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Introduction

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INTRODUCTION: NATIONAL PARKS AT THE CENTENNIAL

By Robert B. Keiter*

The original idea of an integrated national park system overseen by a professional agency will turn 100 on August 25, 2016. The national park concept, regularly heralded as “America’s best idea,” has both thrived and changed during the past century. Not only has the United States exported the idea across the globe, but the American national park system has expanded enormously, now totaling more than 400 units in all 50 states and covering more than 84 million acres. With annual visitation hovering near 300 million, the national park system now encompasses more than a dozen different types of park units, including national parks, monuments, preserves, recreation areas, seashores, trails, rivers, battlefields, historical sites, and heritage areas. As an agency, the widely revered National Park Service has matured as it has faced myriad challenges managing the system’s extraordinary natural and cultural resources. Not surprisingly, its resource management policies have evolved in response to a changing world and emerging scientific knowledge. This timely Natural Resources Journal issue on the national parks provides an opportunity to highlight these evolutionary changes and the lessons learned, while also contemplating the manifold challenges that lie ahead as the system moves into its second century of existence.

The United States of today is a much different place than it was in 1916, when Congress passed the National Park Service Organic Act, giving legitimacy and coherence to the scattering of national parks then on the books. The early twentieth century world of Stephen Mather, the highly regarded first director of the national park system, predated our mass automobile culture, television, commercial airplane travel, the interstate highway system, the civil rights revolution, and computers, not to mention the internet, off road vehicles, widespread leisure time, and disposable income. In 1916, the United States population stood at roughly 102 million people, mostly clustered in the East, Midwest, and South. Black and other dark skinned Americans were routinely subject to Jim Crow-type laws and traditions. Few citizens could afford, in terms of either time or money, the arduous cross-

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6. For a biography of Mather, see ROBERT SHANKLAND, STEVE MATHER OF THE NATIONAL PARK SERVICE (1970).
country train travel required to visit the mostly western national park sites. Still to come were momentous events and developments that are now firmly engrained in our culture and psyche: the Great Depression; World War Two; the atomic bomb; the Cold War; Viet Nam; the civil rights movement; lunar landings; Earth Day; globalization; 9/11 and international terrorism; climate change; an increasingly diverse national population that exceeds 322 million; and the list goes on. The national park system, as the official repository of the nation’s natural and cultural heritage, manifests many of these changes, which also reflect corresponding shifts in the nation’s views about nature conservation and cultural preservation.

As much as the national park system and the world surrounding it have changed over time, the fundamental law governing administration of the parks has not changed. In 1916, with passage of the National Park Service Organic Act, Congress instructed the new National Park Service “to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

This original preservation mandate not only still governs the national parks, but was reaffirmed in 1978 with Congress’s passage of the so-called Redwood Amendment, which directs that “the protection, management, and administration of these [national park] areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these areas have been established, except as may have been or shall be specially provided by Congress.” Moreover, Congress has adopted individual enabling acts for each new unit of the national park system, often tweaking but not significantly altering the basic protective purpose of these designations. And Congress, with the passage of environmental laws like the Wilderness Act, Endangered Species Act, and the National Environmental Policy Act, has imposed additional protective responsibilities on park managers. This overarching legal framework has proven quite adaptable, enabling the Park Service to shift over time its priorities, policies, and strategies in response to new scientific knowledge, evolving social values, changing park visitation patterns, and developments outside park boundaries.

The articles in this special issue identify and address several of the key changes occurring in the national parks as well as related legal and policy concerns. During Mather’s era, the national parks were largely isolated enclaves, and the Director concentrated on attracting visitors to these distant settings. With the

7. On the role of the railroads and train travel in visiting the early national parks, see ALFRED RUNTE, TRAINS OF DISCOVERY: WESTERN RAILROADS AND THE NATIONAL PARKS (1998).
expansion of the park system, national park sites are now scattered across the country, and several are proximate to major urban areas, highlighting the challenges of working with new constituencies and designing new roles for the parks. Growing diversity in the American populace and related social justice concerns present similar challenges, prompting the Park Service to pursue new partnership arrangements and increasingly to contemplate sharing management responsibilities. Climate change, invasive species, relentless commercial and recreational pressures, shifting ecological patterns, proximate development activity, and ongoing advancements in scientific knowledge have sparked even more resource management challenges that are testing the Park Service’s present legal authorities, policies, and strategies. The articles that follow tackle these often thorny questions, offering important insights into how we should conceive and manage our national parks in a future world that will inevitably be quite different from the one we know today.

