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## Foreword

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## FOREWORD

STEWART L. UDALL

The essays in this volume validate the truth of Justice Holmes' maxim that the "life of the law has not been logic but experience." Contrary to legend, the National Park idea did not emerge full-blown when Congress created Yellowstone Park as a public "pleasuring ground" in 1872. The concept we honor today is a component of our national experience which offers many insights about the evolution of American democracy and American law.

Any policy that expresses elements of a nation's ethos changes over time. The concept of nature preserves first proposed by George Catlin, Ralph Waldo Emerson, and Henry Thoreau was simplistic and vague. None of these visionaries realized that laws embracing conceptions of public ownership and management of specific lands would be imperative if their dreams were to be fulfilled. Nor could they envision that the managers of such reserves would face complex problems of stewardship as they confronted pressures from park patrons, the findings of future scientists, and the intrusions generated by the machines of modern technology.

It is important to remember that the laws which created the first National Parks in the West did little more than fix boundaries and set forth hortatory recitals about the purposes for which these reserves were created. Since most of the initial parks were located in remote wildernesses, for a half century the Congress saw no need to appropriate funds to protect or manage these lands.

John Muir, the founder of the Sierra Club of California, had long argued that the parks would never be treated as inviolate sanctuaries unless there was "legislative interference." The Organic Act of 1916 met most of Muir's specifications. This landmark law was rooted in tenets of resource management developed by the nascent conservation movement, and it provided a legal foundation which enabled our park system to become a model for other nations.

However, the most important issue facing the Congress involved the need to provide clear guidelines for park stewardship. With what can only be described as masterful evasion, the authors of the 1916 Act passed the buck by fashioning the now famous use-but-do-not-impair dictum which, to this day, bedevils the decisionmaking of American park managers. (Professor Robin Winks's analysis of the effect of this "contradictory mandate" provides a valuable centerpiece to this volume.)

A period of relative quiet followed until the 1960's when a tidal wave of events brought changes that made park management more complex, enlarged the reach of the nation's legal system, and fostered the emergence of a new discipline called environmental law. In 1961 when I became Secretary of the Interior there were no environmental lawyers and environmental law was not a

subject taught in law schools.

A list of the developments that altered the matrix of policymaking and changed the politics of conservation must include:

- Leadership in Washington that enlarged the mission of the Park Service by adding a necklace of National Seashores and Lakeshores to the System. In the process of creating these new parklands Congress wrote statutes that described in detail how these new areas were to be administered.
- The publication in 1962 of Rachel Carson's seminal book, *Silent Spring* introduced fresh insights and values that quickened ecological thinking and became the spearpoint of what was soon described by Americans as the environmental revolution.
- When it approved John F. Kennedy's Cape Cod National Seashore legislation, Congress broke the hidebound "not a scent for scenery" policy and began appropriating hundreds of millions annually to acquire lands for parks in all parts of the country. This was a move that, in due course, stripped the "Western" label from the National Park System and led to major additions to that system located east of the Mississippi river.
- The acceleration of environmental action brought to the forefront new, vibrant citizen organizations like The Nature Conservancy, and sparked the creation of aggressive national environmental law groups such as the Environmental Defense Fund and the Natural Resources Defense Council.
- A landmark decision by the United States Supreme Court gave aggrieved groups of citizens access to the courts where they could force government agencies to enforce existing laws and challenge decisions made by wrongheaded federal officials.
- The enactment of a National Environmental Policy Act, with its requirement that government entities prepare environmental impact statements, instituted a planning process which revolutionized decisionmaking in federal agencies and, in effect, gave environmental lawyers power as citizen "Attorneys General" to compel public officials to carry out mandates embedded in the growing body of environmental laws.
- During this same period, big increases in visitation and the growing impacts and intrusions of mechanized forms of recreation (polluting autos, dune buggies, helicopters, airplane tours, etc.) confronted harried park administrators with complex decisions about (a) allowable "uses" relating to the carrying capacity of particular parks; and (b) methods to faithfully implement the "maintain unimpaired" injunction in the Organic Act of 1916.

The essays in this volume convey the message that the conflicts over the policies that determine the quality of stewardship that prevails in our National Parks are not abating. Indeed the available evidence tells us that our national treasures are beleaguered today by myriad threats. Auto emissions damage

trees in Sequoia. Oil, mining, and logging companies encroach on the borders of some parks. Geothermal development outside Yellowstone poses a threat to geysers inside. Tour companies, cruise ships and air charter firms hard-sell parks to increase their profits while noisy overflights of the Grand Canyon are marketed in Las Vegas as a break from blackjack.

Meanwhile, the Park Service has its own troubles. Never adequately funded, it now has a \$2 billion backlog in deferred maintenance and infrastructure needs. In the age of ecology, good science is the backbone of good management, but the Service's science program remains an embarrassment. Some poorly paid summer rangers now qualify for food stamps. And intrusions by heavy-handed members of Congress and by political hacks in Washington demoralize the agency's dedicated and competent staff.

Now, perhaps more than at any time in history, our Park Service needs strong leadership, assiduous, ardent support from the American people, and levels of funding that will enable it to meet the challenges that lie ahead.

*Santa Fe, New Mexico  
April, 1997*

