

2 Reviews

NPS Legislation Reinterpreted

In the Fall, 1984, issue (Vol. 15, No. 1, pp. 41-66) of *Environmental Law* (Northwestern School of Law of Lewis and Clark College), there appeared an article entitled "A Reinterpretation of National Park Legislation" by John Lemons, Ph.D, Associate Professor of Environmental Studies at Sweet Briar College, and Dean Stout, J.D.

The two authors delve into legislative history and court opinions in an attempt to shed light on what most employees and followers of the National Park Service have often read about and more often have discussed: the dilemma over the competing goals of park use versus park preservation enunciated in the 1916 Organic Act. Their conclusion is that "the most basic fiduciary duties of the NPS are to reduce development and promote preservation of resources." As they interpret the Organic Act, these basic duties have three basic objectives which are:

- to conserve the scenic, natural, historic and biotic values of parks;
- to promote enjoyment of park resources by the public; and
- to provide for public enjoyment of park resources so that these resources are left unimpaired for future generations.

The article deals briefly with the litany of internal threats caused by overuse and overdevelopment facing the natural, cultural and recreational resources of the National Park System today. The State of the Parks Report, Cahn's "Will Success Spoil the National Parks?" and other documents describing internal park threats are briefly mentioned to set the scene. The authors also list various park developments such as luxury hotels, swimming pools, tennis courts, bars, apparel stores, etc., which the authors obviously include under the rubric of "park threats."

Next, the authors review the traditional interpretation of the preservation versus use dilemma. Because government agencies attempt to take a middle-of-the-road approach, the authors claim it is not at all surprising that the NPS has avoided limiting access to parks whenever possible. They review the period in NPS history when tourism was promoted to gain political support for parks, and they view certain NPS launched development programs as methods to make parks more accessible and to increase visitor facilities.

In addition, the authors feel that influential members of the conservation community did not foster the preservation mandate in their writings. They specifically cite Joseph Sax who, in his *America's National Parks*, maintains that the statutes are of very little help in balancing preservation and use, and A. Runte who, in his *National Parks: The American Experience* indicates that because the legislation does not adequately define the purpose of parks, it cannot be used to resolve conflicts.

From these introductory sections, the authors turn to the Organic Act, its legislative history and court opinions to develop their own interpretation of the Park Service mandate. They provide an interpretation that strongly supports the preservation of park resources. In Lemons and Stout's view, Congressional intent does permit the accommodation of visitors, but with two significant conditions:

- (1) Visitor enjoyment must be enjoyment of park

resources and not enjoyment of luxury hotels, tennis, golf or other non-resource-related activities; and (2) visitation must not impair park resources. For them, visitor use and enjoyment is legitimate only when it is limited to those activities which do not cause impairment. Their interpretation alleges that resource impairment would violate the fundamental purpose of parks, i.e., strict and uncompromising preservation.

The article is well-documented and well-written. The authors obviously have researched their topic well, and those interested in the future of the National Park System would do well to give it a thorough reading. The authors state that the article "is intended to stimulate discussion and clarification of park legislation." It is sure to do just that.

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