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UNITED STATES DEPARTMENT OF THE INT

ANNUAL REPORT OF JESSE L. NUSBAUM

Department Archaeologist

TO THE SECRETARY OF THE INTERIOR
FOR FISCAL YEAR ENDED JUNE 30, 1929

UNITED STATES DEPARTMENT OF THE INTERIOR

ANNUAL REPORT

OF

JESSE L. NUSBAUM

Department Archaeologist and
Superintendent of Mesa Verde National Park

TO THE

SECRETARY OF THE INTERIOR

1929

UNITED STATES
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LETTER OF TRANSMITTAL

DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE,
MESA VERDE NATIONAL PARK,
Mancos, Colo., September 15, 1929.

The SECRETARY OF THE INTERIOR,
Washington, D. C.

MY DEAR MR. SECRETARY: I am transmitting herewith my annual report as department archaeologist, regretting that excessively wet weather during the month of August, that culminated in a serious cloudburst near the end of the month, prevented earlier preparation of the report. I trust that I have presented the information contained therein in a manner and form acceptable to you.

Under the subhead in the report entitled "Permits granted by the Secretary," it is of importance to scientific institutions to know the exact extent of the area involved under the respective permits, and for this reason it would be appreciated by the writer, and others engaged in like work, if this portion of the report could be printed in its entirety. It constitutes the only published report available of the extent of the examination of others in the field.

The impatience of institutions in gaining permits is natural, since funds for such work are largely provided through personal donations, and for this reason such work is rarely planned long in advance. Stress should be placed on the prompt filing of reports, as required in the issuance of the permits, since unwarranted delay or noncompliance with instructions seriously disrupts the completion of files under each permit.

It is particularly important at this time that an effort be made to enlist the cooperation of all field representatives of the department in the matter of protection and preservation of archaeological and other remains on the public domain. I have repeated my recommendations of the past annual report in the hope that some definite help may be gained.

I have watched the trend of visitor travel through the southwestern archaeological field for the past 25 years and have noted its gradual advance from the main routes to the then practically unknown and untraversed areas of the Southwest. With scientific organization now established and eager to enter the field in greater concentration than ever before, it becomes more and more important that the tremendous wealth of archaeological remains in the Southwest be protected for their serious investigations. Only drastic methods can stop the unlicensed "pothunter," and, I may add, the majority of tourists are potential "pothunters." One lone field representative with the responsibility of administering and operating a national park can not protect an area that extends over the major portion of the Southwestern States. Help is needed.

Trusting that my conduct of this division of the department's activities has met with your approval, I am,

Respectfully yours,

JESSE L. NUSBAUM,
Department Archaeologist.

ANNUAL REPORT OF JESSE L. NUSBAUM, DEPARTMENT ARCHAEOLOGIST

PRELIMINARY STATEMENT

The department archaeologist renders advisory service to all branches of the department, as well as to the scientific and educational institutions contemplating or engaged in archaeological and like investigations on the lands of the public domain under the jurisdiction of the department, in addition to his duties as superintendent of Mesa Verde National Park, Colo., one of the major archaeological areas of the Southwest.

This office is also concerned with working out means and methods for the better protection of the countless thousands of archaeological sites scattered over the lands of the department, mainly in the Southwest; the prevention of unlawful excavation and gathering of objects of antiquity thereon; the orderly progression of the work in the field under secretarial permit; the publication of the information so gained, as well as the broader aspects of this service with which scientific and educational institutions are so thoroughly in accord.

AMERICAN ANTIQUITIES

The act of June 8, 1906, entitled "An act for the preservation of American antiquities," provides, among other things:

SEC. 3. That permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdiction may be granted by the Secretaries of the Interior, Agriculture, and War, to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: *Provided*, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view of increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums.

SEC. 4. That the Secretaries of the departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this act.

The uniform rules and regulations promulgated by the Secretaries of the Departments of the Interior, Agriculture, and War, pursuant to the above-mentioned act, under date of December 28, 1906, provide (par. 3) that:

Permits for the excavation of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity will be granted by the respective Secretaries having jurisdiction to reputable museums, universities, colleges, or other recognized scientific or educational institutions, or to their duly authorized agents.

APPLICATIONS RECOMMENDED

During the past year 17 applications for permits were received for consideration and recommendation, of which 13 were concerned with archaeological investigations and 4 with paleontological examinations. But one application was unfavorably reported, that of an institution desiring a paleontological permit on lands on which another institution was already engaged in like work under a prior permit. Certain regulatory and restrictive requirements were recommended for insertion in the formal permits so that work accomplished thereunder would meet with department approval in all respects.

