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# The National Park Service at 100

Donald J. Hellmann

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## THE NATIONAL PARK SERVICE AT 100

*Donald J. Hellmann \**

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## I. INTRODUCTION

The evening of August 25, 1916, a twenty-six-year-old law student and legal assistant at the U.S. Department of the Interior, Horace Albright, went to the Capitol to meet with the congressional enrolling clerk. As the clerk was preparing to send the army appropriations bill to the White House for the president's signature, Albright persuaded him to, "Be a good fellow and stick the Parks Act in the same envelope."<sup>1</sup> Around 9 p.m. that evening, the legislative clerk at the White House, whom Albright had befriended, called to inform him that President Woodrow Wilson had signed the bill to create the National Park Service.<sup>2</sup> The White House clerk secured the pen the president used in signing the bill so Albright could present it to Stephen Mather, for whom Albright was working at the time in the department, and who would later agree to be the first director of the National Park Service.<sup>3</sup>

That evening 100 years ago was the start of a federal agency that would be changed over the next century from one that managed a small number of natural areas in the western United States to one with responsibility for over 410 diverse parks in all 50 states and several territories, along with many grant and technical assistance programs that would touch communities in every corner of the nation. This article will examine the key moments in our history as Congress developed and expanded the mission of the National Park Service, beginning with the first efforts to protect lands within Yosemite Valley in California, and including the actions of several of our presidents through the use of the

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1. Horace M. Albright as told to Robert Cahn, *The Birth of the National Park Service, The Founding Years, 1913-33*, 16-18, 42-43 (Howe Brothers, Salt Lake City, an Institute of the American West Book, 1985). Horace Albright had completed two years at the University of California, Berkeley Law School at the time he was asked to accompany Adolph C. Miller, who was to be an assistant to the Secretary of the Interior Franklin K. Lane, to Washington, D.C. See *id.* at 1-2. After agreeing to accompany Miller, Albright later enrolled in Georgetown University Law School where he completed his law degree and passed the bar exam for both the District of Columbia and the State of California. See *id.* at 11-13.

2. See *id.* at 43; The law establishing the National Park Service is the Act of Aug. 25, 1916, ch. 408, 39 Stat. 535, (1916) (codified at 54 U.S.C. § 100101, 100301 (Supp. II 2014)).

3. ALBRIGHT, *supra* note 1, at 43, 60. See also the list of the 18 men and woman who have served as directors of the National Park Service. *Directors of the Nat'l Park Serv.* NAT'L PARK SERV. <http://www.nps.gov/parkhistory/hisnps/NPSHistory/directors.htm>.

Antiquities Act to create new parks. This Article also will highlight the contributions made by significant individuals in our legislative and executive branches of government who helped make the agency a leader in the protection of our country's natural and cultural resources.

The Article traces the evolution of the National Park Service over its first 100 years, as the number of sites included in the national park system increased and as new responsibilities beyond the parks were assigned to the Park Service. It does so in a way that permits a detailed view of the legislative struggles and compromises that led to the enactment of the many bills that contributed to the growth of the national park system and that allowed the Park Service to work outside of the parks to help states and local communities preserve their historic fabric. It is clear that Congress will continue to authorize inclusion of more areas in the national park system and will continue to ask the Park Service to be the leader in preserving our nation's natural, historic, and cultural resources.

In its first century, management of the parks has varied with some sites being managed solely by the National Park Service and with others being managed through partnerships with local communities or non-profit organizations. There also have been times where Congress has directed specific ways to manage these parks. Further, the Park Service has been asked to share this management expertise by assisting state and local governments with resource preservation and the creation of recreational opportunities in neighborhoods where people live. Additionally, the Park Service is providing a leadership role in helping other countries in their efforts to preserve their natural and cultural resources through the creation of protected areas modeled on our national parks.

The Article concludes with observations on the two primary challenges facing the National Park Service as it moves into its second century—providing funding for the national park system and keeping the national parks relevant to succeeding generations of Americans.

The significant legislative and executive milestones of the history of the National Park Service are organized as follows: Sections II and III look at some of the initial areas Congress and our presidents set aside for preservation and the difficulties in managing those lands that led to the creation of the National Park Service. Section IV discusses the growth of the national park system in its first 50 years of the National Park Service to include areas beyond the great western parks. Sections V and VI show how the nation's new environmental awareness contributed to the expansion of the national park system, along with efforts to protect

nationally significant rivers, trails, and wilderness area. This awareness also led to new laws to protect our air, water, plants, and wildlife and a declaration by Congress that united all parks and their resources into one national park system. Section VII discusses the efforts of Congress to create parks in urban areas and to provide new ways to preserve our nation's historic resources while increasing the profile of some of the parks internationally through their nomination to the World Heritage Convention. Section VIII delves into the controversial and protracted effort to establish national parks in the state of Alaska, which doubled the size of the national park system. Sections IX and X discuss, beginning with President Ronald Reagan's Administration, the attempts made to limit the expansion of the national park system and the authorities by which some park units could be created, at the same time Congress was adding parks to the system, including wide expanses of the California desert. Section XI focuses on the conflicting efforts by Congress in the past couple of decades to consider closing some parks at the same time others were being created. Section XII will discuss how the management of national parks was affected by actions of Congress and various political appointees of President George W. Bush's Administration. Section XIII analyzes legislation passed by Congress during the administration of President Barack Obama as the National Park Service moved toward its Centennial in 2016. Finally, Section XIV discusses the challenges that await the National Park Service as it embarks on its second century of existence and continues to evolve.

## II. PROTECTING AREAS AS NATIONAL PARKS

Well before the passage of the 1916 law that created the National Park Service, Congress took legislative action to provide federal protection to some areas of our country, many of which would eventually be managed as part of the national park system. These areas were primarily lands in the western United States and lands that preserved some of the Civil War battlefields. In 1906, Congress passed the Antiquities Act, which would permit the President to act by public proclamation to designate historic landmarks, structures, and other objects of historic or scientific interest, as national monuments. Many of these early actions taken by Congress and our presidents to preserve lands would provide the foundation for the establishment of the National Park Service.

When the delegates met in Philadelphia and drafted our Constitution, there was no mention of preserving lands or historic places

for the American people. Article I, section 8, identifies a legislative power of the Congress to “. . . provide for the common Defence and general Welfare of the United States;. . . And, To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers,. . .”<sup>4</sup> This broad language would later be cited by the U.S. House of Representatives in its committee reports as the authority by which Congress could establish new units of the national park system.<sup>5</sup> If you asked some employees of the National Park Service today when the first national park was created and which individuals were behind this effort, you likely would receive different responses as to which park was first and few indications as to the responsible parties. Some may suggest that as early as 1790, Congress began protecting areas as parks when the District of Columbia was established as the seat of government, and accommodations were provided for the president.<sup>6</sup> Various parcels of land in this new seat of government later would become some of the most well-known and heavily visited components of the national park system such as the White House, the National Mall, and other memorials located within the Mall and throughout the city.<sup>7</sup>

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4. U.S. Const. art. I, § 8. cl. 2 and 18.

5. One of the changes instituted by the Republicans in the House of Representatives at the beginning of the 105<sup>th</sup> Congress in 1997, was to require committees to include in a committee report on a bill, a constitutional authority statement “citing the specific powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *See* H. Res. 5, 105th Cong., § 13 (1997). When the Republicans resumed the majority in 2012, the House adopted an amendment to House Rule XII, adding clause 7(c) that required all bills introduced in the House to include “a statement citing as specifically as practicable the power or powers granted to Congress in the Constitution to enact the bill or joint resolution,” and that removed the requirement for a committee report to cite this authority; *See also* H. Res. 5, 112th Cong., § 2(a) (2011). This rule continues today; *See also* Rule XII, 7(c)(1), *Rules of the House of Representatives*, 114th Cong., (Jan. 6, 2015).

6. Article I, section 8 of the Constitution authorized Congress to create a “. . . District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of Government of the United States. . .”. *See* U.S. Const. art. I, § 8, cl. 17. This was implemented through the Act of July 16, 1790, ch. XXVIII, 1 Stat. 130 (1790), where the President was authorized to appoint three Commissioners to define the land that became our seat of government. The White House was made part of the national park system by P.L. 87-286, 75 Stat. 586, (1961)(codified at 3 U.S.C. § 110 note)(2012). First Lady Jacqueline Kennedy began the effort that led to restoration of the White House and to its eventual inclusion within the National Park System. *See The White House Restoration*, JOHN F. KENNEDY PRESIDENTIAL LIBRARY AND MUSEUM, <http://www.jfklibrary.org/JFK/JFK-in-History/The-White-House-Restoration.aspx>. For a complete list of units of the National Park System and the years of their establishment, *See* Nat'l Park Service, *Important Anniversaries and Dates of Designation for National Park Service Units*, U.S. DEPT. OF THE INTERIOR (last updated Dec. 28, 2015), [https://www.nps.gov/aboutus/upload/NPS\\_Anniversaries\\_2016.pdf](https://www.nps.gov/aboutus/upload/NPS_Anniversaries_2016.pdf).

7. Today, the White House, the National Mall, and over 20 memorials and other sites found within the District of Columbia are components of the national park system. *See* Nat'l Park Service, *Important Anniversaries and Dates of Designation for National Park Service Units*, U.S. DEPT. OF

Others would point to the Hot Springs Reservation in 1832 as the beginning of congressional efforts to protect special places, where the act required that these springs “shall be reserved for the future disposal of the United States. . .”<sup>8</sup> Some may offer that it was in 1864, when President Abraham Lincoln signed legislation to protect the headwaters of the Merced River and part of the Sierra Nevada mountains known as “Yo-Semite valley” and to transfer the land from the federal government to the State of California.<sup>9</sup> This legislation had been sponsored by Senator John Conness of California, at the request of “various gentlemen of California, gentlemen of fortune, of taste, and of refinement” because “(t)he property is of no value to the Government.”<sup>10</sup> That view would change when California re-granted this land to the United States, and when Congress made the land and part of the forest lands that had been reserved in 1890, the new Yosemite National Park.<sup>11</sup>

Following the 1864 legislation to protect certain lands in Yosemite Valley, Congress would preserve some of the most iconic lands within our nation as national parks. Because Yosemite did not become a permanent part of the national park system until 1890, Yellowstone National Park is seen by many as the first national park. It was set aside “as a public park or pleasuring-ground for the benefit and enjoyment of the people. . .” and came about through the efforts of Senator Samuel Pomeroy (R-KS), the chairman of the Senate Public Lands Committee.<sup>12</sup> Similar to Yosemite, the lands were set aside not only because of their beauty, but also potentially for later use. During the House debate on the bill, Representative Henry Dawes (R-MA) noted that the purpose of the

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THE INTERIOR (last updated Dec. 28, 2015), [https://www.nps.gov/aboutus/upload/NPS\\_Anniversaries\\_2016.pdf](https://www.nps.gov/aboutus/upload/NPS_Anniversaries_2016.pdf).

8. Act of Apr. 20, 1832, ch. 70, 4 Stat. 505 (1832). Hot Springs later would be re-designated as Hot Springs National Park by the Act of Mar. 4, 1921, ch. 161, 41 Stat. 1407 (1921)(codified at 16 U.S.C. §361 (2012)).

9. Act of June 30, 1864, ch. 184, 13 Stat. 325 (1864) (codified at 16 U.S.C. § 46 (2012)).

10. CONG. GLOBE, 38th Cong., 1st Sess. 2300-01 (1864).

11. 1905 Cal. Stat., p. 54. Act of Oct. 1, 1890, ch. 1263, 26 Stat. 650 (1890) would set aside key tracts of land as forest reservations under the control of the Secretary of the Interior. Congress would accept the re-granted lands from the State of California, add them to the forest reservation set aside in 1890, and declare that the lands would be known thereafter as “Yosemite National Park.” Act of Feb. 7, 1905, ch. 547, §1, 33 Stat. 702 (1905) (codified as amended at 16 U.S.C. § 46 (2012)).

12. Act of Mar. 1, 1872, ch. 24, 17 Stat. 32 (1872). Senator Pomeroy introduced Senate bill 392 on December 18, 1871 to establish Yellowstone National Park (CONG. GLOBE, 42nd Cong., 2nd Sess. 159 (1872) and managed the floor debate where Senator George Edmunds (R-VT) noted that the lands are “so far elevated above the sea that (the park) cannot be used for private occupation at all, and Senator Cole argued that if it “cannot be occupied by man, why protect it from occupation?”. CONG. GLOBE, 42nd Cong., 2nd Sess. 697 (1872).

bill was “to preserve that country from depredations, but to put it where if the United States deems it best to appropriate it to some other use it can be used for that purpose.”<sup>13</sup>

Other iconic parks would follow Yellowstone including Sequoia, Yosemite, and Mt. Rainier as well as some battlefield sites from the Civil War.<sup>14</sup> At the same time, a movement was growing to protect archeological resources that were subject to destruction and plundering, particularly in the Southwestern United States. A petition was presented to Senator George Frisbie Hoar (R-MA) by members of the New England Historic Genealogical Society and the senator brought it to the Senate’s attention.<sup>15</sup> No action resulted, but seven years later in 1889, again at the request of Senator Hoar, Congress acted to preserve the Casa Grande Ruins in Arizona.<sup>16</sup>

Until more permanent solutions were found to the destruction of similar sites, the General Land Office of the Interior Department made temporary withdrawals of certain public land from settlement, excavation, plundering, or sale.<sup>17</sup> Congress had three proposals put forward in 1900 to protect a wide range of historic and natural areas, and for six years, variations of the legislation were presented to give the president wide authority to reserve these areas for the public.<sup>18</sup> But differences among the Interior Department, the Smithsonian Institution, and the Bureau of Forestry in the Department of Agriculture about which agency would ultimately be responsible for protecting areas reserved for the public led to inaction.<sup>19</sup>

Finally, in 1906, the Department of the Interior, through the efforts of Edgar Lee Hewitt, presented a bill to Representative John F. Lacey

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13. CONG. GLOBE, 42 Cong., 2nd Sess. 1243 (1872)

14. Sequoia National Park was established by the Act of Sept. 25, 1890, ch. 926, 26 Stat. 478 (1890) (codified as amended at 16 U.S.C. § 41 (2012)); Mr. Rainier National Park was established by the Act of Mar. 2, 1899, ch. 377, 30 Stat. 993, (1899)(codified at 16 U.S.C. § 91 (2012)); and the national cemetery at Antietam Battlefield was established by the State of Maryland in 1865, transferred to the War Department in 1877, with Congress authorizing federal funds for the preservation of lands that would protect the lines of battle in 1890. For a discussion of this site and other Civil War battlefield sites, *See Nat’l Park Serv., Proclamations and Orders Relating to the National Park Service, January 1, 1945 to January 20, 2001* (2004), U.S. Dept. of the Interior, 595-603, 575. <https://www.nps.gov/subjects/legal/proclamations-and-orders-volume-2.htm>.

15. UNIV. OF ARIZONA PRESS, *THE ANTIQUITIES ACT, A CENTURY OF AMERICAN ARCHAEOLOGY, HISTORIC PRESERVATION, AND NATURE CONSERVATION* 18 (David Harmon, Francis McManamon, & Dwight Pitcaithley eds., 2006). 13 CONG. REC. 3777 (1882).

16. Act of Mar. 2, 1889, ch. 411, 25 Stat. 961 (1889). Senator Hoar presented the petition to Congress on Feb. 4, 1889. 20 CONG. REC. 1454 (1889).

17. UNIV. OF ARIZONA PRESS, *supra* note 15 at 27.

18. *See* UNIV. OF ARIZONA PRESS, *supra* note 15, at 30.

19. *See* UNIV. OF ARIZONA PRESS, *supra* note 15, at 31.



(R-IA), Chairman of the House Committee on Public Lands, who introduced the legislation that was to become known as the Antiquities Act.<sup>20</sup> The legislation would be approved by both houses of Congress with little change and would be signed into law by President Theodore Roosevelt.<sup>21</sup> The president sent Representative Lacey a note of commendation for his efforts, and six months later in December, 1906, the president designated the Petrified Forest in Arizona as a national monument—an area Representative Lacey was determined to preserve as a national park.<sup>22</sup>

The Antiquities Act gave the president “discretion to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments. . .” and to accept donations of private lands for similar purposes.<sup>23</sup> President Roosevelt designated the first national monument at Devil’s Tower, Wyoming, on September 24, 1906.<sup>24</sup> While the Antiquities Act limits these monument designations “. . .to the smallest area compatible with the proper care and management of the objects to be protected. . .”, the language did not limit Roosevelt in his use of this authority.<sup>25</sup> On January 11, 1908, President Roosevelt proclaimed the Grand Canyon National Monument, which incorporates most of the land that is known as Grand Canyon National Park today.<sup>26</sup> Other presidents following him would make good use of this authority to preserve many cultural, historic, and natural sites that would become part of the national park system over the next decade.<sup>27</sup>

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20. Representative Lacey introduced H.R. 11016 on Jan. 9, 1906, 40 CONG. REC. 883 (1906).

21. UNIV. OF ARIZONA PRESS, *supra* note 15, at 31. See Act of June 8, 1906, ch. 3060, 34 Stat. 225 (1906) (codified as amended at 54 U.S.C. § 320301 (Supp. II 2014)).

22. UNIV. OF ARIZONA PRESS, *supra*, note 15 at 61. See Proclamation No. 697, *reprinted in* 34 Stat. 3266 (1906).

23. Act of June 8, 1906, *id.*

24. Proclamation No. 658, *reprinted in* 34 Stat. 3236 (1906).

25. Act of June 8, 1906, *id.*

26. Proclamation No. 794, *reprinted in* 35 Stat. 2175 (1908).

27. The only Presidents since Theodore Roosevelt who have not used the Antiquities Act authority to preserve lands for public use are Presidents Nixon, Reagan, and George H.W. Bush. President Nixon issued a proclamation to designate the Lady Bird Johnson Grove in Redwood National Park, but the land designated was already part of the park and he did not use the Antiquities Act authority to issue this particular proclamation. See Proclamation No. 3925, 34 Fed. Reg. 13903 (1969)).

### III. ESTABLISHING THE NATIONAL PARK SERVICE

Managing the parks that had been set aside by Congress, and later by the president through the Antiquities Act, proved to be challenging. A jurisdictional split among the Departments of the Interior, Agriculture, and War emerged mainly due to lack of funding and minimal communication.<sup>28</sup> For example, when Yellowstone National Park was established, no funds were provided for administration as it was expected that funding would come from concessioners paying rent.<sup>29</sup> The first appropriations for Yellowstone's preservation would not come until June 1878.<sup>30</sup> Yosemite also faced the same fate by not receiving appropriations until 1898.<sup>31</sup>

Protection of the resources of Yosemite was left to cavalry members of the War Department, aided by the Buffalo Soldiers, African-American members of the segregated regiments of the U.S. Army regiments.<sup>32</sup> Yellowstone National Park faced similar problems and relied on troops for assistance.<sup>33</sup>

The need for better protection and definition of the role of national parks became more obvious by the conflict between those who saw parks for their utilitarian purposes and those who felt conservation was their primary purpose. Secretary of the Interior Franklin K. Lane supported legislation enacted in 1913 that authorized a dam to be built in the Hetch Hetchy Valley of Yosemite National Park to supply water to the city of San Francisco.<sup>34</sup> This effort was strongly opposed by conservationists, but with little effect.<sup>35</sup>

Secretary Lane had been told about a man named Stephen Mather, who loved wilderness and climbing mountains, as someone who could potentially be the secretary's chief assistant. Lane met Mather and finding him impressive, asked for his views on the parks.<sup>36</sup> When Mather sent a written reply speaking to the parks' poor condition, Lane

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28. ALBRIGHT, *supra* note 1, at 6.

29. JOHN ISE, *OUR NATIONAL PARK POLICY, A CRITICAL HISTORY*, 20 (Henry Jarrett & Vera W. Dodds, eds., John Hopkins Press, Baltimore, 2nd ed., 1961).

30. *See id.* at 29.

31. *See ISE, supra* note 29, at 58–59.

32. ISE, *supra* note 29, at 58–59. For a discussion of the Buffalo Soldiers and the role they played in protecting the resources of Yosemite, *see* Nat'l Park Serv., *Buffalo Soldiers*, U.S. DEP'T. OF THE INTERIOR, <http://www.nps.gov/yose/learn/historyculture/buffalo-soldiers.htm>.

33. ALBRIGHT, *supra* note 1, at 23–29.

34. *See* ALBRIGHT, *supra* note 1, at 4. *See also* Act of Dec. 19, 1913, ch. 4, 38 Stat. 242 (1913).

35. ISE, *supra* note 29, at 85–96.

36. ALBRIGHT, *supra* note 1 at 15–16.

persuaded him to come to Washington to take care of the parks after offering a reluctant Horace Albright as an assistant.<sup>37</sup> As 1916 dawned, the Department of the Interior was responsible for twelve national parks and nineteen national monuments.<sup>38</sup> And yet, coordination of efforts to administer the parks was left to part-time individuals with the president's FY 1917 budget asking for only \$24,000 to support this work.<sup>39</sup>

Various organizations, such as the American Civic Association, the General Federation of Women's Clubs, the Sierra Club, and individuals such as landscape architect Frederick Law Olmstead, Jr., were supportive of the effort to establish a National Park Service.<sup>40</sup> Bills were introduced in the Senate and the House between 1911 and 1915 to create the agency, but none of them were enacted.<sup>41</sup> Senator Reed Smoot (R-UT) and Representative John F. Raker (D-CA), would again take the lead on pursuing these bills in the 64th Congress; however, because of concerns by fellow Democrats about Representative Raker and his personal problems with House leaders, Representative William Kent (I-CA) would introduce the bill favored by the Department of the Interior.<sup>42</sup>

Opposing the efforts to create the National Park Service was the Forest Service, which was part of the Department of Agriculture and which saw the potential new bureau as affecting its administration of lands reserved for forest purposes, including some of the national monuments created since the Antiquities Act was passed.<sup>43</sup> And when some committee members in the House asked Stephen Mather about this, he told them that despite the desire of some individuals to give the Park Service authority over the Forest Service monuments, the Park Service would only have jurisdiction over monuments under the Interior

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37. ALBRIGHT, *supra* note 1 at 15-16.

38. ALBRIGHT, *supra* note 1, at 32.

39. See ALBRIGHT, *supra* note 1, at 33.

40. See ALBRIGHT, *supra* note 1, at 34.

41. ALBRIGHT, *supra* note 1, at 34. See 48 CONG. REC. 363 (1912). In the 63rd Congress, the two prime sponsors of these efforts, Senator Reed Smoot (R-UT) introduced S. 826, 63rd Cong., 1st Sess. (1913), 50 CONG. REC. 162 (1913) and Representative John E. Raker (D-CA) introduced H.R. 104, 63rd Cong., (1913) 1st Sess., 50 CONG. REC. 81 (1913).

42. ALBRIGHT, *supra* note 1, at 34-35. Representative Kent would introduce four versions of the Park Service legislation, H.R. 8661 and H.R. 8668, 64th Cong., 1st Sess. (1916) 53 CONG. REC. 931 (1916); H.R. 15437, 64th Cong., 1st Sess. (1916) 53 CONG. REC. 7557 (1916); and H.R. 15522, 64th Cong. (1916 1st Sess., 53 CONG. REC. 7791 (1916). Representative Raker would introduce H.R. 434, 64th Cong., (1916), 1st Sess., 53 CONG. REC. 23 (1916); and Senator Smoot would introduce S. 38, 64th Cong., 1st Sess. (1916), 53 CONG. REC. 76 (1916).

