

Subject: The 4/25 hearing on NPS Management Policies

Hi all - I sat in on the House Subcommittee on National Parks, Recreation and Public Lands oversight hearing on NPS Management Policies (the 2001 edition). There had been a lot of preparation for contentious questions from members. As it turned out, the hearing was pretty tame and the Director stood firm on retaining the NPS Management Policies when many of the Republican members were pushing for revision.

AK's own Jeff Mow was the legislative point person for this hearing, so he will probably do notes that go to John Quinley, but until then, here are my notes. The Director's written testimony as entered into the Record plus her oral remarks are attached at the end.

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Members in attendance:

Chairman Geo. Radanovich (R-CA)  
John Duncan (R-TN)  
Wayne Gilchrest (R-MD)  
Mark Souder (R-IN)  
Ranking Minority Member Donna Christian-Christensen (D-VI)  
Hilda Solis (D-CA)  
and one other Democrat,

The NPS Director was the only witness invited to present testimony.

The chairman and majority members expressed concern over their perception that the "new" management policies place resource protection above visitor enjoyment and therefore skew the balance as exists in our Organic Act. Radanovich said that we now interpret the Organic Act in light of a court decision in the Canyonlands Salt Creek lawsuit (Southern Utah Wilderness Alliance - SUWA- v. Dabney), a decision that was later overturned or remanded back to the lower court with a different outcome. The Chairman took exception with the idea that 1) the NPS would make policy based on a court decision that later changed, and 2) that using language from a court decision is tantamount to allowing the judicial branch to establish governing language where that is the role of the Congress. There was also concern over "impairment" and the possibility that this would be used to freeze existing levels of public use.

Ms. Christian-Christensen said that she supported, largely, the 2001 NPS Management Policies as a reflection of the Organic Act, and said that we must err on the side of conservation.

The Director testified, flanked by Deputy Director Randy Jones and Associate for Nat. Res. Mike Soukup. She described what the NPS Policies document is intended to do (translate laws and regulations for cohesive and consistent application in the national parks), and the process (emphasizing that there was public involvement) used to do the revision. She noted the other levels of guidance - Directors Orders and Reference Guides. She said she was asking the Service to do a new DO on public involvement (she did mention the 4 Cs once, in reference to this). She differentiated between impacts and impairment and said the no impairment clause did not preclude the Service from developing new facilities or allowing reasonable public use. In the Q&As, she explained that she would be emphasizing consistency with NPS Management Policies across the Service, noting that exceptions are often required by individual parks' enabling legislations.

## **Verbal Testimony**

### **STATEMENT OF MS. FRAN MAINELLA, DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS, RECREATION AND PUBLIC LANDS, HOUSE COMMITTEE ON RESOURCES, CONCERNING NATIONAL PARK SERVICE MANAGEMENT POLICIES.**

**April 25, 2002**

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Mr. Chairman, I would like to summarize my written statement that has been submitted for the record.

Mr. Chairman, thank you for the opportunity to appear before your subcommittee to discuss the National Park Service's *Management Policies*. Our policies play a vital role in helping us make intelligent and fair decisions about the national parks, and I welcome this opportunity to explain what the policies are, how we develop them, and how we apply them to our daily management of the national park system. I want to describe how we are ensuring that our park superintendents implement the changes found in the *Management Policies 2001* appropriately and consistently. I also welcome the opportunity to hear any concerns you may have about how we developed and apply the current policies.

#### **The Need for Management Policies**

Policies are guiding principles or procedures that set the framework and

provide consistent direction for management decisions. Through our policies, we try to translate laws, regulations, Executive orders, and Secretarial orders in a cohesive manner that all our employees can understand and implement as intended. Second level directives known as Director's Orders supplement our Management Policies, and in some cases a third level such as a *Handbook* or *Reference Manual* is required.

Congress intended and visitors expect that the parks will be managed to the highest standard of consistent and professional care. Visitors rightly expect that they will have appropriate opportunities to enjoy park resources and values. *Management Policies* help bring a reasonable degree of order and discipline to the decision-making process, which is important in a dispersed organization with 385 diverse park units.

