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Chapter 9

Through a Forest Wilderness

Native American Environmental Management at Yosemite and Contested Conservation Values in America’s National Parks

Rochelle Bloom and Douglas Deur

The creation of the United States’ national parks is a widely celebrated achievement in the history of land conservation worldwide, often credited as America’s “best idea.” Early national parks served to protect some of the most dramatic landscapes, geology, and natural habitats in North America. Yet, there has been growing awareness of the way in which park creation served to displace Native American peoples, practices, and traditions from the American landscape. Consequently, the traditional ecological practices that had sustained Native peoples and ecosystems were also displaced, contributing to the decline of both Native cultures and the habitats on which they have traditionally depended.

For many Native American tribes whose traditional lands were incorporated into national parks, the experiences of the tribes traditionally associated with Yosemite National Park are both representative and instructive. Founded in 1864 and designated a national park in 1890, Yosemite National Park was one of the first national parks in the world. Significantly, however, before its founding as a wilderness park, Yosemite was home to many Native American tribes. The enduring connection between these tribes and Yosemite is reflected today by the concept of “traditional association,” which is enshrined in the legal frameworks of modern federal land management. This status denotes “a longstanding relationship of historical or cultural significance between an Indian tribe and a park area predating the establishment of the park area” (United States Code of Federal Regulation 2016 [36 CFR 2.6]). Today,
there are seven tribes traditionally associated with Yosemite: the Tuolumne Band of Me-Wuk Indians, the Bridgeport Indian Colony, the Bishop Paiute Tribe, the North Fork Rancheria of Mono Indians, the Picayune Rancheria of Chukchansi Indians, the Mono Lake Kutzadikaa, and the Southern Sierra Miwuk Nation (a.k.a. the American Indian Council of Mariposa County).

The establishment of the national parks was rooted in nineteenth-century conceptions of “wilderness.” “Wilderness,” as used by nineteenth-century environmentalists in the United States, was derived from the tenets of European Romanticism. The philosophy conveyed a nostalgic yearning for a nature that was “untouched” and “unspoiled” by human influence, hearkening back to the days before industrialization (Haila 1997:129). Significantly, these conceptions of supposed “wilderness” relied upon an assumption of human-nature duality and *terra nullius*, the perceived absence of actual or meaningful prior indigenous occupation of the land. Wilderness was defined in diametric opposition to “civilization,” or any area inhabited or utilized by humans. It was viewed as a space in which humans had not historically had any lasting impact, and in which they were to be prevented from doing in order to protect it from their harmful influence. With the creation of national parks, “pristine” landscapes were set aside in order to protect them from the extractive uses suffered by industrialized areas.

This understanding of “wilderness” is demonstrative of the way in which early Euro-Americans misunderstood the processes that shaped the landscape that they so admired. The perception that Native peoples had a negligible impact on the landscape is reflected in the writings of John Muir. In *My First Summer in the Sierra*, Muir (1911:54–55) provides the following description of Native people in order to contrast their practices with the destructive impacts of non-Native settlers:

> Indians walk softly and hurt the landscape hardly more than the birds and squirrels, and their brush and bark huts last hardly longer than those of wood rats, while their more enduring monuments, excepting those wrought on the forests by the fires they made to improve their hunting grounds, vanish in a few centuries.

This perception ignored the extensive millennia-long contributions of Native peoples to shaping the Sierra-Nevada landscape and its biota. In many parts of the Americas, this colonial fiction was made manifest as Native people were displaced from their “wilderness” homes.

Park creation served to displace Native peoples from designated parklands and disrupted traditional lifeways that included widespread plant harvesting and associated activities—cultural, social, economic, dietary, and spiritual. Prior to their designation as parks, lands throughout the United States were
traditionally modified through annual or semiannual burning. Many of the habitats today preserved and managed as “natural” landscapes within national parks are in fact the product of long-term cultural interventions. As a result of these misperceptions, park managers prohibited Native management traditions and restricted their ability to gather. The natural and cultural consequences of these restrictions have been far reaching; tribes have experienced an erosion of their sovereignty and lifeways while park-directed regulations have brought about the deterioration of culturally significant habitats (Pyne 2015; Boyd 1999).

Based on these factors, it is unsurprising that the view of wilderness proclaimed by nineteenth-century conservationists is diametrically opposed to the Native conception of what constitutes a healthy landscape. Anderson (2005:3–4) elucidates the Native perception of the so-called “wilderness” and how the removal of human influence is detrimental to both plants and animals:

Interestingly, contemporary Indians often use the word wilderness as a negative label for land that has not been taken care of by humans for a long time, for example, where dense understory shrubbery or thickets of young trees block visibility and movement. A common sentiment among California Indian is that a hands-off approach to nature has promoted feral landscapes that are inhospitable to life. “The white man sure ruined this country,” said James Rust, a Southern Sierra Miwok elder. “It’s turned back to wilderness” (personal communication 1989). California Indians believe that when humans are gone from an area long enough, they lose the practical knowledge about correct interaction, and the plants and animals retreat spiritually from the earth or hide from humans. When intimate interaction ceases, the continuity of knowledge, passed down through generations, is broken, and the land becomes “wilderness.”