43. ALBRIGHT, *supra* note 1, at 34, 37.

Department's care at the time.<sup>44</sup>

Members of the committee also asked about the cost of the new bureau as they sought assurances that expenditures would be limited. Mather provided those assurances, and the bill was approved by the House Committee on Public Lands.<sup>45</sup> The committee-reported bill would place all the national monuments managed by both the Department of the Interior and the Department of Agriculture under the new National Park Service.<sup>46</sup> The report accompanying the bill said the members saw a distinction between areas that were being set aside for preservation and public enjoyment as national parks and those areas that had a utilitarian purpose such as timber production in our national forests.<sup>47</sup>

However, the Secretary of Agriculture disagreed with the decision of the committee. While he supported the Interior Department having jurisdiction over larger national monuments, he believed the ones managed by the Agriculture Department should remain there and only be transferred by presidential proclamation in the future.<sup>48</sup> When the bill was debated by the House of Representatives, Representative Irvine Lenroot (R-WI) offered an amendment removing the Agriculture Department monuments from the proposed National Park Service's jurisdiction.<sup>49</sup>

The debate in the Senate was fairly swift with one amendment from Senator Clarence Clark (R-WY) adopted to prohibit grazing in national parks because of his concern about its effect on Yellowstone National Park.<sup>50</sup> Yet, the conference committee resolving the differences between the House and Senate bills decided to limit the prohibition on grazing to only Yellowstone.<sup>51</sup> The conference report was approved by the Senate and House and the bill establishing the National Park Service was signed into law on August 25, 1916.<sup>52</sup>

The proposed words of Frederick Law Olmstead defined the mission of the National Park Service, as found in the first section of its Organic Act.<sup>53</sup> The service was charged by Congress "to conserve the

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44. See ALBRIGHT, *supra* note 1, at 37.

45. See ALBRIGHT, *supra* note 1, at 37-38.

46. H.R. REP. NO. 64-700, at 3 (1916); 64 CONG. REC. 1, 3 (1916).

47. H.R. REP. NO. 64-700, at 3 (1916); 64 CONG. REC. 1, 3 (1916).

48. H.R. REP. NO. 64-700, *id.*, at 6-7 (1916).

49. 53 CONG. REC. 10364 (1916).

50. 53 CONG. REC. 12150-51 (1916).

51. H.R. REP. NO. 64-1136, at 2 (1916).

52. 53 CONG. REC. 12632, 13004 (1916); Act of Aug. 25, 1916, ch. 408, 39 Stat. 535 (1916) (codified at 54 U.S.C. §100101, 100301 (Supp. II 2014)).

53. ALBRIGHT, *supra* note 1, at 35-36. For 88 years, the Act of Aug. 25, 1916, was referred to by Park Service employees and others as the National Park Service Organic Act. However,

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.”<sup>54</sup>

It only seemed natural that Stephen Mather, who had invested so much time and energy into the passage of the park legislation, take the reins of this new bureau within the Interior Department. However, Mather’s assumption of this role was delayed for a year because of his recovery from illness.<sup>55</sup> In the interim, Horace Albright, at age twenty-seven, was asked to serve as acting director of the National Park Service until Mather recovered.<sup>56</sup>

#### IV. THE FIRST FIFTY YEARS OF THE NATIONAL PARKS

The decade following the establishment of the National Park Service saw the creation of several national parks, including Mount McKinley National Park in Alaska (now Denali National Park and Preserve), Lafayette National Park in Maine (now Acadia National Park), and Grand Teton National Park in Wyoming.<sup>57</sup> Congress also began using the national monument designation to establish parks during this period instead of reserving this particular designation for those parks established through a presidential proclamation.<sup>58</sup> Badlands National Monument (later to become Badlands National Park) was an example of this.<sup>59</sup>

Most of the large natural areas that had become parks at this time were located west of the Mississippi River. This changed in 1926 when Congress created Great Smoky Mountains, Shenandoah, and Mammoth

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section 10 of the National Park System Technical Amendments Act of 2004, P.L. 108-352, 118 Stat. 1397 (2004), officially gave the act that name, but its codification in 16 U.S.C. 1 as the name of the act was brief. At the end of the 113th Congress in December, 2014, Congress passed and the president signed P.L. 113-287, 128 Stat. 3094, (2014), which moved the National Park Service laws to title 54, United States Code, where the name of the National Park Service Organic Act remains un-codified with only a note giving an historical reference to the name.

54. Act of Aug. 25, 1916, ch. 408. *Supra* note 2.

55. ALBRIGHT, *supra* note 1, at 60.

56. *See* ALBRIGHT, *supra* note 1, at 53.

57. Mount McKinley National Park was established by the Act of Feb. 26, 1917 Pub. L. No. 96-487, ch. 121, 39 Stat. 938 (1917)(codified at 16 U.S.C. § 347 (2012)); Lafayette National Park was established by the Act of Feb. 26, 1919, P.L. 114-229, ch. 45, 40 Stat. 1178 (1919)(codified at 16 U.S.C. § 343 (2012)); and Grand Teton National Park was established by the Act of Feb. 26, 1929, P.L. 114-229, ch. 331, 45 Stat. 1314 (1929) (current version at 16 U.S.C. § 406 (2012)).

58. *See* Act of Mar. 4, 1929, Pub. L. 95-625, ch. 693, 45 Stat. 1553 (1929) (codified at 16 U.S.C. § 441 (2012)).

59. *See* Act of Mar. 4, 1929, *id.*

Cave National Parks.<sup>60</sup> These parks resulted from a concern that more parks needed to be near the population centers of the country; however, they were treated somewhat differently in that Congress expected them to be created as a result of donations.<sup>61</sup>

Within the National Park Service leadership, it was not only natural areas that were being contemplated for protection. Horace Albright was thinking much larger than this. He wanted to transfer the park areas, such as military battlefields and monuments, which were under the jurisdiction of the war department and the agriculture department, to the National Park Service.<sup>62</sup> A bill was introduced in 1928 to do just that, and it passed the Senate, but at the hearings in the House, the members of the military affairs committee looked at it skeptically as Representative Frank James (R-MI) said that “For sentimental reasons we think these parks ought to stay where they are.”<sup>63</sup> Others expressed concern that if the Park Service had control of the military parks “hot dog stands” would proliferate.<sup>64</sup>

The effort was given a boost at the end of President Herbert Hoover’s Administration when the president sent his reorganization plan to Congress, which called for the transfer of the War Department’s military parks to the National Park Service.<sup>65</sup> However, Congress passed a law that went beyond this to give the president authority to undertake a much wider reorganization of the executive branch of government as he saw fit through issuing executive orders.<sup>66</sup>

Then Director of the Park Service, Albright, obtained the support of the new Secretary of the Interior Harold Ickes, for the transfer of the military parks as a way to increase interpretation of these sites, to consolidate their management under one agency, and to make the Park Service truly national in scope.<sup>67</sup> And then fate intervened when Albright was asked to accompany President Franklin Roosevelt in April, 1933 on a trip to look at a camp that was to be made part of Shenandoah

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60. Great Smoky Mountains and Shenandoah National Parks were established by the Act of May 22, 1926, P.L. 114-229, ch. 363, 44 Stat. 616 (1926) (codified at 16 U.S.C. § 403 (2012)); and Mammoth Cave National Park was established by the Act of May 25, 1926, P.L. 114-229, ch. 382, 44 Stat. 635 (1926) (codified at 16 U.S.C. § 404 (2012)).

61. S. REP. NO. 69-824, at 1-5 (1916).

62. ALBRIGHT, *supra* note 1, at 188.

63. See ALBRIGHT, *supra* note 1, at 231.

64. ALBRIGHT, *supra* note 1, at 231. See S. 4173, 70th Cong., 1st Sess., 69 CONG. REC. 6918, 7947, 8581 (1928).

65. ALBRIGHT, *supra* note 1, at 280.

66. Act of Mar. 3, 1933, ch. 212, 47 Stat. 1517 (1933).

67. ALBRIGHT, *supra* note 1, at 285.

National Park.<sup>68</sup> Albright used the occasion to explain why the military parks needed to be managed by the Park Service, and the president agreed. He directed Albright to work with his office to implement it.<sup>69</sup> Executive Order 6166 was the result and it also turned out to be broader than originally envisioned by Albright, as it transferred 48 areas from the War Department and the Forest Service to the National Park Service.<sup>70</sup> This action was further clarified by a subsequent executive order listing the specific areas transferred to the National Park Service.<sup>71</sup>

To help the nation recover from the depression, President Roosevelt asked for the creation of a Civilian Conservation Corps (CCC) in which unemployed men would be paid to perform work in the national parks and other public lands. He asked Secretary of the Interior Ickes to work with the Labor and War Departments to make a plan for its CCC operations.<sup>72</sup> The plan was sent to Congress as part of an unemployment relief bill on March 21, 1933.<sup>73</sup> Congress acted quickly to pass the bill, which the president signed into law on March 31, 1933.<sup>74</sup> Up to a half million men would perform work under the CCC and many national parks would benefit from their labors.<sup>75</sup>

During the 1930s, Congress also gave the Secretary of the Interior a new tool to establish national historic sites across the country in a new law commonly referred to as the Historic Sites Act. This authority was similar to the Antiquities Act as it did not require subsequent congressional action. Senator Harry Flood Byrd (D-VA) introduced S. 2073, which provided for the “preservation of historic American sites, buildings, objects, and antiquities of national significance.”<sup>76</sup> In his transmittal of the legislation to Congress, President Roosevelt said the National Park Service would be charged with this new responsibility.<sup>77</sup> The bill was passed with little debate in the Senate and House and was

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68. See ALBRIGHT, *supra* note 1. at 291.

69. See ALBRIGHT, *supra* note 1 at 295-97.

70. Exec. Order No. 6166, 3 C.F.R. § 2 (1933), reprinted in 5 U.S.C. § 124-132 (1933).

71. Exec. Order No. 6228, 3 C.F.R. (1933), reprinted in 5 U.S.C. § 124-132 (1933).

72. T.H. WATKINS, *RIGHTEOUS PILGRIM, THE LIFE AND TIMES OF HAROLD L. ICKES, 1874-1952* at 337-38 (1990).

73. See WATKINS, *supra* note 72, at 339.

74. See WATKINS, *supra* note 72, at 339. See also Act of Mar. 31, 1933, ch. 17, 48 Stat. 22 (1933).

75. See WATKINS, *supra* note 72, at 339. As an example, to learn more about the work of the CCC at Prince William Forest Park during the early years of our country's recovery from the depression. See Nat'l Park Serv., *Civilian Conservation Corps*, U.S. DEPT. OF THE INTERIOR, <http://www.nps.gov/prwi/learn/historyculture/ccc.htm>.

76. S. 2073, 74th Cong., 1st Sess.; 79 CONG. REC. 2710 (1935).

77. S. REP. NO. 74-828, at 2 (1935).

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signed into law by the President on August 21, 1935.<sup>78</sup>

The Historic Sites Act not only gave the National Park Service the ability to acquire property for the preservation of historic sites, but it also authorized the service to obtain information about the sites to determine those that might be nationally significant.<sup>79</sup> Additionally, the law allowed the Park Service to work outside the boundaries of parks with states, local governments, and others to preserve historic sites and buildings and to provide educational programs to the public about these sites.<sup>80</sup> Some of our best known national historic sites started as a result of this act, including Jamestown National Historic Site in Virginia, Independence Hall National Historic Site in Pennsylvania, Minute Man National Historic Site in Massachusetts, and the Harry S. Truman National Historic Site in Missouri.<sup>81</sup>

The key to making this new authority work was the appropriation of money, which was difficult to come by during the years of recovery from the depression. Appropriations for the Park Service had been cut in 1934 more than 50 percent, and the Service had to rely on funds from many of the emergency work relief programs requested by President Roosevelt and approved by Congress.<sup>82</sup> Some of these funds were obtained through the Federal Emergency Relief Administration's program where "submarginal land" was made available for "recreational demonstration" projects that became state and local parks.<sup>83</sup> These project areas were shifted to the responsibility of the National Park Service in 1936 by President Roosevelt's Executive Order 7496.<sup>84</sup> Later, Congress would pass legislation to allow the conveyance or lease of these projects to the states or other federal agencies with the

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78. 79 CONG. REC. 8981, 12509, 13055 (1935); Act of Aug. 21, 1935, ch. 593, 49 Stat. 666 (1935) (codified at 54 U.S.C. § 320101-320102 (Supp. II 2014)).

79. See Act of Aug. 21, 1935, ch. 593.

80. See *id.*

81. 5 Fed. Reg. 5282 (Dec. 18, 1940); 8 Fed. Reg. 7283 (May 14, 1943); 24 Fed. Reg. 2997 (Apr. 14, 1959); 47 F.R. 57575 (1982). Jamestown is now part of Colonial National Historical Park. The name of the park at Independence Hall has been changed to Independence National Historical Park and the name of Minute Man National Historic Site has been changed to Minute Man National Historical Park. These changes occurred as additional buildings and lands were added to the sites. See Act of June 28, 1948, § 1, ch. 687, 62 Stat. 1061 (1948) (codified at 16 U.S.C. § 407m (2012)); and Pub. L. No. 86-321, § 1, 73 Stat. 591 (1959) (codified at 16 U.S.C. § 410s (2012)); respectively.

82. ISE, *supra* note 29, at 359-64. See also DWIGHT F. RETTIE, OUR NATIONAL PARK SYSTEM, 251 (Univ. of Ill. Press, 1st ed., 1995).

83. See ISE, *supra* note 29, at 367.

84. Exec. Order No. 7496, 1 Fed. Reg. 1946 (Nov. 18, 1936), *reprinted in* 16 U.S.C. § 459r at 344-45 (2012).



understanding that they would be used only for park purposes.<sup>85</sup> Section 2 of this legislation would specifically transfer four of the recreational demonstration projects to become part of Acadia National Park, Hopewell Village National Historic Site, Shenandoah National Park, and White Sands National Monument.<sup>86</sup>

The 1930s saw the establishment of parkways as an effort to create jobs during the depression. The parkways traversed primarily state rights-of-way, but they were constructed with federal money.<sup>87</sup> The Blue Ridge Parkway, running 477 miles between Shenandoah National Park and the Great Smoky Mountains National Park, was among the early ones created and the National Park Service was given responsibility for its administration.<sup>88</sup> This did not come about without controversy, though, when it came to providing funding for this road. When the House was debating an appropriation bill to provide \$3 million for this effort, Representative Thomas Jenkins (R-OH) noted his continuing opposition:

I said at that time and I say now that it was the most gigantic and stupendously extravagant and unreasonable expenditure made by the most extravagantly expensive administration in the history of the world. Think of it—477 miles of parkway 800 feet wide. What is it going to cost to maintain this vast parkway?<sup>89</sup>

Despite the opposition, funds were appropriated and other parkways would follow, such as the Natchez Trace Parkway, which was authorized to be administered by the Park Service in 1938.<sup>90</sup>

National Recreation Areas came to the National Park Service in the same years. The first of these was the Boulder Dam project, which later became Hoover Dam, and which formed the Lake Mead National Recreation Area. The National Park Service administered the recreational activities of the area under an agreement with the Bureau of Reclamation, which was responsible for the operation of the dam.<sup>91</sup> National seashores also joined the ranks of national park units during

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85. Act of June 6, 1942, ch. 380, 56 Stat. 326 (1942).

86. See *id.* at Stat. 327. The name of Hopewell Village National Historic Site was changed to Hopewell Culture National Historical Park by Pub. L. No. 102-294, 106 Stat. 185 (codified at 16 U.S.C. § 410uu (2012)).

87. ISE, *supra* note 29, at 415.

88. Act of June 30, 1936, ch. 883, 49 Stat. 2041 (1936) (codified at 16 U.S.C. § 460a1-3 (2012)).

89. 81 CONG. REC. 4087 (1937).

90. Act of May 18, 1938, ch. 251, 52 Stat. 407 (1938) (codified at 16 U.S.C. § 460 (2012)).

91. ISE, *supra* note 29, at 369.

this time. Cape Hatteras National Seashore in North Carolina was authorized by Congress in 1937 from over 100 square miles of the Atlantic coastline.<sup>92</sup> However, the law required the state of North Carolina to acquire the lands and then donate them to the federal government.<sup>93</sup> It would be several years before the seashore was officially established.<sup>94</sup>

When America joined World War II, the national parks were affected, as were other federal agencies, when their appropriations were cut in half even while visitation was soaring.<sup>95</sup>

The CCC camps were shuttered, tourism fell, and park employees were reduced more than fifty-five percent.<sup>96</sup> Even the Washington, D.C. offices of the Park Service were moved to Chicago in 1942 to allow military use of their space. It would not be until 1947 that these offices would return to Washington.<sup>97</sup> The military also was issued permits to use national park lands for training and other purposes with some of these activities badly damaging the parks.<sup>98</sup>

During the war, President's Roosevelt's use of the Antiquities Act would provoke a major controversy when he enlarged the existing Grand Teton National Park, an action that was vigorously opposed by local ranchers who were felt they would lose their homes and their grazing lands as well as their way of life. Horace Albright and Stephen Mather had first seen the beauty of the Grand Teton Mountains in 1916, which they described as "the Alps of America."<sup>99</sup> Albright had wanted to have part of the Grand Tetons added to Yellowstone National Park.<sup>100</sup> Some early efforts were made in Congress after 1916 to preserve the lands within the Jackson Hole valley, but local opposition from ranchers resulted in no action on the legislation.<sup>101</sup> When he later was superintendent of Yellowstone National Park, Albright relayed his dream to philanthropist John D. Rockefeller, Jr., who agreed to purchase several thousand acres to preserve the land and ultimately donate it to the federal government.<sup>102</sup> To keep his interest secret, the purchases

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92. ISE, *supra* note 29, at 425.

93. Act of Aug. 17, 1937, ch. 687, 50 Stat. 669 (1937) (codified at 16 U.S.C. § 459 (2012)).

94. ISE, *supra* note 29, at 426.

95. See ISE *supra* note 29, at 447 and RETTIE, *supra* note 82, at 251.

96. See ISE *supra* note 29, at 448.

97. See ISE *supra* note 29, at 448.

98. See ISE, *supra* note 29, at 451-52.

99. ALBRIGHT, *supra* note 1, at 39-40.

100. See ALBRIGHT, *supra* note 1, at 66-67.

101. ROBERT W. RICHTER, CRUCIBLE FOR CONSERVATION THE STRUGGLE FOR GRAND TETON NATIONAL PARK, 28-29 (Colo. Associated Univ. Press, 1982).

102. ALBRIGHT, *supra* note 1, at 164-68.

were done through a Snake River Land Company.<sup>103</sup> Ultimately, a smaller Grand Teton National Park was established in 1929 that did not include all the lands envisioned for the park.<sup>104</sup>

The dream of a larger Grand Teton National Park was still held by Albright and others, including John D. Rockefeller, Jr. When Rockefeller's association with the Snake River Land Company became public, it led to criticism of the Park Service and its dealings with the residents of the area.<sup>105</sup> Because of the opposition from local people and Wyoming Representative Frank Horton (R-WY), as well as Rockefeller's threat to dispose of the lands he had acquired, Secretary Harold Ickes and Horace Albright convinced President Roosevelt to protect over 220,000 acres of lands by establishing the Jackson Hole National Monument.<sup>106</sup> This action provoked a large outcry and Representative Frank Barrett (R-WY) introduced legislation to abolish the monument.<sup>107</sup> The bill was passed by Congress in late 1944, but was vetoed by President Roosevelt.<sup>108</sup> It would be six more years before a compromise was worked out to give Wyoming some money to replace the lost tax revenues from the lands while adding most of the national monument lands to Grand Teton National Park, except for 9,000 acres that became part of the forest service's National Elk Refuge.<sup>109</sup> More ominously, the law expanding the park included a provision that prohibited the president from using the authority of the Antiquities Act to establish new national monuments in Wyoming except by authorization by Congress.<sup>110</sup> This created a chilling effect on presidents following Roosevelt. While the Antiquities Act authority was used by

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103. RIGHTER, *supra* note 101 at 49-50.

104. ALBRIGHT, *supra* note 1, at 227-28. Act of Feb. 26, 1929, ch. 331, 45 Stat. 1314 (1929) (current version at 16 U.S.C. § 406 (2012)).

105. RIGHTER, *supra* note 101, at 66-68.

106. ALBRIGHT, *supra* note 1 at 321-22. Proclamation No. 2578, 3 C.F.R. 327 (1938 Cum. Supp.) reprinted in 57 Stat. 731 (1943).

107. See ALBRIGHT, *supra* note 1, at 321.

108. See ALBRIGHT, *supra* note 1, at 323. H.R. 2241, 78th Cong., 1st Sess. (1943), 89 CONG. REC. 2278 (1943). The House debated and passed the bill on December 8, 1944, 90 CONG. REC. 9082-9095, 9182-9196 (1944), with a surprising 142 members not voting and the Senate had no debate on the bill and passed it by voice vote on December 19, 1944, 78th Cong., 2nd Sess., 90 CONG. REC. 9769 (1944). The bill was sent to the President for his signature on December 21, 1944, after Congress had adjourned for the year, 78th Cong., 2nd Sess., 90 CONG. REC. 9805 (1944), and the President pocket vetoed the bill on December 29, 1944, 78th Cong., 2nd Sess., 90 CONG. REC. 9807 - 9808 (1944).

109. See ALBRIGHT, *supra* note 1, . at 323-324. Act of Sept. 14, 1950, ch. 950, 64 Stat. 849 (1950) (codified at 16 U.S.C. § 406 (2012)).

110. See the *proviso* at the end of the first section of the Act of Sept. 14, 1950, ch. 950, 64 Stat. 849 (1950) (codified at 54 U.S.C. § 320301(d) (Supp. II 2014)).

his successors to enlarge or modify boundaries of existing national monuments, only six new national monuments were established by presidents between 1943 and 1978.<sup>111</sup>

At the end of World War II, tourism increased again in the parks, but appropriations were inconsistent due to the war debt. This made it difficult for the Park Service to assist visitors and to protect the resources in its care.<sup>112</sup> Episodes of vandalism increased with some advocating closing parks to protect the resources within.<sup>113</sup> Congress also was looking at ways to deal with the aftermath of the war by reorganizing government. One bill gave the National Park Service a role when the Government Services Administration was created and the Secretary of the Interior was given the responsibility of transferring surplus federal property for park or recreation area use.<sup>114</sup> Since 1949, the Federal Lands to Parks Program has transferred more than 1,500 properties of over 178,000 acres to state and local governments to provide park and recreation opportunities for people across the nation.<sup>115</sup>

To help deal with the challenges facing the Park Service, a plan was created in 1955, called Mission 66, to prepare for the Park Service's 50th anniversary in 1965. Its intent was to do a study of all the problems that faced the service and to determine ways to meet the needs of the large number of visitors who were coming to the parks.<sup>116</sup> President Dwight Eisenhower's Administration was strongly supportive, and Congress joined in this effort by increasing appropriations.<sup>117</sup> Funds were allocated to upgrade staffing and to improve employee housing, to create

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111. Those six were Effigy Mounds National Monument established by President Truman, Proclamation No. 2860, 3 C.F.R. 48 (1948) *reprinted in* 64 Stat. A371 (1949); Edison Laboratory National Monument (now Thomas Edison National Historical Park) established by President Eisenhower, Proclamation No. 3148, 3 C.F.R. 36 (1957), *reprinted in* 70 Stat. 49 (1956); Chesapeake and Ohio Canal National Monument (now Chesapeake and Ohio Canal National Historical Park) established by President Eisenhower, Proclamation No. 3391, 3 C.F.R. 25 (1962), *reprinted in* 75 Stat. 1023; Russell Cave National Monument established by President Kennedy, Proclamation No. 3413, 3 C.F.R. 39 (1962), *reprinted in* 75 Stat. 1058 (1961); Buck Island Reef National Monument in the Virgin Islands established by Proclamation No. 3443, 3 C.F.R. 21 (1962), *reprinted in* 76 Stat. 1441 (1961); and Marble Canyon National Monument (now part of Grand Canyon National Park) established by President Lyndon Johnson, Proclamation No. 3889, 3 C.F.R. 26 (1970), *reprinted in* 83 Stat. 924 (1969).

112. ISE, *supra* note 29, at 455-56. *See also* RETTIE, *supra* note 82, at 251.

113. *See* ISE, *supra* note 29, at 534-35.

