



MEMORANDUM

October 16, 2012

To: Sen. Tom Udall
Attention: Sarah Cobb

From: Kristina Alexander
Legislative Attorney
7-8597

Subject: **National Park Service Management Control Over City Property in Petroglyph National Monument**

You have asked whether the enabling act for Petroglyph National Monument¹ (Petroglyph) gives the National Park Service (NPS) “clear authority” to enforce NPS laws “on City-owned lands in the Boca Negra and the Piedras Marcadas units.” While NPS appears to have authority to enforce its laws and regulations on city property within the monument’s boundaries, NPS and the City of Albuquerque (the City) have agreed, per a cooperative agreement authorized by the enabling act, that the City will be the primary law enforcement authority in the Boca Negra and Piedras Marcadas units.

Enabling Act

Petroglyph was established in 1990 and comprises land owned by the federal government, State of New Mexico, and the City. At the time of its creation, the act authorized an exchange between the federal government and the City for a parcel known as the Piedras Marcadas Unit and with the State of New Mexico a for a parcel known as the Boca Negra Unit. Upon acquisition, these units would be managed by NPS in accordance with P.L. 101-303, § 105. Section 105 directs NPS to “administer, manage, and protect the monument” in accordance with general park laws “in such a manner as to preserve, for the benefit and enjoyment of present and future generations, its cultural and natural resources, and to provide for the interpretation of and research on such resources.” According to the information available to CRS, the City owns most of the Piedras Marcadas Unit, as well as lands in the Boca Negra Unit; the State of New Mexico owns land in the Boca Negra Unit; and the United States owns a small tract of land in the Boca Negra Unit.

Section 105(b) of the Petroglyph enabling act further provides that the Piedras Marcadas Unit and the Boca Negra Unit “shall be managed and developed in accordance with management and operational plans prepared concurrently with the National Park Service.” Section 105(c) directs NPS to enter cooperative agreements with the State and City for management of those two units. Section 105(e) allows NPS to

¹ P.L. 101-313, 104 Stat. 272.

pursue “concurrent jurisdiction of the monument for the purposes of law enforcement and implementation of Federal regulations.”

Cooperative Agreement

In 2008, the City of Albuquerque² and NPS entered into a Cooperative Management Agreement for Petroglyph National Monument (Agreement).³ The Agreement states:

To the maximum extent practicable, Petroglyph National Monument will be managed as a joint responsibility of the parties. The City shall administer and manage the Boca Negra and Piedras Marcadas Units of the Monument.... The term “administer and manage” means the exercise of daily functions including but not restricted to administration, maintenance, delivery of programs, visitor services, and public safety.⁴

The Agreement defines *public safety* to include law enforcement.⁵ Thus, under the Agreement, the City is in charge of managing the Boca Negra and Piedras Marcadas units, including law enforcement, upkeep, and information for visitors.

The Agreement also provides expressly that the City will be the primary law enforcement authority in the two units and that NPS will respond to any “request of the city” for assistance with accidents and incidents in city-owned and managed units. The Agreement states:

The City shall serve as the primary law enforcement agency for the Boca Negra and Piedras Marcadas units.... At the request of the city, NPS law enforcement rangers will respond to, and assist with accidents and incidents in these city owned and managed units. This provision is not intended to, and does not, preclude either party from patrolling or responding to incidents within any portion of the Monument or from enforcing, to the extent of its lawful jurisdiction, applicable statutes, regulations, or ordinances within any portion of the Monument.⁶

In addition, the Agreement provides that the law enforcement provision does not preclude “either party” from “enforcing, to the extent of its lawful jurisdiction,” law in any part of Petroglyph. Thus the Agreement appears to provide that while NPS has agreed to the City managing and serving as the primary law enforcement authority for those units, NPS has not waived its authority to enforce law within any part of Petroglyph, including the Boca Negra and Piedras Marcadas borders. This is consistent with general law that allows NPS to manage and enforce laws on state and locally owned property within park boundaries.⁷

² Earlier, the State of New Mexico entered a Joint Powers Agreement giving the City of Albuquerque management responsibilities for state-owned land in the Boca Negra Unit.

³ A copy of the agreement is available from the author.

⁴ Agreement, Art. I.

⁵ Agreement, Art. II: “Public Safety - resource, facility and visitor protection, routine patrols, investigations, interagency coordination, special projects/directed assignments, sharing of reports and intelligence, sharing of radio systems, dispatches and frequencies, managing special use permits and developing superintendent’s compendiums for managing public use.”

⁶ Agreement, Art. II.A.2.

⁷ See, e.g., *Free Enterprise Canoe Renters Ass’n of Missouri v. Watt*, 711 F. 2d 852, 856 (8th Cir. 1983) (“Given the recognized federal power to regulate nonfederal land, there is no reason to doubt the Park Service’s interpretation of its own regulation, which is that it covers all the [national park unit boundaries], not just the portions that are federally owned”); *United States v. Cooper*, 295 F. Supp. 2d 840 (M.D. Tenn. 2003) (upholding NPS’s authority to enforce traffic laws on state or county owned roads within Natchez Trace Parkway).

Entering into such an agreement would be consistent with law governing NPS. National park units are generally governed by the law known as the National Park Organic Act,⁸ which gives NPS discretion as to how to manage its lands and enforce its regulations and provides: “The Secretary of the Interior shall 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.”⁹ Courts have interpreted this statute as giving NPS broad discretion to manage its resources.¹⁰

Therefore, it appears that NPS has authority to enforce laws and regulations in the Boca Negra and Piedras Marcadas units under the enabling act and general law, but has agreed for the City to be the primary law enforcement authority with respect to those units.

⁸ Act of August 25, 1916, 39 Stat. 535; 16 U.S.C. §§ 1-4.

⁹ 16 U.S.C. § 3.

¹⁰ See, e.g., *Lesoeur v. United States*, 21 F.3d 965 (9th Cir. 1994) (“it is clear that the Secretary has a great deal of discretion in promulgating and enforcing regulations for use of the national parks under 16 U.S.C. § 3”); *Organized Fishermen of Florida v. Hodel*, 775 F.2d 1544, 1550 (11th Cir.1985) (“the Organic Act is silent as to how the protection of park resources and their administration are to be effected. Under such circumstances, the Park Service has broad discretion in determining which avenues best achieve the Organic Act’s mandate”); *Eiseman v. Andrus*, 433 F. Supp. 1103 (D. Ariz. 1977) (NPS has the authority to determine how to use park resources).
