THE COALITION OF NATIONAL PARK SERVICE RETIREES

Voices of Experience – Advocating Protection of America's National Parks

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And Its Implementation Through Daily Park Management
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Mr. Chairman, and other distinguished Members of the Subcommittee, thank you for holding this hearing and thank you for inviting me to express my views, and the views of our Coalition on the important topic of managing our nation's National Parks. I retired just over eight years ago from the National Park Service after a 32-year career, including serving the last nine years of that career as the Superintendent of Shenandoah National Park. I am now the Chair of the Executive Council of the Coalition of National Park Service Retirees.

The Coalition now consists of just fewer than 460 individuals, all former employees of the National Park Service, with more joining us almost daily. Together we bring to this hearing nearly 14,000 years of experience. Many of us were senior leaders and many received awards for stewardship of our country's natural and cultural resources. As rangers, executives, park managers, biologists, historians, interpreters, planners and specialists in other disciplines, we devoted our professional lives to maintaining and protecting the National Parks for the benefit of all Americans – those now living and those yet to be born. In our personal lives we come from a broad spectrum of political affiliations and we count among our members, five former Directors or Deputy Directors of the National Park Service, twenty-five former Regional Directors, or Deputy Regional Directors, twenty-seven former Associate or Assistant Directors and one hundred and ten former Park Superintendents or Assistant Superintendents.

The National Park Service Organic Act – Its Origin and Intent

The Act (see 16 U.S.C. § 1) establishing the National Park Service, often referred as the "NPS Organic Act," was passed nearly 90 years ago – on August 25, 1916. Almost since its inception, it has been subject to debate because of what some view as its "contradictory mandate." The apparent contradiction lies in the preamble to the Act wherein the intent of the Service to be established by the act 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 in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.* (This language was drafted by Frederick Law Olmsted, Jr., son of the founder of American landscape architecture and creator of Central Park in New York City and the first person to promote the idea of a Yosemite National Park.)

The late preeminent historian Dr. Robin W. Winks (former Randolph W. Townsend Professor of History; Chair, Program in Environmental Studies, Yale University), perhaps more than any other person, has studied this (and related) legislation. Dr. Winks has provided a compelling foundation on how the 1916 NPS Organic Act came to pass and what the intent of it was. Because it would be difficult to improve on the effort provided by Dr. Winks, I have included significant portions (much of it verbatim) from his research (Robin W. Winks, *The National Park Service Act of 1916: "A Contradictory Mandate"?* Denver University Law Review, Vol. 74:3, 1997, at 575-623) in what follows:

> First, and foremost, Dr. Winks concludes that the language contained in the preamble to the National Park Service Act of 1916 is not, in fact, contradictory and that Congress did not regard it as contradictory; that to the extent that a contradictory interpretation can be imputed to the sentence in the preamble [quoted above], that contradiction can be eliminated by reference to the printed record of Congress at the time, to the private papers of those individuals most directly responsible for framing the language of the act, and to the prevailing canons of rhetoric in 1916. Further it is argued that subsequent legislation, and numerous interpretations of related legislation by the courts … sustain the view that there was and is no inherent contradiction in the preamble to the Act of 1916. The National Park Service was enjoined by that act, and the mission placed upon the Service was reinforced by subsequent acts, to conserve the scenic, natural, and historic resources, and the wild life found in conjunction with those resources, in the units of the National Park System in such a way as to leave them unimpaired; this mission had and has precedence

over providing means of access, if those means impair the resources, however much access may add to the enjoyment of future generations.

Elaborating on Dr. Winks' conclusion that no contradiction exists, he cites the following reasons from his research:

1. The 1916 Act was the result of six years of discussion, intense lobbying by a variety of interest groups and growing public concern. Many of these discussions centered on the term "scenery."

   Beginning in 1910, the American Civic Association had declared the need for a special bureau, most likely in the Department of the Interior, to administer the nation's national parks, of which by then there were eleven and also eleven units with other designations; as well as seventeen national monuments, under the administration of the Department of the Interior or the Department of the Agriculture.

