

Revisiting the Organic Act: Can It Meet the Next Century's Conservation Challenges?

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WRITTEN INTO LAW IN 1916, the act that created the National Park Service, known as the Organic Act, has ever since served as the Magna Carta for our national park system. The language of the Organic Act defines the national park mission in well-known terms: “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 . . . as will leave them unimpaired for the enjoyment of future generations.” To achieve this mission, the act directs the National Park Service to “promote and regulate” the parks, establishes a visitor-focused planning process, and enlists the Park Service in identifying areas of “national significance” as potential new parks.¹ The agency has fully embraced these responsibilities, even as internal and external debates have swirled as to whether the act contains a fundamental contradiction and how its strictures apply in particular situations.

Since the Organic Act was adopted, however, the national park system and the world around it have undeniably changed. Where the system originally numbered 31 national park and monument units in 1916, it today boasts 397 units sporting an array of quite different designations that stretch across 49 states and several territories. Since the system's inception, the nation's population has more than tripled, becoming much more urban, diverse, and removed from nature. A century ago the automobile was just gaining a foothold in American society; it is now ubiquitous across the nation and within the parks. And where most national parks were originally surrounded by undeveloped land, these lands are today under intense development pressures, whether in the form of industrial activity on adjacent public and private lands or subdivision proposals on nearby private lands. Such matters as climate

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change, biodiversity conservation, and nature deficit disorder—unknown a century ago—present critical environmental challenges in the present age.

Given these enormous changes and concerns, is it time to overhaul the Organic Act? Is the act's simple injunction to conserve unimpaired sufficient to meet tomorrow's conservation challenges?² Is the absence of references to modern resource management terminology—biodiversity conservation, integrated planning, ecological integrity, and the like—a fatal flaw? Does the language of “national significance” correctly capture the essence of potential new park units in an era of biological decline and climate change? And in the face of well-known political realities, should the National Park Service be relocated outside the Department of the Interior? With the system's centennial anniversary approaching, it is impossible to ignore these fundamental questions. Is it time to change the law? And if so, then how—by a total rewrite or by targeted amendments?

Understanding the Organic Act

The history surrounding adoption of the Organic Act suggests that Congress gave scant attention to the key language defining the fundamental purpose of the national parks. Indeed, the congressional discussions involving the Organic Act proposal focused primarily on the need for a new federal bureau to oversee the parks and its cost, with few references to the mission of the proposed agency or the purpose of the parks. Supporters of the legislation, intent on bringing the diverse parks and monuments under the administration of a single agency, emphasized the economic value of the parks and the need to encourage Americans to visit them. To the extent that anyone at the various hearings spoke about the parks themselves, they did so primarily in terms of their recreational, scenic, and educational value. Though the proposed Organic Act language, initially drafted by Frederick Law Olmsted, Jr., evolved over the four years it took to pass the bill, the revisions made it ever more specific in listing the various purposes of the parks. And despite repeated suggestions that the law contained a fundamental contradiction between conservation and public use, the historian Robin Winks—after exhaustively reviewing the records surrounding the Organic Act's origins—concluded that Congress intended conservation of park resources as the paramount mission of the parks.³

Given its brevity and uniqueness, the Organic Act needed further explication, which was soon forthcoming in the form of the seminal 1918 Lane Letter. Originally drafted by Horace Albright, who was serving as Director Stephen Mather's chief assistant, and signed by Secretary of the Interior Franklin Lane, the document set forth three principles to guide future management of the park system: (1) the parks “must be maintained in absolutely unimpaired form” for present and future generations; (2) “they are set apart for the use, observation, health, and pleasure of the people;” and (3) “the national interest must dictate all decisions affecting public or private enterprise in the parks.” Elaborating on the first point, the letter admonished: “Every activity of the Service is subordinate to the duties imposed upon it to faithfully preserve the parks for posterity in essentially their natural state.” But the Lane Letter did not stop there; it also provided much more specific guidance for how the parks were to be managed. It expressly endorsed outdoor recreation in the parks, the construction of new roads and other facilities, the presence of automobiles, the removal

of inholdings, good relations with concessioners, and promotional collaboration with local chambers of commerce, auto clubs, and the like. In short, the Lane Letter gave expression to the national park idea and is widely regarded as an early authoritative interpretation of the Organic Act's provisions.⁴

