



Spring 2012

Walk in the Park: A Legal Overview of California's State and Federal Parks and the Laws Governing Their Use and Enjoyment, A

Pieter M. O'Leary

Recommended Citation

Pieter M. O'Leary, *Walk in the Park: A Legal Overview of California's State and Federal Parks and the Laws Governing Their Use and Enjoyment, A*, 52 NAT. RES. J. 237 (2012).

Available at: <https://digitalrepository.unm.edu/nrj/vol52/iss1/9>

This Article is brought to you for free and open access by the Law Journals at UNM Digital Repository. It has been accepted for inclusion in Natural Resources Journal by an authorized editor of UNM Digital Repository. For more information, please contact disc@unm.edu.

PIETER M. O'LEARY*

A Walk in the Park: A Legal Overview of California's State and Federal Parks and the Laws Governing Their Use and Enjoyment

ABSTRACT

After years of hiking and camping in many of California's state and federal parks, Pieter O'Leary came to wonder about the formation and history of both park systems in California as well as the development of laws and regulations governing their use and enjoyment, especially after repeated budget crises threatened to close many of the parks. Whenever hikers and campers obtain permits to use parklands, the permits often direct what the hikers or campers can and, more often, cannot do within the boundaries of a park. Whether a permit restricts noise levels, traffic, or the use of firearms, hikers and campers step into both the natural world and the legal world when they enter a state or federal park. This article examines the history of park systems in California and explores issues such as park funding, criminal activity, invasive species, and, among other things, the use of recreational vehicles on parklands. This article also makes several recommendations related to the operation and maintenance of park units in light of the threats posed by California's budget crises and argues that underfunding can create a host of legal problems for both the state and the public.

I. INTRODUCTION

This article is the product of a love affair with the natural beauty of California. The wondrous blue coastal ocean waters, the mountain peaks of the Sierra, and the flat arid deserts are all evidence of California's beauty and its extreme topographical contrasts. From the highest point in the continental United States (Mt. Whitney)¹ to the lowest point in the United States (Death Valley)²—which are less than 100 miles

* J.D., California Western School of Law; M.A., Pepperdine University; B.A., Wilfrid Laurier University. The author is an attorney practicing law in San Diego, California, and dedicates this article to the numerous hikers and campers he has met on trails and mountain peaks throughout the state.

1. Mt. Whitney's summit is 14,497 feet above sea level. Jordan Rane, *Mt. Whitney in their sights*, L.A. TIMES, Dec. 6, 2009, available at <http://articles.latimes.com/2009/dec/06/travel/la-tr-whitney6-2009dec06>.

2. PETER SCHRAG, CALIFORNIA: AMERICA'S HIGH-STAKES EXPERIMENT 37 (2006).

apart—California literally has it all.³ Its natural beauty and topographical contrasts blend with the history of numerous peoples who, over the centuries, have migrated from every point on the globe and influenced the way America, and particularly California, has come to view its natural diversity. Examples of this migration include Russian exploration and settlement at Fort Ross,⁴ Spanish migration from the south and the establishment of the 21 missions along the El Camino Real,⁵ and feverish Americans in search of gold in the Sacramento region that later became the Marshall Gold Discovery State Historic Park.⁶ The result has been the mixing of people and a land of rich and diverse natural bounty.

The territory that eventually became California first developed under aboriginal inhabitants. Over time, however, control of this territory would pass between Spanish, Mexican,⁷ and American governments.⁸ As control of the land shifted between the region's powers, issues related to water, mineral rights, homesteading, crime, and other important economic and sociological issues arose. With increased migration and development came greater need for oversight and regulation of land use and enjoyment. Many early American explorers and settlers recognized the unique beauty of the state,⁹ including John Muir, who founded the Sierra Club.¹⁰ As more people migrated to the area in the mid-to late-1800s, pressure mounted to set aside land for the public.¹¹ As both the state and federal governments set aside more lands, laws were needed to oversee, maintain, and preserve the parklands.

Whether operated and maintained jointly by both state and federal governments or by just one sovereign at a time, California's parklands are governed by a myriad of laws, regulations, and local ordinances, which impact tens of millions of park users each year. The two primary sources of state law pertaining to California's parklands are the California Code of Regulations and the California Public Resources

3. *Id.*

4. See *History of the Russian Settlement at Fort Ross, California*, <http://www.parks.sonomoma.net/rosshist.html> (last visited Jan. 31, 2012).

5. Stacey L. Mahaney, Comment, *The California Missions Preservation Act: Safeguarding our History or Subsidizing Religion?* 55 AM. U. L. REV. 1523, 1526–27 (2006).

6. WARREN BECK & DAVID WILLIAMS, CALIFORNIA: A HISTORY OF THE GOLDEN STATE 123 (1972); see also CAL. STATE PARKS, *Marshall Gold Discovery State Historic Park*, http://www.parks.ca.gov/?page_id=484 (last visited Feb. 1, 2012) (discussing the discovery of gold in 1848).

7. DALE L. WALKER, BEAR FLAG RISING: THE CONQUEST OF CALIFORNIA 32–33 (1999).

8. KEVIN STARR, CALIFORNIA: A HISTORY 73–74, 91–92 (2005).

9. *Id.* at 52. John Muir arrived in San Francisco in 1868 and for the next 50 years lived and wrote about California's landscapes, particularly the Yosemite Valley.

10. Oliver Houck, *Unfinished Stories*, 73 U. COLO. L. REV. 867, 911–12 (2002).

11. *Id.*

Code, although other state codes such as the California Vehicle Code, California Fish and Game Code, and California Government Code also contain relevant provisions that impact California's state park units. Despite years of budgetary cutbacks and a myriad of complicated legal issues, the parks have adapted and survived as a result of protective legislation.

This article focuses on the regulatory history and legal framework of California's state and federal parklands, and argues that volunteerism, budget funding reform, and increases in taxes, park fees, and leases can save California's unnecessarily underfunded park system. While Part I of the article set out the introduction, Part II identifies California's parks, examines the differences between the state park and federal park systems, distinguishes one "unit" of park land from another, and highlights the necessity of regulation, financing, and oversight. Part III examines from a legal perspective, and through the lens of California's repeated budget crises, specific issues that impact California's parks, such as criminal activity, invasive species, endangered species, wildfires, the possession and use of firearms, and the use of off-road vehicles. Finally, Part IV makes several recommendations intended to increase funding for California's state parks as well as to promote increased volunteerism.

II. CALIFORNIA'S PARKS—STATE AND FEDERAL

California has a vast number of federal, state, county, and local parks and wilderness areas as well as historical sites, points of interest, and other memorable recreational areas. Federal, state, and local laws all work to govern the protection and use of these areas. It is important to note that while California's state park system developed in conjunction with the national park system of the federal government, they are two separate and distinct, yet in some cases, overlapping systems.¹² The state park system evolved from a process whereby California purchased lands from private landowners for inclusion in the system. California's national park system evolved from a process of reserving lands already owned by the federal government.¹³ Together, the two park systems cover tens of millions of acres in size.

12. Paul Stanton Kibel, *The People Down the Hill: Parks Equity in San Francisco's East Bay*, 1 GOLDEN GATE U. ENVTL. L.J. 331, 345–46 (2007) (giving a brief history and description of the California state park system).

13. *Id.*

A. California's State Park System

From the ocean views of Pelican State Beach on the Oregon border to the Tijuana Estuary near the Mexican border, California has a large and diverse state park system. In fact, California's 278-unit park system is the largest state park system in the United States and had over 79 million park visitors in 2007.¹⁴ Not only is California's park system large in size, but it is rich in history as well.

Prompted by a growing desire to protect forests and other natural resources, naturalists in northern California during the 1920s banded together to conserve large swaths of redwood forests.¹⁵ These conservation efforts resulted in the founding of California's first state park, Big Basin Redwoods State Park, in Santa Cruz County, in 1902.¹⁶ Several other parks were added to the park system in the 1920s until a formal State Park Commission was established.¹⁷

In 1927, the state legislature created the State Park Commission to oversee and manage California's state parks, primarily the coastal redwoods.¹⁸ The state legislature also set aside funds for a survey of areas suitable for new parks.¹⁹ In 1928, voters approved a bond measure whereby the state would sell \$6 million in bonds, which would then be matched by private funds, for the purchase of new park lands.²⁰ Much of the land that was eventually acquired was along what became the scenic

14. Carl Nolte, *State Treasures on Endangered List*, S.F. CHRONICLE, May 20, 2008, at A1, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/05/20/MNRM10P5QV.DTL&ao=all>.

15. See generally Jean Hocker, *Land Trusts: Key Elements in the Struggle Against Sprawl*, 15 NAT. RES. & ENV'T 244 (Spring 2001). See also Diana Lindsay, *History in the California Desert: The Creation of the Anza Borrego Desert State Park—Largest in the United States*, J. OF SAN DIEGO HISTORY (Fall 1973), available at <http://www.sandiegohistory.org/journal/73fall/anza.htm> (noting the Sierra Club was created in 1892 and the Save-the-Redwoods League in 1918, both in California). "The purpose of these early conservation groups was to protect and preserve scenic resources and to secure some of these areas for the state." *Id.*

16. *Georgia-Pacific Corporation v. United States*, No. 882-71, 1979 U.S. Ct. Cl. LEXIS 961 at *154–155 (Ct. Cl. Sept. 17, 1979) (discussing early efforts to preserve California's Redwoods and noting that "Old-growth Redwood trees are not only the largest living plants, they are also among the oldest [sic] living things on earth.").