Ironically, going by this understanding of the term, Yosemite is indeed returning to true wilderness—a place where Native people do not have an active hand in resource management. In 1929, Totuya, also known as Maria Lebrado Ydarte, a survivor of the Mariposa Battalion’s incursion into Yosemite, visited Yosemite Valley for the first time since she and her family had been forced out in 1851. Upon looking at the meadows covered with trees and shrubs, she is reported to have shaken her head and remarked that it was “too dirty; too much bushy” (Taylor 1932:4–5). Without the continuation of traditional management, there has been a measurable decrease in biodiversity, deteriorating plant health, and obstruction of the scenic vistas valued by both environmentalists and recreationists. Dense, young conifer forests overrun traditionally managed meadows and oak groves, as the Western fiction of “wilderness” becomes manifest in the landscape (Catton 1997; Keller
Nevertheless, this concept of wilderness has persisted throughout the history of the U.S. national parks, codified in such legal instruments as the 1964 Wilderness Act (Deur and James 2020). To this day, this concept—fundamentally unexamined as to its ontological context and implications—actively shapes national parks policy. One major change, however, is the growing understanding and acceptance among resource managers that Native management techniques were necessary for producing the landscape and conditions necessary for the mosaic of species found within the valley to survive. Over the last few decades, Native peoples have exerted greater pressure on the government to allow gathering, and the park service has slowly begun to see the importance of implementing Native methods of management. As a result, gradual changes to regulations indicate that the paradigm is slowly beginning to shift.

The following pages recount the historical impacts of “wilderness” on park service regulations, and the resulting suppression of traditional management and gathering in Yosemite. The experience at Yosemite may serve as a cautionary tale, but also offers a potential path forward for resource managers attempting to restore park species to their historical vitality and abundance.

TRADITIONAL ECOLOGICAL MANAGEMENT IN YOSEMITE VALLEY AT THE TIME OF CONTACT

Yosemite Valley abounds with seeds, grasses, clovers, bulbs, corms, tubers, roots, fungi, berries, and other vegetation that have long provided Native peoples with sustenance, medicine, and materials (Anderson 1990; Bibby 1994; Clark 1904:78–87). Seeds and nuts provided the bulk of the Native diet and included acorns and buckeye nuts as well as the seeds of herbaceous plants and wild grasses such as clarkias, wild oats, red maids, and California buttercup (Anderson 1990; Barrett and Gifford 1933). Native harvesters gathered seeds using a seed-beater, and then winnowed, parched, and pulverized them in bedrock mortars (Barrett and Gifford 1933:151–155). Harvesters collected acorns when they fell from the oaks, beat the acorns off the trees with a long, slender pole, or removed them from branches pruned from trees before they were ripe enough to fall (Barrett and Gifford 1933:142; Clark 1894:15). Bulbs, corms, and tubers, often referred to as “Indian potatoes” or “wild potatoes,” included brodiaeas and other lilies. Harvesters typically extracted these with a digging stick, and then cooked within an earth oven or roasted in coals (Anderson 1990:15; Barrett and Gifford 1933:155–158). In addition to food, plants were also a significant source of medicines, basketry materials,
and other items. Barrett and Gifford (1933:165–176) identify at least sixty-seven plants used medicinally by tribes associated with Yosemite Valley. Additionally, native communities of Yosemite Valley have traditionally harvested various grasses, shoots, and fibers for the production of baskets, cordage, and other traditional crafts. Harvesters have widely perceived Yosemite Valley as a place of cultural importance and cosmological power, so that they often describe the valley’s plants as being imbued with more power—medicinal, cosmological, nutritional, and otherwise—than the same species obtained from other locations. Additionally, gathering in ancestral lands provides a link to one’s ancestors. These factors contribute to a distinct preference for plants gathered within the park (Deur 2007). Though traditional foods may no longer form the bulk of Native American diets, they retain a place of significance within their culture. The act of gathering itself, and particularly in the land used by one’s ancestors, is considered by some cultural practitioners to be “one of the last traditional practices” (NPS 2016c:2).

The abundance of culturally preferred natural resources was not merely “natural” phenomenon but represented a cultural artifact of considerable antiquity. Traditional resource management was intensive, particularly on the valley floor. Contemporary tribal members and ethnohistorical literature have consistently reported a wide range of traditional management methods employed within Yosemite. Accounts demonstrate that these methods were responsible for keeping meadows free from underbrush and conifer encroachment, protecting large trees from being destroyed by fire, reintroducing nutrients into the soil, maximizing plant diversity, eliminating insects and pathogens from plants, prolonging the life of dry meadows, enhancing the production of basketry and cordage materials, and preserving open scenic vistas (Anderson 2002:45; Anderson 2005). Various historic accounts describe how Native peoples managed the floor of Yosemite Valley to maintain a “park-like” landscape with clear views of the surrounding meadows, granite walls, and waterfalls (Clark 1894:14–15; Clark 1927:14; Markham 1892:6–7; Martin 1996). Some methods were practiced historically, but have been discontinued in the valley as a consequence of the park’s establishment. Other practices have endured, though typically at a reduced scale and outside the areas trafficked by park visitors. The wide range of management methods are presented here to suggest the extent of Native American engagement with the plant habitats of Yosemite and their significant role in shaping the landscape and its biota.