114. Fed. Prop. and Admin. Serv's Act of 1949, ch. 288, § 203(k)(2)(C), 63 Stat. 388 (1949) (current version at 40 U.S.C. § 550(b)(2)(2012)).

115. For more information on this program, see Nat'l Park Serv., *About Us*, U.S. DEP'T OF THE INTERIOR, (Nov. 12, 2013), [http://www.nps.gov/nrcr/programs/flp/flp\\_abt\\_us.html](http://www.nps.gov/nrcr/programs/flp/flp_abt_us.html).

116. ISE, *supra* note 29, at 547.

117. ISE, *supra* note 29, at 547; *See also* RETTIE, *supra* note 82, at 251.

visitor centers, to upgrade many park buildings and concessions facilities, and to move unnecessary facilities outside of park boundaries.<sup>118</sup>

## V. ENVIRONMENTAL AWARENESS AND OUR NATIONAL PARKS

As the Park Service moved toward its 50th anniversary, the way our nation thought about protecting our air, land, and water began to change. Perhaps no other member of the House of Representatives or the Senate was more responsible for helping to put environmental awareness at the top of the nation's political agenda than Senator Gaylord Nelson, a Democrat from Wisconsin, and the founder of Earth Day. Soon after his election to the Senate in 1962, while still governor of Wisconsin, Nelson went to Washington and discussed with President John F. Kennedy's brother, Robert F. Kennedy, a plan to have the President tour the nation while speaking about the importance of environmental issues.<sup>119</sup> Nelson used his success in establishing Wisconsin's Outdoor Recreation Act Program while he was governor and the positive results it produced in the press and among the general public, to persuade the president.<sup>120</sup>

President Kennedy announced on May 20, 1963, in a meeting with twelve national conservation leaders, that he was considering a fall tour to some of the important natural resources sites in the country.<sup>121</sup> In July, the president said he was planning a five-day tour, and he asked Senator Nelson to join him.<sup>122</sup> The senator had wanted the president to include Wisconsin in order to have him see the Apostle Islands, which had been proposed as a national park for many years. After initially excluding Wisconsin from the itinerary, the president later included it.<sup>123</sup> During the tour, the president stopped at five areas that are now part of the national park system: Apostle Islands National Lakeshore, Lassen Volcanic National Park, Whiskeytown-Shasta Trinity National Recreation Area, Lake Mead National Recreation Area, and the Hanford unit of the Manhattan Sites National Historical Park.<sup>124</sup>

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118. See ISE, *supra* note 29, at 547-50.

119. BILL CHRISTOFFERSON, *THE MAN FROM CLEAR LAKE, EARTH DAY FOUNDER SENATOR GAYLORD NELSON*, 175 (The Univ. of Wisc. Press, 2004).

120. See CHRISTOFFERSON, *supra* note 119 at 175-76 and *see also* *infra* notes 141-144 for a discussion of Wisconsin's pathmarking Outdoor Recreation Act Program.

121. Remarks to Leaders of Twelve National Conservation Organizations, 196 PUB. PAPERS 414 (May 20, 1963).

122. CHRISTOFFERSON, *supra* note 119, at 177.

123. See CHRISTOFFERSON, *supra* note 119, at 178-80.

124. See CHRISTOFFERSON, *supra* note 119, at 181-85. Apostle Islands National Lakeshore was established after Senator Nelson saw his bill, S. 621, enacted into law as Pub. L. No. 91-424, 84

While the trip appeared a success among the president's staff, Senator Nelson disagreed. He did not feel it had roused the country the way it should have, but it began an effort that led to Earth Day, which came a few years later.<sup>125</sup> Senator Nelson directed his efforts to his work on the Senate Interior and Insular Affairs Committee, which was responsible for many of the environmental issues that were his primary interest. In a committee dominated by western senators, he was the only one east of the Mississippi River.<sup>126</sup>

On the Senate Interior Committee, Senator Nelson was a participant in bills that implemented several of his environmental priorities and that became some of the most significant legislation that affected the course of the National Park Service in the years leading up to and following its 50<sup>th</sup> anniversary. These achievements began right after the senator took office in the 88th Congress, which was dubbed the "Conservation Congress."<sup>127</sup>

Legislation had been under consideration since the 84th Congress to establish a national wilderness preservation system, led initially by Senator Hubert Humphrey (D-MN).<sup>128</sup> This was followed by introduction of S. 4 by Senator Clinton Anderson (D-NM) in the 88th Congress.<sup>129</sup> The wilderness preservation legislation would designate areas in national parks and other public lands "where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain."<sup>130</sup> The bill required a review of National Park Service areas that were 5,000 acres or larger and had no roads constructed through them.<sup>131</sup> The bill also required a report to the President with recommendations for areas that would be suitable for wilderness designation.<sup>132</sup>

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Stat. 880 (1970) (codified at 16 U.S.C. § 460w (2012)); Lassen Volcanic National Park was established by the Act of Aug. 9, 1916, ch. 302, 39 Stat. 442 (1916) (codified at 16 U.S.C. § 201 (2012)); Whiskeytown-Shasta Trinity National Recreation Area was established by Pub. L. No. 89-336, 79 Stat. 1295 (1965) (codified at 16 U.S.C. § 460q (2012)); Lake Mead National Recreation Area was established by Pub. L. No. 88-639, 78 Stat. 1039 (1964) (codified at 16 U.S.C. § 460n (2012)); and the Manhattan Sites National Historical Park was established by the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, title XXX, § 3039, 128 Stat. 3784 (2014) (codified at 16 U.S.C. § 410uuu (2012)).

125. CHRISTOFFERSON, *supra*, note 119, at 185-86.

126. *See* CHRISTOFFERSON, *supra* note 119, at 172-73.

127. *See* CHRISTOFFERSON, *supra* note 119, at 266.

128. S. REP. NO. 88-109, at 7 (1963).

129. 109 CONG. REC. 190 (1963).

130. Wilderness Act, Pub. L. No. 88-577, 78 Stat. 891 (1964) (codified at 16 U.S.C. § 1131(c)(2012)).

131. *See* Wilderness Act, *id.*, at 892.

132. *See* Wilderness Act, *id.*, at 896.

Hearings were conducted on S. 4 in February, 1963 and the Senate Interior Committee reported the bill in April.<sup>133</sup> Since all of the areas eligible for wilderness designation were on federal lands, the committee said there were no new costs or administrative requirements. Wilderness areas were seen by the committee as becoming more important as recreational resources in a country of increasing population.<sup>134</sup> The committee concluded that there were some places so important that they should be protected in their natural state for their “cultural, inspirational, recreational, and scientific values”.<sup>135</sup> The bill was debated in the Senate for two days and it passed overwhelmingly on April 9, 1963.<sup>136</sup>

House action did not take place until the following year when the bill was amended and passed on July 29, 1964, with only one vote in opposition.<sup>137</sup> A conference committee fairly quickly resolved the differences between the two versions of the bill, and the conference report was adopted by the House and Senate on August 20, 1963.<sup>138</sup>

Since the passage of the Wilderness Act in 1964, over forty-four million acres of land within forty-seven national park units have been designated by Congress as wilderness. Other park lands are managed as proposed wilderness until Congress decides to act on their status.<sup>139</sup> One of the designated wilderness areas is the Gaylord Nelson Wilderness in Apostle Islands National Lakeshore in Wisconsin—the only national park wilderness area named after a United States senator.<sup>140</sup>

The 88th Congress also considered legislation that mirrored the effort Senator Nelson had made when he was governor of Wisconsin with his Outdoor Recreation Act Program. Due to a need for increased recreational opportunities, then-Governor Nelson had proposed a

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133. See S. REP. NO. 88-109, *id.*, at 1.

134. See S. REP. NO. 88-109, *id.*, at 2.

135. See S. REP. NO. 88-109, *id.*, at 2.

136. See S. REP. NO. 88-109, *id.*, at 7; 109 CONG. REC. 5754, 5885, 5922, 5943 (1963).

137. 110 CONG. REC. 17458 (1964).

138. 110 CONG. REC. 20601, 20626 (1964).

139. See <http://wilderness.nps.gov/faqnew.cfm> for additional information about park wilderness. Nat'l Park Serv. Wilderness, *Frequently Asked Questions*, U.S. DEP'T OF THE INTERIOR. See also <http://wilderness.nps.gov/tb21.cfm> for a list of the national park wilderness areas established to date. Nat'l Park Serv. Wilderness, *Legislation*, U.S. DEP'T OF THE INTERIOR.

140. The Gaylord Nelson Wilderness in the Apostle Islands National Lakeshore was authorized by Congress in the Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 3069, title 1, § 140(c) (2004) (codified at 16 U.S.C. § 1132 note (2012)). There are two national park wilderness areas named after members of the House of Representatives: the John Krebs Wilderness in Sequoia-Kings Canyon National Park, authorized by the Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, title 1, § 1902(1)(2009) (codified at 16 U.S.C. § 1132 note (2012)); and the Philip Burton Wilderness in Point Reyes National Seashore, authorized by Pub. L. No 99-68, 99 Stat. 166, § 1(a)(1986) (codified at 16 U.S.C. § 1132 note (2012)).

visionary program that provided a ten-year period to acquire lands for a variety of recreational and conservation purposes. It would be paid for by a one cent tax on a pack of cigarettes.<sup>141</sup> He presented this as an urgent priority that needed action before resources disappeared.<sup>142</sup> The bill passed the Wisconsin legislature and was signed into law by Governor Nelson on August 28, 1961.<sup>143</sup> It was noticed throughout the country as a model for conservation of our natural resources, including by Secretary of the Interior Stewart Udall, who called it “the boldest conservation step ever taken on a state level in the history of the United States.”<sup>144</sup>

The similar bill considered and enacted in the 88th Congress established a Land and Water Conservation Fund. The bill’s purpose was for acquiring lands within national parks, forests, and wildlife refuges, and for providing matching grants to states for planning, acquisition, and development of outdoor recreation. The fund would be financed through entrance and user fees, surplus property sales, and motorboat fuels taxes. The Senate bill to establish the fund was introduced as S. 859 by Senator Henry Jackson (D-WA), the chairman of the Senate Interior and Insular Affairs Committee, on February 19, 1963, at the request of President Kennedy.<sup>145</sup> Senator Nelson was an original cosponsor of the bill.<sup>146</sup> A similar bill was introduced in the House as H.R. 3846 by Representative Aspinall (R-CO), who was chairman of the House Interior and Insular Affairs Committee.<sup>147</sup>

Even though the House bill was reported from the committee on November 14, 1963, further action on the legislation would not occur until the following summer. And while there was much debate and several amendments on both the House and Senate side, it passed the House by a voice vote on July 23, 1964, and the Senate approved it by a vote of 97-1 on August 12, 1964.<sup>148</sup>

On September 3, 1964, President Lyndon Johnson signed into law both the Wilderness Act and the Land and Water Conservation Act in the Rose Garden of the White House. The president noted his admiration

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141. CHRISTOFFERSON, *supra* note 119, at 138.

142. *See* CHRISTOFFERSON, *supra* note 119, at 141.

143. *See* CHRISTOFFERSON, *supra* note 119, at 146.

144. *See* CHRISTOFFERSON, *supra* note 119, at 146.

145. 109 CONG. REC. 2501-2502 (1963). It is a tradition in the Senate and House for the chairman of the relevant committee to introduce bills requested by the administration, but this does not always occur.

146. 109 CONG. REC. 2501-2502 (1963).

147. H. REP. NO. 88-900, at 7 (1963).

148. 110 CONG. REC. 16874, 19129 (1964).



for the work achieved by these two bills saying that: “No single Congress in my memory has done so much to keep America as a good and wholesome and beautiful place to live.”<sup>149</sup> He mentioned the bipartisan effort in passing these bills, which he termed “some of the most far-reaching conservation measures” the nation had seen.<sup>150</sup>

Once again, the Park Service was asked to reach beyond the national parks to states and to local communities by helping with meeting the outdoor recreation needs of the people through the state grant program of the Land and Water Conservation Act. This met one of President Johnson’s goals to make sure that those who resided in cities and who had little money could also enjoy the outdoors.<sup>151</sup> As Johnson said, “I wanted a new kind of conservation that would bring national parks within reach of more people, that would set aside land for enjoyment in the vicinity of congested urban areas.”<sup>152</sup>

Since the Land and Water Conservation Act became effective on January 1, 1965, the National Park Service has provided grants of \$3.6 billion for planning, acquisition, and development of outdoor recreation resources that has been matched on the state and local level for a total investment of over \$7.2 billion in over 40,000 projects at the state, county, and local level.<sup>153</sup> Additionally, over \$4.5 billion has been appropriated by Congress to allow the National Park Service to buy privately owned lands within the boundaries of existing national parks and to purchase lands to create new national parks.<sup>154</sup>

President Johnson’s vision was furthered and the role of the National Park Service expanded again in the 89th Congress, with the introduction of the National Historic Preservation Act transmitted by Secretary of the Interior Stewart Udall.<sup>155</sup> This legislation had come

149. Remarks Upon Signing the Wilderness Bill and the Land and Water Conservation Fund Bill, 554 PUB. PAPERS 1033 (Sept. 3, 1964).

150. *See id.* at 1033-1034.

151. LYNDON BAINES JOHNSON, *THE VANTAGE POINT, PERSPECTIVES OF THE PRESIDENCY*, 1963-1969, at 336 (1971).

152. JOHNSON, *supra* note 151, at 336.

153. For a brief history of the state grant program and a link to a list of the grants provided, *see* <http://www.nps.gov/nrcr/programs/lwcf/history.html>. Nat’l Park Serv., *A Quick History of the Land And Water Conservation Fund Program*, U.S. DEP’T OF THE INTERIOR, (Sept. 19, 2008).

154. For a list of annual appropriations from 1965 to the present for land acquisition by the National Park Service as well as other land management agencies, *see* <http://www.doi.gov/budget/budget-data> and then click on the link to “Land and Water Conservation Fund Receipts.” Office of Budget, *Budget Background Information, Land and Water Conservation Fund Receipts*, U.S. DEP’T OF THE INTERIOR, (Mar. 5, 2014).

155. BARRY MACKINTOSH, *THE NATIONAL HISTORIC PRESERVATION ACT AND THE NATIONAL PARK SERVICE: A HISTORY*, vii. S. 3035 was the Johnson Administration’s bill, introduced by Senator Jackson on Mar. 7, 1966, 112 CONG. REC. 5079 (1966), and Representative

forward because of the concern about the disappearing historic American landscape through the development of highways, urban renewal projects, and new construction. The legislation was based on a recommendation first proposed by the National Trust for Historic Preservation in 1963, reiterated by a presidential task force the President had advocated in his message to Congress in early 1965, and supported by a special committee of the United States Conference of Mayors in the summer of 1965.<sup>156</sup>

When the Senate Public Works Committee reported the legislation, it noted that, unlike several European countries, our nation had not yet taken steps to preserve its historic past. And with rapid urbanization and new construction, it was imperative to take those steps. The committee said that the “legislation represents a fresh beginning in the continuing effort to turn the tide in favor of historic preservation.”<sup>157</sup>

The bill approved by the Senate committee provided for an expanded national register of historic buildings, districts, sites, structures, and objects, which was being maintained by the National Park Service, grants to states to help preserve significant historic properties, and grants to the National Trust for Historic Preservation to support these efforts.<sup>158</sup> It also created an Advisory Council on Historic Preservation (as proposed in a similar bill by Senator Edmund Muskie (D-ME)), which was charged with advising the president and Congress on historic preservation and recommending ways to coordinate federal, state, and local historic preservation programs, while encouraging public participation in historic preservation.<sup>159</sup> Senator Muskie was the floor manager of the National Historic Preservation bill when the Senate debated and passed it by voice vote.<sup>160</sup>

The debate in the House of Representatives saw House members raise concerns about the costs and whether it was appropriate to be giving grants to the states during a time of war.<sup>161</sup> This resulted in the

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Aspinall introduced a similar bill, H.R. 13491 on Mar. 10, 1966, 112 CONG. REC. 5574 (1966).

156. See MACKINTOSH, *supra* note 155., at v-vi. See also Special Message to the Congress on Conservation and Restoration of Natural Beauty, 54 PUB. PAPERS, 155-165 (Feb. 8, 1965).

157. S. REP. NO. 89-1361, at 2, 5-6, (1966). See MACKINTOSH, *supra* note 155 at 6.

158. S. REP. *supra* note 158 at 2, 5-6. See <http://www.nps.gov/nr/> for further information about the National Register of Historic Places. Nat'l Park Serv., *National Register of Historic Places*, U.S. DEP'T. OF THE INTERIOR. The National Park Service had been keeping an inventory of historic site since the enactment of the Historic Sites Act of 1935, but it was not much of a priority of the agency at that time.

159. S. REP. *supra* note 158 at 8.

160. 112 CONG. REC. 15167, 15169 (1966). See S. 3097, 3098, 89th Cong. 2nd Sess. (1966), 112 CONG. REC. 6097-6100 (1966).

161. 112 CONG. REC. 22954-958 (1966).

bill failing when the vote was taken, as it did not receive the two-thirds vote required under the procedure by which the bill was considered.<sup>162</sup> However, the bill was brought up a second time in the House on October 10, 1966, and passed by voice vote in a form that was somewhat different than the Senate bill.<sup>163</sup> The Senate considered the House-passed bill the following day and accepted the House amendments.<sup>164</sup> President Johnson signed the bill into law on October 15, 1966.<sup>165</sup> Through this action, historic preservation not only became a higher priority within the National Park Service, but it became a shared responsibility among other federal agencies and state and local governments throughout the country.

The conservation legacy of the Johnson Administration was enhanced when it borrowed the idea of Senator Gaylord Nelson to develop a system of national trails and gave the National Park Service a role in trail preservation. Senator Nelson introduced a bill in his first year in the Senate to protect the Appalachian Trail, which was becoming increasingly inaccessible.<sup>166</sup> The bill was not considered in that Congress, but he reintroduced it in the next Congress, followed by another bill to establish a national trails system.<sup>167</sup> The senator could not understand why the Johnson Administration was taking so long to issue a report on his national trails system bill, but then found that the president had appropriated the senator's idea for the president's message on natural beauty.<sup>168</sup> Senator Nelson was unfazed and he introduced the administration's hiking trails bill with Senator Henry Jackson (D-WA) on April 1, 1966.<sup>169</sup> He stated that hiking trails presented a great opportunity for recreation and that "(t)here ought to be a place to hike within an hour's reach of every American."<sup>170</sup> While the bill was not considered in that Congress, a similar bill passed in the next session of Congress and was signed into law by President Johnson on October 2, 1968.<sup>171</sup> The Appalachian Trail was established in the legislation as one of the first two national scenic trails, administered by the National Park

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162. *See id.*, at 22958.

163. 112 CONG. REC. 25940-25945 (1966).

164. 112 CONG. REC. 26026-26028 (1966).

165. Pub. L. No. 89-665, 80 Stat. 915 (1966) (codified at 54 U.S.C. Division A of Subtitle III (Supp. II 2014)).

166. CHRISTOFFERSON, *supra* note 119, at 208; 110 CONG. REC. 11457 (1964).

167. 111 CONG. REC. 883 (1965); 111 CONG. REC. 25817 (1965).

168. CHRISTOFFERSON, *supra*, note 119, at 210-11. *See also* 54 PUB. PAPERS 155-165 (FEB. 8, 1965).

169. 112 CONG. REC. 7393-7396 (1966).

170. *Id.*

171. *See* S. 827, 90th Cong., 1st Sess. (1967), 113 CONG. REC. 2464-465-467 (1967); National Trails System Act, Pub. L. No. 90-543, 82 Stat. 919 (1968) (codified at 16 U.S.C. § 1241 (2012)).

Service.<sup>172</sup>

Along with national trails, the National Park Service would be tasked with protecting nationally significant rivers through Senator Nelson's legislation to establish a national wild and scenic rivers system. The legislation was a result of an effort by Senator Nelson to stop a coal-fired power plant on the Saint Croix River, on the Wisconsin-Minnesota border near Stillwater, Minnesota.<sup>173</sup> When testifying at hearings before the Minnesota Conservation and Water Pollution Control Commissions on issuance of a permit, Senator Nelson said that when you look at the great rivers of the country, "you will have a list of the pollution problems of today. . . The story in each case is the same; they died for their country. They died in the name of economic development."<sup>174</sup>

Senator Nelson joined with Senator Walter Mondale (D-MN) to cosponsor legislation in the 89th Congress to designate the Saint Croix and its tributary, the Namekagon, as wild rivers and the lower Saint Croix as a recreational river.<sup>175</sup> The idea of protecting rivers of the country had also been appropriated by President Johnson in his message on natural beauty in early 1965.<sup>176</sup> The Nelson/Mondale bill was not enacted, so another one was introduced in early 1967 as part of a larger national wild and scenic rivers program.<sup>177</sup>

The new bill called for the creation of a national wild and scenic rivers system and designated nine rivers, including the St. Croix River, as initial components of the system.<sup>178</sup> As the consideration of the legislation proceeded in the Senate and House, Northern States Power decided to abandon its development plans and would eventually donate thousands of acres of land along the river for preservation.<sup>179</sup> The bill passed the Senate without any opposing votes and the House with only

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172. National Trails System Act, *id.*, at Stat. 920. See <http://www.nps.gov/nts/> for further information about the National Trails System and the trails designated as components of the system. Nat'l Park Serv., *National Trails System*, U.S. DEP'T. OF THE INTERIOR, (last modified Aug. 11, 2016).

173. CHRISTOFFERSON, *supra* note 119, at 246-47.

174. CHRISTOFFERSON, *supra* note 119, at 247.

175. 111 CONG. REC. 1553, 1555-57 (1965).

176. See 54 PUB. PAPERS 155-165 (FEB. 8, 1965); *id.*

177. S. 1092 was introduced on February 27, 1967, with Senator Jackson, chairman of the Senate Interior and Insular Affairs Committee, as the lead sponsor with Senator Nelson as cosponsor. 113 CONG. REC. 4576, 4577-80 (1967). An earlier bill, S. 119, was introduced by Senator Frank Church (D-ID) with Senator Jackson as cosponsor, on January 11, 1967; 113 CONG. REC. 192, 254-57 (1967).

178. See 113 CONG. REC. AT 4576 (1967).

179. CHRISTOFFERSON, *supra* note 119, at 249.

seven votes in opposition, although several members did not vote.<sup>180</sup> The differences between the House and Senate bills were quickly resolved and the conference report passed the House on September 24, 1968 and the Senate on September 26, 1968.<sup>181</sup>

President Johnson signed the law creating the wild and scenic rivers system on October 2, 1968, at the same ceremony in which he signed the national trails system law.<sup>182</sup> The wild and scenic rivers law specified which federal agency would manage each river designated as part of the system. The St. Croix River and other designated rivers became the responsibility of the National Park Service for administration through the Secretary of the Interior.<sup>183</sup> Both of the laws signed by President Johnson also directed the National Park Service to look beyond the national parks by helping states and communities protect similar significant rivers and trails.<sup>184</sup> The National Park Service today manages river and trail conservation assistance programs that annually award grants to eligible states and communities in their efforts to protect these resources.<sup>185</sup>

While these important environmental laws were being considered, George Hartzog would become director of the National Park Service in January, 1964.<sup>186</sup> He came to the position with a few goals in mind, including an expansion of the national park system and increasing the relevance of the parks and its program to an increasingly urbanized country.<sup>187</sup> Hartzog knew to accomplish his first goal he would need to get to know the key members of Congress through regular contact. He found a genuine lack of interest in the national parks by Congress, which was exemplified when he met with the ranking Democrat on the House Interior and Insular Affairs Committee, Representative Leo O'Brien (D-NY) who told him, "I don't know why you have called on me because I really have no interest in your program."<sup>188</sup> Hartzog changed that way of

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180. 113 CONG. REC. 21751 (1967); 114 CONG. REC. 26607-08 (1968).

