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External Development Affecting the National Parks:
Preserving "The Best Idea We Ever Had"
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AGENDA: External Development Affecting the National Parks: Preserving "The Best Idea We Ever Had"

University of Colorado Boulder. Natural Resources Law Center

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EXTERNAL DEVELOPMENT AFFECTING THE NATIONAL PARKS:
PRESERVING "THE BEST IDEA WE EVER HAD"

AGENDA

Sunday, September 14, 1986

4:30-5:45 pm **Registration** at Aspen Lodge, Estes Park, Colorado

5:45 **Dinner** for all registrants

7:15 **Welcome and Introduction**
Lawrence J. MacDonnell, Director, Natural
Resources Law Center

7:30 **Keynote Address: The Future of the National
Parks: Recreating the Alliance between Commerce
and Conservation**

Professor Robin Winks, Yale University

The greatest threat to the future of the national parks is public ignorance. The American national park system, of 315 units, is the only genuinely systematic inventory in the world of the places and symbols which reflect a nation's pride. In the 19th century the park idea took root through an alliance between commerce and conservation. Public, and even governmental, ignorance about the parks as a System, coupled with polarization of the two broad communities, and fragmentation among conservation and preservation groups, has destroyed that alliance. The two communities must learn to work together once again.

8:30-10:00 **PANEL: Art, Literature, and the National Parks**

Marcy Culpin, Historian, National Park Service
Robert Cahn, Author, Leesburg, Virginia
Professor Alfred Runte, University of Washington
Professor Kenneth Erickson, University of Colorado
Merrill Mahaffey, Artist, Boulder

National parks have been the subject of literary and artistic attention from their beginnings. This panel will explore the role that art and literature have played in the development and appreciation of the national park system.

Monday, September 15, 1986

7:00-8:15 am **Breakfast** at Aspen Lodge

8:00-8:30 **Registration**

8:30-9:15 **The National Park Idea: Historical Misconceptions and Ecological Realities**

Professor Alfred Runte, Dept. of History,
University of Washington

Historians of the national parks have long been lulled into describing them as one of the highest expressions of American Culture. The merits of this interpretation aside, the issue is no longer the quality of the idea, but whether or not Americans are in fact committed to protection of the national parks in perpetuity. Mounting threats to the national parks, both external and internal, have finally confronted the United States with its moment of truth. National park history, regrettably, leaves little room for optimism.

9:15-10:40 **PANEL: Perspectives on External Threats to the National Parks**

Richard H. Briceland, Associate Director for
Natural Resources, National Park Service
Joseph Browder, Dunlap & Browder, Inc. Washington,
DC
Stephen Gleason, Deputy to the Undersecretary,
Dept. of Interior
T. Destry Jarvis, Vice President, National Parks
and Conservation Association
Estus Whitfield, Senior Analyst, Office of the
Governor, Florida

10:40-11:00 Break

11:00-11:30 **Case Study: Restoring the Biological Integrity of Everglades National Park**

Estus Whitfield, Senior Analyst, Office of the
Governor, Florida

The State of Florida is three years into its Save our Everglades program, a major feature of which is to restore the natural flow of water into Everglades National Park. The Everglades are an aquatic ecological system dependent on overland flow of water from areas to the north and outside

the park boundaries. Florida is pursuing, in concert with the federal government, means of assuring the natural flow of water through acquisition of private land around park boundaries and by the alteration of highways and of levies and canals which influence water flow.

11:30-12:00

Case Study: The Challenges of the Greater Yellowstone

Bill Bryan, Board Member, Greater Yellowstone Coalition

The boundaries of Yellowstone National Park were established without regard to the natural ecosystems of which it is a part. Now activities outside the park boundaries threaten important park resources. Protection of our original national park requires the coordinated efforts of federal agencies, state and local governments, and concerned private parties.

