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OPINION	:	No. 79-1112
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of	:	<u>February 14, 1980</u>
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SUBJECT: RIGHT TO CLOSE FEDERAL LANDS WITHIN CALIFORNIA—In order to protect natural resources, among other reasons, the United States Bureau of Land Management may temporarily prevent public use of federal lands within the State of California.

The Honorable J. Robert Hayes, Assemblyman, 39th District, has requested an opinion on questions that may be rephrased in general terms as follows:

Does the United States Bureau of Land Management have the authority to prevent temporarily the public use of federal lands within the State of California?

CONCLUSION

In order to protect natural resources, among other reasons, the United States Bureau of Land Management may temporarily prevent public use of federal lands within the State of California.

ANALYSIS

The present inquiry concerns an order issued by the United States Bureau of Land Management that temporarily closed two portions of the California Desert Conservation Area over the 1979 Thanksgiving holiday weekend. The action to prevent public use of these federal lands was “taken to close an area repeatedly used on Thanksgiving weekends as a staging area for off-road vehicle activities (Area A), and to protect portions of the environmentally sensitive Clark Mountains (Area B) repeatedly damaged by off-road vehicles on Thanksgiving weekends.” (44 Fed. Reg. 62963 (Nov. 1, 1979).) Exempted from the closure order were persons and entities holding ownership interests, claims, permits, leases, licenses and rights-of-way in the areas, vehicular traffic on certain roads and highways through the areas, and state and local government personnel.

The question presented for analysis is whether the Bureau had the authority to issue such an order. We conclude that it did.¹

The Property Clause of the United States Constitution provides that “The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States. . . .” (U.S. Const., art. IV, § 3, cl. 2.)

As was stated in *Kleppe v. New Mexico* (1976) 426 U.S. 529, 539,

“ . . . the Clause, in broad terms, gives Congress the power to determine what are ‘needful’ rules ‘respecting’ the public lands. [Citations.] And while the furthest reaches of the power granted by the Property Clause have not yet been definitively resolved, we have repeatedly observed that ‘[t]he power over the public land thus entrusted to Congress is without limitations.’ [Citations.]”

Clearly, the Property Clause gives Congress the powers both of a proprietor and of a legislature over the public lands (*Alabama v. Texas* (1954) 347 U.S. 272, 273; *Sinclair v. United States* (1929) 279 U.S. 263, 297), including the power “to control their occupancy and use, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them. . . .” (*Utah Power & Light Co. v. United States* (1917) 243 U.S. 389, 405.)

¹ We have restricted the inquiry to the question of federal regulation of federal lands and do not address the question of whether, and to what extent, federal control may be exercised with regard to the use of non-federal lands which are adjacent to federal property: the latter issue is presently in litigation.

Having established the constitutional basis for congressional action regarding federal property, we next consider whether Congress has acted with respect to the particular federal lands in question.

As part of the public lands, the California Desert Conservation Area is administered by the Secretary of the Interior through the Bureau of Land Management. (43 U.S.C. §§ 1702, subd. (d), 1781, subd. (c).)² The Federal Land Policy and Management Act of 1976 requires that “the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values,” (§ 1701, subd. (a) (8).) Accordingly, Congress has mandated that “In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” (§ 1732, subd. (b).)

It is apparent from the statutory scheme that Congress was particularly concerned with preserving the natural resources of the California Desert Conservation Area. With respect thereto, it declared in section 1781:

“(a) Congressional findings

The Congress finds that—

“(1) the California desert contains historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources that are uniquely located adjacent so an area of large population;

“(2) the California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed;

“(3) the California desert environment and its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California;

“(4) the use of all California desert resources can and should be provided for in a multiple use and sustained yield management plan to

² All unidentified section references hereinafter are to Title 43 of the United States Code.

conserve these resources for future generations, and to provide present and future use and enjoyment, particularly outdoor recreation uses, including the use, where appropriate, of off-road recreational vehicles;

“(5) the Secretary has initiated a comprehensive planning process and established an interim management program for the public lands in the California desert; and

“(6) to insure further study of the relationship of man and the California desert environment, *preserve the unique and irreplaceable resources, including archeological values, and conserve the use of the economic resources of the California desert*, the public must be provided more opportunity to participate in such planning and management, and additional management authority must be provided to the Secretary to facilitate effective implementation of such planning and management.

