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Office of Research and Development  
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Washington, DC 20460

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**Re: Comments on Supplemental Rule Regarding “Transparency” in Science, Docket ID No. EPA-HQ-OA-2018-0259-9322**

On behalf of the National Parks Conservation Association (NPCA), we submit these comments on the United States Environmental Protection Agency’s (EPA) proposed supplemental rule regarding “transparency” in science, Docket ID No. EPA-HQ-OA-2018-0259. The supplemental rule fails to improve upon the original rule and dramatically widens the scope without adequately allowing for public input. Our opposition to the whole of this rulemaking stands. If finalized and implemented, taken together, these rulemakings would result in the degradation of the quality of science used in rulemaking, unnecessarily politicize the consideration of science and undermine public health protections. This in turn will likely lead to the erosion of safeguards necessary to protect national parks, their visitors, park rangers, neighboring communities and beyond.

Since 1919, NPCA has been the leading voice of the American people in protecting and enhancing our National Park System. NPCA advocates for America’s national parks and works to protect and preserve the nation’s most iconic and inspirational places for present and future generations. NPCA celebrates the parks — and works tirelessly to defend them — whether on the ground, in the courtroom or on Capitol Hill.

As defenders of national parks, NPCA strongly supports science-based decision making. The spectacular sites in our National Park System are not just ideal places to enjoy the wonders of nature and learn from pivotal events in America’s history. They are today’s living laboratories and remain critical hotspots for scientific research and discovery. Moreover, the health and wellbeing of our parks depends on science-based management of both the parks themselves as well as lands and resources beyond their boundaries.

EPA’s supplemental rule proposal specifies that the agency will consider studies through a weighted, tiered-access approach based on the degree of publicly available data used to support it. Instead of evaluating a study on its merit or quality, as has been the agency’s practice, this rule shifts the agency’s approach in part by injecting a non-scientific metric that credits a study for disclosing private individual information used.

In addition, the expansion of the rule to cover not just pivotal regulatory science, but also influential scientific information is deeply problematic and would preclude EPA from being able to follow its statutory mandate for the agency to use the best available science. Furthermore, setting aside our overall objections to the rule in its entirety, it should not apply to rules retroactively.

Together, the expansion of the rule and the tiered-access approach brings into question whether or not a study such as the 2013 report, “National Park Service Visitor Values & Perceptions of Clean Air, Scenic Views & Dark Night Skies 1988-2011” (Exhibit A),<sup>1</sup> which followed standard scientific norms for gathering information from groups of people visiting parks, could be considered by EPA to inform internal scientific assessments or rulemakings in the future. If this kind of study were to be devalued or disregarded for the protection of clean air in national parks because individuals weren’t named, it would be a great loss of information that shows the clear co-benefits of the economic value that people place on clean air—for many different reasons—when visiting parks. Furthermore, requiring individuals to sign over their names in order to participate would greatly reduce the likelihood of participation and would therefore limit the quality of information a study such as this could convey. EPA’s supplemental rule proposal unnecessarily modifies which studies can be considered and unscientifically reduces the consideration of valuable and necessary studies that aid the agency in setting policy to protect public health and the environment.

Sound science typically is objective and has no political agenda, therefore its findings are based on the most accurate and available information to date. It is critical to policy decision-making and provides a process that explores how to best answer questions through a carefully structured approach. Science has an extremely rigorous set of filters, relies on carefully collected data and repeatable testing, and is subject to a thorough system of review. Science doesn’t care what we believe, because it is based on objective information – not opinions. It cannot replace good decision-making, but science does enable us to make well-informed decisions and to predict the consequences and outcomes of our choices. Without the benefit of comprehensive scientific knowledge, we cannot know how best to protect our national parks.

It is for this reason that we oppose EPA’s proposed rule and the supplemental proposal. Although it speaks of transparency, the rule threatens to undercut public health and environmental regulations by diminishing the inclusion of sound science in the rulemaking process. Under the guise of generically increasing transparency, EPA’s supplemental rule unnecessarily expands the rule’s applicability from only dose-response research to all research, and from only “pivotal regulatory science” to all “influential science,” the supplemental notice dramatically widens the scope of the rule and the research affected by it. While dose-response studies are the backbone of public health regulations

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<sup>1</sup> Kulesza, C., Y.Le, and S.J. Hollenhorst. 2013. National Park Service visitor perceptions and values of clean air, scenic views & dark night skies; 1988-2011. Natural Resource Report NPS/NRSS/ARD/NRR—2013/632. National Park Service, Ft. Collins, Colorado.

under the Clean Air Act, the Clean Water Act, Superfund, the Safe Water Drinking Act, and more, the broadening of the scope of this proposal threatens all of EPA's rulemaking and consideration of science. 83 FR 18769.

