

Celebrating the first century of the National Park Service - Establishment and expansion of National Park boundaries

The natural wonders of the western United States are myriad, and as a people we have deemed it appropriate to afford special protection to those inspirational places which we find ourselves compelled to preserve for future generations with the most glorious components of the natural landscape intact. Bestowing National Park status upon certain lands has become our principal means of doing that, putting in place a level of protection which is equivalent in legal effect to a negative easement of the strongest kind, preventing exploitation of the subject area for any purpose, in order to insure that it will remain perpetually available for public viewing in an essentially undisturbed state. Not surprisingly, this decision to disclaim the opportunity to derive private financial enrichment from every inch of our continent has often proven to be a controversial one, and we are reminded by the news that many people still feel that federal protection of natural resources is an inappropriately excessive use of governmental power, which some view as a restriction upon constitutional liberties. There can be no doubt however, that we are all one with nature, since every aspect of our lives is controlled by natural cycles, with the ever changing seasons of each year in the short term, and in the longer term as well, as the aging process leads us toward unification with the earth itself, so our elemental connection with nature, at the deepest level, is simply undeniable. Federal protection of National Parks has been characterized as "a golden fence with diamond teeth", accurately emphasizing that no legal means of circumventing federal law exists, but control over whose hands guide the process of determining which areas are to lie within that fence is vested in the populace, so it is ultimately our own votes which govern who makes such vital decisions on our behalf. National Parks are among the many assets of our society which can quite easily be taken for granted, but here, to commemorate the centennial of the National Park Service (NPS) we will recall how some of our most notable park boundaries have come about, in appreciation of the contribution made by those who have devoted their careers to the preservation of our rich natural, cultural and historical heritage by serving as NPS officials and employees.

For the most part, the lines which would one day form our National Park boundaries, in accord with each congressional mandate to that effect, were originally established by federal land surveyors, employed by the General Land Office (GLO) the predecessor agency of the Bureau of Land Management (BLM) within the Department of the Interior (DOI) to define the units of the Public Land Survey System (PLSS) which essentially blankets the west. As the amount of acreage under NPS jurisdiction has enlarged over the decades, land surveyors have also done a highly admirable job of marking those expanded boundaries, typically by recovering original survey evidence along each existing boundary line, thus perpetuating the work of their predecessors, the GLO surveyors of the Nineteenth Century. Although there have undoubtedly been numerous disputes over particular park boundary locations, such controversy is typically the result of mistaken assumptions, which can be readily silenced through basic boundary clarification, and thus only rarely escalates to the level of litigation. A comprehensive list of all boundary modifications to the many forests and parks under federal jurisdiction, which was compiled by the Forest Service in 2012, spanned well over 100 pages of small print, so there can be no doubt that the efforts of thousands of land surveyors, stretching back over more than a dozen decades, have been instrumental in defining the limits of these precious federal assets. Federal creation of the PLSS, through the surveying and platting process, put in place a

convenient tool for the identification of specific land units, so that each one could then be either sold or retained, and as these units were conveyed into private ownership, through the patenting process, the monumented and platted lines of the PLSS began to serve as lines of division between federal and non-federal lands. As can readily be seen, once this PLSS framework was in place, the process of establishing federal boundaries was driven by governmental decisions regarding which units to dispose and which units to reserve, made by authorized officials at the federal level, since the federal government stood in essentially the same position, with respect to the public domain, as does any typical private property owner with respect to his land.