Our written policies are also a means of keeping both the Congress and the public informed on how we will implement the laws that govern the parks. Policies provide an understanding of the ground rules by which the Service manages the parks.

### **History of Management Policies**

Policies to guide park management have been with us for a long time, and many of the fundamentals have remained the same. Since 1918, there have

been 13 documents issued, by the Secretary or the Director, that provided guidance on the administration of national park units. The current form known as *Management Policies* first appeared in 1978 and has been revised four times since then.

### **Development of Management Policies**

The 2001 issue of *Management Policies* was developed through an internal effort that began in 1994, and involved extensive field review, consultation, and an opportunity for public review and comment. Most of our policies offer flexibility to deal with special circumstances. If a park manager has a compelling reason why he or she cannot comply with a particular policy, the Secretary, Assistant Secretary or Director may grant a waiver in writing, so long as the waiver is consistent with statutory law and other higher authorities such as Presidential Proclamations and Executive Orders.

### **The 2001 Revision of *Management Policies***

Most of the policies from the 1988 edition have not changed, but some are explained more fully. For example, the new edition explains in more detail the need for superintendents to be good neighbors by inviting participation in park planning and decision-making. There is also more detail and emphasis on the need for scientific management of park resources, so that better decisions can be made, and an increased emphasis on the administrative record, which

justifies the decisions made by park managers.

### **The No-Impairment Provisions of the 2001 Management Policies**

One issue of particular interest that was addressed in 1998, but is more fully explained in the 2001 edition is the responsibility imposed on the Service by the no-impairment clause of the 1916 National Park Service Organic Act. This issue was dealt with in greater detail primarily because of a **court case involving Canyonlands National Park**. The Organic Act requires the Service to conserve park resources and values and provide for their enjoyment “in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” The policy in section 1.4 of *Management Policies* essentially mirrors that requirement of the law, and explains that impairment “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.”

### **Implementing the No-Impairment Standard**

A significant change in how the National Park Service implements the impairment standard on a case-by-case basis is the integration of a question regarding impairment into the environmental impact evaluation that is already performed under the National Environmental Policy Act (NEPA). This is a step

that strengthens the **administrative record** and responds to the deficiency found by the courts. Ultimately, the decision as to whether the adverse impacts of an action reaches a threshold and becomes an impairment lies with the superintendent and the regional director. To ensure we develop consistency in the implementation of the impairment standard, most if not all findings of impairment will be subject to **review at the national level**.

The Service is going through an internal learning process as managers strive to meet their responsibilities under the policy. We are developing **supplemental guidance** to help all our employees better understand and implement the policy. Our planners and environmental coordinators have been instructed to monitor closely how the impairment issue is addressed in our planning and environmental documents, and to coordinate with our Washington staff on any areas of uncertainty. We provide **training and orientation** on the no-impairment policy at every level of the organization and at every opportunity.

Another important safeguard in implementing this policy is the **Secretary's Four C's program** -- conservation through consultation, cooperation, and communication. To ensure we carry out these principles, I have asked our Policy Team to begin drafting a Director's Order that will address **public participation and outreach** for our management decisions. I believe that implementing the no-impairment policy under the guidance of the Secretary's Four C's principles will help ensure that our actions comply with the law, protect park resources, and guarantee the American public appropriate opportunities to enjoy access to their parks.

## **The Impact of the No-Impairment Standard on Public Use and Enjoyment**

I would like to clarify any misunderstandings that may arise about the no-impairment policy. It does not mean that the Service will not provide any new facilities in the parks, or that we will not allow reasonable public use and enjoyment of the parks. While visitor uses may cause impacts, we are confident that we are managing over 275 million visits a year in a manner that leaves our National Parks unimpaired, and the public at large supports our efforts. While we must always try to avoid impacts on the parks, there are times when there is a compelling reason to develop a facility or allow an activity, even though it may have an adverse impact on the park's environment.

While I have been Director the policy has not been unreasonably applied. It has **not** brought a halt to the construction of roads, visitor centers and other amenities to serve park visitors, nor has it curtailed visitor use and enjoyment.