The proposed rule would subject studies to additional scrutiny by exposing the privacy of participants and illogically raise the standards by which they can be considered. Meanwhile, the rule would allow for the continued confidentiality of equally critical and often much more opaque business information such as economic cost modeling or industry labeled proprietary data, which is rarely subject to verification at all, let alone rigorous peer review. This approach would only serve to eliminate the strong and well-founded basis for health and environmental regulations millions of Americans depend on while keeping information deemed confidential by for profit industry interests out of the public eye.

The dividing line drawn by this proposal creates two camps: the privileged, industry data kept out of the public eye and often used to avoid protections like pollution controls for heavily emitting sources such as coal-fired power plants and oil refineries; and the epidemiological data prejudiced by EPA's proposed transparency rule that is used to support protections for the benefit of public health and welfare. This is a text book example of an arbitrary and capricious rulemaking.

EPA's proposal also inappropriately injects partisanship into the scientific process by granting the EPA Administrator – a political appointee – the sole ownership of exemptions to this policy. Obfuscating the process of setting rules to protect public health and the environment with additional political bias defies the very nature of science, which is to remain objective and follow a consensus of the most accurate data.

In practice, if finalized, this rule creates a double standard by allowing specific industry data to be kept confidential while exposing sensitive data underlying health-based studies. This is problematic for national parks in several ways. For example, public lands designated as federally mandated Class I areas are highly protected under the Clean Air Act through the prevention of significant deterioration (PSD) air permitting process. PSD proceedings require new or modified sources of pollution within a Class I airshed to undergo rigorous review of potential resource impacts (like reduced visibility, impairment to aquatic life or damage to vegetation) and such sources are subject to mitigation measures to ensure that new or increased pollution will be kept in check such that the Class I area/s are protected. This applies to the 156 specially protected national parks, wilderness areas and wildlife refuges across the country.

Should this rule move forward, information such as cost modeling submitted by industry via PSD air permit applications, would continue to be shielded from disclosing important information to the public, yet used by the state or federal agency to determine the level of emission control required. Such permitting decisions often rely on confidential business information. Therefore, the public is barred from commenting on, let alone knowing, the information on which an effective emission control may be bypassed in favor of a lax permit that would result in negative Class I area impacts that could otherwise be avoided. A rule truly designed to increase transparency should require the data of source operators and owners to be released to the public.

There is no absolute certainty in science – it is the very nature of science to question itself, because the world and its mechanisms are complex. Rather than categorically exclude science that does not

perfectly meet an unrealistic and unnecessary set of standards, EPA should continue to empower its scientists and advisors to do what they are trained to do: weigh and use the best available evidence – all of it – in light of its specific strengths and weaknesses, including the level to which it has been peer reviewed and independently validated. When faced with the necessary uncertainty of scientific process and information, we believe EPA should err on the side of keeping parks – and people – healthy and safe. Here, it means considering the best available science, not shunning it.

History provides numerous examples of how and why well-informed science is critical to EPA and other agency decision making affecting the health of national parks, including:

### **Helping rivers, streams and lakes recover from the harms of pollution.**

- A quick drop in the number of fishes throughout Great Smoky Mountains National Park in the 1980s and '90s led researchers to discover that millions of tons of nitrogen dioxide pollution from industrial factories and coal-fired power plants were entering the park over time via acid rain, and streams and lakes were no longer safe for park wildlife. Park Service scientific information was key to identifying the source of the problem and then ensuring that adequate air pollution regulations reversed this trend. Today these scientists collaborate with universities to continue learning about ecosystem recovery, and the sources and effects of pollution.
- Restoring the Elwha River in Olympic National Park by removing two major dams to support the recovery of critical native species like salmon was a huge scientific and engineering feat. Many institutions and agencies have contributed essential scientific research to ensuring the accuracy and success of this endeavor. The University of Washington, alongside many partners, like USGS, NPS, Western Washington University, Olympic Peninsula College and some of the tribes, like the Lower Elwha Klallam studied sediment flow, near shore impacts, wildlife, and other things affected by dam removal.

