United States Department of the Interior
OFFICE OF THE SOLICITOR
One Gateway Center — Suite 612
Newton Corner, MA 02158-2868

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MEMORANDUM

TO: Regional Director, Region Five
United States Fish and Wildlife Service

FROM: Regional Solicitor, Northeast

SUBJECT: Ownership of Riparian Rights,
Tracts 5,a,b; 8,a,-I,-II,-III; 47,a; 50,a;
54,b,e; 200,a,-I,-IV,b,-I; 471; 472
E.B. Forsythe NWR, Brigantine Division

We are in receipt of a memo originated by the Realty division requesting our opinion on the ownership and control of those portions of the subject parcels lying below the mean high water line. We will first answer the question of ownership of lands below mean high water and then deal with the issue of control and regulation in such areas.

OWNERSHIP

We understand that all the parcels were acquired by eminent domain with the exception of Tracts 200,a,-I,-IV,b, and -I, which were purchased.

With regard to the condemned parcels, the United States acquired fee simple title by virtue of the condemnation actions.[1] While portions of the tracts below mean high water may have been in state ownership, this does not alter the fact that the condemnations vested fee simple title to the entire tracts in the United States.

The Federal power of eminent domain is an inherent sovereign power of the United States to appropriate any property within its geographical limits. Hanson Lumber Company v. United States, 261 U.S. 581 (1923); Kohl v. United States, 91 U.S. 362 (1875). Such power includes the taking of lands owned by a state. United States v. Cormack, 329 U.S. 230 (1940); United States v. Holmes, 414 F.Supp. 831 (D.C. Md. 1976).

[1] It is noted that the estate taken in Tract 471 is fee simple title although subject to "rights of the public and private, in and to the Mullica River and any other water course bounding, crossing, or affecting the premises in question."

It should be noted that the title files we reviewed, some of which are over thirty years old, are far from complete. Consequenty, it is not clear whether proper notice was received by and proper process afforded the State of New Jersey. However, we can at least presume that the proceeding was proper based on the Court decrees vesting title in the United States and the Attorney General's issuance of final title opinions on the condemned tracts.

In any event, even assuming that notice or due process was not provided to the State, this would not affect the validity of United States' title to the tracts. Rather, the State of New Jersey would merely have a cause of action to receive just compensation for the taking. A condemnation proceeding is an in rem action which means that the Court may hear the case by virtue of the Court having jurisdiction over the property. The failure to join a party in the proceeding does not generally defeat the condemnor's title to the land but the party would retain his right to compensation. See Schroeder v. City of New York, 371 U.S. 208 (1962); United States v. Haddon, 550 F.2d 677 (1st Cir. 1977); United States v. 416.81 Acres, 525 F.2d 450 (7th Cir. 1975); but compare, United States v. Chatham, 323 F.2d 95 (4th Cir. 1963), where published notice of the proceeding was grossly deficient as to the land description and proper parties were not notified, the Court held proper jurisdiction was not established.

As you are aware, the acquisition authority for the subject parcels is the Migratory Bird Conservation Act, as amended, 16 U.S.C. § 715 et seq.. Section 715(b) requires that a state consent by law to acquisition by the United States of lands in that state before a deed or instrument may be accepted. We have reviewed the State of a New Jersey legislation which your staff furnished us and find that it contains no qualifications or limitations with regard to acquiring State lands or lands below mean high water. In fact, the legislation specifically consents to Federal acquisition of areas of "land or water, or of land and water" in the State of New Jersey. This would include State owned lands.

We have also reviewed the certifications your staff provided of State administrative approval of acquisitions in Brigantine NWR. The certifications, similarly, are unqualified and, in fact, the most recent certification, November 1983, incorporates a map which clearly includes tidal areas.