Since then, Congress has engrafted amendments onto the Organic Act that affect the park system as a whole and further clarify the Park Service's mission. The General Authorities Act of 1970 expressed Congress's view that the national park system was a single entity, intentionally enjoining the Park Service from dividing the system into different categories—natural, recreational, and historical—for management purposes.⁵ A 1976 amendment to the General Authorities Act gave the Park Service a role in the new park creation process, directing the secretary of the interior “to investigate, study, and continually monitor the welfare of areas whose resources exhibit qualities of national significance and which may have potential for inclusion in the National Park System.”⁶ The so-called Redwood Amendment of 1978 reaffirmed in powerful terms the congressional commitment to the Organic Act's fundamental purpose, explicitly mandating that “the protection, management, and administration of these areas [national parks] 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.”⁷ The 1978 amendments also revised the park planning process, establishing quite general standards for unit-based general management plans.⁸ And in the 1998 National Parks Omnibus Management Act, Congress added “scientific research” to the Park Service's mission, clearly acknowledging that science must play a critical role in park planning and decision-making processes.⁹ Significantly, none of the subsequent amendments have altered the Organic Act's original mission statement.

Other related legislation has also shaped the system and its management. Two major concession reform bills—one in 1965 and another as part of the 1998 legislation—revised and then revised again how the Park Service deals with its concessioners, who have long played an influential behind-the-scenes role in shaping park management policies.¹⁰ Over the years, through a dizzying array of individual national park enabling acts, Congress has substantially changed the face of the national park system, primarily by adding new designations, such as national recreation areas, national seashores, national preserves, and national parkways, each with its own unique priorities and management standards. In doing so, Congress has indicated that the more specific enabling legislation takes priority over the more general Organic Act strictures in the event of conflict between the two.¹¹ And Congress has adopted laws like the Mining in the Parks Act and the National Parks Air Tour Management Act to address specific resource management problems.¹² Moreover, Congress has adopted other important laws that apply to the national parks, including the National Environmental Policy Act, Endangered Species Act, Wilderness Act, Wild and Scenic Rivers Act, and Clean Air Act. These cross-cutting environmental laws have not only influenced how the Park Service addresses its management responsibilities, but they can override inconsistent park management policies or decisions. While these laws have plainly expanded the agency's resource management obligations, none have either questioned or revised the Organic Act's statement of purpose.

For its part, the National Park Service has interpreted and given meaning to the Organic Act language through its policies, programs, and initiatives. The agency's *Management Policies* document not only explains how it interprets the Organic Act mandates, but also sets forth explicit resource management requirements and other responsibilities. According to the 2006 *Management Policies*, the Park Service "must leave park resources and values unimpaired," a mandate that is construed to mean "when there is a conflict between conserving resources and values and providing for the enjoyment of the visitor, conservation is to be predominant." Even if management actions do not impair park resources, park officials are still obligated to "conserve" them by minimizing or avoiding adverse impacts. Any proposed action that "could lead to impairment of park resources or values" must be evaluated, in writing, by the appropriate official before it is approved.¹³ But the *Management Policies* document is not binding law, according to the influential District of Columbia Circuit Court of Appeals, and thus could be revised to reinterpret the Organic Act's mission statement.¹⁴ And this is what almost occurred in 2006 when Bush administration officials sought to rewrite the document to open the parks to more commercial and motorized recreational activities. Though eventually derailed by strong opposition within and outside the Park Service, the rewrite episode revealed that politically motivated officials were not averse to revising the agency's priorities and that an array of forces stood ready to defend the agency's view of its statutory obligations.¹⁵

In fact, the Park Service's own interpretation of its Organic Act responsibilities has changed over the years. Perhaps the most stunning—and controversial—change occurred during the 1960s when, without any congressional modification of its statutory duties, agency officials reversed course in the aftermath of the Leopold Report and adopted a new, less-intrusive natural resource management policy to achieve its conservation obligations. Park managers were instructed to allow nature to take its own course in the parks, which meant intervening sparingly to control wildlife population numbers, allowing most wildfires to burn rather than suppressing them, and halting the practice of feeding bears and other animals.¹⁶ Although questioned at the time (and ever since),¹⁷ the policy change has endured, reflecting an evolved agency interpretation of the Organic Act's "conserve unimpaired" mandate. In the future, however, any such dramatic change in interpretation of the organic legislation will likely require a detailed explanation of why the agency is altering its view of its statutory responsibilities if it is to withstand judicial scrutiny.¹⁸

