

UC Berkeley

The George Wright Forum

Title

The National Park Service in Law Reviews and Law Journals

Permalink

<https://escholarship.org/uc/item/3q73s9sp>

Journal

The George Wright Forum, 2(3)

ISSN

0732-4715

Author

Lucke, Thomas W.

Publication Date

1982-06-01

In Law Reviews and Law Journals

Thomas W. Lucke

On June 22, 1982, at Hearings on the proposed National Park System Resources Evaluation and Management Act of 1982 before the subcommittee on Public Lands and National Parks, Nathaniel P. Reed recommended legislation to "broaden the training of park leaders and the ranger force." He went on to state that park managers and rangers

"...need exposure to local governments, zoning and land-use techniques, principles of ecology and wildlife management, water resource management, timber management and oil and gas and mineral extraction. We need to take the blinders off the Park Service. You are asking them to react and respond to an ever-changing world to which the stereotypic Smokey Bear is an artifact."

While there is much truth in Nat Reed's recommendation, it is highly unlikely, in this period of tight budgets, that the Park Service will be able to train all of its managers and rangers in the broad range of subjects he has described. There is a definite need for this type of training; but, even if the initial hurdles of lack of training funds, travel and tuition costs were overcome, it would still take a great deal of time and money to organize courses and gather appropriate course materials designed specifically to concentrate on the unique problems that the National Park System faces.

But, to say that there are problems is not to say that training cannot take place, particularly in the area of self-education. Just a few decades ago, very few law professors, legal historians or legal commentators produced articles on the National Park System. This situation has now changed, and there is developing a rich and varied body of legal periodical literature on various aspects of the System. A thorough reading of materials readily available in law journals and law reviews is something that could be done at little or no cost and would do much to assist the park managers and rangers in becoming acquainted with the topics Nat Reed mentioned.

There follows a brief listing of various articles that have appeared in the last few years. Most items are available through local law libraries, can be obtained from the law school that produces the particular review or journal, or can be ordered on an inter-library loan basis.

The most prolific producer of legal periodical literature on the National Park System is Joseph L. Sax, Professor of Law at the University of Michigan. His writings include the following:

"Helpless Giants: The National Parks and the Regulation of Private Lands," *Michigan Law Review* 75(2):239-274. 1976.

"Fashioning a Recreation Policy for Our National Parklands: The Philosophy of Choice and the Choice of Philosophy," *Creighton Law Review* 12(2):973-985. 1978-79.

"Buying Scenery: Land Acquisitions for the National Park Service," *Duke Law Journal* 1980(4):709-740.

Professor Sax is a seasoned observer of the National Park System. His articles delve into the philosophy behind the Service, its management and land acquisition policies, and the constitutional underpinnings of many of the Service's activities.

"Private Landholdings in the National Parks: Examples from Yosemite National Park and Indiana Dunes National Lakeshore," by John F. Lambert, Jr., *Harvard Environmental Law Review* vol. 6, 1982:35-60. Using Wawona in Yosemite National Park and Beverly Shores in Indiana Dunes National Lakeshore as his primary examples, John Lambert discusses the questions and problems surrounding "inholdings" of privately owned parcels of land located within park boundaries. He is critical of the recently proposed Land Protection Policies and feels that prompt fee simple acquisition is the only viable course of action from both economic and preservation perspectives.

"Mining and the National Park System," by Eva Novak, *Journal of Energy Law Policy* 2(2):165-179. 1982. In this article, Eva Novak discusses the concerns and issues that lead to the passage of the Mining in the Parks Act of 1976. The effects of the act and its regulations are explored as are the extent of mining claims and mineral production on NPS lands.

"In Defense of Federal Parks Near Urban Areas," by Jerome C. Tinianow, *Natural Resources Lawyer*, XIV(3):567-588. 1982. In an era of tight budgets and huge deficits, urban parks are viewed by many as an obvious target for the budgeting ax. Jerome C. Tinianow reviews the development of the urban parks movement in the context of the history of the National Park System. He defends Federal ownership of urban areas such as Santa Monica Mountains NRA, Cuyahoga Valley NRA and Jean Lafitte National Historical Park, and he concludes that continued Federal ownership and operation of such parks serves the national interest.

"The Alaskan National Monuments of 1978: Another Chapter in the Great Alaskan Land War," by Regina Marie Hopkins, *Boston College Environmental Affairs Law Review*, 8(1):59-87 (1979); and "Preservation and Strategic Mineral Development in Alaska: Congress Writes a New Equation," by Jerry R. Fish, *Environmental Law*, 12(1981):137-196. The path that eventually lead to the passage of the Alaska National Interest Lands Conservation Act was long and tedious. These two articles speak to two important milestones along that path. The former deals with President Carter's use of the Antiquities Act of 1906 to attempt to resolve

the Alaskan lands question, while the latter analyzes the compromises reached between those who desired to preserve entire ecosystems in a completely natural state and those who wanted complete discretion to mine the vast amounts of strategic minerals located in Alaska.