The Yellowstone National Park Act of 1872 introduced the concept of a federally established park system during the Grant administration, and efforts to expand Yellowstone began as early as the 1890s, when the scenic value of the nearby Jackson Valley was first publicized, as we will later observe in greater detail. But Nineteenth Century presidents had no capacity to put such strong protection of federal land in place, only Congress was authorized to approve and fund the permanent preservation of land at the federal level, thus the path leading toward the creation of additional sites of the same kind not surprisingly turned out to be one which was strewn with numerous major bureaucratic hurdles. The Forest Reserve Act of 1891 heralded the arrival of an era in which the federal focus would rapidly swing toward a more protective view regarding the value of natural resources, and the rather bland phrase "Forest Reserve" endured only until 1907, when it was replaced by the somewhat more patriotically appealing phrase "National Forest", which of course remains in place today. Prior to the turn of the century however, the primary focus of protective efforts at the federal level with respect to the public domain was on retention of federal control over timbered lands, the practical value of which was well appreciated, while other unique areas holding more esoteric significance remained either relatively unappreciated or in some cases undiscovered. Between 1891 and 1906 Congress authorized the creation of over 150 forest areas but only 11 National Parks, leaving the rapidly growing number of park enthusiasts, who favored preservation values over economically oriented land management, unsatisfied. During this period, due in large measure to the subjugation of the west by the railroads, making long distance travel suddenly far more convenient, at least for those who could afford to partake of it, the public view of preservation broadened, to include areas which held value in the context of tourism, such as sites containing either natural wonders or evidence of bygone human civilizations. Thus the stage was set, at the dawn of the new century, for a dramatic increase in public demand for sites that could offer both natural beauty and luxurious amenities, thereby providing ideal vacation destinations.

The 1906 Antiquities Act, supported by prominent conservationists and readily embraced by President Theodore Roosevelt, was motivated by extensive pilfering of historically significant artifacts from Native American habitation sites in Arizona, Colorado and New Mexico, such as Mesa Verde. That Act authorized presidents to designate "National Monuments", as a type of federal reservation, with the goal of providing immediate protection to highly sensitive areas, in the nature of an emergency response, to threats of the kind that are introduced by the onslaught of civilization. This Act was also motivated by the congressional propensity for inaction however, for example it took 16 years for Congress to finally approve Crater Lake National Park in 1902, and 15 years for those lawmakers to finalize Mesa Verde in 1906, despite the fact that virtually no opposition to those proposals was ever voiced. The endowment of the President in 1906 with a new form of power, which could be wielded independently, potentially to

circumvent the wishes or intentions of Congress, obviously set the stage for political friction, which would not be long in coming. Our 26th President, being a fervent naturalist, unabashedly set out to make maximal use of this new tool which had been congressionally placed at his fingertips, creating the first 18 National Monuments, spread out across 9 western states, in a period of less than 3 years, before leaving office early in 1909. His immediate successors, Presidents Taft and Wilson, also put the Antiquities Act to very substantial use, proclaiming another 23 National Monuments during the ensuing 10 year period, including the first several federal reservations of this kind ever created in Alaska. Although the emphasis was exclusively upon the west during the early years of National Monument creation, subsequent presidents have employed the Act of 1906 to generate such sites in the eastern states as well, and the Statute of Liberty became the first National Monument east of the Mississippi in 1924. The capacity to unilaterally create National Monuments under the Antiquities Act has been leveraged by US presidents on more than 100 additional occasions since 1920, comprising a consistent source of controversy, concerning both the use of presidential power and the exertion of federal control over various portions of our national landscape.