The courts, when called upon to interpret the Organic Act language, have consistently found that resource conservation takes priority over public enjoyment or other interests. In *National Rifle Association v. Potter*, a case that sustained the Park Service's prohibition on hunting, the court held: "In the Organic Act, Congress speaks of but a single purpose, namely, conservation."¹⁹ Later judicial decisions have reached the same conclusion, sustaining agency regulations that limit trapping, mountain biking, fishing, and whitewater rafting in the parks.²⁰ In doing so, the courts have generally deferred to the agency's regulatory restrictions, granting park officials considerable authority to ensure conservation takes priority over recreation and other park uses. But when confronted with Park Service decisions that seem to put park resources at risk, the courts have not hesitated to invoke the Organic Act's "non-impairment" standard to enjoin threatening activities, as a federal court did when Canyon-

lands National Park agreed to open a backcountry route that traversed a desert riparian area to motorized travel, risking both pollution and erosion.²¹ These court rulings not only put the *Management Policies* interpretation of the organic mandate on firm footing, but they should make it difficult—if not impossible—for a future administration to downplay resource protection in favor of recreation or another purpose.

An evolving national park idea

Change is endemic in any society and its institutions, and that holds true for the national parks. Just as the world around the national parks has changed, our view of the national park idea has changed, reflecting new knowledge about the natural world, the nation's history, and the role of parks in contemporary society. Among the ideas that we have long associated with the national parks are these: That they represent a wilderness area, a tourist destination, an outdoor playground, a “cash cow” for local communities, nature's laboratory, and a wildlife reserve. Each captures an important dimension of the national park's role over time, but none of these ideas presents an entirely satisfactory picture of what a national park is in today's changing world or what it should aspire to be for tomorrow.²² Indeed, new ideas about the parks are emerging with the potential to reshape our understanding of the national park idea as well as the national park system. What are these new ideas? And do they fit within the century-old Organic Act?

One compelling new idea about the national parks views these protected areas as the vital cores of much larger ecosystems. This idea reflects the fact, long evident to scientists and other knowledgeable observers, that the national parks are and always have been connected—economically, politically, and ecologically—to the larger landscape that surrounds them.²³ Although we have long characterized the parks as islands, this was never really true and never will be. The gateway communities have historically had economic connections with the parks; concessioners and other industries—hospitality companies, snowmobile manufacturers, off-road-vehicle businesses, and others—have long sought to shape park policies; the seasonal habitat needs and migration patterns of park wildlife regularly extend beyond park boundaries; distant pollution sources have a profound impact on air quality and visibility in the Grand Canyon, Great Smoky Mountains, and elsewhere; and a warming atmosphere portends game-changing effects on the natural world globally. Simply put, the national parks are both “anchor tenants” and “ecological cornerstones” in the larger landscape.

In today's world, recognizing this new ecological cornerstone role for the national parks is essential to fulfilling the Organic Act's fundamental conservation obligations and reflects the increasingly important role science is playing in national park policy. Scientists agree that our current nature reserves are too small to ensure the genetic viability and long-term survival of many species, particularly in the face of unrelenting development pressures and warming temperatures.²⁴ Industrial activities and subdivision development fragments the landscape and thus isolates species, while climate-related temperature increases will force species to relocate as ecosystems are altered and their habitats change. These realities have prompted scientists, conservationists, and others to endorse ecosystem-based management to address the problem, with the national parks viewed as the core protected areas in land-

scape-scale planning efforts. And the Park Service, in its *Management Policies*, has acknowledged this reality, recognizing that successful wildlife management inevitably entails transcending park boundaries, which means “park units must be managed in the context of their larger ecosystem.”²⁵

This new ecological cornerstone role has several implications for park management. It means giving science a prominent role in resource management decisions, putting biodiversity and resource conservation before public use or corporate profits, engaging with neighbors in creative new relationships that are designed to protect park resources from adverse external impacts, identifying and establishing new connective corridors across the landscape, and working strategically with allies (conservation groups, scientists, and others) to bring this new vision of the national parks to fruition. For issues involving adjacent public lands, it entails working with the Forest Service and the Bureau of Land Management to coordinate planning efforts, including new migratory corridor and dispersal route designations, and participating with them in project-level decisions in order to safeguard park resources from external impairment. For issues involving adjacent private lands, it means strategically engaging in local zoning and land use planning processes, providing technical and financial assistance, and promoting strategic conservation easement purchases, while carefully gauging the most effective way to engage as a sometimes unwelcome federal neighbor.²⁶

