

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON

1-57 ✓

M. 27025.

May 16, 1932.

The Honorable,

The Secretary of the Interior.

My dear Mr. Secretary:

The Acting Director of the National Park Service in a memorandum dated May 6, 1932, has submitted for consideration and opinion certain questions which have arisen in connection with the establishment of the proposed Death Valley National Monument in California.

The memorandum reads in part as follows:

By Executive Order No. 5408, copy attached, certain public lands within the State of California were temporarily withdrawn for classification and pending determination as to the advisability of including said lands in a national monument to be known as the Death Valley National Monument.

The organic law for the establishment of national monuments is the Act of June 8, 1906 (34 Stat. 225), which authorizes the President to establish the same by proclamation. It is understood, however, that upon the issuance of a proclamation pursuant to said Act, the lands thus declared to be a national monument are permanently withdrawn from the operation of mining laws. This understanding is confirmed by a memorandum from the General Land Office informally discussing the question, copy of which is also attached.

In considering the establishment of this national monument, however, it is the desire of the Service not to prevent the location of mining claims within the area as such activities would in no way interfere with the

*Copy filed in
12-0-Proposed*

M. 27025.

preservation of the character of land to be included. This presents the question whether special legislation for the establishment of this national monument would be necessary or whether the President may, under the authority of the Act of June 8, 1906, proclaim the area a national monument and by express provision in the proclamation continue the mining laws in the monument area.

The Executive order referred to in the memorandum temporarily withdrew, under authority of the act of June 25, 1910 (36 Stat. 847), as amended by the act of August 24, 1912 (37 Stat. 497), a vast area embracing approximately 120 townships, for classification and pending determination as to the advisability of including such land in a national monument.

With some exceptions, national monuments have been created by presidential proclamation under the authority of section 2 of the act of June 8, 1906 (34 Stat. 225), entitled "An Act for the Preservation of American antiquities," which provides:

Sec. 2. That the President of the United States is hereby authorized, in his 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 may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected:

M. 27025.

Provided, That when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States (U. S. C., title 16, sec. 431).

In some cases, such monuments have been created by acts of Congress.

By the act of August 25, 1916 (39 Stat. 535, U. S. C., title 16, sec. 2), the supervision, management, and control of the several national parks and national monuments under the jurisdiction of the Department of the Interior were delegated to the Director of the National Park Service, under the direction of the Secretary of the Interior.

By section 3 of the act, the Secretary was authorized to make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service. Certain other powers were specified, including the authority to sell or dispose of timber where cutting is required in order to control the attacks of insects or diseases, or other-

M. 27025.

wise to conserve the scenery of the natural or historic objects, the destruction of animal and plant life detrimental to the use of such parks or monuments, the granting of privileges, leases, and permits for the use of land for the accommodation of visitors therein, and the granting of privilege to graze live stock, where use is not detrimental to the primary purpose for which the park, monument, or reservation was created.

The jurisdiction over ~~such~~ monuments established by proclamation under authority of the act of June 8, 1906, supra, and certain others established by acts of Congress, was, therefore, delegated to the Park Service under the supervision of the Secretary of the Interior, subject to administration as prescribed by the statutes.

The authority of the Executive to establish national monuments under the provisions of the act of 1906 has not been curtailed by subsequent legislation but it has frequently been ruled by the Attorney General that in the absence of authority from Congress the President may not restore to the public domain lands which have been reserved for a particular purpose (10 Op. 359; 16 Op. 121, 123; 17 Op. 168; 21 Op. 120) nor transfer their control from one department to another (28 Op. 143; 36 Op. 75).

M. 27025.

The authority to establish by proclamation national monuments and to administer same must be exercised within the limits fixed by the statutes. The questions submitted by the Acting Director in his memorandum must be considered in the light of this principle. In brief, the question is; Whether the President may create the proposed reservation and provide in the proclamation that the lands within the reservation shall continue to be subject to the provisions of the mining laws. In this connection, it seems that the mineral leasing law of February 25, 1920 (41 Stat. 437), should also be considered.

Proclamations heretofore issued creating national monuments in many instances have contained saving clauses with respect to valid claims initiated prior to the establishment of the reservation and the authority of the Department to determine the validity of the claims asserted has been upheld by the courts (Cameron et al v. United States, 252 U. S. 450).

The language of the act of June 8, 1906, supra, apparently contemplates that reservations created under the authority granted shall be free from the acquisition of claims or from disposition under the public land laws.

M. 27025.

It also authorizes the acquisition, where practicable, of lands in private ownership or in which bona fide claims have been initiated.

The situation presented in this case is unique and apparently was not contemplated when the original legislation was enacted and no provision for the administration of a national monument as now proposed was made when the National Park Service was created and national monuments placed under its supervision.

It would seem inconsistent with the general purpose of such reservations to permit the initiation and development of mining claims therein under the mining laws. It would likewise appear that since Congress expressly excluded national parks from the operation of the mineral leasing act it intended to exclude national monuments as well, inasmuch as such monuments, with national parks, were made subject to the act of August 25, 1916, supra, and the same general rules of administration therein prescribed.

In view of the foregoing, I am of the opinion that the establishment of the national monument as proposed with special provisions for the operation of the mining

M. 27025.

and mineral leasing laws should be accomplished by special legislation designed to meet the peculiar conditions prevailing within the area sought to be reserved. This action would be in harmony with that taken heretofore where national monuments were created and peculiar local conditions were involved.

Very truly yours,

(Signed) E. C. Finney

Solicitor.

Approved: May 16, 1932.

(Signed) John H. Edwards

Assistant Secretary.

PROMULGATION:

Original and copy filed.
2 copies to Chief Clerk of Dept.
4 copies, with record, to National Parks.