   A House hearing in 1912 was the first substantive discussion of the purposes of a National Park Service or Bureau. Throughout testimony, those who spoke reflected a desire to see the lands administered by the proposed bureau viewed as being unique, nationally significant, and a coherent whole rather than an "accumulation." Three generalizations emerged. Parks were to be held to a higher standard of preservation because of their grandeur and (with monuments) scientific value than were other federally-administered lands; this would best be achieved through a separate bureaucracy which would understand these different needs and values; and while roads, accommodations, and other man-made intrusions were necessary in order to enhance the recreational purposes of the national parks, such physical objects were to be subordinate to the preservation of the "scenery." Never, however, was scenery defined, for clearly all believed they understood the meaning. In defining "scenery," no matter which dictionary one might consult, "scenery" is tied to "a place," or "features"; involves more than one "object"; and derives special value from the "aggregate" or conjunction of those objects, as viewed from some undefined but nonetheless human vantage point.

   Hearings were again held in 1914, when the National Park Service bill was introduced again in the 63rd Congress. Little new emerged from these hearings.

   House hearings in April, 1916, dealt with two bills, H.R. 434 and H.R. 8668, which differed from H.R. 434 in that it contained the significant preamble quoted above. Congressman Kent (CA), sponsor of H.R. 8668 expressed a desire to have a document that was "as short and uncluttered as possible," knowing that this meant that language would not be provided to clarify all future areas of conflict and ambiguity. The 1916 hearings substantially repeated the previous hearings, even to the extent of reading into the record the texts of those hearings. Only two new points were made. For the first time, the phrase "national park system" was used, involving the image of a systematic inventory of the nation's grandest scenic landscapes and natural and scientific curiosities, all to be combined within one efficient and consistent administration. Secondly, for the first time the notion of parks as great educational enterprises was set out clearly. J. Horace McFarland, President of the American Civic Association, read into the hearing Olmsted's sentence framed as the preamble to H.R. 8668 and declared that this statement must "remain as it is, unless it can be strengthened; it should never be weakened."

2. Olmsted's Statement of "Fundamental Purpose"

   Undergoing very slight alterations from Olmsted's original version, his "fundamental purpose" of the parks was (as earlier stated) "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."

Each signifier here has undergone change since 1916; a linguist might argue that the change is somewhat differential between sections of the country, but none would argue that change has not occurred or that such change has not tended in one direction, toward a wider interpretation of the key words "conserve," "natural," "historic," "objects," "wildlife," and "unimpaired." As this last word set the only actual standard (as opposed to purpose) it has been seen as the most open to attack, interpretation, expansion, and ambiguity.

What may we reasonably believe Congress, and those who framed the legislation, meant by "unimpaired"? To stalk this question, one must turn to the papers, first, of Frederick Law Olmsted, Jr., and then to those of Congressman William Kent [sponsor of the aforementioned H.R.8668] for it was Olmsted who had insisted that there must be an overriding and succinct statement of purpose (today one would say "mission statement"). Since he expected and hoped for substantial public use of the parks, he was not content with leaving an area "unimpaired for future generations," but inserted the key words, "for the enjoyment of" those generations.

Herein lay an ambiguity and a potential source for future conflict. "Enjoyment" reasonably required access, and at the time roads, trails, hotels, campgrounds and administrative facilities did not seem unduly invasive. The act cannot have meant that "unimpaired" was to be taken in its strictest sense, particularly since the act included specific approval for certain inevitably compromising actions: leasing for tourist accommodation was the most obvious example.

3. Congressman Kent's Views

Kent often is singled out as the "father of the National Park System," and his views deserve some analysis. Kent's views on what a national park should be had been made clear across several park proposals. In 1913 he had offered up a national monument on the Middle Fork of the Feather River in northern California and a Redwood National Park on the California north coast and in January, 1915, he had come out strongly in House debate for the Rocky Mountain National Park bill, declaring that the preservation of scenery is a "most valuable purpose." He drew a distinction between national forest, national monument, and national park land, asserting that a national park must be held "in a state of nature" and that animal life must be "forever free from molestation." One may reasonably conclude that this was still his view only a year later, as sponsor of H.R. 8668.