12:00-1:00

Lunch

1:00-3:00

PANEL: Legal issues associated with protecting park resources

Air: Molly Ross, Assistant Chief, Air Quality Division, National Park Service

Air pollution can damage the very resources parks were established to protect. Although air pollution from individual local sources can hurt nearby parks, pollution transported from many sources over long distances is the more pervasive problem for national parks today. The presentation will briefly discuss the provisions of the Clean Air Act and other law relevant to these problems and then focus on certain recent legal issues with implications for park protection.

Water: Professor A. Dan Tarlock, Chicago-Kent College of Law, Illinois Institute of Technology,

The maintenance of adequate stream flows within and without National Park boundaries may be essential to fulfill Park Service mandates. The acquisition of water rights is a matter of both state and federal law. This presentation will discuss historic Park Service water rights policy and the options open to the Service under the Federal Reserved Rights doctrine.

Wildlife: Professor George Cameron Coggins,
University of Kansas School of Law

This presentation will discuss threats to National Park values associated with wildlife, stemming from public and private activities outside the parks: will outline the limited options of the National Park Service and park partisans for combatting such threats; and will suggest possible reform measures.

3:00-6:15 **Recreation time**

6:15 **Cash bar**

7:00 **Dinner**

8:30 **PANEL: The Role of Science, Research, and Resource Management in Protecting National Park Resources**

Robert Cahn, Moderator
Alston Chase, Author and Educator
Destry Jarvis, National Parks and Conservation Association
Michael Mantell, Conservation Foundation
John Varley, Chief of Research, Yellowstone National Park

Tuesday, September 16, 1986

8:30-10:15 am **PANEL: Jurisdictional and institutional issues**

Public lands: Professor Robert B. Keiter, College of Law-University of Wyoming

The management objectives governing the national parks will be compared with those governing other public land management agencies responsible for lands adjacent to the parks, with attention to the various laws that influence the actions of these agencies. The speaker will also examine inter-agency conflict resolution mechanisms, commenting on the effectiveness of the current system in assuring park protection based on his recent follow-up study on the Glacier National Park experience.

Private lands: Michael Mantell, Conservation Foundation, Washington, DC

Development on private lands adjacent to National Parks can affect park resources in a variety of ways. Federal, state, and local laws and

decision-making processes, as well as cooperation with nonprofit organizations provide numerous opportunities and tools for Park Service staff to influence the nature of that development and to protect National Park System resources more effectively in the future.

International issues: Professor Daniel Magraw,
University of Colorado School of Law, Boulder

This presentation will examine: (1) Customary international law that may apply, in the first instance, to transboundary threats (i.e. threats from sources in other countries) to U.S. parks; (2) Current treaty arrangements with Canada and Mexico that may provide specific rules, or at least a negotiating framework, for resolving threats emanating from those countries; and (3) international treaty law that applies to U.S. parks designated as international parks under the World Heritage or International Biosphere Programs.

10:15-10:35

Break

10:35-11:05

Congressional Activities Regarding Park Protection

Robert F. Hurley, Administrative Assistant to
Senator John H. Chafee

In recent sessions Congress has considered legislation addressing park protection. This presentation will discuss the approaches that have been taken and the prospects for passage.

11:05-11:45

A Simple Solution to a Thorny Problem: Focusing on Alternatives

David Mastbaum, Attorney, Boulder

The most effective way to ensure that parks are protected from incompatible external development is to force the vigorous consideration of alternatives to park-threatening activities. This requires explicit recognition that the unique values of a national park should not be jeopardized if feasible alternatives exist. Case studies involving the use of alternatives to protect parks will be discussed and future actions suggested.

11:45-12:45

Lunch

12:45-2:45

PANEL: Protecting Our National Parks--What Should Be Done?

Lawrence J. MacDonnell, Moderator
Professor William J. Lockhart, University of Utah
College of Law
Richard H. Briceland, National Park Service
Stephen Gleason, Dept. of the Interior
T. Destry Jarvis, National Parks and Conservation
Association
David Mastbaum, Attorney

This concluding panel will summarize and further discuss proposals for park protection offered by earlier speakers. Effectiveness for ensuring park protection will be considered as will be the feasibility of implementation.