Quite fittingly, the especially distinctive Devil's Tower in eastern Wyoming became the first National Monument in 1906, created through unilateral presidential action under the Antiquities Act by TR, and it was soon followed by several southwestern sites holding clear historical value, including New Mexico's famed Chaco Canyon in 1907. Perhaps most interesting from a boundary perspective was the creation of Lewis and Clark Cavern National Monument in Montana, which was declared by TR in 1908, in the midst of a dispute between a mining company and a railroad over which of those parties had a stronger claim of title to the coveted land containing this valuable oddity of nature, as documented in *Jefferson Lime Company v United States* (48 Ct Cl 274 - 1913). The relevant area was situated within unsurveyed public land, in a township which had been only partially surveyed in 1900, yet the railroad claimed land rights in that area based on a Nineteenth Century federal land grant, while the mining company asserted rights to the same area resulting from its 1901 discovery, use and subsequent development of the cavern at issue. When the remainder of the relevant township was surveyed in 1907 and platted in 1909 however, the plat depicted a 160 acre PLSS lot, centered upon the cavern entrance, which had plainly been created by the GLO for the specific purpose of defining the limits of this National Monument, since it was expressly labeled as such on the plat. There can be little doubt that this GLO action resulted from direct presidential intervention, targeted at insuring the perpetuation of federal title to the contested area, in the face of the aforementioned competing claims, by preventing any federal patent to that area from ever being issued. This particular National Monument is no longer under federal control however, it was conveyed to Montana in 1937 and has been part of a Montana State Park ever since (FNI). Exactly how many National Monuments were created in this unusual manner, during an original survey, with platted boundaries that were expressly designed around a natural feature to facilitate its protection, is unknown, but on at least this one occasion land surveyors played a truly formative role in producing National Monument boundaries, intentionally deviating from standard PLSS sectional subdivision procedures, pursuant to a direct presidential mandate to do so.

National Monument status soon became a steppingstone toward National Park status for some of our most prominent protected areas, such as Olympic National Park, which originated in 1897, when President Cleveland created the Olympic Forest Reserve. The enormous size of that

federally designated area soon became a subject of serious controversy however, and President McKinley reduced its size in 1901, but 7 years later in a clever move by those who supported complete protection for that area, the local variety of elk was named the Roosevelt Elk, inducing TR to establish Mount Olympus National Monument in 1909, just hours before his presidency expired. Nearly 30 years then passed before that site finally achieved National Park status in 1938, ending decades of congressional debate over whether or not the relevant area, covering about 500 square miles at that time, was actually better suited to use as a game preserve open to hunting. Boundary modification at Olympic National Park was not yet complete however, through subsequent expansion the federally protected portion of the Washington Peninsula has nearly tripled in size now encompassing over 1400 square miles, and efforts to further expand it have been launched in recent years. Similarly, the magnificent Grand Canyon of the Colorado River in northern Arizona, renowned worldwide as "the House of Stone and Light", which became Grand Canyon National Monument in 1908, was also initially set aside as a Forest Reserve in 1893 by President Harrison, to prevent homesteading within that area, then in 1906, prior to the Antiquities Act, TR converted it into a National Game Preserve. National Park status was congressionally awarded to the site in 1919, but President Hoover effectively expanded its boundaries late in 1932, near the end of his presidency, by declaring the adjoining Toroweap National Monument, and early in 1969 President Johnson did so as well, by creating Marble Canyon National Monument, both of which officially became additions to Grand Canyon National Park in 1975, which now embraces over 1900 square miles. Use of the Antiquities Act during the final days of a presidency, as an elegantly simplistic means of augmenting a presidential legacy, has become a theme, carried onward by most recent presidents, since reserving such action until the concluding moments of a president's term has proven to be a convenient way of dodging the slings and arrows of critics.

Death Valley was among several sites which were designated as National Monuments by President Hoover late in 1932 and early in 1933, during his lame duck period, but his successor, FDR, rather than viewing his predecessor's action critically, saw fit to substantially enlarge that protected area just 4 years later in 1937, and in 1994 this site was deemed worthy of National Park status by Congress after being greatly enlarged once again, to a size of more than 5200 square miles, dwarfing Grand Canyon National Park. A large number of other special places in the southwest have made a strong impression upon our presidents, such as Utah's Zion Canyon, which first came under federal protection in 1909, when President Taft decided to name it Mukuntuweap National Monument. In 1918 Zion obtained its more familiar present name from President Wilson, who also dramatically expanded it at that time, and it very soon obtained National Park status in 1919. The adjoining Kolob Canyon area also became a distinct National Monument in 1937, under President Roosevelt, and was eventually congressionally approved as an addition to Zion National Park in 1956. Also in southern Utah, Bryce Canyon was originally protected as part of the Powell National Forest, created by TR in 1908, and was tagged as a National Monument in 1923 by President Harding. In recognition of its rare and spectacular beauty, that site was soon elevated in status once again, and was christened as Bryce Canyon National Park in 1928. As previously noted, several presidents have identified places which they have deemed to be worthy of National Monument status in the eastern half of our country as well, and the Chesapeake & Ohio Canal along the Potomac River provides a rather unique example of the linear variety. Dubbed "the Capitol's back door" by Justice William O. Douglas, the champion of its legacy, that Nineteenth Century artery of historic commerce was rendered obsolete by modern modes of travel, and languished in a state of advancing decay for decades,