181. 114 CONG. REC. 20817 (1968); 114 CONG. REC. 28310 (1968).

182. See Remarks Upon Signing Four Bills Relating to Conservation and Outdoor Recreation, 510 PUB. PAPERS, 1000 (Oct. 2, 1968).

183. Wild and Scenic Rivers Act, Pub. L. No. 90-542, 82 Stat. 906 (1968) (codified at 16 U.S.C. § 1271, 1274(a)(6)).

184. *Id.*, § 11; Pub. L. No. 90-543, at § 8.

185. For further information on the program, see <https://www.nps.gov/orgs/rtca/index.htm>. Nat'l Park Serv., *Rivers, Trails, and Conservation Assistance Program*, U.S. DEP'T. OF THE INTERIOR.

186. GEORGE B. HARTZOG, JR., *BATTLING FOR THE NATIONAL PARKS*, 79 (Moyer Bell Ltd., 1st ed., 1988).

187. See HARTZOG, JR., *supra* note 186, at 91.

188. HARTZOG, JR., *supra* note 186, at 117.

thinking by spending time with key committee members, stopping by their offices to visit with them, or leaving his card if they were unavailable.<sup>189</sup> He kept in touch with letters to the members and arranged for them to see some of the park sites in the Washington, D.C. area.<sup>190</sup> Hartzog also encouraged park superintendents to meet with members of the House and Senate where their park was located in order to establish better relations.<sup>191</sup>

Hartzog's efforts with congressional members were to pay off. During his tenure, Congress passed legislation to create a National Park Foundation, the philanthropic arm of the National Park Service, to encourage private gifts of real and personal property for the benefit of the service.<sup>192</sup> Congress also implemented a program to use volunteers in the national parks, an idea Hartzog pursued during the Johnson Administration, but which was not passed by Congress until the Nixon Administration.<sup>193</sup> Hartzog saw the national park system expand with sixty-nine parks added in every state except Delaware, including such iconic areas as Redwood National Park, North Cascades National Park, and Voyageurs National Park.<sup>194</sup> Areas also were added to interpret our cultural heritage, such as Wolf Trap Farm Park for the Performing Arts.<sup>195</sup> Senator Nelson's beloved Apostle Islands National Lakeshore was finally authorized by Congress during this time.<sup>196</sup> By the time Hartzog left his position in 1972, he said he knew over 300 members of

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189. See HARTZOG, JR., *supra* note 186, at 118-19.

190. See HARTZOG, JR., *supra* note 186, at 118.

191. See HARTZOG JR., *supra* note 186, at 117-18.

192. Pub. L. No. 90-209, 81 Stat. 656 (1967) (codified at 54 U.S.C. subchapter II of Chapter 1011 (Supp. II 2014)).

193. HARTZOG, JR., *supra*, note 186, at 96. See Volunteers in the Parks Act of 1969, Pub. L. No. 91-357, 84 Stat. 472 (1970) (codified at 54 U.S.C. 102301 (Supp. II 2014)).

194. Redwood National Park was established by Pub. L. No. 90-545, 82 Stat. 931 (1968) (codified at 16 U.S.C. § 79a (2012)); North Cascades National Park was established by Pub. L. No. 90-544, 82 Stat. 926 (1968) (codified at 16 U.S.C. § 90 (2012)); and Voyageurs National Park was established by Pub. L. No. 91-661, 84 Stat. 1970 (1971) (codified at 16 U.S.C. § 160 (2012)). Delaware would become the last state to have a national park established with the designation of the First State National Monument by President Obama in 2013, Proclamation No. 8944, 3 C.F.R. 23 (2014). The national monument was redesignated as First State National Historical Park by the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, title XXX, § 3033(b), 128 Stat. 3775 (2014) (codified at 16 U.S.C. § 410rrr (2012)).

195. Wolf Trap Farm Park for the Performing Arts (now Wolf Trap National Park for the Performing Arts) was established by Pub. L. No. 89-671, 80 Stat. 950 (1966) (codified at 16 U.S.C. § 284 (2012)).

196. Apostle Islands National Lakeshore was established by Pub. L. No. 91-424, 84 Stat. 880 (1971) (codified at 16 U.S.C. § 460w (2012)).

Congress.<sup>197</sup>

Secretary of the Interior Stewart Udall sent a memorandum to President Johnson at the end of his administration in which he said that “the Johnson years have been good years for the cause of conservation. . .” and would be remembered as favorably as those of President Theodore Roosevelt and President Franklin Roosevelt.<sup>198</sup> Johnson agreed with that assessment and credited his wife, Lady Bird Johnson, with “her quiet crusade to beautify our country.”<sup>199</sup>

## VI. UNITING PARKS INTO ONE NATIONAL PARK SYSTEM

On April 22, 1970, Senator Nelson’s idea of a nationwide “environmental teach-in” occurred with the first Earth Day. The senator said that the day “. . .did exactly what I was aiming for. It was a big enough demonstration to get the attention of the political establishment and force the issue on to the political agenda.”<sup>200</sup> While the previous decade had seen a number of advances toward protecting our air, land, and water, the 1970s would add to that record. The National Environmental Policy Act was signed into law by President Richard Nixon on January 1, 1970.<sup>201</sup> The law required a review of the environmental impact of any major federal actions before those actions commenced.<sup>202</sup> Additionally, Congress provided greater protection for the animals and plants found in national parks and in ecosystems throughout the country through the passage of the Endangered Species Act of 1973.<sup>203</sup> The decade also had Congress amend the Clean Air Act to give specific protection to the air of certain national park and wilderness areas and to require the National Park Service and other federal agencies to maintain public water systems to provide safe drinking water just as non-federal agencies were required to do.<sup>204</sup>

197. HARTZOG, JR., *supra* note 186 at 137.

198. JOHNSON, *supra* note 151, at 336.

199. JOHNSON, *supra* note 151, at 336-37. Lady Bird Johnson is perhaps best known for her efforts that led to the Highway Beautification Act, Pub. L. No. 89-285, 79 Stat. 1028 (1965) (codified at 23 U.S.C. § 131 (1965)), which was intended to limit billboards along the nation’s highway and encourage the planting of flowers and shrubs to beautify the roadsides.

200. CHRISTOFFERSON, *supra* note 119 at 302-312.

201. National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970) (codified at 42 U.S.C. § 4321 (2012)).

202. *Id.*

203. Endangered Species Act of 1973, Pub. L. No. 93-205, 87 Stat. 884 (1973) (codified at 16 U.S.C. § 1531 (2012)).

204. Clean Air Act Amendments of 1977, Pub. L. No. 95-95, 91 Stat. 731 (1977) (codified at 42 U.S.C. § 7470 (2012)); Safe Drinking Water Amendments of 1977, Pub. L. 95-190, 91 Stat. 1396 (1977) (codified at 42 U.S.C. § 300j-6 (2012)).

Congress also defined in law the relation between our national parks and our national heritage. This action actually began a couple of decades earlier when Congress initially defined the “National Park System” in the act of August 8, 1953.<sup>205</sup> This law was a result of a request from the Secretary of the Interior, Oscar Chapman.<sup>206</sup> In the 1953 law, the national park system was described as six specific groups of parks by the common designations that had become prominent for parks up to this point in time. However, the definition also included “miscellaneous areas” of other federal agencies and privately owned land over which the Park Service exercised some jurisdiction, as well as other lands not covered by the six categories.<sup>207</sup>

By the time of the 1970s, Congress acted at the request of the Secretary of the Interior to bring the laws guiding the Park Service more in line with park needs at a time when the national park system had grown to include 278 separate areas.<sup>208</sup> The Senate Interior and Insular Affairs Committee noted that all of the areas “are interrelated—each serves a different specific purpose, but together they serve a common function.”<sup>209</sup> The committee said that the 1916 Organic Act referred to some areas, such as national parks, but it did not mention some of the newer names that had been bestowed on areas, such as national seashores. The committee mentioned several other laws where references also were made to just one type of park designation and thus created ambiguity as to the applicability of those laws to other park areas with dissimilar designations.<sup>210</sup>

Congress fixed this ambiguity in the first section of what is now known as the National Park Service General Authorities Act, by declaring “. . .that these areas, though distinct in character, are united through their inter-related purposes and resources into one national park system as cumulative expressions of a single national heritage. . .”.<sup>211</sup> The law also provided for an updating of a host of other authorities needed to accommodate specific parks or to assist Park Service employees to better do their jobs.<sup>212</sup>

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205. Act of Aug. 8, 1953, ch. 384, 67 Stat. 495 (1953) (current version at 54 U.S.C. § 100501) (Supp. II 2014)).

206. H.R. REP. NO. 83-116, at 2-4 (1953).

207. Act of Aug. 8, 1953 § 2, *id.*

208. S. REP. NO. 91-1014, at 1 (1970).

209. *See id.* at 2.

210. *See id.* at 3.

211. Pub. L. No. 91-383, 84 Stat. 825, § 1 (1970) (current version at 54 U.S.C. 100101(b) (Supp. II 2014)).

212. *See id.*



In passing this law with its statement that all parks are part of one national park system, Congress did not necessarily view that action as a very big deal. The chairman of the House Interior and Insular Affairs Committee said during the House floor debate that, “It is no glamorous bill. No one will receive any trophies or awards or be acclaimed a statesman in the field of conservation because of its enactment. . .”<sup>213</sup>

Yet, the National Park Services General Authorities Act would guide how the Park Service approached management of the park system, with some questioning the policies for management that had previously been established. In 1964, Secretary of the Interior Udall had set a three-tiered system of management with categories for natural areas, historical areas, and recreational areas.<sup>214</sup> This was considered by Director Hartzog to be a “brilliant solution to a real dilemma.”<sup>215</sup> However, it became apparent to many that parks were not easily placed in one category when many parks exhibited characteristics of two or even three types of resources, resulting in a park placed arbitrarily in any of the categories.<sup>216</sup> These management policies were largely abandoned by the middle of the 1970s and formally abolished in 1977 by Director William Whalen.<sup>217</sup> A new set of policies relied on areas within parks that should be managed according to their common characteristics, with recognition that parks could have overlapping resource types.<sup>218</sup>

## VII. PARKS FOR THE PEOPLE

Even with the major environmental advances of the 1960s and the early 1970s, there remained a gap in the national park system. This would change when parks were created closer to where a majority of the population of our country lived. The driving force behind the expansion and the additions to the national park system was an unusual member of Congress from the city of San Francisco, Representative Phil Burton (D-CA), who pushed a large amount of significant park legislation through the chambers of Congress in a very short period of time.

### A. *Expansion of National Parks into Urban Areas*

The national park system continued to evolve in the 1970s when the

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213. 116 CONG. REC. 24956 (1970).

214. HARTZOG, JR., *supra* note 186, at 102-03.

215. HARTZOG, JR., *supra* note 186, at 102.

216. RETTIE, *supra* note 82, at 41-44.

217. RETTIE, *supra* note 82, at 43.

218. *See* RETTIE, *supra* note 82, at 43.

Secretary of the Interior under President Nixon, Wally Hickel, undertook a “parks to the people” program. His goal was to provide additional recreational experiences for large urban populations in places such as New York, Los Angeles, San Francisco, and Cleveland.<sup>219</sup> This initiative came about via a memo prepared for him by George Hartzog, who continued as director of the National Park Service in the new administration.<sup>220</sup> The effort was also helped by the fact that President Nixon was disgusted by Native Americans who occupied Alcatraz Island in November, 1969 and who promised to remain there until they were given the island as recompense for lands taken from tribes.<sup>221</sup> Nixon demanded that Hickel remove them and Hickel thought creating the national recreation area was a good way to take care of the problem.<sup>222</sup> Hickel’s staff contacted the staff for Representative Phil Burton, who would undertake the challenge of bringing parks to the people, and not only create a park for his city, but also become a force for national parks over the next decade in the House of Representatives.<sup>223</sup>

Burton was an unlikely champion of creating Golden Gate National Recreation Area, much less any park. He was seen as a member of Congress who was often crude, abrasive, and prone to excessive drinking. Other members tired of his tirades and hardball tactics and looked for any reason to avoid him.<sup>224</sup> And as for his views on nature and the outdoors, it was said “. . .there was nothing environmental about his life. His idea of a nature experience would have been to look out the car window as he was being driven through Washington’s Rock Creek Park.”<sup>225</sup> But, his congressional district was home to the offices of the Sierra Club, as well as many people who were passionate about protecting the environment.<sup>226</sup>

Burton worked with Ed Wayburn, Sierra Club president, local activist Amy Meyer, and with Secretary Hickel’s staff on reviewing maps and on completing the planning required before writing the legislation. At one point, Burton became exasperated with Wayburn when Wayburn conceded that he did not request the most appropriate plan because he did not think it was politically feasible. Burton told

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219. JOHN JACOBS, *A RAGE FOR JUSTICE, THE PASSION AND POLITICS OF PHILLIP BURTON*, 210 (Univ. of Cal. Press, 1995).

220. HARTZOG, JR., *supra* note 186, at 95-96.

221. JACOBS, *supra* note 219, at 210-11.

222. JACOBS, *supra* note 219, at 210-11.

223. JACOBS, *supra* note 219, at 210-11.

224. JACOBS, *supra* note 219, at 230.

225. JACOBS, *supra* note 219, at 209.

226. JACOBS, *supra* note 219, at 209.

Wayburn to “[g]et the hell out of here. You tell me what you want, not what’s politically feasible, and I’ll get it through Congress.”<sup>227</sup>

After more discussion, Representative Burton introduced the bill on June 29, 1971.<sup>228</sup> It created a national recreation area that included land stretching from just south of Point Reyes National Seashore in Marin County, to properties in San Francisco including several coastline beaches and adjoining areas south of the city.<sup>229</sup> The bill also proposed to stop any plans by the military to develop the Presidio, a military base at the foot of the Golden Gate Bridge with its scenic views of the bay, and it ensured that, should the Presidio ever be found surplus to the needs of the military, it would be transferred to the recreation area.<sup>230</sup> In all, 34,000 acres were planned for this national recreation area.<sup>231</sup>

Senator Alan Cranston (D-CA) introduced a comparable bill in the Senate on July 26, 1971. In his introductory remarks, he spoke of the need “of bringing the national parks to the people” in an area where the population was already five million and estimated to increase to fifteen million by 2020.<sup>232</sup>

The House Committee on Interior and Insular Affairs combined nearly a dozen similar bills into H.R. 16444 after conducting hearings in both Washington, D.C. and San Francisco.<sup>233</sup> Concerns by the House Armed Services Committee were resolved and language was added to address how military properties were to be used in creation of this new recreation area.<sup>234</sup> President Nixon had even weighed in during a Labor Day visit prior to House passage of the bill where he endorsed the idea of the park. This was noted during the House floor debate and helped lead to passage of the bill by a voice vote.<sup>235</sup> The Senate moved swiftly on the House-passed bill the next day, as the chairman of the Senate committee saw no need to delay since the two bills were nearly identical, and the Senate passed the bill without any debate by voice vote.<sup>236</sup> President Nixon signed the new law on Oct. 27, 1972. On the same day, he also signed the law creating Gateway National Recreation Area in the

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227. JACOBS, *supra* note 219, at 212.

228. 117 CONG. REC. 22664 (1971).

229. Pub. L. No. 92-589, 86 Stat. 1299 (1972) (codified at 16 U.S.C. 460bb-2 (2012)).

230. *See id.*, at 1300.

231. 117 CONG. REC. 22664 (1971).

232. 117 CONG. REC. 27065 (1971).

233. See list of bills introduced to preserve lands that became Golden Gate National Recreation Area in H.R. REP. NO. 92-1391, at 1 (1972).

234. 118 CONG. REC. 35056-35062 (1972).

235. *Id.*

236. 118 CONG. REC. 35435 (1972).

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New York and New Jersey urban area.<sup>237</sup> Other park and public land bills would be signed the same week.<sup>238</sup>

### *B. Further Growth of the National Parks*

While the growth of the national park system continued, Congress expanded the scope of the Park Service's responsibilities through the establishment of the Historic Preservation Fund to provide resources for our country's historic preservation efforts. This was accomplished as a separate title to a bill that also amended the Land and Water Conservation Fund Act.<sup>239</sup>

Congress determined that to adequately fund both the land acquisition programs of the Land and Water Conservation Fund and the historic preservation efforts under the Historic Preservation Act, additional sources of money would be needed. This was accomplished by increasing the amounts authorized for both of these programs and by making receipts from oil drilling on the Outer Continental Shelf (OCS) the primary source of money for each fund.<sup>240</sup> As the House committee noted, when Congress originally decided in 1968 to use part of the OCS receipts to fund land acquisition, it "reflected the intent of Congress that some part of the revenues collected by the Federal Government from the sale of the Nation's natural resources should be reinvested in other national resources of lasting value for public benefit."<sup>241</sup> By using OCS receipts for the Historic Preservation Fund, Congress was helping to guarantee the protection of our historic resources for the public's benefit as another natural resource was being depleted. President Ford would sign the bill into law even though his administration had opposed the bill when it was under consideration.<sup>242</sup>

In the Tax Reform Act of 1976, Congress took another step toward preserving our nation's historic buildings by implementing an idea presented by President Nixon in his 1971 environmental message to encourage rehabilitation of historic properties through the tax code.<sup>243</sup> The tax act provided a credit to those who redeveloped historic buildings

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237. Pub. L. No. 92-589, 86 Stat. 1299, § 3(f) (1972) (codified at 16 U.S.C. 460bb-2. (2012)).

238. See Presidential Statement on Signing 37 Bills, at 1582-84 (Oct. 28, 1972).

239. Pub. L. No. 94-422, 90 Stat. 1313, § 101, 201 (1976) (codified at 54 U.S.C. 200302(c) and 303102) (Supp. II 2014)).

240. H.R. REP. NO. 94-1021, at 3-5 (1976).

241. See H.R. REP. NO. 94-1021, *supra* note 241, at 3.

242. See H.R. REP. NO. 94-1021, *supra* note 241, at 14-16.

243. Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1916, § 2124 (1976) (codified at 26 U.S.C. § 191 (1976)).

in cities according to standards set by the Secretary of the Interior. The National Park Service works with the Internal Revenue Service to carry out this program and to certify eligible properties.<sup>244</sup> Since the passage of this law, over 41,000 historic properties have benefitted from this tax credit program, which has leveraged over \$78 billion in investments that have helped to maintain the vitality and character of many communities across our country.<sup>245</sup>

In 1980, when Congress considered more historic preservation amendments, the National Park Service received an added responsibility when it was asked to lead the U.S. role in the Convention Concerning the Protection of the World Cultural and Natural Heritage.<sup>246</sup> The law required the nomination of properties of “international significance to the World Heritage Committee on behalf of the United States.”<sup>247</sup> A couple of dozen sites in the United States, mostly under the jurisdiction of the National Park Service, have been designated World Heritage Sites since 1980, with the San Antonio Missions in Texas being the most recent site receiving this designation.<sup>248</sup>

After Representative Burton lost his bid to become House majority leader by one vote at the beginning of the 95th Congress, he redirected his efforts as chairman of the House National Parks and Insular Affairs Subcommittee to make a point about his leadership and his ability to help members that would benefit them politically.<sup>249</sup> In one of his first efforts as chairman, he was determined to expand Redwood National Park because the law previously passed when Representative Aspinall was chairman was not doing the job of protecting the trees. But with the costs associated with creating the park reaching \$200 million and

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244. See <http://www.nps.gov/tps/tax-incentives.htm> for further information about this program. Nat'l Park Serv., *Technical Preservation Services, Tax Incentives for Preserving Historic Properties*, U.S. DEP'T. OF THE INTERIOR.

245. See *id.*

246. Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 23, 1972, 27 U.S.T. 37, T.I.A.S. No. 8226.

247. National Historic Preservation Act Amendments of 1980, Pub. L. No. 96-515, 94 Stat. 3000, § 401(b)(1980) (codified at 54 U.S.C. 307101(c) (Supp. II 2014)). Even though the text of subsection 401(a) states that the Convention was approved by the Senate on Oct. 26, 1972, the actual vote on the resolution of ratification did not occur in the Senate until Oct. 30, 1973. See 119 CONG. REC. 35424 (1973).

248. For more information about World Heritage Sites see Nat'l Park Serv., *World Heritage Sites in the U.S.*, U.S. DEP'T OF THE INTERIOR, [https://www.nps.gov/nr/travel/worldheritagesites/text\\_only.htm#sites](https://www.nps.gov/nr/travel/worldheritagesites/text_only.htm#sites). See UNESCO World Heritage Centre, *New Inscribed Properties (2016)*, UNITED NATIONS, <http://whc.unesco.org/en/newproperties/> to look at the sites designated in 2015 as world heritage sites.

249. JACOBS, *supra* note 219, at 330. For an interesting look at the majority leader's race that Burton lost by one vote, see *id.*, at 296-327.

concerns about losing additional local jobs, this proved to be a challenge for Burton.<sup>250</sup>

The previous redwood law had protected a narrow strip of trees next to Redwood Creek and clear-cutting was creating erosion problems that scarred the landscape. Lawsuits and other expressions of concern about the status of the park led a candidate for president, Governor Jimmy Carter, to offer his support for the expansion.<sup>251</sup> Representative Burton made the expansion effort his first order of business in his subcommittee. He immersed himself in the details of the park and the timber industry and held hearings in California and in Washington, D.C.<sup>252</sup> Burton introduced H.R. 3813 on February 22, 1977, to expand Redwood National Park.<sup>253</sup> When the House Committee on Interior and Insular Affairs reported the bill on August 5, it called for an additional 48,000 acres of land to be added to the park from lands already cut over, but that were planned for rehabilitation to protect the drainage of Redwood Creek.<sup>254</sup> Additionally, the bill called for a generous program of economic assistance to those affected by the loss of timber industry jobs as a result of the legislation.<sup>255</sup>

The committee also added what is now known in the National Park Service as the Redwood Amendment to its General Authorities Act, which built on the language from 1970 in which all park units were found to be part of one national park system. In the Redwood Amendment, the committee stated that:

Congress further reaffirms and declares, and directs that. . .the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.<sup>256</sup>

Several on the minority side of the House committee opposed the redwood bill, and they outlined their deep concerns both in the committee report and in the House floor debate where they argued there

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250. See JACOBS, *supra* note 219, at 333.

251. See JACOBS, *supra* note 219, at 334.

252. See JACOBS, *supra* note 219, at 336-39.

253. 123 CONG. REC. 4974 (1977).

254. H.R. REP. NO. 95-581, at 19 (1977).

255. H.R. REP. NO. 95-581, at 17-18 (1977).

256. Pub. L. No. 95-250, 92 Stat. 166, § 101(b) (1978) (codified at 54 U.S.C. § 100101(b)(2) (Supp. II 2014)).

was misinformation about the bill that needed to be corrected.<sup>257</sup> But the opposition did not have much effect as the bill passed the House by a vote of 328-60.<sup>258</sup>

A similar Senate bill had been introduced by Senator Cranston, S. 1976, but it did not address the worker job losses as well as the House-passed bill.<sup>259</sup> While the bill was reported out of the Senate committee favorably, Senator Hayakawa (R-CA) voiced his strong opposition during the Senate debate.<sup>260</sup> Despite this opposition and that of some other senators, the bill easily passed the Senate by a vote of 74-20.<sup>261</sup>

When the conference committee met to resolve the differences in the bills, the worker assistance title of the House bill was reinstated, and the conference report easily passed both houses.<sup>262</sup> President Jimmy Carter signed the bill six days later, and Burton explained why he had invested so much in this legislation: “Once when I was a kid, my parents took me to see the redwoods. I’ve never forgotten that. This was easy.”<sup>263</sup>

At the same time the redwood legislation was being considered, Representative Burton was constructing an omnibus parks bill that was to become the largest park bill in our country’s history. Burton used his legislative skills to construct a bill that included 150 different park and public land sections impacting forty-four states.<sup>264</sup> Ten days after it was introduced, it was approved by the House Interior Committee.<sup>265</sup> The bill was debated on the House floor for three days in July with amendments made to deal with concerns raised by various members and with final approval coming on July 12, 1978.<sup>266</sup>

The Senate proceeded on a more limited bill about the same time.<sup>267</sup> Various versions of the bill went back and forth between the House and Senate at the end of the congressional session until a different bill, S. 791, was used as the vehicle to include the text of Burton’s omnibus

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257. H.R. REP. NO. 95- 581, *id.*, at 50-57. *See* 124 CONG. REC. 870 (1978).

