Briefing Paper Subcommittee on National Parks, Recreation, and Public Lands Subcommittee Oversight Hearing April 25, 2002 2:00 p.m. 1334 LHOB

Summary:

The 2001 National Park Service Management Policies have been altered significantly from the 1988 Management Policies. There is concern regarding language in the 2001 policies that seem to be minimize the second component of the Park Service's dual mandate to (1) protect the resources and to (2) provide for the enjoyment of the parks, which would include providing for public access to the parks. This oversight hearing will focus on the development, implementation, and impact of the 2001 National Park Service Management Policies.

Background and Need: In the final days of the Clinton administration, the National Park Service attempted to alleviate some of the perceived problems of the 1988 policy handbook by implementing new management policies. These new policies shift policy direction toward a philosophy of limiting public access and the enjoyment of the public.

The Organic Act of 1916 established the National Park Service and stated its purpose "to conserve the scenery and the national historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." The purpose of the Park Service, then, can be summarized in two emphases: (1) to conserve park resources and (2) to provide for the enjoyment of these resources by the public. A proper balance must be found between the two.

There is concern that the 2001 Park Management Policies seem to be highly biased in favor of the first objective of the Act at the expense, and to the exclusion of, the second objective. In fact, when the new policies were introduced NPS Director Robert Stanton stated, "We believe this update of Management Policies will improve the Service's ability to protect park resources and values as Congress intended when it passed the 1916 Organic Act..." No mention was made of the second requirement of the Organic Act. Moreover, the handbook itself lists as the sole fundamental purpose of the Service to conserve park resources and values while omitting the second provision.

This sharply contrasts with the 1988 Management policies which distinctly support the balance of both resource conservation and providing enjoyment to the public. It admits that "there will inevitably be some tension between conservation of resources on the one hand and public enjoyment on the other." But it still concludes that "the National Park service is charged with the difficult task of achieving both."

The new management policies are to be used "as the basic Service wide policy manual used by park superintendents and other NPS managers to guide their decision-making [emphasis added]." These policies have already permeated into local park units and have significantly affected users around the nation. Limitations on snowmobiles, personal watercraft, and even the ability to walk pets in a national recreation area have been limited under the guise of the 2001 policies. This subcommittee will examine these issues and determine if such disparate limitations are warranted. A careful scrutiny of this issue is necessary to determine if and to what extent these impediments are justified.

A few issues of concern are outlined below:

Natural Resource Management

While the 1988 Management Policies state that the NPS will participate in the recovery of endangered and threatened species within park boundaries, the 2001 policies state that the Service will "pro-actively" work to "survey for, protect, and strive to recover all species native to national park system units . . . (4.4.2.3)" There is concern that the new policy does not seem to be limited by the park's boundaries. The policy would seem to greatly expand the jurisdiction and role of the NPS by directing the agency to monitor species living outside park boundaries that might be considered native to the area. This concern has heightened with the recent fraudulent placement of lynx hair in an effort to extend critical habitat.

Finally, the water quality standards in the 2001 policies suggest that park waters be maintained at "the highest possible standards available under the Clean Water Act (4.6.3)." It also stipulates that the Service enter into agreements with other agencies and governing bodies in maintaining or restoring water resources. The Service, however, has not universally enforced this mandate. The Washington Aqueduct, for example, has been discharging sludge directly into the C & O Canal National Historic Park, but the NPS has not responded to an action that would clearly be in violation of the policy, as well as the Organic Act itself. The American public has a right to ensure that if the Park Service adopts a policy, it is going to be equally enforced.

Wilderness Preservation and Management

According to the Wilderness Act, wilderness areas must encompass at least 5,000 acres, roadless, and without the visible blemish of human intrusion. Therefore, requirements for inclusion into the Park Wilderness system are strict. In the 1988 policies the Park Service directed that if human impacts were noticeable, areas weren't qualified for inclusion. Areas would only be recommended for inclusion if effects of extraction were largely unnoticeable and existing mineral right holders would likely relinquish them (6.2.1.2). Designation of Wilderness Study Areas have been subjected to a much lower threshold under the new policies. Although a Wilderness Area must be Congressionally designated, WSAs are managed under "non-impairment" provisions which can often be more restrictive than actual Wilderness.