I. A CENTURY OF CHANGE

Yellowstone National Park—the world’s first national park—was created by Congress in 1872 as a “pleasuring ground,” giving initial meaning to the national park concept. By the time Congress passed the National Park Service Organic Act in 1916, it had established several more western national parks renowned for their scenic splendor, including Yosemite, Sequoia, Mt. Rainier, Crater Lake, Glacier, and Rocky Mountain. In addition, Congress had passed the Antiquities Act in 1906, granting the President authority to protect important cultural and scientific resources by designating national monuments on federal lands. These new preservation laws underscored the fact that national parks and monuments were political creations, making the system ultimately dependent on public support. As the first director of the fledgling national park system, Stephen Mather, a former Borax marketing executive, recognized this fact and set about promoting visitation and building support for this new nature conservation idea. At both the congressional and agency levels, the focus was on scenic preservation and creating the facilities necessary to attract the public to these generally distant locations.

Under Mather’s watch, the new National Park Service adhered to a set of principles and policies outlined in the so-called “Lane Letter,” which was conceived to provide concrete direction for managing the fledgling system. Issued by Secretary of the Interior Franklin Lane to the Park Service Director in 1918, the Lane Letter set forth three basic principles that have endured to this day: “First that the national parks must be maintained in absolutely unimpaired form for the use of future generations as well as those of our own time; second, that they are set apart for the use, observation, health, and pleasure of the people; and third, that the national interest must dictate all decisions affecting public or private enterprise in the parks.” Further, the letter stated: “Every activity of the Service is subordinate to the duties imposed upon it to faithfully preserve the parks for posterity in essentially

17. RUNTE, supra note 3, at 48–81.
19. See SELLARS, supra note 4, at 47–90.
20. Id. at 56–57 (for background on the Lane Letter).
their natural state.” At the same time, the letter contemplated the construction of roads and buildings, encouraged diverse outdoor recreational activities, called for luxury hotels as well as low-priced camps, and urged the new agency to work with the railroads, automobile clubs, chambers of commerce, and tourist bureaus to prompt visitors to come to the new parks. What soon emerged was an agency committed to promoting visitation while also intent on preserving the scenic integrity of the new parks and on removing any permanent human occupants from them. Though Native Americans had long had a presence in most of the original western parks, they were no longer welcome on these ancestral lands, creating a longstanding schism between the National Park Service and Indian people.

The Park Service’s commitment to visitation drove its early resource management policies and helped spark growth of the system. Consistent with the Lane Letter’s reference to the new parks as “this nation’s playground,” Park Service managers emphasized recreational opportunities in an effort to attract visitors, even going so far as to construct swimming pools, ski areas, tennis courts, and ice skating rinks in some parks. To entertain the visiting public, park managers sanctioned such unnatural spectacles as the Yosemite fire fall, wildlife zoos, and evening bear viewing programs at park garbage dumps. In the aftermath of World War Two, faced with escalating visitation fueled by the baby boom as well as increased leisure time and more disposable income, Congress started adding new types of units to the national park system, expanding its reach across the country and creating multiple new designations, such as national recreation areas, national seashores, and national rivers. To commemorate its 50 year anniversary, the Park Service embarked on Mission 66 to upgrade visitor facilities, prompting yet more park visitation and compelling critics to complain that the agency was engaged in “industrial tourism.” With the visiting public increasingly using the automobile to visit the parks, gateway communities along with park concessionaires assumed ever more importance in shaping park management policies, giving the national parks a distinctly commercial flavor. Despite some drop-off in the early twenty-first century, the pace of park visitation has continued to escalate, creating ever increasing demands for visitor services and recreational opportunities that are not always in harmony with the agency’s conservation obligations.