With regard to the purchased tracts, the question of ownership is more complicated. We understand that Tracts 200, a-I, b, -I, were purchased by the Fish and Wildlife Service from private landowners at fair market value. In November, 1903, the State of New Jersey Riparian Commission by recorded instrument made tideland grants to the former owners of these parcels for the sum of $1,000. The State conveyed the "lands flowed by tidewater" as described in said conveyance to be used for

"appropriation to their private use." The state reserved the right to convey lands in front of said lands. Clearly, the FWS has acquired the tide land grant from the present landowners.

The issue of whether the State's tideland grant is valid is a difficult to answer and would require substantial research into New Jersey and Federal Constitutional Law. In lieu thereof, we recommend that a reasonable position to take with the State is that absent their providing convincing legal support that such grants are invalid, FWS we will continue to assert its ownership and jurisdiction over the tidal and wetland areas which were conveyed by the State.

FWS CONTROL AND REGULATION

The extent of FWS control or regulation of activity on land or waters within the subject parcels is rather complicated. We have attempted to summarize below the major issues affecting control or regulation.

1. Rights excepted or reserved in FWS acquisitions by condemnation or purchase

Our preliminary review of the title files indicates that FWS in acquiring the subject parcels expressly acquired title subject to certain outstanding rights.

For example, "oyster gathering" and "oyster rights" were excepted or reserved from many of the condemnation takings. Also, the grantor of the purchased tracts reserved in the deed the oyster bed rights below mean low water. Consequently, FWS cannot prevent the exercise of such rights by the valid holders of said rights.

Similarly, as discussed earlier, in the condemnation of Tract 471, public and private rights in and to watercourses including the Mullica River were excepted from the condemnation. This exception is rather vague. In tidal waters owned by the state, there exist public rights to harvest the shell and floating fishery and a navigation easement, unless the state regulates to the contrary. See Great Water Rights, 25 Rutgers L.R. 615, 679 (1971). At a minimum, these public rights would continue on despite Federal ownership. Arguably, were these rights to be unreasonably regulated, the holders could assert that they have been deprived of property without just compensation in violation of the Fifth Amendment to the United States Constitution.

We would recommend that the realty division review all the title files and ascertain the outstanding riparian rights which FWS expressly took subject to either in the condemnation or purchase acquisitions. Riparian

2. Statutory Provisions on Hunting and Fishing

Two Federal statutes deal with hunting and fishing regulation in National Wildlife Refuges. In our opinion neither statute seriously restrict FWS's authority to control or regulate other than in areas outside the boundaries of the Refuge.

The National Wildlife Refuge System Administration Act, 16 U.S.C. § 668dd, provides in subsection (c) that the Secretary is not authorized under the Act to control or regulate hunting or fishing of resident fish and wildlife on lands not within the Refuge System. Moreover, the Act provides that hunting and fishing regulations within a Refuge "shall be to the extent practicable, consistent with State fish and wildlife laws and regulations." The Act further provides that its provisions shall "not be construed as affecting the authority, jurisdiction, or responsibility of the several States to arrange, control, or regulate fish and resident wildlife under State laws or regulations in any area within the System."

The Migratory Bird Conservation Act, 16 U.S.C. § 715, provides in subsection (h) that the Act is not intended to interfere with the operation of the game laws of the several States on migratory game birds insofar as they do not prevent what is forbidden by Federal law.

We construe both statutes as allowing the Fish and Wildlife Service to regulate hunting and fishing within the boundaries of a Refuge in the best interests of the Refuge. If there is any conflict between state law and Federal regulation, the state law must give way. This is essentially a reiteration of the Supremecy Clause of the United States Constitution.

3. Federal control or regulation in areas within the Refuge not owned by the United States.

The question of regulating areas within the boundaries of the Refuge not owned by the United States is complicated. Of primary importance is the kind of Federal jurisdiction present. Ordinarily, if the area in question is under exclusive or concurrent Federal jurisdiction, FWS can regulate such areas. In the event, jurisdiction is solely proprietary, i.e., where no grant of jurisdiction by the State has been made and Federal jurisdiction is based on mere ownership of the property, the authority to regulate is more circumscribed.