Kent was particularly concerned with standards, and with the rumor that the chief forester, Henry S. Graves, was opposed to his bill, and on this he sought out assurances. Graves responded to Kent on March 17, declaring that he fully favored the bill. The Department of the Interior was facing pressure for economic use of natural resources in the parks and chose to meet this by granting grazing privileges similar to the national forests. This would affect the forests too, and as we have seen, Graves wanted to see a national park service created so that a national park would be clearly distinct from a national forest, "almost wholly protective," set aside to preserve "exceptional natural wonders," "segregated," for "exclusively . . . recreation and scenic purposes." The goal was to "preserve these areas in their natural condition." Congress must, Graves concluded, be certain that national parks are "really distinctive" and then hold them to a higher standard than

other public lands, with the proposed National Park Service to have "its own separate and distinct field."

Nothing could have seemed clearer, and Kent and Graves were in agreement that precisely because a higher standard was to be applied to national parks, one must resist the growing demand at the local level to create parks primarily to attract tourists. Graves noted that there were fifteen or more bills pending to create new parks; many of the bills would not prohibit industrial use and would authorize grazing, mineral development, the sale of timber or the use of streams for water power. This must not happen, he said, and Kent agreed.

Had Kent intended any emphasis on recreational purposes for the parks - one of the purposes to which Graves referred - he surely would have said so, for at the time Kent was a Vice President of the Playground and Recreation Association of America. Had he believed that he could leave interpretation of the bill to the Secretary of the Interior, Frederick K. Lane, he surely would not have written to Woodrow Wilson on July 24, when the bill was soon to be on the President's desk, advising him that Interior was abandoning sound policy. The Assistant Secretary, A.A. Jones, was not to be trusted, and Lane himself "had broken down to a considerable extent in his conservation policies."

4. These recent commentators ask, in one form or another, how a management policy can both accommodate use and preserve a natural area. These commentators, often in very similar terms, conclude that the Park Service was presented by the act with a "fundamental dilemma," that the Service was asked to attempt "harmonizing the unharmonizable," and that the dilemma is not capable of either logical or historical resolution. None of these authors appears to have examined the bills that led to the Act of 1916, the hearings, the debates - that is to say, the legislative history - much less having sought out and explored the private papers of the members of the Committee on the Public Lands.

   To accept the conclusion that the preamble presented the Park Service with an inherent contradiction, that it is illogical, is to conclude that Congress had no clear intent, that it either did not know what it was doing when it posed a dilemma, that it did not care, or that there is no inherent contradiction in the preamble. While Congressional acts undeniably contain unclear language, and (when acted upon administratively) unresolved issues, it seems unreasonable to so summarily dismiss Congressional intent when the act was the product of well-informed men, especially Congressman Raker and Congressman Kent, both of whom had studied the issue with care, one of whom declared the act to be his "pet" and the other, by evidence of his correspondence, having spent much time upon it; when the act was the last of a series, each of which had benefited from the clarification of hearings; when the co-sponsor in the senate, Reed Smoot, confided to his diary that this act was one of the most important of his accomplishments; and when such careful and scholarly individuals as Frederick Law Olmsted and Robert B. Marshall had a hand in its language.

5. There is, as a final approach to the "contradictory mandate," the logic of rhetoric. Many of those involved in framing the Organic Act, and certainly the former judges, school teachers, and present Congressmen, were well accustomed to the use of rhetoric, or the study of the effective use of language. As rhetoricians, Senator Smoot and Congressmen Kent, Ferris, and Lenroot were highly regarded. The classical education of the time - and Olmsted and Raker had such an education - included rhetoric as a formal study. The principles of rhetoric held that, when listing two or more elements to an argument, the most important be stated first, and when speaking in public debate, a significant element of the argument which was not, however, the most significant, should be stated

last in order to allow for an "Attic fall." If the principles of rhetoric were applied to the language of the preamble, then conserving "the scenery and the natural and historic objects and the wild life" within a park took precedence over providing for public "enjoyment," and there was no contradiction between two elements of equal weight for the elements were not, in fact, equal.