PERMITS GRANTED BY THE SECRETARY

July 27, 1928: To Dr. Byron Cummings, president, University of Arizona, Tucson, Ariz., extension for a period of one year of prior permit to conduct archaeological reconnaissance and excavation in the San Juan drainage and on the Gila drainage on the San Carlos Reservation, Ariz., and to include permission to excavate a small pueblo ruin in township 21 north, range 8 east, section 34, approximately 7½ miles east of Flagstaff, Ariz.

July 31, 1928: To Mr. F. W. Hodge, acting director, Museum of the American Indian, Heye Foundation, New York City, to conduct minor final excavations at the ruins of Hawikuh, on the Zuni Indian Reservation, N. Mex., in completion of work inaugurated under department permit of 1923.

August 1, 1928: To Dr. F. B. R. Hellems, acting president, University of Colorado, Boulder, Colo., to permit their representative, Mr. Earle H. Morris, to conduct an archaeological reconnaissance in that portion of the Hopi Indian Reservation, Ariz., lying south of the thirty-sixth parallel and extending eastward from the west boundary of Navajo County to the Keams Canyon agency, and to excavate and collect archaeological specimens in a ruin and the refuse heaps pertaining thereto at the foot of Second Mesa, near Toreva. Objection of Hopi Indians of Second Mesa to excavation in their ancestral home resulted in transferring operations to the ruins of Kawaikuh, 7 miles from Jeddito, under recommendations approved by the Assistant Secretary, September 22, 1928.

September 28, 1928: To President George Thomas, University of Utah, Salt Lake City, Utah, permission to excavate two small burial mounds in Ute Canyon, 12 miles southeast of Blanding, Utah, under the direction of the department of anthropology of said university.

NOTE.—Unlicensed pothunters, probably of the adjacent region, completely destroyed these two sites, from the scientific standpoint, prior to the arrival of the university expedition in mid-October, 1928.

December 13, 1928: To Harold S. Gladwin, the Medallion, Pasadena, Calif., permission to June 30, 1929, to make surface collections of potsherds on ruins, rubbish mounds, etc., without excavation, on the public lands under the jurisdiction of the Department of the Interior in the southwestern section of the United States, except Indian reservations, for which specific authority must first be obtained.

January 19, 1929: To Mr. M. R. Harrington, director of research, Southwest Museum, Los Angeles, Calif., permission to conduct archaeological reconnaissance on behalf of the Southwest Museum on

such lands as are under the jurisdiction of the Department of the Interior in Nye, Clark, and Lincoln, Counties, Nev., and San Bernardino County, Calif., for the purpose of tracing out, if possible, the western limits of the Pueblo and basket-maker culture areas and their relations with the cultures of California; permit to expire December 31, 1929.

February 21, 1929: To Dr. C. G. Abbott, Secretary of the Smithsonian Institution, Washington, D. C., permission on behalf of Peabody Museum of Natural History, Yale University, and Smithsonian Institution to jointly conduct paleontological excavations within the area in Dona Ana County, N. Mex., described as follows: SW¼ SW¼ sec. 4; SE¼ SE¼ sec. 5; NE¼ NE¼ sec. 8; NW¼ NW¼ sec. 9, T. 26 S., R. 2 W., N. M. P. M., and to include the right of reconnaissance and investigation in other cave and fossil-bearing deposits on public lands under Department of Interior jurisdiction in that part of Dona Ana County lying west of the Rio Grande River, for the calendar year 1929.

April 19, 1929: To Dr. C. G. Abbott, Secretary of the Smithsonian Institution, Washington, D. C., permission for Mr. C. W. Gilmore, curator of vertebrate paleontology, National Museum, to conduct a field party, explore, excavate, and collect paleontological material within the entire east half of the Navajo Reservation between the San Juan River on the north and the Chaco River on the south, for the calendar year 1929.

April 20, 1929: To Dr. Gilbert Grosvenor, president, National Geographic Society, Washington, D. C., permission to conduct, during 1929, under the direction of Mr. Neil M. Judd, curator of archæology, United States National Museum, such archæological excavations as may be necessary, following superficial inspection of 10 designated ruins in the Hopi, Navajo, and Fort Apache Indian Reservations, and Navajo County, Ariz., for the purpose of obtaining, if possible, charred fragments of beams or logs cut prior to 1260 A. D. to close the single remaining gap in the "tree ring" chronology now being erected by Dr. A. E. Douglas of the University of Arizona.

May 10, 1929: To Dr. Edgar L. Hewitt, director, School of American Research, Santa Fe, N. Mex., permission on behalf of the School of American Research and the University of New Mexico to jointly continue excavations at the ruin of Chettro Ketl, situated in sec. 12, township 21 north, range 11 west, Chaco Canyon National Monument, San Juan County, N. Mex., for a period of three years, subject to definite restrictive conditions.