Our review of the New Jersey consent-to-acquisition statute indicates that New Jersey reserved "full and complete jurisdiction or authority" over areas to be acquired by FWS for the purposes of the Migratory Bird Treaty, "not incompatible with the administration, maintenance, protection and control thereof by the United States...." Consequently, FWS jurisdiction would be proprietary.

We have attached a 1976 memo from this office prepared by Mariana Schulstad in which she cites three constitutional grounds for regulating activity on non-Federal property: the Commerce Clause, the treaty Power, and the Property Clause. Under the Commerce Clause, Federal regulation is permitted of navigable waters. The rule for determining navigability is whether the body of water in question is capable of navigation for travel and trade. The Commerce Clause permits regulation not only for navigation but for the protection of fish, wildlife, and other ecological values as well. The treaty power is based on the implementation of international treaties to which the United States is a signatory. Under the property clause, the Federal Government is permitted to make all "needful Rules and Regulations respecting the Territory or other Property belonging to the United States." All three powers potentially permit FWS regulation of non-Federal property but there still must be a statutory and regulatory basis for the exercise of these Constitutional powers.

We would advise that in the event you foresee a conflict with with State law or programs in carrying out FWS programs, you seek our advice on the resolution of that particular conflict. It is very difficult in the abstract to provide guidance on the full extent of FWS's regulatory authority or the impact of State regulations or programs on Federal programs without a specific dispute in mind. Generally, though, any Federal activity which has a proper statutory and regulatory basis would supercede any conflicting State law or program pursuant to the Supremacy Clause of the Constitution.

We understand that FWS is presently considering entering into a cooperative agreement with the State of New Jersey that should resolve many of the potential conflicts. We will gladly assist in reviewing any such cooperative agreement.

Should you have any questions in this matter, do not hesitate to call Abe Cooper of my staff.

Anthony R. Conte

ANTHONY R. CONTE

Enclosure

United States Department of the Interior

IN REPLY REFER TO:

OFFICE OF THE SOLICITOR
One Gateway Center
Room 310
Newton Corner, Mass. 02158

DEC 6 1976

Memorandum

To : Regional Director, FWS, Region 5

From : Philadelphia Regional Solicitor, Boston Office

Subject: Extent of Control over Navigable Waters - Mason Neck NWR

[illegible] January 14, 1976 memorandum to the Philadelphia office has recently been forwarded to me for response. As I under[illegible] memorandum, you pose a number of questions concerning the right of the Fish and Wildlife Service to regulate different kinds of activities on navigable waters within and without a refuge. Particular reference is made to Mason Neck National Wildlife Refuge, where there apparently has been a problem in past years with turtle trapping. Unfortunately, the Mason Neck situation is not susceptible of a precise answer, as will be shown below.

The Mason Neck refuge was established with the purchase of a 252.01-acre parcel from The Nature Conservancy in 1969. The land description contained in the deed is with reference to a survey. It is the same as was contained in the deed from Wills & Van Metre, Inc. to The Nature Conservancy and contains five courses along the low water line of the Potomac River. According to the 1969 maps, some of these points appear to be well within the river, and there is thus substantial doubt as to whether or not all of the land described in the deed is actually above the mean low water line. This will require determination since the Commonwealth of Virginia claims all land below low water line in tidal waters. It is very possible that neither The Nature Conservancy or its predecessors in title had the necessary interest in some of the area to convey title to the United States. As a general principle, the actual low water line would control the boundary rather than the precise description in the survey and deed.

Assuming that all of the lands described in the deed and survey are, in fact, above the mean low water line of the Potomac River, then all of the submerged land is within the refuge, which was established with reference to the deed description. This does not necessarily mean

that the Fish and Wildlife Service has gained title to all of it; however, since, as to any water areas which are legally navigable, the Commonwealth would hold title to the beds of these up to mean low water of these bodies of water, which would not necessarily be the same elevation as mean low water of the Potomac. The discussion on navigability as a legal proposition which follows may help in determining whether or not any of the water areas in the Mason Neck refuge are in fact navigable. If not, and all areas are above the mean low water line of the Potomac, then such lands not only are within the refuge but are also property of the United States and can be administered under all of the same authorities as the adjacent uplands.

