



Carol McCoy

09/09/02 04:03 PM MDT

To: Linda Dansby/SANTAFE/NPS@NPS

cc:

Subject: Suggested response re: impairment comments

Linda--Here's what I sent to Ken. I'm not very happy with it but there wasn't much to work with. Carol

----- Forwarded by Carol McCoy/DENVER/NPS on 09/09/02 04:03 PM -----



Carol McCoy

09/09/02 03:38 PM MDT

To: Ken McMullen/PAIS/NPS@NPS

cc:

Subject: Suggested response re: impairment comments

Hi, Ken--

Here's my suggestion. Talk with you tomorrow.

Carol



suggested response to impairment comments.doc

Carol McCoy
Chief, Policy and Regulations Branch
Geologic Resources Division
Natural Resource Program Center
w-303/969-2096; fax-303/987-6792
carol_mccoy@nps.gov

Impairment: Response to comments from NPCA, Johnny French and Sierra Club

I. Comments

NPCA

- states that inadequate data to support non-impairment conclusion (page 1)
- finds non-impairment conclusion with re: impact to visitors from vehicle traffic unsupported (page 7)
- finds non-impairment conclusion with re: to soundscapes unsupported by the necessary data and analysis (page 8)

JOHNNY FRENCH

- calls for shifting the responsibility of making impairment decisions to Congress instead of agency (page 1)
- objects to the definition of impairment that is contained in the EA even though this language parrots the definition from the *2001 Management Policies* (bottom of page 6--NOTE: He quotes text he says is present on page 39 of the EA but is not.)
- calls for defined thresholds of impairment (page 7)

SIERRA CLUB

- states it believes the heavy truck traffic and dune destruction, nearly continuous for 15-yrs equals impairment (page 10)
- quoting Mr. French, finds that that the NPS has failed to define impairment and calls for the identification of "objective measures" (page 3)

II. Suggested NPS Response

Under the NPS Organic Act, Congress vested the NPS with the responsibility of making decisions on behalf of units of the National Park System so as to "leave them unimpaired for the enjoyment of future generations." Under our modern structure of governance, Congress has a long-standing practice of delegating decision-making authority to agencies. In doing so, Congress provides some degree of flexibility to the agencies so that they can content with changing scientific knowledge, technology and a myriad of factual situations. It is not practical to expect that Congress could make or even be involved in the multitude of daily decisions being made across federal agencies, in general, or the NPS, in particular.

In the *2001 NPS Management Policies*, the Service set forth expanded guidance to park decision makers on how to go about determining whether a proposed action could lead to an impairment. While the *2001 Management Policies* lay out specific factors for park managers to consider in making impairment determinations, this document contains text that recognizes that ultimately such determinations rest on the professional judgment of park managers. The EA for the Lemon/Lemon Seed Unit Wells draws heavily on this guidance in describing to the public what factors enter into an impairment determination. Based on the data presented in the EA, including supporting documents, the NPS determined that the proposed action with mitigation would not cause an impairment to park resources, including soundscape.