



IN REPLY TO:

## United States Department of the Interior

NATIONAL PARK SERVICE .

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Washington, D.C: 20240

SEP 24 2003

L58 (0120)

Honorable George P. Radanovich, Chairman  
Subcommittee on National Parks, Recreation  
and Public Lands. Committee on Resources  
House of Representatives  
Washington, D.C. 2051.5

Dear Mr. Chairman:

First, I would like to apologize for the delayed response to your questions regarding the management policies of the National Park Service. The Service appreciates the patience of the House Resources Subcommittee on Parks in awaiting our answers to your clarifying questions from the April 25, 2002 hearing.

Second, the Subcommittee should be aware of my personal commitment, to see that the National Park Service partners with our sister federal land management agencies, state and local governments, gateway communities, private interest groups, and other shareholders to in the day-to-day implementation of our management policies. This will greatly enhance the public's experience of a seamless network of local, state, and federal parks.

Finally, I have already begun a systematic review of the NPS Management Policies of 2001. The purpose of this review is to assure they are in alignment with both the Organic and General Authorities Acts, and with Secretary Norton's 4 Cs- Consultation, Cooperation and Communications, all in the service of Conservation. Such a review is a standard management practice and we would welcome any input from the committee. As a direct follow-up to the April hearing, I recently issued for public comment Director's Order (D.O.)#75A: Civic Engagement and Public Involvement. This D.O. commits the entire NPS to embracing civic engagement as the essential foundation and framework for creating plans and developing programs.

Please contact me lithe subcommittee has any additional questions or concerns.

Sincerely,

Director

## RESPONSES TO SUBCOMMITTEE CHAIRMAN RADANOVICH'S QUESTIONS ABOUT NPS MANAGEMENT POLICIES

1. The brief filed in the Tenth Circuit Court of Appeals in the case of *Southern Utah Wilderness Alliance v. Dabney* differs substantially from the brief first filed in August of 1997 with regard to the National Park Service's interpretation of the Organic Act of 1916. Does the National Park Service recognize that this is a change in position?

Answer: The Service recognizes that this is a change in position in the context of this case. At the district court, the United States emphasized that the Organic Act and related authorities provided the Service discretion in balancing resource conservation and public enjoyment. The district court accepted this argument with respect to the Service's decisions to allow four-wheel-drive use in Horse Canyon, Lavendar Canyon, and Salt Creek Canyon up to Peekaboo Spring, but not with respect to the last 10 miles of Salt Creek Canyon between Peekaboo Spring and Angel's Arch. There, the district court held that the Service abused its discretion and violated the Organic Act by allowing a permanent impairment of unique park resources. The previous administration decided not to appeal this decision by the district court, but, instead, to advise the appellate court of the Service's interpretation of the Organic Act through the lens of this case and the then ongoing *Management Policies* review. Through this process, the Service recognized that its discretion to balance conservation and use is not unlimited. The United States' brief on appeal did not contest the district court's judgment, but did advise the court of the agency's interpretation of the Organic Act without reference to the facts in the case. That interpretation noted the Service's broad discretion in managing park resources, but also articulated the limits of that discretion. Moreover, that interpretation, while emphasizing a different aspect of the Organic Act and supporting a different position than in the district court in this case, is nonetheless consistent with prior policies and practices of the National Park Service over many years.

2. Given the reversal of the *SUWA v. Dabney* case, what is the legal basis for concluding that the Organic Act requires that "when there is a conflict between conserving resources and values and providing for the enjoyment of them, conservation is to be predominant"?

Answer: We believe this statement is an inaccurate interpretation of the law. The Organic Act states that the "fundamental purposes" of parks are "to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." The act states that enjoyment by the public should be achieved consistent with leaving resources unimpaired for future generations. This does not mean that the mere presence of conflict constitutes impairment or places conservation as preeminent over enjoyment.

3. In their opinion on Dabney, the Tenth Circuit Court of Appeals states: "Although the {Organic] Act and the Canyonlands enabling legislation place an overarching concern on preservation of resources, we read the Act as permitting the NPS to balance the sometimes conflicting policies of resource conservation and visitor enjoyment in determining what activities should be permitted or prohibited." Does the NPS disagree with the Tenth Circuit's interpretation of the Organic Act?

Answer: No, we do not disagree with the court's interpretation. We agree that NPS is permitted "to balance. . . resource conservation and visitor enjoyment" The key point, however, is what the court says next: "The test for whether the NPS has performed its balancing properly is whether the resulting action leaves the resources 'unimpaired' for the enjoyment of future generations." It is permissible for visitor activities to cause impacts to park resources, but it is not permissible for visitor activities to cause impacts that are so severe as to constitute an impairment that would affect the enjoyment of future generations. The "balancing" occurs as the Service evaluates whether the impacts from visitor activities on park resources are acceptable or unacceptable, subject to the caveat that those impacts must leave park resources "unimpaired for future generations." Whether an impact constitutes a prohibited impairment is a case-by-case decision to be made "in the professional judgment of the NPS manager," through appropriate public land-use and resource planning processes, taking into account various factors such as "the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impacts; and the cumulative effects of the impact in question and other impacts." See *Management Policies* 1.4.5.