Anthropogenic burning is the most commonly cited form of traditional management for Yosemite Valley. It was frequently mentioned by early writers, such as Willis Baxley (1865:476), who observed:

A fire glow in the distance, and then the wavy line of burning grass, gave notice that the Indians were in the Valley clearing the ground, the more readily
to obtain their winter supply of acorns and wild sweet potato root. (huch-hau [Brodiaea spp.])

The literature holds many descriptions of its beneficial impacts on the landscape and associated species. Native peoples used fires to clear conifers and shrubs from the valley floor, maintaining an open landscape, and perpetuating and enhancing a mosaic of culturally significant wetland, meadow, shrub, and forest communities. Burning promoted the quality and abundance of subsistence staples, such as edible lily bulbs (especially Brodiaea spp.) and the acorns of California black oak (Quercus kelloggii), caused the release of nutrients from accumulated biomass, and triggered the germination of fire- and heat-stimulated seeds (Anderson and Lake 2013:68; Ernst 1949:40; Kuhn and Johnson 2008:4; Reynolds 1959:159–160; Stewart 2002:294). Burning brush also increased the availability of surface water and increased the flow of springs by reducing water appropriation by less culturally preferred species (Anderson and Rosenthal 2015:22; Wickstrom 1987:8).

In addition to promoting the growth and health of preferred species, anthropogenic burning is important for protecting them from threats. Regular and systematic burning decreases the risk of destructive wildfires by eliminating underbrush, dead leaves, pine needles, and other debris (Kuhn and Johnson 2008:4; Stoy 1890:26). Research also demonstrates that it assists in controlling pests and pathogens, and limits the spread of root fungus, partly by keeping trees scattered and isolating the disease (Anderson and Rosenthal 2015:22; Champion 1986; Kuhn and Johnson 2008:4; West 1986:2).

In addition to burning, several interviewed tribal members have also reported “smoking” certain species in order to increase their output and deter the insects that infest certain preferred plants (Anderson and Rosenthal 2015; Goode 2014:6). Pruning is another common management technique. Tribal members cut off the fruit- or flower-bearing parts of branches while they are harvesting plants such as elderberry and manzanita (Anderson 1988:132). Similarly, in his letter to the Board of Commissioners of the Yosemite Valley and Mariposa Big Trees Grove, Galen Clark (1894:15) attested to Yosemite Native peoples pruning black oaks as they harvested acorns and enumerated the benefits of the practice:

In order to get the necessary supply early in the season, before ripe enough to fall, the ends of the branches of the Oak trees were pruned off to get the acorns, this keeping the branches well cut back and not subject to being broken down by the heavy snows in winter, and the trees badly disfigured as is the case since that practice has been stopped.
Pruning also serves to remove diseased limbs from trees and is reported to improve the health and output of plants (Anderson 2005; NPS 2014:2; Stevens 1998). Basketry plants, such as redbud (*Cercis occidentalis*) and willow (*Salix* spp.), were also pruned in order to produce the long, straight shoots necessary for weaving (Anderson 1988:133; Anderson 2005:319).

“Knocking” is another management technique that occurs in conjunction with traditional gathering. Gatherers would use long, flexible poles to knock acorns off of higher branches that could not be reached from the ground; this encouraged acorns to fall without damaging branches or bark (Anderson 2005:141; Long et al. 2016:44). While using this harvesting and management technique, gatherers simultaneously remove dead and diseased wood from the trees, reducing the likelihood of disease or catastrophic fire that might affect the living tree, and also stimulate new growth (Martin 1996). As one tribal member associated with Yosemite noted, when Native people hit the trees with sticks to harvest acorns, what they were really doing was pruning, but park service didn’t understand that (NPS 206d:3). Knocking is also beneficial to the reciprocal relationship between the trees and tribal members; the practice is described as “a kind of massage for the tree, to give it energy and continue the relationship between the harvester and the tree” (Goode 2014:6).

Individuals and families also manually removed conifer seedlings, weeded, cleared underbrush, and raked leaf litter around the bases of trees. These actions made it easier to gather, prevented crowding out of preferred plants, reduced the competition among different plants for sunlight and water, and promoted light surface fires that reduced the likelihood of destructive fires (Anderson 1988; Bibby 1994; Martin 1996).

Tribal members practiced selective harvesting by only harvesting larger plants and leaving the smaller ones to continue growing. They also left parts of various tubers, bulbs, corms, rhizomes, and mushrooms within the soil so that the remaining parts could regenerate. Selective harvesting ensures that culturally significant plant communities are not overexploited and functions to promote genetic diversity (Anderson 2005; Anderson and Lake 2013).

Digging bulbs in meadows with the use of digging sticks loosened soil and resulted in both deliberate and inadvertent soil aeration. This stimulates the growth of bulbs, helps convey water to drier soil, and produces straighter stems appropriate for weaving (Anderson 2005; Reynolds 1959; Ortiz 1991; People of Yosemite n.d.; Stevens 1998).