In the event that any waters within Mason Neck are navigable, then title to the submerged area below mean low water thereof would still be vested in the Commonwealth of Virginia unless there is a grant therefrom in existence. The file includes some materials gathered by an attorney from Alexandria, Virginia, who, apparently, was asked to research the title to the area and to determine whether or not such a grant had ever been made. He concluded that there was no such grant ever made, based on having found no document in which such an interest was noted, though gaps in the record apparently exist. Absent a specific grant or a statutory grant, it is a general rule that title to the beds of navigable waterways is vested in the respective states. See such classic cases as Martin v. Waddell, 41 U.S. (16 Pet.) 367, 10 L.Ed. 997 (1842); Pollard v. Hagen, 44 U.S. (3 How.) 212 11 L.Ed. 565 (1845); Shively v. Bowlby, 152 U.S. 1, 14 S.Ct. 518, 38 L.Ed. 331 (1894). This is the rule in Virginia, and thus is the case at Mason Neck. See Va. Code Ann. §62.1-1:

> "All the beds of the bays, rivers, creeks, and the shores of the sea within the jurisdiction of the Commonwealth and not conveyed by special grants or compact according to law, shall continue and remain the property of the Commonwealth of Virginia."

Correspondingly, as to non-navigable bodies of water, the adjacent upland owner holds title to the thread of the stream, in the case of a river or creek, and to the center of the pond or marsh.

The rule for determining navigability is an old one but still valid: waters which are in fact navigable are legally navigable. By navigable in fact, the cases speak in terms of being capable of navigation for travel and trade. See The Daniel Ball, 77 U.S. (10 Wall.) 557, 19 L.Ed. 999 (1869); Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 6 L.Ed. 23 (1824); United States v. Appalachian Electric Power Co., 23 F.Supp. 83 (D.Va. 1938), reversed on other grounds 311 U.S. 377, 61 S.Ct. 291, 85 L.Ed. 243 (1940), and more recently P. F. Z. Properties, Inc. v. Train, 393 F.Supp. 1370 (D.D.C. 1975). These cases stand for the proposition that a body of water, to be classified as legally navigable, must be capable of floating more than a fishing boat, skiff or canoe. It must be of sufficient width and depth for use as a trade

route or travel route. The entire body of water need not meet the definition, however. A portion of a river may be legally navigable and the balance not. Thus, even though as a practical matter a particular body of water or portion thereof may not be customarily used for trade or travel, if it is capable of such use it would likely be held navigable legally.

The question of navigability impacts on jurisdiction as well as ownership. As to non-navigable areas within the Mason Neck refuge, title to the underlying lands was acquired along with the same regulatory jurisdiction as was acquired over the adjacent upland areas. The file does not disclose in the case of Mason Neck whether jurisdiction acquired is proprietary or concurrent with the State; however, in either event the jurisdiction acquired is sufficient to close the upland areas and any non-navigable water areas to such activities as hunting and turtle trapping. As to navigable water areas within the refuge, even though title to the underlying lands may be vested in the Commonwealth, there are several bases for the exercise by the Fish and Wildlife Service of jurisdiction to regulate use of the areas by the public.

One of the principal bases for exercise of jurisdiction by the United States over navigable waters arises in the commerce clause of the United States Constitution appearing in Article I, Section 8. Cases are legion recognizing this jurisdiction and holding that the exercise of such jurisdiction pre-empts inconsistent state laws, notwithstanding state or private ownership of the submerged lands. See e.g., Gibbons v. Ogden, supra; Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. (18 How.) 421, 15 L.Ed. 435 (1856); Gilman v. Philadelphia, 70 U.S. (3 Wall.) 713, 18 L.Ed. 96 (1866); United States v. Chandler-Dunbar Co., 229 U.S. 53, 33 S.Ct. 667, 57 L.Ed. 1063 (1913); Arizona v. California, 283 U.S. 423, 51 S.Ctl. 522, 75 L.Ed. 1154 (1931); United States v. Appalachian Electric Power Co., supra; United States v. Rands, 389 U.S. 121, 88 S.Ct. 265, 19 L.Ed. 329 (1967).