2:45

Conference ends.

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CONFERENCE ORGANIZER

LAWRENCE J. MacDONNELL (B.A. Political Science, University of Michigan, 1966; J.D. Natural Resources Law, University of Denver College of Law, 1972; and Ph.D. in Mineral Economics, Colorado School of Mines, 1974) became Director of the Natural Resources Law Center in November 1983. Prior to that he was a research economist at the Denver Research Institute and Adjunct Professor at the Graduate School of Business and Public Management at the University of Denver, 1980-83. He has served as a consultant to the Colorado Office of Energy Conservation, as an instructor and course director for the Colorado Outward Bound School, as Assistant Professor in the Dept. of Mineral Economics at the Colorado School of Mines, and as a Special Consultant to the Interior and Insular Affairs Committee of the U.S. House of Representatives. He is a member of the Colorado Bar Association and the Association of Environmental and Resource Economists.

FACULTY

RICHARD H. BRICELAND (Mechanical Engineering and Hydraulic Engineering, University of Iowa; Ph.D., Mechanical Engineering, California Institute of Technology, 1959) joined the National Park Service as Associate Director for Science and Technology in 1980. In 1983 he was named Associate Director for Natural Resources, in which capacity he directs an interdisciplinary team of some 110 scientists, natural resource specialists and policy analysts responsible for NPS programs on air quality, water resources, energy and mineral development, acid rain, and ecological processes. Previously he has worked for both the U.S. and the Illinois Environmental Protection Agency. He is author of many studies and articles relating to environmental and ecological processes, presidential command and control, information management, satellite communications, energy systems, energy conservation, and pollution control.

JOSEPH BROWDER is a principal in Dunlap & Browder, Inc., a Washington, DC firm specializing in legislative and regulatory strategies and in assistance in planning to minimize delay and cost associated with conflicts about the social, economic, and environmental consequences of industrial development. From 1977-81, he was appointed by the Secretary of Interior to advise the Department on energy and environmental matters. He coordinated energy and natural resources transition planning for the

Carter-Mondale presidential campaign in 1976, and from 1982-84 served as Staff Director of the Democratic National Advisory Panel on Promoting Energy Security and Protecting the Environment. He was a Senior Advisor to the 1984 Democratic National Convention Platform Committee and an advisor in preparation of energy and natural resources materials for the 1986 Democratic Congressional Campaign. In 1975 he was named Conservationist of the Year by the Tropical Audubon Society for his years of work in behalf of the Everglades.

WILLIAM L. BRYAN, JR. (B.S. Zoology, Univ. of New Hampshire, 1966; M.S. Environmental Education, '67, and Ph.D. Resource Conservation Planning, '71, Univ. of Michigan) has served since 1983 as President of Silvertip Consulting Associates, a management consulting business whose clients have included American Rivers Conservation Council, Teton Science School, Canyonlands Field Institute, Defenders of Wildlife and The Wilderness Society. From 1973-82 he was Executive Director of the Northern Rockies Action Group, which he founded. He is author of a book for the Montana Geographic Series, "Montana Indians, Yesterday and Today" (1986). He and two partners will open a business OFF THE BEATEN PATH in October 1986 to provide personalized travel plans for the Northern Rockies.

ROBERT CAHN is an author and journalist whose articles have appeared in Sierra, Audubon, Smithsonian, and the Christian Science Monitor (for whom a series of articles, "Will Success Spoil the National Parks?", won him the 1969 Pulitzer Prize for National Reporting). He is coauthor with Robert Ketchum of American Photographers and the National Parks (1981) and with Horace Albright of The Birth of the National Park Service: The Founding Years, 1913-33 (1985). From 1979-81 he was Washington Editor of Audubon Magazine, and he was one of the original members of the President's Council on Environmental Quality. His awards include the Department of Interior's Conservation Service Award and the Distinguished Service Award of the National Wildlife Federation. He and his wife Patricia (who is his writing partner) live in Leesburg, Virginia.