May 20, 1929: To Edward Reynolds, M. D., director, Peabody Museum of American Archæology and Ethnology, Harvard University, Cambridge, Mass.; permission during 1929 to conduct exploratory archæological investigations in that portion of southern Utah northwest of the Colorado River in the drainage of the Escalante, Fremont, Muddy, and Paria Rivers, including the adjacent corners of Sevier and Emery Counties, Utah; in the drainage of the Green and Colorado Rivers in Emery and Grand Counties, Utah, and that portion of San Juan County, Utah, lying northwest of the Colorado River, under the direction of Mr. Henry B. Roberts.

May 31, 1929: To the director Royal Ontario Museum of Paleontology, Toronto, Canada, permission to continue collecting vertebrate fossils in the areas of South Dakota and Wyoming designated in

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the previous permit granted June 27, 1928, and in addition, to explore and collect fossil specimens in Sioux and Dawes Counties, Nebr.; Niobrara County, Wyo., and Shannon County, S. Dak., under the supervision of Mr. Levi Sternberg and Mr. Ralph Hornell of the museum staff, within the calendar year 1929.

June 8, 1929: To George H. Sherwood, director, American Museum of Natural History, New York City, permission to conduct archaeological reconnaissance in territory adjacent to Montezuma Creek, and Grand Gulch, southeastern Utah, under supervision of Mr. Earle H. Morris of the seventh Bernheimer expedition of said institution.

June 25, 1929: To Dr. Clark Wissler, American Museum of Natural History, New York City, permission granted by renewal of previous permit to conduct archaeological excavation and remove specimens from ruins in that portion of the Navajo Reservation, N. Mex., bounded on the northeast by the immediate valley of the San Juan River, on the east by the Chaco Valley, on the south by the Chioska and Tunicha Mountains, and on the northwest by a line due north and south just west of the Carrizo Mountains, and to include the ruins in the Canyon de Chelly and Canyon del Muerto (Gregory's Map, Paper No. 380, U. S. G. S.) during the calendar year 1929, under the direction of Earle H. Morris of the Carnegie Institution, Washington, D. C.

June 26, 1929: To Dr. George Norlin, president, University of Colorado, Boulder, Colo., permission to collect archaeological specimens and conduct a reconnaissance during 1929 within the area beginning at the La Plata River 2 miles north of the mouth of Cherry Creek, in La Plata County, Colo.; extending thence due west to the Mancos River in Montezuma County, Colo.; thence southwestward along said river to its confluence with the San Juan River; thence following the San Juan River eastward to the mouth of the La Plata River to the point of beginning, and under the supervision of Mr. Earle H. Morris, of Carnegie Institution, Washington, D. C.

July 16, 1929: To President C. C. O'Harra, South Dakota State School of Mines, Rapid City, S. Dak., permission during the calendar year 1929 to collect fossil specimens on the Pine Ridge Indian Reservation, S. Dak.

CONTINUING PROJECTS UNDER PRIOR PERMITS

The State Historical Society of Colorado, under cooperative agreement with the Bureau of American Ethnology of Smithsonian Institution and under the field supervision of Dr. Paul S. Martin, State archaeologist of Colorado, continued archaeological investigations during the present summer in the designated area in Montezuma County, Colo., under authority granted in the 2-year permit issued May 29, 1928.

DELAY IN SUBMITTING REPORTS ON CONCLUSIONS OF INVESTIGATIONS

Inexcusable has been the delay of some institutions or their field representatives in submitting the required brief reports on work accomplished under their respective department permits, as called for on conclusion of their field work. Thirteen permits in all were granted by the Secretary of the Interior during the period covered

in the previous year's report of this office. Approximately one year has elapsed since the conclusion of the previous year's investigations in the various fields. But five reports have been transmitted to this office through the Secretary to this time. An allowance of 30 days from conclusion of field work to submission of the briefed reports should be ample time for all minor investigations, with a 60-day limit for major operations. In the future I can not consistently recommend the issuance of permits to institutions or their representatives, no matter how well qualified, if reports called for in the permit are not submitted without unreasonable delay. The impatience of some institutions or their representatives in gaining permits to conduct investigations is understandable; their noncompliance in the matter of submitting reports or unwarranted delay is deplorable.