While the crucial words from the preamble to the Organic Act of 1916 have traditionally been viewed as the statement of "fundamental purpose" already examined here, there is other language in the act that requires consideration. Let us read the preamble again:

> The service thus established shall *promote* and *regulate* the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified . . . by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose 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 in such manner and by such means as will *leave* them unimpaired for the enjoyment of future generations.

Thus, the primary goal of the new Service is to "leave" the parks and monuments unimpaired, placing clear priority on protection as opposed to restoration of landscapes and by implication arguing for a presumption of inaction in the face of any request for what may be viewed as "impairment."

But what of "shall promote and regulate" in reference to the parks and monuments? Here arises the true source of the dichotomy of purpose, between preservation and use, conservation and enjoyment. It may well be argued that the order in which these two objectives are set forth, as well as the sequence by which taken together they precede other terms in the statement, is significant, with "enjoyment" circumscribed by "unimpaired." The legislative history of the act would appear to support this view, and successive Directors of the National Park Service, and for the most part Secretaries of the Interior, as well as chairpersons of the relevant committees and subcommittees in Congress, have usually acted in such a manner as to suggest that the Park Service's first priority should be preservation.

6. The intent of Congress as expressed in 1916 must also be seen as modified in light of the acts of 1970 and 1978.

Congress supplemented and clarified the provisions of the 1916 Act through enactment of the General Authorities Act in 1970, and again through enactment of a 1978 amendment to that law (the "Redwood amendment," contained in a bill expanding Redwood National Park, which added the last two sentences in the following provision). The Senate Report accompanying the Redwood amendment emphasized that the purpose was to refocus and insure that the basis for decision-making concerning the National Park System continues to be the criteria provided by 16 U.S.C. § 1 because the committee had been concerned that litigation with regard to Redwood National Park and other areas of the system may have blurred the responsibilities articulated by the 1916 Act creating the National Park Service.

The key part of the General Authorities Act, as amended by the Redwood National Park bill, is:

> *Congress declares that the national park system, which began with establishment of Yellowstone National Park in 1872, has since grown to include superlative natural, historic, and recreation areas in every major region of the United States, its territories*

> *and island possessions; that these areas, though distinct in character, are united through their inter-related purposes and resources into one national park system as cumulative expressions of a single national heritage; that, individually and collectively, these areas derive increased national dignity and recognition of their superlative environmental quality through their inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people of the United States; and that it is the purpose of this Act to include all such areas in the System and to clarify the authorities applicable to the system. Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park System, as defined in section 1c of this title, shall be consistent with and founded in the purpose established by section 1 of this title [the Organic Act provision quoted above], to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress. (16 USC 1a-1)*

The act of 1970 introduces somewhat revised language, for unlike the act of 1916, it does refer to "the people." The act arose in the context of a growing concern for recreational opportunities in the United States, recognized by the Outdoor Recreation Resources Review Commission appointed by President Dwight D. Eisenhower, which reported to President John F. Kennedy in 1962. In 1970, President Richard M. Nixon's "Legacy of the Parks" program held that the government should be "taking parks to the people," an idea which was supported on a bipartisan basis in Congress. The result was the Act of August, 1970, which in addition to reasserting the significance of the national parks, remarked upon their "increased national dignity" both "individually and collectively," so that an infringement upon the dignity of one was an infringement upon the dignity of all.

Less commented upon, but important, is the language by which "the people" are invoked: the parks, which must represent "superb environmental quality," also acquire their significance by virtue of their "inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people." In addition to the explicit citation to the people, the act added to the linked criteria of 1916, unimpaired preservation and access for enjoyment, the new, if parallel, concepts of "inspiration" and "benefit." As these words are at least as open to subjective interpretation as were those of 1916, they gave rise to renewed debate.