If the Subcommittee is aware of any situation where it believes the no-impairment policy has led to an inappropriate decision, I would be pleased to review it to avoid any misapplication of the policy.

## **Appropriate Use and Enjoyment**

One area that may lead to confusion is the distinction between appropriate uses and the impairment of resources. The term "appropriate use" is key to the way we manage use and enjoyment of the National Park System. The

National Parks belong to all Americans, and all Americans should feel welcome to experience the parks. Visitors to the National Park System today continue to enjoy a wide range of recreational activities, where appropriate and as determined by legislation or a unit's General Management Plan. These activities include: biking, wildlife viewing, boating, canoeing, sailing, personal watercraft, cross-country skiing, down-hill skiing, fishing, golfing, hiking, horseback riding, mountain climbing, off-road vehicle use, orienteering, rock climbing, SCUBA diving, snowmobiling, and swimming.

We in the National Park Service appreciate Congress' past reminders that the enjoyment of the parks today must not be at the expense of future generations.

However we also understand some of the concerns of committee members have regarding the current Management Policies. With respect to the no-impairment standard, we are

- developing supplemental guidance,
- expanding our training and orientation programs,
- reviewing our impairment findings at the national level, and
- keeping a better administrative record on any decisions.

In addition for all management decisions we will be developing policy guidelines on public participation and outreach.



With your help, the Service will ensure that we today, and our children tomorrow, continue to enjoy the same quality of the natural, cultural and scenic splendors of our National Park System.

Mr. Chairman, thank you for the opportunity to provide you with this background information. This concludes my prepared remarks, and I will be happy to answer any questions you or other committee members might have.

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DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON  
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Mr. Chairman, thank you for the opportunity to appear before your subcommittee to discuss the National Park Service's *Management Policies*. Our policies play a vital role in helping us make intelligent decisions about the national parks. I welcome this opportunity to explain what the policies are, how we develop them, and how we apply them to our daily management of the national park system. I also look forward to hearing any concerns you may have about how we develop and apply the current policies.

**The Need for Management Policies**

Policies are guiding principles or procedures that set the framework and provide consistent direction for management decisions. Through our policies, we try to translate laws, regulations, Executive orders, and Secretarial orders in a cohesive manner that all National Park Service employees can understand. These policies also keep Congress, the public, and interested stakeholders informed on how we will implement the laws that govern the parks. The Service has three tiers of policy that provide such guidance which include: *Management Policies; Director's Orders; and Handbooks, Reference Manuals, and Other Documents*.

The National Park Service's *Management Policies* provide the broadest level of guidance by helping to bring a reasonable degree of order, consistency, and discipline to the decision-making process. Such guidance is particularly important in a dispersed organization, like ours, which manages 385 diverse units of the National Park System across the United States. The *Management Policies* are available to the public and other interested parties on the National Park

Service website at [www.nps.gov/policy](http://www.nps.gov/policy).

Policies to guide park management have been with us for a long time, and many of the fundamentals have remained the same. Since 1918, there have been 13 documents issued, by the Secretary or the Director, that provided guidance on the administration of National Park units. On each of these occasions, the policies have attempted to respond to changing times and the Service's changing needs. A similar effort may be appropriate if current policies are not providing park managers with a sufficient level of guidance or if improvements could be made to make the policies more effective.

### **Development of the Management Policies**

Policy initiatives may develop as a sudden, urgent response to a specific problem or issue, through an evolutionary process as the Service gains experience in addressing a problem or issue, or as a response to legislative or court action. Occasionally, policy initiatives originate from individuals, local or state governments, and non-governmental organizations outside the Service who have a strong interest in how the parks are managed. Most often, however, Service-wide policy is developed through an internal effort involving field review, consultation with all levels of the organization, and an opportunity for public review and comment.