### **Protecting ecosystems and water resources in Florida.**

- In Florida, polluted discharges from Lake Okeechobee inundate local estuaries, causing toxic algae blooms linked to respiratory issues and economic disaster for local communities. At the same time, downstream Everglades National Park is starved for freshwater needed to sustain seagrass habitat in Florida Bay. In 2015, the University of Florida Water Institute released an independent technical review of Florida's water crisis that called for one million acre-feet of water storage to relieve the harmful estuary discharges and rehydrate Everglades National Park. Largely guided by that report, Gov. Rick Scott signed legislation to advance a water storage and treatment reservoir south of the lake in 2017.
- The Comprehensive Everglades Restoration Plan (CERP) is an unprecedented undertaking aimed at protecting and preserving the water resources of Florida and bringing the Everglades back to life. For this massive restoration effort to be successful, the federal agencies involved must have the necessary science and data to accomplish their goals. For example:
- The Department of Interior, U.S. Geological Survey (USGS) Environments Program provides research, science, and data for Everglades restoration to address the quality, quantity, timing, and distribution of freshwater throughout the ecosystem. USGS researches and monitors the effects of altered water flows, which is critically important for baseline data and for assessing the ecosystem responses after restoration projects are completed. Without

this critical scientific information, we would not have the data necessary to know if restoration projects we are investing in are achieving the desired results.

- EPA's South Florida Geographic Program is a critical federal partner for restoring the Everglades by helping to ensure clean water flows through Everglades National Park and Loxahatchee National Wildlife Refuge by monitoring and enforcing the pollution limit. Through this program, EPA works jointly with federal and state agencies to provide extensive information about hydrological conditions and changing water quality levels in Everglades National Park and monitor reef and seagrass health at the Florida Keys National Marine Sanctuary. EPA also works with the State of Florida on the Stormwater Treatment Areas, a successful state-federal partnership that has resulted in improved water quality for the Greater Everglades Ecosystem.

### **Restoring key wildlife species.**

- Decades after government-sanctioned programs effectively eradicated gray wolves from Yellowstone National Park and the surrounding region, researchers began to understand the critical role predators like wolves play in maintaining a healthy ecosystem. After consulting with wildlife experts, considering public comments, and creating a solid strategy, the U.S. Fish and Wildlife Service worked in cooperation with the Park Service to release gray wolves back into Yellowstone National Park in the mid-1990s.
- Despite its remote location approximately 70 miles west of Key West, scientific studies in Dry Tortugas National Park in the late 1990s documented significant declines in the abundance and size of recreationally and commercially important fish species in the park from rapidly increasing visitor use. In response in 2007, the National Park Service and the State of Florida created a 46-square mile Research Natural Area that prohibits extractive activities, including fishing. Its creation, and the sound science that called for this protection, resulted in significant increases in the size and abundance of target reef fish species, recovery of the mutton snapper spawning aggregation, and spillover of larger, more numerous fishes into surrounding areas.
- Sixty years of scientific study of the wolves and moose at Isle Royale National Park has helped us understand the predator-prey dynamics at the park and informed wildlife management for national parks across the country. The study documents the loss of the wolf population and the growing moose population and makes clear that without wolves, the landscape of the park will change dramatically. This research, coupled with consultation of many subject-matter experts, informed the Park Service decision in 2018 to introduce 20-30 wolves at the park to order to help balance the island's ecosystem and ensure this iconic species won't disappear from the park.
- Since the 1970s, Padre Island National Seashore has worked to restore the endangered Kemp's Ridley Sea Turtle population. The Division of Sea Turtle Science and Recovery at Padre Island provides essential scientific information on five gulf sea turtles, all of which are endangered or threatened. Kemp's Ridley is the most endangered sea turtle and in the 1980s only one to two nests could be found in the park, but now each year 50-100 can be found with each nest having up to 100 eggs. Understanding turtle behaviors and breeding habits through the scientific research project has been essential to protecting these beloved sea creatures.
- Big Thicket National Preserve staff and rangers conduct year-round scientific research on the preserve and key species. The research, called "Biological Crossroads of North America" has

been essential in supporting efforts to bring back the once predominate longleaf pine tree. It was cut down for a cash crop, but now with protection made possible by the park and the science verifying its ecosystem value, the longleaf pine is being restored. Each year thousands of volunteers have come to plant – in 2016, the park planted their Centennial Forest – 100,000 trees for the 100th birthday of NPS. Bringing back the longleaf pine tree forest is allowing rare species like the red-cockaded woodpecker and Texas trailing phlox to also rebound.