In addition to mechanical management methods, tribal members stress the importance of less quantifiable actions and interactions. Tribal interviewees assert that the plant species of Yosemite were gifted to them by the Creator, along with the responsibility to care for them. These caretaking obligations are both mechanical and metaphysical in nature; ensuring the health of plant
and animal communities necessitates a holistic combination of traditional management, gathering and use of the species, and demonstrating respect for them. Failure to perform these duties, as mandated by the Creator, threatens the well-being of both land and people (Deur 2007:59). As such, tribal members describe the reciprocal relationship between themselves and the plant species as a crucial component of their care (NPS 2014:1). Instead of just “cold management,” the plants thrive when tribal members sing to them, talk to them, and dance for them (NPS 2016b:3). Harvesting and managing the plants in a culturally appropriate manner demonstrates a “respect” for them, which is reciprocated by the plants returning more abundantly in the future (Anderson and Lake 2013; Deur 2007). The importance of fulfilling caretaker responsibility entails that even if they are not gathering, they continue to check the crop to ensure its well-being (NPS 2016b:6).

Most significantly for the purposes of this chapter, tribal members stress the interconnectivity of gathering and caring for the plants. As is demonstrated by the descriptions and results of the management techniques above, gathering and management are two inseparable byproducts of the same actions. These management techniques are, in fact, implemented as part of the gathering process, and not within a vacuum for purely aesthetic, recreational, or even conservation purposes. These methods are implemented to create the conditions ideal for gathering, to improve the quality of the gathered species, or in the course of undertaking gathering. Historical references to management techniques explicitly describe them as employed for subsistence purposes. These conditions demonstrate that the management of the landscape is inseparable from gathering. As such, tribal consultants state that by implementing some of their management techniques without also restoring gathering traditions, they will not work (NPS 2016a, b). Fundamental to this concept of gathering as a form of management is the principle that “if you don’t use it, it goes away” (NPS 2016b:5). Tribal members often express that “the plants want to be used” and that the plants flourish and return when people care for and respect them (Deur 2007:59). In this sense, the inability of tribal members to harvest species may have negative effects on plant communities that respond positively to human management for biological and/or spiritual reasons.

PARK CREATION, SURVEILLANCE, AND THE DISPLACEMENT OF TRADITIONAL ECOLOGICAL PRACTICES

The management of Yosemite Valley’s anthropogenic landscape changed abruptly as Euro-Americans arrived and it eventually became a park. First
under control of the State of California, and later under federal control, fire and other forms of mechanical management were actively suppressed. For a generation or two, traditional management persisted, usually clandestinely and on a much smaller scale than before. As the park quickly developed, tribal communities were relocated and their previously dispersed villages were consolidated. Over time, however, only tribal members who worked for the park as laborers or in interpretive roles were allowed to remain (Spence 1999; Turek and Keller 1997). With this displacement, the extent and intensity of traditional management practices declined. As park-imposed land-use regulations became stricter over the decades, most of the management and gathering activities described above were largely extirpated within the park boundaries. Implementation of these regulations, which codified nineteenth-century beliefs about a pristine untouched wilderness, had deleterious impacts on the health of plant species and valued scenic views within Yosemite.

Euro-American settlement began in Yosemite Valley in the 1850s. Though disruption of traditional Native practices began soon after the Mariposa Battalion entered the valley in 1851, plant gathering practices persisted into the 1850s and 1860s (Deur 2007:9–10). In 1864, President Lincoln signed the Yosemite Grant Act, which gave Yosemite Valley and the Mariposa Grove to the State of California to be set aside for preservation and public use. The Yosemite Park Commission was charged with upholding the management of the park. In this period, authorities sought to suppress fires and prohibit traditional anthropogenic burning. An 1866 letter from the secretary of the Yosemite Commission, W. Ashburner, to Galen Clark, the appointed Guardian of Yosemite, is illustrative of their management of park resources. Clark was instructed to inform the sub-Guardian that in order to protect the valley from “future depredations,” he was to ensure

that no trees are to be cut or injured, that no fires are to be made where by running in the dry grass or undergrowth they will destroy or injure the large trees; that the Indians are to be especially warned from breaking the boughs of oaks in search of acorns. (Ashburner 1866:8)

An article in the Mariposa Gazette in 1869 attests to the implementation of these instructions:

It is the custom with the Indians to commence gathering [acorns] for food very early in the Fall by cutting off the branches of the trees before the acorns are ripe enough to fall. While on a recent trip to the Valley, Mr. Galen Clark, one of the Commissioners and Guardian of the Valley, had a talk with the Indians living there, requesting them not to cut off the branches of the trees, but wait until the acorns fell off and then gather them. They replied that he had never
paid them for their acorn trees nor the Valley, neither had anyone else paid
them. . . . The Guardian explained to them that it would be better for them not
to injure the trees by cutting them even if they had never been paid. (Mariposa
Gazette 1869:2)