ALSTON CHASE holds degrees from Harvard, Oxford, and Princeton Universities and is a well-known speaker on environmental and educational topics whose articles have appeared in the Atlantic, Outdoor Life, Prime Time, Educational Record, Outside, and other magazines. Author of Playing God in Yellowstone (1986), he first visited Yellowstone in 1947, and in 1973 founded a summer environmental program for young people on Montana's Smith River, where he regularly took natural history classes into the Yellowstone backcountry. In 1975 he gave up the Chair of the Philosophy Department at Macalester College to become founding executive director of the Northern Rockies Foundation. He is former chairman of the Yellowstone Library and Museum Association.

MARY SHIVERS CULPIN (University of Colorado, Phi Beta Kappa) is Research Historian for the Rocky Mountain Regional Office of the National Park Service. Among her current projects are: adjudication of water rights in the Virgin River Basin, Utah; the identification, evaluation, and registration of cultural resources in Yellowstone National Park; Project Historian for the reconstruction project of Fort Union Trading Post National Historic Site, North Dakota; preparing a legislative history of the National Park Service Act of 1916 and a study of the similarities and differences between a national park and a national monument.

GEORGE CAMERON COGGINS, Tyler Professor of Law at the University of Kansas, is a coauthor of Federal Public Land and Natural Resources Law, the second edition of which is in press. His A.B. is from Central Michigan University (1963) and J.D. from the University of Michigan Law School (1966). He practiced law with the firms of Pillsbury, Madison & Sutro and McCutchen, Doyle, Brown & Enersen, both in San Francisco, before coming to the University of Kansas in 1970. He has been visiting professor at the University of Notre Dame, Northwestern Law School Lewis and Clark College, University of North Carolina Law School, and at the University of Denver Law School. He has written and lectured widely in the area of natural resources law.

KENNETH A. ERICKSON (University of Oregon, B.S. Geography and Geology, 1956, M.A. Geography, 1959; University of California, Ph.D. Geography, 1965) is Professor of Geography at the University of Colorado. Prior to coming to Colorado in 1968 he was Associate Professor at Central Washington State College and did research on sawmilling in northern Sweden on a Foreign Field Research Grant for the National Resources Council of the National Academy of Sciences. He was coordinator and major advisor for the Environmental Conservation Program, an interdisciplinary major at the University of Colorado, and is an alternate delegate for the Eisenhower Consortium for Western Environmental Forestry Research.

STEPHEN ANSON GLEASON assumed his current position as Deputy to the Under Secretary of Interior in September 1985. Among other duties, he is currently charged with managing the implementation of the Department's Resource Threat anticipation/avoidance/resolution process. Previously he was Director of the Executive Secretariat for the Dept. of Interior, where he received the Department's highest honor, the Distinguished Service Award. He began his federal career in 1980 with the Dept. of the Treasury, moving to Interior in 1984. He is a 1971 graduate of Westminster College (Pa.) and has completed three years of graduate work in International Studies at the University of South Carolina, Columbia.

THOMAS DESTRY JARVIS, Vice President for Policy with the National Parks and Conservation Association in Washington, DC, has been with NPCA for nearly 14 years, where his work has focused on defending the natural resources of the national park system. A biologist and former U.S. Army Captain, he has visited and worked on issues in virtually every national park.

ROBERT B. KEITER (B.A. cum laude, Washington University, Saint Louis, 1968; J.D. cum laude, Northwestern University School of Law, 1972) has been Professor of Law at the University of Wyoming College of Law since 1978. In 1985 he was Visiting Professor, Boston College Law School. Previously he was Associate Professor, Southwestern University School of Law, 1976-78; and Managing Attorney, Idaho Legal Aid Services, 1975-76. Publications include On Protecting the National Parks from the External Threats Dilemma, 20 Land & Water Law Rev. 355 (1985), and Legal Considerations in Challenging External Threats to Glacier National Park, Journal of Environmental Management (with W. Hubert) (in press). He was Principal Investigator, University of Wyoming/National Park Service Research Center grant: "An Assessment of Research Needs to Develop Legal Bases for Challenging External Threats to Glacier National Park" (with UW Zoology professor), 1983-84.