17. See generally PLANNING DIV., CAL. STATE PARKS, PLANNING MILESTONES FOR THE PARK UNITS AND MAJOR PROPERTIES ASSOCIATED WITH THE CALIFORNIA PARK SYSTEM 13–52 (Philomene Smith ed., 2010), available at <http://www.parks.ca.gov/pages/795/files/planning%20milestones%202010%20final%20website.pdf>.

18. STEPHANIE S. PINCETL, TRANSFORMING CALIFORNIA: A POLITICAL HISTORY OF LAND USE AND DEVELOPMENT 46 (1999). The first secretary of the State Park Commission was William E. Colby, a young lawyer and longtime leader of the Sierra Club. *William E. Colby*, <http://www.sierraclub.org/history/colby.aspx> (last visited Feb. 1, 2012).

19. PINCETL, *supra* note 18.

20. PINCETL, *supra* note 18.

coastal highway, stretching from the Mexican border to California's border with Oregon.²¹ Only 30 years later, the California state park system had grown to 150 beaches, parks, and historic monuments covering approximately 615,000 acres.²²

In the late 1960s, the California Department of Parks and Recreation was born, and it would see a doubling in the size of the state park system by 1975.²³ The separate State Park Commission and Recreation Commission "merged into a nine-member Park and Recreation Commission."²⁴ Today, the Department of Parks and Recreation manages California's state park system: 1.4 million acres of land, over 280 miles of coastline, 625 miles of lake and river frontage, nearly 15,000 campsites, and 3,000 miles of hiking, biking, and equestrian trails.²⁵ The 278 "units"²⁶ which make up the state park system are broken down further into "underwater preserves, reserves, and parks; redwood, rhododendron, and wildlife reserves; state beaches, recreation areas, wilderness areas, and reservoirs; state historic parks, historic homes" and other structures such as ghost towns and Off-Highway Motor Vehicle (OHV) parks.²⁷ Much of the acreage in the California state park system is found in state parks such as Anza-Borrego Desert (600,000-acre park in San Diego County), Big Basin Redwoods (18,000-acre park in Santa Cruz County), and Humboldt Redwoods (53,000-acre park in Humboldt County).²⁸

The California Public Resources Code provides much of the legal basis for operating and maintaining California's state parks. It requires the Department of Parks and Recreation to "administer, protect, develop, and interpret the property under its jurisdiction for the use and enjoy-

21. PINCETL, *supra* note 18; see also NAT'L PARK SERV., *Frederick Law Olmsted, Jr.*, http://www.nps.gov/history/history/online_books/sontag/olmsted.htm (last visited Feb. 2, 2012) (noting that in 1929, Mr. Olmstead "developed the guiding plan for California's state park system.").

22. CAL. STATE PARKS, *A State Park System is Born*, http://www.parks.ca.gov/?page_id=940 (last visited Feb. 3, 2012).

23. *Californian to Head National Park Service: William Penn Mott was Director of the State System Under Reagan*, L.A. TIMES, May 2, 1985, available at http://articles.latimes.com/1985-05-02/news/mn-20525_1_national-park-service.

24. CAL. STATE PARKS, *supra* note 22.

25. See CAL. STATE PARKS, *Our Mission*, http://www.parks.ca.gov/?page_id=91 (last visited Feb. 3, 2012); see also CAL. PUB. RES. CODE § 5001 (2011) ("The Department of Parks and Recreation has control of the state park system.").

26. "No state park system unit, other than a state wilderness, a natural preserve, or a cultural preserve, shall be located within the boundaries of another state park system unit." CAL. PUB. RES. CODE § 5001.95 (2011).

27. CAL. STATE PARKS, *supra* note 25.

28. Kibel, *supra* note 12 at 345-46.

ment of the public.”²⁹ Additionally, “the department may establish rules and regulations not inconsistent with law for the government and administration of the property under its jurisdiction.”³⁰ Section 5019.50 of California’s Public Resources Code notes that “[a]ll units that are or shall become a part of the state park system . . . shall be classified by the State Park and Recreation Commission into one of the categories specified in this article.”³¹ Section 5019.53 notes that California’s state parks “consist of relatively spacious areas of outstanding scenic or natural character, oftentimes also containing significant historical, archaeological, ecological, geological, or other similar values [and] . . . may be established in the terrestrial or nonmarine aquatic (lake or stream) environments of the state.”³² Recreational units of the state park system “consist of areas selected, developed, and operated to provide outdoor recreational opportunities” and are made up of state recreation areas, underwater recreation areas, state beaches, and wayside campgrounds.³³

The other primary source of law governing California’s state park system is the California Code of Regulations. Title 14 of this code applies generally to natural resources. Chapters 1–16 of Division 3 apply to the Department of Parks and Recreation. Chapter 4, for example, pertains to camping and outlines, among other things, where a person may camp,³⁴ the number of vehicles and persons permitted to occupy a single campsite,³⁵ and camping time limits.³⁶ Other chapters govern hunting,³⁷ boating,³⁸ winter sports,³⁹ and a wide variety of other specific issues related to maintaining safe and manageable park units of all types. Together, the Public Resources Code and Code of Regulations form the backbone of all legislation intended to facilitate the establishment and operation of California’s state parks.

29. CAL. PUB. RES. CODE § 5003. “Commercial exploitation of resources in units of the state park system is prohibited.” CAL. PUBLIC RES. CODE § 5001.65 (West 2011).

30. CAL. PUB. RES. CODE § 5003 (2011).

31. CAL. PUB. RES. CODE § 5019.50 (2011).

32. CAL. PUB. RES. CODE § 5019.53 (2011).

33. CAL. PUB. RES. CODE § 5019.56 (2011). Historical Units are described under § 5019.59, State Seashores under § 5019.62, State Reserves under § 5019.65, State Wildernesses under § 5019.68, Natural Preserves under § 5019.71, and Cultural Preserves under § 5019.74. *See also* CAL. PUB. RES. CODE § 5001.6 (2011) (identifying the general geographical boundaries of the various State Seashore regions).

34. CAL. CODE REGS. tit. 4, § 4451 (2011).

35. CAL. CODE REGS. tit. 4, § 4452 (2011).

36. CAL. CODE REGS. tit. 14, § 4455 (2011).

37. CAL. CODE REGS. tit. 14, §§ 4501–4509 (2011).

38. CAL. CODE REGS. tit. 14, §§ 4650–4665 (2011).

39. CAL. CODE REGS. tit. 14, §§ 4700–4701 (2011).

Despite the size of the Department of Parks and Recreation, California's cities⁴⁰ and counties⁴¹ also have their own, independently managed parklands with separate rules and regulations. Additionally, the federal and state governments cooperatively manage parklands such as Redwood National and State Park.⁴² Consequently, there are numerous rules and regulations that come into play when any level of government creates and operates parkland.

B. The National Park System in California

Like California's state park system, the national park system in California, administered by the National Park Service, also offers a variety of different types of park units.⁴³ President Woodrow Wilson enacted the National Park Service Organic Act⁴⁴ in August 1916, thereby creating the National Park Service.⁴⁵ Today, "the National Park Service is a bureau of the U.S. Department of the Interior and is led by a Director nominated by the President and confirmed by the U.S. Senate."⁴⁶

As with California's state system,⁴⁷ which is in large part modeled after the national park system, national parks are divided into 21 different types of units, including parks, monuments, battlefields, memorials,⁴⁸

40. For example, Griffith Park, home to the Griffith Park Observatory, is a 4,218-acre park overlooking Hollywood and is managed by the City of Los Angeles Department of Recreation and Parks. Dana Bartholomew, *To Protect and Preserve: Great-Grandson of Griffith Park Donor Leads Historic Monument Status Effort*, L.A. DAILY NEWS, Jul. 22, 2008, at A1.

41. For example, William Heise County Park in San Diego County is a 929-acre park located nearly 4,200 feet above "sea level in a forest of pines and oaks along the northern extremity of the Laguna Mountain Range." *William Heise County Park*, CNTY. OF SAN DIEGO (Feb. 26, 2011), <http://www.co.san-diego.ca.us/parks/Camping/heise.html>.

42. See *Salsedo v. Dep't of Parks & Recreation*, 175 Cal. App. 4th 1510, 1513 (2009) (discussing the state and federal cooperative management of Redwood National and State Park in the northwestern portion of the state and specifically noting issues related to vehicle permitting / access to the beach).

43. See generally *Universal Interpretive Shuttle Corp. v. Washington Metro. Area Transit Comm'n*, 393 U.S. 186 (1968) (noting the Secretary of Interior is responsible for maintaining the nation's national parks through the National Park Service).

44. 16 U.S.C.S. § 1.

45. Andrea Waye, *An Environmental Justice Perspective on African-American Visitation to Grand Canyon and Yosemite National Parks*, 11 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 125, 134 (2005).

46. *About Us*, NAT'L PARK SERV. (Feb. 2, 2011), <http://www.nps.gov/aboutus/index.htm>.

