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THE NATIONAL PARK SERVICE (NPS) MAY EXPEND LUMP-SUM APPROPRIATIONS PROVIDED FOR PLANNING AND CONSTRUCTION IN PARKS EVEN THOUGH EXPENDITURES FOR SPECIFIC PARKS WOULD EXCEED AMOUNTS AUTHORIZED TO BE APPROPRIATED FOR SUCH PARKS.

NATIONAL PARK SERVICE CONSTRUCTION APPROPRIATIONS IN EXCESS OF CERTAIN AUTHORIZATION CEILINGS:

THIS DECISION TO THE SECRETARY OF THE INTERIOR IS IN RESPONSE TO A REQUEST FROM THE DIRECTOR OF THE NATIONAL PARK SERVICE (NPS), DEPARTMENT OF THE INTERIOR, CONCERNING THE AVAILABILITY OF FUNDS APPROPRIATED IN PUB. L. NO. 95-26, 91 STAT. 61, 71, MAY 4, 1977, THE SUPPLEMENTAL APPROPRIATIONS ACT, 1977, AND PUB. L. NO. 95-74, 91 STAT. 285, 289, JULY 26, 1977, THE DEPARTMENT OF INTERIOR AND RELATED AGENCIES APPROPRIATION ACT FOR FISCAL YEAR 1978. AT ISSUE ARE LUMP-SUM APPROPRIATIONS TO NPS OF $90,855,000 IN THE SUPPLEMENTAL ACT FOR "PLANNING AND CONSTRUCTION" AND $161,442,000 IN THE 1978 ACT "FOR CONSTRUCTION, IMPROVEMENTS, REPAIR OR REPLACEMENT OF PHYSICAL FACILITIES."

THESE FUNDS WERE PROVIDED AS THE INITIAL PART OF INTERIOR'S BICENTENNIAL LAND HERITAGE PROGRAM, A COMPREHENSIVE 5 YEAR DEVELOPMENT PROJECT TO UPGRADE THE NATIONAL PARKS AND WILDLIFE REFUGES WHICH, IN THE CONSTRUCTION PORTION OF THE PLAN, IS TO PERMIT RECONSTRUCTION PROJECTS IN OLDER AREAS AND PROVIDE INITIAL FACILITIES IN NEW AREAS. THE SENATE AND HOUSE COMMITTEE REPORTS AND THE CONFERENCE COMMITTEE REPORTS DISCLOSE ONLY INDIVIDUAL PARKS FOR WHICH FUNDING WAS DEFERRED, REDUCED BELOW OR INCREASED ABOVE THE AMOUNT REQUESTED BY INTERIOR. THE PROJECTS FOR WHICH THE APPROPRIATIONS WERE TO BE USED ARE SPECIFIED IN THE INTERIOR DEPARTMENT BUDGET JUSTIFICATIONS WHICH WERE REPRINTED IN THE HOUSE HEARINGS. SEE HOUSE APPROPRIATIONS COMMITTEE, SUBCOMMITTEE ON THE DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES, HEARINGS ON SUPPLEMENTAL APPROPRIATIONS, 1977, PART III, PP. 565-576; HOUSE APPROPRIATIONS COMMITTEE, SUBCOMMITTEE ON THE DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES, HEARINGS ON DEPARTMENT OF INTERIOR, 1978, PART V, PP. 259-308.

THE NPS NOTES THAT EXPENDITURE OF WHAT IT DESCRIBES AS "AN UNPREDECENTED INCREASE IN THE LEVEL OF DEVELOPMENT FUNDING APPROPRIATED TO THE PARK SERVICE IN FISCAL YEARS 1977 AND 1978, TOTALING ABOUT $200 MILLION OVER APPROPRIATIONS FOR DEVELOPMENT IN PREVIOUS FISCAL YEARS." WOULD EXCEED AMOUNTS AUTHORIZED TO BE APPROPRIATED FOR THREE INDIVIDUAL PARK UNITS DURING FISCAL YEAR 1977 AND FOUR ADDITIONAL AREAS IN THE 1978 FISCAL YEAR. THESE AREAS AND THE AMOUNT BY WHICH THE APPROPRIATIONS AUTHORIZATIONS WOULD BE EXCEEDED ARE:

AREA . . . . . AMOUNT OF APPROPRIATION EXCEEDING LIMITATION

CEILING

FORT BOWIE . . . . . $503,000 FORT SCOTT . . . . . 404,000 FREDERICK DOUGLASS HOME . . . 619,000 HAMILTON GRANGE . . . . . 15,000 VICKSBURG - GUNBOAT CAIRO . 3,980,000 WHISKEYTOWN . . . . . 199,000 SAN JUAN ISLAND 107,100

SHOULD PRESENT LEVELS OF FUNDING AND NPS DEVELOPMENT PRIORITIES BE MAINTAINED FOR THE REMAINING PHASES OF THE LAND HERITAGE PROGRAM, THE SERVICE ESTIMATES THAT AMOUNTS AUTHORIZED TO BE APPROPRIATED FOR AN ADDITIONAL 22 PARK AREAS WILL BE EXCEEDED.

WE ARE ASKED TO DECIDE WHETHER THESE LUMP-SUM APPROPRIATIONS IN EFFECT SUPERSEDE THE PREVIOUSLY ENACTED APPROPRIATION AUTHORIZATIONS FOR DEVELOPMENT OF THE INDIVIDUAL PARK UNITS. /1/ THE NPS STATES THAT:

/1/IT IS OUR UNDERSTANDING THAT ALL OF THE SO-CALLED "CEILINGS" APPLY BY THEIR TERMS ONLY TO THE AUTHORIZATION OF APPROPRIATIONS AS SUCH FOR THE PROJECTS INVOLVED.

" * * * WHERE APPROPRIATIONS HAVE INCLUDED FUNDING FOR PROJECTS IN EXCESS OF LIMITATION CEILINGS * * * , THE APPROPRIATION ITSELF PROVIDES CONGRESSIONAL AUTHORITY AND TAKES PRECEDENCE OVER THE PREVIOUSLY AUTHORIZED LIMITATION CEILINGS."

THE LEGISLATIVE HISTORIES OF THE INSTANT APPROPRIATION ACTS CLEARLY DEMONSTRATE THAT CONGRESS INTENDED THE FUNDS APPROPRIATED TO BE AVAILABLE FOR EXPENDITURE FOR PROJECTS LISTED IN, AND IN ACCORDANCE WITH THE DEPARTMENT JUSTIFICATIONS, EXCEPT FOR SPECIFIED DEFERRALS AND REVISIONS. THIS REPRESENTS THE MOST RECENT EXPRESSION OF CONGRESSIONAL PURPOSE AND MUST BE GIVEN EFFECT. WHILE, AS WE HAVE PREVIOUSLY RECOGNIZED, THE GENERAL PROPOSITION IS THAT "APPROPRIATIONS TO CARRY OUT ENABLING OR AUTHORIZING LAWS MUST BE EXPENDED IN STRICT ACCORD WITH THE ORIGINAL AUTHORIZATION BOTH AS TO THE AMOUNT OF FUNDS TO BE EXPENDED AND THE NATURE OF THE WORK AUTHORIZED": "IT IS FUNDAMENTAL * * * THAT ONE CONGRESS CANNOT BIND A FUTURE CONTRESS THAT THE CONGRESS HAS FULL POWER TO MAKE AN APPROPRIATION IN EXCESS OF A COST LIMITATION CONTAINED IN THE ORIGINAL AUTHORIZATION ACT. THIS AUTHORITY IS EXERCISED AS AN INCIDENT TO THE POWER OF THE CONGRESS TO APPROPRIATE AND REGULATE EXPENDITURES OF THE PUBLIC MONEY." 36 COMP.GEN. 240, 242 (1956).

ACCORDINGLY, IT IS OUR OPINION THAT THE FULL AMOUNTS OF THE LUMP-SUM APPROPRIATIONS HERE INVOLVED MAY BE EXPENDED IN THE MANNER CONTEMPLATED BY CONGRESS IN THE ENACTMENT OF SUCH APPROPRIATIONS.