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THE NATIONAL PARK SERVICE IN LAW REVIEWS AND LAW JOURNALS

An Update

Thomas W. Lucke

In the Summer 1982 issue of *The George Wright FORUM*, there appeared an article entitled "The National Park Service In Law Reviews and Law Journals" (pages 36-39). The article was basically an annotated bibliography of legal periodical literature on subjects pertaining to the National Park Service that had appeared in law reviews and law journals during the late 1970s and early 1980s. A number of park planners and managers throughout the National Park Service have contacted me and have stated that they found the listed literature extremely helpful in their work.

Since publication in the Summer of 1982, additional materials have appeared in law reviews and law journals. The purpose of this article is to update managers and planners as to what new legal periodical literature is available to them.

"For Whom the National Parks," by A. Dan Turlock, *Stanford Law Review* 34:255-274 (November 1981). Mr. Turlock's article is a book review of Joseph L. Sax's *Mountains Without Handrails: Reflections on The National Parks*, University of Michigan Press, Ann Arbor, 1980. He uses the review as a stepping stone to analyse the legal implications of the preservation policies of the National Park Service. The meaning behind the 1916 National Park Service Organic Act, the legal duty to preserve and protect park resources, and the National Park Service's power to protect its areas from the adverse effects of adjacent development are discussed in detail.

"The National Parks of Canada: An Endangered Species?" by H. Ian Rounthwaite. *Saskatchewan Law Review* 46(1):43-71 (1981-1982). The pressures on National Parks in Canada are much like those confronting parks in the United States: increased visitation, adverse peripheral development and budgetary constraints. The article examines the legal structure which governs the operations of Canadian parks. Part I traces the evolution of park policy, presents a brief synopsis of the administrative and legislative history of Parks Canada, and emphasizes the need for more effective legal safeguards designed to ensure that the policies of preservation and conservation become more than a hollow statement of government intention. Part II discusses changes in Canadian law that are needed to give individuals the right to initiate litigation to control incompatible development that could adversely affect park resources.

"The National Reserve System and Transferable Development Rights: Is the New Jersey Pinelands Plan an Unconstitutional 'Taking'?" by Ellen M. Randle. *Boston College Environmental Affairs Law Review* 10(1):183-241 (1982). For many years, legal

writers have espoused the usefulness of transferable development rights as a tool to preserve landmarks, farmlands and open spaces. The Pinelands Plan is the first attempt to apply the transferable development concept on a significant scale. The article describes the Pinelands Plan, examines the mechanics of transferable development rights in the Plan, analyses recent case law with respect to the Constitutional prohibition against "Taking," and applies the "Taking" test to the Pinelands Plan. The conclusion of Ms. Randle is that the Pinelands Plan appears to be on constitutionally firm ground.

Ecology Law Quarterly 10(3)(1982) contains two articles that deal with exceptionally important but different aspects of the National Park Service. They are "Visibility Protection Under the Clean Air Act: Preserving Scenic and Parkland Areas in the Southwest," by Jerome Ostrov (pages 397-454) and "The Public Trust Totem in Public Land Law: Ineffective - And Undesirable - Judicial Intervention," by Steve M. Jarvetz (pages 455-495). Emphasizing the protection of visibility in the Southwest, Mr. Ostrov's article examines the various Clean Air Act provisions which affect visibility in the nation's pristine air quality areas. Technical aspects of the Clean Air Act such as integral vistas and nonattainment areas are discussed in detail with an eye toward identifying the myriad of interacting factors affecting visibility in the Southwest. The references cited throughout the article constitute an exceptionally fine bibliography of various studies produced by the US Environmental Protection Agency and the National Park Service concerning air quality, visibility and integral vistas. Mr. Jarvetz's article is a technical discussion of the Public Trust Doctrine as it relates to public land under the jurisdiction of a number of Federal agencies. A substantial portion of the article deals with the application of that doctrine to lands administered by the National Park Service. The Redwood National Park litigation and *Sierra Club v. Andrus* (a court case dealing with reserved water rights in parklands in Utah and Arizona) are analysed in detail. His conclusion is that "the public trust doctrine of itself imposes no duties or obligations on the agencies responsible for administering the public lands."

"The Economic Benefits of Preserving Visibility in the National Parklands of the Southwest," by William D. Schulze, David S. Brookshire, Eric G. Walther, Karen Kelly MacFarland, Mark A. Thayer, Regan L. Whitworth, Shaul Ben-David, William Malm, and John Molenaar. *Natural Resources Journal* 23(1):149-173 (January 1983). Anyone familiar with the work of the National Park Service's Air Quality Division in Denver, Colorado, will recognize several of the authors of this article which reports on an experimental study designed to measure the economic value of visibility in the national parklands of the Southwest. As a basis for the study, a survey directed at the preservation of visibility was conducted during the summer of 1980 in over 600 households in Denver, Los Angeles, Albuquerque, and Chicago. The survey and study revealed that Americans place great value on the

preservation of air quality in the parklands, and this value is not localized to residents of the Southwest, and that Americans are willing to pay for clean air through higher entrance fees and/or utility bills. It was the hope of the authors of this article to get to this nation's decisionmakers information on the value of good visual air quality so that these decisionmakers could evaluate the costs of air pollution control vis-à-vis the benefits of visibility protection.

As discussed in the Summer 1982 issue of *The George Wright FORUM*, I would like to remind the reader that the opinions and interpretations expressed in these articles do not necessarily represent the position of the Department of the Interior or the National Park Service. A reading of the various materials will not serve as a substitute for a briefing by or discussion with representatives of the Solicitor's Office or Department of Justice officials. However, a thorough understanding of the subject matter discussed in the articles will provide the manager or planner with the background needed to insure that the briefings and discussions are more meaningful and productive.

Thomas W. Lucke, Chief, Division of Environmental Coordination, Southwest Region, US National Park Service, Santa Fe, New Mexico, USA.

AN OUTDOOR LABORATORY

The Indiana Dunes

EDITOR'S NOTE: The following is reprinted from the June issue of the *Save the Dunes Council Newsletter*. It was written by Florence Broady and presents a lively look at the history of the Indiana Dunes plus a reference to the famous father of GWS member Dr. Charles E. Olmsted III (University of Northern Colorado). She also refers to *Sacred Sands*, a new book by another GWS member, J. Ronald Engel (Meadville/Lombard College, Chicago), a book well worth one's time (distributed by Harper and Row, 352p.). Indiana Dunes Superintendent Dale Engquist points out that the fourth paragraph is "probably legendary" but the grain of truth is at least as alive there as it is in the apocryphal story of the Yellowstone campfire—a legend that served the National Park Service well for a long, long time.

Dunes lovers see and feel the charm of the Indiana Dunes, the beaches, the woods, the plants and wild flowers, the sand dunes themselves, some high and spectacular, others low and manageable. But how many can tell why 10 leading European scientists visiting the United States in 1913, when asked what they would most like to see, the four sites named were: The Grand Canyon, Yosemite, Yellowstone Park and the Lake Michigan dunes? Professor Henry Cowles who shepherded them on their trip, after having visited dunes sites in Europe, was in his element, and the group tramped happily far and