

JASON SMITH

8TH DISTRICT, MISSOURI

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**OFFICIAL COMMENT FROM CONGRESSMAN JASON SMITH IN SUPPORT OF A
NO-ACTION ALTERNATIVE**

Please address each bullet point specifically:

I. SUMMARY OF COMMENT

On behalf of the constituents from my district who use and enjoy the Ozark National Scenic Riverways (ONSR) and depend on its local economy; and also on behalf of the tourists who come from all over the country, and even the world, to use and enjoy the Park, I write urging you to continue implementing the No-Action Alternative proposed in the Draft General Management Plan. The “No Action Alternative” is a continuation of management policies that have been used successfully for over thirty years, and would continue sound park management without threatening the Public’s use and enjoyment of the rivers.

The other Action Alternatives proposed by the National Park Service (NPS) fail to conform to current statutes on the federal and state level. Moreover, a No-Action Alternative is the best option because it is compatible with preservation, it is economically viable unlike the other alternatives, it has worked for thirty years and does not require overreaching by the NPS contrary to the other Action Alternatives. Therefore, a No-Action Alternative is the best course of action as it protects the natural resources of the ONSR while securing the property rights of those who depend on the local economy of the region.

II. OFFICIAL COMMENT

a. The Scope of the National Park Service Organic Act and the Wild & Scenic Rivers Act

The National Park Service Organic Act (Organic Act), under 16 U.S.C. §§ 1-4, established the NPS. The Organic Act directs the NPS to:

promote and regulate the use of Federal areas known as national parks, monuments, and reservations . . . 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 wild life 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 textual quote is commonly referred to as the “preservation / use mandate.” The mandate seeks to balance preservation and use to determine the extent of permissible recreation on federally owned lands. The majority of citizens, and many of my constituents in the Eighth District of Missouri, contend that the enjoyment of national parks requires physical access. Therefore, the Act could not have intended “impairment” to be used in its broadest sense.

Frederick Law Olmsted, Jr., the father of American landscape architecture, and Congressman William Kent insisted that the Organic Act contain an overriding statement of purpose that provided a type of mission statement as its guiding principle. *See Symposium: The National Park System: The National Park Service Act of 1916: “A Contradictory Mandate?”* (Deny 74). U.L. Rev. 575, 597 (1997). These men not only wanted to conserve the national parks, but they also wanted to ensure the parks received substantial public use, and therefore were not content with using an overly-expansive definition of “unimpaired” in the Act. Instead of using the language “unimpaired for future generations”, Congress inserted the keywords, “for the enjoyment of future generations.” The term “enjoyment” reasonably requires access, and so long as roads, trails, public access points, hotels, campgrounds, administrative facilities, and other forms of entertainment are not unduly invasive, the public has a right to “enjoy” the national parks.

The Organic Act provides clear guidelines for any type of Draft General Management Plan that sets forth a comprehensive plan for a national park. Although the Secretary of the Interior is allowed to “make and publish such rules and regulations as he may deem necessary or proper” (16 U.S.C. § 3), the promotion and regulation of the various areas of the National Park System “shall be consistent with and founded in the purpose established by section 1 of this title, to the common benefit of all the people of the United States.” *See* 16 USC § 1(a-1). Thus, any form of comprehensive plan, including the one in question for the ONSR, must conform at a minimum with the balance of preservation and use that is expressly declared under the Organic Act. The NPS is not permitted to dismiss or unfairly undermine the recreational interests citizens have in the ONSR.

Moreover, the National Wild and Scenic Rivers System (WSRS), created by Congress in 1968 and codified under 16 U.S.C. 1271, states:

rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, *recreational*, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the *benefit and enjoyment of present and future generations.*

Again, a fundamental requirement of “enjoyment” is use and access, and therefore, under the WSRS, it is imperative that the NPS give greater consideration to use and recreation when developing a final General Management Plan. Any action alternative that minimizes recreational interests in favor of preservation runs contrary to the plain language of the Organic Act and the WSRS which seeks to balance both.

b. Statutory Authority for the Ozark National Scenic Riverways

i. Public Law 88-492

The ONSR was created not only to preserve the history and resources of the region, but it was also meant to provide for recreation and enjoyment uses as well. *See* Public Law 88-492. The law states that it was passed for:

the purpose of conserving and interpreting unique scenic and other natural values and objects of historic interest, including preservation of portions of the Current River and the Jacks Fork River in Missouri as free-flowing streams, preservation of springs and caves, and management of wildlife, and provisions for *use and enjoyment of the outdoor recreation resources* thereof by the people of the United States....

