

**STATEMENT OF  
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BEFORE THE  
SUBCOMMITTEE ON NATIONAL PARKS  
COMMITTEE ON RESOURCES  
UNITED STATES HOUSE OF REPRESENTATIVES**

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Mr. Chairman: My name is William P. Horn and I appreciate the opportunity to appear again before the Subcommittee as it continues the inquiry into the need for revised National Park Service (NPS) Management Policies that more accurately and faithfully reflect the letter and spirit of the 1916 NPS Organic Act. Proposed revisions are not about expanding motorized uses or allowing greater commercial development – those are red herrings. The revisions are about restoring recognition that resource conservation and visitor enjoyment are the cornerstone purpose of our incomparable national park system. The 2001 Policies engaged in a sleight of hand trick to create the legal fiction that there is one “core” or “primary” objective (i.e., preservation) and all other considerations are secondary or subordinate.

**Background**

For over 35 years, NPS has developed a set of internal Management Policies to articulate how it will fulfill its obligations under the Organic Act and provide specific guidance and direction to agency personnel on an array of issues from visitor use management to planning to conservation of cultural resources. Since the 1916 Act provides only general guidance and direction, Management Policies are designed to fill in the gaps. This process entails making particular choices (i.e., establishing policy) with regard to key statutory terms such as “impairment”, “promote and regulate the use” of NPS units, “conserve resources”, and “provide for the enjoyment” of parks.

It hardly needs to be said that the general language prescribed by Congress confers significant discretion and latitude on NPS and the Secretary of the Interior. Exercise of that discretion has been the basis for five different versions of Management Policies since the late 1960’s as policy makers struggle with establishing the proper balance between resource conservation and visitor use and enjoyment, determining what level of impacts constitute “impairment”, and how far NPS is to go in “promoting” visitor use of the parks. Similarly, there should be absolutely no surprise that different Administrations bring different perspectives to these issues and choose to interpret the words of the statute with often subtle but important differences.

The first Management Policies were issued in the late 1960's under then Director George Hartzog. Those policies were superseded in 1978 by a new version prepared under the direction of the Carter Administration’s political appointees. During the Reagan Administration, we determined that the 1978 Policies did not accurately reflect the letter and spirit of the Organic Act and a rewrite effort commenced in 1986 directed in large measure by the Assistant

Secretary's office. That culminated in the 1988 Management Policies completed early that year (not as the Administration left office). Those policies remained in force and effect for 13 years until replaced by the 2001 Management Policies. The latter were completed in the last days of the Clinton Administration (i.e., January, 2001) and reflected the policy choices of that Administration's senior political appointees including the Assistant Secretary for Fish, Wildlife, and Parks.

In early 2001, consistent with long established practice, the Bush Administration transition team for the Department of the Interior reviewed an array of last minute policies, regulations, directives, and other pronouncements issued by the lameduck Clinton appointees as they left office. The two week old Management Policies were on that list and promptly identified as an action that merited review and reconsideration by the incoming policy leadership at Interior and NPS. It's safe to say that the present proposed revisions to the Policies are the result of review first proposed by transition personnel five years ago. It is also safe to say that this Administration is acting in the same manner as the Carter, Reagan, and Clinton Administrations in regard to review and revision of NPS Management Policies.

Before proceeding to identify the deficiencies in the 2001 Policies, it is necessary to briefly discuss precisely what federal courts have held in regard to agency interpretation of the 1916 Organic Act. In a variety of NPS management cases, federal courts have consistently ruled that NPS has wide discretion and latitude in interpreting the 1916 Act and the courts have routinely deferred to the interpretations put forth by the agency. Specifically, the courts have held that any permissible reading of the 1916 Act by the agency is entitled to judicial deference under the Supreme Court's Chevron standard (i.e., permissible agency interpretations are acceptable even if such interpretation does not represent the best reading of a statute). The courts have not ruled that the Act should be interpreted in one specific manner. Accordingly, revision of the Management Policies is within the agency's discretion and primarily a matter of how the agency should exercise that discretion.

### **Problems With the 2001 Policies**

Thorough review of the 2001 Policies persuades me that it fails to accurately reflect both the letter and spirit of the Organic Act. As such, the recently issued proposed revisions are both warranted and necessary to ensure that NPS exercises its discretion more consistent with the purposes and duties prescribed by Congress nearly 90 years ago. The following identifies specific sections of the 2001 Policies that do not appropriately reflect the 1916 Act.

"Foundation" Statement – This purports to be a restatement or paraphrase of section 1 of the Organic Act. However, it omits the critical, and fundamental reference, to the agency duty to "provide for the enjoyment" of park units. When the "foundation" statement misrepresents the statute, the remaining structure is skewed.

Sec. 1.4.3 – It misconstrues the 1916 Organic Act by stating that it "begins with a mandate to conserve resources." In reality, the statute "begins" with one mandate (i.e., "which purpose IS") to conserve resources AND provide for enjoyment. Similarly, the policy language

takes a bent on the interplay of conservation, enjoyment, and impairment that is inconsistent with a close reading of section 1.