Another emerging idea conceives the national parks assuming a more prominent role in public education, both in terms of nature conservation and historical literacy. The National Park System Advisory Board, in its *Rethinking National Parks for the Next Century* report, put it this way: the “Park Service should be viewed as . . . an [educational] institution,” and “education should become a primary mission of the National Park Service.”²⁷ The recent Second Century Commission Report carries the idea even further, calling on Congress to “affirm in legislation that education is central to the success of the National Park Service mission.”²⁸ The Park Service has not only long maintained a highly regarded interpretation program at individual parks, but the national parks have long been associated with a nature conservation ethic. Establishment of the national parks is generally viewed as the nation’s initial and preeminent commitment to nature conservation; it not only helped forge a unique American identity linked to nature conservation,²⁹ but the national park idea has been exported around the world. Although Park Service nature management policies have vacillated over the years, the public plainly views the national parks as enclaves of nature conservation. To maintain and promote this conservation ethic and tradition (as well as greater historical literacy about the nation’s origins, development, and values), the Park Service should be engaging in public education to a much greater degree than is true presently. It is, after all, the only federal land management agency deeply engaged in public education, and thus uniquely positioned to impart environmental knowledge and related conservation values to the general public.

Public education about nature conservation is more important than ever in this age of potentially catastrophic climate change and in a time of growing urbanization when “nature deficit disorder” has infected the nation’s youth.³⁰ It is also important given the role that the general public now plays in resource management planning and decision-making under the

National Environmental Policy Act (NEPA) and other laws. An ecologically informed public is more likely to understand and endorse management policies that protect park resources, even when that involves constraining activities outside park boundaries. In short, the Park Service must assume a greater public education role, both inside and outside the parks, to explain the challenges of conservation in an interconnected and warming world, and to connect our citizenry with nature and its role in our everyday lives.

Meeting tomorrow's conservation challenges

The national parks confront an array of vexing conservation challenges, and others lie ahead. With change endemic within and around the park system, policies that made sense in the past may not work tomorrow as new pressures are brought to bear on the parks and new knowledge alters our conservation strategies. We no longer need to universally promote park visitation in this era of industrial tourism,³¹ and we now recognize that uncontrolled recreational activities can visit adverse environmental impacts on the parks, while new forms of recreation can also cause serious damage and impinge on the visitor experience. And we now understand that ecosystems transcend linear park boundaries, and resource management policies must accommodate sometimes unpredictable ecological changes. With the threat of climate change looming over the world, profound demographic shifts altering the complexion of the nation's populace, the emergence of nature deficit disorder among the nation's children, and ongoing development pressures outside the parks, it is clear that new approaches to conservation are necessary—ones that will call for changes in how the Park Service addresses and handles its basic resource management responsibilities. Can the Organic Act meet these challenges?

The arguments for rewriting the Organic Act are evident. With its concise, almost quaint, statement of purpose and imprecise planning provisions, the Organic Act reads more like a century-old law than a modern resource management statute. It speaks of wildlife, scenery, and natural objects, not biodiversity or ecosystems; it makes no reference to the kind of public participation that has been enshrined in NEPA and other environmental laws; and it lacks rigorous, detailed planning standards or procedures. While Congress has amended the law, it has neither altered the Organic Act mission statement nor otherwise significantly changed the basic law, but rather only reconfirmed the act's purpose statement and clarified the agency's responsibilities. In contrast, Congress has given each of the other major federal land management agencies what amount to new organic laws: the Federal Land Policy and Management Act for the Bureau of Land Management; the National Wildlife Refuge System Administration Act and the National Wildlife Refuge System Improvement Act of 1997 for the US Fish and Wildlife Service; and the National Forest Management Act for the Forest Service.³² In each case, these new laws detail extensive new management responsibilities and procedures, employing the language of biodiversity, NEPA-based environmental analysis, public participation, and integrated planning. On several occasions, moreover, we have altered the nation's most hallowed document—the US Constitution—to incorporate new ideas that reflect our evolving social and political values. Why not the Organic Act?

Notwithstanding these arguments, the case for retaining the Organic Act and its concise yet inspirational mission statement is compelling. First, when faced with changing condi-

tions or crises in the past, Congress has responded with appropriate and measured Organic Act amendments rather than rewriting the law. Prime examples are the Redwood Amendment, the concession reform legislation, and the new science mandate. In the case of the Redwood Amendment, Congress responded to emerging external threats facing the parks by reaffirming the Organic Act and instructing the Park Service to protect national park values and purposes, unless specifically directed otherwise by Congress. And Congress has not hesitated to apply new laws, such as the Endangered Species Act, NEPA, and the Wild and Scenic Rivers Act, to the national parks, which has helped park managers to protect sensitive resources and address new environmental concerns. Moreover, when specific systemic problems have arisen, such as air overflights or mining in the parks, Congress has addressed these matters in targeted laws that did not infringe on the Organic Act itself.

