

**1155 Connecticut Avenue, NW
Suite 1200
Washington, D.C. 20036**

October 20, 2008

VIA FAX and REGULAR MAIL

Honorable Dirk Kempthorne
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Mr. Secretary:

A recent U.S. District Court decision radically reinterprets the 1916 National Park Organic Act (16 U.S.C. § 1) by relying on section 1.4.3 of the 2006 National Park Service Management Policies. The Court held that a visitor activity that would have any adverse impact on park resources is permissible only if that activity is "NECESSARY and appropriate to fulfill the purposes of the park" (emphasis added). This unprecedented and dangerous necessity requirement was lifted directly from 1.4.3. We urge you to modify 1.4.3 so it becomes clear that you do not intend the Policies, or the 1916 Act, to impose an anti-visitor "necessity" test on visitor use and enjoyment of our National Parks.

For 90 years, established policy and practice has been that NPS is obligated to bar only those visitor activities that would "impair" park resources. Virtually all existing visitor activities have some adverse impacts (e.g., emissions and sounds from autos or boats, habitat disturbance by Park cabins, lodges and visitor facilities, fish mortality from angling, etc.) but do not rise to the level of proscribed impairment. NPS has always had broad discretion to determine if these activities are appropriate, however, never has there been a binding legal requirement that NPS must find these visitor activities are "necessary" to fulfill park purposes before allowing them to occur.

This unprecedented threshold requirement puts an array of traditional park recreation activities at risk. How does NPS find that traditional auto entries into Yellowstone (nearly two million annually) are "necessary" to fulfill the Park's purposes as it was established in 1872 before autos were invented? What makes maintenance of the Ahwanee Hotel in Yosemite "necessary" as a matter of law?

The sporting community is also deeply alarmed by this new requirement. Fishing is now allowed in many Parks. How does NPS make a legally sufficient finding that fishing is necessary in Yellowstone or the Florida Bay waters of Everglades National Park when the laws creating those Parks make no reference to fishing? Leaving 1.4.3 intact puts a legal weapon in the hand of animal rights zealots to attack fishing as well as hunting in the Preserve units where that activity is allowed but not mandated.

Honorable Dirk Kempthorne
 October 20, 2008
 Page 2 of 2

Judge Sullivan's binding "necessary and appropriate" requirement is taken directly from 1.4.3. Many of the undersigned previously identified this language as a problem but we were assured that this phrase could not be taken out of context and that the Policies were not enforceable by third parties. The ruling shatters those assurances. The critical "necessary" phrase has been lifted out of context and the Court ignored the second paragraph of 1.4.3 with its emphasis on enjoyment being a "fundamental purpose of all parks." In addition, the Court stated that "§ 1.4 serves as NPS's official interpretation of the Organic Act and is therefore enforceable against NPS."

There is only one sure way to promptly fix this serious problem: amend 1.4.3. Federal administrative law provides ample authority and discretion to quickly modify the provision, and other elements of the Policies, to prevent other judges from further misconstruing the intent of the Policies and putting traditional visitor activities at risk.

Failure to act, however, will leave the "necessary" requirement intact and ensure that this impediment to traditional uses remains the binding interpretation of the 1916 Organic Act. That would be a sad legacy.

Sincerely,

American Horse Council
 Americans for Responsible Recreational
 Access
 American Sportfishing Association
 American Council of Snowmobile
 Associations
 BASS
 Blue Ribbon Coalition
 Boone & Crockett Club
 Campfire Club of America
 Congressional Sportsmen's Foundation
 Conservation Force
 Dallas Safari Club
 Delta Waterfowl Foundation
 Florida Guides Association
 Florida Keys Fishing Guides Association
 International Hunter Education Association

Lower Keys Guides Association
 Marathon Guides Association
 National Marine Manufacturers Association
 National Trappers Association
 North American Bear Foundation
 National Rifle Association
 Personal Watercraft Industry Association
 Pope and Young Club
 Quail Unlimited
 Quality Deer Management Association
 Rocky Mountain Elk Foundation
 Safari Club International
 International Snowmobile Manufacturers
 Association
 U.S. Sportsmen's Alliance
 Whitetails Unlimited, Inc.
 Wildlife Management Institute, Inc.