By the 1880s, written accounts indicated that suspension of management
activities had resulted in obscured vistas, overgrowth of underbrush, and
rapid colonization of meadows and other plant habitats by young conifers
(Briggs 1882:10–11; Gibbens and Heady 1964:11). In 1882, M. C. Briggs,
Secretary of the Yosemite Commission, detailed the valley’s rapid devolving
landscape:

In our brief report of 1880, we called attention to the rapidly increasing breadth
of underbrush and second growth pines, and need not restate our convictions
with respect to the importance of counterworking this spreading infestation.
While the Indians held possession, the annual fires kept the whole floor of the
valley free from underbrush, leaving only the majestic oaks and pines to adorn
the most beautiful of parks. In this one respect protection has worked destruc-
tion. (Briggs 1882:10–11)

These observations were stressed yet again a decade later in the Report of the
Commissioners to Manage the Yosemite Valley and the Mariposa Big Tree
Grove (1891–1892):

As this Commission has already demonstrated, the valley originally was a for-
est park, dotted with open meadows. Its Indian owners kept the floor clear of
underbrush. It is known that besides the careful use of fire for this purpose they
annually pulled up unnecessary shrubs and trees as soon as they sprouted. This
protected the large trees from destruction by fire and left a free view of the walls,
waterfalls, and beauties of the valley. Letting nature have her way in choking
every vista with underbrush has obscured many of the finest views, has hastened
the destruction of many fine old trees, especially the oaks, which, when crowded
and starved by younger growth, yield to parasites and decay, and has increased
the risk from fire. (Markham 1892:6–7)

Though regulations proscribed Native management, enforcement was
still comparatively disorganized and intermittent under the management of
the Commission. Native Americans still returned to the valley seasonally to
undertake traditional burning practices, but these became increasingly clan-
destine and were carried out beyond the margins of those places frequented
by visitors (Deur 2007; Gassaway 2005). In 1890, an act of Congress cre-
ated Yosemite National Park, which was placed under the administration of
federal troops. Under new regulations, fire and other traditional management methods were actively and strictly suppressed, which further marginalized long-standing Native practices (Rothman 2005:16–19; Taylor 2006:2).

In the first decades of federal management, many observers noted a range of dramatic changes to Yosemite Valley. The rapid expansion and increasing density of conifers; the loss of meadow areas and scenic vistas; an increase in shrubs and underbrush on the floors of the meadows; an increased threat and occurrence of wild fires and pathogens; and a reduction in the productivity and diversity of many culturally preferred plant species proliferated by anthropogenic means were all attributed to fire suppression policies (Deur 2007; Ernst 1949; Long et al. 2016:36–37). In 1894, Galen Clark wrote to the Yosemite Board of Commissioners, comparing the valley’s conditions with its appearance forty years prior. Clark (1894:14) detailed the stark changes and attributed them to the management restrictions implemented by the Commission:

My first visit to Yosemite was in the summer of 1855. At that time there was no undergrowth of young trees to obstruct clear open views in any part of the valley from one side of the Merced River across to the base of the opposite wall. The area of clear open meadow land with abundance of luxuriant native grasses and flowering plants, was at least four times as large as at the present time. The valley had then been exclusively under the care and management of the Indians, probably for many centuries. . . . Since Yosemite has been under the care of the State of California, it was for many years the policy of its managers to protect the valley as much as possible from the ravages of fires, and to preserve all the young trees from destruction. This constant vigilant care for the preservation of Yosemite has resulted in the whole valley being overrun with dense thickets of young forests, shrubbery and underbrush, and an accumulation of a vast amount of highly inflammable combustible material which in the event of accidental fires, are a fearful menace to the safety of property and the beauty of the landscape scenery. . . . Many of the former finest views in Yosemite are now so much obscured by the growth of trees that it is impossible for photographers to again reproduce their former finest work until the trees and underbrush are cut away.

By 1907, Galen Clark’s growing apprehension regarding the dramatic changes in the valley was expressed in his “Yosemite Plea of 1907.” His narrative describes the exacerbation of meadow encroachment following ceased Native management of the valley. He laments that “nearly all the open ground between the large scattering trees is now covered with a dense growth of young trees, which also extend out over hundreds of acres of the dryest portion of the meadow land” (Clark 1927:14).
In 1916, the National Park Service was established through the Organic Act. The act’s expressed mandate was to “conserv[e] 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” (16 U.S.C. 1).

The restrictions on gathering were stressed again in the first iteration of NPS rules and regulations, published in the Federal Register in 1936. The rules dictated the preservation of public property, natural features and curiosities, stating that

the destruction, injury, defacement, removal or disturbance in any way . . . of any tree, flower, [or] vegetation . . . is prohibited: Provided, [t]hat flowers may be gathered in small quantities when, in the judgement of the superintendent or custodian, their removal will not impair the beauty of the park or monument. (1 Fed. Reg. 672, 673 [June 27, 1936])

This conservation mandate further reinforced the perception of parklands as wilderness devoid of humans and their influence, and strengthened prohibitions against Native gathering and management (Schrack 2018:1–2)

By the latter part of the twentieth century, the debate over subsistence access was reflected in the 1983 Code of Federal Regulations (CFRs). Codifying long-standing agency policy, the CFRs imposed significant restrictions. The regulations permitted park superintendents to “designate certain fruits, berries, nuts, or unoccupied seashells that may be gathered by hand for personal use or consumption if it will not adversely affect park wildlife, the reproductive potential of a plant species, or otherwise adversely affect park resources” (United States Code of Federal Regulation 2016 [36 CFR 2.1]). Notably, the regulations specify that, with the exception of instances explicitly authorized by treaty or federal statute, “this section shall not be construed as authorizing the taking, use, or possession of fish, wildlife, or plants for ceremonial or religious purposes.”