OTHER PENDING MATTERS

House memorial No. 1 of the Ninth Legislature of the State of New Mexico, approved March 9, 1929, by Hon. R. C. Dillon, Governor of New Mexico, memorializing the Secretaries of War, Agriculture, and Interior to make necessary regulations to protect the interests of the State of New Mexico in prehistoric relics excavated on Government lands in that State, was referred to this office March 14, 1929, for consideration and recommendation, with instructions that the report should include information as to where the State of New Mexico would deposit its share of the archæological material under the proposed agreement set forth therein, if authorized. Under date of April 16, 1929, Mr. B. F. Pankey, Commissioner of Public Lands, replied that he had given some consideration to the question but had not as yet formulated any regulation or rule governing these matters. He further states that as soon as he has adopted any regulations under the provisions of the act of the legislature relating to State lands he would so advise this office. No further word has been received since that time, and final recommendation is therefore held in abeyance.

INSPECTION, MOAPA VALLEY, NEV.

Under instructions dated May 6, 1929, received through the Director of the National Park Service from the Secretary of the Interior, I proceeded, on May 13, to Las Vegas, Nev., to conduct an archæological investigation of prehistoric remains in the Moapa Valley and in adjacent areas with a view to their inclusion in a proposed national monument area in that State.

Mr. C. C. Smith, mining engineer of the General Land Office, San Francisco, Calif., met me at St. Thomas, Nev., on May 15, as directed, to assist in examination of lands involved. Mr. M. R. Harrington, director of research of the Southwest Museum, of Los Angeles, long identified with archæological research in the particular area, joined me en route at Barstow, Calif., as a result of my request to Director Scherer of his museum for his services. Three days were spent in reconnaissance in the area, and a report favorable to the inclusion of certain definite areas within a proposed national monument is in process of preparation. Pressing park duties of the travel period have prevented earlier completion of the report.

INCREASE IN FIELD ACTIVITY

Important scientific discoveries of the past few years in the southwestern portion of the United States have resulted in renewed activity in this field as reflected in the great increase in the number of applications filed for permits by the various institutions of this country. Permits issued by the Secretary of the Interior indicate but a part of this greater activity, since permits covering investigations on national forests, State lands, and private holdings are otherwise gained.

In view of the fact that nearly 80 representatives of the major scientific institutions, museums, universities, and colleges gathered from all points of the United States for a 3-day field conference at Dr. A. V. Kidder's excavation camp near Pecos, N. Mex., in late August for general discussion of anthropological problems and field work confined largely to the southwestern field, there is every indication that the coming year will record an even greater number of applications for permission to conduct archæological investigation on the public domain. Field courses of instruction for both graduate and regular students have been maintained in the New Mexico archæological field during the past summer. The laboratory of anthropology to be erected during the coming year at Santa Fe, N. Mex., will, by providing adequate facilities for anthropological research in the field for representatives of the institutions associated in its establishment, tremendously advance progress in southwestern field work. Mr. John D. Rockefeller, jr., has pledged funds to the extent of $200,000 for the erection and equipment of the principal unit of the plant, as well as the major portion of a like fund for the first five years of maintenance. In addition, the Laura Spellman-Rockefeller Foundation provided $15,000 for field equipment and graduate student instruction in anthropological field work in New Mexico and Arizona during the past summer in connection with the laboratory's activities.

ACTIVE COOPERATION WITH FIELD REPRESENTATIVES

The location of this field office in the area adjacent to many of the major operations of the past season in the southwestern field has permitted active cooperation with many field representatives, who, by correspondence or personal conference at the park, have kept this office informed as to problems and progress on their investigations, as well as their plans for future work. Invariably such contact has been mutually valuable. Correspondence has been increasing in direct relation to the interest in southwestern research, and reports of new "finds and ruins and dinosaur bones," etc., are constantly being received by this office from interested outsiders and transmitted to those most interested in the particular field from which the new finds are reported.

PRESERVATION OF ARCHÆOLOGICAL REMAINS ON THE PUBLIC DOMAIN

The growth of motor-borne travel in the southwestern archæological fields has been tremendous, and yearly it pushes farther into the wilderness areas of a decade ago threatening even greater despoliation of ruins and archæological remains than in the period of

the eighties and nineties, the heyday of the commercial pothunter. The few scattered settlers of that period are replaced by the thousands of motorists and visitors of to-day, many of whom are potential pothunters. That advantage is taken of opportunity in isolated areas is recognized by all.

Because of the tremendous area involved the problem of protection of archæological remains on the public domain is primarily that of educating the public to a proper appreciation of the value of scientific investigation by qualified scientific and educational institutions as contrasted with the destructive work of the pothunter, the curio seeker, and the vandal. In the former case the information and the materials gained are accessible to the public through published reports and public museums, while in the latter, all benefit to the public is lost.

