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# The National Park System: Visions for Tomorrow

## ABSTRACT

*The American national park system consists of more than 390 units scattered over 49 states and spread across 82 million acres. Although legally referred to as a system, our national parks are actually a diverse collection of natural, recreational, historical, cultural, archeological, and other sites that have been melded together under the aegis of the National Park Service without any overarching vision or much forethought. Since its origin over 130 years ago, the national park idea has steadily evolved, reflecting changes in our society and economy. Traditionally, the national park has been viewed as a wilderness, tourist destination, playground, laboratory, wildlife reserve, and an economic engine for nearby communities. But with advances in scientific knowledge and our maturing sense of social justice, national parks can also be conceived as the vital core of larger ecosystems, as essential biodiversity reserves, and as important civic educational entities. Given this evolution, how might we expand and strengthen the national park system to meet tomorrow's challenges? Several options merit consideration: expanding individual parks to embrace entire ecosystems, creating new national restoration areas, promoting park-focused ecosystem management arrangements, and developing new urban-based parks to address the needs of an increasingly diverse populace. It may be necessary, however, to revisit the "national significance" standard that has long guided expansion of the national park system. The ultimate goal must be to address and meet the needs of the future generations to whom our national parks are dedicated.*

## INTRODUCTION

Among the federal public lands, the national parks stand out as a revered symbol of this nation's commitment to preserving its natural and cultural heritage. Ever since Yellowstone was established in 1872 as

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the world's first national park, the American national park idea has served as a worldwide model for nature conservation. Successive generations of Americans recall fondly their childhood visits to national parks, often attributing their lifelong appreciation of nature to this experience. These special places, set aside to preserve their unique natural attributes, continue to inspire and awe the millions who visit them annually, many of whom have traveled across the country or from abroad just to experience these wondrous settings. Indeed, Wallace Stegner, the acclaimed American writer and conservationist, deemed the national parks "the best idea we ever had."<sup>1</sup>

With passage of the National Park Service Organic Act in 1916, Congress formally created the national park system and the National Park Service (Park Service). Under the Organic Act, the Park Service is responsible for managing the national parks "to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner . . . as will leave them unimpaired for the enjoyment of future generations."<sup>2</sup> Over the years, the park system has grown from an original handful of western parks to now include over 390 units situated in 49 states and several territories. Congress has fueled this growth by creating an amalgam of new Park Service-managed designations—ranging from national recreation areas and national preserves to national seashores and national rivers—that cover more than 80 million acres, two-thirds of which is located in Alaska. Although much has changed since 1916, Congress has not altered the basic Organic Act mandate, though it has given the Park Service a role in identifying and reviewing potential additions to the system.

Yet the American national park system, despite its prominence and esteem, is hardly a monument to visionary planning. Rather, the system has evolved over the years in a haphazard fashion, driven more by hard-headed political calculations and attractive scenic features than by a sweeping commitment to preserving diverse ecosystems or key biological specimens.<sup>3</sup> In fact, even with their protective status, the existing na-

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1. WALLACE STEGNER, *MARKING THE SPARROW'S FALL: THE MAKING OF THE AMERICAN WEST* 137 (1998). This famous quote is sometimes attributed to James Bryce, an early twentieth-century British ambassador to the United States. See THOMAS R. VALE, *THE AMERICAN WILDERNESS: REFLECTIONS ON NATURE PROTECTION IN THE UNITED STATES* 90 (2005).

2. National Park Service Organic Act, 16 U.S.C. § 1 (2009). In 1978, Congress reaffirmed this mission, directing that "the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System." 16 U.S.C. § 1a-1 (2009).

3. The same point can be made about the historical and cultural sites that are part of the national park system; there is no historical evidence of a comprehensive plan for pro-

tional parks are not secure from outside development pressures, which have disrupted wildlife travel corridors, fouled park waters, polluted regional air sheds, and altered surrounding landscapes.<sup>4</sup> With the alarming prospect of climate-induced changes to the natural world and the accelerating rate of biodiversity loss becoming stark realities, the national park system may be more important than ever in our efforts to address these challenges. With nature-deficit disorder now an identified malady among children, the need for accessible and protected natural areas to introduce a new generation to the marvels of nature is both pressing and compelling.<sup>5</sup>

How might we, then, go about reconceiving our national park system to meet the challenges of the next century? What is an appropriate vision for the national park system? How might that vision be brought to reality? This article seeks to address these questions from the perspective of an evolving national park system, with a view toward tomorrow. It begins with a brief history of the evolution of the current park system, focusing on how and why the system has grown into its present shape. It then turns to the present and future roles of national parks, setting forth a rationale for designating new parks or establishing similar protected areas. It concludes by introducing several ideas for strengthening and expanding the system and noting the attendant challenges. If we cannot summon the same vision and courage that drove our forebears to create Yellowstone and other national parks at a time when land was regarded solely in utilitarian terms, then we risk leaving the generations that succeed us an impoverished landscape in an increasingly unnatural and warming world.