Thus, similar to the Organic Act and WSRS, the statutory authority for the creation of the ONSR was intended to ensure preservation along with the use and enjoyment of outdoor recreation. Neither interest is given greater textual weight than the other. The NPS must adhere to this statutory language by securing the rights of folks who visit and enjoy the ONSR for recreational purposes. Closing 20 public access points and preventing the use of motors on boats in certain areas is diametrically opposed to the intent and plain language of this Public Law because these measures place preservation interests far above the recreational rights of the folks who use the park. These arbitrary and burdensome regulations are not only inconsistent with the Public Law, but are potentially crippling to a local economy that depends on the access and use of the rivers for their businesses.

The ONSR includes 134 miles of clean and clear water, comprising large portions of the Current and Jacks Fork Rivers. Although the last comprehensive planning effort for the ONSR occurred in 1984, changes within the region have not been substantial enough to warrant any form of action alternative. Given the lack of adverse environmental changes, and the detrimental economic impact any proposed action alternative would have on recreational use of the ONSR, the best option is a No-Action Alternative which would continue to conform to the original purposes of the park: the preservation of its history and resources, and the protection of recreation and enjoyment uses.

ii. Missouri Revised Statutes Section 12.025

In 1965, one year after the passage and designation of the ONSR, the State of Missouri codified section 12.025 to incorporate the area ceded to the federal government comprising the Ozark National Scenic Riverways “for so long as this area is administered and maintained by the United States.” *See* § 12.025 (2). It also lists an exception explicitly stating: “Provided that no

part of this section shall apply to the White River watershed.” See Missouri Revised Statutes, § 12.025 (3). This section raises multiple issues about the NPS’s jurisdiction and administration of the ONSR:

- (1) During the period of government shutdown the NPS and the Obama Administration continuously denied state requests to open and maintain the public use of National Parks. Missouri specifically requested to open and maintain the Ozark National Scenic Riverways for public use, and its request was denied. Thus, the Park Service chose to no longer “administer and maintain” the public use of the Ozark National Scenic Riverways during the period of government shutdown.
 - a. Please address specifically:
 - i. The Nature of the Federal Government’s property interests in the Ozark National Scenic Riverways, in light of the closure of the Park during the period of government shutdown and RSMo. 12.025.
- (2) The second issue involves the attached map of the White River watershed (Watershed) produced as part of the failed attempt to designate the White River and its watershed as a National Blueway. As depicted on the map, it appears the ONSR falls completely within the Watershed. Thus, the regulation by the NPS of the ONSR through its Draft General Management Plan will inevitably apply to and impact the Watershed.
 - a. Please address specifically:
 - i. The Nature of the Federal Government’s property interests in the Ozark National Scenic Riverways, in light of its geographic location entirely within the White River watershed.

c. No-Action Alternative as the Best Option

The No-Action Alternative describes how the ONSR has been and would continue to be managed without the implementation of an action alternative. The No-Action Alternative encompasses the 1984 general management plan, 1989 river use management plan, and the 1992 statement for management and uses these past plans and statements as a description for current management conditions. A No-Action Alternative is preferable because there is no evidence of considerable adverse effects to resources in the ONSR, and the other proposed alternatives are too restrictive of users’ enjoyment of the park. Additionally, the other alternatives, including the one recommended by the NPS, lack sufficient economic analysis to measure the impact these action alternatives will have on recreation and the local economy. The Action Alternatives amount to overreaching, arbitrary, and capricious government action to confiscate the recreation and property rights of Missouri residents and visitors alike with no reasonable basis. Therefore, because the No-Action Alternative is compatible with preservation, the other alternatives lack sufficient economic analysis, and the NPS is overreaching their delegated authority with any of the other alternatives, the No-Action Alternative is the best option for the NPS to take.

i. Compatible with Preservation

Current forms of permitted recreation in the park are easily compatible with preservation. The NPS should not be afforded the right to impose its preservationist viewpoint on the people of

Missouri and the millions of visitors that the park receives every year. This detrimentally impacts the local economy built to accommodate visitors with food, lodging, and entertainment; including canoeing, horseback riding, and camping. The closure of 20 of the access points on the river and horsepower limitations for boats would inevitably reduce the number of visitors the ONSR receives each year, stifling commerce and hurting the local economy in the process. Any Action Alternative would be an excessive demonstration of regulatory authority by the NPS, significantly disrupting the delicate balance of preservation and use as explicitly set forth in every piece of legislation mentioned above. The closure of 20 access points is an arbitrary and capricious action alternative to the current management practices that have sufficiently maintained the health and vitality of the ONSR region. Oftentimes, the use of boats on the Current and Jacks Forks Rivers is the only means for some people to access the park due to disability or age. Aside from being excessive, arbitrary, and unnecessary, the closure of these access points on the river would threaten the access these folks have to the park and implicate their fundamental right to travel under the U.S. Constitution.