leaving the fate of its winding 185 mile right-of-way unclear until 1961, when President Eisenhower signed the C&OC National Historic Monument into existence, shortly before attending President Kennedy's inauguration. In a twist of irony, this waterway, for which the nearby Watergate Hotel was named, became a National Historical Park in 1971 under President Nixon, whose own fate was destined to be sealed by the Watergate revelations just a few years later.

The NPS was created in 1916 within the DOI by Congress, to put in place a team of people with a mission to focus on the conservation and augmentation of unique resources found in National Parks and Monuments that had been under the jurisdiction of others within the DOI, but not all of the National Monuments came under NPS control at that time, many were still administered by other agencies, such as the Forest Service, based in other federal departments. Visionary conservationist Stephen Mather (1867-1930) served as the first director of the NPS, holding that position until 1929, when failing health made it impossible for him to continue to function in that role. Mather was powerfully motivated and his conservation philosophy mirrored the increasing public emphasis on the importance of keeping places which were clearly special in a variety ways available for public access and use. This stance taken by the NPS resulted in a somewhat competitive state of affairs and some friction between the NPS and the Forest Service, which endured for decades, but the NPS gradually gained jurisdiction over certain key locations that held high tourism value from the Forest Service. In the end, Mather's vision proved to be accurate, as the public responded in a big way, perhaps to an even larger extent than he may have imagined, to the vast array of recreational opportunities offered by our National Parks, and accordingly NPS jurisdiction steadily broadened during the last century, to include treasured sites of divergent types, such as forts & battlefields, cemeteries & other memorials, rivers & lakeshores, and parkways & trails. The 1920s proved to be a decade of phenomenal growth for the NPS, as national prosperity produced ever greater pressure to generate new recreational resources, and the advancing automotive age made the idea of independent travel to remote places more realistic. In 1933, in an effort to satisfy the public demand for federal land management targeted at providing broader recreational opportunities, nearly all of the National Monuments were placed under NPS jurisdiction, with just a handful of exceptions, such as the Gila Cliff Dwelling site in the Gila National Forest of southwestern New Mexico, one of the earliest national monuments created by TR in 1907.

Since public officials at all levels generally attempt to put in place and implement policies which support the preferences of their constituents, and the needs or wishes of the general public are often at odds with those of smaller local groups, virtually constant political strife and contention over federal land management decisions is inevitable, and we will observe how such a scenario, in which NPS personnel were instrumental, played out in western Wyoming. The long political struggle to protect the Grand Teton region began in earnest in 1929, when a National Park of relatively modest size, encompassing only some mountain lakes, was carved out of the 2 million acre Teton National Forest south of Yellowstone during the waning days of the Coolidge administration, leaving the richly endowed Jackson Hole area unprotected. Because the original Grand Teton National Park boundaries excluded valuable portions of that area's unique ecosystem, the creation of that park triggered what would become the most intensely contentious battle ever fought over National Park expansion. The valley at the eastern foot of the Teton Range came to be known among fur traders as "Jackson's Hole" early in the Nineteenth Century, memorializing David Jackson (1788-1837) who was a contemporary of Jim Bridger, Kit