The section also misrepresents court rulings by failing to note that the courts have deferred to agency interpretations rather than make binding judicial determinations on the meaning of the words in section 1 of Organic Act.

Sec. 1.4.5 – This identifies three sources of “impairment” – visitor use, NPS management activities, and concessions operations. Please note that these three activities are expressly authorized in section 3 of the 1916 Act (1 U.S.C. § 3). Policies that single out Congressionally authorized activities as sources of Congressionally prohibited impairment do not accurately reflect the statute.

Sec. 4 – The introduction to Natural Resources Management provides a list of six categories of resources. The first five are simply listed without adjectives or adverbs. The sixth, “associated characteristics” are defined as “highly valued.” Policies that elevate “characteristics” above clean air, clean water, healthy wildlife, etc. are not consistent with the language of the 1916 Act.

Sec. 4.1 – The section misstates the law by referring to resource conservation as the “core” or “primary” responsibility of the agency. “Enjoyment” is also a core or primary responsibility under the law.

Sec. 4.9 - It states that NPS “will restore degraded soundscapes to the natural condition wherever POSSIBLE” (emphasis added). If this is true, it is a mandate to prohibit automobile traffic in many parks with a concomitant reduction in visitor opportunities.

Sec. 6.2.1.2 – After making it clear that “impairment” is a low threshold and that a wide array of traditional and authorized activities are sources of impairment and therefore subject to prohibition, the Wilderness section announces that “impairment” of wilderness from past activities is not really permanent and irreversible. The policy specifies that “wilderness” can be restored even if an area was mined, logged, farmed, grazed, etc. and that such areas can still be found suitable for wilderness designation. This definition enables a wide variety of lands to be deemed “suitable” for wilderness and restrictive management as provided below.

Sec. 6.3.1 – De facto “wilderness” status is conferred on five categories of lands including those identified as “suitable”, “recommended” or “proposed.” All such lands are to be administered like Wilderness unless and until Congress takes specific action to release such lands from this status. It is commonly understood that Wilderness management is highly restrictive and can substantially limit any number of visitor activities. The law provides that only Congress can establish Wilderness units – this Section turns the law on its head by saying that only Congress can take these administratively designated areas out of de facto Wilderness status.

Sec. 8.1 – The Uses of the Parks section is replete with problems. At the outset, it again misconstrues the Organic Act by omitting the references to the enjoyment prong of the mandate. It then proceeds to set a new standard for barring uses: “negative” or “adverse” effects even “when they fall FAR SHORT of causing impairment.” (Emphasis added.) There is no basis in

law for administratively creating this new diminished standard for prohibiting recreational uses of parks.

Sec. 8.2 – In managing uses, this provision specifies an order of close first, prohibit second, and manage third. A more appropriate order consistent with the fundamental mandate to “promote” park uses and visitor “enjoyment” would be to first manage uses to conserve resources, second to move to closures in time or space, and at last resort to prohibitions.

Sec. 8.2.2.6 – Hunting is allowed or expressly authorized in a number of NPS units. Despite specific statutory authorizations or directives, this section created a new hurdle of determining that hunting will not “compromise” public safety. “Compromise” is an utterly subjective “standard” which would allow anti-hunting interests or highly sensitive non-hunting visitors to complain that they feel “compromised” thereby creating the pretext for a hunting closure contrary to the law.

Sec. 8.2.3 – This provision adversely impacts traditional automobile use in park units. It starts by stating that vehicular use can adversely impact park resources especially “natural soundscapes.” It then proceeds to outline a new goal: “The Service will strive to preserve OR RESTORE the natural quiet or natural sounds associated with the physical and biological resources of the park.” (Emphasis added.) The consequences of this objective could be substantial in terms of diminished visitor opportunities. For example, Yellowstone’s 200 mile loop road system has hosted automobiles since 1915 (before the Organic Act was enacted). Each year, over 1.5 million vehicles use this road system and clearly have some impact on “natural quiet.” Striving to restore this quiet in Yellowstone must mean that NPS is obligated, in some fashion, to seriously restrict or reduce automobile access in Yellowstone.

Sec. 9.1 – Once again, the Policies misstate the law by emphasizing the “core” or “primary” obligation to be resource conservation in derogation of the visitor enjoyment prong of the Organic Act mandate.

## **Conclusion**

The 2001 Management Policies concocted in the waning days of the Clinton Administration do not reflect the letter and spirit of the 1916 Organic and its single mandate to ensure that parks are both conserved and enjoyed. Deficiencies highlighted above created the need to have the 2001 version scrutinized and rewritten to better track Congressional intent as well as decades of accepted practice in management of our incomparable National Park System. I commend Director Mainella, Deputy Director Steve Martin, Deputy Assistant Secretary Paul Hoffman and others for having undertaken that effort and look forward to seeing a new completed version of Management Policies that achieve these goals.