### **The 2001 Revision of the Management Policies**

The most recent effort to update the *1988 Management Policies* was triggered by a review undertaken in 1991 by the Park Service concerning its responsibilities and prospects for the future. This review included a symposium that brought together individuals from within and outside the government to look at the challenges facing the National Park Service in the new millennium. The symposium culminated in the 1992 publication: "Report of National Parks for the 21<sup>st</sup> Century -- The Vail Agenda." The report included a finding that "if the National Park

Service is to adequately meet the challenges before it, park system policy and management must be guided by a clear sense of its role and purpose.” In response to the report, a *Federal Register* notice was published in June 1998, asking the public for their input on updating the 1988 policies. Over the next two years, two draft revisions to the 1988 policies were circulated throughout the Service for comment. A January 2000 *Federal Register* notice invited public comment on a third draft that was distributed to all the members of this subcommittee and to the public. The result of this effort is the 2001 edition of the National Park Service *the Management Policies*.

In the 2001 *Management Policies*, most of the policies in the 1988 edition have been retained, but a fuller explanation of certain policies is provided. Highlights of the 2001 *Management Policies* include new or improved management and planning concepts, new guidance on implementing recently-passed laws, and improved consultation with interested groups.

One aspect of the 2001 *Management Policies* of particular interest is the revisions that place greater emphasis on consultation with interested groups, such as gateway communities, community groups, traditional cultural groups, and Indian Tribal Governments. For example, the 2001 *Management Policies* emphasize that superintendents should act as good members of their community, by inviting participation in park planning and decision-making, and by being actively involved in the planning and regulatory activities of neighboring jurisdictions that may affect their parks. As you know, efforts to develop stronger partnerships with States, Tribes, local communities, and citizens are consistent with Secretary Norton’s Four Cs Program -- conservation through consultation, cooperation, and communication. We believe that more thoughtful policy decisions can be made if we work together toward our common goal of stewardship of the Nation’s lands and resources.

## **The No-Impairment Provisions of the 2001 Management Policies**

One issue of particular interest is the way 2001 *Management Policies* interprets the 1916 National Park Service Organic Act's no-impairment clause. The Organic Act requires the Service to conserve park resources and values and provide for their enjoyment "in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

The Service's detailed explanation of the no-impairment clause is found in section 1.4 of 2001 *Management Policies* (see attachment). The policy states that the Service is to conserve in an unimpaired condition all the resources and values in the parks for the enjoyment of those who are here today, and those who will follow in generations to come. It explains that impairment "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." Although section 1.4 does not explicitly define impairment, it does indicate that an impact is more likely to constitute an impairment if 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.

The National Park Service implements the standard on a case-by-case basis by integrating an impairment question into the environmental impact evaluation that is already performed under the National Environmental Policy Act (NEPA).

These provisions that address the no-impairment issue were refined during the 2001 revision of

the *Management Policies*. At that time, as part of the National Park Service's review of its 1988 edition of *the Management Policies*, the question arose as to whether the 1988 provisions of the no-impairment clause provided adequate guidance to managers. The Service has grappled with the no-impairment clause for 85 years and had made diligent efforts to interpret Congressional intent in the *Management Policies*. However, several developments indicated that the Service needed to further clarify the impairment statement. First, some managers may have interpreted the clause to authorize a balancing act that would allow them to impair park resources if necessary to create opportunities for public use and enjoyment. Second, courts had ruled that while there is a balance between resource protection and public use, resource protection must be the "overarching concern."

On September 23, 1998, the District Court of Utah issued a decision on the impairment issue in Southern Utah Wilderness Alliance v. Dabney, et al. In this case, environmental groups challenged several aspects of Canyonlands National Park's Backcountry Management Plan including our decision to allow limited, permitted vehicle use of Salt Creek Road where there had previously been unlimited and uncontrolled use of the Road. The district court held that the Service had violated the 1916 Organic Act with regard to the impairment standard by allowing any vehicle use in the area. This was the first court decision to find that Service-permitted actions in a park violated our mandate to leave resources unimpaired for the enjoyment of future generations. On appeal, the Tenth Circuit Court of Appeals noted that the Service did not have a final, adopted agency position addressing the question of when impairment occurs because the *Management Policies* were in the process of being revised.

Policy was later finalized which sought to clarify the impairment standard. The Service's first obligation is to make certain that the right of future generations to enjoy park resources and values are not compromised by the actions we take today. To ensure consistent implementation of the impairment standard, nearly all findings of impairment are subject to public comment and

review.