The commerce clause power over navigable waters is not limited to facilitating navigation. In more than one case it has been held to include the power to permit Federal regulation to protect fish, wildlife and other ecological values as well. Zabel v. Tabb, 430 F2d 199 (5th Cir. 1970), certiorari denied 401 U.S. 910 (1971); United States v. Ekerwood, 344 F.Supp. 486 (D.Fla. 1972); Union Oil Company of California v. Morton, 512 F.2d 743 (9th Cir. 1975); Scenic Hudson Preservation Conference v. Federal Power Commission, 354 F.2d 608 (2nd Cir. 1965), certiorari denied 384 U.S. 941 (1966); United States v. Ashland Oil, 504 F2d 1317 (6th Cir. 1974. In Zabel v. Tabb permits had been issued under state law to a private owner of submerged lands to dredge and fill his lands for a trailer park development. The Corps of Engineers, however, denied the issuance of a Federal permit under the 1899 Rivers and Harbors Act on the grounds that the development would harm ecological and environmental values. The Court of Appeals

sustained this action by the Corps, even though the denial was not based on a threatened obstruction to navigation and notwithstanding the previously issued state permits. More recently, a Federal court in P. F. Z. Properties, Inc. v. Train, supra, observed the validity of Zabel v. Tabb when, in support of its findings halted development in a mangrove swamp, it stated:

> "The Government's power extends to the protection of wildlife and natural resources in navigable waters, as well as to the protection of navigation. /Zabel v. Tabb cited/ The inclusion of ecological factors in the determination of whether the Corps should grant a construction permit allows for the denial of a permit on purely ecological, rather than navigational grounds." 393 F.Supp. at 1381.

These cases show clear jurisdiction of Congress over the navigable waters of the nation under the commerce clause not only in the interests of navigation but for ecological and environmental purposes as well. Pursuant to its authority to delegate jurisdiction of various aspects of Federal authority for various purposes, Congress has delegated to the Secretary of the Interior the jurisdiction to administer all areas within the National Wildlife Refuge System including the navigable waters therein, regardless of ownership of the submerged lands. See also United States v. Carter, 339 F.Supp. 1334 (D.Ariz. 1972), which held that the Secretary of the Interior has jurisdiction for park purposes over navigable waters within a national recreation area. A legitimate exercise of this authority derived from the commerce clause would be the prohibition of turtle trapping in navigable waters within the Mason Neck National Wildlife Refuge or the prohibition of the use of such waters for access to other areas for turtle trapping purposes. I do not believe, however, that this authority could be used as a basis for regulating navigable waters outside the refuge.

The treaty power also provides a basis for the exercise of Federal jurisdiction over unowned areas within a wildlife refuge, and for some purposes over areas outside a refuge as well. It is well established that Congress may regulate the hunting of migratory waterfowl in order to effectuate treaties signed to protect such wildlife. In Missouri v. Holland, 252 U.S. 416, 40 S.Ct. 302, 64 L.Ed. 641 (1920), the Supreme Court held:

> ". . . by Article II, § 2, the power to make treaties is delegated expressly, and by Article VI treaties made under the authority of the United States, along with the Constitution and laws of the United States made in pursuance thereof, are declared the supreme law of the land. If the treaty is valid, there can be no dispute about the validity of the statute under Article I, § 8, as necessary and proper means to execute the powers of Government." 252 U.S. at 432.

