
Dept.: 16 14
Judge: Hon. Judy Holzer Hersher

Respondents/Defendants.

Defendants and Respondents, California Department of Parks and Recreation and State
Park and Recreation Commission (collectively "State Parks") answer the Second Amended
Petition for Writ of Mandamus and Complaint for Declaratory Relief as follows:

- 1. State Parks admits the allegations in paragraph 1.
- 2. State Parks admits that Petitioner Citizens submitted comments to State Parks on

the Preliminary General Plan and the Draft Environmental Impact Report. State Parks denies
that the General Plan for the Forest of Nisene Marks State Park ("Nisene Marks State Park") fails
to adequately protect the environmental integrity of the Park, denies that it allows the use of
Nisene Marks State Park for purposes inconsistent with the express terms of the Grant and Gift
Deeds of the Grantor and Donors and further denies that the Grant and Gift Deeds provide that

1 Nisene Marks State Park be used as a natural preserve as that term is defined in the Public
2 Resources Code. State Parks lack sufficient information and belief to admit or deny the
3 remaining allegations in paragraph 2 and on that basis denies those allegations.

4 3. In response to paragraph 3, State Parks incorporates each admission, denial and
5 affirmative allegation set forth above.

6 4. State Parks denies that Nisene Marks State Park is wilderness as that term is used
7 and understood within the State Parks system. State Parks affirmatively alleges that Nisene
8 Marks State Park contains land acquired by means other than from the Marks family and further
9 alleges that the terms of the Grant and Gift Deeds apply only to the land within the park granted
10 by the Marks family. State Parks therefore denies any implied or specific allegation that the
11 terms of the Grant and Gift Deeds apply to the Park as a whole. State Parks further denies that
12 the Grant and Gift Deeds specifically provide that the Park or any part of the Park be preserved
13 for all time as a natural preserve as that term is defined in the Public Resources Code. State
14 Parks denies that State Parks is required, as part of the state park system, to prepare a General
15 Plan for the future management of Nisene Marks State Park. State Parks admits all other
16 allegations in paragraph 4.

17 5. State Parks admits the allegations set forth in paragraph 5.

18 6. State Parks admits the allegation set forth in paragraph 6.

19 7. State Parks admits that Petitioners challenge the approval of the Preliminary
20 General Plan and Final EIR and deny each and every other allegation contained in paragraph 7.

21 8. State Parks denies that it failed to comply with the conditions set forth in the
22 Grant and Gift Deeds and affirmatively alleges that the powers of termination in the Grant and
23 Gift Deeds have expired and the restrictions are unenforceable by any means.

24 9. In response to paragraph 9, State Parks incorporates each admission, denial and
25 affirmative allegation set forth above.

26 10. State Parks lacks sufficient information and belief to admit or deny the allegations
27 in paragraph 10 and on that basis denies each and every allegation contained in paragraph 10.

28 ///