Carson, Jim Clyman, Tom Fitzpatrick, Jed Smith and Bill Sublette, all destined to become truly legendary figures, as a result of their exploits in the great western wilderness, far beyond the limits of civilization as they then stood. F. V. Hayden (1829-1887) one of the most highly skilled and celebrated surveyors of his century, aided substantially in popularizing the Jackson Hole area during the 1870s by publishing numerous photographs, which made its staggering beauty visible to those in the eastern states. Settlement in the Jackson Valley developed at only a rather modest pace during the late Nineteenth and early Twentieth Century however, since the harsh winter conditions of that region proved to be more than the typical settler could bear. Nonetheless, a core group of newcomers established themselves in and around the present town of Jackson, forming an agrarian society during the 1890s, raising crops supported by an irrigation system that was based on dams and canals tapping into and distributing water from the upper reaches of the infamously petulant Snake River.

In 1915, Horace Albright (1890-1987) who would go on to become a Superintendent of Yellowstone National Park, first viewed the Teton Range and felt that Yellowstone should be expanded, to include prized lands lying to the south, in the shadows of the Tetons. Wyoming congressional representatives initially supported the creation of a National Park within the Teton National Forest, when that idea was first floated in 1918, but it gained no traction in Congress and was shot down in 1919 after meeting with strong resistance from Idaho congressional representatives. During the early 1920s, federal officers actively prevented development of private tourist camps within the Teton National Forest, as applications to build over 6000 cabins to house tourists in that area were all denied. In 1923, after having spent several years persistently but unsuccessfully seeking local support for his park expansion plan, Albright finally managed to convince a small group of local business leaders that enhanced federal protection over part of the Jackson Valley might be beneficial to their interests, resulting in a land acquisition plan, which brought the question of funding to the forefront. In a key stratagem, Albright then covertly invited real estate mogul John D. Rockefeller, Jr. (1874-1960) to visit the Jackson Hole area during the mid 1920s, and once Rockefeller personally observed the majesty of the land through which the upper Snake River wound, the fate of that area became a matter of deep concern to his immensely wealthy family. Rockefeller was no stranger to preserving wild land and safeguarding natural resources, quite the contrary, those subjects were of great importance to him. Prior to his involvement in Wyoming, Rockefeller had participated in donating land for the formation of Acadia National Park in Maine, and he also provided substantial funding for federal acquisitions which produced National Parks in the Great Smoky Mountains and the Virgin Islands. In addition, the Rockefellers funded the establishment of museums at numerous parks, including Grand Canyon, Mesa Verde and Yosemite. In reality, such private donations made by philanthropists are not at all unusual and have been instrumental at a long list of federal sites, such as Cape Hatteras, Ellis Island, Golden Gate, Mount Rushmore, Scotts Bluff and a host of other wonderfully historic places, including many Civil War battlefields.

The infamous Snake River Land Company, which was actually a private land preservation effort launched in secrecy by the Rockefellers, bought up as much land as possible in the Jackson Hole area during the late 1920s, with the intention of eventually placing it under federal control, but this massive land acquisition scheme was exposed in 1930, generating intense opposition from most of the local people. County personnel viewed the idea of an expanded federal presence in the relevant area as a problem from a tax revenue standpoint, opposing it for that reason, while a

lot of the settlers and their successors hoped to buy more land themselves, so they were also unconvinced that federal control over a larger area in their vicinity held any benefit for them. The settlers and their descendants were typically very strong and highly independent people by nature, who were capable of forging a productive life amidst sometimes brutal frontier conditions, and they simply wanted the government to stay out of their way, so they naturally saw federal officials like Albright, who were devoted to serving the larger interests of the nation, as unwelcome interventionists. In 1932 various other conservationists began to suggest the creation of a National Monument in the Jackson Hole area to President Hoover, but he was unreceptive to such plans, cognizant that Wyoming lawmakers had turned against the idea of expanded preservation efforts in that area, yet a seed had been planted that would later sprout with the support of another president. The arrival of the Great Depression brought economic issues to the forefront at the national level during the early 1930s, and the political climate swung dramatically, away from the hedonism that marked the previous decade, toward broad support for federally created programs that produced jobs, which comprised the essence of President Roosevelt's New Deal. Although the new president who took office in 1933, at a time of genuine national desperation, was a child of aristocracy and was physically crippled, making him unable to fully enjoy the wonders of nature at a personal level, he had a great appreciation for the diversity he saw in the natural aspects of our national landscape, and he therefore proved to be a fervent supporter of federal conservation efforts, such as those in which the NPS was engaged.