### **The Impact of the No-Impairment Policy on Public Use and Enjoyment**

Some people have characterized the no-impairment policy to mean that the Service will not provide any new facilities in the parks and will not allow reasonable public use and enjoyment of the parks, because doing so would always cause at least some degree of impairment. Such an interpretation mistakenly assumes that impacts on the environment are the same as impairments. The Service must try to avoid or mitigate adverse impacts on the parks, but there will be times when there is a compelling reason to develop a facility or allow an activity even though it may have an adverse impact on the park's environment.

One of the questions I was asked during my confirmation hearing was whether I agreed with the current *Management Policies'* interpretation of the Organic Act. My response was that it seems reasonable that the Service would not allow activities that would deprive future generations of the ability to enjoy park resources or values. As Director, I believe that the no-impairment policy has not brought a halt to the construction of roads, visitor centers and other amenities to serve park visitors. The policy should be viewed as a step toward making the parks a welcome place for visitors to enjoy activities that are uniquely suited and appropriate to the special resources and values that draw them to the parks.

However, if the Subcommittee is aware of any situation where it believes the no-impairment policy has led to an inappropriate decision, I would be pleased to review it with you. In the meantime, I would like to assure you that certain measures are in place to monitor implementation of the no-impairment policy and help ensure that it is not being unreasonably applied. Superintendents must now affirm in writing in their environmental assessments and impact statements that proposed actions will not impair park resources and values. In

determining whether an impact would harm park resources and values, the superintendent must consider a variety of factors, including:

- 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;
- The cumulative effects of the impact in question and other impacts; and
- Any specific provisions of the park's enabling legislation or proclamation.

Regional directors must sign the environmental assessments and impact statements after evaluating whether the proposed action 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. Our planners and regional environmental coordinators have been instructed to monitor closely how the impairment issue is addressed in our planning and environmental documents, and to coordinate with our Washington staff on any areas of uncertainty or controversy.

We are continuing to develop supplemental guidance to help ensure that the no-impairment policy is consistently applied in a reasonable manner. Another important safeguard in implementing this policy is the Secretary's Four Cs program -- conservation through consultation, cooperation, and communication. I meet on a monthly basis with our Regional Directors to discuss ways that we can use the Secretary's Four Cs program to make more thoughtful policy decisions together with our affected communities. I believe that implementing the no-impairment policy under the guidance of the Secretary's Four Cs principles will help ensure that our actions comply with the law, protect park resources, and guarantee the American public appropriate opportunities to enjoy access to their parks.



## **Appropriate Use and Enjoyment**

The word “appropriate” is key to the way we manage the national park system. As stated in the *Management Policies*, national parks belong to all Americans, and all Americans should feel welcome to experience the parks. While competing interests may disagree on their interpretation of “appropriate use,” our mandate is to ensure public access and enjoyment of the parks. I strongly support this mandate. As park stewards we must be thoughtful in authorizing activities in the parks. Congress has entrusted to our care the most unique and special places in America. I would like to offer some historical perspective about the types of “appropriate” recreational activities that have occurred in the National Parks through the years:

- In 1930, a nine-hole miniature golf course was laid out on the grounds of the Ahwahnee Hotel in Yosemite National Park. Today, 7 Federally-owned and approximately 41 private or municipal golf courses continue to operate in Park Service areas.
- In 1883, the first pack trips into Yellowstone National Park began. Dude ranching was introduced at the end of the 1890s and reached its peak by 1920s. Today, horse concession operations currently exist in a number of parks including Yellowstone, Great Smoky Mountains, Shenandoah, Rocky Mountain, Grand Teton, Glacier, Yosemite and Zion National Parks.
- As early as 1917, skiing occurred in Rocky Mountain National Park. In 1931, a major ski tournament held in the park was attended by 5,000 other spectators. During the 1964-65 season, 60,000 people visited the ski area. This ski area, along with those at Lassen Volcanic and Sequoia National Parks were closed within the past 20 years. The ski areas in Yosemite and Olympic National Parks remain open. Cross-country skiing and snowshoeing continue to be popular activities in many parks.