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tecting these sites, thus these designations have also evolved in a haphazard fashion. Given the inherent differences between our natural and cultural parks, however, this article focuses on the natural parks.

4. See U.S. GEN. ACCOUNTING OFFICE, LIMITED PROGRESS MADE IN DOCUMENTING AND MITIGATING THREATS TO THE PARKS (1987); NAT'L PARKS CONSERVATION ASS'N, PARKS IN PERIL: THE RACE AGAINST TIME CONTINUES (1992); U.S. GEN. ACCOUNTING OFFICE, ACTIVITIES OUTSIDE PARK BORDERS HAVE CAUSED DAMAGE TO RESOURCES AND WILL LIKELY CAUSE MORE (1994); see also STEERING COMM. OF THE 75TH ANNIVERSARY SYMPOSIUM, NAT'L PARK SERVICE, NATIONAL PARKS FOR THE 21ST CENTURY: THE VAIL AGENDA 17 (1992); NAT'L PARK SYSTEM ADVISORY BOARD, RETHINKING THE NATIONAL PARKS FOR THE 21ST CENTURY 5-6 (2001); NAT'L PARKS CONSERVATION ASSOCIATION, THE STATE OF OUR PARKS: A RESOURCES INDEX (2008).

5. See RICHARD LOUV, LAST CHILD IN THE WOODS: SAVING OUR CHILDREN FROM NATURE-DEFICIT DISORDER (2005); Richard Louv, *Leave No Child Inside*, ORION MAGAZINE, March/April 2007.

## I. A BRIEF HISTORY OF THE NATIONAL PARK SYSTEM

The national parks, though legally referred to as a system, are actually a diverse collection of natural, recreational, historical, cultural, archeological, and other sites that have been melded together without any overarching vision or much forethought. The current approach has preserved many important sites, ranging from large natural parks like Yosemite to hallowed battlefields like Gettysburg, each of which captures an aspect of the nation's heritage, and most of which can legitimately be described as nationally significant. But this approach does not ensure that all such meritorious sites have received federal protection, nor does it suggest much of a unifying theme. Instead, the national park system has evolved piecemeal, park by park, either by congressional legislation or presidential edict. As the system has evolved, despite its best efforts to shape the system, the Park Service has been mostly a bit player in the larger political drama of new park creation. The result is a national park system that is quite different today than anyone could have envisioned in 1916, when the system was first created.

### A. The Park Creation Process

From the beginning, Congress has assumed the primary responsibility for establishing new national parks. The first parks were designated to protect spectacular mountainous western landscapes. Congress, acting under its expansive Property Clause power, initially created Yellowstone in 1872,<sup>6</sup> followed by a succession of other parks, including Yosemite, Sequoia, Mount Rainier, Crater Lake, Rocky Mountain, and Glacier.<sup>7</sup> In 1906, again exercising its Property Clause power, Congress adopted the Antiquities Act and delegated to the President the authority to create new national monuments in order to protect "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" found on federally owned lands.<sup>8</sup> Never shy about exercising power, President Theodore Roosevelt promptly christened the Grand Canyon, Mount Olympus, Lassen Peak, Carlsbad

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6. Yellowstone Park Act of 1872, 17 Stat. 32, codified at 16 U.S.C. §§ 21–22 (2009).

7. On the history of the national park system, see ALFRED RUNTE, NATIONAL PARKS: THE AMERICAN EXPERIENCE (3d ed., 1997); JOHN ISE, OUR NATIONAL PARK POLICY: A CRITICAL HISTORY (1961).

8. Antiquities Act of 1906, 16 U.S.C. § 431 (2009); *see generally* THE ANTIQUITIES ACT: A CENTURY OF AMERICAN ARCHAEOLOGY, HISTORIC PRESERVATION, AND NATURE CONSERVATION (D. Harmon et al., eds., 2006); HAL ROTHMAN, AMERICA'S NATIONAL MONUMENTS: THE POLITICS OF PRESERVATION (1989). The Antiquities Act also directs the President that any national monument designation should be "confined to the smallest area compatible with the proper care and management of the objects to be protected." 16 U.S.C. § 431.