47. Paul Stanton Kibel, *supra* note 12, at 345.

48. For example, Port Chicago Naval Magazine National Memorial located near Concord, California is one of the newest units to the national park system and was the site of "the biggest home-front disaster of World War II. . . . Followed by the largest mass mutiny

and the like.⁴⁹ Nationwide the national park system currently consists of nearly 400 units and covers more than 84 million acres.⁵⁰ More than 285 million people visit national park units each year,⁵¹ and in 2010 more than four million people visited California's Yosemite National Park alone.⁵² Yosemite National Park comprises nearly 747,956 acres of land and in 2011 had an annual budget of approximately \$29 million.⁵³ The National Park Service, however, maintains 23 different units in California including nine national parks.⁵⁴ Much of the national parklands in California are found in the Mojave National Preserve, which is nearly 1.7 million acres in size.⁵⁵ Other national park units in California include Joshua Tree National Park,⁵⁶ Golden Gate National Recreation Area, and Manzanar National Historic Site.⁵⁷

The federal government shares jurisdiction over several parks with California's Department of Parks and Recreation. One of the best examples of the overlapping history and management of parkland in

trial in U.S. Navy history." Christopher Reynolds, *Port Chicago, site of a World War II home front tragedy, is a classroom today*, L.A. TIMES, Sept. 5, 2010.

49. See Robin W. Winks, *The National Park System: The National Park Service Act of 1916: "A Contradictory Mandate?"* 74 DENV. U. L. REV. 575, 576 (1997). See also *Find A Park*, NAT'L PARK SERV. (Mar. 10, 2011), <http://data2.itc.nps.gov/parksearch/atoz.cfm> (providing a list of units within the National Park System and their locations and designations).

50. *NPS Overview*, NAT'L PARK SERV., U.S. DEP'T OF THE INTERIOR (Mar. 12, 2011), <http://www.nps.gov/news/loader.cfm?csModule=security/getfile&PageID=387483>.

51. Mireya Navarro, *National Parks Reach Out to Blacks Who Aren't Visiting*, N.Y. TIMES, Nov. 3, 2010, at A17.

52. *Yosemite Visits up But Manageable*, SAN DIEGO UNION-TRIBUNE, Feb. 6, 2011, at G1. The history of Yosemite is an important part of the history of parks in California and was instrumental in galvanizing preservationists to protect the valley that would one day be such an iconic place. In 1864, President Lincoln enacted legislation ceding the Yosemite Valley and the Mariposa Grove of Giant Sequoias to the state of California for protection as a public preserve and recreation site. This was the first time the Federal government set aside open space for the purpose of protecting the beauty of the land and permitting public use and enjoyment. Forty-five years later California ceded the Yosemite Valley back to the federal government. See also Diana Lindsay, *History in the California Desert: The Creation of the Anza Borrego Desert State Park—Largest in the United States*, J. OF SAN DIEGO HISTORY (Fall 1973), available at <http://www.sandiegohistory.org/journal/73fall/anza.htm>.

53. *Id.* See also *Park Statistics*, NAT'L PARK SERV., U.S. DEP'T OF THE INTERIOR, <http://www.nps.gov/yose/parkmgmt/statistics.htm>.

54. California's National Parks and Monuments, CAL. ENVTL. RES. EVALUATION SYS. (Mar. 12, 2011), http://ceres.ca.gov/ceres/calweb/Natl_Parks.html.

55. *Challenges for Park Rangers*, L.A. TIMES, Sept. 29, 2008.

56. Joshua Tree National Park is made up of more than 1,200 square miles of open space, including six mountain ranges. David Danelski, *Great Outdoors' Breathtaking Crisis*, THE PRESS ENTER., Feb. 14, 2011, at A1.

57. This is one of several sites where, during WWII, the United States Government detained Japanese American citizens and residents. Vanessa Gregory, *Spread Forth In the Shadow of the Mountains*, N.Y. TIMES, May 7, 2010, at C31.

California is Redwood National and State Park.⁵⁸ Redwood National and State Park had a unique beginning in 1968 when the U.S. Congress authorized the creation of the park, with the intent of including areas of land well outside its current boundaries.⁵⁹ In 1968, Congress anticipated that California might transfer to the federal government areas of three adjacent state park units (Jedediah Smith Redwoods State Park, Del Norte Coast Redwoods State Park, and Prairie Creek Redwoods State Park).⁶⁰ To date, California has not transferred the land to the federal government. As a result, California and the federal government share jurisdiction of the four different parks.⁶¹ In order to minimize administrative issues and effectuate full cooperation between the two branches of government, the California Department of Parks and Recreation and the National Park Service have entered into various agreements and memoranda of understanding, which, for example, call for the two agencies to designate and adopt the name Redwood National and State Park as a common reference to the area.⁶²

Consequently, while California's state park system and the national park system are separate and distinct, they do share the common purpose of protecting California's natural resources for enjoyment by all. Millions of people visit these parks each year and use trails, campsites, and ranger services. These visitors depend on the fact that the parks are maintained and safe. The use and enjoyment of the parks, therefore, requires extensive regulation, financing, and oversight.

58. Denver Nelson, *Sale of Park Would Benefit State, Feds, Citizens*, EUREKA TIMES STANDARD (CAL.), Jun. 11, 2009 (noting that the National Park was created on October 2, 1968 by President Lyndon Johnson after intense pressure from a coalition of Save-the-Redwoods League, the Sierra Club, and the National Geographic Society to protect the redwoods forests from the lumber industry. "The 58,000 acres on Redwood Creek were purchased for nearly \$1 billion (\$17,241 per acre) and in 2005 was combined with the three state parks to form Redwood National and State Park. In 1978, 48,000 acres were added at a cost of \$1 billion (\$20,833 per acre) and in 2005 another 25,000 acres were added at a cost of \$500 million (\$20,000 per acre). Prairie Creek Redwoods, Del Norte Coast Redwoods, and Jedediah Smith Redwoods state parks total 60,268 acres worth a present day value of \$1.2 billion." *Id.*)

59. *Salsedo v. Dep't of Parks and Recreation*, 175 Cal. App. 4th 1510, 1512 (2009).

60. *Id.*

61. *See id.*

62. *Id.* at 1513.

III. CALIFORNIA'S PARKS AND THE LAW

A. California's Budget Crisis

California's recent bout of budget cuts and threatened park closures has not been its first.⁶³ California's budget woes have long plagued state parks and created a host of issues resulting in various real and potential legal consequences.⁶⁴ While this article does not set out to explore the link between California's economic problems, its budgetary history, and the various legal and environmental issues that impact California's parklands, one cannot help being struck by the fact that a lack of park funding creates significant (and often preventable) problems that cannot be addressed without more funding.

California's recent budget crisis has had a devastating impact on state parks.⁶⁵ The federal budget crisis and the mounting financial deficit have only contributed to it. Clear evidence of the struggle to fund state parks came in 2008 when Governor Arnold Schwarzenegger threatened to close approximately 50 of California's due to the state's financial crisis.⁶⁶ Closure of nearly 50 of California's 278 parks and a \$13.3 million budget cut was a drastic proposal that caught the attention of the country and resulted in the entire 278-unit park system being named to the National Trust for Historic Preservation's list of endangered landmarks.⁶⁷ In 2009, however, Governor Schwarzenegger threatened to close 220 of California's state parks as part of the 2009–10 budget.⁶⁸ Although neither of the governor's threatened park closures occurred, the

63. See Percy Ednalino, *Cost of Relaxation Goes Up*, VISALIA TIMES-DELTA (Visalia, California), Jun. 30, 2004, at A1 (noting "[t]he state parks system is expected to see a \$15 million cut in its operating budget when the 2004–05 state budget is passed."); see also Michael McCabe, *Threatened Parks Likely to Stay Open: Employees Still Worry About State Cutbacks*, SAN FRANCISCO CHRONICLE, Apr. 26, 1993, at A15 (noting that in 1993, nearly \$10 million had been cut from the state's parks budget and that the state's parks were "showing signs of deterioration because of budget cutbacks." *Id.*)

64. Unsupervised and unmaintained parks might result in increased criminal activity from drug cartels or vandals or illegal hunting theft of resources. See Michael McCabe, *Threatened Parks Likely to Stay Open: Employees Still Worry About State Cutbacks*, SAN FRANCISCO CHRONICLE, Apr. 26, 1993, at A15.

65. This article cannot address the various political and economical issues related to the mounting budget crisis, but needless to say that underfunding and threatened park closures have a significant bearing on how the law impacts California's state parks.

66. David Fagundes, *Property Rhetoric and the Public Domain*, 94 MINN. L. REV. 652, 699 (2010) (noting donations flooded the state in the wake of the Governor's announcement).

67. Nolte, *supra* note 14.

68. Sarah Rohrs, *License Fee Could Save Parks*, VALLEJO TIMES HERALD (California), Jun. 17, 2009. In 2009, California's budget deficit amounted to approximately \$26 billion. See also *California's Budget Crisis and the Parks*, N.Y. TIMES, Jul. 16, 2009.

problem of inadequate funding and the growing \$1.2 billion in deferred park maintenance costs due to years of underinvestment continue to endanger the state park system.⁶⁹

Underfunded, unmaintained, and inadequately supervised parks increase the potential for liability related to the development of dangerous conditions on public property, poaching, trespassing, and other criminal activity, as well as activity associated with the spread of non-native species. In essence, nearly all legal issues related to state parks result from a lack of funding. For example, California Government Code section 841.4 immunizes a public entity, public employee, or certain grantors of public easements to a public entity related to the use of roadways and trails for—among other things—fishing, hunting, camping, or hiking⁷⁰. However, there are a host of potential liability issues that develop when signage is not maintained, parking lots go unlit, sewer lines are neglected, or historical structures are abandoned.⁷¹ By not funding its parks, the state exposes itself to a variety of possible legal claims which would likely have been prevented for a fraction of the cost of defending the claim, including the resulting settlement or court judgment.