After the adoption of 36 CFR 2.1, there was significant internal disagreement within the NPS on the prohibition against tribal members gathering for religious and ceremonial purposes. This resulted in extensive and open noncompliance with the rule at several parks (PEER 2010). At Yosemite, in particular, the approach to tribal plant gathering has varied depending on park administrations. Some superintendents have supported plant gathering, and have not actively enforced prohibitions or have even issued passes to permit such gathering by tribal members; others have chosen to enforce prohibitions (Deur 2007:56). By the late twentieth to the early twenty-first century, Yosemite National Park was among a number of parks that established both official and unofficial ways in which tribal members could gather within the
park. The park entered into a memorandum of understanding (MOU) with traditionally associated tribes and local park officials quietly endorsed gathering through non-enforcement of regulations, adopting a “don’t ask, don’t tell” approach (PEER 2010; Schrack 2018). The MOU was signed under the authority of individual superintendents, rather than at the behest of a regional or national NPS directive. The authority for these agreements was predicated, in part, on the authorities of the American Indian Religious Freedom Act (AIRFA), which protects the free expression of Native American religion (Schrack 2018:7).

Environmental groups that learned of these agreements argued that gathering was being authorized in ways that violated the CFRs. The Public Employees for Environmental Responsibility (PEER), an environmental watchdog group, reported that they had obtained documents revealing that, in 2009, the acting park superintendent had told tribal members that they could gather plants as they wished without filing reports or acquiring permits (Ruch 2010; Schrack 2018:10). Since the tribes were given verbal permission, they noted, it was “difficult to quantify the nature and extent of park noncompliance of the rules at 36 CFR 2.1 because much of that noncompliance has been undocumented” (PEER 2010:4). These groups also disputed the authority for the agreements based on AIRFA. PEER cites the Preamble to the Final Rule for 36 CFR Part 1 and 2, which specifies that

the Service recognizes that the American Indians Religious Freedom Act directs the exercise of discretion to accommodate Native religious practices consistent with statutory management obligations. The NPS intends to provide reasonable access to and use of, park lands and park resources by Native Americans for religious and traditional activities. However, the National Park Service is limited by law and regulation from authorizing the consumptive use of park resources. (48 FR 30255; emphasis added by Ruch 2010)

In the 2010s, legal and political pressure from tribes increased while a growing number of studies demonstrated the anthropogenic origins of park vegetation. Nevertheless, park allowances for gathering continued to be considered illegal in the absence of formal changes to the CFRs. Under those circumstances, senior NPS officials feared the threat of political and legal action taken by environmental watchdog groups that objected to plant harvests on public lands (Deur and James 2020; PEER 2010). As a result, the NPS determined to reassess resource access policy and revise the CFRs addressing gathering, paving the way for 36 CFR 2.6, the Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes.
In 2016, the NPS approved revised plant gathering regulations. The new regulation, 36 CFR 2.6, is entitled the “Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes.” The new regulations allow the NPS to negotiate and enter into agreements with federally recognized tribes for the gathering of plants or plant parts within areas of the National Park Service where those activities traditionally occurred. Gathering must take place for traditional purposes and must not result in a significant adverse impact on park resources or values. The regulations enable tribes and park managers to establish procedures for plant gathering and monitoring in accordance with a plant gathering agreement and permitting process (36 CFR 2.6; NPS 2017; Schrack 2018:1–2; Talken-Spaulding and Watkins 2018:58). The regulations also place a number of restrictions on who is permitted to gather and the methods they may use to do so. The new policy limits gathering to enrolled members of federally recognized tribes who are “traditionally associated with the specific park area” and specifies that “this traditional association must predate the establishment of the park” (36 CFR 2.6). The rules also state that “traditional gathering” may only be conducted using hand tools (36 CFR 2.6; Schrack 2018:14).

Before gathering may occur, the tribe must submit a written request to the park superintendent in order to create a gathering agreement (36 CFR 2.6). The tribe must provide information on a number of subjects including their traditional association with the park and the traditional purposes of their gathering activity; identification of tribal members that are designated to gather; the specific plants that may be gathered; and the size, quantities, seasons, and locations where the gathering and removal will take place (NPS 2017).

In order for the agreement to be approved, the NPS must then complete an environmental assessment (EA) in compliance with the National Environmental Policy Act of 1969 and make a Finding of No Significant Impact (36 CFR 2.6). Once the agreement is signed, the NPS will issue a permit for the activities outlined in the agreement and list the names of tribal members that the tribe has authorized to gather in the park (NPS 2017).