4. In Dabney, the district court ruled that the term visitor "enjoyment," as used in the Organic Act, "refers to visitor enjoyment of park scenery, wildlife, and natural and historic objects that are to be preserved," and that "as used in this sense, visitor enjoyment does not refer to visitor enjoyment of outdoor recreational activities." Given that the Management Policies are based on this district court decision, would you agree with this interpretation that enjoyment does not include outdoor recreational activities?

Answer: The Service does not agree with the district court's interpretation that enjoyment' does not include outdoor activities. The *Management Policies* document *encourages* many forms of recreational activities, including outdoor recreation. We are, however, currently reviewing the document to ensure that it provides clear direction regarding the NPS mission of ensuring public enjoyment of the parks, including outdoor recreational activities, while ensuring the resources remain unimpaired for future generations.

Recreational activities in the parks include, but are not limited to, hiking, sailing, motor boating, camping, orienteering, bicycling, picnicking, horseback riding, ball playing, cross- country skiing, mountain climbing, and scuba diving. Of course, not all recreational activities are appropriate in all parks. What is appropriate is determined through the planning process, taking into account a park's authorizing legislation or proclamation, the nature and significance of the park's resources, desired future conditions, and desired visitor experiences.

5. Do you believe that Congress ever declared that resource protection is on a higher plane than the second component of "providing for the enjoyment" of the parks? If so, please cite the source.

Answer: We do not believe that Congress has ever placed resource protection on a "higher plane" than public enjoyment. However, Congress has made it clear that park resources must be protected so that each generation of Americans may fully enjoy them. The language of some recent court cases seems to elevate resource protection over visitor enjoyment. We believe the Service has a responsibility both to conserve park resources and to provide for their enjoyment, as section 1.4.3 of *Management Policies* explains. Rather than thinking of enjoyment as being on a "lower plane" than resource protection, enjoyment should be viewed as interrelated with resource protection. Both are goals for the park system, as indicated in the Organic Act of 1916. The test for whether the NPS has performed its balancing properly is whether the resulting action leaves the resources 'unimpaired' for the enjoyment of future generations.

6. While the 2001 policies spent a great deal of time explaining the meaning of protecting park resources, is there any explanation for the meaning of the "providing for the enjoyment" of the parks? If not, why not?

Answer: Section 1.4.3 of *Management Policies* is entitled "The NPS obligation to conserve and provide for enjoyment of park resources and values." The second paragraph states: "The fundamental purpose of all parks also includes providing for the enjoyment of park resources and values by the people of the United States." We will continue to review the *Management Policies* document to ensure that its guidance on public enjoyment is clear and consistent with the NPS Organic Act and congressional direction.

The Department of the Interior's newly revised strategic plan developed under the Government Performance and Results Act identifies recreation as a central mission. The plan includes measures pertaining to access to recreational opportunities and to the quality of recreation experiences. Park performance will be evaluated against these goals to help ensure that public enjoyment, as set forth in the Organic Act, is fulfilled.

Chapter 8 of *Management Policies* is devoted to the "Use of the Parks." Section 8.2 of that chapter focuses specifically on visitor use, and sets the overarching Service-wide policy when it states: "Enjoyment of park resources and values by the people of the United States is part of the fundamental purpose of all parks. The Service is committed to providing appropriate, high-quality opportunities for visitors to enjoy the parks, and will maintain within the parks an atmosphere that is open, inviting, and accessible to every segment of American society." The Service hosts nearly 300 million park visits annually, and surveys show that the overwhelming majority of those who visit have an enjoyable experience.

7. Since the Organic Act articulates a dual mandate, do you think it would be possible for the Park Service to violate the second component of that mandate by obstructing the enjoyment of the parks? Do you believe the Park Service has ever gone too far and violated that second component?

Answer: The Service embraces both of these responsibilities. However, there will be times and places where, for reasons of safety and security, opportunities for visitor enjoyment may be managed through various regulations and other restrictions. There may be instances where some park users have felt they have been unfairly prevented from pursuing their particular form of enjoyment. Each case needs to be examined on its own merits. In some cases, the Service has disallowed or curtailed an activity because of the potential for significant resource damage that would undermine the enjoyment of the parks by present and future generations. An example of this would be collecting plant specimens as a hobby. In some cases, the Service has disallowed or curtailed an activity because of unacceptable conflicts with other park users. An example of this would be mountain biking on pedestrian trails. In all cases where a park's enabling legislation specifically authorizes an activity that would otherwise be disallowed, the Service complies with legislative direction. An example of this would be the various units where hunting is permitted. If the subcommittee is aware of instances where the Service appears to have violated the Organic Act or has specific concerns, we would appreciate knowing the details so that we could more closely examine the circumstances and take corrective action, as warranted.