WILLIAM J. LOCKHART (University of Minnesota, B.A. 1955, L.L.B.-converted to J.D., 1961) has been Professor of Law since 1970 (Assistant Professor of Law, 1964-70) at the University of Utah. He has done extensive pro bono litigation in civil liberties and environmental matters, 1968-present, including: attorney for the National Parks and Conservation Association and other in two cases challenging the Dept. of Energy site selection guidelines for a high-level nuclear waste repository adjacent to Canyonlands National Park; and attorney (with David Mastbaum) for the Environmental Defense Fund in judicial review of Secretary of the Interior Andrus' determination of the "unsuitability" of surface coal mining adjacent to Bryce Canyon National Park. He is a member of the Litigation Review Committee of the Environmental Defense Fund, and drafted the Utah Administrative Rule-Making Act, designed to require public availability of administrative rules, and to assure open procedures and public participation in the state administration rule-making process.

MERRILL MAHAFFEY is an artist who specializes in western landscapes. He sees his subjects as timeless and resents glibness in art: "Everyone thinks he knows how the Grand Canyon or Monument Valley is supposed to look. A lot of artists sell by continuing to paint that look." His one-man show, Canyons of the Colorado, is being shown this year at the Museum of Art of the American West in Houston and at the University of Utah Museum in Salt Lake City. He is also currently participating in group exhibitions on Contemporary Art of the Southwest at the Tampa Museum of Art,

Florida, and has just returned from Gran Pajatén, Peru, with the University of Colorado Rio Abiseo Research Project. He has been published in The Contemporary West, Smithsonian Magazine, Art New, Art in America, Arizona Magazine, and others.

MICHAEL MANTELL is a Senior Associate at The Conservation Foundation in Washington, DC, where he is project manager for the Foundation's forthcoming third State of the Environment report. A coauthor of National Parks for a New Generation and A Handbook on Historic Preservation Law, he has directed Foundation efforts on radioactive waste management and has been involved in Foundation work on wetland and floodplain protection, coastal zone management, and industrial siting. Before joining the Foundation in 1979, he worked on various environmental matters with the City Attorney's office in Los Angeles. He is a graduate of the University of California-Berkeley and Lewis and Clark College Law School and serves as chairman of an ABA Subcommittee on Federal Land-Use Policy.

DAVID MASTBAUM is an attorney practicing in Boulder, Colorado. He is a graduate of the University of Michigan Law School. He was lead counsel for the Environmental Defense Fund in the Allen-Warner Valley proceeding, involving the proposed construction of a large energy project near Bryce and Zion National Parks. He also represents the environmental intervenors in the Juniper-Cross Mountain case before the Federal Energy Regulatory Commission, which involves the construction of two dams on the Yampa River above Dinosaur National Monument. He has climbed, skied, run, or walked in most of the western National Parks. His research at the Natural Resources Law Center during the spring semester 1986 on the effects of external development on the National Parks helped generate the idea for this conference.

MOLLY N. ROSS (A.B. Harvard College, 1972; J.D. University of Chicago Law School, 1976) has been Assistant Chief of the Air Quality Division of the National Park Service since 1984. She often represents the NPS on air quality issues in the Department, with other agencies, and with the public. From 1976-78 she was an associate attorney with Morgan, Lewis and Bockius in Washington, DC, specializing in the area of environmental and energy law. In 1978, she became an attorney in the Parks and Recreation Branch, Division of Conservation and Wildlife, Department of the Interior. During her six years with that office, she worked on many park issues, but concentrated on the Clean Air Act and Alaska lands issues.