In many ways, one of the most significant contributions of the regulations was the recognition that Native American resource stewards were often responsible for creating the “natural” landscapes within parks. Native harvests enhanced, rather than damaged, the preexisting ecological integrity of such places. The regulatory language explicitly mentions traditional ecological knowledge and recognizes the enduring connections between plants and tribal communities. Published in full within the Federal Register, the regulation and its justification state, in part:
Over the past 20 years, studies in ethnobotany and traditional plant management, along with consideration of traditional ecological knowledge in scientific symposia and scholarly gatherings, have increased greatly. Research findings have shown that traditional conservation of plant species includes gathering and management techniques as well as social and cultural rules for avoiding over-exploitation (Berkes 2012; Blackburn and Anderson 1993; Anderson 2005; Deur and Turner 2005). Traditional gathering is carried out in ways that ensure plant replacement and abundance by using specific harvest criteria and foraging and cultivation strategies. (Anderson 1993; Turner and Peacock 2005)

Wild plant species used for food have been managed for thousands of years by native groups using specific gathering techniques to maximize both harvest and sustainability (McCarthy 1993; Farris 1993; Parlee and Berkes 2006), and the general management of landscapes and ecosystems by native peoples have been well documented (e.g., Hammett 2000; Nabhan 2000). (U.S. Federal Register, Vol. 81, No. 133 [July 12, 2016], 45025–26)

Though federal recognition of the role Native peoples played in the shaping of park lands and nurturing the species found within them is revolutionary compared to historical policies and attitudes, the new regulations have detractors among both the Native and environmentalist communities. Many of the issues that tribal members have with the regulations relate to the data that the NPS requires the tribes to share, including locations, methods, and plant quantities, as part of the gathering agreement. Tribes argue that this is culturally inappropriate and that disclosure of such information with people outside of the tribe goes against traditional practice. This is particularly the case in instances where knowledge is only passed to those with a specific right to possess it (Schrack 2018:17; Vasquez 2019:72). Tribes fear that the NPS will be unable to protect their traditional knowledge and keep it confidential and they have raised concerns that sensitive information might be shared with the public (Schrack 2018:17; Tirado 2015).

Many gatherers are hesitant to share information on quantities as it is considered a highly sensitive subject and there is an aversion to reducing sacred practices to quantifiable data (Schrack 2018:17; Vasquez 2019:34). Questions on this subject are often be considered intrusive and demeaning, in part due to the primacy granted western science over traditional ecological knowledge when the two are in conflict (Vasquez 2019:72). Tribal members traditionally associated with Yosemite describe the invasiveness of questions by park staff when they were trying to care for plant species; they were bombarded with questions on how they cut, why they cut, how much they cut (NPS 2016b). Additionally, tribes state that their relationship to the plants and the ritual practices associated with gathering them are sacred. They argue that it
is wrong to place government officials as middlemen between them and the creator when undertaking these sacred practices (Tirado 2015).

Sharing locations, in particular, can be problematic and is highly contested by tribal members. Traditional practitioners tend to be secretive about gathering locations in order to protect them. There is a fear that sharing traditional knowledge and locations with outsiders opens the possibility that they will be abused and disrespected, either deliberately or unintentionally (Vasquez 2019:36–37). Tribal members describe instances in which they provided data on gathering locations to the government or other outsiders. In some cases, these locations were destroyed by people who were irresponsible and did not harvest sustainably. There is a fear that providing locations to the NPS about their preferred gathering spots is essentially “pointing an arrow” at them (NPS 2016c:4).

The requirement to identify designated gatherers is also problematic. Various tribal community members are endowed with different pieces of traditional knowledge and there are no single individuals that possess all of those pieces (Tirado 2015). Furthermore, gathering is commonly a social activity, undertaken by families or whole communities (NPS 2016b:5). Specifying that only particular individuals from a tribe are authorized to gather would thus exclude the knowledge of certain traditional practitioners and the social dimension of such cultural activities. The new policy also requires tribes to fund EAs, which causes an additional impediment to gathering for tribes with fewer financial resources (Schrack 2018; Vasquez 2019). Another contention, particularly as these regulations apply to Yosemite, is that the new rule only permits federally recognized tribes to make plant gathering agreements. Although Yosemite has seven traditionally associated tribes, two are not currently federally recognized. The rule, therefore, prevents tribal members whose ancestral lands are within the boundaries of the park from gathering within the legal framework (Vasquez 2019:44–45).