Caverns, Petrified Forest, and several other sites as national monuments, thus consecrating the President's important role in the establishment of new parks. Once the initial local uproar over a national monument designation has subsided, Congress has converted several presidentially decreed national monuments into national parks, including such icons as the Grand Canyon, Olympic, Zion, Grand Teton, and Death Valley.

The National Parks Organic Act of 1916 consolidated these early individual parks and monuments into a single national park system and also established a uniform management standard for them.<sup>9</sup> But the Organic Act only hinted at how the new system might be expanded, and it was silent on what role the new National Park Service might play in any expansion process. The logical assumption was that Congress would continue to be responsible for designating new parks. That assumption appears in the Organic Act, which refers to "such other national parks and reservations of like character that may be hereafter created by Congress."<sup>10</sup> To the extent one can glean any notion of what sites might qualify for future national park status, it comes primarily from this statutory language and the specific reference to preexisting national parks and monuments "of like character."

The Park Service was quick to assert its role in the new park creation process. That role was explained in the so-called Lane Letter, a set of directions transmitted in 1918 from Secretary of the Interior Franklin K. Lane to the Park Service's first director, Stephen T. Mather, setting forth management principles for the new agency.<sup>11</sup> The letter explicitly identified standards for evaluating new national park proposals:

In studying new park projects, you should seek to find scenery of supreme and distinctive quality or some national feature so extraordinary or unique as to be of national interest and importance. . . . The national park system as now constituted should not be lowered in standard, dignity, and prestige by the inclusion of areas which express in less than the highest terms the particular class or kind of exhibit which they represent.<sup>12</sup>

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9. 16 U.S.C. § 1; *see supra* note 2 and accompanying text.

10. 16 U.S.C. § 2 (2009).

11. The so-called Lane Letter was actually penned by Horace Albright, Mather's esteemed assistant who went on to serve as the second Park Service director upon Mather's retirement. National Park Service: Biography (Horace Marden Albright), [http://www.nps.gov/history/history/online\\_books/sontag/albright.htm](http://www.nps.gov/history/history/online_books/sontag/albright.htm). The Lane Letter can be found in *AMERICA'S NATIONAL PARK SYSTEM: THE CRITICAL DOCUMENTS*, 48–52 (Lary M. Dilsaver, ed., 1994) [hereinafter Dilsaver].

12. Letter dated May 13, 1918, from Secretary of the Interior Franklin K. Lane to Park Service Director Stephen T. Mather, reprinted in Dilsaver, *supra* note 11, at 51. The letter

These original standards have been carried forward over the years and still form the principal basis by which the Park Service evaluates new park proposals. Beginning in 1972, the Park Service used these standards to develop the first national park system plan by identifying gaps in the natural and cultural themes represented in the system, with the intent that new park proposals should be designed to fill these gaps.<sup>13</sup> The emerging vision was to create a thematically representative park system, though changes in scientific knowledge and cultural values inevitably meant that this would be an ongoing and evolutionary process.

Eventually Congress crafted a modest role for the Park Service in designating new parks, charging the agency with evaluating whether a proposed area met national park standards. Under a 1976 amendment to the General Authorities Act of 1970, Congress directed the Secretary of the Interior “to investigate, study, and continually monitor the welfare of areas whose resources exhibit qualities of national significance and which may have potential for inclusion in the National Park System.”<sup>14</sup> In 1998, with the passage of the National Parks Omnibus Management Act, Congress set forth more detailed criteria for the Park Service to consider in evaluating whether an area merited national park protection: Not only must it “meet the established criteria of national significance, suitability, and feasibility,” but it should also contain “themes, sites, and resources not already adequately represented in the National Park System.”<sup>15</sup> Other factors to be considered included the rarity and integrity of the resources, existing threats to those resources, the potential for public use, the site’s interpretive and educational potential, possible socio-economic impacts of any designation, the level of local and general public support, and whether the area can be adequately protected over the long-term. Curiously, while creating a clear role for the Park Service in evaluating proposed national park sites, the omnibus legislation also

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also notes that the size of new areas proposed for national park status does not matter, and it instructs the Park Service to “study existing national parks with the idea of improving them by the addition of adjacent areas which will complete their scenic purposes or facilitate administration.” *Id.* It specifically mentions the Teton Mountains as a potential addition to Yellowstone and the Sierra summits and slopes as a possible addition to Sequoia.

13. Craig L. Shafer, *History of Selection and System Planning for U.S. Natural Area National Parks and Monuments: Beauty and Biology*, 8 BIODIVERSITY & CONSERVATION 189, 194 (1999).