B. Criminal Activity

Crime is one of the most obvious ways in which California's laws impact those using state and federal parks. Whether large illicit marijuana grow operations,⁷² grave robbing,⁷³ theft,⁷⁴ or simply failing to pay park fees,⁷⁵ park authorities battle many of the same criminal acts that take place in large urban areas like Los Angeles or San Diego, but with

69. Nolte, *supra* note 14.

70. See CAL. GOV'T CODE § 831.4 (2011).

71. See *id.* (regarding unpaved road access to fishing, hunting, or recreational areas; Trails); see generally Lawrence J. Steele, *Where the Wild Things Are: California Public Entity Liability for Wild Animal Attacks on Public Lands*, 8 UCLA J. ENVTL. L. & POL'Y 87 (1988).

72. In late 2010, nine separate clandestine marijuana fields, each measuring approximately two acres, were slated for final clean-up in Cuyamaca Rancho State Park in San Diego County. *Copter Aids Cleanup of Former Pot Fields*, SAN DIEGO UNION-TRIBUNE, Dec. 9, 2010 at B2.

73. *Reward Put up for Arrest of Del Norte County Tribal Grave Looters*, EUREKA TIMES STANDARD (CAL.), May 12, 2010 (noting that grave robbers struck burial grounds on the fenced-in Yontocket Indian Memorial Cemetery at Tolowa Dunes State Park in April 2010. Some human remains in the cemetery were disturbed).

74. Jim Staats, *Five Suspects Arrested in Connection with China Camp Car Burglaries*, MARIN INDEP. J. (California), Feb. 2, 2009, http://www.marinij.com/ci_11612288 (noting five local residents were arrested in connection with a rash of alleged car burglaries at China Camp State Park).

75. Shane Goldmacher, *Measure on Global Warming Law Loses: Californians Reject Proposals to Legalize Pot and Fund State Parks with Car Fees*, L.A. TIMES, Nov. 3, 2010, at A18. (In the

an ever-decreasing amount of funding. In 2009, 62,575 crimes were reported in California parks (about 170 a day), which is over two and a half times the rate of 65 reported crimes per day in 1999.⁷⁶ According to state authorities, crime in California's 278 state parks is more common near water and in the eight off-road vehicle recreation parks based on the theory that water and off-road vehicle activity tends to draw larger crowds and involve inherently risky activities.⁷⁷

Illegal marijuana grow operations are also among the most significant concerns for authorities due to the environmental damage and potential for violence to hikers and campers who stumble upon marijuana fields.⁷⁸ For example, in 2010 park rangers and sheriff's deputies from Los Angeles and Ventura County located and destroyed approximately 42,000 marijuana plants found growing in and around the Santa Monica Mountains National Recreation Area.⁷⁹ This was nearly triple the number of plants found the year before.⁸⁰ Around the state, many park supporters point to a decrease in funding for state parks and the ever-increasing boldness of Mexican drug cartels for the rise in illegal grow operations.⁸¹ Some drug enforcement authorities feel that money earned from these illegal grow operations goes to fund other criminal activity, such as gun

recent 2010 elections, California voters rejected a proposal for a new car fee to fund state parks).

76. Marjie Lundstrom and Matt Weiser, *Rising Crime Dims Luster of California State Parks*, SACRAMENTO BEE, Jul. 25, 2010 at A1. According to State Park officials, there were a total of 957 arrests in the state park system in 2009 and 1009 in 2010. Additionally, there were 14,250 citations issued in the units of the state park system in 2009 and 14,611 in 2010. "According to the California Department of Parks and Recreation, the 62,575 crime reports for 2009 represent the total number of requests for a park ranger as recorded by California Department of Parks and Recreation computers and range from everything from reports of a skunk near a campsite to requests based on criminal activity." *Id.* California Department of Parks and Recreation was unable to provide specific statistics of what it deemed a criminal report, but stated that based on the way the Departments' communications centers and computers recorded the various requests, it would appear that "crime is outrageous in parks when it is certainly not so." Email from Roy Stearns, Deputy Director for Communications to Pieter O'Leary, Mar. 5, 2012 (on file with author).

77. *Id.* Again, according to State Park officials, the park with the highest number of arrests in 2009 was Oceano Dunes with 164. Statistics for 2010 not currently available, but Oceano Dunes is also believed to be the park unit with the most arrests in 2010. Email from Roy Stearns, Deputy Director for Communications to Pieter O'Leary, Mar. 5, 2012 (on file with author).

78. Andrew Blankstein, *Region's Rugged Terrain Draws Pot Farms*, L.A. TIMES, Oct. 1, 2010, at AA3.

79. *Id.*

80. *Id.*

81. Peter Fimrite, *Mexican Growers Having Big Pot Year in State*, SAN FRANCISCO CHRONICLE, Jul. 28, 2009, <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2009/07/28/MN6P18K1FV.DTL>.

running and methamphetamine production, while the environmental damage can be significant.⁸²

Though California has enacted a series of laws to preserve the state's parkland and combat criminal activities, its park rangers are primarily responsible for keeping park areas safe. Per the state controller's records, on February 21, 2012, the state park system had approximately 746.5 established peace officer positions with 582.5 of them filled and 164 of them vacant.⁸³ In November 2010, per the annual reporting requirement, the California state park system reported to the Department of Justice that the system had 665 peace officers and 80 vacant positions.⁸⁴ These peace officers (or, rangers) have a dual role in performing both law enforcement and non-law enforcement (visitor service) functions.⁸⁵ The enforcement component tasks them with enforcing public safety within the parks.⁸⁶ The primary duties of the peace officers are to enforce the California Code of Regulations, the Public Resources Code, and various rules and regulations pertaining to the Harbors and Navigation Code. The peace officers also enforce the rules and regulations of the Department of Boating and Waterways, as well as various sections of the Vehicle Code. In addition, peace officers "arrest persons for the commission of public offenses within the property under its jurisdiction."⁸⁷ As such, they may issue tickets for the consumption of alcohol on park lands, may search and seize property, issue parking citations, and eject or arrest park visitors.⁸⁸

82. *Id.* The negative environmental impact of marijuana grow operations includes clearing native vegetation, using illegal pesticides and chemicals, diverting water resources, and killing wildlife such as bears or mountain lions. Shannon Service, *Pot: Not So Green After All?* (May 21, 2010), <http://www.pbs.org/wnet/need-to-know/environment/pot-not-so-green-after-all/839/>.

83. California State Parks Position Control Data System (2012).

84. *Id.*

85. Specifications of State Park Peace Officer (Ranger). See <http://www.dpa.ca.gov/textdocs/specs/s1/s1915.txt>.

86. CAL. PENAL CODE § 830.2(f) (2011) (identifying persons who are peace officers whose authority extends to any place in the state, specifically those employees designated by the Director of the Department of Parks and Recreation as peace officers).

87. CAL. PUB. RES. CODE § 5008 (2011) (discussing the authority and powers of the peace officers designated by the Director of the Department of Parks and Recreation).

88. See *Adams v. Kraft*, 2011 U.S. Dist. LEXIS 24984 (N.D. Cal. Mar. 8, 2011) (chronicling plaintiff's repeated encounters with park rangers at Seacliff State Park Beach and Pier).

C. Wildfires

In 2008, California lost over 900,000 acres of national forest land to wildfires.⁸⁹ This was more than three times the average annual national forest land lost to fire since 1970. In total, the state also lost over 2,300 structures to wildfires in 2008.⁹⁰ The cost of fighting the fires in California in 2008, one of the worst fire seasons in the state's history, was approximately \$700 million, or half of the \$1.4 billion the U.S. Forest Service spent nationally on wildfire suppression.⁹¹ California's fire expenditures alone exceeded \$1 billion.⁹²

In both 2003 and 2007, multiple wildfires ravaged Southern California, particularly San Diego County. The fires raged uncontrolled for days and involved thousands of firefighters.⁹³ In October of 2003 alone, multiple fires ignited due to a mix of years of extreme drought, an unusually large number of diseased, dying trees available for fuel, and hot, dry weather.⁹⁴ The Cedar Fire began in the Cleveland National Forest southwest of Julian, California, on October 25, 2003 and spread from the national forest to threaten large parts of the city of San Diego, including the communities of Scripps Ranch and Ramona.⁹⁵ By December 1, 2003, more than 320 homes had been destroyed and 70 were severely damaged.⁹⁶ In the aftermath of the Cedar Fire, legislators set out to upgrade and implement new and more stringent wildfire related laws.

Strict building codes⁹⁷ and vegetation abatement measures demonstrate the legal impact of wildfires in California. Moreover, public

89. Mike Swift, *With Wild Fire Season Coming, Satellites are Powerful, New Weapon Against Devastation*, SAN JOSE MERCURY NEWS (California), Apr. 9, 2009.