Hand in hand with education of the public must be the active cooperation of all field heads and field employees in this matter of protection. All field employees, particularly those of the Southwest, should be informed through channels of the pertinent facts of the "act for the protection of American antiquities" and of the importance of prohibiting all unauthorized excavation and pothunting; of reporting immediately to this office acts of vandalism and unlawful excavation.

Field heads should be authorized to apprehend or cause to be arrested any person or persons who appropriate, excavate, injure, or destroy any prehistoric ruin or monument, or object of antiquity on lands under the supervision of the Secretary of the Interior (par. 15 uniform rules and regulations, approved December 28, 1906), and to seize wherever found and at any time, any object of antiquity, or collection so made, for disposition as the Secretary shall determine by deposit in the proper national depository or otherwise as provided under paragraphs 15 and 16, uniform rules and regulations, approved December 28, 1906.

Indian traders and others operating stores and trading posts and accommodations on lands of the department under permit, should be prohibited from purchasing or bartering or exposing for sale archæological materials or objects of antiquity taken either from private holdings or public domain under penalty of revocation of license. The purchase or barter of such materials encourages further unlawful excavation on the part of the Indians and others so engaged.

Although several years ago the following warning sign was posted on and in the vicinity of some of the more important ruins, to wit:

> *Warning.*—This ancient ruin is located on public ground. It belongs to you—help protect it.
>
> All persons are warned that it is unlawful to remove any object from, excavate upon, damage, destroy, or remove any portion of, an ancient ruin located on lands owned and controlled by the Government of the United States, except under permit issued in accordance with the act of Congress approved June 8, 1906 (34 Stat. 225); that any person violating this law may be arrested by an officer of the United States, and may be fined not more than $500 or imprisoned for not more than 90 days, or may suffer both fine and imprisonment, in the discretion of the court. Help preserve for the future the records of the past.

an earnest effort should be made to have all ruins on or adjacent or visible from the automobile highways so posted. To the average visitor, only ruins so posted are the property of the United States and protected by the act of June 8, 1906 (34 Stat. 225).

The destructive methods used in the commercial exploitation of the notable ruins within the area now embraced in Mesa Verde National Park as well as at Pueblo Bonito, now included in the Chaco Canyon National Monument, were the prime motives that fathered the passing of the act for the preservation of American antiquities on June 8, 1906. Twenty-one days later Mesa Verde National Park, primarily concerned with the preservation and protection of archæological remains, was created.

Methods followed in handling all visitors through the major ruins of this area under informative ranger guidance, together with the informal evening camp-fire talks, have presented opportunities for important educational service in developing an appreciation of the archæological remains on the public domain and their importance to science. The National Park Service of the department has accomplished outstanding public educational work in the protection and preservation of the national park and national monument areas and the features therein.

APPENDIX

[PUBLIC—No. 209]

An act for the preservation of American antiquities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the department of the Government having jurisdiction over the lands on which said antiquities are situated, shall upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

SEC. 2. That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected: *Provided*, That when such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in behalf of the Government of the United States.

SEC. 3. That permits for the examination of ruins, the excavation of archæological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: *Provided*, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums.

SEC. 4. That the Secretaries of the departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this act.

Approved, June 8, 1906 (34 Stat. L. 225).

UNIFORM RULES AND REGULATIONS

PRESCRIBED BY THE SECRETARIES OF THE INTERIOR, AGRICULTURE, AND WAR TO CARRY OUT THE PROVISIONS OF THE "ACT FOR THE PRESERVATION OF AMERICAN ANTIQUITIES," APPROVED JUNE 8, 1906 (34 STAT. L. 225)

1. Jurisdiction over ruins, archeological sites, historic and prehistoric monuments and structures, objects of antiquity, historic landmarks, and other objects of historic or scientific interest, shall be exercised under the act by the respective departments as follows:

By the Secretary of Agriculture over lands within the exterior limits of forest reserves, by the Secretary of War over lands within the exterior limits of military reservations, by the Secretary of the Interior over all other lands owned or controlled by the Government of the United States, provided the Secretaries of War and Agriculture may by agreement cooperate with the Secretary of the Interior in the supervision of such monuments and objects

covered by the act of June 8, 1906, as may be located on lands near or adjacent to forest reserves and military reservations, respectively.

2. No permit for the removal of any ancient monument or structure which can be permanently preserved under the control of the United States *in situ*, and remain an object of interest, shall be granted.

3. Permits for the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity will be granted, by the respective Secretaries having jurisdiction, to reputable museums, universities, colleges, or other recognized scientific or educational institutions, or to their duly authorized agents.