14. 16 U.S.C. § 1a-5 (2009). In addition, the secretary was directed to submit an annual list of potential additions to the park system and a list of previously studied areas to the House and Senate congressional committees with oversight of the national parks. *Id.*

15. National Parks Omnibus Management Act, 16 U.S.C.A. § 1b(2)(A-B) (2009).

prohibited the agency from initiating new studies without specific congressional authorization.<sup>16</sup>

## B. An Evolving System

Since 1916, the addition of new parks to the system has been an often haphazard process, but one that has gradually expanded the system across the country while fostering several new designations. In 1919, Congress extended the national park system eastward with the addition of Acadia in Maine, and then added Great Smoky Mountains, Shenandoah, and Mammoth Cave a few years later. In 1933, President Franklin Roosevelt more than doubled the number of park system units when he signed an executive order transferring 64 national monuments, military parks, battlefield sites, memorials, and cemeteries to the Park Service.<sup>17</sup> A year later, Congress designated Florida's Everglades a new national park, deviating from its traditional view that only scenically spectacular locations, as reflected in the early western parks, merited national park status. In 1936, Congress added Lake Mead National Recreation Area to the system, not only creating a new type of protected area, but also giving an explicit priority to recreation that it did not enjoy in the traditional national parks. In 1937, Cape Hatteras National Seashore was created and brought into the system, further confirming that the system had grown well beyond the early western national park and monument designations.<sup>18</sup>

In the decades following World War II, to meet escalating public pressures for outdoor recreational opportunities from an increasingly prosperous and leisure-oriented populace, Congress created a plethora of new national parks, national recreation areas, national seashores, national lakeshores, and national rivers—several of which were located near growing urban centers where these pressures were greatest.<sup>19</sup> Among the new sites were Theodore Roosevelt National Park, Coulee Dam National Recreation Area, Glen Canyon National Recreation Area, and the Chesapeake and Ohio Canal National Historic Park. Yet more new units were created during the 1960s when, driven by a park-friendly

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16. National Parks Omnibus Management Act, Pub. L. 105-391, title III, § 303, 112 Stat. 3497, 3501 (1998), codified at 16 U.S.C. § 1a-5(b)-(c) (2009). In addition, the legislation directed the Park Service to consider whether the area under consideration might be adequately protected by another federal or state agency and to conduct any new park study in compliance with the National Environmental Policy Act. *Id.*

17. See RUNTE, *supra* note 7, at 219–20 (the new units came from the War Department, U.S. Forest Service, and District of Columbia).

18. On the early evolution of the national park system, see RUNTE, *supra* note 7, at 114–18, 135–36.

19. See Shafer, *supra* note 13, at 195.



administration and Congress, new designations surged. These included Point Reyes, Padre Island, Cape Cod, Canyonlands, Big Horn Canyon, Assateague Island, Delaware Water Gap, Indian Dunes, North Cascades, Redwood, Biscayne, and the Appalachian Trail. In 1978, Congress dropped its single-park bill approach and passed the omnibus National Parks and Recreation Act, which added Santa Monica Mountains and New River Gorge, established four national historic trails, and made boundary adjustments to 39 existing park units. Some critics decried this new legislative packaging approach to national park system expansion as “parks barrel politics.”<sup>20</sup>

In 1980, Congress adopted the expansive Alaska National Interest Lands Conservation Act (ANILCA),<sup>21</sup> which more than doubled the size of the national park system and dramatically increased the national wilderness and wildlife refuge systems. ANILCA added 43.6 million new acres and 10 new units to the national park system, including Gates of the Arctic, Wrangell-St. Elias (now the largest park in the system at 13.2 million acres), Lake Clark, and Kenai Fjords. While the ANILCA legislation significantly expanded Denali, Katmai, and Glacier Bay, it put part of the new acreage in national preserve status, which is historically less protective than park status because it allows activities such as mining, energy leasing, and hunting.<sup>22</sup> Moreover, ANILCA specifically authorized subsistence uses inside most Alaskan national parks, preserves, and monuments, which were defined as the taking of renewable resources by hunting, fishing, trapping, and otherwise for personal consumption and barter.<sup>23</sup> Since then, however, Congress has added only a few new large units to the national park system, including Great Basin National Park, the Mojave National Preserve, and several new scenic rivers and national recreation areas. It has also greatly expanded the California desert parks.

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20. See RUNTE, *supra* note 7, at 233–35.