As the twentieth century unfolded, the new science of ecology was altering how scientists viewed the natural world, eventually prompting the Park Service to

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22. Id.
23. Id. at 48–52.
25. Secretary Lane’s Letter on NPS Management, in DILSAVER, supra note 21, at 49.
26. SELLARS, supra note 4, at 62–63; KEITER, supra note 2, at 72.
27. SELLARS, supra note 4, at 62–63, 78; KEITER, supra note 2, at 46.
28. RUNTE, supra note 3, at 209–35; KEITER, supra note 2, at 235–42.
29. On the Mission 66 program, see “Mission 66 Special Presentation to President Eisenhower and the Cabinet by Director Conrad Wirth” (Jan. 27, 1956), in DILSAVER, supra note 21, at 193–96; see also SELLARS, supra note 4, at 201–03, 78; KEITER, supra note 2, at 47–49, 98–99.
rethink its resource management policies. Long focused on protecting scenery and “good animals” to maintain an aesthetically pleasing façade for park visitors, park officials routinely extinguished wildfires, and exterminated wolves and other predators. But by the 1960s, ecologists were calling these practices into question as well as the underlying balance of nature concept that was then widely accepted. They realized that nature was really a dynamic process rather than a static phenomenon, subject to constant and often unpredictable change that belied any notion of balance or equilibrium. For the Park Service, these new scientific understandings were captured in the seminal Leopold Report that fundamentally reshaped the agency’s resource management policies. Released in 1963 to address Yellowstone’s controversial practice of culling its elk herds, the Leopold Report recommended that “the biotic associations within each park be maintained, or where necessary recreated, as nearly as possible in the condition that prevailed when the area was first visited by the white man. A national park should represent a vignette of primitive America.” Noting that the “biotic associations in many of our parks are artifacts,” the report called for “the maintenance of naturalness,” the elimination of mass recreation facilities and artificial wildlife displays, restoring native plants and animals as well as natural fire regimes, and reestablishing historic predator-prey relationships to help control ungulate populations. In short, the Report sought to reorient the Park Service’s natural resource management policies away from static scenic preservation and toward a more science-based approach that would involve both passive and active management strategies. Eventually, with passage of the 1998 Omnibus National Park Management Act, Congress added an explicit science mandate to the agency’s management responsibilities, requiring “the full and proper utilization of the results of scientific study for park management decisions.”

During the early twentieth century, the remote western national parks were distant from much human pressure, surrounded mostly by other remote federal lands that buffered them from intensive development activities that could disrupt natural systems. But as the century wore on, the nation’s growing population began spreading ever westward, and the nation’s natural resource development demands on the public lands intensified. By mid-century, the national parks faced a growing human presence that included new home developments, mining projects, exploratory oil wells, clear-cut logging sales, and escalating motorized and other recreational pressures. These extensive changes on the nearby landscape, as exemplified by the intense controversy over commercial logging upstream from Redwood National

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34. A.S. Leopold et al., Wildlife Management in the National Parks, in DILSAVER, supra note 21, at 237–51.

35. Id. at 239.

36. Id. at 242.

37. Id. at 241–49.


Park, cumulatively portended serious environmental injury and threatened the ecological integrity of several parks. The problem was captured in the Park Service’s 1980 State of the Parks report. In response, the agency has gradually adapted its policies and strategies in order to address these external threats as part of its preservationist legal responsibility. As reflected in the agency’s revised Management Policies, most park managers now view their resource management responsibilities from a larger landscape-scale perspective, and it is no longer unusual to find them working collaboratively with their neighbors, often under the rubric of ecosystem management.

The first 100 years of the national park system have seen these special places assume several different and sometime conflicting roles as the original national park idea has evolved in response to changing knowledge, values, and times. In these evolving roles, the national park idea can be variously captured in the following images: a protected wilderness enclave; an attractive tourist destination; a vast outdoor playground; a local economic engine; an ancestral homeland; a natural laboratory; a wildlife reserve; and a vital centerpiece in a larger ecosystem. Each of these images manifests a core reality of the national park idea, and yet no one image fully expresses the role that national parks play. Each image also carries important connotations about how the Park Service has gone about managing these unique and popular lands. But just as these images display how the national park idea has evolved over the past century, we can be confident that it will continue to evolve in the years ahead, presenting challenges like those addressed in these articles.