ALFRED RUNTE (Ph.D. American History, University of California, Santa Barbara, '76) is Assistant Professor of History and Adjunct Assistant Professor of Environmental Studies at the University of Washington, Seattle, where he teaches courses on the American West

and American Environmental History. He is best known for National Parks: The American Experience (1979). A second, revised edition, updated to include material on fire ecology, Alaskan parks, and the expansion of the national park system into ecologically sensitive areas, will appear early in 1987. He is also author of Trains of Discovery: Western Railroads and the National Parks (1984) and is currently working on a centennial history of Yosemite National Park under a grant from Resources for the Future. He served as a seasonal ranger naturalist for the National Park Service in Yosemite Valley, 1980-83.

A. DAN TARLOCK (A.B. and LL.B., Stanford University) is Professor of Law at the Chicago-Kent College of Law of the Illinois Institute of Technology. He is a member of the Advisory Board of the Natural Resources Law Center of the University of Colorado School of Law and has spoken several times at conferences sponsored by the NRLC. He is co-author of Environmental Law and Policy (with Eva and John Hanks), and of Water Resource Management (with Charles Meyers); author of "Western Water Law and Coal Development," and several law review articles on instream flow maintenance. He has served as consultant to private law firms, industry, local, state and federal agencies, and was a Visiting Professor of Law at the University of Michigan.

JOHN D. VARLEY is presently Chief of Research for Yellowstone National Park, a position he has held for three years. Prior to becoming the park science administrator, he spent over 20 years in aquatic and fishery research activities in many parts of the west including Alaska. He received his B.S. and M.S. in Zoology and Entomology at the University of Utah and began his career with the Utah Division of Wildlife Resources, where he gained extensive experience with impounded waters and reservoir tailwaters, including a period as Fisheries Research Director at the Flaming Gorge National Recreation Area. He has also worked for eight years in aquatic and fisheries research in Yellowstone and three years with Chinook salmon and steelhead trout in Idaho while employed by the U.S. Fish and Wildlife Service. Earlier he worked with resident and anadromous fishes in Alaska. He is author of a book on Yellowstone fishes and has published extensively in scientific literature.

ESTUS D. WHITFIELD (B.S. Biology, Troy State College, '65; M.S. Wildlife Ecology and Forestry, University of Florida, '71) has been since 1979 Natural Resources advisor to the Governor of Florida on environmental policies and projects; Staff Director of the Florida Land and Water Adjudicatory Commission; Legislative lobbyist; and principal author and coordinator of Governor Graham's "Save Our Rivers" (1982), "Save Our Everglades" (1983), and "Save Our Keys" (1986) Programs. Prior to that, as Senior Planner for the Florida Division of State Planning, he was Supervisor and principal author of the State Land Development Plan

and environmental resources element of the State Comprehensive Plan (1974-79). Before that he was Federal Programs Specialist for the Florida Department of Administration (1971-74).

ROBIN W. WINKS (B.A. magna cum laude, '52, and M.A. '53, History, University of Colorado; M.A. Anthropology, Victoria University College, University of New Zealand, '52; Ph.D. with Distinction, John Hopkins University, '57) has been on the faculty of Yale University since 1957, becoming a full professor in 1967 and the Randolph W. Townsend Professor of comparative history in 1984. Since 1977 has has been the Master of Berkeley College, Yale. He has written extensively on comparative national parks movements world wide. He has visited over 300 of the 335 units of the American national park system, was a long-term member of the National Park System Advisory Board and Council, and served for two terms as Chairman of the Board. He is a Trustee of the National Parks and Conservation Association and of the Forest History Society. He is now writing a biography of Frederick Billings, a study in the 19th century alliance between commerce and conservation.

PROFESSOR DANIEL MAGRAW (A.B. Economics, Harvard '68; J.D. Boalt Hall Law School, University of California at Berkeley, '76) teaches international law and international development policy (focusing on natural resources development) at the University of Colorado School of Law. He worked for three years in India as an economist and business consultant, is a consultant for the United Nations and the U.S. Department of State, and chairs committees in the American Bar Association and American Society of International Law. He has published widely in the public and private international law fields, including articles regarding international liability for nonprohibited acts (e.g., liability for transboundary pollution.)