Under current management practices, the ONSR Park Staff is tasked with preserving the natural resources of the Park, and have done an admirable job of protecting the area's habitat. The discretion they have to exercise adaptive management approaches is more than sufficient to ensure the continued protection of the resources in the park to guarantee that any permitted recreational activities are compatible with preservation. These current management practices are consistent with the balanced approach between preservation and use as set forth in the statutes above. Thus, under the No-Action Alternative, unforeseen or emerging issues can be readily and effectively addressed by Park Staff when they arise.

ii. **Lack of Economic Analysis**

The Draft General Management Plan suffers from a lack of economic analysis, preventing the NPS from accurately gauging the economic impact of closing public access points, eliminating motorized boat traffic in certain areas, restricting boat motor horsepower, closing gravel bars, and designating new wilderness areas. Additional economic analysis is needed to determine the impact these changes will have on the local, state, and national economy. The cumulative effect of these changes is likely to lead to long-term, major, and adverse economic effects to commercial services and tourism in the Riverways. The conclusory economic results provided by the NPS are insufficient and require additional analysis and data to support their findings.

While the NPS evaluates each of the individual changes from the action alternatives to the ONSR (i.e. the closure of public access points), it is their cumulative impact that will likely create significant economic harm for the folks who depend on the economic vitality of the region. This lack of economic analysis is in direct contravention to the requirements of the Organic Act which explicitly calls for a balance of preservation and use considerations. Without sufficient economic data to support its conclusions, the NPS would be completely neglecting the micro and macro-economic effects that this General Management Plan will likely produce. Therefore, additional economic analysis is needed in order to conform to each of the statutes mentioned above.

Furthermore, I would also request that the National Park service specifically address the potential for the other action alternatives to change, limit or eliminate small business vendors and concessionaires from operating in the park

iii. **De Facto Wilderness Areas usurp Congressional Authority**

Each of the action alternatives offered by the NPS include management zones, which only apply to land areas where the NPS has fee title land ownership. I take contention with the NPS using these management zones as *de facto* wilderness areas in the Action Alternatives. By proposing additional areas for designation as federal wilderness, the NPS is taking an already over-managed region and employing additional measures that only serve to harm a local economy that has tirelessly worked to preserve the region since its creation as a demonstration park for the "Wild and Scenic Riverways" program. The authority to designate federal land as wilderness is clearly vested in Congress alone under the 1964 Wilderness Act. *See* 16 U.S.C. 1131. Thus, the NPS does not have the authority to prevent recreation or use of these areas without Congressional authorization. It does not have the power to create *de facto* wilderness areas from self-created management zones that have not been approved as wilderness by Congress.

Designation of the Big Spring area in particular would be a terrible act of overreach by the NPS. Under Action Alternative B, which NPS prefers, most of the Big Spring Wilderness Study Area would be recommended for wilderness designation. This action would severely threaten the private property rights of folks who have cabins and homes in the area. The removal of telephone lines that serve these residences, access roads, and a fire tower are arbitrary and unnecessary changes to an already pristine and protected area. The confiscation of our local state forests by the NPS seriously infringes on private property and land use rights of the citizens of Missouri.

iv. **Boat Motor Restrictions lead to safety / access concerns**

Along with the proposed wilderness designations, the restriction of boat motor horse power in certain areas and the elimination of motorized boat traffic in others are capricious actions that serve no purpose aside from restricting fishing, trapping, gigging, guided float trips, and other forms of recreational activity on the rivers. Total elimination of motorized vessel access in the northern section of the park would eliminate recreational activities like gigging that have been historically performed in the park. Often, motorized vessels remain the best option to get injured visitors medical attention quickly and safely.

v. **Closing Access points will be unnecessarily burdensome**

Additionally, closing gravel bars will unnecessarily restrict camping activities to designated sites. Moreover, limiting public access points will severely affect the commerce generated by the rivers as the number of visitors will inevitably decline. In some instances, the closure of access points on one side of the river may increase travel time to an access point of forty-five minutes or more. These actions all serve as primary examples of the numerous instances of overreaching by the NPS in their proposed action alternatives.

vi. **Horseback riding effectively managed under current practices**

The tourism industry supported by horseback riding in the Ozark National Scenic Riverways provides visitors with a unique and irreplaceable opportunity to experience the park from a different perspective. The arbitrary closing of 65 miles of trails that have been widely used by the public under current management practices, with no concern for what economic impact that may have on the local economy, is an excessive solution for a non-existent problem. I urge the National Park Service to continue to manage horseback riding, and trails, in substantially the same manner as it is managing them now.