II. INTO THE FUTURE

Originally located far from where most Americans lived, national park sites are today found outside many major metropolitan areas, and the concept of urban parks is now widely accepted and embraced. Sarah Morath, herself an urban dweller who revels in regular excursions to nearby Cuyahoga Valley National Park, traces the evolution of urban parks in the national park system and highlights their increasing importance. Beginning with the designation in 1972 of a new “gateway” national recreation area on each coast, the number of urban national park units has proliferated, putting city dwellers closer to the natural world and affording them new recreational opportunities. These new urban parks have not, however, been widely embraced within minority communities, prompting the Park Service to launch new

45. See generally Keiter, supra note 2.
relevancy programs and related initiatives in an effort to attract minority visitors. The urban-oriented millennial generation, renowned for its fascination with the electronic world, is similarly disinclined to venture outdoors, giving rise to the notion of “nature deficit disorder” and thus motivating the Park Service to seek new ways to engage with this group too. Morath endorses the agency’s urban park agenda and its related efforts to reach outside its traditional middle class white constituency, cautioning that failure to engage with these new groups could render the national parks less relevant in the years ahead and cost them vital political support.

As the Park Service works to engage new constituencies, it can perhaps derive important lessons from its ongoing foray into the new world of partnership-oriented management arrangements. University of New Mexico law student Alan Barton in “From Parks to Partnerships” draws upon his own Park Service experience to review how the agency has over time adopted a more participatory approach to park management, responding to new park unit models and changing public expectations. Early on, park managers were viewed as experts, and they generally made unilateral management decisions without regularly consulting neighboring communities or others. But as new types of park units—frequently designed to attract new constituencies to the national parks—were created, the agency found itself needing to engage these new park visitors and collaborate with neighbors to protect the units from outside threats. More recently, the agency has been involved with National Heritage Areas that are explicitly designed to integrate Park Service management talents with local communities to protect historical sites and structures, and to interpret the area’s past in an effort to promote heritage tourism. This new approach to preservation, which involves collaborative partnerships, cooperative agreements, and limited federal authority, is bringing preservation opportunities to locations without expansive federal land holdings. While noting the problems presented by a federal presence among private landowners and a pervasive lack of adequate funding, Barton nonetheless concludes that the national heritage area model presents important new landscape conservation opportunities and offers valuable lessons for how the Park Service can engage effectively with neighboring communities across the national park system.

Besides addressing new constituencies in new locations, the Park Service has found that it cannot continue to ignore a longtime neighbor—Native American communities, particularly the tribes with spiritual and historic ties to national park lands. Yellowstone, Yosemite, and other early national parks were carved from ancestral Indian lands, where local native inhabitants were summarily removed from the immediate landscape in order to cleanse these new nature reserves of any permanent human presence. Until recently, Park Service policy has generally excluded tribal members who sought to exercise religious rights or cultural practices within the national parks. In her article on “Reclaiming a Presence in Ancestral Lands,” Professor Jeanette Wolfley briefly recounts the evolution of federal Indian policy and early conflicts between the Park Service and tribal leaders. In doing so,

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47. NATIONAL PARK SERVICE, A CALL TO ACTION: PREPARING FOR A SECOND CENTURY OF STEWARDSHIP AND ENGAGEMENT 9–11 (2011) [hereinafter NPS CALL TO ACTION].
49. NPS CALL TO ACTION, supra note 47, at 13–15.
51. See supra note 24 and references cited therein.
Wolfley sets the stage for a more detailed examination of how President Clinton’s 1994 executive order on tribal sovereignty has precipitated a new “government to government” relationship between the agency and tribal leaders. Though revised national park policy now calls for regular consultation between the two entities, Wolfley questions whether the Park Service is yet prepared to fully acknowledge the legitimate rights of native people to access sacred sites and cultural properties within the parks. Acknowledging that the First Amendment’s Establishment Clause poses certain limitations on federal agencies seeking to accommodate Native American religious claims, she explains how agencies can still respond to sacred site claims, citing the National Historic Preservation Act and other federal laws that can be invoked to safeguard these sites. As a legal matter, the Park Service has clearly entered a new era in its relationship with its Native American neighbors, one that finds the agency increasingly sensitive to historic treaty rights, sacred sites, and traditional cultural property.