90. Bettina Boxall, *Spending to Fight California Wildfires Surpasses \$1 Billion: About 1.4 Million Acres are Scorched in One of the Worst Fire Seasons in the State's History*, L.A. TIMES, Dec. 31, 2008, at B1.

91. *Id.* (noting that one of the biggest fires of 2008 scorched the mountains of the Big Sur coast south of San Francisco).

92. *Id.*

93. Michelle Dearmond & Julia Glick, *No End In Sight: Wildfires' Epic Ruin Blamed On Heat, Drought, Wind, People*, THE PRESS ENTERPRISE (Riverside, California), Oct. 24, 2007, at A1.

94. *San Diego County Fire Facts*, THE SAN DIEGO WILDFIRES EDUCATION PROJECT, http://interwork.sdsu.edu/fire/resources/fire_facts.htm (last visited Feb. 4, 2011) (also providing various wildfire related education resources for teachers).

95. Jeff Bowen, Fire Chief, *City of San Diego Fire Rescue Department: Cedar Fire 2003 After Action Report*, at 2, <http://www.sandiego.gov/fireandems/pdf/afteraction03.pdf> (last viewed Feb. 4, 2011). *Id.* at 76–81.

96. *Id.* at 5.

97. Lori Weisberg, *The Burn Factor; New Outdoor Building Materials Meet Stricter County, State Codes*, SAN DIEGO UNION TRIBUNE, Dec. 30, 2007, at D1 (noting new regulations regarding outdoor decking and measures to make decking more fire-resistant).

entities continue to enjoy immunity from claims based on injuries caused in fighting fires or due to the condition of firefighting equipment or facilities. California law provides various specific immunities related to firefighting services and is intended to “provide for a broad immunity from liability for injuries resulting in connection with fire protection service.”⁹⁸ Thus, not only is the state immunized under a variety of scenarios related to wildfires starting on park lands and spreading to private property, but those fighting the fires and providing firefighting related services are also immunized.

A 2010 case stemming from the Corral Canyon Wildfire, which started in Malibu Creek State Park,⁹⁹ then spread to and destroyed adjacent private property, is a recent example of an instance where the state was immune from wildfire damage liability.¹⁰⁰ After their claims with the California Victim Compensation and Government Claims Board had been rejected the plaintiff homeowners brought an action against California for damages that resulted from the 5,000-acre wildfire.¹⁰¹ They alleged first that the State created “a substantial risk of injury and damage to surrounding properties” when it permitted “easy and unrestricted access” to a cave at the top of Corral Canyon where, allegedly, partygoers started the fire.¹⁰² Second, the plaintiffs alleged that the State created “the nuisance of a severe fire hazard by allowing unrestricted and easy access to” the road leading to the site where the fire started and resulted in the fire damage to the plaintiffs’ property.¹⁰³

98. CAL. GOVT. CODE § 850. (2011) states that “[n]either a public entity nor a public employee is liable for failure to establish a fire department or otherwise to provide fire protection service.” Section 850.2 states “[n]either a public entity that has undertaken to provide fire protection service, nor an employee of such a public entity, is liable for any injury resulting from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities.” Section 850.4 states “[n]either a public entity, nor a public employee acting in the scope of his employment, is liable for any injury resulting from the condition of fire protection or firefighting equipment or facilities or . . . for any injury caused in fighting fires.” Fire-fighting is a governmental function, and in the absence of statute, neither municipality nor its officers are liable in tort for failure to discharge a duty with respect thereto. *Stang v. Mill Valley*, 38 Cal. 2d 486, 488, 240 P.2d 980 (1952).

99. *Man Admits to Starting Wildfire*, L.A. TIMES, Oct. 3, 2008, at B4.

100. *Avedon v. State of California*, 186 Cal. App. 4th 1336, 1345, 113 Cal.Rptr.3d 578 (2010) (noting more than 50 homes were destroyed and many more damaged as a result of the fire).

101. *Id.*

102. *Id.* at 1340–41, (alleging the State maintained its property in a dangerous condition “by allowing easy and unrestricted vehicular access to the top of Corral Canyon and to a parking lot within a quarter of a mile of the cave” as well as by allowing entry to the cave, “which was known to attract partiers who then lit bonfires inside.”).

103. *Id.* at 1340.

The Court of Appeal held that, based on legal precedent, “[t]hird party conduct by itself, unrelated to the condition of the property, does not constitute a ‘dangerous condition’ for which a public entity may be held liable.”¹⁰⁴ However, the court noted, “[i]n appropriate circumstances, a public entity may owe members of the public a . . . duty not to maintain public premises in a dangerous condition and, specifically, not to maintain its premises in a condition that will increase the reasonably foreseeable risk that criminal activity will injure such individuals.”¹⁰⁵ With that in mind, the court held that the plaintiffs “make no claim that the cave, the fire road, or the parking lot was unsafe The dangerous conditions alleged are the lack of barriers to prevent vehicular access and parking near the cave, and the lack of a barrier to prevent entry into the cave itself.”¹⁰⁶ The court concluded that, “[b]arring the entrance to the cave might have prevented third parties from building a bonfire inside the cave, but it would not have prevented them from building a bonfire outside the cave, thereby presenting the same (or even greater) risk of a brush fire.”¹⁰⁷ Simply put, the plaintiffs did “not allege facts to establish a defect in the cave itself or in vehicular access to that area of the park. In the absence of a defect in the property, appellants cannot allege facts establishing a causal connection between the defect and the injuries sustained.”¹⁰⁸

The plaintiffs’ second claim was that the State created “the nuisance of a severe fire hazard by allowing unrestricted and easy access to” the road leading to the site where the fire started, resulting in the fire damage to the plaintiffs’ property.¹⁰⁹ The court held that a claim for nuisance could not “be predicated on these actions” because “[n]othing which is done or maintained under the express authority of a statute can be deemed a nuisance[.]” and because the State had the express authority to “operate Malibu Creek State Park,” which included the State’s “decision to allow access to the cave and the road near the cave.”¹¹⁰

Due to this reasoning, despite California’s operation and maintenance of state parklands, those using parklands or living adjacent to parklands have significant difficulty maintaining legal claims against the

104. *Id.* at 1341 (citing *Peterson v. San Francisco Community College Dist.* 36 Cal.3d 799, 810, 685 P.2d 1193 (1984)).

105. *Id.* at 1341 (citing *Zelig v. County of Los Angeles*, 27 Cal.4th 1112, 1133, 45 P.3d 1171 (2002)).

106. *Id.* at 1342–44.

107. *Id.* at 1342.

108. *Id.* at 1344.

109. *Id.*

110. *Id.* at 1345.

state government for dangerous conditions, particularly wildfires, which may arise on or travel from parklands.

D. Invasive Species

In ocean waters at state park units such as Candlestick Point State Recreation Area and Angel Island State Park in San Francisco, invasive species like the Asian Clam and Chinese Mitten Crab have become commonplace.¹¹¹ By some estimates, the San Francisco Bay alone is home to over 234 species of non-indigenous plants and animals.¹¹² State officials have identified more than 600 aquatic invasive species in California's estuarine waters, such as the Tijuana River National Estuarine Research Reserve.¹¹³ Additionally, the forests and meadows of California's state parks are being inundated with non-indigenous animal species such as the African clawed frog,¹¹⁴ invasive plant diseases like Sudden Oak Death,¹¹⁵ or bark-eating beetles.¹¹⁶ It is estimated that California spends \$85 million annually in taxpayer funds fighting invasive species.¹¹⁷

Over the years, California has enacted a host of legal measures to halt the introduction of non-native plant and animal species into its

111. Deborah A. Sivas & Margaret R. Caldwell, *A New Vision For California Ocean Governance: Comprehensive Ecosystem-Based Marine Zoning*, 27 STAN. ENVTL. L.J. 209, 216 (2008).

112. *Id.*

113. Julia A. Ekstrom et al., *Gauging Agency Involvement in Environmental Management Using Text Analysis of Laws and Regulations*, 6 I/S: J. L. & POL'Y FOR INFO. SOC'Y 189, 193–94 (2010).

114. Robert Brown, *Exotic Pets Invade United States Ecosystems: Legislative Failure and a Proposed Solution*, 81 IND. L.J. 713, 716 (2006) (noting that the African Clawed Frog is devouring insects, fish, and even birds in Golden Gate Park).

115. Susan Young, *Tree Deaths Affect Disease-Carrying Ticks: Scientists Study Whether There is a Link Between Tree Deaths and Lyme Disease*, SAN JOSE MERCURY NEWS, Dec. 18, 2010, http://www.mercurynews.com/breaking-news/ci_16889610?nclick_check=1 (noting Sudden Oak Death was first reported in 1995 in Marin County and is now found in coastal mountain ranges such as Big Sur National Park. Sudden Oak Death is believed to be caused by a microbe related to the potato blight that caused the Irish famine of the 1840s and is believed to have arrived in California via ornamental plants imported from Asia).

116. Scott LaFee, *Pining Away; In Beetle-Infested Forests, Scientists See Red—and Death*, SAN DIEGO UNION TRIBUNE, Dec. 25, 2008, at E1 (discussing the devastating impact of bark beetles which trees by boring through the outer sapwood into the inner bark, where they lay clusters of eggs which soon hatch into hungry grubs, which then feed on the tree's phloem, the layer of tissue through which the tree transports water and nutrients).