"The Clean Air Act Amendments of 1977 and the National Parklands," by Robert Maynard, *University of Michigan Journal of Law Reform* 11(2):290-316 (1978); and "Land-Use Implications of the Clean Air Act for the Mountain West: The Utah Example," by Ralph E. Becker, Jr., *Journal of Contemporary Law* 5(1):127-174 (1978). Both of these articles discuss the Clean Air Act Amendments of 1977 by which Congress attempted to resolve the conflict between industrial development and the preservation of national park lands. "Prevention of Significant Deterioration in Air Quality" and "Visibility Protection" are analyzed, and their land use implications are discussed.

"The National Park Idea: A Perspective on Use and Preservation," by Gerald H. Suniville, *Journal of Contemporary Law* 6(1):75-91. (1979.) This article is another look at the conflict between the dual National Park Service mandates of resource preservation and visitor use. Mr. Suniville's conclusion is that the type and level of use allowed in national parks should be compatible with the underlying philosophy which lead to the establishment of national parks: the elevation of the natural elements of the park above the artificial, mechanical and urbanized concoctions of man.

"Federal Groundwater Rights: A Note on Cappaert v. United States," by Charles J. Meyers, *Land and Water Law Review*, XIII(2):377-387 (1978); and "The Rainbow Bridge Case and Reclamation Projects in Reserved Areas," by John B. Draper, *Natural Resources Journal*, 14(1974):431-445. The future of many National Park Service areas, particularly those in the western portions of the United States, will be measured in acre-feet. Agriculture, municipalities and industry daily increase their demands for water. These two articles, the former dealing with water rights at Death Valley National Monument and the latter with water use at Rainbow Bridge National Monument, discuss the type of conflicts that are sure to increase in arid portions of the United States as the battles over water rights and water use intensifies.

"Parks to the People: New Directions for the National Park System," by J. William Futrell, *Emory Law Journal*, 25(1976):255-316; and "New Directions for the National Park System: The Proposed Kansas Tallgrass Prairie National Park," by George Cameron Coggins and Michael McCloskey, *Kansas Law Review*, 25(4):477-543, 1977. The days of acquiring large areas such as Yosemite and Yellowstone national parks are gone. Will the National Park System cease to expand, or are there alternatives? These two articles, the former using Chattahoochee River National Recreation Area and the latter using the proposed Kansas Tallgrass Prairie National Park as examples, discuss ways in

which the System can continue to grow and continue to serve an important role in these ever-changing times.

Some law review articles deal comprehensively with very narrow topics or areas of specialized concern. Nonetheless, they can give insights into how parallel or similar issues or situations can be handled. Examples of such articles are:

"State Ownership in the Marginal Sea Around the Channel Islands National Monument," by James R. Keller, *Urban Law Annual*, 18: 313-329 (1980).

"The Second Battle of Gettysburg: Conflict of Public and Private Interests in Land Use Policies," by Charles E. Roe, *Environmental Affairs*, 2(1972):16-63.

"The National Park Service's Master Plan: An Unconstitutional Delegation of Legislative Power?" by David A. Williams, *New England Law Review*, No. 11(1975):7-24.

"The Grand Canyon National Park Enlargement Act: Perspectives on Protection of a National Resource," by Kendra Shawne McNally, *Arizona Law Review*, 18(1976):232-270.

"New Jersey's Pinelands Plan and the 'Taking' Question," by Roger A. Greenbaum, *Columbia Journal of Environmental Law*, 7:227-249.

"The Criminal Law Enforcement Authority of Park Rangers in Proprietary Jurisdiction National Parks—Where is it?" by James F. Watts, *California Western Law Review*, 1976-1977:126-152.

Reading through a number of law review articles, of course, will not make managers their own lawyers. However, such background reading will acquaint them with terms, concepts and language of the legal profession so that they will be better prepared to deal more effectively with Solicitors, U. S. Attorneys, the Department of Justice, U. S. Magistrates and Judges. While the law review articles do NOT represent the official position of the National Park Service or the Department of the Interior, hopefully, the managers who take the time to make the effort to read them will become more effective in this litigious period of National Park Service history.

THOMAS W. LUCKE is Chief, Division of Environmental Coordination, Southwest Region of the U. S. National Park Service, Santa Fe, New Mexico.