258. 124 CONG., REC. 888 (1978).

259. 124 CONG. REC. 13211 (1977).

260. 124 CONG. REC. S 934 (1978) (Statement of Sen. Hayakawa).

261. 124 CONG. REC. S 959 (1978).

262. The House passed the conference report on March 14, 1978 by a vote of 317-60, 124 CONG. REC. H 2021 (1978) and the Senate passed it on March 21, 1978 by a vote of 63-26, 124 CONG. REC. S 4248 (1978).

263. JACOBS, *supra* note 219, at 345.

264. JACOBS, *supra* note 219, at 365. The bill was H.R. 12536, 124 CONG. REC. 12543 (1978).

265. H.R. Rep. No. 95-1165, at 1 (1978).

266. 124 CONG. REC. H 6504 (1978).

267. S. 2876 was reported by the Senate Energy and Natural Resources Committee on May 12, 1978. S. REP. NO. 95-811, (1978).

legislation, which was finally passed and sent to the president for his signature on October 13, 1978.<sup>268</sup> President Carter signed the bill into law on November 10, 1978.<sup>269</sup>

This new law had a large impact on the National Park Service. It created fifteen new national parks, and designated new national historic trails. The bill created 1.9 million acres of national park wilderness, which was three times the amount that previously existed, and it created many miles of wild and scenic rivers.<sup>270</sup> The bill doubled the size of Golden Gate National Recreation Area and established a new national recreation area in the Santa Monica Mountains of metropolitan Los Angeles.<sup>271</sup> It also increased development and land acquisition funding for dozens of parks.<sup>272</sup> Additionally, it created an Urban Park and Recreation Recovery Program to help meet the recreation needs of our countries' cities.<sup>273</sup>

After passage of this law, Burton maneuvered three other bills through the House, which were passed by the Senate and signed into law by the president in the next two years. These bills allegedly were just some minor fixes to the omnibus bill passed in 1978, but the bills turned out to be much more. In the first law, Burton used the opportunity to make a host of technical fixes to the 1978 omnibus bill, which also included the creation of another new national park site—the Frederick Law Olmsted National Historic Site.<sup>274</sup> A few months later, he moved another bill through Congress that created the Channel Islands National Park, added lands to Point Reyes National Seashore and Golden Gate National Recreation Area, created the North Country National Historic Trail, and made several other boundary revisions while increasing land acquisition and development funding levels at many park units.<sup>275</sup> The third bill added another property to the Golden Gate National Recreation Area, created a couple of new parks, and adjusted boundaries at several other parks.<sup>276</sup> In the four years that Representative Burton was chairman of the national parks subcommittee between 1977 and 1980,

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268. For the legislative path of this bill, *see* JACOBS, *supra* note 219, at 373-78.

269. National Parks and Recreation Act of 1978, Pub. L. No. 95-625, 92 Stat. 3467 (1978). *See also* Presidential Statement on Signing S. 791, WEEKLY COMP. PRES. DOC. 1999 - 2000 (Nov. 10, 1978).

270. *See* Presidential Statement on Signing S. 791, at 1999.

271. *See* National Parks and Recreation Act of 1978, at 3501.

272. *See* Presidential Statement on Signing S. 791, at 1999.

273. *See* National Parks and Recreation Act of 1978, at 3538.

274. Pub. L. No. 96-87, 93 Stat. 664 (1979) (codified at 16 U.S.C. 461 note) (2012).

275. Pub. L. No. 96-199, 94 Stat. 67 (1980) (codified at 16 U.S.C. 1 note) (2012).

276. JACOBS, *supra* note 219 at 398-400; Pub. L. No. 96-607, 94 Stat. 3539 (1980).



thirty new parks had been added to the national park system. And this did not include the actions taken in the state of Alaska, which separately were winding their way through the congressional process.

### VIII. ALASKA'S NATIONAL PARKS

During the time Representative Burton was making his mark on the national park system, the House Committee on Interior and Insular Affairs was led by Representative Morris Udall (D-AZ). If anyone was the opposite of Burton, it was Representative Udall. While Udall and Burton were friends and shared views on protecting the environment, they had different ways of accomplishing their legislative goals.<sup>277</sup> As Burton said about Udall, "We both have minor ego problems. He thinks he should have been president of the United States. My ambitions are not that limited."<sup>278</sup> Udall was beloved by fellow members of the House for his sense of humor and ability to find agreements among opposing parties.<sup>279</sup>

When Udall took over as chairman of the Interior Committee, he worked with Burton to allow him to assume the chairmanship of the National Parks Subcommittee. Udall also created a new Subcommittee on General Oversight and Alaska Lands, which was chaired by Representative John Seiberling (D-OH), the most senior Democratic member who had actually been to Alaska with the National Park Service and seen many of the lands that were eligible for preservation.<sup>280</sup>

The subcommittee's work was dictated by an effort to resolve which lands would be available to the federal government to protect for all Americans and which lands would be made available for selection by the state and native Alaskans, an issue that had remained unresolved since 1958 when Alaska first became a state.<sup>281</sup> When George Hartzog was director of the Park Service and with the support of Secretary of the Interior Stewart Udall, he had a task force make recommendations for protecting lands in Alaska, which issued its report in January, 1965.<sup>282</sup> The report recommended 76 million acres be preserved for park purposes.<sup>283</sup>

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277. JACOBS, *supra*, note 220, at 357.

278. JACOBS, *supra*, note 220, at 357.

279. JACOBS, *supra*, note 220, at 357.

280. DONALD W. CARSON & JAMES W. JOHNSON, MO, THE LIFE AND TIME OF MORRIS K. UDALL, 212 (The Univ. of Ariz. Press, 1st ed., 2001).

281. *See id.* at 194.

282. HARTZOG JR., *supra* note 187, at 205-06.

283. *See* HARTZOG JR., *supra* note 187, at 211.

The land issue in Alaska was complicated by the discovery of oil at Prudhoe Bay and the need for a pipeline to move the oil to the port at Valdez. Representative Udall worked with Representative John Saylor (R-PA) to attach an amendment to the Alaska Native Land Claims Settlement Act, known as section 17(d)(2), that authorized the Secretary of the Interior to withdraw from all forms of appropriation up to eighty million acres of lands suitable for national parks, forests, refuges and wild and scenic rivers for a period of two years and to submit his recommendations for those lands to Congress.<sup>284</sup>

This two-year timeframe gave Congress little time to act on the recommendations from the Secretary of the Interior. Representative Udall introduced H.R. 39 at the beginning of the 95th Congress to begin the process of deciding which lands should be protected by the federal government.<sup>285</sup> His bill called for 115.3 million acres of land to be protected with 64.1 million reserved for national parks.<sup>286</sup> This bill was similar to two others he had introduced in the previous two Congresses.<sup>287</sup>

Subcommittee chairman Seiberling worked to fulfill the goals of the Udall legislation by nationalizing the issue with key national conservation organizations to take on the special interests in Alaska. He held hearings in major cities across the lower forty-eight states and then throughout Alaska with over 1,000 witnesses participating.<sup>288</sup> Udall visited the state to view many of the areas under consideration for protection.<sup>289</sup> Afterward, the House Interior and Insular Affairs Committee approved a bill in March of 1978 that protected over 120 million acres of land, and this bill was passed by the House on May 19.<sup>290</sup>

Unfortunately, Alaska Senator Mike Gravel (D-AK) made sure a bill did not make it through the Senate. Senator Henry Jackson (D-WA),

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284. Alaska Native Claims Settlement Act, Pub. L. No. 92-203, 85 Stat. 709, § 17(d)(2) (1971) (codified at 48 U.S.C. prec. 21 note) (2012); Carson, *supra* note 280, at 195.

285. 123 CONG. REC. 127 (1977).

286. HARTZOG JR., *supra* note 187, at 218.

287. 123 CONG. REC. 261 (1977). Those bills were H.R. 13546, 93rd Cong., 2nd Sess., (1974) and H.R. 2063, 94th Cong., 1st Sess., (1975).

288. CARSON, *supra* note 280, at 195-96.

289. CARSON, *supra* note 280, at 195-96.

290. 124 CONG. REC. 14696 (1978). 126 members of the House of Representatives paired themselves on this vote as a favor to their colleagues who may have wished to avoid a difficult vote. When a member supporting the bill pairs with a member opposed to the bill, both members show that their votes did not make a difference in the outcome of the vote. Yet in this case, only eight of the members publicly announced which way they would have voted while the remainder of the members did not record their preferences.

chairman of the Senate Energy and Natural Resources Committee, had introduced a bill similar to Representative Udall's based on a proposal from the Carter Administration. This bill formed the basis of a Senate substitute for H.R. 39, which would be approved by Jackson's committee.<sup>291</sup> However, Senator Gravel had introduced a much more modest bill protecting 51.25 million acres, which he believed was ". . . a reasonable middle ground."<sup>292</sup> The committee bill was more than Gravel could agree to and he delayed any kind of compromise between the House and Senate. Senator Ted Stevens (R-AK), on the other hand was trying to get the best deal he could and blamed Gravel for an impasse.<sup>293</sup> The legislation was not adopted before the two-year deadline ended on December 18, 1973.<sup>294</sup> Anticipating no action by Congress, Alaska had filed to claim 41 million acres of land including almost four million that were proposed for national parks and five million for wildlife refuges.<sup>295</sup>

This resulted in Secretary of the Interior Cecil Andrus's withdrawing 110.7 million acres from all forms of appropriation, including the 80 million previously designated as section 17(d)(2) lands.<sup>296</sup> President Carter followed this action by designating seventeen new national monuments in Alaska with a total of 56 million acres using his authority under the Antiquities Act, including ten that became new units of the national park system.<sup>297</sup>

In the next Congress, efforts were made to again push for a final settlement of the Alaska lands issue through enactment of the Alaska National Interest Lands Conservation Act. But when the House Interior Committee voted on the bill, Chairman Udall saw his bill defeated by a pro-development bill sponsored by committee member Jerry Huckaby (D-LA).<sup>298</sup> Yet Udall was able to turn the tables when the bill came to the House floor by getting bipartisan support for his version of the bill to protect 127.5 million acres through the help of Representative John Anderson (R-IL). Udall offered his substitute during the House floor

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291. Senator Jackson introduced S. 2465 on January 31, 1978, 124 CONG. REC. 1505, 1508 (1978). The Senate Energy and Natural Resources Committee reported H.R. 39 on October 9, 1978. S. REP. NO. 95-1300, (1978).

292. 124 CONG. REC. 10716-717 (1978).

293. CARSON, *supra* note 280, at 197-98.

294. HARTZOG JR., *supra* note 187, at 219.

295. HARTZOG JR., *supra* note 187, at 219.

296. Press Release, U.S. Dep't. of the Interior, (Nov. 16, 1978).

297. Presidential Statement on Designating National Monuments in Alaska WEEKLY COMP. PRES. DOC. 2111-44 (Dec. 1, 1978). The text of this statement includes a separate statement for each area proclaimed as a national monument at the time, including the ten new units added to the national park system.

298. CARSON, *supra* note 280, at 198.

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debate and using parliamentary maneuvering, it was adopted by a vote of 268-157.<sup>299</sup> The House then passed the substitute H.R. 39 by a vote of 360-65.<sup>300</sup>

However, even with the House victory, Representative Udall realized the two Alaska senators needed to be contended with before a final bill was adopted. Senator Stevens became particularly concerned by a substitute version being offered in the Senate by Senator Paul Tsongas (D-MA), similar to Udall's House-passed bill, to protect 125 million acres rather than the Senate Energy and Natural Resources Committee-approved bill.<sup>301</sup> Senator Gravel continued his efforts to delay action, but those efforts ultimately failed and on August 19, 1980, the Senate passed a bill by a vote of 78-14, which protected 104.3 million acres.<sup>302</sup>

Politics would influence the final action on the bill as Ronald Reagan was elected president in November, 1980, and Udall felt he had no choice but to accept the Senate bill. He took heat from environmentalists who were not interested in compromising, but Udall believed achieving most of what he wanted done was the right thing to do.<sup>303</sup> As a result, the House passed the Senate version of the bill on November 12, 1980, shortly after the election.<sup>304</sup> President Carter signed the Alaska National Interest Lands Conservation Act into law on December 2, 1980.<sup>305</sup> As the president remarked, "Never before have we seized the opportunity to preserve so much of America's natural and cultural heritage on so grand a scale."<sup>306</sup> Indeed, the legislation doubled the size of the national park system by adding 43.6 million acres with many of them designated as wilderness, while protecting thousands of miles of wild and scenic rivers. Udall remembered the legislative battle with humor when he noted after he returned to Alaska, "Times have changed for my coming up here. I think I'm doing better now. When people wave at me, they use all five fingers."<sup>307</sup>

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299. 125 CONG. REC. 11457-58 (1979).

300. 126 CONG. REC. 11459 (1979).

301. CARSON, *supra*, note 280, at 199.

302. 126 CONG. REC. 21891 (1980).

303. CARSON, *supra*, note 280, at 200.

304. 126 CONG. REC. 29285 (1980).

305. Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, 94 Stat. 2371 (1980) (codified at 16 U.S.C. 3101 note).

306. Remarks on Signing H.R. 39, Alaska National Interest Lands Conservation Act, WEEKLY COMP. PRES. DOC. 2755 (DEC. 2, 1980).

307. CARSON, *supra*, note 280, at 202.

## IX. LIMITING THE NATIONAL PARK SERVICE

After two decades of Congress creating many new park sites and adding to the programs managed by the National Park Service, some change appeared inevitable. When President Reagan took office, his administration would put the brakes on the expansion of the park system and Congress would concur with those efforts while exploring alternatives to Park Service management for natural, historic, and cultural sites in our nation.

### *A. Limiting and Proposing Alternatives to National Parks*

The new Reagan Administration would challenge the Park Service with the appointment of James C. Watt as Interior Secretary. Representative Udall noted, “. . .it was like putting Dracula in charge of the blood bank[,]” and when Watt complained, Udall then said it was like “. . .putting Colonel Sanders in charge of the chicken coop.”<sup>308</sup> Watt did not subject the Park Service to the severe reductions in its budget and programs that were exacted from other Department of Interior bureaus, but he took actions that impeded the service, such as opposing new land acquisition within national parks and opposing the addition of new parks to the system.<sup>309</sup> Watt also would undo a reorganization that had occurred in the previous administration that placed all the grant programs of the Park Service into a Heritage Conservation and Recreation Service.<sup>310</sup> In 1981, these programs were transferred back to the Park Service.<sup>311</sup> And while Watt would only be secretary until 1983, similar policies were continued under new Secretary Donald Hodel.<sup>312</sup>

Although additions to the park system were scarce during the first term of the Reagan Administration, Congress took the initial steps in 1984 to create an alternative to the national parks in local communities. The Park Service was tasked with helping local communities protect large landscapes and tell the story of these landscapes. This was accomplished through the creation of the first national heritage area—the Illinois and Michigan Canal National Heritage Corridor.<sup>313</sup> As the Senate committee report on the bill, S. 746, stated, this was “. . .a predominantly state and local effort to protect the historical and natural

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308. See CARSON, *supra*, note 280, at 131.

309. RETTIE, *supra* note 82, at 129.

310. See RETTIE, *supra* note 82, at 7.

311. See RETTIE, *supra* note 82, at 7.

312. See RETTIE, *supra* note 82, at 129.

313. S. REP. NO. 98-355, at 4 (1984).

resources. . .while fostering economic growth.”<sup>314</sup> The National Park Service would help identify those resources and assist with interpreting them for the visitors to the corridor. Day-to-day management of the corridor would fall to a federal commission.<sup>315</sup> The bill was supported by Secretary Watt in a letter outlining the administration’s views.<sup>316</sup>

The bill came about because of efforts by Congress to resolve land right-of-way ownership questions between the federal government and the state in the corridor.<sup>317</sup> It was sponsored by Senator Charles Percy (R-IL) and Senator Alan Dixon (D-IL), who noted that various commitments of funding from the governor, major corporations, and local non-profit organizations helped to assure the success of this primarily local effort.<sup>318</sup> A comparable House bill, H.R. 2014, was introduced on the same day by Representative Tom Corcoran (R-IL), and cosponsored by the entire Illinois delegation.<sup>319</sup>

S. 746 passed the Senate on February 27, 1984, where Senator Percy said during the debate that the bill originated from his request to see if a national park could be established along the canal.<sup>320</sup> This bill represented an alternative to creating another national park and the heritage corridor designation assured that resources would be protected, but they would be managed by a commission with federal, state, and local representatives.<sup>321</sup>

The House passed the bill the day after the Senate acted, which added a second title that authorized the Jefferson National Expansion Memorial in St. Louis to acquire lands across the river in East St. Louis.<sup>322</sup> Final action did not come until June when the differences between the House and Senate bills were resolved and approved.<sup>323</sup> President Reagan signed the bill into law on August 24, 1984.<sup>324</sup>

This legislation would become a model for a couple of other national heritage areas created by the end of the decade. Beginning in the 1990s and continuing to the present time, the number of heritage areas would quickly grow. Today there are 49 designated national

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314. *Id.*

315. S. REP. NO. 98-355, *supra* note 313, at 5.

316. S. REP. NO. 98-355, *supra* note 313, at 13-15.

317. S. REP. NO. 98-355, *supra* note 313, at 5.

318. 129 CONG. REC. 4440, 4457-58 (1983).

319. 129 CONG. REC. 4663 (1983).

320. 130 CONG. REC. 3490 (1984).

321. Illinois and Michigan Canal National Heritage Corridor Act of 1984, Pub. L. No. 98-398, 98 Stat. 1457-1458 (1984) (codified at 16 U.S.C. 461 note).

322. 130 CONG. REC. 3572 (1984).

323. 130 CONG. REC. 19754, 20301 (1984).

324. Illinois and Michigan Canal National Heritage Corridor Act, *supra* note 321, at 1456.

heritage areas throughout the country that Congress has authorized, with the National Park Service providing both financial and technical assistance on an annual basis.<sup>325</sup> While most are managed by local non-profit entities, there are still a few being managed by federal commissions similar to the first one established in the Illinois & Michigan Canal heritage corridor.<sup>326</sup>

### *B. Limiting Memorials in Washington D.C.*

Congress also took steps during the 1980s to reign in the proliferation of memorials in the Washington, D.C. area, most of which were under the jurisdiction of the National Park Service. A bill introduced by Representative Udall, H.R. 4378, was designed to provide a way to balance the multiple uses of the limited land in the National Mall and surrounding areas, with a similar bill being introduced in the Senate.<sup>327</sup> The House Interior Committee noted that there were already 108 memorials of one type or another on park land with 18 proposals pending in that Congress to add others.<sup>328</sup> The National Park Service had identified only fifty spaces potentially left for new memorials depending upon the size and scope of the proposals.<sup>329</sup>

The law subsequently enacted by Congress divided the remaining open space for memorials into two areas, with all future memorials being subject to an established process. This included (1) approval by Congress of the commemorative work, and (2) approval by the National Capital Memorial Commission and the Commission of Fine Arts of the site and design. Further, a military commemorative work could only be built to commemorate a war or a major conflict or a branch of the armed services. Individuals or groups could be considered for commemoration only twenty-five years after that person's death or the death of the last surviving member of the group.<sup>330</sup> For a memorial to be placed in "Area I," which is primarily the most prominent space on the National Mall between the U.S. Capitol and the Lincoln Memorial, the Secretary of the Interior or the Administrator of the General Services Administration

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325. For information about each of the areas and the role of the National Park Service, see Nat'l Park Serv., *National Heritage Areas*, U.S. DEP'T OF THE INTERIOR, available at <http://www.nps.gov/heritageareas/>.

326. *See id.*

327. 132 CONG. REC. 4268 (1986); S. 2522 was introduced in the Senate on June 5, 1986, 132 CONG. REC. 12773 (1986).

328. H.R. REP. NO. 99-574, at 4 (1986).

329. *Id.*

330. Pub. L. No. 99-652, 100 Stat. 3650, 3651-2 (1986) (codified at 40 U.S.C. 1002).

would have to notify Congress of a finding that the memorial should be placed in that area, and Congress would have to approve the location in subsequent legislation.<sup>331</sup>

The law was only partially successful in reigning in memorial proposals. In 2003, Congress was to adopt further revisions to define the terms for establishing memorials in Washington, D.C. and to place additional limits on them.<sup>332</sup> This law established a “Reserve,” defined as an area from the Capitol building to the Lincoln Memorial and its cross-axis from the White House to the Jefferson Memorial, that was found to be “a substantially completed work of civic art” and in which the establishment of new memorials or visitor centers was prohibited.<sup>333</sup> This law also said that a commemorative work designed as a museum could not be located in Area I.<sup>334</sup> Congress has frequently provided exceptions to this prohibition in the subsequent years and has authorized additions to existing memorials, museums, or new memorials within the space.<sup>335</sup>

Congress recognized there might be other ways to protect significant resources by allowing more sites to be designated as “affiliated areas” of the national park system. These areas are seen within the National Park Service as areas managed by other entities, but managed in accordance with National Park standards. Often the Park Service provides planning and technical assistance to these sites, and some limited funding. Some affiliated areas have been officially designated in law by Congress while others have been administratively

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331. *Id.*

332. Commemorative Works Clarification and Revision Act of 2003, Pub. L. No. 108-126, 117 Stat. 1348, (2003).

333. *Id.* § 202.

334. *Id.* § 204.

335. Even though once a memorial was built, it was considered to be a completed work of civic art and nothing was to be added to it, exceptions were often made. For example, the Vietnam Veterans Memorial has had several additions. The controversy about the memorial by traditionalists who did not like the abstract design led to The Three Servicemen statue being included, with an American flag on a flagpole added a couple of years after the memorial was completed. In 1988, Congress authorized the Vietnam Women’s Memorial Project to add a statue to the memorial to honor women who served during the Vietnam War, Pub. L. No. 100-660, 102 Stat. 3922 (1988). In 2002, Congress authorized a plaque to be added to the memorial to honor Vietnam veterans who died as a result of their service, but who did not die during the war years memorialized at the site, Pub. L. No. 106-214, 114 Stat. 335 (2000). In 2003, Congress authorized a visitor center to be built at the memorial, Pub. L. No. 108-126, 117 Stat. 1348 (2003). Congress also authorized a plaque to be placed at the World War II Memorial to honor the leadership of Senator Robert Dole (R-KS) in helping to assure the completion of the memorial, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-88, 123 Stat. 2933, § 128 of title I, division A (2009). There have been other exceptions allowed at other memorials.



designated.<sup>336</sup> In 1988, Congress asked the Park Service to study the criteria needed for an area to be designated as an affiliated area.<sup>337</sup> The study was particularly interested in learning if the Wildlife Prairie Park in Illinois met the criteria.<sup>338</sup> That study was completed in 1990 and transmitted to Congress, but to date, it has not resulted in any action.<sup>339</sup> The study determined that the Wildlife Prairie Park did not have nationally significant resources and should not be designated an affiliated area, although the Park Service provided an interpretive handbook for the site.<sup>340</sup>

### *C. Limiting the Use of the Historic Sites Act*

A few years later, Congress limited the use of the Historic Sites Act to create new units of the national park system without going through the House and Senate authorizing committees with jurisdiction over national parks. The effort to limit them was undertaken by Representative Bruce Vento (D-MN), who became chairman of the House Subcommittee on National Parks in 1985 before the retirement of Representative Seiberling. It was during this time that Vento observed how some members of the House and Senate were creating new parks in appropriations bills without involving the authorizing committees.<sup>341</sup>

The park that precipitated this reform effort was Steamtown National Historic Site in Scranton, PA, a park proposed to preserve the unused Delaware, Lackawanna, and Western Railroad yards and a collection of steam locomotives. The park was championed by the congressman from Scranton, Representative Joe McDade (R-PA), who was also the ranking Republican on the House Interior Appropriations Subcommittee. McDade initially pursued the idea by having \$250,000 in funding earmarked in the annual Interior appropriations bill considered

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336. Nat'l Park Serv., *National Park Service Management Policies*, U.S. DEP'T OF THE INTERIOR, SEC. 1.3.4 (2006), <https://www.nps.gov/policy/MP2006.pdf>. The National Park Service recognizes just over two dozen areas throughout the country as affiliated areas. See the entire list of affiliated areas in [http://www.nps.gov/aboutus/news/upload/Site\\_Designations\\_02-23-16.pdf](http://www.nps.gov/aboutus/news/upload/Site_Designations_02-23-16.pdf).