21. Alaska National Interest Lands Conservation Act of 1980, Pub. L. 96-487, 94 Stat. 2374; codified at 16 U.S.C. §§ 3101–3233 (2009). The ANILCA legislation was prompted, in part, by President Jimmy Carter’s designation of several new national monuments in Alaska and by Interior Secretary Cecil Andrus’s withdrawal of millions of acres from mineral development in 1978. On the history of ANILCA, see DANIEL NELSON, *NORTHERN LANDSCAPES: THE STRUGGLE FOR WILDERNESS ALASKA* (2004); RUNTE, *supra* note 7, at 236–58.

22. Although ANILCA withdrew the new Alaskan national preserves from future mining or energy development, 16 U.S.C. §§ 410hh, 410hh-1 (2009), earlier national preserve designations allowed these activities. See RUNTE, *supra* note 7, at 256 (noting that earlier legislation creating Big Thicket National Preserve in Texas and Big Cypress National Preserve in Florida allowed mining, oil and gas exploration, and livestock grazing, as well as hunting and trapping).

23. 16 U.S.C. §§ 3111–26 (2009); see Deborah Williams, *ANILCA: A Different Legal Framework for Managing the Extraordinary National Park Units of the Last Frontier*, 74 *DENV. U. L. REV.* 859 (1997).

The Park Service's enthusiasm for new parks has waxed and waned over the past 30 years. Park Service officials have consistently maintained that new park proposals must meet the "national significance" standard and must be both suitable and feasible for inclusion in the system.<sup>24</sup> They are well aware that new parks cost money and fear these funds will come from the existing budget, a particularly troublesome prospect since Congress has chronically underfunded the agency. When opposed to a proposed new area, agency officials have regularly recommended that such areas be protected by another federal agency or by state or local authorities. Congress, however, has not consistently responded to these concerns or recommendations, as in the cases of the Presidio in San Francisco and Steamtown National Historic Site in Pennsylvania.<sup>25</sup> This led one former Park Service director, lamenting a "thinning of the blood," to assert that "members of Congress have blatantly disregarded the standards that have been traditionally used in evaluating the creation of new national park units."<sup>26</sup> While maintaining high standards for the national park system may be laudable, it can also reflect an unduly narrow view of the type of lands and waters that might be added to the system.<sup>27</sup>

Viewed through an historical prism, several themes emerge from this excursion through the new park designation process. First, where the original national park system primarily consisted of large western natural parks and national monuments (mostly designed to protect Native American ruins and artifacts), it has been dramatically diversified over the years with the addition of national recreation areas, national seashores, national trails, and the like. Second, the notion that only scenically spectacular locations merit national park protection has fallen by the wayside. Beginning with the addition of Everglades National Park in

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24. See, e.g., NAT'L PARK SERVICE, MANAGEMENT POLICIES 1.3–1.3.4 (2006) [hereinafter NPS MANAGEMENT POLICIES]. The National Park Service's Management Policies serve as the agency's "basic policy document . . . for managing the national park system," and all employees must adhere to the policies set forth in it. *Id.* at Introduction.

25. JAMES M. RIDENOUR, THE NATIONAL PARKS COMPROMISED: PORK BARREL POLITICS AND AMERICA'S TREASURES, 17–18 (1994).

26. *Id.* at 16–18 (1994). These same "national significance" concerns have also prompted periodic calls to decommission some national parks, perhaps most notably when Utah Congressman James V. Hansen chaired the House of Representatives subcommittee on national parks during the 1990s. See Howard Witt, *National Parks Face Survival of the Fittest*, CHI. TRIB., Sept. 4, 1995; James Gerstenzang, *House Rejects Effort to Shrink Park System*, L.A. TIMES, Sept. 20, 1995.

27. For a brief description of the laws and processes involved in establishing new national park units, see CAROL HARDY VINCENT, NATIONAL PARK SYSTEM: ESTABLISHING NEW UNITS (1999), available at [http://www.historicpreservation.gov/c/documents\\_library/get\\_file?p\\_1-id=36286&folderId=35097&name=DLFE-707.pdf](http://www.historicpreservation.gov/c/documents_library/get_file?p_1-id=36286&folderId=35097&name=DLFE-707.pdf).

1934, several national parks have been designated or expanded as much for their ecological and wilderness values as for their scenic splendor.<sup>28</sup> This was certainly true in the case of several Alaska parks and the North Cascades complex, and it is reflected in the additions to Grand Canyon, Redwood, Death Valley, and Joshua Tree. Third, the advent of such new designations as national recreation areas, national lakeshores, and gateway parks stand as proof that the “national significance” criteria has been diluted, if not abandoned, in several instances, partly to meet the growing demand for close-to-home recreational opportunities. In sum, these changes reflect an evolving national park system, which provides an opportunity to think creatively about the future shape of the system.