The 385 diverse units of the National Park System are special places with great variety. Thus, what activities are appropriate in one area may not necessarily be appropriate in others. Therefore, the term appropriate use and enjoyment is not necessarily restrictive. Moreover, we must recognize that the terms may also be dependent upon the cultural context in which they are

applied – i.e. what was considered an appropriate use in the 1920s may not necessarily be viewed as an appropriate use today.

Visitors to the National Park System today continue to enjoy a wide range of recreational activities, where appropriate and as determined by legislation or a unit's General Management Plan. These activities include: biking, wildlife viewing, boating, canoeing, sailing, personal watercraft, cross-country skiing, down-hill skiing, fishing, golfing, hiking, horseback riding, mountain climbing, off-road vehicle use, orienteering, rock climbing, SCUBA diving, snowmobiling, and swimming.

Mr. Chairman, thank you for the opportunity to provide you with this background information. This concludes my prepared remarks, and I will be happy to answer any questions you or other committee members might have.

## Section 1.4 of the National Park Service *Management Policies*

### *Interpreting the Key Statutory Provisions of the 1916 NPS Organic Act*

#### **1.4 Park Management**

##### **1.4.1 The Laws Generally Governing Park Management**

The most important statutory directive for the National Park Service is provided by interrelated provisions of the NPS Organic Act of 1916, and the NPS General Authorities Act of 1970, including amendments to the latter law enacted in 1978.

The key management-related provision of the Organic Act is:

[The National Park Service] 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. (16 USC 1)

Congress supplemented and clarified these provisions 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 key part of that act, as amended, 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)

This section 1.4 of *Management Policies* represents the agency's interpretation of these key statutory provisions.

#### **1.4.2 “Impairment” and “Derogation”: One Standard**

Congress intended the language of the Redwood amendment to the General Authorities Act to reiterate the provisions of the Organic Act, not create a substantively different management standard. The House committee report described the Redwood amendment as a “declaration by Congress” that the promotion and regulation of the national park system is to be consistent with the Organic Act. The Senate committee report stated that under the Redwood amendment, “The Secretary has an absolute duty, which is not to be compromised, to fulfill the mandate of the 1916 Act to take whatever actions and seek whatever relief as will safeguard the units of the national park system.” So, although the Organic Act and the General Authorities Act, as amended by the Redwood amendment, use different wording (“unimpaired” and “derogation”) to describe what the National Park Service must avoid, they define a single standard for the management of the national park system – not two different standards. For simplicity, *Management Policies* uses “impairment,” not both statutory phrases, to refer to that single standard.

#### **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.

#### **1.4.6 What Constitutes Park Resources and Values**

The “park resources and values” that are subject to the no-impairment standard include:

- the park’s scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals;
- opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing any of them;
- the park’s role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system; and
- any additional attributes encompassed by the specific values and purposes for which it was established.

#### **1.4.7 Decision-making Requirements to Avoid Impairments**

Before approving a proposed action that could lead to an impairment of park resources and values, an NPS decision-maker must consider the impacts of the proposed action and determine, in writing, that the activity will not lead to an impairment of park resources and values. If there would be an impairment, the action may not be approved.

In making a determination of whether there would be an impairment, a National Park Service decision-maker must use his or her professional judgment. The decision-maker must consider any environmental assessments or environmental impact statements required by the National Environmental Policy Act of 1969 (NEPA); relevant scientific studies, and other sources of information; and public comments.

When an NPS decision-maker becomes aware that an ongoing activity might have led or might be leading to an impairment of park resources or values, he or she must investigate and determine if there is, or will be, an impairment. Whenever practicable, such an investigation and determination will be made as part of an appropriate park planning process undertaken for other purposes. If it is determined that there is, or will be, such an impairment, the Director must take appropriate action, to the extent possible within the Service’s authorities and available resources, to eliminate the impairment. The action must eliminate the impairment as soon as reasonably possible, taking into consideration the nature, duration, magnitude, and other characteristics of the impacts to park resources and values, as well as the requirements of NEPA, the Administrative Procedure Act, and other applicable law.