The 2001 policies state that areas surrounding Wilderness Areas may be managed a *buffer zones*. This effectively extends the reach of the restrictions associated with Wilderness via Congressionally unauthorized expansions (6.3.4.1).

Use of the Parks:

Language in the 2001 policies, regarding the issue of impairment, reads:

Impact v. Impairment

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 and 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; 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 (1.4.5).

This policy seems to be a very broad interpretation of the impairment standard which will pose numerous problems for park management, as well as invite numerous legal challenges. In fact, some park superintendents have privately expressed concern regarding the problematic nature of the management polices and have specifically cited the impairment standard.

In addition, language in the policies have given NPS a foothold in regulating historically sound forms of recreation. There have been practical implications as well:

1) Snowmobiles: Snowmobile use has been under intense scrutiny in the park system. In April 2000, the Department of the Interior announced its intention to prohibit snowmobile use in all the national parks, except those that allow it by statute. The Interior Department claims that snowmobile emissions are causing negative effects on the park ecosystems and that noise from the snow machines is an intrusion of "natural quiet" – even though existing NPS regulations currently permit snowmobile noise that does not exceed certain decibel levels.

When the Final Regulations were published in January 2001 (effective April 21), the NPS established interim actions to reduce the impact of snowmobile use during the winter use season of 2002-2003 and a prohibition effective at the end offthe 2002-2003 winter use season. The rule allows for oversnow motorized recreation access by NPSmanaged snowcoach only, with limited exceptions for continued snowmobile access to other public and private lands adjacent to, or within Grand Teton National Park. According to the NPS, the decision to phase out most snowmobile use over the next three years in favor of multipassenger snowcoaches best meets the legal mandates and protects park resources while offering winter visitors a range of experiences. However, it should be noted that the Service failed to address pollution generated by increased snowcoach use. The Service is also developing winter use plans for Yellowstone and Grand Teton which include the banning of public snowmobile access, thereby limiting the number of people who actually visit the park in the winter months.

The Service recently released its Draft Supplemental Environmental Impact Statement (DSEIS) motivated by concerns of motorists who were denied access because of the final rule. The new findings in the Draft SEIS heavily relied on the terminology and guidelines of the 2001 Management policies.

2) Air Tours: Air tours of the national parks, most notably Grand Canyon, is another form of access that is being severely restricted by the NPS. With the passage of the National Parks Overflight Act in 1987, Congress stated that the Park Service and Federal Aviation Administration should work together to develop regulations for air tours within the park system, and more specifically, the Grand Canyon. In 1988, Special Federal Aviation Regulation 50-2 (SFAR 50-2) was issued, establishing minimum altitudes and flight-free zones over portions of the Grand Canyon. SFAR 50-2 was highly successful in reducing visitor complaints about noise from tour aircraft. However, this was not enough for the NPS which insisted that a problem still exists. In 1996, President Clinton again directed the agencies to restore natural quiet in the Grand Canyon by 2008. The 1988 policies allow for commercial aircraft to be used in parks on existing sights. Again reinforcing the idea of allowing visitor access, Congress passed the National Parks Air Tour Management Act of 2000, emphasizing cooperation between the two agencies and making it mandatory to develop an Air Tour Management Plan for each park. But, these agencies have severely limited visitor access. On March 28, 2000, the FAA issued a new set of rules concerning

overflights. These rules include the modification of the air tour routes, expansion of Flight Free Zones, and a limitation of the total number of commercial air tours in the Flight Area. However, by implementing these regulations, the air tour industry will be severely restricted. Because of these restrictions, the air tour industry may not be able to provide this form of access to over 800,000 park visitors.

Meanwhile, on April 16, 2001, the Committee sent a letter to Jane Garvey, Administrator, Federal Aviation Administration (FAA), requesting that the agency complete its statutory mandate to designate reasonably achievable quiet technology requirements for fixed-wing and helicopter aircraft and routes or corridors to be used by commercial air tour operators of fixed-wing aircraft and helicopter aircraft that employ quiet aircraft technology.