This principle is amply demonstrated by the case of Bailey v. Holland, 126 F.2d 317 (4th Cir. 1942). There Holland owned the submerged lands of a cove that was bordered by a wildlife refuge, and he used his lands for hunting purposes. The Secretary of the Interior, under the authority of two migratory bird treaties, closed Holland's submerged lands and the overlying navigable waters to hunting as a part of a management plan for the refuge. Holland challenged this action, but the court sustained the hunting prohibition as a valid exercise of the treaty powers, stating that the "government's power to prohibit the hunting of migratory waterfowl is not confined to those lands to which it has title." 126 F.2d at 322.

The regulatory jurisdiction which the Fish and Wildlife Service exercises in furtherance of any of the number of treaties which it administers on behalf of the Secretary of the Interior or the United States Government is thus not limited either to lands owned by the United States or to areas within the National Wildlife Refuge System. With relation to the Mason Neck National Wildlife Refuge, for example, migratory bird regulations would be applicable in areas below mean low water of the Potomac River, even though such areas were neither within the refuge nor owned by the United States. More general comprehensive authority to regulate unowned navigable water areas within the boundaries of a refuge may be found in a different treaty, however. The Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, October 12, 1940, proclaimed by the President April 30, 1942, 56 Stat. 1354, 161 UNTS 193, TS 981, 3 Bevens 630, provides, at Article III thereof,

> "The Contracting Governments agree to prohibit hunting, killing and capturing of members of the fauna and destruction or collection of representatives of the flora in national parks except by or under the direction or control of the park authorities, or for duly authorized scientific investigations."

On its face, the above provisions would seem inapplicable to wildlife refuges, but Article I, Section 1 of the treaty defines national parks as,

> "Areas established for the protection and preservation of superlative scenery, flora and fauna of national significance which the general public may enjoy and from which it may benefit when placed under public control."

Thus, in the lexicon of the Convention, it would appear that the term "national parks" was intended to include not only such areas as are administered by the National Park Service but also such areas as wildlife refuges, national forests, game ranges and other areas set aside by the government for the preservation and enhancement of species of animal and plant life. When read in that light, it provides clear

authority to prohibit such activities as the trapping of turtles within the boundaries of a wildlife refuge regardless of who owns the affected lands and waters.

A third basis of authority to regulate unowned water areas in the vicinity of refuge uplands appears in the property clause of the Constitution. Appearing at Article IV, Section 3, Clause 2, it vests with Congress the "Power to dispose of and make all needful Rules and Regulations respecting the Territory of other Property belonging to the United States." By its own terms, the regulatory authority is not limited in its application to Federally-owned property, and it has been extended beyond in a number of cases. Notable among these is a very recent decision from the Federal District Court for Minnesota, United States v. Brown, Cr. No. 5-76-10 (D.Minn. November 4, 1976).

Brown involved a prosecution for duck hunting and possession of a loaded firearm within Voyageurs National Park. The offense took place within the navigable water areas of the recently established park, the lands underlying which were owned by the State. The court, after finding that the United States had acquired neither exclusive nor concurrent jurisdiction over the navigable waters within the park, nevertheless, found that the National Park Service had jurisdiction to regulate the water areas under the property clause in furtherance of its administration of the adjacent upland areas. Much of the discussion in the opinion is relevant to the Fish and Wildlife Service as well as substantial portions are thus worth setting forth:

> "But while the United States cannot acquire exclusive or partial derivative jurisdiction over areas within a state without the state's consent or cession, the presence or absence of such jurisdiction has nothing to do with its powers under the Property Clause. Kleppe v. State of New Mexico, ___ U.S. ___, 44 LW 4878, 4882 (1976). In Kleppe, the Supreme Court noted that absent consent or cession of a state retains jurisdiction even over federal lands subject to federal power under the Property Clause to enact legislation respecting those lands. When Congress acts under that clause, the federal legislation overrides conflicting state laws under the Supremacy Clause, Kleppe v. State of New Mexico, supra, at 4882.
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> ". . . Section 3 of Title 16 gives the Secretary authority to promulgate rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments, and reservations under the jurisdiction of the National Park Service. . . ' In making rules and regulations for national parks which are proper for their use and management, the Secretary is guided by the 'fundamental purpose' of national parks. . . ' This administrative

"authority is indeed very broad and necessarily includes the power to promulgate regulations prohibiting activity which may be detrimental to the use of public land within the park. New Mexico State Commission v. Udall, 410 F.2d 1197, 1201 (10th Cir. 1969).