Second, the Organic Act has proven flexible and adaptable, enabling the Park Service to identify and implement new policies to address changed conditions, enhanced knowledge, and new values. Without any change in the law, the Park Service has successfully devised and implemented new resource management policies that track evolving scientific knowledge and related conservation strategies. In the aftermath of the Leopold Report, the agency basically reversed course in its approach to wildlife management and resource conservation without any change in the Organic Act. Faced with pending climate change impacts, the agency is now in the process of identifying new conservation policies to address this threat.³³ These policies could involve more intrusive management and broader-scale planning efforts to promote ecological resilience, changes that may be necessary for the agency to meet the non-impairment standard when confronting significant ecological shifts.³⁴ So long as the policy revisions are adequately explained and linked to the Organic Act's mission statement, these changes would reinforce the statute's flexibility in the face of new knowledge and changing conditions.

Third, the Organic Act mandate has been interpreted and applied to provide important legal protection for park resources, both from pressures outside and inside the parks. Indeed, the act's non-impairment standard is the strongest found in contemporary public land law; the same standard appears in the Wilderness Act as well as several other preservation-oriented laws. When the National Rifle Association sought to hunt in the parks, the courts read the Organic Act's conservation mandate to prohibit hunting. When Redwood National Park was besieged by upstream logging outside the park that threatened its iconic namesake trees, park supporters successfully invoked the Organic Act in a lawsuit that forced the agency to take action to curtail the logging.³⁵ And when park officials agreed to allow motorized access along a desert riparian area in Canyonlands, a court blocked the plan on the grounds that it violated the Organic Act's mandate against impairing park resources.³⁶ Although the act has not protected the parks from these types of pressures in every instance, there may be no law that can ensure ironclad protection from the powerful political and economic pressures that industrial development or recreation advocates can deploy.

Fourth, a substantial body of judicial precedent has accumulated that acknowledges resource conservation as the Park Service's first management priority. As noted above, the courts have consistently ruled that resource conservation takes priority over visitor preferences and commercial interests, and have accorded the Park Service a great deal of discre-

tionary authority that it can invoke to protect park resources. These court decisions strengthen the hand of park officials when confronting resource conservation challenges and should embolden park managers to prioritize resource protection over other competing concerns.³⁷ And these rulings present a major obstacle to anyone seeking to rewrite the agency's management responsibilities, a lesson that the Bush administration learned in 2006 when it sought to revise the *Management Policies* document. Just the mere fact of these precedents should help to deter any effort to overcome, reverse, or downplay the Park Service's strong preservationist instincts.

Fifth, any call to amend or rewrite the Organic Act would invite congressional mischief and could open a Pandora's box. Once Congress starts down the legislative trail, the sausage-making begins, and no one can predict with certainty how the process will end. Although change proponents may have a clear vision of how they would like a new organic act to read, there is no assurance that their preferred version would emerge, given the compromises that inevitably figure into the political process and the trade-offs that might be necessary, perhaps for matters unrelated to the national parks. If there is a demonstrated need to adjust the Organic Act, then the task would be better accomplished by targeted amendments rather than rewriting the entire law—the approach that has been followed in the past to address specific problems.

In fact, rather than tampering with the Organic Act's classic mission statement or other key provisions, the new challenges confronting the national parks can be addressed, as in the past, through carefully conceived amendments and policy adjustments. The Organic Act's conservation imperative, as we have seen, has proven quite adaptable over the years, enabling the agency to shift from façade management to a new non-interventionist natural regulation policy rooted in science rather than scenery. The act—either through its “promotion” or “enjoyment” language—has also allowed the Park Service to develop a popular interpretation program, which should set the stage for a more ambitious agency foray into public education, including programs designed to improve ecological literacy, promote a conservation ethic, and address the nature deficit disorder problem. The Redwood Amendment, as interpreted by the Department of the Interior solicitor's office and the agency's own *Management Policies*, holds the Park Service responsible for protecting park resources from external forces that could impair them,³⁸ effectively legitimizing the agency's involvement in matters beyond the boundary as well as the concept of ecosystem management, with the parks constituting the vital core in regional initiatives. And the Park Service, drawing upon the Organic Act's rather general planning provisions, has incorporated quite detailed contemporary planning standards and requirements into its *Management Policies*, including public participation, NEPA analysis, inventory, monitoring, collaboration, and biological diversity provisions.³⁹ In short, the gloss that has accumulated on the Organic Act should be sufficient to enable the Park Service to promulgate new policies and strategies needed to address climate change, landscape-scale planning, nature deficit disorder, and a more expansive public education effort.