3) Personal Watercraft The use of personal watercraft (PWCs) is also being restricted by the Park Service. Once again, citing noise intrusion as the primary basis of new regulations, the Park Service points out that PWCs have a negative effect on the park environment. According to a report by the Park Service, these noise problems are compounded by several other characteristics of PWCs. The Park Service argues that because of the maneuverability of PWCs, users do not leave an area, but rather traverse the same area again and again. As a result, other park users are disturbed by the constant high-pitched whining sounds produced by the machines. The Administration also points to other factors, such as water quality damage caused by emissions, as a basis for limiting the public's access to certain waterways.

Because of these factors, the NPS issued final regulations on March 21, 2000, which effectively closed PWC use in all but 21 park units. The 21 remaining units may also by closed to PWC use pending the outcome of the superintendents compendium. As specifically provided in the regulations, the 21 park units could continue to allow PWC use until April 22, 2002, during which time each park superintendent would complete an appropriate analysis to determine the impacts of PWC use in each park unit. Such analysis would evaluate impacts on water quality, air quality, "soundscapes", wildlife and wildlife habitat, shoreline vegetation and visitor safety and conflict. Many superintendents are not following these guidelines. Ten of the parks may authorize PWC annually via a Compendium or indefinitely by promulgating special regulations while in the eleven other park units, PWC use may continue only through promulgated special regulations.

The March 21, 2000 Rule specifically stated that the April 22, 2002, "grace period" was to allow continued PWC use while an impact analysis could be completed in each identified park unit. The Rule was not designed to be an open invitation for each superintendent to arbitrarily decide prior to April 22, 2002, to eliminate PWC use. Yet on March 28, 2001, the superintendent for the Cape Lookout National Seashore sent out a press release stating that effective immediately, PWCs would be prohibited throughout the park unit. In addition, the Subcommittee is aware that the following park units from the 21 listed in the Final Rule have already decided prior to their April 22, 2002, deadline to prohibit PWC use: Cape Cod NS; Cumberland Island NS; Gulf Islands NS; Padre Island NS; Indiana Dunes NS; and Delaware Water Gap NRA. The new management policies mirror these decisions by stating: "PWC is prohibited unless it has been identified as appropriate for a specific park." Thus far, no park has determined PWC use appropriate.

4) Pet Management in Golden Gate National Recreation Area

In January 2002, the National Park Service issued a proposed rule to ban unleashed dogs in Golden Gate National Recreation Area (GGNRA). NPS stated that the 2001 Management Policies did not allow for flexibility or compromise on existing regulations requiring pets to be leashed at all times. However, by limiting pet visitation, owners will be forced to take their pets elsewhere in an extremely urban area—an action that could have more significant repercussions than maintaining

existing requirements. If Park Service Management Policies are strictly followed, then all off leashed pets will be eliminated. The NPS must allow for compromise and ensure the "enjoyment of park resources" for all citizens.

Park Facilities:

The 2001 Management Policies encourage designing and promotingalternate means of transportation within park systems. The '88 policies stated that any transportation system other than "rubber-tired vehicles...would have to be uniquely advantageous to warrant its use to supplement or replace an existing system." It emphatically stated that alternatives be cost effective, practical, and enhance the visitor experience. With the promulgation of new policies, however, many of the proposed alternatives are neither practical nor cost-effective and can be highly exclusionary.

Some proposals by the NPS have been to limit vehicular entry into parks by substituting light rail and/or bus transportation systems. The NPS has already implemented transportation systems in Zion and Bryce Canyon National Parks and has developed major transportation plans for Grand Canyon and Yosemite National Parks. Without question, these new transportation systems are very costly. The system planned for Grand Canyon, for example, is estimated to cost approximately \$250 million. Although this expense will be the responsibility of the private sector, admission fees will be charged to cover the cost of the construction and operation of the system. This cost per visitor at both Grand Canyon NP and Yosemite NP have not yet been determined, but may prove to be prohibitive to a great number of park visitors.

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