III. CONCLUSION

In light of the concerns raised above, I urge the NPS to implement the No-Action Alternative as described in the Draft General Management Plan. It is the only proposed plan that conforms to current federal and state statutes, it is compatible with preservation, and it has proven to be economically viable for the last thirty years. Folks in Missouri's Eight District do not need the federal government to implement any additional regulations to govern their forests, streams, and rivers. The Ozark National Scenic Riverways has been a premier destination for tourists in Missouri, it is the lifeblood of the local economy, and it provides some of the best recreational opportunities in the region. The No-Action Alternative is the best course of action because it not only ensures that folks will be able to enjoy the region as they have for years, but that it will continue to be preserved as well.

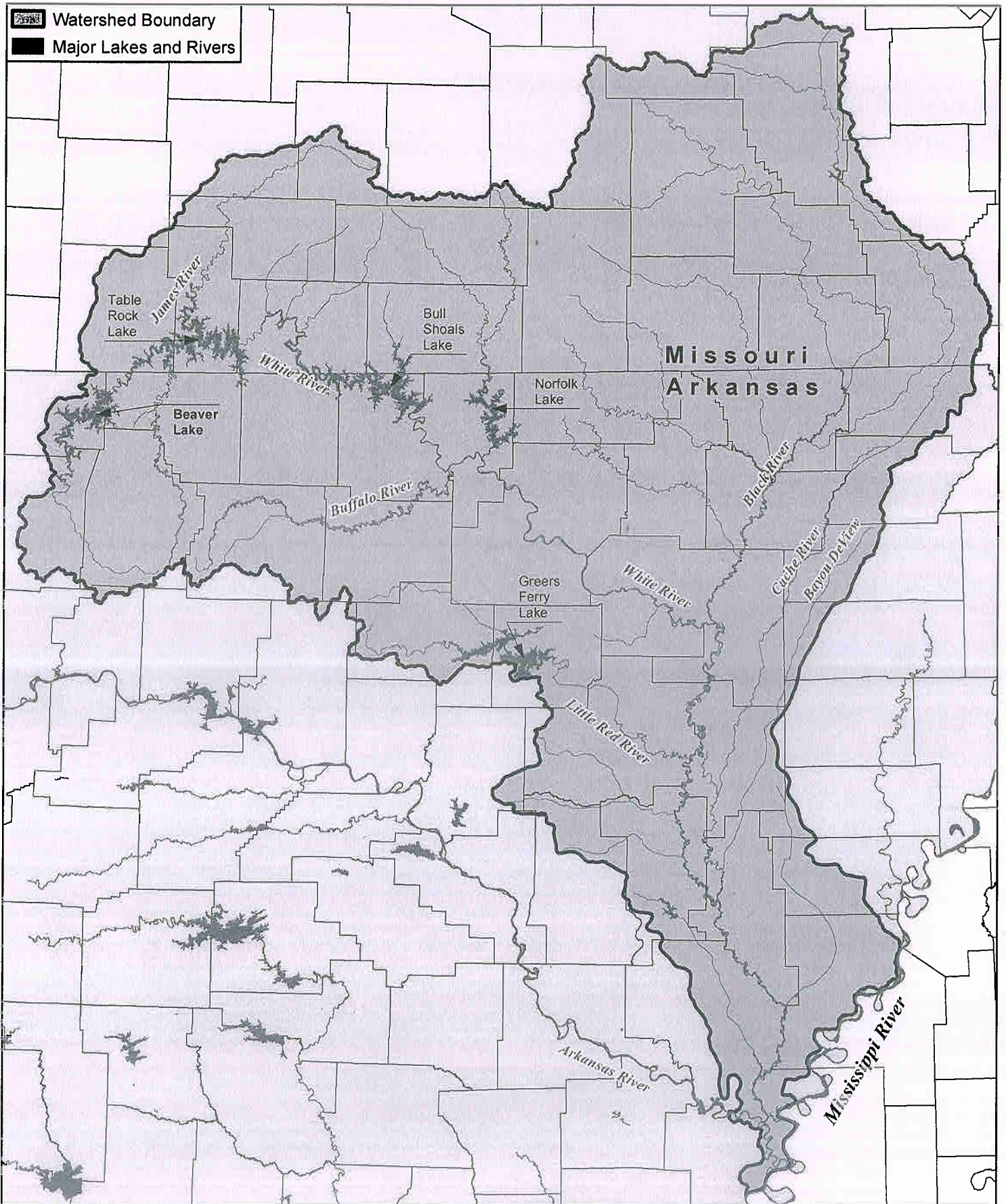
I look forward to your response.

Sincerely,



Jason Smith
MEMBER OF CONGRESS

Figure 2:
White River Watershed
White River Watershed National Blueway



**Figure 3:
Conservation Estate within the Watershed
White River Watershed National Blueway**