337. Pub. L. No. 100-336, 102 Stat. 617 (1988).

338. *Id.*

339. U.S. DEP'T. OF THE INTERIOR REP. NO. 101-877, REPORT ON CRITERIA FOR AFFILIATED AREAS (1990). An example of an affiliated area being established by Congress is the Thomas Cole National Historic Site.; See Thomas Cole National Historic Site Act, Pub. L. No. 106-146, 113 Stat. 1714 (1999).

340. U.S. DEP'T. OF THE INTERIOR REP. NO. 101-877, REPORT ON CRITERIA FOR AFFILIATED AREAS (1990), at 14-16.

341. Discussion with Rick Healy, former staff of the House Subcommittee on National Parks, Jan. 13, 2016.

in 1986.<sup>342</sup> The money was included to allow the Park Service to conduct a study of the resources of the Steamtown historic area to determine if they were nationally significant and to recommend if they should be designated a park.<sup>343</sup> However, McDade appeared to have no intention of this study being done, because less than two months later, he introduced, H.R. 5555, to establish the historic site.<sup>344</sup>

To make sure McDade could achieve his goal of enactment of H.R. 5555 quickly, he had Representative Seiberling, who was the former Chairman of the House National Parks Subcommittee, join as a cosponsor of the bill.<sup>345</sup> Seiberling had enlisted McDade's help to work for adequate funding for what is now called the Cuyahoga Valley National Park in Seiberling's congressional district. In return, Seiberling agreed to work with McDade in creating the new Steamtown National Historic Site via the annual Interior appropriations bill.<sup>346</sup>

When the House and Senate conferees on the Interior appropriations bill met, they agreed not only to establish the Steamtown National Historic Site, but also to provide an initial \$8 million in funding to allow immediate restoration of the facilities and the trains at the site.<sup>347</sup> The new park became a reality when the Interior appropriations bill was folded into a continuing appropriations resolution along with several other unfinished appropriations measures for the year, and the joint resolution was signed into law on October 30.<sup>348</sup> It took only forty-two days from introduction of the bill to authorize the historic site to see its establishment.<sup>349</sup>

Vento also was upset by some members of the House and Senate appropriations committees, including Senator Bennett Johnston (D-LA), who used the appropriations process to bypass the authorizing committees to secure assistance for their home-state projects.<sup>350</sup> Johnston was both chairman of the Senate Energy and Natural Resources Committee and a member of the Senate Interior Appropriations Subcommittee.<sup>351</sup> In these positions, he determined which sites were

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342. H.R. REP. NO. 99-714, at 26 (1986).

343. *Id.*

344. 132 CONG. REC. 24687 (1986).

345. *Id.*

346. Discussion with Rick Healy, *supra* note 341.

347. H.R. REP. NO. 99-1002, at 18-20 (1986).

348. Pub. L. No. 99-592, 100 Stat. 3341, 3342-248 – 3342-229 (1986).

349. *Id.*

350. Discussion with Rick Healy, *supra* note 341.

351. See <http://www.senate.gov/artandhistory/history/resources/pdf/CommitteeChairs.pdf> and <https://www.gpo.gov/fdsy/pkg/DCOC-107doc13/pdf/DCOC-107sdoc13.pdf>. Because Senator Robert Byrd was both the chairman of the Senate Appropriations Committee and the Interior

authorized to receive funding and how much money they received. Johnston had included \$1 million in funding for restoration of the Tad Gormley Stadium in New Orleans, LA, in the FY 1992 Interior Appropriations Act – a site for which the Park Service had no relationship.<sup>352</sup> While others members received appropriations in the same act for similar places under the authority provided by the Historic Sites Act, Johnston made sure the Gormley Stadium project was funded “notwithstanding any other provision of law.”<sup>353</sup>

This process of bypassing the authorizing committees was changed by what is now known as the Vento amendment to the Historic Sites Act. The amendment prohibits appropriations from being expended for purposes of preserving or restoring historic sites, buildings, and objects without an explicit authorization by Congress.<sup>354</sup> This law also severely limited use of the Historic Sites Act by the Secretary of the Interior to designate national historic sites.<sup>355</sup> Many members of Congress saw this law as a small impediment as laws still passed to authorize funding of over \$300 million from the National Park Service’s budget for many preservation efforts that had no relationship to the Park Service or any of its programs.<sup>356</sup>

## X. EXPANDING AND DIVERSIFYING THE PARK SYSTEM

During Representative Vento’s ten years, 1985-1994, as chairman

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Appropriations Subcommittee, he often asked Sen. Johnston to take the lead in preparing the annual Interior appropriations bill. This gave Sen. Johnston an ability to get a number of his priorities funded through the Interior appropriations bill.

352. Department of the Interior and Related Agencies Appropriations Act, 1992, Pub. L. No. 102-154, 105 Stat. 997 (1991).

353. *See id.*

354. National Historic Preservation Act Amendments of 1992, Pub. L. No. 102-575, 106 Stat. 4768, § 4023 (1992) (codified at 54 U.S.C. 320106 (Supp. II 2014)).

355. Secretary of the Interior James Watt was the last secretary to use the authority of the Historic Sites Act to designate the Harry S Truman National Historic Site in 1982, Exec.Order No. 3088, 47 Fed. Reg. 57575 (Dec. 8, 1982).

356. For example, the Omnibus Parks and Public Lands Management Act of 1996, Pub. L. No. 104-333, 110 Stat. 4299, § 1011 (1996) authorized \$17.5 million to the Palisades Interstate Park Commission to acquire lands in the Sterling Forest Reserve; the Hispanic Cultural Center Act of 1997, Pub. L. No. 105-127, 111 Stat. 2543, (1997) authorized \$17.8 million to the New Mexico Hispanic Cultural Center for the design, construction, furnishing, and equipping of the Center for the Performing Arts within the Cultural Center; and the Department of the Interior and Related Agencies Appropriations Act, 2001, Pub. L. No. 106-291, 114 Stat. 952, § 146 (2000) authorized \$50 million in funding to establish an Abraham Lincoln Interpretive Center in Springfield, IL, which was a rehabilitation of the Illinois State Historical Library with a museum to Lincoln added. There are many more examples. The author of this article has on file a copy of the list of grants authorized by Congress between the 104th Congress and the 109th Congress totaling over \$300 million for sites unrelated to the National Park Service.

of the House Subcommittee on National Parks, Forests and Public Lands, over 300 laws were enacted creating new national parks, wilderness areas, wild and scenic rivers, and other measures that protected our country's natural resources.<sup>357</sup> Vento became known as a workhorse on Capitol Hill where his previous staff director of the subcommittee recalled that Vento "always sought the best policy, largest park or wilderness boundaries and longest river designation possible regardless of the political consequences."<sup>358</sup>

Discussions with Representative Vento led Senator Harry Reid (D-NV) to move forward with legislation that created Great Basin National Park in Nevada with Lehman Caves, a 13,000-foot-high mountain peak, and Nevada's only glacier.<sup>359</sup> Vento also led efforts to diversify the resources found in the national park system by including parks representing different aspects of our country's history. San Francisco Maritime National Historical Park was created in 1988 out of some property within the boundary of Golden Gate National Recreation Area to preserve part of our nation's maritime history.<sup>360</sup> He also championed a park in his hometown of St. Paul, Minnesota, with the creation of the Mississippi National River and Recreation Area as a joint effort among the federal, state, and local governments to protect the area's resources.<sup>361</sup>

Vento moved forward with a bill to recognize the first American painter as part of the national park system with the establishment of Weir Farm National Historic Site, at the home of Julian Alden Weir, a leader in the American impressionist art movement. This site became the first national park site in the state of Connecticut.<sup>362</sup> Vento also led efforts to commemorate some of the more difficult aspects of our history, with the establishment of the Manzanar National Historic Site, which preserved a Japanese-American internment camp from World War II and the Brown v. Board of Education National Historic Site, which recalled the story of the struggle for civil rights in America.<sup>363</sup>

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357. MEMORIAL TRIBUTES IN HONOR OF BRUCE F. VENTO LATE A REPRESENTATIVE FROM MINNESOTA, at 95 (106th Congress, 2nd Session, 2001).

358. *Id.* at 95.

359. 146 CONG. REC. 21855 (1986); Great Basin National Park Act, Pub. L. No. 99-565, 100 Stat. 3181 (1986) (codified at 16 U.S.C. 410 mm (2012)).

360. San Francisco Maritime National Historical Park Act of 1988, Pub. L. No. 100-348, 102 Stat. 654 (1988) (codified at 16 U.S.C. 410nn (2012)).

361. Arizona-Idaho Conservation Act of 1988, Pub. L. No. 100-696, 102 Stat. 4599, title VII, (1988) (codified at 16 U.S.C. 460zz (2012)).

362. Weir Farm National Historic Site Establishment Act of 1990, Pub. L. No. 101-485, 104 Stat. 1171 (1990) (codified at 54 U.S.C. 320101 note (Supp. II (2014))).

363. Pub. L. No. 102-248, 106 Stat. 40 (1992); Pub. L. No. 102-525, 106 Stat. 3438 (1992).

During his time as chairman, Vento saw over 30 new parks added to the park system.

Representative Vento was helped in this effort by another champion of national parks on the opposite side of Capitol Hill, Senator Dale Bumpers (D-AK). Senator Bumpers was chairman of the Senate Subcommittee on Public Lands, National Parks and Forests and was equally committed to advancing these bills through his subcommittee. Perhaps Bumpers' most-remembered action to preserve parks was his moving speech and the ensuing debate on the evening of October 7, 1988, to convince his colleagues in the Senate to authorize a legislative taking of 542 acres of land next to Manassas National Battlefield Park in Virginia, which was the place where part of the Second Battle of Manassas was fought and which was slated to become a shopping mall and residential area.<sup>364</sup>

The debate went on for three hours that evening, and it was one of the few times that Bumpers found that “. . . the Senate was a deliberative body in the finest sense. . . .”<sup>365</sup> Bumpers had timed it just right to occur after dinner. When the senators observed the proceedings, they saw several of their colleagues listening to Bumpers and Senator John Warner (R-VA), who had a much smaller proposal for preserving part of the site, debating the merits of their amendments, and learning some important history of the Battle of Bull Run.<sup>366</sup> By the time the vote came near midnight, there were nearly seventy senators listening to the debate. The Bumpers amendment was adopted by a vote of 50 to 25.<sup>367</sup> Senator Warner then asked that his amendment be withdrawn.<sup>368</sup> The Bumpers amendment was ultimately included in an unrelated technical corrections bill to the Tax Reform Act, which was signed into law by President Reagan on November 10, 1988.<sup>369</sup> The cost for this land added to Manassas National Battlefield turned out to be \$100 million, a fact that Bumpers noted would have only been two million if it had been

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The law establishing Manzanar National Historic Site also required the completion of a theme study by the National Park Service to determine other internment and detention camps should be nominated as national historic landmarks. Pub. L. No. 102-248, 106 Stat. 42, title II (1992).

364. DALE BUMPERS, *THE BEST LAWYER IN A ONE-LAWYER TOWN, A MEMOIR*, 246-247 (Random House Publishers, 1st ed., 2003). Senator Bumpers' memoir says the debate took place on October 8, 1988, but this was in error as the actual date was October 7, 1988, a Friday evening. For the full debate on the amendment, see 134 CONG. REC. 29341-29352 (1988).

365. BUMPERS, *supra* note 364, at 246.

366. BUMPERS, *supra* note 364, at 247-48.

367. 134 CONG. REC. 29356 (1988).

368. *Id.*

369. Manassas National Battlefield Park Amendments of 1988, Pub. L. No. 100-647, 102 Stat. 3810, title X (1988).

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purchased seven years earlier.<sup>370</sup>

This effort to protect the land at Manassas and the controversy involved was small compared to the battle that ensued with other national park efforts at the beginning of the 1990s. In 1991, Congress enacted legislation to place some of the Niobrara River in Nebraska in the wild and scenic rivers system, which generated strong opposition from Republicans in Congress because of concerns expressed by residents along the protected stretches of river.<sup>371</sup> Democrats believed the opposition was manufactured and not based in the reality of a wild and scenic designation. They were able to overcome the opposition and pass the bill.<sup>372</sup> While President George H.W. Bush signed the bill, he expressed his deep disappointment that Congress did not complete a study prior to designation to take into consideration the concerns of private property owners.<sup>373</sup>

However, legislation to protect vast areas of the California desert generated a battle over several years that was much more controversial than that which faced the Niobrara designation. A proposal to expand two desert national monuments under the National Park Service, and to create a Mojave National Park, was the vehicle that would carry numerous Bureau of Land Management and park wilderness proposals toward enactment.<sup>374</sup>

The idea for a Mojave National Park came from Peter and Joyce Burk and was implemented through the Citizens for a Mojave National Park, which was created in 1977.<sup>375</sup> The Bureau of Land Management (BLM) had found in its planning efforts that the resources of the Mojave area qualified it to be a national park or national monument.<sup>376</sup> When the Mojave National Park idea was presented to Senator Alan Cranston's legislative aide, Kathy Lacey, she said it would take ten years—an accurate prediction as the law would be signed ten years and seven days after her statement.<sup>377</sup>

In 1986, during the 99th Congress, Senator Alan Cranston (D-CA),

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370. BUMPERS, *supra* note 364, at 248.

371. H. R. REP. NO. 102-51, at 9-11 (1991).

372. *Id.* at 2-3; Niobrara Scenic River Designation Act of 1991, Pub. L. No. 102-50, 105 Stat. 254 (1991).

373. Presidential Statement on Signing the Niobrara Scenic River Designation Act, WEEKLY COMP. PRES. DOC. 674 (May 24, 1991).

374. FRANK WHEAT, CALIFORNIA DESERT MIRACLE, THE FIGHT FOR DESERT PARKS AND WILDERNESS, 106 (Sunbelt Publishers, 1st ed., 1999).

375. *Id.* at 50-52.

376. WHEAT, *supra* note 374, at 53.

377. WHEAT, *supra* note 374, at 105.

first introduced a comprehensive bill to designate both Park Service and BLM wilderness for millions of acres in southern California; to enlarge the Joshua Tree and Death Valley National Monuments and to re-designate them as national parks; and to create a new Mojave National Park.<sup>378</sup> It was the Mojave National Park title of the bill that would cause the most controversy.

In succeeding Congresses, various versions of the bill were introduced, with hearings held on some bills and with one bill passing the House of Representatives in the 102nd Congress.<sup>379</sup> However, Senator Cranston's bill was held up in the Senate by his California colleague, Senator Pete Wilson (R-CA), and the bill failed to make it to the finish line before Congress adjourned for the year.<sup>380</sup> Senator Cranston also retired at the end of the 102nd Congress.<sup>381</sup>

At the beginning of the 103rd Congress, the political dynamics for the bill completely changed as Senator Wilson became governor of California and was replaced by Senator Diane Feinstein (D-CA). This now assured two liked-minded senators from California would be working with the Democratic administration of President Clinton to enact the bill. Senator Feinstein assumed the leadership of the desert protection effort and introduced S. 21, the California Desert Protection Act.<sup>382</sup> During her campaign against the appointed incumbent Senator John Seymour (R-CA), who was filling the remaining two years of now-Governor Pete Wilson's Senate term, Feinstein had campaigned acknowledging her support for the desert legislation and saying this would be her top priority if elected. After she won that election, her colleague, Senator Barbara Boxer (D-CA), agreed to let Feinstein lead the desert bill effort.<sup>383</sup> Feinstein also retained Kathy Lacey from Senator Cranston's staff to help shepherd the bill through the process because of the high regard in which she was held.<sup>384</sup>

Feinstein's bill called for designating seventy-four areas of almost four million acres of BLM land as wilderness.<sup>385</sup> She proposed adding 1.3 million acres to Death Valley National Monument and 234,000 acres to Joshua Tree National Monument and re-designating both as national

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378. 132 CONG. REC. 1902 (1986).

379. H.R. REP. NO. 103-498, at 23-24 (1994).

380. For a discussion of these efforts, see WHEAT, SUPRA NOTE 374 at 214-38. See also H.R. REP. NO. 103-498, at 23-24 (1994).

381. WHEAT, *supra* note 374, at 238.

382. 139 CONG. REC. 578 (1993).

383. WHEAT, *supra* note 374, at 242.

384. WHEAT, *supra* note 374, at 243.

385. 139 CONG. REC. 807 (1993).

parcs. She also proposed establishing a Mojave National Park of 1.5 million acres.<sup>386</sup> Additionally, Feinstein proposed designating as wilderness 3.1 million acres of land in the new Death Valley National Park, 131,800 acres in the new Joshua Tree National Park, and 695,000 acres in Mojave National Park.<sup>387</sup> The bill included some other land transfers and designations and eliminated other areas from protection to avoid conflicting uses.<sup>388</sup>

A similar bill was introduced in the House by Representative Rick Lehman (D-CA), H.R. 518, with the chairman Representative George Miller (D-CA), of the House Natural Resources Committee, as his prime cosponsor.<sup>389</sup> The bill was somewhat different from the Feinstein's bill in that it called for the establishment of a Mojave National Monument instead of a park.<sup>390</sup> The bill also eliminated the authorization for hunting in the national monument that had been included in a previous version of the bill in 1991.<sup>391</sup>

When the Senate began consideration of the bill at the subcommittee hearings, Senator Feinstein noted the reductions she had made in the proposed protected areas to deal with mining areas, off-road vehicle use, and military overflights of the desert lands.<sup>392</sup> She was joined in promoting the bill with a strong statement of support from Senator Boxer.<sup>393</sup> The chairman of the Senate Energy Committee, Senator Bennett Johnston (D-LA), expressed his support for the bill, as well as his concern about the issue of hunting in the desert, and his interest in making a few designations of his own in Louisiana.<sup>394</sup> The

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386. *Id.*

387. *Id.*

388. *Id.*

389. 139 CONG. REC. 482 (1993).

390. 139 CONG. REC. 1076 (1993).

391. WHEAT, *supra* note 374, at 243.

392. California Desert Protection Act of 1993, Hearings before the Subcommittee on Public Lands, National Parks and Forests, of the Committee on Energy and Natural Resources, 103rd Cong., 1st Sess., on S. 21, to Designate Certain Lands in the California Desert as Wilderness, to Establish Death Valley, Joshua Tree, and Mojave National Parks, and for Other Purposes, S. Hrg. 103-18, 93-97 (April 27, 28, 1993) (statement of Senator Diane Feinstein).

393. *Id.* at 97-100.

394. California Desert Protection Act of 1993, Hearings before the Subcommittee on Public Lands, National Parks and Forests, *supra* note 392 at 93. Senator Johnston would ultimately add Titles XI and XII to the California Desert Protection Act to establish the Delta Region Native American Heritage Corridor and Heritage and Cultural Center as well as a Delta Region African American Heritage Corridor and Heritage and Cultural Center with a network of satellite or cooperative units, all in Louisiana. The titles also established the New Orleans Jazz National Historical Park. *See* Pub. L. No. 103-433, 108 Stat., title XI and XII, 4512-4525 (1994). At the same time this legislation was being considered, Senator Johnston titles III and IV to an unrelated national heritage corridor bill to establish the Cane River Creole National Historical Park and the Cane River



Clinton administration stated its strong support, including the creation of the Mojave National Park, by having Secretary of the Interior Bruce Babbitt testify.<sup>395</sup>

But the opposition of Representative Jerry Lewis (R-CA), who represented the area, was prominent at the hearing. He characterized S. 21 as a bill that reflected the views of a group of “elitists” who were dissatisfied with the results of the planning process for the desert carried out under the previous administration.<sup>396</sup> He particularly noted that creating such a large Mojave National Park at a time of a large maintenance backlog by the National Park Service made no sense.<sup>397</sup> He argued that if the bill passed, it would “. . .close down millions of acres of desert in the name of wilderness protection. . .”<sup>398</sup>

The Senate committee reported the bill favorably with the support of two of the Republican senators.<sup>399</sup> On the other hand, a majority of the committee’s Republican senators opposed the bill, led by Senator Malcom Wallop (R-WY).<sup>400</sup> Even though the committee had adopted his amendment to exclude almost 300,000 acres of the Lanfair Valley from the proposed park, Senator Wallop had serious concerns with the legislation because of the size of the designations and the inability to pay for the cost associated with these designations. He and other senators feared that the Park Service would see the national park system facing a “death by a thousand hugs.”<sup>401</sup>

During the floor debate, Senator Wallop offered an amendment to eliminate the proposed Mojave National Park, but it was defeated on a vote of 35-62.<sup>402</sup> And for procedural reasons, Senator Feinstein decided not to offer her amendment to put the Lanfair Valley lands back in the park boundaries.<sup>403</sup> After the consideration of some other amendments,

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National Heritage Area, both in Louisiana. Cane River Creole National Historical Park and National Heritage Area Act, Pub. L. No. 103-449, 108 Stat. 4757- 4765, titles III and IV (1994). Senator Johnston used his chairmanship to greatly expand the National Park Service’s responsibilities in his home state in 1994.

395. California Desert Protection Act of 1993, Hearings before the Subcommittee on Public Lands, National Parks and Forests, *supra* note 392, at 133.

396. California Desert Protection Act of 1993, Hearings before the Subcommittee on Public Lands, National Parks and Forests, *supra* note 392, at 247.

397. California Desert Protection Act of 1993, Hearings before the Subcommittee on Public Lands, National Parks and Forests, *supra* note 392, at 247.

398. California Desert Protection Act of 1993, Hearings before the Subcommittee on Public Lands, National Parks and Forests, *supra* note 392, at 250.

399. S. REP. NO. 103-165, at 26 (1993).

400. *Id.*

401. S. REP. NO. 103-165, *supra* note 399, at 61.

402. 140 CONG. REC. 7086 (1994).

403. WHEAT, *supra* note 374, at 261.

including those offered by Senator Johnson to create a new park and heritage area in his state, the Senate passed the bill by a vote of 69-29.<sup>404</sup>

The road for the bill in the House proved challenging. Representative Lehman was able to reduce the size of the Lanfair exclusion from the Mojave park to only 59,000 acres, and the House committee approved the bill fairly quickly by a vote of 28-14.<sup>405</sup> The Republican members of the committee were scathing in their comments on the bill and urged the House to reject the bill for ignoring the wishes of the members of the House who represented the area.<sup>406</sup>

During the House floor debate, Representative Miller led the charge for the bill and pushed back Republican attempts to stop the bill. Even with that, debate went on for seven days between May 17 and July 27.<sup>407</sup> And to the great concern of a number of members, an amendment was offered by Representative Larry LaRocco (D-ID) to re-designate Mojave National Park as a national preserve so that hunting could take place.<sup>408</sup> That amendment passed by a vote of 239-183.<sup>409</sup> The bill finally passed the House on July 27.<sup>410</sup>

A conference committee resolved the differences between the two versions of the bill after several delaying motions in both the Senate and the House, but the clock ticked down toward adjournment of the Congress prior to the elections. Final efforts were made to prevent a vote in both houses, but were unsuccessful.<sup>411</sup> The House adopted the conference report on October 6, and the Senate followed suit on October 8, 1994.<sup>412</sup> The final bill signed into law was very close to the original bill introduced by Senator Feinstein with just slightly smaller amounts of BLM wilderness designated and a slightly smaller and re-designated Mojave National Preserve.<sup>413</sup>

But the opponents of the bill were not to be denied. The 1994 elections saw the House of Representatives change hands to Republican leadership for the first time in 40 years.<sup>414</sup> Representative Jerry Lewis

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404. 140 CONG. REC. 7224 (1994).