However, "benefit" and "inspiration" need not be placed in opposition to each other. The context makes clear that "inspiration" refers to the re-creation of the spirit that comes from gazing upon or walking amidst a sublime scene, or from examining an historical remnant relating to an event or achievement presumably inspiring to most Americans; it may, of course, also refer to the "inspiration" that arises from the healthy use of recreational outlets, mastery over one's body, or simply a sense of well-being. Indeed, since Congress proceeded to create, under the 1970 act, a number of new National Recreation Areas, including so-called "urban parks," at the least this reading seems essential. It does not follow, however, that "recreation" was given priority over "re-creation." The 1970 act clearly strengthened the Congressional mandate placed upon the Park Service to protect park units in the fullest sense of the word.

"Benefit" requires less parsing, though in conjunction with "the people" it does require a textual comment. As stated, this linkage had not been made explicit in previous legislation. By the

> linkage, Congress appears to have been saying that management principles must look to actions that would benefit "all the people" (indeed, the 1970 act used precisely this language) rather than decisions that would redound primarily to the benefit of a minority, be it local, an interest group, or an ethnic community. Thus guidance was given to the Park Service to exercise the broad powers it either possessed or would acquire over the next decade.
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> The act of 1970 also expanded the definition of the Park System to include "any area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes." While this provision was directed to the concept of national seashores, national lakeshores, and wild and scenic rivers, no distinction of this nature was made in the act itself, and thus the language is quite sufficiently broad to admit of all water and land resources within a park.

Professor Winks has provided irrefutable evidence of the intent of the Congress with regard to the 1916 Act, and the Congressional record relative to the subsequent amendments is even clearer. Those who continue to perpetuate the notion that the two stated "missions" of the National Park Service are "on an equal plane" are those who would wish to see the protection of the resources diminished in favor of increasing purely recreational or consumptive uses of the national parks.

Implementation of the Organic Act in Day to Day Park Management

To assure that the National Park System is managed, on a day to day basis, in accordance with the aforementioned statutes, legislative intent and legal interpretations by the courts, the National Park Service primarily relies on its management policies. Management policies generally have been accepted as the NPS's interpretation of key statutory and other legal provisions.

The need for management policies in the National Park Service was first articulated by Secretary of the Interior Franklin K. Lane in a letter to the first Director of the National Park Service, Stephen T. Mather, on May 13, 1918. Secretary Lane stated that administrative policy should adhere to three broad principles based on the 1916 Organic Act:

> First, that the national parks must be maintained in absolutely unimpaired form for the use of future generations as well as those of our own time; second, that they are set apart for the use, observation, health, and pleasure of the people; and third, that the national interest must dictate all decisions affecting public or private enterprise in the parks.

Today's national parks have become important to our nation in more ways than Secretary Lane could possibly have imagined. However, his guiding principles remain fundamentally valid, and serve as a useful reminder of the need for a sustained commitment to park resource protection.

The Service's commitment to protecting the national parks currently is embodied in the 2001 edition of management policies. Current NPS policy is to interpret the 1916 "non-impairment" standard, and the 1978 *"non-derogation"* standard as having the same meaning and intent.

Chapter 1 of these policies contains several crucial sections that act to establish the foundation upon which all management decisions in the NPS will be made to assure that the laws and their intents are upheld.

> **1.4.3 The NPS Obligation to Conserve and Provide for Enjoyment of Park Resources and Values**

The "fundamental purpose" of the national park system, established by the Organic Act and reaffirmed by the General Authorities Act, as amended, begins with a mandate to conserve park resources and values. This mandate is independent of the separate prohibition on impairment, and so applies all the time, with respect to all park resources and values, even when there is no risk that any park resources or values may be impaired. NPS managers must always seek ways to avoid, or to minimize to the greatest degree practicable, adverse impacts on park resources and values. However, the laws do give the Service the management discretion to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, so long as the impact does not constitute impairment of the affected resources and values.