One policy merits special mention in the face of these daunting new challenges: the “national significance” standard that governs the Park Service in its assessment of potential new parks. The ecological impacts that climate change portends will likely put extensive new

pressures on the parks, particularly on sensitive wildlife populations struggling to adapt to fundamental changes in habitat conditions. One widely proposed adaptive response to this scenario is the need for new, expanded, or reconfigured nature reserves—a potentially significant new role for the national parks.⁴⁰ Besides focusing on conventional park system additions, this new role could include adding to the system damaged lands with restorable habitat or designating new connective corridors to facilitate movement by displaced species. Under the *Management Policies* definition of “national significance,” however, the agency may not have the authority to recommend these types of lands for a new or expanded park.⁴¹ But Congress has regularly discounted the “national significance” criteria in its own designation of new parks, as reflected historically in the Shenandoah, Great Smoky Mountains, Redwood, and other designations that included degraded lands—a fact that virtually invites the Park Service to redefine “national significance” in its *Management Policies* to add the restoration concept.⁴² In addition, faced with mounting urbanization, an increasingly diverse population, and nature deficit disorder problems, the need for new urban-based parks attractive to minority citizens and others is evident, and such units should also be considered for addition to the system. These definitional changes could be accomplished administratively by reinterpreting the “national significance” language in the *Management Policies*, obviating the need for a congressional amendment to the Organic Act. In short, this represents another instance where the existing language in the Organic Act is arguably broad enough to accommodate potential park system expansion policy revisions that are designed to address changes that are afoot.

Another aspect of the Organic Act that has come under scrutiny and prompted calls for reform involves the Park Service’s institutional structure, which regularly enshrouds the agency in politics. Director George Hartzog put it this way: “[T]he position of the director ... is the command post on the fireline where politics meets parks. From the birth of the park service in 1916 to the present day, the director’s job has been political.”⁴³ In response to instances of political intermeddling in agency affairs, proposals calling for an independent Park Service have surfaced regularly. Some have advocated creating a new independent agency along the lines of the Smithsonian or National Archives, in order to reduce the level of political interference in the agency. Others have called for the director, as a presidential appointee, to serve for a specified term of office, perhaps five years, to provide greater independence by safeguarding her from dismissal if she were to run afoul of the presiding administration.⁴⁴ The argument, simply put, is that independent status would allow the Park Service Director and other officials a greater degree of freedom to advocate for the national parks.

While not without considerable merit, these independence proposals also raise serious questions, including what effect independence would have on the agency’s influence and budget. If the Park Service were moved outside the Interior Department, it might lose some of its ability to influence the other Interior-based agencies and departmental conservation policy more generally. Without direct secretarial support, it would certainly be in a weaker position when seeking to coordinate resource management decisions with Interior and non-Interior agencies. And the agency would no longer have the department as a buffer against inevitable congressional pressures. Moreover, unless Congress were prepared to provide an

independent Park Service with a guaranteed revenue stream—a highly unlikely prospect—the agency could find itself in a weakened rather than strengthened position in the annual budget battles. Instead of expending the precious political capital that would be required to gain independent status, the agency and its supporters might be better advised to focus their reform efforts on expanding, strengthening, and better funding the system, recognizing that public land policy, whether in the case of the national parks or the other federal lands, is inherently political in nature.

Conclusion

For all of its quaintness and distinctly un-modern provisions, the Organic Act has served the national parks well for nearly a century. The act's concise and clear-cut mission statement has plainly put conservation in a priority position, strengthening the agency's hand when framing resource management policies and dealing with others. As new problems have surfaced over the years, Congress has addressed them without tinkering with the Organic Act's core mission statement or other key statutory provisions. Although the Park Service and the national parks face daunting conservation and other challenges in the years ahead, including the specter of massive ecological dislocation linked to climate change, the Organic Act has proven flexible enough to respond to similar past challenges. Rather than alter the fundamental national park system charter, attention should be on the agency itself to use its powerful conservation mandate and related authority to craft innovative new resource management and public education policies for the next century. If statutory changes or additions are needed, they can and should be accomplished by targeted amendments, not by wholesale revisions. In its evolved form, the Organic Act provides a clear, time-tested, and inspirational anchor for shaping the new policies and programs that will be required to meet the needs of future generations.