117. Shirley Brenon, *Make Friends With the Environment*, THE DESERT SUN, Jun. 14, 2008. According to the California Department of Parks and Recreation, some of the other harmful invaders include the “yellow starthistle, tamarisk, Cape and English ivy, eucalyptus, pampas grass, non-native thistles, tree of heaven, French and Scotch broom, European beachgrass, and ice plant.” See *Exotic Plant Control*, CAL. DEPT. OF PARKS AND RECREATION, http://www.parks.ca.gov/?page_id=21561.

parks. For example, the state legislature intends to regulate the “importation, transportation, and possession of wild animals” in order “to reduce the depletion of wildlife populations [and] to protect the native wildlife and agricultural interests of this state against damage from the existence at large of certain wild animals.”¹¹⁸ Also, it is illegal to “release alive into this state, except under a revocable, nontransferable permit[,]” a wide variety of birds, mammals, amphibians, fish,¹¹⁹ and the like.¹²⁰ State law further requires its Department of Agriculture to “prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.”¹²¹ A noxious weed is defined as, among other things, “any species of plant that is or is liable to be troublesome, aggressive, intrusive, detrimental, or destructive to agriculture, silviculture, or important native species, and difficult to control or eradicate.”¹²² The state legislature has declared *hydrilla verticillata* a noxious aquatic weed not native to California, which affirmed that its introduction and spread was detrimental to the state and specifically the “recreational use of streams, lakes, and waterways.”¹²³

Ballast water is another source of non-native species that the California legislature has sought to restrict.¹²⁴ It is a misdemeanor for any person “within the anchorage of any port, harbor, or cove of this State” to throw “overboard from any vessel all or any part of the ballast.”¹²⁵ California law also addresses the issue of ballast water discharge and its

118. CAL. FISH AND GAME CODE § 2116.5 (1974).

119. See generally *Adams v. Shannon*, 7 Cal.App.3d 427, 86 Cal. Rptr. 641 (Ct. App. 1970) (where a tropical fish dealer sought review of the trial court judgment denying him an injunction to restrain the California Department of Fish and Game from enforcing laws prohibiting the importation and possession of piranha fish).

120. CAL. FISH AND GAME CODE § 2118 (1974).

121. CAL. FOOD AND AGRIC. CODE § 403 (1967). Interestingly, however, section 405 declares that “[w]ith the prior approval of the Department of Fish and Game and the State Department of Health Services, the department may reproduce or distribute biological control organisms that are not detrimental to the public health and safety which are known to be useful in reducing or preventing plant or animal damage due to pests or diseases.” CAL. FOOD AND AGRIC. CODE § 405(a) (1967).

122. CAL. FOOD AND AGRIC. CODE § 5004 (1967). See also CAL. FOOD AND AGRIC. CODE §§ 52257, 52258 (1967) (discussing prohibited and restricted noxious weed seed).

123. CAL. FOOD AND AGRIC. CODE § 6048 (1977). Hydrilla is a submersed plant found typically in fresh water and grows to form dense mats of vegetation. See Center for Aquatic and Invasive Plants, *Hydrilla*, <http://plants.ifas.ufl.edu/node/183> (last visited Feb. 28, 2011).

124. Andrew N. Cohen & Brent Foster, *The Regulation of Biological Pollution: Preventing Exotic Species Invasions From Ballast Water Discharged into California Coastal Waters*, 30 GOLDEN GATE U. L. REV. 787, 789 (2000).

125. CAL. HARB. AND NAV. CODE § 132 (1937). See CAL. PENAL CODE §§ 17, 19, & 19.2 (2001) for discussion and definition of misdemeanors in California.

impact on California's waters.¹²⁶ Consequently, while the San Francisco Bay is not itself a state park unit, portions of the bay are encompassed in the state park system and as a result, various state codes addressing invasive species control and monitoring play a significant role in protecting and maintaining state park units in the region. Clearly, one of the greatest challenges the state Department of Parks and Recreation faces is the threat of invasive species entering the ecosystem of various state parks as well as controlling those invasive species already present in the park system.

E. Firearms

California law forbids the carrying, possession, or discharge of any firearm "across, in, or into any portion of any unit [of a state park]." However, "firearms not having a cartridge in any portion of the mechanism . . . may be possessed within temporary lodging or mechanical mode of conveyance when such implements are rendered temporarily inoperable or are packed, cased, or stored in a manner that will prevent their ready use."¹²⁷

In the case of national parks such as Yosemite, Death Valley, and Joshua Tree, a recently enacted federal law now permits park visitors to carry firearms into national parks so long as they comply with the firearm laws of the park's home state.¹²⁸ California law, as noted, forbids the possession of loaded firearms in park units. There are, however, limited exceptions. The federal legislation, sponsored by Senator Tom Coburn (R-Okla.), was a rider to the Credit Card Accountability Responsibility and Disclosure Act of 2009 that President Barack Obama signed in May 2009.¹²⁹ The intent behind this federal law was to align federal firearm laws with state gun laws in national parks.¹³⁰ Consequently, the new law allows guns in all but three of the country's 391 national parks. The new federal law does not, however, permit firing or brandishing a weapon while in a national park.¹³¹ The problem, however, is that parks

126. CAL. PUB. RES. CODE §§ 71200-71215 (2004).

127. CAL. CODE REGS., tit. 14, § 4313 (1986).

128. Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, § 512, 123 Stat. 1734, 1764-1765 (2009). See also Julie Cart, *Guns Now OK in U.S. Parks: A Controversial Law Takes Effect, Letting Visitors Carry Firearms in National Preserves*, L.A. TIMES, Feb. 22, 2010, at AA1.

129. The new federal law overturns a 1983 law which required that visitors to national parks unload and store their firearms before entering most parks. See Richard Simon & Judy Pasternak, *Gun Ban in National Parks May be Eased*, L.A. TIMES, Feb. 23, 2008, at A1.

130. *Id.*

131. Mark Grossi, *Rules Blur Issue of Guns in National Parks*, CHARLESTON GAZETTE, Mar. 26, 2010, at 8D (noting that "California's odd exemptions to the concealed weapons rule

such as Death Valley National Park are located in both California and Nevada, and both of these states have very different gun laws.¹³² In California, weapons law is contained in Title 2 of the California Penal Code, commencing with section 12000, which is applicable to the state park system.¹³³ California also adheres to the Carry Concealed Weapon (CCW) permit exemptions granted by the California Penal Code to peace officers and citizens with CCW permits.¹³⁴

With respect to hunting and fishing, “hunting shall not be permitted in any unit now in the state park system and officially opened to the public on or before June 1, 1961, or in any unit hereafter acquired and designated by the commission as a state park.”¹³⁵ Chapter 5 of the California Code of Regulations also governs hunting in state park units. For example, only deer, California Quail, dove and Bandtail Pigeon and turkey may be hunted with shotguns, rifles, and bows and arrows during the regular hunting season, which runs between September 1 and January 31 each year, as established by the Fish and Game Commission.¹³⁶

Firearms and hunting in both state and federal park units are contentious issues for a number of reasons. With respect to hunting, for example, environmental groups argue that overhunting and the hunting of species other than those permitted by law are both harmful to wildlife. In a lawsuit recently filed to protect the desert tortoise in the Mojave National Preserve, environmentalists argued that hunting “nongame ani-

include sleeping in a tent, which is considered your temporary home.”). See Cal. Penal Code § 25550 (a)(2012), which states that Cal. Penal Code § 25400 does not apply to “[t]he transportation of a firearm by a person when going directly to, or coming directly from, a lawful camping activity for the purpose of having that firearm available for lawful personal protection while at the lawful campsite.”

132. The Federal law is more complicated in parks such as Yellowstone which lies within the boundaries of three separate states, Wyoming, Montana, and Idaho. Each of the three states has different laws governing the possession of firearms and the recognition of permits from other states. For example, Wyoming recognizes permits from only 23 states while Montana recognizes permits from 40 different states and Idaho recognizes permits from only four other states. See *Yellowstone Insider, NPS Clarifies Yellowstone Gun Rules: You Can Pack, But You Can't Shoot*, <http://www.yellowstoneinsider.com/20100219527/news/articles/nps-clarifies-yellowstone-gun-rules-you-can-pack-but-you-cant-shoot.php> (last visited Feb. 2, 2011).