The fundamental purpose of all parks also includes providing for the enjoyment of park resources and values by the people of the United States. The "enjoyment" that is contemplated by the statute is broad; it is the enjoyment of all the people of the United States, not just those who visit parks, and so includes enjoyment both by people who directly experience parks and by those who appreciate them from afar. It also includes deriving benefit (including scientific knowledge) and inspiration from parks, as well as other forms of enjoyment. Congress, recognizing that the enjoyment by future generations of the national parks can be ensured only if the superb quality of park resources and values is left unimpaired, has provided that when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant. This is how courts have consistently interpreted the Organic Act, in decisions that variously describe it as making "resource protection the primary goal" or "resource protection the overarching concern," or as establishing a "primary mission of resource conservation," a "conservation mandate," "an overriding preservation mandate," "an overarching goal of resource protection," or "but a single purpose, namely, conservation."

1.4.4 The Prohibition on Impairment of Park Resources and Values

While Congress has given the Service the management discretion to allow certain impacts within parks, that discretion is limited by the statutory requirement (enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired, unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the National Park Service. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.

The impairment of park resources and values may not be allowed by the Service unless directly and specifically provided for by legislation or by the proclamation establishing the park. The relevant legislation or proclamation must provide explicitly (not by implication or inference) for the activity, in terms that keep the Service from having the authority to manage the activity so as to avoid the impairment.

1.4.5 What Constitutes Impairment of Park Resources and Values

The impairment that is prohibited by the Organic Act and the General Authorities Act is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. Whether an impact meets this definition depends on the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts.

> An impact to any park resource or value may constitute an impairment. An impact would be more likely to constitute an impairment to the extent that it affects a resource or value whose conservation is:
>
> - Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park;
> - Key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park; or
> - Identified as a goal in the park's general management plan or other relevant NPS planning documents.
>
> An impact would be less likely to constitute an impairment to the extent that it is an unavoidable result, which cannot reasonably be further mitigated, of an action necessary to preserve or restore the integrity of park resources or values. Impairment may occur from visitor activities; NPS activities in the course of managing a park; or activities undertaken by concessioners, contractors, and others operating in the park.

Growth of the System and experience has included learning from mistakes. Ski areas, fire suppression, roads, Fishing Bridges, polluting runoff from parking lots, feeding bears, helicopter tours, the "Firefall" in Yosemite Valley, removing facilities from Giant Forest in Sequoia National Park because they were killing the big trees, all have taught us lessons. In general, the lessons of experience have taught us to move away from artificial, noisy, active, equipment-dependent, entertainment-based uses that are easy enough to find on other public and private lands; and toward quieter, more contemplative and less intrusive or impacting uses that distinguish the National Parks from other places.

The 2001 management policies are a product of thoughtful growth and cumulative experience over 89 years. They are clear, unambiguous, and responsive to law. They are responsive not only to legislation, and its intent, but to a history of case law adjudicated in the courts. That is why the 2001 policies represent the best and clearest (to date) expression of what it means to leave a resource "unimpaired for the enjoyment of future generations." Both protection of resources and providing for visitor enjoyment are provided for by law and both have been admirably carried out for generations, clearly establishing the US National Park System as a global model.

As superintendent of Shenandoah National Park, and earlier in several mid-level management positions, I frequently relied on the NPS management policies (and their accompanying Directives) for guidance in decision-making. Of paramount importance to those of us in field units of the NPS who were/are faced with increasingly difficult decisions was/is the need for clear, unequivocal language in the management policies (in regular conversations with many former colleagues in the NPS, now in management positions, they convey this same need).

<u>Threats to the National Park System from the Currently Proposed Revisions to the 2001 Management Policies</u>

Beginning earlier this year, political appointees in the Department of the Interior initiated attempts to radically alter the 2001 management policies. Their process has been deeply flawed:

- There has been no articulated compelling need to undertake the radical revisions proposed. To be sure, there needs to be some updating and additions to accommodate circumstances that

have changed since 2001. But these could have been, and should have been carried out as "bottom up" amendments to the management policies, as has been the case in the past.