405. H.R. REP. NO. 103-498, at 80 (1994).

406. *Id.* at 88-93.

407. WHEAT, *supra* note 374, at 266-75.

408. 140 CONG. REC. 16230-16231 (1994).

409. *Id.*, at 16230-16231.

410. 140 CONG. REC. 18322-18323 (1994).

411. WHEAT, *supra* note 374, at 276-94.

412. 140 CONG. REC. 28618, 29477 (1994).

413. H.R. REP. NO. 103-832, at 57-59 (1994); California Desert Protection Act of 1994, Pub. L. No. 103-433, 108 Stat. 4471 (1994).

414. See R.W. Apple Jr., *The 1994 Elections: Congress—News Analysis How Lasting a Majority? Despite Sweeping Gains for Republicans, History Suggests the Power Is Temporary*,

continued his opposition to the Mojave National Preserve when, as a member of the House Appropriations Committee, he had the committee appropriate one dollar for management of the Mojave National Preserve in the first year under the administration by the National Park Service.<sup>415</sup> The committee also transferred \$600,000 to the Bureau of Land Management to continue operations in the area.<sup>416</sup> The director of the National Park Service, Roger Kennedy, stopped by Representative Lewis's office to try to understand his concerns and to find a way forward. However, Kennedy was told the congressman was unavailable. Kennedy asked the staff to have the congressman call him, but that call was never made.<sup>417</sup>

This funding limitation ultimately was changed somewhat in the final appropriations bill signed into law, whereby the National Park Service was required to maintain the traditional uses at the preserve that were previously allowed by BLM until a final management plan for the area could be developed, and only \$1.1 million was available to be spent unless further funds were approved by the House and Senate appropriations committees.<sup>418</sup> However, the president was given authority to suspend this section of the law if he determined it was in the public interest and for good resource management.<sup>419</sup> President Clinton promptly signed the suspension on the same day he signed the bill into law.<sup>420</sup>

## XI. CLOSING PARKS WHILE OPENING OTHERS

The elections of November 1994 would have a profound impact on the national parks. The Republicans had assumed control over the House of Representatives and it was clear that some members of their party had expressed concern about the viability of various small and least-visited parks. They questioned whether it was appropriate for these parks to remain part of the national park system and were supportive of

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NEW YORK TIMES, Nov. 10 1994, available at <http://www.nytimes.com/1994/11/10/us/1994-elections-congress-analysis-lasting-majority-despite-sweeping-gains-for.html?pagewanted=all>.

415. WHEAT, *supra* note 374, at 298.

416. H.R. REP. NO. 104-73, at 33 (1995).

417. The author of this article accompanied Director Kennedy on the visit to Representative Lewis' office and was told by Kennedy that the congressman never called as requested.

418. Department of the Interior and Related Agencies Appropriations Act, 1996, Pub. L. No. 104-134, § 119 of title I, 110 Stat. 1321-179 (1996).

419. *Id.* § 119.

420. Presidential Statement on Signing the Omnibus Consolidated and Rescissions Act of 1996, WEEKLY COMP. PRES. DOC. 726-727 (Apr. 26, 1996); Memorandum on Waivers for Environmental Management, WEEKLY COMP. PRES. DOC. 730 (Apr. 26, 1996).

efforts to de-authorize them. However, these efforts proved unsuccessful and Congress resumed the expansion and diversification of the national park system just as their predecessors had done.

#### *A. Trying to Close National Parks*

When the Republicans assumed control of the House of Representatives in 1995, they looked for ways to change the National Park Service to address concerns about its management. The effort that created the most controversy was a bill, H.R. 260, which was a holdover from the previous Congress, to reform the process by which areas were studied for possible inclusion in the park system and to create a commission to examine the possibility of turning over management of some national parks to the states or other qualified entities.<sup>421</sup> The bill was sponsored by Representative Joel Hefley and cosponsored by Representative Vento, the ranking Democrat of the subcommittee. Representative Vento's support was in part due to a lingering controversy from his chairmanship when he supported an effort to establish the Charles Pinckney National Historic Site in South Carolina as part of the national park system.<sup>422</sup>

Pinckney was a delegate from South Carolina to the Constitutional Convention and was a proponent for a strong federal government at the time of the drafting of the U.S. Constitution.<sup>423</sup> However, the home that exists at the site was found to have been built after Pinckney's death on part of the plantation that he inherited from his father's family and that he rarely visited.<sup>424</sup> Vento often mentioned that the subcommittee he led made its decision about the site based on the best information it had at the time.<sup>425</sup> The fact that a park site was created that had little relationship to the reasons for its creation rankled some Republicans and led to the bill to potentially deaccession some existing national park

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421. H.R. 260, 104th Cong. 1st Sess. (1995).

422. Pub. L. No. 100-421, 102 Stat. 1581 (1988).

423. For a discussion of Pinckney's association with the site; see Robert W. Blythe, Emily Kleine, & Steven H. Moffson, *Charles Pinckney Nat'l Historic Site, Historic Resource Guide*, (2000) available at [http://www.nps.gov/chpi/learn/historyculture/upload/CHPI\\_HRS.pdf](http://www.nps.gov/chpi/learn/historyculture/upload/CHPI_HRS.pdf)

424. *See id.*

425. At the hearings on H.R. 260, Representative Vento brought up the Pinckney site and other units of the park system where questions had been raised. See *Hearings before the Subcommittee on National Parks, Forests, and Lands, of the Committee on Resources, House of Representatives, 104<sup>th</sup> Cong., 1st Sess., on H.R. 260, A Bill to Provide for the Development of a Plan and a Management Review of the National Park System and to Reform the Process by which Areas are Considered for Addition to the National Park System, and for other purposes*, Serial No. 104-1 (Feb. 23, 1995) (statement of Rep. Bruce Vento).

sites, although the sponsors claimed that was not the intent of the bill.<sup>426</sup>

Secretary of the Interior Bruce Babbitt undertook a nation-wide campaign to let people know about the efforts of the Republicans to close parks and otherwise threaten our environment.<sup>427</sup> Babbitt's description of H.R. 260 as a "park-closing bill" was noted at the House hearing.<sup>428</sup> The House committee approved the bill after defeating an attempt by Representative Bill Richardson (D-NM) to remove the commission that would make recommendations for park units that should be managed by someone other than the federal government and despite growing concerns about its real intent.<sup>429</sup>

The debate in the full House focused primarily on whether the bill was a park-closing bill, with strong views on both sides.<sup>430</sup> The effectiveness of Secretary Babbitt's message, which was supported by other interest groups, was underestimated by the sponsors of the bill. They miscalculated when they decided to have the bill brought up under suspension of the rules in the House, which required a two-thirds vote to pass. When the roll was called, the bill failed by a vote of 180-231.<sup>431</sup> Not only did the bill not get the two-thirds needed to pass, it did not even get a majority vote. Sixty-seven Republicans joined almost all the Democrats in opposing the bill, with most Republicans in opposition to the bill having national park sites in their congressional districts.<sup>432</sup>

The Republicans were livid about the outcome and maneuvered to attach the text of H.R. 260 to the House Budget Reconciliation Bill, a must-pass piece of legislation that was protected under House rules from procedural or other delays.<sup>433</sup> A staff member of the House Natural Resources Committee made the curious observation about the vote on H.R. 260 when he said, "I don't think the vote truly represents the feeling of the entire House."<sup>434</sup> This effort to attach the text ultimately

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426. *Id.*; see statement of Rep. Joel Hefley as an example in the hearing record.

427. Lee Davidson, *Babbitt Fears GOP Cuts Could Close 5 Utah Parks*, *Deseret News*, May 26, 1995, is just one example.

428. *Hearings on H.R. 260*, *supra* note 425.

429. H.R. REP. NO. 104-133, at 3-4, 20 (1995)

430. 141 CONG. REC. 25387-25400 (1995).

431. 141 CONG. REC. 25462 (1995).

432. The author of this article did this informal survey after the vote and noted the strong correlation between those who opposed the bill and those who also had units of the national park system in their congressional districts.

433. See H.R. 2491, § 9913, 104th Cong., 1st Sess. (1995) as introduced.

434. Warren Cornwall, *Bill Comes Back From the Dead*, *High Country News*, Oct. 2, 1995 (print ed.). This statement was interesting in that only 23 members of the House did not vote that day and even if all had voted to support the bill, it still would not have passed or received a majority vote.

failed as the Republicans were forced to drop it from the Budget Reconciliation Bill because the text violated the Byrd rule, which prohibited the attachment of extraneous material that did not produce a change in spending or revenue.<sup>435</sup>

But the Republican chairman of the House Subcommittee on National Parks, Forests, and Lands, Representative James Hansen (R-UT), did not let the matter die. He went after the director of the Park Service, Roger Kennedy, by introducing a bill, H.R. 2465, to require that directors of the National Park Service be presidentially appointed and confirmed by the Senate and to require that the position be limited to a term of five years with the possibility of being reappointed for up to three years.<sup>436</sup> His bill also required the director to “have substantial experience and demonstrated competence in Federal park management and natural or cultural resource conservation.”<sup>437</sup> The bill was to apply to anyone holding the position as of February 1, 1997, so Kennedy likely would have had to gain approval of the Senate to retain his job.<sup>438</sup>

Hansen then held a hearing two weeks later on this bill and a few others, which was unlike any previous hearing. Director Kennedy was required to take an oath to tell the truth as he gave his testimony. Over the next couple of hours, the director was berated by the chairman and members of the subcommittee for the actions taken by the secretary and the department for stating that H.R. 260 was a park-closing bill.<sup>439</sup> Even though the bill was not on the agenda of the hearing, it became the primary focus over the next couple of hours.<sup>440</sup>

The ranking Democrat on the subcommittee, Representative Bill Richardson, strongly objected to the impugning of Director Kennedy’s character and the fact that he was the only witness at the hearing to be

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435. The so-called Byrd rule is named after former Sen. Robert C. Byrd (D-WV) and is codified at 2 U.S.C. § 644 (2012). The Budget Reconciliation Act, H.R. 2491, 104th Cong. 1<sup>st</sup> sess., (1995), was ultimately vetoed by President Clinton on Dec. 6, 1995 and no attempt was made to override the veto.

436. H.R. 2465, 104th Cong., 1st Sess. (1995).

437. *Id.*

438. *Id.*

439. See Hearings before the Subcommittee on National Parks, Forests, and Lands of the Committee on Resources, House of Representatives, One Hundred Fourth Congress, First Session, on H.R. 2025, a bill to amend the Land and Water Conservation Fund Act of 1965 as regards the National Park Service, and for other purposes; H.R. 2067, a bill to facilitate improved management of National Park Service lands; H.R. 2464, a bill to amend Public Law 103-93 to provide additional lands within the state of Utah for the Goshute Indian Reservation, and for other purposes; H.R. 2465, a bill to establish 5-year terms for, and require the advice and consent of the Senate in the appointment of, the Director of the National Park Service, and for other purposes. Serial No. 104-42 (Oct. 26, 1995).

440. See Hearings on H.R. 2025, *supra* note 439.

placed under oath.<sup>441</sup> The hearing further devolved when Representative Helen Chenoweth (R-ID) took the director to task for not having the money to operate 200 national park sites at the same time he was spending \$650 dollars for four seat cushions under a proposal to refurbish the waiting area outside the director's office.<sup>442</sup> Director Kennedy denied any knowledge of the seat cushions, and Representative Bruce Vento decried the fact that the hearing has strayed far beyond the four bills that were being considered.<sup>443</sup>

While the larger effort to look at potentially reducing the number of national parks failed, this did not stop efforts to reign in individual parks. Bills were approved by the House Resources Committee to shrink the boundary of Richmond National Battlefield from 250,000 acres to 1,700 acres and the boundary of Shenandoah National Park from 521,000 acres to 196,000 acres.<sup>444</sup> But the largest target for the Republicans was the Presidio of San Francisco, in the congressional district of Representative Nancy Pelosi (D-CA). Pelosi's predecessor, Representative Phil Burton had ensured in 1972 that whenever the Presidio became surplus to the needs of the military, it would be incorporated into Golden Gate National Recreation Area.<sup>445</sup> That became a reality when the National Park Service was given management responsibility for the site on October 1, 1994.<sup>446</sup>

The National Park Service tried to establish a working relationship with another entity to manage the vast real estate holdings found in the Presidio. However, those efforts did not result in a final bill approved by Congress prior to the Republicans taking control in 1995.<sup>447</sup> Thus, the House Republicans moved ahead with a bill that turned 80 percent of the Presidio over to a Presidio Trust that would have to become self-sufficient within twelve years when it would lose all federal appropriations.<sup>448</sup> The Senate version of the bill made some small modifications to the House approach.<sup>449</sup> Final action was held up until the waning days of the 104th Congress when multiple parks and public lands bills were included in an omnibus lands bill that drew multiple

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441. Hearings on H.R. 2025, *supra* note 439 at 16.

442. Hearings on H.R. 2025, *supra* note 439 at 39-40.

443. Hearings on H.R. 2025, *supra* note 439 at 40.

444. H.R. REP. NO. 104-76, at 12-13 (1995).

445. Pub. L. No. 92-589, 86 Stat. 1299, § 3(f) (1972) (codified at 16 U.S.C. 460bb-2. (2012)).

446. For a more complete discussion of this effort, see Donald Hellmann, *The Path of the Presidio Trust Legislation*, 28 Golden Gate L. Rev. 3 (1998).

447. See *id.* at 334-40.

448. *Id.* at 334-40.

449. *Id.* at 350-54.

veto threats from the Clinton administration. Among the bills mentioned as objectionable included those to shrink the boundaries of Shenandoah National Park and Richmond National Battlefield.<sup>450</sup> The veto threats resulted in the House and Senate conferees finally dropping the controversial titles to the bill and it was enacted before the 104th Congress adjourned for the year. The compromise bill was signed into law by President Bill Clinton on November 12, 1996.<sup>451</sup>

### *B. Continuing to Create New Parks*

The Omnibus Parks and Public Lands Management Act of 1996 for the first time turned over management of part of a national park to a trust that would operate lands within a park boundary using authorities different than those other parks used and with a requirement that the trust make the area self-sustaining.<sup>452</sup> This approach was heavily criticized by some who felt it did not represent a good precedent for our national parks.<sup>453</sup> The Park Service made it clear that it felt the Presidio was a unique situation and that the law was not intended to create a precedent for future park management. Four years later Congress adopted a similar trust concept for management of the Valles Caldera National Preserve in New Mexico as a unit of the National Forest System.<sup>454</sup> While the Park Service believed it should manage the preserve since it adjoined Bandelier National Monument and was part of its watershed, Congress added only a small portion to the monument.<sup>455</sup> However, the Valles Caldera trust would prove to be a failure and a dozen years later, Congress would eliminate the trust and place management of the entire national preserve with the National Park Service.<sup>456</sup>

While the Republicans complained at the time about the ability of

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450. *Id.* at 358-60.

451. *See* Omnibus Parks and Public Lands Management Act of 1996, *supra* note 140.

452. *Id.* §104.

453. Johanna H. Wald, *The Presidio Trust and Our Nat'l Parks: Not A Model To Be Trusted*, 28 Golden Gate L. Rev. 3 (1998). Years after the trust's authorization, the trust continued to engender controversy. In the most recent lawsuit on the matter, a federal appeals court of the 9<sup>th</sup> Circuit rejected a challenge by environmental groups to a plan to construct 12 buildings on the site while reducing a somewhat greater amount of square footage. *See* Presidio Historical Ass'n v. Presidio Trust, 811 F.3d 1154, 1172, 2016 U.S. App. LEXIS 1287, at \*41 (9th Cir. Cal. Jan. 27, 2016).

454. Valles Caldera Preservation Act, Pub. L. No. 106-248, 114 Stat. 598 § 106 (2000) (codified at 16 U.S.C. 698 (2012)).

455. *Id.* § 103(b).

456. Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, *supra* note 124, at § 3043.



the Park Service to take care of the parks it already had and was exploring ways to eliminate some of these responsibilities, the Omnibus Parks Act seemed contradictory to the rhetoric. The act was the largest parks and public lands bill since Representative Burton's omnibus bill in 1978, with over a hundred different sections and with most of them relating to the National Park Service.<sup>457</sup> At the same time the law was turning over management of one part of a park to a trust, Congress created five new units of the national park system, a new affiliated area, special designations for three other areas, created eleven new national heritage areas, expanded boundaries of twelve other parks, designated a new national historic trail and a new segment of a wild and scenic river, and created several new authorities for various national parks.<sup>458</sup> It also included the provision requiring presidential nomination and Senate confirmation of the director of the National Park Service.<sup>459</sup>

Additionally, the same Omnibus Parks Act established two new programs for the National Park Service to manage. The first created a preservation assistance program for significant Civil War battlefield sites outside of national park boundaries.<sup>460</sup> The second was an expansion of the National Historic Preservation Act to provide grants to historically black colleges and universities across the country.<sup>461</sup> A few years later, the Civil War battlefield program would be expanded with a grant program to encourage others to protect these lands outside of park boundaries.<sup>462</sup>

Congress also accelerated the role of the National Park Service as a grant and technical assistance leader for our nation's cultural resources outside of park boundaries, which it had first established in the 1960s and 1970s through the Land and Water Conservation Fund and the Historic Preservation Fund. This included programs for the preservation of abandoned shipwrecks, grants to states for the preservation of maritime heritage preservation projects, technical assistance and grants for sites associated with the Underground Railroad, technical and financial assistance to preserve the resources of the Chesapeake Bay, and a program for the protection of historic lighthouses and their associated structures.<sup>463</sup>

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457. Omnibus Parks and Public Lands Management Act of 1996, *supra* note 140, at § 1.

458. Omnibus Parks and Public Lands Management Act of 1996, *supra* note 140, at § 1.

459. Omnibus Parks and Public Lands Management Act of 1996, *supra* note 140, at § 814(e).

460. Omnibus Parks and Public Lands Management Act of 1996, *supra* note 140, at § 604.

461. Omnibus Parks and Public Lands Management Act of 1996, *supra* note 140, at § 507.

462. Civil War Battlefield Preservation Act of 2002, Pub. L. No. 107-359, 116 Stat. 3016 (2002) (codified at 54 U.S.C. § 308103 (Supp. II (2014))).

463. Respectively, the programs are the Abandoned Shipwreck Act of 1987, Pub. L. No. 100-

Even with concerns expressed about the ability to support the parks already established, Congress demonstrated its commitment to the natural resources of the park system in a couple of dramatic ways at opposite ends of the country. In 1989, Congress expanded Everglades National Park to include areas to help restore the natural flow of water into the park to reverse the loss of fish and birds.<sup>464</sup> That was followed at the end of the Clinton administration by the enactment of the Comprehensive Everglades Restoration Plan—an almost \$8 billion plan to help restore some of the natural water flow to the everglades ecosystem.<sup>465</sup> This effort continues to this day with a recent Army Corps of Engineers' report saying the cost has doubled to about \$16.4 billion.<sup>466</sup>

In 1992, Congress passed legislation to restore the native fisheries along the Elwha River by authorizing the removal of the Elwha and Glines Canyon dams within Olympic National Park.<sup>467</sup> The total cost of that project was over \$300 million, but the dams were fully removed by 2014, and the river again flows freely.<sup>468</sup>

### *C. Diversifying the National Parks*

Despite reservations expressed by some that the National Park Service had more than it could handle, the effort to expand the national park system continued in Congress, with a focus on sites important to diverse communities. Senator Dale Bumpers championed the effort to establish the Little Rock Central High School in Arkansas for its role in

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298, 102 Stat. 432 (1988) (codified at 43 U.S.C. § 2104 (2012)); National Maritime Heritage Act, Pub. L. No. 103-451, 108 Stat. 4770 (1994) (codified at 54 U.S.C. § 308703(c) (Supp. II (2014))); National Underground Railroad Network to Freedom Act of 1998, Pub. L. No. 105-203, 112 Stat. 679 (1998) (codified at 54 U.S.C. § 308302-308304 (Supp. II (2014))); Chesapeake Bay Initiative Act of 1998, Pub. L. No. 105-312, title V, 112 Stat. 2961 ) (codified at 54 U.S.C. § 320101 note (Supp. II (2014))); and National Historic Lighthouse Preservation Act of 2000, Pub. L. No. 106-355, 114 Stat. 1385 (2000) (codified at 54 U.S.C. Chap. 3051 (Supp. II (2014))).

464. Everglades National Park Protection and Expansion Act of 1989, Pub. L. No. 101-229, 103 Stat. 1946 (1989) (codified at 16 U.S.C. § 410r-5 (2012)).

465. Water Resources Development Act, Pub. L. No. 106-541, 114 Stat. 2680, title VI (2000). For an interesting look at this restoration effort, see MICHAEL GRUNWALD, *THE SWAMP* (Simon & Schuster, Inc., 2006).

466. SECRETARY OF THE ARMY AND SECRETARY OF THE INTERIOR, 114TH CONG., REP. TO CONGRESS ON THE COMPREHENSIVE EVERGLADES RESTORATION PLAN (CERP) 39 (Comm. Print 2015).

467. Elwha River Ecosystem and Fisheries Restoration Act, Pub. L. No. 102-495, 106 Stat. 3173 (1992).

468. For more information about this effort, see Nat'l Park Serv., *Olympic Nat'l Park Washington, Frequently Asked Questions*, U.S. DEP'T OF THE INTERIOR, <https://www.nps.gov/olymp/learn/nature/elwha-faq.htm>.

desegregation.<sup>469</sup> Representative George Miller led the effort to recognize the women who formed the workforce at the site of the World War II shipyards in Richmond, California, with the establishment of the Rosie the Riveter/World War II Homefront National Historical Park.<sup>470</sup> Despite the National Park Service's recommendation for a more limited role at the site, Representative Ralph Regula (R-OH) included the establishment of the First Ladies National Historic Site in an annual appropriations bill for the National Park Service's budget, which was handled by a subcommittee he chaired.<sup>471</sup>

The significance of Native Americans to the National Park Service was recognized through a number of actions over the late twentieth century. Congress had passed legislation in 1990 to protect Native American remains, associated funerary objects, and other sacred objects and to repatriate them when possible.<sup>472</sup> The National Park Service was designated to implement the law and to provide grants to tribes and Native Hawaiian organizations to assist them in the repatriation of these cultural items.<sup>473</sup>

Congress also took steps to commemorate Native Americans at specific national park sites. In 1991, Congress re-designated the Custer Battlefield National Monument in Montana as the Little Bighorn Battlefield National Monument and directed that a memorial be constructed to the tribal members who were killed at the site.<sup>474</sup> When Senator Ben Nighthorse Campbell (R-CO), a Native American and member of the Northern Cheyenne tribe, came to the Senate, he championed legislation that resulted in the establishment of a park site to commemorate the massacre of Cheyenne and Arapaho Indians at Sand

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469. Pub. L. No. 105-356, 112 Stat. 3268 (1998) (codified at 54 U.S.C. § 320101 note (Supp. II (2014))).

470. Rosie the Riveter/World War II Home Front National Historical Park Establishment Act of 2000, Pub. L. No. 106-352, 114 Stat. 1370 (2000) (codified at 16 U.S.C. 410ggg (2012)).

