

The Intent of Congress on Preservation and Use

By Glen F. Cole

The policy of Congress for the management and use of national parks is stated in Section 1 of the 1916 Organic Act. Here Congress directed:

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 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.

This directive to promote and regulate the use of national parks in a manner that both preserves and provides for the enjoyment of their natural scenery and biota has always been clear to me because it establishes that parks have some measurable capacity to accommodate use. Here, different kinds and amounts of use can either be below or at levels that cause impaired (i.e. human modified) conditions. In contrast, others have considered Section 1 to be a conflicting legislative mandate. As near as I can assess, such interpretations result from philosophical views that preservation and any presence of humans are contradictions, from failures to distinguish between a park's developed areas and natural zones, or from assumptions that Congress did not intend that the specific language of Section 1 be strictly followed.

In a 1984 article which is titled "A Reinterpretation of National Park Legislation" (in *Environmental Law* Vol. 15:1, p. 41-66) John Lemons and Dean Stout review congressional law as it relates to the "preservation versus use dilemma" and the management policies of the National Park Service. They conclude that past interpretations of park law ignore the express language of Section 1 of the Organic Act, and written policy fails to clarify the intent and meaning of congressional laws. They point out that the laws enacted by Congress, rather than the desires of particular users, should be taken by the National Park Service as an expression of both the national interest and public desires. Their final recommendation is that a Congressional or public policy task force

be created to review NPS compliance with existing legislation.

As an alternative or in addition to any outside reviews, it would seem desirable for the NPS to routinely monitor its own compliance with statutory law. This could take the form of adding a "critical element" to the performance standards of persons whose decisions or actions could be inconsistent with such laws. As an example, the written standard that has been used in Voyageurs National Park since 1983 is that job performance is in accord with a park's enabling legislation and the amended and supplemented 1916 Act. Here, job performance that either enhanced, did not impair, or impaired the park's natural or cultural resources, or appropriate public enjoyment of these, is rated on a scale of one to five by distinguishing higher and lesser levels of enhancement or impairment. This use of performance standards to monitor compliance with park law contributed to an increased awareness of the congressionally mandated purpose of the park and the statutory constraints that are placed on promoting and providing for public use.