4. No exclusive permits shall be granted for a larger area than the applicant can reasonably be expected to explore fully and systematically within the time limit named in the permit.

5. Each application for a permit should be filed with the Secretary having jurisdiction, and must be accompanied by a definite outline of the proposed work, indicating the name of the institution making the request, the date proposed for beginning the field work, the length of time proposed to be devoted to it, and the person who will have immediate charge of the work. The application must also contain an exact statement of the character of the work, whether examination, excavation, or gathering, and the public museum in which the collections made under the permit are to be permanently preserved. The application must be accompanied by a sketch plan or description of the particular site or area to be examined, excavated, or searched, so definite that it can be located on the map with reasonable accuracy.

6. No permit will be granted for a period of more than three years, but if the work has been diligently prosecuted under the permit, the time may be extended for proper cause upon application.

7. Failure to begin work under a permit within six months after it is granted, or failure to diligently prosecute such work after it has been begun, shall make the permit void without any order or proceeding by the Secretary having jurisdiction.

8. Applications for permits shall be referred to the Smithsonian Institution for recommendation.

9. Every permit shall be in writing and copies shall be transmitted to the Smithsonian Institution and the field officer in charge of the land involved. The permittee will be furnished with a copy of these rules and regulations.

10. At the close of each season's field work the permittee shall report in duplicate to the Smithsonian Institution, in such form as its secretary may prescribe, and shall prepare in duplicate a catalogue of the collections and of the photographs made during the season, indicating therein such material, if any, as may be available for exchange.

11. Institutions and persons receiving permits for excavation shall, after the completion of the work, restore the lands upon which they have worked to their customary condition, to the satisfaction of the field officer in charge.

12. All permits shall be terminable at the discretion of the Secretary having jurisdiction.

13. The field officer in charge of land owned or controlled by the Government of the United States shall, from time to time, inquire and report as to the existence, on or near such lands, of ruins and archaeological sites, historic or prehistoric ruins or monuments, objects of antiquity, historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.

14. The field officer in charge may at all times examine the permit of any person or institution claiming privileges granted in accordance with the act and these rules and regulations, and may fully examine all work done under such permit.

15. All persons duly authorized by the Secretaries of Agriculture, War, and Interior may apprehend or cause to be arrested, as provided in the act of February 6, 1905 (33 Stat. L. 700), any person or persons who appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity on lands under the supervision of the Secretaries of Agriculture, War, and Interior, respectively.

16. Any object of antiquity taken, or collection made, on lands owned or controlled by the United States, without a permit, as prescribed by the act and these rules and regulations, or there taken or made, contrary to the terms of the permit, or contrary to the act and these rules and regulations, may be seized wherever found and at any time, by the proper field officer or by any person duly authorized by the Secretary having jurisdiction, and disposed of as the Secretary shall determine, by deposit in the proper national depository or otherwise.

17. Every collection made under the authority of the act and of these rules and regulations shall be preserved in the public museum designated in the permit and shall be accessible to the public. No such collection shall be removed from such public museum without the written authority of the Secretary of the Smithsonian Institution, and then only to another public museum, where it shall be accessible to the public; and when any public museum, which is a depository of any collection made under the provisions of the act and these rules and regulations, shall cease to exist, every such collection in such public museum shall thereupon revert to the national collections and be placed in the proper national depository.

WASHINGTON, D. C., *December 28, 1906.*

The foregoing rules and regulations are hereby approved in triplicate and, under authority conferred by law on the Secretaries of the Interior, Agriculture, and War, are hereby made and established, to take effect immediately.

E. A. HITCHCOCK,
Secretary of the Interior.

JAMES WILSON,
Secretary of Agriculture.

WM. H. TAFT,
Secretary of War.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, November 26, 1928

The SECRETARY OF THE INTERIOR.

MY DEAR MR. SECRETARY: My opinion has been requested in respect to the question whether the recent act of April 10, 1928 (45 Stat. 413), providing for cooperative ethnological research by the Smithsonian Institution with State, educational, and scientific organizations, will interfere with administration by this department of the act of June 8, 1906 (34 Stat. 225), for the preservation of American antiquities, and if so, in what respect it will be affected.

The said recent act is essentially consistent with the said prior law and may be regarded as a supplemental provision in furtherance thereof. In substance, it authorizes the Smithsonian Institution to cooperate with States and institutions for continuing ethnological researches among the American Indians and the excavation and preservation of archæological remains for the same general purpose indicated by the prior act. It further authorizes an appropriation to be made in the amount of $20,000 for that purpose, and permits the Smithsonian Institution to expend an amount from that sum equal to that contributed by the State, educational institution, or scientific organization, not to exceed, however, $2,000 in any one State during any calendar year. The appropriation was actually made by the act of May 29, 1928 (45 Stat. 883, 889).