- The initial draft was kept secret and the subsequent draft involved "nearly 100" (according to statements by NPS Director Fran Mainella) career NPS employees. This represents less than one-half of one percent of the total employees in the NPS.

But more importantly, the content of the current draft, out for public comment, is more vague and ambiguous and includes language that has the potential to place park managers in the position of violating the NPS Organic Act, as amended.

- Some of the extraordinary attempts made by the DOI to radically change the intent of Congress in the initial draft have carried over to the draft currently under consideration. The most egregious of these include:
  - The proposed Section 1.4.3 entirely removes the language referring to the Organic Act as beginning "with a mandate to conserve park resources and values" and also deletes that this mandate "is independent of the separate prohibition on impairment, and so applies all the time, with respect to all park resources and values, even when there is no risk that any park resources or values may be impaired." This section also removes the language describing how courts "have consistently interpreted the Organic Act, in decisions that variously describe it as making 'resource protection the primary goal' or 'resource protection the overarching concern,' or as establishing a 'primary mission of resource conservation,' a 'conservation mandate,' an 'overriding preservation mandate,' an 'overarching goal of resource protection,' or 'but a single purpose, namely, conservation.'"
  - The same section inserts the following guidance, "The Park Service recognizes that activities in which park visitors engage can cause impacts to park resources and values, and the Service **must balance** (emphasis added) the sometimes competing obligations of conservation and enjoyment in managing the parks. The courts have recognized that the Service has broad discretion in determining how best to fulfill the Organic Act's mandate."
  - In Section 1.4.3.1, the proposed definition of "Appropriate Use" states that such uses may include uses whose impacts can be successfully mitigated or eliminated through
    - visitor education,
    - temporal, spatial, or numerical limitations on the use,
    - the application of best available technology, or
    - the application of adaptive management techniques.
  - In several places in the draft, there is increased emphasis on "cooperating" with special and local interest groups (such as "gateway communities") and potentially giving disproportionately greater influence in decision-making to those entities than to the broader interests of the national constituency. The consequence of this emphasis, over time, will be to make some national park units less "national."
- It seems clear that the Department of the Interior has set forth a course of action to weaken the intent of the NPS Organic Act. In fact, within the past two weeks, Brian Waidmann, Secretary Norton's Chief of Staff, so much as admitted this to a high-ranking official in a national conservation organization. He confirmed that the intent was to make visitor use equal with conservation and that the intent of the rewrite was to eliminate the default towards conservation.

We believe that this position is being driven by a narrow faction consisting of special and commercial interests, primarily devoted to increasing motorized recreation uses on public lands, including the national parks. We believe that this position generally is not supported by the American public – as evidenced by over fifty opinion pieces in newspapers across the nation reacting negatively to the proposed radical revisions since their release late last summer.

National park resources, and indeed the visitor enjoyment opportunities associated with them, are the most special our country holds in trust for its citizens. These places were established by successive generations of Americans through their elected officials to remain special, deserving of the highest levels of protection and reverence, clearly differentiated from the myriad other places in our country that are in public ownership and clearly differentiated from the myriad other visitor uses that can take place in those places. Parks were not established by Congress to represent the lowest common denominator of resource protection and visitor use. They were established to represent a narrow slice of what is best in our country and to be managed to the highest standards. While management of these places must be responsive to a changing society it must not, by law, allow them to become like all other public places in our country. The national park system is no different than the democracy from which it has evolved....it will die or live on, greater and stronger, only if we intend it to. The greatest threat to both are from small, cumulative, and seemingly innocuous decisions that when taken in total context, over a period of time, represent the loss of greatness and the slide to mediocrity and potential loss.

Perhaps this has been said best by former National Park Service Director Newton B. Drury (1940 – 1951):

> *If we are going to succeed in preserving the greatness of the national parks, they must be held inviolate. … If we are going to whittle away at them we should recognize, at the very beginning, that all such whittlings are cumulative and that the end result of such whittlings will be mediocrity.*