Political machinations marked the mid and late 1930s, preventing the Snake River operation from reaching fruition, leaving Rockefeller holding title to a large amount of Wyoming land which he had no intention or desire to put to personal use, and he looked on with regret as national priorities shifted once again upon the arrival of the 1940s, this time toward foreign policy, as war erupted around the globe, and the US was drawn into the conflict. In 1942, exasperated with governmental procrastination, Rockefeller threatened to sell his extensive land holdings in the Jackson Hole area to a land development interest, prompting President Roosevelt to take decisive action to prevent that from occurring, establishing Jackson Hole National Monument, embracing the Rockefeller holdings, by Executive Order in 1943. Opposition from Congress, motivated by powerful lobbyists, was both swift and fierce, and Roosevelt's action was characterized as a "foul blow" to Wyoming, depriving that state of resources of potentially tremendous value, which were ripe for exploitation. In reaction at the local level, an impromptu uprising took place, as numerous armed local ranchers deliberately drove their livestock straight through the protected area, to illustrate their defiance toward federal authority, but no violence occurred, as federal personnel wisely elected to simply allow this protest to play out without any move to restrain the participants, and no efforts were made to arrest or otherwise penalize anyone for this symbolic violation of federal law. Ironically, even those federal officials serving in the Executive Branch at this time were not unified in their positions regarding federal treatment of this precious landscape, and the Forest Service leadership chose to join those opposing the new National Monument, on the grounds that such land was best administered by the Forest Service rather than NPS. Congress reacted by passing a bill abolishing the National Monument, but the President vetoed it, causing opponents of the National Monument to turn to litigation, resulting in the case of *State of Wyoming v Franke* (58 F Supp 890 - 1945). In that case, Wyoming challenged the declaration of Jackson Hole National Monument by FDR as an allegedly excessive and abusive presidential use of the Antiquities Act, but a federal district court disagreed, and upheld the right of the President to exercise his

congressionally delegated authority just as he had done, despite any potential economic downside, in terms of lost revenue, that might be suffered by Wyoming as a consequence of his decision.

In explaining his veto of the bill to eliminate the new National Monument, Roosevelt indicated that he felt that the area thus protected was an "integral part of the whole Grand Teton region", making its protection essential, and he went on to suggest that his action in declaring the Monument's existence would have been viewed with approval by TR. To his credit, FDR was certainly not unmindful of the significance of private property rights, pointing out that those areas within the outermost boundaries of the National Monument which were "still in private and state ownership, and the rights of the owners, are the same as they were before the proclamation". In an unusually acquiescent step, the President then proceeded to emphasize the continual and permanent nature of the historically established practices of local ranchers, stating that their "existing grazing privileges on Monument lands and existing stock driveway privileges" had been acknowledged at the federal level. His use of the word "privilege" in this context was both wise and legally sound, because those practices had been secured unto the land owners only as permits, rather than easements, and were therefore not genuine property rights. Nonetheless, it could be fairly argued that by issuing this guarantee that their "privileges" would never be disrupted by anyone, the President personally created an irrevocable license or a de facto easement in favor of the inholders. Congress repeatedly tried to eliminate Jackson Hole National Monument during the 1940s without success, and in 1950 the boundaries of Grand Teton National Park were expanded by President Truman, with the inclusion of the 7 year old Monument, but Congress inflicted a heavy price in so doing, barring any further presidential use of the 1906 Act in Wyoming. This action tripled the size of the original park, and thus ended the incredibly arduous saga that had consumed 3 full decades, since the time of the first official proposal to extend intensive federal protection over the Wyoming land lying south of Yellowstone. Upon absorbing the Jackson Hole site, Grand Teton National Park reached its present size, covering over 300,000 acres, perforated by only about 1000 acres of small private inholdings. The popularity of this glorious area brought greatly enhanced tourism revenue to Wyoming during the 1950s, apparently justifying the foregoing federal actions, and leaving at least a majority of Wyoming citizens satisfied with the outcome of this long running controversy over the proper status of the inspiring lands within the Jackson Valley. In 1972 the Rockefeller Memorial Parkway was dedicated, connecting Grand Teton with Yellowstone, thereby fulfilling Albright's dream, and the last remaining Rockefeller property in the area was eventually donated by that family to the US, becoming the Rockefeller Preserve in 2008.