133. CAL. PENAL CODE § 16000 *et seq.* (2012). (Deadly Weapons Recodification Act of 2010).

134. CAL. PENAL CODE § 25450 (2012). Note, California law does not recognize CCW licenses issued in other states.

135. CAL. PUB. RES. CODE § 5003.1 (1961).

136. CAL. CODE REGS., tit. 14, § 4501 (1986). Other subsections of Title 14, Division 3, Chapter 5, Section 4501 of the California Code of Regulations identify additional state park units where hunting is permitted and the geographical areas, species, and methods of hunting allowed.

imals such as coyotes and jackrabbits puts the tortoises at risk because hunters leave behind carcasses that draw predatory ravens” who then prey on the young tortoises.¹³⁷ The lawsuit regarding the desert tortoise and hunting nongame animals again reflects the overlap in jurisdiction between the state and federal governments. While Mojave National Preserve is a unit of the national park system—one of only 69 that allow hunting—only about 30 percent of the national park units that permit hunting actually have laws specific to their jurisdictions.¹³⁸ In the case of Mojave National Preserve, California’s Department of Fish and Game regulates hunting restrictions.¹³⁹

The issues of firearms and hunting are divisive no matter the venue—parkland or not. In light of the foregoing, however, it should be noted there are significant restrictions in California limiting the use and possession of firearms, whether for hunting or not, in all state and federal parks.¹⁴⁰

F. Recreational Vehicle Use in State Parks

Like many other states, California faces pressure from boaters, snowmobilers, and others who push for the use of motor vehicles in state and federal parks.¹⁴¹ According to the state’s Off-Highway Motor Vehicle Recreation Commission (OHMVR), “California is the epicenter of the

137. Janet Zimmerman, *Lawsuit: Limit Hunting in Preserve*, THE PRESS ENTERPRISE, Dec. 1, 2010, at A2. See also Compl., *Pub. Employees for Env. Responsibility v. U.S. Dept. of the Interior*, No. 10-1274 (D.D.C. Jul. 28, 2010), available at http://www.peer.org/docs/nps/7_28_10_Mojave_Hunting_Complaint.pdf (last visited Mar. 17, 2011).

138. Zimmerman, *supra* note 137.

139. Zimmerman, *supra* note 137. See also Park Service Reneges on Mojave Desert Tortoise Safeguard, PUB. EMPLOYEES FOR ENV’T’L RESPONSIBILITY, http://www.peer.org/news/news_id.php?row_id=1428 (last visited Mar. 17, 2011) (providing greater detail about the lawsuit).

140. For example, the 2010-2011 Upland Game Hunting Season at Lake Perris Recreation Area only permitted shotguns in designated areas from 6:00 a.m. until sunset and that only 3 rounds were permitted in a shotgun at one time. See *Hunting*, CAL. DEPT. OF PARKS AND RECREATION, http://www.parks.ca.gov/?page_id=24697 (last viewed Jan. 16, 2011). Also, California Code of Regulations section 4313 exempts California Peace Officers who are otherwise permitted to carry firearms, honorably retired California Peace Officers with concealed weapons permits, and citizens with valid concealed firearms permits. CAL. CODE REGS., tit. 14, § 4313 (1986).

141. CAL. PUB. RES. CODE § 5090.02(a)(1) (2008). See also Byron Kahr, *The Right to Exclude Meets the Right to Ride: Private Property, Public Recreation, and the Rise of Off-Road Vehicles*, 28 STAN. ENVTL. L.J. 51, 52 (2009) (noting in his article, which is focused on off-road vehicle (ORV) threats to private lands, that there were an estimated 39.7 million recreational ORV users over the age of sixteen in the United States in 2009 and that the “ORV-user population is growing at a startling pace, with annual sales of ORVs more than tripling between 1995 and 2003.” *Id.*).

Off-Highway Motor Vehicle (OHV) industry and OHV recreation” and the state has the “largest OHV program in the country.”¹⁴² In California, State Vehicular Recreation Areas (SVRA) are considered units of the state park system.¹⁴³ Formed in 1971,¹⁴⁴ the OHMVR Program has grown to eight SVRAs, which are OHV parks operated by the OHMVR Division of California state parks.¹⁴⁵ The use of motor vehicles on lands in the SVRA is confined to areas and routes designated for that purpose.¹⁴⁶ Various issues related to the increasing popularity of OHV use in California, including mounting pressure to increase SVRA acreage conflicts with environmental and wildlife concerns.¹⁴⁷

One of the primary issues with SVRAs is funding. According to the California Vehicle Code,¹⁴⁸ the OHV trust fund is used to generate funds for the use and operation of SVRAs in California. Revenue for park operation is generated by fuel taxes, which are attributable to the recreational use of vehicles off highway,¹⁴⁹ OHV registration fees, and use fees collected at SVRAs.¹⁵⁰ Fifty percent of monies collected for the

142. See California State Parks—Off-Highway Motor Vehicle Recreation Division, *OHMVR Commission Program Report* (2011), available at <http://ohv.parks.ca.gov/pages/1140/files/2011%20report-web.pdf> (last visited Feb. 3, 2012).

143. CAL. PUB. RES. CODE § 5001.5 (1983) (reference to state park system deemed to be reference to SVRA).

144. Jim Miller, *Inland Off-Road Parks Still a Dream: Recreation: Money To Fund The Latest Effort To Create An Area Is Gone From The Budget*, THE PRESS ENTERPRISE (Riverside, California), Feb. 17, 2008, at A1. (the OHMVR Program “attempts to balance two potentially competing interests—OHV recreation and protection of California’s natural and cultural resources from the negative impact of OHV recreation.” Elaine M. Howle, *OHMVR Program: The Lack of a Shared Vision and Questionable Use of Program Funds Limit Its Effectiveness* 1 (2005), available at <http://www.bsa.ca.gov/pdfs/reports/2004-126.pdf>).

145. C.A. STATE PARKS, http://ohv.parks.ca.gov/?page_id=1170 (last visited Mar. 1, 2011) (including Carnegie SVRA in San Joaquin County, Clay Pit SVRA in Butte County, Heber Dunes SVRA in Imperial County, Hollister Hills SVRA in San Benito County, Hungary Valley SVRA in Ventura County, Oceano Dunes SVRA (formerly Pismo Dunes SVRA) in San Luis Obispo County, Ocotillo Wells SVRA in San Diego County, and Prairie City SVRA in Sacramento County).

146. CAL. PUB. RES. CODE § 5001.8 (2011). See also CAL. CODE REGS tit. 14, § 4352 (2011) (limiting the use of hovercraft and snowmobiles “except in designated units or portions thereof.”).

147. Byron Kahr, *The Right to Exclude Meets the Right to Ride: Private Property, Public Recreation, and the Rise of Off-Road Vehicles*, 28 STAN. ENVTL. L.J. 51, 52–53 (Feb 2009).

148. CAL. VEH. CODE § 38225(c) (2011).

149. See CAL. REV. & TAX. CODE § 8352.6 (2011) (noting the required transfer of “moneys deposited to the credit of the Motor Vehicle Fuel Account to the Off-Highway Vehicle Trust Fund . . . an amount attributable to taxes imposed upon distributions of motor vehicle fuel used in the operation of motor vehicles off highway and for which a refund has not been claimed.”).

150. See C.A. STATE PARKS, http://ohv.parks.ca.gov/?page_id=1241 (last visited Mar 1, 2011).

OHV trust fund are allocated to park acquisition, development, maintenance, restoration, and conservation of lands.¹⁵¹ The remaining 50 percent is made available via competitive grants and cooperative agreements¹⁵² to local counties, cities, federal agencies, and nonprofit groups intended to support conservation, restoration, and law-enforcement activities.¹⁵³ In recent years, due to California's budget crisis, state legislators have approved diverting funds from the OHV trust fund for use in other state parks and for other budgetary concerns. This has prompted massive outcries from OHV supporters.¹⁵⁴ Despite their opposition, however, the California Public Resources Code provides that "any money temporarily transferred by the Legislature from the OHV trust fund to the General Fund shall be reimbursed, without interest, by the Legislature within two fiscal years of the transfer."¹⁵⁵ Despite temporary transfers from the trust fund, to date there have been no legal challenges to the State's diversion of monies.

Another issue which continues to arise, especially with the establishment of SVRAs, is the scope of the state's liability with respect to accidents and injuries occurring within SVRAs.¹⁵⁶ Again, however, the state is largely immune from such claims based on the California Government Code.¹⁵⁷ For example, in *Astenius v. State of California*,¹⁵⁸ the chil-

151. CAL. PUB. RES. CODE § 5090.61 (2011) (pertaining to appropriation and allocation of moneys in the trust fund as defined under Cal. Pub. Res. Code § 5090.06 and created by Cal. Veh. Code § 38225).

152. CAL. PUB. RES. CODE § 5090.12, § 5090.36 (2011) (noting the Division of OHMVR may enter into cooperative agreements with other agencies for the care and maintenance of the of park lands, including law enforcement services).

153. See Off-Highway Vehicle Funds Support Conservation, Enforcement Programs, available at <http://www.parks.ca.gov/pages/712/files/121903.pdf> (last visited Feb. 12, 2011). See also CAL. PUB. RES. CODE § 5090.50 (2011) (enumerating the various ways monies are allocated under competitive grants and cooperative agreements).

154. Michael Gardner, *Optimism Spreads That Fewer State Parks Will Shut: Budget Deal Expected to Pare List of Closings*, SAN DIEGO UNION-TRIBUNE, Jul. 27, 2009, at A1 (noting that state legislators planed "to raid other recreational programs to help keep parks open. A fund for off-highway vehicle projects still on the drawing board will chip in an unspent \$22 million."); Hugo Martin, *All-Terrain Tumult: Off-Roaders Are Being Deprived of Parks and Funds, the State Auditor Charges*, L.A. TIMES, Sept. 20, 2005, at F3.

155. CAL. VEH. CODE § 38225(d) (2011).

156. See *Giannuzzi v. State of California*, 17 Cal. App. 4th 462 (1993) (where a motorcyclist brought an action against the state for injuries he suffered while riding a motorcycle on an established dirt trail on Christmas eve in Carnegie State Vehicular Recreation Park and was unaware that the state had moved quantities of dirt, thereby forming "large, loose dirt pilings at the bottom of this hill . . . directly in the path of the previously established trail."); see also *Knight v. Capitola*, 4 Cal. App. 4th 918 (1992) (involving a body surfing accident at a public beach).

