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COURT OF APPEALS FOR THE 10TH CIRCUIT COURT TO HEAR CASE OF NEW MEXICO Vs. INTERIOR

.... not a narrow legal question, but one of far-reaching consequences.

In recent litigation between the State of New Mexico and the Department of the Interior over the deer research program at Carlsbad Caverns National Park, the issue was resolved at the district court level in favor of the State of New Mexico. Because fundamental questions are involved regarding the authority of the National Park Service to perform research in park areas in order to manage ecological units of the parks, the decision is being appealed to the Court of Appeals for the 10th Circuit.

According to the State of New Mexico, upheld by the district court, the National Park Service did not have research authority in the area of wildlife. Such a conclusion, if it should prevail, would preclude all future research on native animal life within the national parks. This would not only critically hamper the development and implementation of ecologically sound management programs, it could result in a significant loss of basic scientific information.

If the Park Service is required to get State approval and permission in the form of collecting permits before commencing research projects, the State would have the power to deny the permit and thereby control the activities of the Park Service in carrying out its statutory responsibilities to conserve and manage wildlife within park areas.

In 1962, Secretary Udall appointed an Advisory Board to study and make recommendations on the Wildlife Management Policy in the National Parks, with Dr. A. Starker Leopold as Chairman. The Leopold Committee, as the Advisory Board is popularly called, concluded in summary, that (1) protection though it is important, is not in itself a substitute for adequate habitat; (2) that the objective of management for the national parks and monuments, including their wildlife, should be to preserve them as vignettes of primitive America; (3) that inasmuch as the national parks and monuments did not represent self-regulatory ecological units, management was necessary, and that this management was the responsibility—and should remain the responsibility—of the National Park Service; (4) that sound research is the basis for all resource management; (5) that public recreational hunting was not an appropriate recreational pursuit in the national parks and monuments; (6) that public recreational hunting was an appropriate recreational pursuit in

recreation areas; and (7) that the National Park Service should change some of its attitudes, policies and procedures with respect to wildlife management.

As the Department of the Interior views it, the basic point at issue is not the narrow legal question of "ownership" of wildlife, but whether Park Service activities designed to protect and conserve federally-owned land and the wildlife resources of those lands shall be subject to State review, control and regulation.



The Department has never suggested or maintained that a private landowner has title to wildlife resident on his lands. To the contrary, the law is quite clear that the State has the power and duty to manage and regulate hunting activities. On the other hand, the Department of the Interior maintains that the United States as a sovereign power, is not subject to State regulation and control in the performance of congressionally authorized activities. In this regard, reference is made to a policy statement developed by the Department after consultation with representatives of the International Association of Fish, Game and Conservation Commissioners.

Paragraph B.3 of the policy statement specifically provides that research projects involving wildlife on park and monument areas are not subject to State control or require a State collection permit. The Department is, however, required to consult with the State prior to commencing the research project. This was done in the Carlsbad Caverns research project and the State concurred in the necessity for the research.

Every Service employee should have a keen interest in the outcome of the Department's appeal to the Court of Appeals for the 10th Circuit Court in the case of the State of New Mexico vs. the United States Department of the Interior.