The Park Service is also engaged in cooperative relationships with counterpart state agencies, particularly in the realm of natural resources conservation. Although fish and wildlife management is traditionally a state responsibility, a national park designation generally shifts management responsibility to the Park Service, sometimes creating noticeable federal-state tensions that can complicate conservation efforts. At Biscayne National Park, as recounted by Senior Scholar Ryan Stoa, the Park Service and the state of Florida have been congressionally directed in the park’s enabling legislation to share responsibility for managing the park’s fishery resources. After putting this unique cooperative federalism arrangement in a broader conceptual framework, Stoa examines how it is working in this urban marine national park environment. A key issue is whether the Park Service, through its general management plan process, has the authority to create a marine reserve zone off limits to fishing in order to protect coral reefs and other non-fishery resources. The state, unhappy with the Park Service’s reserve designation, has contemplated litigation to clarify the federal-state relationship as established in the park’s rather ambiguous enabling act. Regardless, Stoa points to several important benefits that have accrued from the joint fishery management relationship, including more stakeholder involvement in park decision making processes, greater legitimacy for park management decisions, and improved law enforcement coordination. These benefits, Stoa concludes, make cooperative federalism arrangements a resource management model that merits consideration in other national park settings.

Author Stephanie Showalter Otts and her colleagues, Catherine Janasie and Paula Cotter, also address the subject of federal-state cooperation, but in the context of invasive species management. Noting that more than 6,500 non-native species inhabit national park system lands, the article provides a primer on the sources of Park Service legal authority while exploring the legal tools that park managers can employ to address this pervasive cross-boundary resource management problem. The Park Service and state natural resource management agencies, though operating under quite different legal regimes, share a common responsibility to eradicate and control invasive species. Using Glen Canyon National Recreation Area as a case study, the authors describe how park officials and the surrounding states are each addressing their common zebra and quagga mussel threat, and highlight the jurisdictional law enforcement tensions that persist within and outside the park’s

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boundaries. They then outline how cooperative and general agreements, the regulatory process, and federal criminal laws might each be employed to promote greater federal-state cooperation. Their suggestions provide a roadmap for how Park Service officials might work more effectively with their state counterparts to jointly address cross jurisdictional resource management issues.

Although national parks and energy development are certainly not synonymous, 14 park units are actually open to oil and gas exploration, creating a very challenging resource management problem. Located mostly in the East and South, the affected units include Cuyahoga Valley National Park, Big Thicket National Preserve, and Padre Island National Seashore, where the park unit was created from private lands after the mineral rights had been severed from the surface estate. Professor Elizabeth Geltman tackles this issue in her article. She first explains the origins and scope of oil and gas drilling in the parks, then identifies the available legal authorities for addressing the matter, and concludes by proposing revisions to the Park Service’s regulations governing energy activity. The article is particularly timely since the Park Service has recently released proposed revisions to its oil and gas regulations. Anticipating the Park Service’s proposal, Geltman outlines major reforms to improve the agency’s oversight ability: increasing bonding requirements; eliminating grandfather provisions that exempt older wells; charging access fees to cover related park maintenance costs; and imposing noncompliance fines for permit violations. Whatever the pace of oil and gas development in the years ahead, park managers clearly need the necessary tools to control the environmental and visitor impacts associated with an industrial activity that is fundamentally incompatible with the national park idea.

Law Professor Eric Biber and attorney Elisabeth Long Esposito explore whether an old law—the foundational Organic Act—will enable the Park Service to effectively address a challenging new resource management problem: climate change. After outlining potential climate change impacts on the national parks and likely responsive management strategies, Biber and Esposito examine the Organic Act in detail, providing a useful guide to the statute’s language, legislative history, agency interpretations, and relevant judicial precedent. Observing that the Organic Act has proven sufficiently flexible during the past century to enable the Park Service to adapt its resource conservation strategies to new scientific knowledge as well as changing values, they conclude that the agency’s evolving approach to the statute combined with numerous court decisions provide park officials with broad discretion in determining how to meet their legal conservation and non-impairment obligations. Thus, the Act should not constrain the agency in framing appropriate active or passive management responses to the climate change challenge, including assisted migration, wildlife culling, and vegetation removal strategies. This venerable old law, in their view, provides the Park Service with sufficient authority and flexibility to meet the insidious new challenges posed by climate change.