471. The effort to create a greater public understanding of the role of the First Ladies was led by Mary Regula, wife of Representative Ralph Regula. She and others created the National First Ladies Library in Canton, Ohio, at the home of First Lady Ida Saxton McKinley in 1996. This was followed by the National Park Service purchasing the property in 1990 after Representative Regula included funding in Pub. L. No. 101-121, 103 Stat. 708 (1989) under the authority of the Historic Sites Act, and prior to the site being designated as part of the national park system in 2000. Department of the Interior and Related Agencies Appropriations Act, 2001, *id.* at § 145.)). *See also*, Nat'l Park Serv., National First Ladies Library Special Resource Study, Canton, Ohio at 15 (2000).

472. Native American Graves Protection and Repatriation Act, Pub. L. No. 101-601, 104 Stat. 3048 (1990) (codified at 25 U.S.C. § 3001 (2012)).

473. *Id.*

474. Pub. L. No. 102-201, 105 Stat. 1631 (1991) (codified at 54 U.S.C. § 320101 note (Supp. II (2014))).

Creek, Colorado in 1864<sup>475</sup>

Congress carried this recognition further by giving tribes a land base and the ability to develop partnerships for certain activities in some national parks. The Miccosukee Tribe was given perpetual rights to the use and occupancy of certain lands within the northern boundary of Everglades National Park.<sup>476</sup> The Timbisha Shoshone had lands within Death Valley National Park held in trust for the benefit of the tribe and for traditional uses.<sup>477</sup> The Eastern Band of Cherokee Indians were authorized to exchange lands with the National Park Service in the Great Smoky Mountains National Park and the Blue Ridge Parkway to consolidate its lands and to enhance educational opportunities for its school children.<sup>478</sup>

This sensitivity to other cultures was highlighted with a bill led by Senator Daniel Akaka (D-HI) to change the names of five national parks in Hawaii by inserting diacritical marks to reflect the Native Hawaiian spellings of those names.<sup>479</sup> After the attempt to shrink the boundaries of Richmond National Battlefield Park to 1,700 acres in the 104th Congress, a new bill to revise the park's boundaries to 7,300 acres was easily enacted based upon a new Park Service general management plan.<sup>480</sup> This legislation also recognized the role of fourteen Medal of Honor recipients from the United States Colored Troops by requiring a memorial at the site and interpretation of the role of black Union soldiers.<sup>481</sup> Further, while the sites of the internment of Japanese Americans at Manzanar and Tule Lake in California and Minidoka in Idaho led to their establishment as units of the national park system in the 1990s and early 2000s, Congress authorized a program so the National Park Service could provide grants to entities protecting

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475. S. 2950, 106th Cong., § 4, 2nd Sess. (2000); Sand Creek Massacre National Historic Site Establishment Act of 2000, Pub. L. No. 106-465, 114 Stat. 2019 (2000) (codified at 54 U.S.C. § 320101 note (Supp. II (2014))).

476. Miccosukee Reserved Area Act, Pub. L. 105-313, 112 Stat. 2964 (1998) (codified at 16 U.S.C. § 410 note (2012)).

477. Timbisha Shoshone Homeland Act, Pub. L. No. 106-423, 114 Stat. 1875 (2000) (codified at 16 U.S.C. § 410aaa note (2012)).

478. Department of the Interior and Related Agencies Appropriations Act, 2004, Pub. L. No. 108-108, 117 Stat. 1241 (2003) (codified at 16 U.S.C. §460a-5 note (2012)).

479. Hawaii Volcanoes National Park Adjustment Act of 2002, Pub. L. No. 106-510, 114 Stat. 2363 (2000) (codified at 16 U.S.C. §§ 391d; 396b; 396c; 396d; 397; 397a; 397b; and 397d (2012)); and (codified at 54 U.S.C. § 320101 note (Supp. II (2014))).

480. Richmond National Battlefield Park Act of 2000, Pub. L. No. 106-511, 114 Stat. 2365 (2000) (codified at 16 U.S.C. 4231-1 (2012)).

481. *Id.*

internment camps outside of national parks.<sup>482</sup>

## XII. CHANGING WAYS TO MANAGE NATIONAL PARKS

While our national parks are created with the intention of preserving their natural, historic, and cultural resources for future generations, not every national park site created by Congress survives to this day. A couple dozen were abolished after their creation for one reason or another since 1875. For example, in 1875, Mackinac National Park was established by Congress, but it was abolished twenty years later because Fort Mackinac, next to the park, was decommissioned and the governor requested the park be returned to the state of Michigan.<sup>483</sup> Other park areas that were believed to be of state, rather than national, significance were recommended for transfer in 1954 by the National Park System Advisory Board.<sup>484</sup> In another case, the Mar-A-Lago estate of socialite Marjorie Merriweather Post was designated a national historic site by Secretary of the Interior, Stuart Udall, and Congress later directed its use for visiting foreign dignitaries and federal officials.<sup>485</sup> However, it was returned to the Marjorie Merriweather Post Foundation in 1980.<sup>486</sup>

Along with transferring selected park lands to other entities, one prominent national park site was re-designated as an affiliated area of the National Park System because of opposition to the site being under Park Service management. After the tragedy at the Oklahoma City federal building in 1995, Congress moved quickly in 1997 to designate the site as a national memorial despite the Park Service's views that another designation might be more appropriate, such as an affiliated area of the national park system.<sup>487</sup> The law directed the site to be managed by a trust, similar to the Presidio Trust, but managed according to Park Service laws and regulations.<sup>488</sup> However, the site would remain part of the park system for a brief time.

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482. Pub. L. No. 109-441, 120 Stat. 3288 (2006) (codified at 54 U.S.C. § 320101 note (Supp. II (2014))).

483. Act of Mar. 3, 1875, ch. 191, 18 Stat. 517 (1875); Act of Mar. 2, 1895, ch. 189, 28 Stat. 946 (1895).

484. ISE, *supra* note 29, at 522-23.

485. Exec. Order No. 11446 34 Fed. Reg. 1195 (Jan. 16, 1969); Act of Oct. 21, 1972, 86 Stat. 1049, § 1(b) (1972).

486. Pub. L. No. 96-586, 94 Stat. 3381, § 4 (1980). The property is now owned by President Donald Trump.

487. Oklahoma City National Memorial Act of 1997, Pub. L. No 105-58, 111 Stat. 1261 (1997) (codified at 16 U.S.C. § 450ss (2012)). See H.R. REP. NO. 105-71, at 8 (1997).

488. Oklahoma City National Memorial Act of 1997, *supra* note 487.

After disputes with the Oklahoma City National Memorial Trust, which complained about adhering to Park Service policies and regulations, and questions about the cost of Park Service personnel at the site, the memorial was re-designated as an affiliated area in 2004 by Senator Ernest Istook (R-OK), who slipped the re-designation in a much-larger, unrelated appropriations bill.<sup>489</sup> When Park Service Director Fran Mainella learned of this, she placed a call to the senator to express her concerns about not being consulted, but the senator never returned the call.<sup>490</sup> The appropriations bill was passed by Congress and signed into law, and the original preference of the Park Service resulted.<sup>491</sup>

And for the parks that remain under Park Service jurisdiction, their management can be questioned when that management does not fit with the views of the current administration occupying the White House or with the member of Congress representing the park. The largest threat to the parks during the early 2000s came about as a result of the efforts of a political appointee of the President George W. Bush's Administration, who tried to rewrite the Park Service management policies to give greater weight to those who advocated for more use of national park areas.<sup>492</sup> The management policies of the Park Service had just been revised in 2001—the first revision since 1988. The 2001 revision clearly stated that in order to fulfill the mandate of the Organic Act, “. . .when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant.”<sup>493</sup>

The proposed revision by the George W. Bush Administration was done without input from career employees or the public, and it created a firestorm of controversy.<sup>494</sup> The testimony offered at an oversight hearing on the policies in 2005 by the Deputy Director of the Park Service stated that the revisions were necessary so soon after adoption of the 2001 policies because the agency needed to “. . .strive for excellence. . .” and provide “. . .clarity. . .” and that “. . .some members of [Congress] have expressed an interest in seeing the [National Park

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489. Transportation, Treasury, and Independent Agencies Appropriations Act, 2004, Pub. L. No. 108-199, 118 Stat. 347, § 544 (2004) (codified at 16 U.S.C. § 450ss note (2012)).

490. The author of this article was with the director when she placed this call and she confirmed later that the senator had never returned her call.

491. See Transportation, Treasury, and Independent Agencies Appropriations Act, *supra* note 489.

492. Editorial, *Destroying the National Parks*, N.Y. Times, (Aug. 29, 2005), [http://www.nytimes.com/2005/08/29/opinion/destroying-the-national-parks.html?\\_r=0](http://www.nytimes.com/2005/08/29/opinion/destroying-the-national-parks.html?_r=0).

493. NAT'L PARK SERV., MANAGEMENT POLICIES, 12 (2001).

494. *Destroying the National Parks*, *supra* note 492.

Service] review its policies.”<sup>495</sup> Five hearings were held in the 109th Congress by both the House and Senate to discuss the revisions.<sup>496</sup> However, when the final policies were issued in 2006, no change was made to the policy that conservation would be predominant when conflicts arose between conserving resources and providing for their enjoyment.<sup>497</sup>

Congress also has taken steps to alter management of specific parks where the management did not comport with Congress’s desires. Representative Jack Kingston (R-GA) inserted language into an appropriations bill, strongly opposed by the National Park Service, to delete the main road and two spur roads from designated wilderness at Cumberland Island National Seashore so more people could access historic resources on the northern end of the seashore.<sup>498</sup> Representative Devin Nunes (R-CA) added his legislation to the same appropriations bill to allow owners of cabins in Sequoia National Park to remain in the cabins in perpetuity despite the owners’ having agreed to only remain for 25 years after having been paid for the rights to those cabins.<sup>499</sup> Representative Duncan Hunter (R-CA) had language added to the FY 2007 defense authorization bill to allow deer elk to remain on Santa Rosa Island within Channel Islands National Park despite a court-ordered settlement for their removal.<sup>500</sup> It was couched as an effort to provide hunting and fishing opportunities for members of the armed forces and disabled veterans.<sup>501</sup> However, this reprieve for the deer elk

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495. See Hearings before the Subcommittee on National Parks, United State Senate, One Hundred Fourth Congress, First Session, on H.R. 2025, One Hundred Ninth Congress, *Nat’l Park Service Draft Management Policies* (Nov. 1, 2005) (statement of Stephen P. Martin).

496. The Senate Subcommittee on National Parks held hearings on Nov. 1, 2005 and June 20, 2006. *Nat’l Park Service Draft Management Policies*, 109th Cong. (2005); *Management Policies*, 109th Cong. (2006) (both statements of Stephen Martin, Deputy Director of Nat’l Park Serv.; The House Committee on Resources held a hearing on Dec. 14, 2005 while its Subcommittee on National Parks held two other hearings on February 15, 2006 and July 19, 2006. *Public Lands and Forests Subcommittee Hearing*, 109th Cong. (2006). An initial hearing on the management policies had been held in 2002 by the House Subcommittee on National Parks, Recreation and Public Lands on April 25, 2002.

497. NAT’L PARK SERV., *MANAGEMENT POLICIES*, 11 (2006). See U.S. Dept. of the Interior, NPS Management Policies, available at <https://www.doi.gov/oc/nps-management-policies>.

498. H.R. 4887, 108th Cong., 2nd Sess. (2004). Cumberland Island Wilderness Boundary Adjustment Act of 2004, Pub. L. No. 108-447, 118 Stat. 3072, § 145 (2004) (codified at 16 U.S.C. 1132 note (2012)).

499. H.R. 4508, 108th Cong., 2nd Sess., (2004). Department of the Interior and Related Agencies Appropriations Act, 2006, Pub. L. No. 108-447, 118 Stat. 3068-3069, § 139(b) (2004) (codified at 16 U.S.C. 45f (2012)).

500. Editorial, *House OKs Proposal to Let Military Hunt on Santa Rosa Island*, L.A. Times, (May 13, 2006), <http://articles.latimes.com/print/2006/may/13/nation/na-island13>.

501. John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. No. 109-

was short-lived as Senator Diane Feinstein repealed it the following year in the annual Interior Appropriations bill, a subcommittee which she chaired.<sup>502</sup>

### XIII. ACTION AND INACTION BY CONGRESS

The political polarization in our country has been evident in how Congress has addressed parks and public land issues in recent years. There have been large bursts of action followed by years of inaction. This has resulted in most of the legislation affecting national parks being rolled into large omnibus bills similar to the ones Representative Phil Burton championed in the late 1970s. When the Democrats resumed control of both the House and Senate after the inauguration of President Obama, they moved quickly on two fronts. The American Recovery and Reinvestment Act provided \$750 million to the Park Service to assist with a backlog of maintenance and other important construction priorities and in turn, to help stimulate the economy.<sup>503</sup>

Additionally, a bill that had originally been introduced by Representative Rush Holt (D-NJ), H.R. 146, to extend the American Battlefield Protection Program to make Revolutionary War and the War of 1812 battlefield sites outside of park boundaries eligible for grant assistance, was used as a vehicle to create the largest parks and public lands bill since the late 1970s.<sup>504</sup> Senator Jeff Bingaman (D-NM), chairman of the Senate Energy and Natural Resources Committee, attached several parks and public lands bills that had stalled in his committee over the past years after negotiations on the text with House Democrats. While it took three days to debate the bill and various amendments in the Senate and an additional day for the House to accept the Senate amendments, the Omnibus Public Lands Management Act was signed into law on March 30, 2009, just over two months after President Obama assumed office.<sup>505</sup>

Similar to previous omnibus bills, the National Park Service was impacted by a large amount of the bill. Over 465,000 acres in five national parks were designated as wilderness. Several additions were made to the national trails and wild and scenic rivers systems. Nine new

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364, 120 Stat. 2406, § 1077 (2006).

502. Department of the Interior, Environment, and Related Agencies Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 2121, § 122 (2007).

503. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 167, (2009).

504. H.R. 146, 111th Cong., 1st Sess. (2009).

505. Omnibus Public Land Management Act of 2009, *supra* note 140.



national heritage areas were established, along with three new national park sites.<sup>506</sup> Over two dozen other changes were made to various authorities for national parks and its programs, including the enactment of two grant programs to assist our country's historic preservation and cultural treasures that were championed by First Ladies Hillary Clinton and Laura Bush.<sup>507</sup>

Shortly after this law was enacted, Congress took a significant step to override a management decision of the National Park Service when Senator Tom Coburn (R-OK) offered an amendment to an unrelated bill to allow people to carry a firearm, including a functional one, within a national park or national wildlife refuge as long as it was allowed by appropriate federal, state or local law.<sup>508</sup> Even though the Democrats were in the majority in Congress, the Coburn Amendment passed easily with the support of many Democrats.<sup>509</sup> The regulations prohibiting individuals from carrying firearms in national parks originated during the Reagan administration, which was very supportive of gun rights; however, Congress determined that this law was needed "to ensure that unelected bureaucrats and judges cannot again override the Second Amendment rights of law-abiding citizens. . ."<sup>510</sup> While individuals can now possess guns while in national parks, they are still prohibited from taking them inside government buildings within the parks.<sup>511</sup>

Following the signing of the Omnibus Public Lands Act, the political polarization found in the country took hold in Congress, and action on park legislation dramatically slowed for the next six years. While there were some small park bills signed into law during the intervening six years, most of them were held up until the lame-duck session of the 113th Congress when over sixty parks and public lands bills were added to the annual Defense Authorization Act, a must-pass piece of legislation.<sup>512</sup>

The new law authorized seven new national park units and a commemorative coin to celebrate the National Park Service's 100th

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506. *Id.*

507. *Id.*

508. Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1764, § 512 (2009) (codified at 54 U.S.C. § 104906 (Supp. II 2014)).

509. 155 CONG. REC. S 5360 (2009). The amendment passed by a vote of 67-29.

510. See 36 C.F.R. § 2.4(a)(1) (2015) and 50 C.F.R. § 27.42 (2015); Credit Card Accountability Responsibility and Disclosure Act of 2009, *supra* note 508, at § 512(a)(7).

511. For example, see Nat'l Park Serv., *A Quick Guide to Gun Regulations in the Intermountain Region*, U.S. DEP'T. OF THE INTERIOR, (Feb. 2010), [https://www.nps.gov/yell/learn/management/upload/gunsinparks\\_IMR\\_2-2010.pdf](https://www.nps.gov/yell/learn/management/upload/gunsinparks_IMR_2-2010.pdf).

512. Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, *supra* note 124, at 3717, title XXX.

anniversary in 2016, re-named three parks, modified boundaries of six parks, extended funding for fifteen national heritage areas, designated three wild and scenic rivers and added segments to another designated river, extended federal grant authority to Revolutionary War and War of 1812 battlefield sites, and authorized the National Park Service to study several rivers, trails, and areas for potential additional to the national park system.<sup>513</sup>

And three days after this bill cleared Congress in the lame-duck session, the Senate passed and sent to the president for his signature, a bill that was six years in the making. This legislation, H.R. 1068, enacted as positive law Title 54 of the U.S. Code, which is devoted to the National Park Service and its programs.<sup>514</sup> Prior to this, national park laws were joined with those from multiple other agencies in Title 16 of the code, and that title was becoming fairly large and somewhat disorganized. Title 54 reorganized the agency's laws developed over almost 100 years and brought them up to date.

#### XIV. ENTERING A SECOND CENTURY

In its first century, the National Park Service was transformed from an agency that managed a small number of western parks to one responsible for over 400 sites across the country. The management of these park sites has changed, with many new parks structured as a partnership effort with surrounding cities and towns, as well as non-profit organizations and friend groups. The Park Service has extended its work beyond park boundaries by helping states and local governments with resource preservation and the development of recreational opportunities in neighborhoods where people live and work. The Park Service also has been given a leadership role in providing technical assistance to other countries in creating national parks and preserving their natural and cultural resources.

As the National Park Service enters its second century, it faces many of the same challenges as other federal agencies. Even though Congress gave the National Park Service its largest budget in history in the current fiscal year, the Park Service is only making a small dent in its backlog of maintenance, which is exacerbated with projects such as the iconic Arlington Memorial Bridge in Washington, D.C. that will cost

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513. Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, *supra* note 124, at 3717.

514. Pub. L. No. 113-287, 128 Stat. 3094 (2014) (codified at 54 U.S.C. note prec. 100101 (Supp. II (2014))).

\$250 million alone to repair, at a time that the agency's entire transportation budget for the year is only \$268 million.<sup>515</sup>

Providing supplemental funding to the National Park Service is one of the reasons Director Jon Jarvis has advocated the creation of an endowment to help level the variances found in annual appropriations. The endowment proposal was included in the Obama administration's 2016 National Park Service Centennial Act, along with a request for \$1.5 billion in additional funding to assist with the maintenance backlog.<sup>516</sup> The House and Senate passed a modified version of the Obama Administration's bill, H.R. 4680, in early December 2016, which included the creation of an endowment in the National Park Foundation, and a small amount of additional funding to be matched by private contributions that would support national park projects and programs.<sup>517</sup>

A second challenge is remaining relevant during the Park Service's second century. Director Jarvis has led the National Park Service toward continued relevancy starting with the 2011 initiative, *A Call to Action*.<sup>518</sup> This effort asked for a commitment by all National Park Service employees and partners to connect people to the natural and cultural resources of our national parks and their local communities.<sup>519</sup> This call was followed by the Find Your Park campaign launched in 2015 with the National Park Foundation to encourage all Americans to reconnect with their favorite parks while placing special emphasis on the millennial generation, who will be stewards of these places in the second century.<sup>520</sup>

Another effort to build relevancy is through the Park Service's *Urban Agenda*.<sup>521</sup> This program is building relationships with people where they live and engaging them in efforts to preserve the best of those urban environments.<sup>522</sup> Through the agenda, the Park Service is

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515. Charles S. Clark, *Ensuring America's Iconic National Parks Survive the Next 100 Years*, Government Executive, (Mar. 24, 2016), <http://www.govexec.com/management/2016/03/ensuring-americas-iconic-national-parks-survive-next-100-years/126925/print/>.

516. The Obama Administration's bill was transmitted to Congress on August 31, 2015. For the text of the bill and an accompanying press release see <https://www.nps.gov/subjects/centennial/nps-centennial-act.htm>. See H.R. 4680, 114th Cong. (2016) (enacted).

517. National Park Service Centennial Act, Pub. L. No. 114-289, 130 Stat. 1482 (2016).

518. See Clark, *Ensuring America's Iconic National Parks Survive the Next 100 Years*, *supra* note 515.

519. NAT'L PARK SERV., *A CALL TO ACTION* (2011), [https://www.nps.gov/calltoaction/PDF/Directors\\_Call\\_to\\_Action\\_Report.pdf](https://www.nps.gov/calltoaction/PDF/Directors_Call_to_Action_Report.pdf).

520. See FIND YOUR PARK, <http://findyourpark.com/> (2016).

521. NAT' PARK SERV., *URBAN AGENDA, CALL TO ACTION INITIATIVE* (2015), [https://www.nps.gov/subjects/urban/upload/UrbanAgenda\\_web.pdf](https://www.nps.gov/subjects/urban/upload/UrbanAgenda_web.pdf)

522. *Id.*

working on ways to collaborate with urban communities to connect them to their heritage, local open spaces, and recreational assets that contribute to their daily way of life.

To reach out to young people as potential supporters of the parks in the future, the Obama Administration launched the Every Kid in a Park campaign to allow every fourth-grader to enter parks for free with an accompanying adult.<sup>523</sup> This program continues to be very popular with parents and their fourth-graders, as well as members of Congress who have joined the Park Service in distributing passes since the program's inception.

Additionally, the National Park Foundation has partnered with the Park Service to generate private matching funds for the Centennial challenge dollars appropriated by Congress in recent years for projects in our national parks and to engage young people in learning about and appreciating all that the parks offer.<sup>524</sup> The Foundation is engaged in a capital campaign to raise additional dollars that will benefit many of our parks in the coming years.<sup>525</sup>

As much as some members of Congress have expressed their desire to defer creation of new national parks until its maintenance backlog is eliminated, these concerns are not shared by all. When former National Park Service Director Roger Kennedy was asked by members of Congress how many parks were enough, he told them that history does not stop.<sup>526</sup> Since the beginning of the Clinton administration in 1993, over 45 new areas have been added to the National Park System.<sup>527</sup> While about fifteen of those were created by presidential proclamation, the rest were a result of congressional action.<sup>528</sup> Congress continues to authorize the National Park Service to study areas for their potential to be included in the national park system.

National parks remain popular with the American public for the way they connect us to the land and the story of our country. Perhaps former National Park Service Director George Hartzog stated it best

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523. See EVERY KID IN A PARK, <https://www.everykidinapark.gov/> to learn how kids can get free passes to the parks.

524. See NAT'L PARK FOUND., <http://www.nationalparks.org/> to learn more about the foundation's efforts on behalf of the national parks.

525. See THE CENTENNIAL CAMPAIGN FOR AMERICA'S NAT'L PARKS, <http://campaign.nationalparks.org/>.

526. The author of this article was in many meetings with members and at congressional hearings when Director Kennedy responded in this manner.

527. See Important Anniversaries and Dates, *supra* note 6; [https://www.nps.gov/aboutus/upload/NPS\\_Anniversaries\\_2016.pdf](https://www.nps.gov/aboutus/upload/NPS_Anniversaries_2016.pdf).

528. See areas created since 1995 at Important Anniversaries and Dates, *supra* note 6; [https://www.nps.gov/aboutus/upload/NPS\\_Anniversaries\\_2016.pdf](https://www.nps.gov/aboutus/upload/NPS_Anniversaries_2016.pdf).

when he said:

“The national park idea has been nurtured by each succeeding generation of Americans. Today, across our land, the National Park System represents America at its best. Each park contributes to a deeper understanding of the history of the United States and our way of life; of the natural processes which have given form to our land, and to the enrichment of the environment in which we live.”<sup>529</sup>

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529. See *Famous Quotes Concerning the Nat'l Parks*, NAT'L PARK SERV., (last modified Jan.16, 2003) <https://www.nps.gov/parkhistory/hisnps/NPSThinking/famousquotes.htm>.