### C. Underlying Opportunities and Tensions

Historically, the identification and creation of new parks has involved players other than the Park Service, reflecting the political nature of this process. Indeed, the vast majority of new parks has come into being through the vision and hard work of a single individual or a group of citizens dedicated to protecting a treasured local landscape or waterway. Most historians, for example, credit Enos Mills with bringing Rocky Mountain National Park into being. A local naturalist sometimes referred to as “the John Muir of the Rockies,” Mills tirelessly campaigned for the park, penning promotional articles for *The Saturday Evening Post* and other national publications.<sup>29</sup> In addition, private philanthropy has been crucial in preserving park-worthy lands until they can be incorporated into the system. The present shape of Grand Teton National Park, for example, may be traced to the clandestine land purchases made in Jackson Hole, Wyoming, by John D. Rockefeller, Jr., during the late 1920s. These purchases saved much of the park’s eventual front country from subdivision and development.<sup>30</sup> The states have also played an important role in the evolution of the park system. During the 1930s, with federal funds unavailable, Virginia and North Carolina both invested state monies to acquire the lands slated to become Shenandoah and Great Smoky Mountains national parks.<sup>31</sup> Simply put, the national park creation process has been an opportunistic, grassroots-driven process, generally nonpartisan in nature and truly reflecting democracy in action.

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28. See RUNTE, *supra* note 7, at 128–37.

29. ISE, *supra* note 7, at 212.

30. RUNTE, *supra* note 7, at 124–26, 142–44; see also ROBERT W. RIGHTER, CRUCIBLE FOR CONSERVATION: THE CREATION OF GRAND TETON NATIONAL PARK (1982). Rockefeller also played a key role in acquiring lands for Acadia National Park in Maine. RUNTE, *supra* note 7, at 114.

31. ISE, *supra* note 7, at 248–64.

One constant factor in the growth of the park system has been the presence of rival federal land management agencies and their gradual assumption of protective land management responsibilities. At least since the creation of Rocky Mountain National Park in 1917, when Congress transferred highly regarded national forest lands to the Park Service to create a new national park, the U.S. Forest Service (Forest Service) has generally opposed the transfer of lands under its management for national park designation.<sup>32</sup> One motivation for the Forest Service's decision to embrace administratively the wilderness concept during the 1920s was its desire to curtail the loss of its prime scenic and recreational lands to the rival Park Service.<sup>33</sup> Once the Wilderness Act was passed in 1964,<sup>34</sup> the Forest Service has regularly argued that its wilderness lands are much better protected than national park lands because no roads, tourist facilities, motorized recreation, or other intrusions are permitted in these areas. Since passage of the Federal Land Policy and Management Act of 1976 (FLPMA),<sup>35</sup> the Bureau of Land Management (BLM) could likewise argue that its new and potential wilderness lands were well protected and should not be transferred to the Park Service, as had also been the practice.<sup>36</sup> Moreover, laws like the Wild and Scenic Rivers Act, the National Trails Act, and the Endangered Species Act have further expanded the preservationist and recreational management responsibilities of these other federal land management agencies. With the growth of state and local park systems, nonfederal protection options are also available. In short, national park status is not the only option available for protecting lands and waters from development or for promoting outdoor recreation and education.

All of the principal federal land management agencies now have important land protection responsibilities: the Forest Service for its wilderness lands, which are a major part of the larger National Wilderness Preservation System, the BLM for its National Landscape Conservation System, and the U.S. Fish and Wildlife Service for the National Wildlife Refuge System. One obvious result of this growth in federal protected

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32. ISE, *supra* note 7, at 212. See also SAMUEL TRASK DANA & SALLY K. FAIRFAX, *FOREST AND RANGE POLICY: ITS DEVELOPMENT IN THE UNITED STATES* 131–32 (2d ed., 1980).

33. See ISE, *supra* note 7, at 643.

34. Wilderness Act of 1964, Pub. L. No. 88-577, 78 Stat. 890, codified at 16 U.S.C. §§ 1131–36 (2009).

35. Pub. L. No. 94-579, 90 Stat. 2744, codified at 43 U.S.C. §§ 1701–84 (2009). The FLPMA wilderness section is found at 43 U.S.C. § 1782.