. . .

". . . under the Property Clause, Congress or its delegates have broad power to regulate public property. In this Court's view, that power certainly includes the authority to prohibit hunting and the possession of loaded firearms on public land within a national park . . . The question still remains whether the United States, acting through the Secretary of the Interior and the National Park Service, has the power under the Property Clause to enforce these regulations . . . on territory over which it has not acquired ownership. . .

"In Camfield v. United States, 167 U. S. 518 (1897), the Supreme Court extended Congressional power under the Property Clause to situations where a certain use of private land interferes with the uses for which the public land was acquired. At issue in that case was a statute which prohibited the enclosure of public lands when no claim of title or property right had been asserted by the party fencing in the public territory. The court intimated that the purpose of the statute was to promote or, at least, allow settlement of unowned lands in Colorado. The Court then noted that Congress passed the statute in response to persons who were building fences on private land but by so doing were effectively enclosing the public land and, thereby, preventing intending settlers access to lands which the Government wished to be settled. The Court held:

> 'Considering the obvious purposes of this structure, and the necessities of preventing the enclosure of public lands, we think the fence is clearly a nuisance and that it is within the Constitutional power of Congress to order its abatement, notwithstanding such action may involve an entry upon the lands of a private individual. The general Government doubtless has a power over its own property analogous to the police power of the several states, and the extent to which it may go in the exercise of such power is measured by the exigencies of the particular case. If it be found to be necessary for the protection of the public, or of intending settlers, to forbid all enclosures of public lands, the Government may do so, though the alternative sections of private lands are thereby rendered less available for pasturage.'

"Id., at 525. Although not addressing the issue presented in Camfield, the Supreme Court recently stated:

> '. . . Camfield holds that the property Clause is broad enough to permit federal regulation of fences built on private land when the regulation is for the protection of the federal property. Camfield contains no limitation on Congress' power over conduct on its own property; its sole message is that the power granted by the Property Clause is broad enough to reach beyond territorial limits.'

"Kleppe v. State of New Mexico, supra, LW at 4881.

> 'The reach of the Property Clause extends to prohibiting interference with uses of public lands sanctioned by Congress. In McKelvey v. United States, 260 U.S. 353 (1922), the High Court said:
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> > "It is firmly settled that Congress may prescribe rules respecting the use of the public lands. It may sanction some uses and prohibit others, and may forbid interference with such as are sanctioned." Id. at 359.
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> > . . .
> >
> > "Carl Brown was cited for certain violations while on public waters held by the State of Minnesota for the benefit of its citizens. However, his location on the Black Bay waters was immediately adjacent to public lands within the park . . . the surrounding land areas have been acquired by the United States for park purposes. Because hunting is prohibited on these lands, there is no doubt in this Court's mind that duck hunting on the contiguous water areas represents a significant interference with the normal use of the public park lands and, as such, is a nuisance which the Park Service may prohibit in order to protect these lands and preserve them according to the purposes for which they were acquired. Camfield v. United States, supra, at 525.
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> > . . .
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> > ". . . The Property Clause gives Congress authority to regulate the waters for the protection of the park lands and to prevent interference with the purpose for which the lands were acquired." ' "

This case, the decisions cited therein, and others such as Hunt v. United States, 278 U.S. 96, 49 S.Ct. 38, 73 L.Ed. 200 (1928), and United States v. Alford, 274 U.S. 264, 47 S.Ct. 597, 71 L.Ed. 1040 (1927), clearly stand for the proposition that activities which will interfere with the