The new gathering regulations have also been opposed by environmental groups, the most vocal of which is PEER. Their opposition to the regulations is based largely on the grounds that they violate the Organic Act by disregarding the conservation mandate and encouraging consumptive use of resources. They also argue that only Congress, and not the NPS, possesses the authority to enact the changes (Ruch 2015; Schrack 2018). These views represent the sentiment of many individuals and organizations opposed to the resumption of Native American gathering rights within parks. They applied a “slippery slope” argument against tribal gathering rights, suggesting that restoring plant gathering rights to tribes might open opportunities for commercial plant harvests, wildlife harvests, and other more objectionable outcomes (Deur and James 2020).
In comments on the proposed rule in 2015, the executive director of PEER enumerates the reasons for the organization’s opposition to the regulations in detail. The following represent some of the most pertinent comments:

- PEER seeks to learn which plants, in which parks, and in which ecosystems will Indian tribal plant destruction (by uprooting, digging, trimming, pruning, thinning) “conserve” the plants. We are unaware of plant communities whose natural processes of growth, succession, replenishment, and/or replacement would be advanced by human harvesting or removal.
- This notion that the “first peoples” have an unbroken connection or claim to the land reduces the last century of park preservation history to a footnote. . . . It was 119 years ago, in 1896, when the Supreme Court effectively ended the Bannock Shoshone hunting rights in Yellowstone National Park. Reversing so many years of history is neither easily done nor wise.
- Cultivated landscapes are especially inimical to the congressionally described purpose of designated wilderness. When Congress designates lands as wilderness it is to preserve “land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions.” 16 U.S.C. § 1131(c). Man-made and artificially managed areas do not preserve a natural condition, even when the manipulation is by Indians. (For additional comments, see Ruch 2015.)

Many of these arguments contain an implicit foundation in nineteenth-century wilderness philosophies. As a result of such sentiments, Native American plant gathering rights remain legally contested by those who seek to impose contested Western notions of “wilderness” on the anthropogenic landscapes comprising many of the United States’ national parks. Furthermore, the NPS faces potential litigation from environmental groups over their statutory authority to permit traditional gathering (Schrack 2018:24).

**TOWARD A CONCLUSION**

The same nineteenth-century ontologies that fostered the creation of the National Park Service are also implicit in the regulations that have restricted traditional management and gathering throughout the park system’s history. The strict cessation of these methods crucial to Native American cultural life stemmed from the lack of recognition of the Native American role in creating the landscapes as they were when first encountered by Euro-Americans. The habitat mosaic so admired by early park proponents and environmentalists was a product of Yosemite Native peoples burning, pruning, and
implementing other forms of management over the course of millennia (Nabhan 1995:94). While regulations excluding human intervention were intended to protect the spectacular vistas and species that were the reason for the parks’ creation, they have instead resulted in their deterioration.

As a result of over a century of suppression of traditional management, biodiversity has decreased, species health has deteriorated, meadows have been encroached by conifers, scenic vistas have been obstructed, fuel loads have accumulated and increased the threat of fire, and traditional practices and culture have been negatively impacted (Ernst 1949; Long et al. 2016; Vasquez 2019). By contrast, Native American communities associated with Yosemite have stressed the caretaker responsibility toward plant species, which mandates that they must tend the plants in culturally appropriate ways, which includes gathering and using them. They assert that if the plants are not used, they decline in abundance and in quality (Deur 2007; NPS 2016b). The changing conditions in the valley appear to support this assertion.

Elders express their frustration. They state that they have been telling park employees that they needed to manage and gather for decades and that no one has listened to them because they did not have academic or professional qualifications that are sanctioned by the non-Native world. They blame the park’s desire to “protect” for the decline in culturally and ecologically significant species (NPS 2016a). Their lament is consistent with assertions made by non-Native caretakers too, such as those of the Yosemite Commission in 1882: “In this one respect protection has worked destruction” (Briggs 1882:11). Only active human management—guided by tribal knowledge and administered within the context of modern NPS management—seems likely to restore these species to anything approaching their historical vitality and abundance.

Recent changes to the gathering regulations have made great progress in recognizing Native peoples’ deep and lasting connection to the landscapes comprising the National Park system and their role in shaping those landscapes. This represents a significant step forward in repairing the degradation caused by severing the caretaker relationship between park-associated Native peoples and park ecosystems. While these regulations theoretically offer a way in which to bolster the reciprocal relationship between tribes and parklands, there are many inherent issues. For a park like Yosemite, it excludes two of the park’s traditionally associated but non-federally recognized tribes, providing them with no legal manner in which to gather in their ancestral lands. Gathering agreements require that tribes share sensitive information with outsiders in a manner that runs counter to their traditions and with no guarantee that this information will be protected. The process also adds undue bureaucratic and financial burdens for which many tribes lack the resources. The necessity to designate gatherers also ignores the social and ritual realities
of traditional gathering. In short, the method of gathering attempts to make traditional practices conform to a western framework in a way that is quantifiable, and yet, completely inimical to tribal values.

Challenges from environmental organizations reveal their intellectual roots in nineteenth-century ontologies that hold “wilderness” apart from human experience. Such positions lack awareness of the deeper historical context or sophistication of traditional indigenous caretaking. This still prevalent perception, and the threat of litigation, contribute to the difficulty of establishing a framework in which traditional management and gathering can be restored more fully and appropriately to recognize the reciprocal relationship between tribes and species within the park system.

Hope remains that parks may yet restore the vitality and quality of natural resources and landscapes that have been declining by reconnecting Native harvesters to the landscape. Furthermore, with greater access to their ancestral lands, tribes will succeed in protecting and transmitting their traditions, as well as the associated knowledge of plants, habitats, and places that sustained their ancestors—and were sustained by their ancestors—for generations to come.

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