The last proviso to the recent act directs that where such cooperative work involves lands under the jurisdiction of the Bureau of Indian Affairs or the National Park Service, such work thereon shall be under such regulations and conditions as the Secretary of the Interior may provide. That is in harmony with the prior law, which provides that permits involving lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and War. Interdepartmental regulations under that act were approved December 28, 1906, and they appear to be adequate for guidance in respect to operations under the recent act. If, however, special regulations or conditions shall be found necessary in particular cases, that may be attended to as the occasions arise. It is recommended that the Smithsonian Institution be advised to this effect.

Very truly yours

E. O. PATTERSON, *Solicitor.*

Approved: November 26, 1928.

JOHN H. EDWARDS,
Assistant Secretary.

DEPARTMENT OF JUSTICE

WASHINGTON

JULY 30, 1927.

SIR: Receipt is acknowledged of your letter of May 19, 1927, in which you request the opinion of the Attorney General upon the question whether a law recently enacted by the State of Arizona, entitled "An act to prevent further despoliation of the prehistoric sections of Arizona, providing regulations under which the exploration and recovery of prehistoric material may be prosecuted and providing a penalty for any violation of the provisions of this act," modifies or supersedes the act of Congress approved June 8, 1906 (34 Stat. 225), entitled "An act for the preservation of American antiquities," and the rules and regulations thereunder promulgated by the Secretary of the Interior, in so far as such act, rules, and regulations refer to public lands of the United States.

The material parts of the Arizona law are as follows:

"SECTION 1. Any person, persons, corporation or institution making investigations, explorations, or excavations in or on the prehistoric ruins of Arizona, either on Federal, State, or private lands, shall donate to the State 50 per cent of all articles, implements, and material found or discovered by such investigation, exploration, or excavation, which shall be deposited with some public museum in the State of Arizona, to become the property of the State of Arizona, for the uses, benefits, and purposes of the people of the State, to be forever open to the public free of charge, for study and investigation. Before any exploration or excavation in or on any prehistoric ruins or archaeological working in Arizona shall be undertaken, a permit shall first be obtained from the archaeological branch of the University of Arizona and from the board of supervisors of the county wherein the same is to be undertaken.

"SEC. 2. Any person, persons, corporation, or institution violating any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by forfeiting to the State all articles and material that may have been discovered by or through their efforts, and by a fine of not to exceed $500 or by imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment."

It will be noted that the statute is broad enough to include within its operation prehistoric ruins on land forming part of the public domain of the United States, as well as on land belonging to the State, or private individuals. Its preamble declares that for many years the State has been robbed of its treasure of antiquity by "individuals and scientists alike, for commercial purposes"; that "numerous institutions are being granted permission to excavate the ruins of the State and remove the priceless articles obtained from these ruins to other States and other lands, thus depriving the people of Arizona for all time of that which is justly theirs."

By the act of June 8, 1906 (34 Stat. 225), Congress enacted legislation relating to the protection and preservation of historic or prehistoric ruins or monuments, or any object of antiquity, situated on lands owned or controlled by the Government of the United States and providing penalties for a violation thereof.

By section 2 of said act the President is given authority "in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected," etc.

Section 3 makes provision for permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions to be granted by the Secretaries of the Interior, Agriculture, and War, to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: "*Provided*, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions. with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums."

Section 4 directs the Secretaries of the departments mentioned to make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this act.

Under date of December 28, 1906, the Secretaries of the Interior, Agriculture, and War issued certain rules and regulations applicable to the law thus enacted. These rules purport to regulate the examination of ruins and the gathering of objects of antiquity under permits issued by the respective Secretaries having jurisdiction; they provide for the granting of permits for such examination of ruins and gathering of objects of antiquity, determine how long they shall be operative, authorize the apprehension and arrest of persons who appropriate, excavate, or destroy any historical or prehistorical ruins or monuments or any object of antiquity on lands under the supervision of said Secretaries, and provide that: "Every collection made under the authority of the act and of these rules and regulations shall be preserved in the public museum designated in the permit and shall be accessible to the public."

It will be observed that under the Arizona law permits for exploration or excavation of prehistoric ruins must be obtained from the "University of Arizona and from the board of supervisors of the county wherein the same is to be undertaken," while under the act of June 8, 1906, supra, such permits applicable to the lands of the United States are granted by the Secretaries of the Interior, Agriculture, and War under their respective jurisdictions.