8. In the 2001 Management Policies, a superintendent must make an affirmative declaration during NEP A work regarding whether or not an impact is an impairment. Prior to the policy changes, were regional directors or superintendents required to make an affirmative declaration that a particular action was or was not an impairment?

Answer: Regional directors and superintendents had not previously been required to make an affirmative declaration that a particular action was or was not an impairment. The assumption had always been that the need to avoid impairment was already so internalized in NPS manager decision making that there was no need for them to explicitly certify compliance. However, a number of challenges to decisions that were made in the course of managing parks, and which led to expensive and time-consuming litigation, revealed that the "internalized" no-impairment mandate did not fulfill the need for a defensible administrative record. Therefore, a policy was adopted to have regional directors and superintendents affirmatively declare that their decisions will not violate the Organic Act. This policy provides a record for the public that aids in understanding the rationale for significant NPS management decisions.

9. Does the Park Service have the authority, without direction from Congress, to add additional "values" to be protected?

Answer: A park's enabling legislation or proclamation is the conclusive source and determinant of a park unit's "values" and the Service cannot add or take away from those values given at the direction of Congress.

There is, however, legislative language in the 1970 General Authorities Act suggesting that there are certain values inherent to all units of the National Park System.

10. What are the criteria that the Park Service uses to determine what a resource value is?

Answer: The NPS generally does not use the term "resource values," except where Congress has used that term (see, e.g., 16 U.S.C. § 3170(a)); rather, the NPS typically refers to resources and values as a way of referencing both the tangible and intangible aspects of parks and the visitor experiences they offer. The concepts of "value" and "enjoyment" are subjective, often involving intangible attributes that cover a broad range of visitor experiences. Intangible values, within the context of a visitor experience, might include the enjoyment of solitude or serenity that comes with backcountry hiking, for example, or, the sense of pride in heritage that comes with visiting historic sites. In the NPS planning process, we seek public comment about the experiences the public desires and the values they are seeking to fulfill by visiting our parks.

Park managers, as they strive to ensure public enjoyment and resource protection, must look at the overall visitor experience and evaluate management options in that context and consistent with any other specific congressional direction.

11. Has Congress ever authorized the Park Service to determine subjective values such as "soundscapes" or "odorscapes"?

Answer: Congress stated in the Organic Act that the purpose of the national parks is ". . . to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same. . . ." Congress further stated in the 1978 "Redwood Amendment" to the 1970 General Authorities Act that the authorization of activities and the protection, management, and administration of the parks "shall be conducted in light of the high public value and integrity of the Nation~1 Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established." The concept of "enjoyment," which is set forth in the Organic Act, is necessarily subjective. Individuals derive enjoyment at the parks from different experiences. The Redwood Amendment explicitly uses the term "values," which is subjective, as different individuals value different experiences and hold as priorities different values such as serenity, vigorous physical activity, aesthetic experiences, and so on. Congress thus has recognized the concept of values in general terms. The National Park Service, through its public planning processes and involvement of the public in conducting environmental compliance and other reviews, includes this general authorization to conduct its management of the parks in ways that do not derogate the values and purposes for which park areas were established. This may include consideration of noise associated with certain activities in certain circumstances.

Both Congress and the Executive Branch have provided specific direction to the National Park Service to increase sound experience protection in specific instances. For example, at Grand Canyon National Park, Congressional concern for protection of the park's "natural

quiet" is explicit in the Grand Canyon National Park Enlargement Act of 1975 (Pub. L. No. 93-620), and Congress and the President both increased the focus on this value through the Park Overflights Act of 1987 (Pub. L. No. 100-91), a Presidential Directive in 1996, and the National Parks Air Tour Management Act of 2000 (Pub. L. No. 106-181).

Public enjoyment is multi-dimensional. The process for developing management plans is intended to ensure public engagement and input into developing plans consistent with resource protection and public enjoyment. As noted earlier, that enjoyment may include experiences that range from backcountry hiking or canoeing in conditions of quiet and solitude to scenic drives, to mountain biking, RV camping, or snowmobiling. Achieving the proper balance of these activities is the purpose of the planning process for each park. Evaluating the visitor experience in this context is the purpose of our visitor surveys and our GPRA performance measurement process.