157. CAL. GOV'T CODE § 831.4 (2011) (in relevant part provides that a "public entity, public employee, or a grantor of a public easement to a public entity for any of the follow-

dren of a woman killed while driving an OHV in the Hungry Valley SVRA alleged that the state officials knew that the trail on which their mother was riding was “extremely rough and in poor condition with deep gullies, not visible from the start of the trail,” and the State failed to warn of the dangerous condition.¹⁵⁹ The court noted that the State was aware that that trail was highly trafficked and was dangerous.¹⁶⁰ Additionally, the court noted that “there had been eight prior reported accidents on the trail caused by its dangerous condition” and that the state had awarded “a contract to place a fence around the area to prevent people from using the trail.”¹⁶¹ Thus, despite the fact that the State “failed to warn OHV users of the dangerous condition,” the Court of Appeal affirmed the trial court’s decision based on the state’s “absolute immunity” under section 831.4 because “nothing in section 831.4 makes immunity contingent on giving proper warnings.”¹⁶²

IV. RECOMMENDATIONS

California’s 278 state park units provide low cost recreation and the opportunity for many families, crushed by the Great Recession,¹⁶³ to escape and enjoy a brief and inexpensive holiday adventure. Cutting park funding or closing state parks altogether means California’s wondrous resources are left under-staffed, under-maintained, and in danger of becoming vacant—unpoliced lands will be open to criminal activity and neglect.¹⁶⁴ To ensure the enjoyment of these open spaces by future generations and to rectify this downward spiral of underfunding and lack of maintenance, California state legislators and citizens must act.

A. Volunteerism

California’s state and federal parks enjoy the benefits of significant volunteer activity.¹⁶⁵ Volunteers already lead hikes,¹⁶⁶ assist with

ing purposes, is not liable for an injury caused by a condition of: (a) Any unpaved road which provides access to . . . riding, including . . . all types of vehicular riding . . . (b) Any trail used for the above purposes.”).

158. *Astenius v. State of California*, 126 Cal. App. 4th 472, 474–475 (2005).

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.* at 476.

163. The economic downturn of 2008-2010.

164. See generally *California’s Budget Crisis and the Parks*, N.Y. TIMES, Jul. 15, 2009.

165. The California State Parks Foundation is a 120,000 member organization statewide that advocates for the State park System. See C.A. STATE PARKS FOUNDATION, www.calparks.org (last visited Feb. 6, 2012).

clean-up and park maintenance,¹⁶⁷ and perform historical reenactments, among a wide variety of activities.¹⁶⁸ California state parks also work closely with nearly 100 nonprofit “cooperating associations,” which assist with educational and interpretive programs by contributing over \$10 million annually to California’s state park system.¹⁶⁹ Despite the variety of volunteer opportunities and the number of active volunteers, California’s parklands still require greater assistance as funds continue to be cut and parklands go unmaintained. There are a host of organizations such as Boy Scout troops, environmental groups, religious organizations, and the like, which should be utilized for historical-site restoration, to coordinate large scale clean-up or recycling drives, and to engage in outright fundraising. Active hikers and campers should be encouraged to dedicate one or two days a year solely to trail maintenance. To preserve California’s parklands, nature preserves, and historical sites, Californians must be encouraged to donate some time to assist overworked, underpaid, and under-appreciated park staff.

B. Budget and Funding Reform

California’s state parks get their money through a general fund, which means that they do not have a dedicated operations or maintenance budget of their own.¹⁷⁰ Consequently, when state revenues drop, the general fund shrinks and state parks get less money.¹⁷¹ Clearly, California must reevaluate its method of funding the state park system and

166. Jessica Bernstein-Wax, *Marin’s State Parks Likely to See Continued Cuts This Year After Prop. 21 Failure*, MARIN INDEP. J. (California), Nov. 5, 2010.

167. *More Than \$500,000 of Private Funding Put to Work in State Parks Just as Summer Gets Underway*, BUSINESS WIRE, Jun. 23, 2010, <http://www.reuters.com/article/2010/06/23/idUS122976+23-Jun-2010+BW20100623>.

168. Marc Cabrera, *Christmas in the Adobes Marks 25th Anniversary*, MONTEREY COUNTY HERALD (California), Dec. 8, 2009. See also *Volunteers in Parks*, CALIFORNIA STATE PARKS, http://www.parks.ca.gov/?page_id=886 (last visited Feb. 22, 2011). For example, after purchasing several thousand acres of land which would eventually become part of the 12,000-acre Chino Hills State Park, “the state had no money to open the park to the public.” As a result, “volunteers opened and operated the park until the Department of Parks and Recreation could take over.” Jennifer Schlotterbeck, *Preserving Biological Diversity with Wildlife Corridors: Amending the Guidelines to the California Environmental Quality Act*, 30 ECOLOGY L.Q. 955, fn. 90 (2003) citing Karl Wray, *Volunteers Soon to Open Scenic Chino Hills State Park to All*, ANAHEIM BULL., Sept. 4, 1982, at A3.

169. See *Cooperating Associations Program*, CALIFORNIA STATE PARKS, http://www.parks.ca.gov/?page_id=976 (last visited Feb. 22, 2011) (noting that Cooperating associations are non-profit charitable 501 (c) (3) organizations dedicated to enhancing the educational and interpretive programs in California State Parks).

170. Nolte, *supra* note 14.

171. Nolte, *supra* note 14 (stating in 2008, the state park budget was about \$150 million).

enact legislation creating a dedicated operations and maintenance budget. Legislators must also commit themselves to funding the state parks despite economic downturns. One suggestion is to implement a fund similar to the OHV trust fund, which collects revenue and fees and then specifically designates it to OHV-related parks.

C. Revenue Generating—Taxes, Fees, and Leases

Park fees and state taxes must increase if California's parks are to remain open, staffed, and well-maintained. Since 2005, funding for the operation of state parks has been around \$300 million annually. Approximately \$150 million of this amount comes from the general fund, while the remaining \$150 million or so comes from user fees: admission, camping, and other park-use fees, as well as state gasoline tax revenues.¹⁷² In November 2010, California voters rejected Proposition 21, which included an \$18 registration fee on most cars in California; the fee's intent was to raise money for state parks and make-up for a drop in funding.¹⁷³ Although nearly three million Californians voted to support the new fee, 58 percent of voters rejected the idea.¹⁷⁴ Had Proposition 21 passed,¹⁷⁵ it would have added an estimated \$500 million a year to California's state park system and reduced the dependency and unpredictability of reliance on the General Fund.¹⁷⁶ Clearly, Californians must reconsider the benefits of legislation similar to Proposition 21. While an \$18 fee may be too high, would a \$9 temporary fee be rejected by voters if it brought in \$250 million annually?

Another method of increasing funding is to lease state parklands for profit.¹⁷⁷ This does not mean California should allow logging or mining, but where the state's interests mesh with private interests, it should do more to actively solicit those with the need and the financial resources to lease lands. For example, a business partnership between the public and private sectors to facilitate the removal of trees infested with invasive species may work to reduce or eliminate a threat to a park's

172. See CALIFORNIA STATEWIDE GENERAL ELECTION, <http://www.voterguide.sos.ca.gov/propositions/21/analysis.htm> (last visited Mar. 4, 2011).

173. *No on 21—Yes on Parks*, L.A. TIMES, Nov. 26, 2010, at A32.

174. *Id.* Vehicles subject to the surcharge would have free admission and parking at all state parks. See also CALIFORNIA STATEWIDE GENERAL ELECTION, <http://www.voterguide.sos.ca.gov/propositions/21/> (last visited Mar. 4, 2011).

175. Commercial vehicles, trailers and trailer coaches were exempt from the surcharge.

176. Neil Nisperos, *State Park Closures Possible Next Year*, INLAND VALLEY DAILY BULLETIN (Ontario, California), Nov. 9, 2010.

177. CAL. PUB. RES. CODE § 5003.17 (2011) (lease of property acquired for state park system).

forests, help generate revenue, and provide raw material for a local business.

Finally, California should do more to encourage its citizens to convey their land and land rights to the state government.¹⁷⁸ While this may seem like an expense due to the Department of Parks and Recreation having to incorporate and maintain more parklands, the fact that the department does not need to purchase these lands or land rights helps to reduce the expense of paying to acquire additional lands.

V. CONCLUSION

The legislature enacted the numerous codes and regulations governing California's 278-unit park system to balance use and enjoyment with the need for conservation and restoration. With over 35 million people living in California and with over 80 million park visitors each year, however, the demand for access and enjoyment is immense. Moreover, disagreements about park use arise among various park visitors, such as those enjoying OHVs, those keen to utilize only state beach units, or those more inclined to use mountain hiking trails. Arguably, the Department of Parks and Recreation does not have enough resources to accommodate the numerous diverse interests and needs that underlie these disagreements, while still holding fast to its mandate of protection, conservation, and restoration of parklands. Given the demands imposed by those using parklands, California must do more to fund and maintain its park system. Without better and more reliable funding, the park system faces continued understaffing, which jeopardizes California's environmental future and leads to maintenance, monitoring, and restoration issues.

178. See CAL. CODE REGS § 5005 (2011).