### **Restoring clean and clear air.**

- The National Park System’s Ecosystem Services uses scientific research to help park visitors understand how their actions can affect national parks. The program does so through STEPS: Stressor – Ecological Production function – final ecosystem Services. These steps go through each link in a chain between a stressor and an environment – from indicators in the environment that the stressor is affecting, to how the parts of the environment that people interact with are affected by the stressor. So far, four chains have been evaluated: the effects of nutrient enrichment on terrestrial systems, the effects of nutrient enrichment on aquatic systems, the effects of acidification on terrestrial systems, and effects of acidification on aquatic systems. These chains demonstrate how exactly important resources are affected by pollution or other stressors through generally unseen mechanisms. This scientific information is critical in informed decision making about parks, whether on an individual level, as a stepping board for future research, or future management decisions.
- Rocky Mountain National Park has high rates of nitrogen deposition, 15 times greater than the background rate, which scientific research linked to ecosystem health decline that was first documented in the fifties and early sixties. The excess nitrogen affects soils, alpine tundra plants, spruce forests, and alpine lakes through acidification, increasing susceptibility to disease or insects, and other effects. The affected plants include those in high elevation areas that are especially vulnerable to excess nitrogen. The NPS, the Colorado Department of Public Health and Environment, and the EPA have worked together to implement a 2007 RMNP Nitrogen Deposition Reduction Plan and are also working with agricultural producers to reduce ammonia emissions through “science-based best management practices.” The park has also been monitoring nitrogen deposition since 1980.
- Visibility in Great Smoky Mountains National Park is negatively impacted by human activity due to its proximity to urban areas and power plants. The unique geology of the Appalachian Mountains causes pollutants which make their way into the park to become trapped, drastically reducing visibility to approximately 60 miles from its estimated natural range of 110 miles. Starting in the 1980s, careful monitoring of air quality data and collaboration with scientists at universities and laboratories across the country has allowed the National Park Service to work with local governments and private companies like TVA to reduce pollutants and increase visibility in the Park.
- A noticeable depreciation in visibility of the vistas and diverse landscape at Big Bend National Park sparked research to identify the major sources of the increased haze. The EPA and NPS financed the Big Bend Regional Aerosol and Visibility Observations Study (BRAVO), which illuminated the impact power plant pollution and long-distance sources have on the haze in Big Bend National Park. BRAVO showed that particulate sulfate compounds were the largest contributor to the impaired visibility in the park. The study also indicated that more than half of the sulfate at Big Bend National Park came from the eastern

U.S. and Texas, whereas around a third came from Mexico. Further, BRAVO revealed that both several source regions and single source regions have a severe impact on visibility. This study helped bring attention to the impact that widespread pollutants have on visibility in our national parks.

Finally, bringing this extensive, far-reaching proposal – under the guise of a mere “supplemental”—forward during the COVID-19 pandemic is unconscionable and takes advantage of the public’s distraction and stress. Public health and science experts whose input is essential to the evaluation of this proposal are many of the same experts responding to the public health emergency. Since the supplemental notice is substantially different from the 2018 draft rule and is written in vague language, it warrants more time and careful consideration from the public. For example, by expanding the rule’s applicability from only dose-response research to all research, and from only “pivotal regulatory science” to all “influential science,” the supplemental notice dramatically widens the scope of the rule and the research affected by it. While we appreciate the additional 30 days for commenting, we still believe that now is not an appropriate time to hold a comment period and that all rulemakings ought to be suspended until the national emergency declaration is withdrawn. Furthermore, 60 days is only the minimum time necessary to afford the public a meaningful opportunity to comment during normal times – it is insufficient now – and EPA’s failure to hold any public hearings on this supplemental proposal was another misstep in providing adequate public input, especially considering that this rule would significantly affect nearly every aspect of EPA’s scientific and regulatory work.

Scientific research has never been more important to our National Park System than it is right now. How our park’s preserve history, culture and ecology and are able to adapt to threats like wildfires, flooding, species loss, climate change and other serious issues is uncertain. We must ensure that the EPA continue to have access to the best available science and information to make sound and informed decisions – so we may all enjoy these places with clean air, clean water, and healthy wildlife for generations to come. For all these reasons, on behalf of our 1.3 million members and supporters, we urge EPA to abandon its plans to advance this misguided proposed rule and supplemental proposal that would undermine sound scientific norms in the rulemaking process.

Sincerely,

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