12. While guidance is given to park superintendents about commenting on local planning and zoning, has any policy guidance been given to park personnel regarding what local decisions it might be inappropriate for them to comment on? Do you think it would be a good idea to have some direction on what might be inappropriate intervention in local decision-making?

Answer: The NPS's obligation to protect park resources includes participation in the variety of Federal, tribal, state, regional, and local planning and zoning forums and processes that are available when those actions potentially impact park resources directly. This is a direct application of Secretary Norton's 4 Cs: Consultation, Cooperation, and Communication, all in the service of Conservation. Implementation of the 4 Cs is advanced by encouraging superintendents to be involved in local planning and decision-making as a good neighbor, partner, and interested stakeholder. Their involvement is critical where local decisions have implications for the park and where park decisions may have an impact on local communities. If the local decisions have no implications for the park, there is no compelling reason for a park superintendent to comment on them. In response to the oversight hearing last year, the Director of the National Park Service began a process which has led to the recently released for public comment Director's Order #75A: Civic Engagement and Public Involvement. This D.O. commits the entire NPS to embracing civic engagement, when such engagement enhances partnerships with local communities or is necessary to prevent impairment of park resources, as the essential foundation and framework for creating plans and developing programs. This sort of community participation has led to some very positive outcomes for parks and gateway communities. For example, at Zion National Park, the NPS worked closely with the local community to achieve joint transportation and tourism goals.

Last year, the Department testified in support of the Gateway Communities legislation proposed by Rep. Radanovich, recognizing that strong relationships between parks and gateway communities can enhance visitor experiences in parks and improve the interface of the parks with those communities.

13. In your opinion, should the Park Service be monitoring and surveying property outside their boundaries in an effort to identify species that might occur on park property?

Answer: The Service should only monitor or survey property outside a park boundary when done in cooperation with and concurrence of the property owners outside the boundary. There are times when it is more cost effective to survey park resources in conjunction with the property owners outside the boundary. There are also circumstances when a park resource such as wildlife may cross boundaries with regularity and, therefore, a landscape survey might make sense biologically and economically. However, under no circumstances should a survey or monitoring occur outside a park boundary without the permission and cooperation of the landowner, whether federal, state or private.

14. The definition of wilderness contained in Management Policies seems to be different from the Wilderness Act. For example, the policies do not contain "roadless" as a characteristic of wilderness. This contradicts the Wilderness Act. Do you believe this needs to be changed to accurately reflect what the Wilderness Act states?

Answer: *Management Policies* includes the definition of "wilderness" in section 6.2.1.1, noting the "characteristics (as identified in the Wilderness Act);" The Wilderness Act uses the term "roadless" in section 3(c) of the Act to identify the area that the Secretary of the Interior was required to review for suitability or nonsuitability for preservation as wilderness. *Management Policies* § 6.2.1 directs the Service to consider all park lands for their suitability or nonsuitability for wilderness preservation based on the statutory characteristics of wilderness, their capability of being managed as wilderness, and other factors. We are reviewing these policies and we will revise them as needed to ensure that the policies are consistent with the 1964 Wilderness Act.

15. The policies do not provide any clear direction between lands suitable and potentially suitable for wilderness designation. For example, lands may be considered as potential wilderness with utility lines if there is a long-term intent to remove utility lines. In the interim the lands will be managed as wilderness anticipating this long-term removal. This contradicts the intent of the Wilderness Act. Do you believe this needs to be reviewed?

Answer: Yes, this does need to be reviewed. However, NPS policy does require that a wilderness study area be managed to ensure that the wilderness suitability of the area is not impaired until Congress has completed its decision-making on whether to designate wilderness.

16. The policies also allow for buffer zones around wilderness areas. Shouldn't this be a determination that is left to Congress? Why is the NPS expanding wilderness areas through buffer zones?

Answer: Section 6.3.4.1 of *Management Policies* states that "[t]ransition zones adjacent to wilderness may be identified to help protect wilderness values" It is not the intent that this policy "expand" wilderness through the use of buffer zones. Any type of use or development can still be considered along the boundaries of designated wilderness. Rather, the policy simply acknowledges that parks with wilderness may consider what are the most appropriate uses on parkland adjacent to wilderness. ' "

17. Knowing that both the President and the Secretary of the Interior have made it clear that their vision of the National Park System and public lands system involves increasing access, do you believe that there are areas of the 2001 National Park Service Management Policies that are inconsistent with this vision?

Answer:. We believe there may be some areas of the 2001 Management Policies that may be inconsistent with the President and Secretary's position regarding access by Americans to enjoy their national parks. We are in the process of reviewing and updating the Management Policies to eliminate these inconsistencies. Also, Director's Orders may assist in this effort. These types of periodic reviews are a standard management process.