36. Moreover, passage of the National Landscape Conservation System legislation in the Omnibus Public Lands Management Act of 2009 adds even more weight to the BLM's argument against relinquishing its lands for new national parks. Pub. L. No. 111-11, 123 Stat. 991, 1094–1096, codified at 16 U.S.C. §§ 7201–7203 (2009).

lands systems is that inclusion in the national park system is no longer the only federal option for protecting scenically stunning, ecologically rich, or recreationally attractive public lands.<sup>37</sup> These protective systems provide the Park Service's rival agencies with a potent argument against proposals to transfer their desirable lands into national park status, at least when those lands are already protected as wilderness or by a similar designation. Another equally important outcome of the growth in federal protected lands is the real and potential opportunity to link protected areas together to protect much larger and more ecologically intact landscapes. This ecosystem-based approach to preservation has become the common rallying cry for scientists, preservationists, and others concerned about accelerating biodiversity losses and potential climate change impacts.

Although many of the large national parks were created from existing federal public lands, this has not invariably been the case. Several major eastern parks were stitched together from privately owned lands. As opposed to divesting a sister federal agency, this situation required the Park Service to develop different strategies to acquire these new units. In the cases of Great Smoky Mountains, Shenandoah, and Everglades national parks, for instance, Congress authorized the new parks conditioned upon the home state acquiring designated private lands, though it eventually supplemented these state efforts with federal funding.<sup>38</sup> In other instances, private lands have been integrated into a new national park unit. At Cape Cod, for example, the Park Service was responsible for developing zoning standards and vested with condemnation authority to ensure compatibility between community development and the adjacent preserved landscape.<sup>39</sup> More recently, Congress has employed a new National Heritage Area designation that does not disturb ownership patterns but gives the Park Service a partnership role in conserving and interpreting a community landscape with historical, natural, and recreational values.<sup>40</sup> The acquisition of strategically located conservation or scenic easements represents yet another method of effectively expanding the park system without altering the existing ownership or

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37. Of course, the Park Service has not always been in an aggressive expansionist mode; it has frequently asserted that options other than national park status, including state and local park designations, should be considered when park proposals have surfaced. VINCENT, *supra* note 27, at 4-6.

38. See ISE, *supra* note 7, at 258-62, 376-78.

39. 16 U.S.C. § 459b-4 (2009).

40. On the National Heritage Area concept, see <http://www.nps.gov/history/heritageareas> (last visited Sept. 28, 2009). Though not a landowner in National Heritage Areas, the Park Service ordinarily has the authority to approve the area management plan. It may or may not participate in drafting the plan.

boundaries. With sufficient funding, several options exist to piece together nonfederal lands into a new or expanded national park unit.

## II. NATIONAL PARKS IN TODAY'S WORLD

The role of the national park in American society has evolved over time, just as the nation's economy and cultural mores have changed dramatically. The United States of today looks and thinks quite differently than it did during the early part of the twentieth century. Similarly, our conception of what a national park is and should be differs from the ideas that held sway a century ago. Even as several of these early ideas continue to resonate, none has proven powerful enough to completely capture the essence of the national park.

### A. Social Change and the National Parks

At the dawn of the national park system, Woodrow Wilson was President, the nation was just recovering from World War I, and the automobile and airplane were new on the scene, hardly mainstays of the nation's transportation system. The industrial era was still in its infancy. There was no interstate highway system. And the western states, home to most of the national parks, boasted a total population fewer than 10 million people and no major metropolitan areas.<sup>41</sup> In 1916, visitation to Yellowstone totaled 35,850, while fewer than 34,000 people visited Yosemite. Only 37,750 visited the Grand Canyon in 1919. Despite President Theodore Roosevelt's earlier efforts to elevate conservation on the nation's political agenda, federal natural resources policy was focused on the use and disposal of the public lands.

Nearly a century later, however, we face a significantly altered political, economic, social, and environmental landscape. Not only has the American economic engine grown into the world's most powerful economy, but the industrial era has given way to the information age. The West, no longer an unpopulated backwater, now boasts more than 88 million residents, most of whom live in metropolitan areas, and the southern intermountain west is now home to five emerging "megapolitan" areas.<sup>42</sup> No longer is the nation's population predominantly white, but rather reflects a diversity of skin colors and ethnic

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41. For regional historical population statistics, see HERBERT S. KLEIN, *A POPULATION HISTORY OF THE UNITED STATES* 242–43 tbl.A1 (2004).