Endnotes

1. 16 U.S.C. §§ 1, 1a-5.
2. The essay's primary focus is on the relationship between the Organic Act and the national parks and areas; it touches only briefly on the act's relationship to the system's historic and cultural sites.
3. Robin W. Winks, "The National Service Act of 1916: 'A Contradictory Mandate'?" *Denver University Law Review* 74, no.3 (1997): 575, 623.
4. Letter from Franklin K. Lane, secretary of the interior, to Stephen W. Mather, director, National Park Service (May 13, 1918); reprinted in Lary M. Dilsaver, ed., *America's National Park System: the Critical Documents* (Lanham, MD: Rowman & Littlefield, 1994), 48-52.
5. Pub. L. 91-383, 84 Stat. 827 (1970), codified at 16 U.S.C. § 1a-1 et seq.
6. Pub. L. 94-458, 90 Stat. 1940 (1976), codified at 16 U.S.C. § 1a-5.
7. Pub. L. 95-250, 92 Stat. 166 (1978), codified at 16 U.S.C. § 1a-1.
8. 16 U.S.C. § 1a-7(b).
9. Pub. L. 105-391, 112 Stat. 3497, codified at 16 U.S.C. § 5931 et seq.
10. See Concessions Policy Act of 1965, 16 U.S.C. §§ 20-20(g) (repealed); National Park

Service Concessions Management Act of 1998, 16 U.S.C. §§ 5951–5983.

11. 16 U.S.C. §1c(b); see Robert L. Fischman, “The Problem of Statutory Detail in National Park Establishment Legislation and Its Relationship to Pollution Control Law,” *Denver University Law Review* 74, no.3 (1997): 779.
12. Pub. L. 94-429, 90 Stat. 1342 (1976), codified at 16 U.S.C. § 1901 et seq. (mining); Pub. L. 106-181, title VIII, 114 Stat. 61, 185 (2000), codified at 49 U.S.C. §40128 (air tour operators).
13. The noted provisions are found at National Park Service, *Management Policies* (Washington, DC: National Park Service, 2006), 1.43, 1.4.3, 1.4.7.
14. *Wilderness Society v. Norton*, 434 F.3d 584, 594-97 (D.C. Cir. 2005).
15. The *Management Policies* rewrite incident is described and analyzed in Richard West Sellars, *Preserving Nature in the National Parks: A History*, 2d ed. (New Haven, CT: Yale University Press, 2009), 301–306.
16. A. Starker Leopold et al., “Wildlife Management in the National Parks,” in *Transactions of the Twenty-Eighth North American Wildlife & Natural Resources Conference* 29, reprinted in Dilsaver, 237; Memorandum from secretary of the interior [Stewart Udall] to National Park Service director, “Management of the National Park System” (July 10, 1964), reprinted in Dilsaver, 272.
17. See, e.g., Alston Chase, *Playing God in Yellowstone: The Destruction of America’s First National Park* (San Diego: Harcourt Brace Jovanovich, 1986); Frederic H. Wagner et al., *Wildlife Policies in the U.S. National Parks* (Washington, DC: Island Press, 1995).
18. *Motor Vehicle Manufacturers’ Association v. State Farm Insurance Company*, 463 U.S. 29, 57 (1983); see Robert B. Keiter, “Preserving Nature in the National Parks: Law, Policy, and Science in a Dynamic Environment,” *Denver University Law Review* 74, no. 3 (1997): 649, 678–679.
19. *National Rifle Association v. Potter*, 628 F. Supp. 903, 910 (D.D.C. 1985).
20. See *Michigan United Conservation Clubs v. Lujan*, 949 F.2d 202 (6th Cir. 1991); *Bicycle Trails Council v. Babbitt*, 82 F.3d 1445 (9th Cir. 1996); *Organized Fishermen of Florida v. Hodel*, 775 F.2d 1544 (11th Cir. 1985); *Wilderness Public Rights Fund v. Kleppe*, 608 F.2d 1250 (9th Cir. 1979); *River Runners for Wilderness v. Grand Canyon National Park*, 593 F.3d 1064 (9th Cir. 2010) .
21. *Southern Utah Wilderness Alliance v. Dabney*, 7 F. Supp.2d 1205 (D. Utah 1998), reversed and remanded, 222 F.3d 819 (10th Cir. 2000); see also *Southern Utah Wilderness Alliance v. National Park Service*, 387 F.Supp.2d 1178 (D. Utah 2005).
22. See Robert B. Keiter, “The National Park System: Visions for Tomorrow,” *Natural Resources Journal* 50, no. 1 (2010): 71, 84–91.
23. See William L. Halvorson and Gary E. Davis, eds., *Science and Ecosystem Management in the National Parks* (Tucson: University of Arizona Press, 1996); Reed F. Noss and Allen Y. Cooperrider, *Saving Nature’s Legacy: Protecting and Restoring Biodiversity* (Washington, DC: Island Press, 1994).
24. See William D. Newmark, “Legal and Biotic Boundaries of Western North American National Parks: A Problem of Congruence,” *Biological Conservation* 33 (1985): 197; William D. Newmark, “Extinction of Mammal Populations in Western North American