The 1960s back to nature movement, which was a reaction to the land development boom that followed the conclusion of the Great War, produced legislation greatly expanding the scope of federal protection for natural resources, such as the Wilderness Act, which mandated keeping primitive areas intact, the Wild and Scenic Rivers Act, which facilitated protection of river corridors, and the National Trails System Act, which brought the Appalachian Trail and the Pacific Crest Trail into existence, culminating in 1969 with the National Environmental Policy Act, which has put in place intensive standards that are still very much in effect today, targeted at limiting environmental degradation associated with land development. The 1976 Federal Land Policy Management Act (FLPMA) signaled the dawn of an era in which the disposal of the remaining public domain was effectively shut down, since the populace had collectively come to feel that enough land had been patented into private ownership, and in the easement context the

creation of private land rights within those areas still under federal control was also thereby largely curtailed or tightly restricted. All of the presidencies which have played out during the FLPMA era have been replete with conflict over the use of federal land, as has been well documented by countless commentators in recent years, and amidst these many swirling controversies the federal government has come to be viewed as an adversary by some, who would prefer to see all remaining federally held land made available for private acquisition, yet no serious legal challenges to FLPMA have ever gained any real traction in the judicial arena. Most National Parks were originally created upon existing public domain, and in such cases the park designation obviously amounted to a mere reclassification of land that was already under federal control, but today modifying National Park boundaries typically involves federal acquisition of private title or the disposal of federal interest lands to private parties, requiring proper treatment of the relevant public and private land rights, and implicating a potentially arduous governmental process. Congress retains and closely holds the ultimate authority over all federal acquisitions, disposals and transfers of land, so the authority of the NPS to expand or otherwise alter the boundaries of any particular park is quite limited, and the specific boundary modification options which are available to the Secretary of the Interior in any given location were often expressly defined in the language which was crafted by Congress when any particular park was created.

Complications often emerge, in both the fee title context and the easement context, when an opportunity to expand a National Park or comparable federal property arises and the federal land acquisition process engages, implicating the federal Quiet Title Act (QTA). *Lombard v United States* (194 F3d 305 - 1999 & 356 F3d 151 - 2004) provides a very good example of how problematic federal acquisition of fee title for purposes of park creation or expansion can be, documenting the difficulties which were encountered in acquiring land in Massachusetts for the Cape Cod National Seashore, due to the presence of title issues of the kind that frequently afflict an ancient property, with a long and convoluted chain of title. Similarly, *Patterson v Buffalo National River* (76 F3d 221 - 1996) shows how readily easement issues can arise when private land is federally acquired and comes under the jurisdiction of a federal agency, such as NPS, which is expressly charged with monitoring and limiting the use of the acquired area by anyone, including the party who conveyed that land to the US. In addition, *Friends of the Columbia Gorge v United States* (546 F Supp 1088 - 2007) a case which involves the Forest Service rather than the NPS, poignantly illustrates the manner in which both boundary issues and easement issues can generate intense controversy, in an age focused upon environmental protection, as opposed to the Nineteenth Century priorities of expediting and facilitating land use. As that case demonstrates, even when a federal agency seeks to take a collaborative or accommodating posture with respect to private land rights, and either grants or acknowledges the existence of such rights in the spirit of cooperation, other parties operating as legal watchdogs are prepared to step in and question the validity of such federal action, making the federal land rights arena a virtual minefield, in which practically any federal decision is likely to trigger litigation. As we have noted in prior articles comprising this series however, no unauthorized challenge to federal title in any form has any chance of success, since federal courts have consistently held that the QTA represents the sole legal channel available to those who believe they have evidence sufficient to overcome federal title, so the legal avenue of attack open to all those who find federal land ownership objectionable in principle is quite a narrow one, replete with procedural pitfalls which ensnare most who elect to tread that path (FN 2).