“(b) Statement of purpose

“It is the purpose of this section to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple use and sustained yield, and the maintenance of environmental quality.

“

(d) Preparation and implementation of comprehensive long-range plan for management, use, etc.

“The Secretary in accordance with section 1712 of this title, shall prepare and implement a comprehensive, long-range plan for the management, use, development, and *protection of the public lands* within the California Desert Conservation Area. Such plan shall take into account the principles of multiple use and sustained yield in providing for resource use and development, including, but not limited to, *maintenance of environmental quality*, rights-of-way, and mineral development. Such plan shall be completed and implementation thereof initiated on or before September 30, 1980.

“(e) Interim program for management, use, etc.

“During the period beginning on October 21, 1976, and ending on the

effective date of implementation of the comprehensive, long-range plan, the Secretary shall execute an interim program to manage, use, and *protect the public lands, and their resources now in danger of destruction, in the California Desert Conservation Area*, to provide for the public use of such lands in an orderly and reasonable manner such as through the development of campgrounds and visitor centers, and to provide for a uniformed ranger force.”

“” (Emphasis added.)

Hence, Congress has exercised its authority under the Property Clause with respect to the lands in question. It has directed the Secretary of the Interior to manage the lands with a particular concern for protecting their natural resources.

We next examine the acts undertaken by the Secretary of the Interior in following the directives of Congress. Among the regulations issued by the Secretary regarding the management of the public lands are:

“In the management of lands to protect the public and assure proper resource utilization, conservation, and protection, public use and travel may be temporarily restricted. For instance, areas may be closed during periods of high fire danger or unsafe conditions, or where use will interfere with or delay mineral development, timber, and livestock operations, or other authorized use of the lands. Areas may also be closed temporarily to:

“(a) Protect the public health and safety.

“(b) *Prevent excessive erosion.*

“(c) *Prevent unnecessary destruction of plant life and wildlife habitat.*

“(d) *Protect the natural environment.*

“(e) *Preserve areas having cultural or historical value.*

“(f) Protect scientific studies, or preserve scientific values.” (43 C.F.R. § 8364.1 (1978); emphasis added.)

“Roads, trails, and lands providing access to other public lands may be closed entirely or open only for specifically authorized travel in the interest of public health and safety or preservation and protection of public

kinds and resources.” (43 C.F.R. § 8364.1–1 (1978), emphasis added.)

“Notwithstanding the consultation provisions in § 8342.2(a), *where the authorized officer determines that off -road vehicles are causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, wilderness suitability, other authorized uses, or other resources, the authorized officer shall immediately close the areas or trails affected to the type(s) of vehicle causing the adverse effect until the adverse effects are eliminated and measures implemented to prevent recurrence.* Such closures will not prevent designation in accordance with procedures in part 8342 of this subpart, but these lands shall not be opened to the type(s) of off-road vehicle to which it was closed unless the authorized officer determines that the adverse effects have been eliminated and measures implemented to prevent recurrence.” (44 Fed. Reg. 34037 (June 15, 1979), emphasis added.)

For these regulations to be valid, they “must be consistent with the statute under which they are promulgated.” (*United States v. Larionoff* (1977) 431 U.S. 864, 873; see also *Mourning v. Family Publications Service, Inc.* (1973) 411 U.S. 356, 369; *Thorpe v. Housing Authority* (1969) 393 U.S. 268, 280–281.) As was stated in *Manhattan Co. v. Commissioner* (1936) 297 U.S. 129, 134:

“The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is [only] the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity.”

We believe that these regulations of the Secretary of the Interior are reasonably related to the purposes of the enabling legislation. Congress has given authority to the Secretary to promulgate regulations that would serve to protect the natural resources of the federal lands, particularly in the California Desert Conservation Area. Under the Property Clause, all acts on federal lands are subject to the control of Congress through the Secretary’s regulations.

The order temporarily closing portions of the California Desert Conservation Area over the 1979 Thanksgiving holiday weekend was thus within the scope of the language and purposes of the enabling regulations and statutes. The threat of extensive damage to natural resources on federal lands caused by off-road vehicles was a sufficient basis for issuing the order.

The conclusion to the question presented, therefore, is that in order to protect natural resources, among other reasons, the Bureau of Land Management may temporarily prevent public use of federal lands within the State of California.
