

Anatomy of the Impasse at Petroglyph National Monument

6/12

The NPS and the City of Albuquerque signed a Binding Agreement called for in Section 104 of the enabling act, in 1990 (amended in 1991). The enabling act, Section 104, provides that, upon signing such Binding Agreement, the lands in the monument, including the City-owned lands “shall be perpetually managed in accordance with section 105” of the enabling act. Section 105(e) of the enabling act applies Federal laws, generally applicable to the National Park System, to the monument, including City-owned lands in the monument. Central among such laws is the NPS Organic Act, and its provision for regulations at 16 U.S.C. 3.

In May 2008, the NPS and the City signed a five-year renewal of their Cooperative Management Agreement. Nothing in the agreement prevents NPS application of its rules at 36 CFR Part 2 to persons visiting the city-owned lands. To the contrary, the agreement (page 3) states that it 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.*” Emphasis added. The agreement prevents NPS Rangers from enforcing “city criminal ordinances within the Monument” unless the Ranger is commissioned by the City, but not Federal rules.

The United States possesses only proprietary jurisdiction over the lands it owns in the Monument. NPS Rangers may enforce 36 CFR Part 2 on those Federal lands. NPS Rangers may also enforce 36 CFR Part 2 on “lands...administered by the National Park Service for public-use purposes pursuant to the terms of a written instrument” 36 CFR 1.2(a)(2). The Binding Agreement of 1991 and the Cooperative Agreement of 2008 constitute such “written instrument(s).” This is precisely what the enabling act sections 104 and 105 provide. Regulations at 36 CFR 1.2(a)(2) place the city lands within the NPS’ “lawful jurisdiction” as specified in the May 2008 Agreement.

The 2013 renewal of the Cooperative Agreement is supposed to be negotiated in the coming months. PEER is seeking to persuade the City to enter into this new agreement with a provision allowing the NPS to enforce 36 CFR Part 2 rules on City-owned lands within the boundaries of Petroglyph National Monument.