In conclusion, it may be noteworthy that the creation of a National Monument or comparable federal site can also involve a congressional decision mandating the federal acquisition of privately held real property, regardless of whether the owners of the land within the subject area are willing to convey their property to the US or not, bringing eminent domain and condemnation issues into play. *Ferrari v United States* (73 Fed Cl 219 - 2006) documents such a scenario, resulting from the creation of Petroglyph National Monument in New Mexico by Congress in 1990. In that case, Congress defined a perimeter embracing several thousand acres, within which numerous private properties existed, and authorized the federal acquisition of all of those properties, many of which were situated within an undeveloped residential subdivision. Most of the land owners acquiesced and cooperated with the federal acquisition effort, but others did not, and acting as a group they filed an inverse condemnation action, alleging that the inclusion of their properties within the congressionally drawn perimeter constituted a federal taking of their land rights, by expressly targeting their properties for federal acquisition. The US Court of Federal Claims rejected their position however, informing them that no taking of any of their rights had occurred, despite the fact that their properties had become surrounded by federal land. To facilitate the federal acquisition of the subdivided land, the US Attorney General had prudently taken the unusual step of waiving federal supremacy with respect to the covenants that applied to the subdivision in question, thereby agreeing that the US would comply with all such existing covenants, so the private owners who chose not to voluntarily sell their lots to the US had lost none of the rights to which they were entitled by virtue of their subdivision plat or any of the documentation legally associated with it. Thus the unsuccessful plaintiffs learned that their lots were legally not within the National Monument, despite lying inside the congressionally created boundary of the site, until such time as the federal government should take actual control over all of the land within that boundary, thereby providing them with an opportunity to demand monetary compensation. No publicly beneficial land rights can ever exist without some degree of sacrifice on the part of those individuals holding private rights in the relevant area, or those who might desire to acquire such land or land rights, but our society has collectively decided that the lands within our National Parks are worthy of strong protection, at the federal level, and our legislators at the national level have put in place federal statutes definitively enacting such protection, as an expression of our national will.

FN 1 - This site is located within T1N R2W of the Montana Principal Meridian, and the original National Monument was legally defined as Lot 12 in Section 17. The original location and boundaries of that lot were evidently set in a manner which was intended to protect the area surrounding the mouth of the particular cavern that was known or was in use at that time. The visitor center and parking area which exist today are situated to the east of the platted location of the original National Monument however, near the east line of Section 17, presumably due to the subsequent discovery of other caverns in the same vicinity covering a wider area, and the property held by Montana now includes parts of Sections 16, 20 and 21 as well. The 1909 GLO plat, bearing the unique notation identifying this highly unusual federal reservation, can be obtained free of charge in pdf form by anyone, from the GLO records website which is maintained by the BLM.

FN 2 - Previous articles in the Federal Land Rights Series have introduced readers to the federal Quiet Title Act and examined various aspects of its operation. Those articles, along with references to many particularly interesting QTA cases involving boundary and easement issues,

are available free from the author in pdf form upon request by e-mail, and they may also be freely obtained through the internet, by means of a search for the author's name in tandem with any desired keywords or phrases.

(The author, Brian Portwood, is a licensed professional land surveyor, a federal employee, and the author of the Land Surveyor's Guide to the Supreme Court series of books, devoted to advanced professional education focused upon effective conceptualization of the nexus and interaction between title and boundary law.)