III. REFLECTIONS

It should be no surprise that the issues addressed in this special issue track several of the Park Service’s own centennial initiatives. The agency, mindful that it

53. For the most part, these parks were created from federally acquired private lands after the owner had severed the mineral rights, creating a split estate.

has not consistently reached urban or minority populations, has embraced the urban park notion and seems intent on broadening its interpretive programs to tell everyone’s story in order to engage these diverse constituencies in the national park experience. The same holds true for the younger generation; agency officials are implementing several programs designed to coax children outdoors, not only to experience nature but also to educate them about it and to promote physical health among an electronic-focused generation. Further, reflecting its growing sensitivity to Native American concerns, the agency has resolved several sensitive Indian ownership and access claims, and it recently proposed a unique co-management relationship with the Oglala Sioux at Badlands National Park. As the next century unfolds for the national parks, these various initiatives should see the Park Service engaging with important new constituencies, not only bringing the national park experience closer to urban America and a diversifying populace, but also bringing the national park idea new champions in the political arena. Perhaps we are witnessing another new dimension to the national park idea—parks for everyone.

In our rapidly changing world, it has become painfully evident that wildlife conservation and other resource management efforts cannot be pursued effectively within the boundary lines that define our national parks. Whether the issue is fishery management, invasive species control, energy development, or climate change, park managers must be prepared to work outside the boundary if individual park units are to meet the Organic Act’s explicit conservation and non-impairment mandates. Though once perceived as islands unto themselves, the national parks are no longer isolated enclaves; park officials must regularly address external threats that imperil park resources, necessitating cooperative relationships with neighboring federal, state, local, and tribal officials. This calls for new ecosystem-oriented planning efforts and collaborative decision making processes that ensure the Park Service’s voice is represented when counterpart agencies or nearby communities address commonly shared resource management issues. Nowhere is the need for large scale planning as evident as in the case of climate change, which portends sweeping environmental changes at a landscape level. Guided by the Organic Act’s enduring conservation-first mandate, the Park Service recently revisited the Leopold Report, identified how ecological science has changed during the past half century, and endorsed new landscape-scale adaptive management strategies designed to promote ecological resilience in the face of unpredictable change. As a result, we will likely


56. NPS Call to Action, supra note 47, at 13–15; see also National Parks Second Century Commission, Advancing the National Park Idea 24 (2009).

57. See Keiter, supra note 2, at 134–38.

58. See NPS Management Policies, supra note 44, at 1.4.1–1.4.7 for interpretation of these terms and guidance in applying them to resource management issues.

59. NPS Advisory Board, Planning for a Future National Park System, supra note 56, at 15–19; NPS Call to Action, supra note 47, at 17; see also Dep’t of the Interior et al., America’s Great Outdoors: A Promise to Future Generations 53–65 (2011).


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see more active or interventionist resource management initiatives and a greater emphasis on collaborative engagement beyond park boundaries.

Much has changed with the national parks during the past century, and much more will change during the next century. Plainly, the national park system of today is more diverse in design than the parks of Mather’s era, and today’s parks are managed quite differently from how Mather’s rangers administered our earliest parks. Exactly what the system will look like and how it will be managed in another 50 or 100 years is at best speculative. But the fact that Yellowstone, Yosemite, and the other early national parks endure and that their natural features still appear much as they did in Mather’s day suggests that the Park Service is effectively adjusting its resource management policies in response to changing scientific understandings and evolving societal values. And the fact that the nation’s commitment to natural and cultural heritage conservation continues to evolve—as exemplified by the recent addition to the system of the Harriet Tubman Underground Railroad National Historical Park, Manhattan Project National Historical Park, Valles Calera National Preserve, and Cesar Chavez National Monument, and other new sites—shows a clear commitment to broadening the system to represent completely the nation’s diverse ecosystems, history, and culture. If the system continues to evolve in this manner and if the system’s keepers remain attentive to the inevitable changes occurring around them, then future generations should be able to enjoy a vibrant, resilient, and relevant national park system on the occasion of its bicentennial.

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