- National Parks,” *Conservation Biology* 9 (1995): 512 (1995); see generally Michael Soulé and John Terborgh, eds., *Continental Conservation: Scientific Foundations of Regional Reserve Networks* (Washington, DC: Island Press, 1999); Jonathan S. Adams, *The Future of the Wild: Radical Conservation for a Crowded World* (Boston: Beacon Press, 2006).
25. National Park Service, *Management Policies* (2006), 4.1.
 26. On the relationship between national parks and their neighbors, see Joseph L. Sax and Robert B. Keiter, “Glacier National Park and Its Neighbors: A Study of Federal Inter-agency Relations,” *Ecology Law Quarterly* 14 (1987): 207; Joseph L. Sax and Robert B. Keiter, “The Realities of Regional Resource Management: Glacier National Park and Its Neighbors Revisited,” *Ecology Law Quarterly* 33 (2006): 233.
 27. National Park System Advisory Board (John Hope Franklin, chair), *Rethinking National Parks for the 21st Century: A Report of the National Park System Advisory Board* (Washington, DC: National Geographic Society, 2001).
 28. National Parks Second Century Commission (Howard H. Baker, Jr., and J. Bennett Johnson, chairs), *Advancing the National Park Idea* (Washington, DC: National Parks Conservation Association, 2009), 43.
 29. See Alfred Runte, *National Parks: The American Experience*, 2d ed. (Lincoln: University of Nebraska Press, 1987).
 30. See Richard Louv, *Last Child in the Woods: Saving Our Children from Nature-Deficit Disorder* (Chapel Hill, NC: Algonquin Books, 2005); Richard Louv, “Leave No Child Inside,” *Orion* (March/April 2007).
 31. We do, however, need to do a better job of engaging minority communities in the national parks and the park experience. See National Parks Second Century Commission, 30–31, 43.
 32. 43 U.S.C. §§ 1701–82 (FLPMA); 16 U.S.C. §§ 668dd–668ee (refuge system laws); 16 U.S.C. §§ 1600–14 et seq. (NFMA).
 33. National Park Service, *Climate Change Response Strategy* (Washington, DC: NPS, 2010).
 34. For an insightful analysis of the challenges climate change presents for the national parks and park policy, see William C. Tweed, *Uncertain Path: A Search for the Future of National Parks* (Berkeley: University of California Press, 2010).
 35. See *Sierra Club v. Department of the Interior*, 398 F. Supp. 284 (N.D. Cal. 1975).
 36. See references and accompanying text under note 21. See also *High Country Citizens’ Alliance v. Norton*, 448 F. Supp. 2d 1235 (D. Colo. 2006), finding an Organic Act violation when the secretary of the interior agreed to relinquish Black Canyon of the Gunnison National Park’s federal reserved water rights.
 37. For an expansive interpretation of the Organic Act and the Park Service’s authority under it, see William J. Lockhart, “External Threats to Our National Parks: An Argument for Substantive Protection,” *Stanford Environmental Law Journal* 16 (1997): 3.
 38. See memorandum to secretary of the interior [Bruce Babbitt] from the Department of the Interior solicitor, “Options Regarding Applications for Hardrock Mineral Prospect-

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39. National Park Service, *Management Policies* (2006), 2.1 et seq., 4.1 et seq., 4.2.1, 4.4 et seq.
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41. National Park Service, *Management Policies* (2006), 1.3.1 (requiring a potential new area to retain “a high degree of integrity as a true, accurate, and relatively unspoiled example of a resource”).
42. See Keiter, “Visions for the Future,” 96–99.
43. George B. Hartzog, Jr., *Battling for the National Parks* (Mount Kisco, NY: Moyer Bell, 1988), 273.
44. See Dwight Pitcaithley, “On the Brink of Greatness: National Parks and the Next Century,” *The George Wright Forum* 24, no. 2 (2007), 9, 17–18; William J. Lockhart, “External Park Threats and Interior’s Limits: The Need for an Independent Park Service,” in David J. Simon, ed., *Our Common Lands: Defending the National Parks* (Washington, DC: Island Press, 1988), 3.

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