NEWSLETTER

United States Department of the Interior National Park Service

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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.

NEWSLETTER

U. S. Department of the Interior National Park Service

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NEW MEXICO STATE GAME COMMISSION vs. UDALL, et al.:

Interior's Right to Conduct Wildlife Research Upheld by Appellate Court in Carlsbad Case

In the case of "New Mexico State Game Commission vs. Udall, et al.," (see NPS Newsletter, Oct. 31, 1968), the U.S. Court of Appeals in Denver has affirmed the right of the Department of the Interior to conduct wildlife research on Federal lands, including the taking of specimens, without first obtaining permission from a state agency. The action dismisses a suit brought by the State of New Mexico against the Department in the so-called "Carlsbad Caverns deer case" and overrules an earlier U.S. District Court finding in favor of the State. The decision has great significance to the Department's wildlife management program.

Last year, the New Mexico State Game Commission brought this action to enjoin the research project on the grounds that the Secretary did not have statutory authority to kill deer within the park for research purposes, and that the Secretary needed a state collecting permit to kill deer.

The district court agreed with the contentions of the State and issued an order enjoining the Secretary from proceeding with this kind of a research program. On appeal, the Denver Appellate Court reversed and remanded the case with instructions to dissolve the injunction against the Secretary, stating:

- Clearly the Secretary has broad statutory authority to promote and regulate national parks to conserve the scenery and wildlife therein "in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.SC. 1. Anything detrimental to this purpose is detrimental to the park. In addition to this broad authority, the Secretary is specifically authorized "in his discretion" to destroy such animals "as may be detrimental" to the use of any park. 16 U.SC. 3.

- The obvious purpose of this language is to require the Secretary to determine when it is necessary to destroy animals, which, for any reason, may be detrimental to the use of the park. He need not wait until the damage through overbrowsing has taken its toll on the park plant life and deer herd before taking preventive action no less than he would be required to delay the destruction of a vicious animal until after an attack upon a person. In the management of the deer population within a national park, the Secretary can make reasonable investigations and studies to ascertain the number which the area will support without detriment to the general use of the park. He may use reasonable methods to obtain the desired information to the end that damage to the park lands and the wildlife thereon may be averted.

See INTERIOR, Page 4

INTERIOR WINS APPEAL

Continued from page 1

In view of the national interest in this litigation it is possible that the State may petition the Supreme Court for a writ of certiorari to seek review of the court's decision. In addition, it would appear that the various state fish and game commissions may also renew their efforts to seek the enactment of legislation which would limit the authority of the Secretary with respect to management of wildlife resources within Federally owned and controlled areas.