The Legislature of Arizona seems to have been proceeding on the theory that prehistoric ruins and the objects of antiquity found in them, or imbedded in the soil are not the exclusive property of the owner of the land or of the finder, but that the sovereign has some proprietary interest in them or right to control their disposition.

On the other hand, Congress has proceeded on the theory that such ruins or articles belong to the owner of the fee or to the finder, and that as proprietor of the land constituting the public domain the United States either owns these things or at least has the right to say who shall go upon its lands to search for them and to impose conditions on their disposition when giving permits for exploration or excavation of the lands of the United States. The underlying question is one of ownership of the prehistoric ruins or articles referred to.

In some countries it seems to be the practice for the sovereign to exercise dominion or control over such things as against the owner of the land, but the rules of property prevailing in the United States, coupled with our system of constitutional restrictions on legislative interference with property rights, do not permit it here.

The ruins of prehistoric buildings or structures affixed to the soil are, under the common law of real property, part of the land and belong to the owner of the land. The fact that a building or structure may have been affixed to the land for 10,000 years instead of for 10 years does not make it any the less a part of the real estate. In respect of articles which are or once were personal property found in such ruins or imbedded in the soil, the rules are not so well settled but are clear enough to dispose of the case in hand. Such articles do not seem to come within any definition of treasure-trove and the ancient English law of treasure-trove, even if applicable in the United States, can have no bearing here, and it is only with respect to treasure-trove that any question of ownership by the sovereign as against the owner of the soil or the finder has arisen. With respect to ancient relics, the controversy has usually been between the owner of the fee and the finder. (See South Staffordshire Water Works *v.* Sharman, 65 L. J. Q. B. 460; Ferguson *v.* Ray, 44 Ore. 557; Burdick *v.* Chesebrough, 94 App. Div. 532; vol. 7, No. 8, p. 160, Law Notes; Goodard *v.* Winchell, 17 L. R. A. 788; Oregon Iron Co. *v.* Hughes, 47 Ore. 313.)

In Elwes *v.* Briggs Gas Co. (33 ch. D. 562), the remains of a prehistoric boat discovered in the course of excavation by a lessee, were held to belong to the owner of the realty.

In the Staffordshire Water Works case, supra, it was said:

"The possession of land carries with it in general by our law possession of everything which is attached to it or under the land and, in the absence of a better title elsewhere, the right to possess it also and it makes no difference that the possessor is not aware of the thing's existence.

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"The general principle is that where anyone is in possession of house or land which he occupies and over which he manifests an intention of exercising control and preventing unauthorized interference, and something is found in that house or on that land by a stranger or a servant, the presumption is that the possession of the article found is in the owner of the locus in quo."

The general rule is that the finder of lost property is entitled to it as against all the world except the real owner and that ordinarily the place where it is

found does not make any difference, but articles imbedded in the soil as distinguished from those lying loose upon the surface are usually not treated as lost or abandoned articles and are therefore held to belong to the owner of the fee as against the finder, and the principle to be derived from the decisions is that prehistoric articles imbedded in the soil or found in ancient relics belong to the owner of the land or to the finder, but whether the owner of the land or to the finder, the rule excludes the sovereign and in this case, the State of Arizona.

If the prehistoric ruins or articles are part of the land or belong to the proprietor of the soil, such things on the public domain are the property of the United States and a part of that domain. If such articles may become the property of the finder, still the United States has power to exclude the trespassers from its domain and to permit entry thereon on such conditions as it chooses, including one that articles of prehistoric interest found by the permittee on its land shall be disposed of as it directs. Its power to deal with the public domain is clear.

Section 3 of Article IV of the Constitution provides that "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or the property belonging to the United States."

No State may interfere with that right or embarrass its exercise. Van Brocklin *v.* Tennessee (117 U. S. 151); Gibson *v.* Chouteau (13 Wall. 92).

Congress may deal with such lands precisely as a private individual may deal with his farming property. United States *v.* Midwest Oil Co. (236 U. S. 459).

If the question of title to prehistoric articles found on or in the soil is affected in any way by the fact that the owner of the land manifests an intention to exercise control and prevent interference, the statutes of the United States and regulations thereunder relating to prehistoric ruins and articles on the public domain add that element to this case.

I am of the opinion that prehistoric ruins in Arizona on land forming part of the public domain of the United States are the property of the United States; that prehistoric articles imbedded in the soil of or found on land owned by the United States are the property of the United States if not of the finder and that the State of Arizona has no proprietary or sovereign right to interfere under the State statute above referred to with such disposition of those articles as is provided for under the acts of Congress relating thereto.

Respectfully,

WILLIAM D. MITCHELL,
Acting Attorney General.

The SECRETARY OF THE INTERIOR.

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