42. ROBERT E. LANG ET AL., *MOUNTAIN MEGAS: AMERICA'S NEWEST METROPOLITAN PLACES AND A FEDERAL PARTNERSHIP TO HELP THEM PROSPER* (Brookings Inst., 2008). *See also* ATLAS OF THE NEW WEST: PORTRAIT OF A CHANGING REGION 55–56 (William E. Riebsame, general ed., 1997); ROBERT B. KEITER, *KEEPING FAITH WITH NATURE: ECOSYSTEMS, DEMOCRACY & AMERICA'S PUBLIC LANDS* 60–65 (2003).

backgrounds. The white majority is expected to become a minority by the year 2042.<sup>43</sup> With a mature interstate highway system and a wealthy and mobile population, national park visitation numbers now total more than 270 million nationwide. Yellowstone receives just under 3 million visitors annually, while almost 3.5 and 4.5 million visit Yosemite and the Grand Canyon, respectively. As these changes have taken hold, federal policy toward public lands has shifted toward greater protectionism, as reflected in the expanded national park system, the advent of formal wilderness areas, and other protective designations.

In response to these profound shifts in American society, the national park idea—our concept of what a national park is and should be—has changed over the years. Traditionally, we have thought of the national park as a wilderness, tourist destination, playground, laboratory, wildlife reserve, and even an economic engine for nearby communities and businesses. But as our understanding of the ecological sciences has evolved and our commitment to nature preservation and sense of social justice have matured, the national park idea has also grown in content and size. As a result, national parks are increasingly viewed as the vital core of larger ecosystems and as an essential biodiversity reserve. With such phenomena as global warming and nature-deficit disorder upon us and with other transformative social and economic changes on the horizon, it is apparent that the national park idea will evolve even further.

## B. The Traditional View of National Parks

In the beginning, Yellowstone, Yosemite, the Grand Canyon, and the other early parks were viewed as remote and wild places, strongholds of the nation's wilderness heritage where wild nature held sway. The parks were regularly portrayed as wilderness settings, and there was little human presence beyond the military caretakers, some nearby Native American reservations, and a few other hardy souls. The 1872 Yellowstone legislation and the 1890 Sequoia legislation called for retaining each park's resources and features "in their natural condition,"<sup>44</sup> while the 1910 Glacier legislation provided for "preservation of the park in a state of nature."<sup>45</sup> The 1916 Organic Act and the 1918 Lane Letter to the new Park Service endorsed a similar view by instructing that the national parks were to be managed and maintained in an unimpaired condition. But this notion of the national parks as a wilder-

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43. U.S. Census Bureau News, *An Older and More Diverse Nation by Midcentury*, Aug. 14, 2008, <http://www.census.gov/Press-Release/www/releases/archives/population/012496.html> (last visited Dec. 23, 2009).

44. 16 U.S.C. § 22 (Yellowstone), § 43 (Sequoia).

45. 16 U.S.C. § 162 (2009).

ness setting was belied from the outset by the competing notion that the new parks were “pleasuring grounds”<sup>46</sup> and were “set apart for the use, observation, health, and pleasure of the people.”<sup>47</sup> Once roads, hotels, and other structures were built in the parks to accommodate visitors, it was apparent that they were not merely primitive, undeveloped settings.

Nonetheless, the backcountry portions of most national parks remain wilderness-like in appearance, and Congress has not only introduced the term “wilderness” into park enabling legislation,<sup>48</sup> but it has also extended formal wilderness status to these lands in many parks.<sup>49</sup> In fact, the Park Service oversees more congressionally designated wilderness acreage than any of the other land management agencies. Where such formal wilderness designations are in place, the Park Service faces additional legal constraints on its management options. It cannot construct new roads or other facilities, nor can it utilize mechanized means to access or manage these areas.<sup>50</sup>

Even as early as 1872, the image of Yellowstone as a wilderness was in tension with the idea that the new park should serve as a “pleasuring ground” for visitors. To ensure accessibility, the Yellowstone legislation gave the Secretary of the Interior authority to “grant leases for building purposes . . . for the accommodation of visitors” and for “the construction of roads and bridle paths therein.”<sup>51</sup> Once the Park Service came into being, its first director, Stephen Mather, who had enjoyed a remarkably successful career as a marketing executive, set about introducing the public to the national parks. The Lane Letter provided that “low-priced camps operated by concessioners should be maintained, as well as comfortable and even luxurious hotels . . . but the development of revenues should not impose a burden upon the visitor.”<sup>52</sup> It instructed the new Park Service to work with the railroads, as well as “chambers of commerce, tourist bureaus, and automobile highway associations for the

46. U.S.C. § 21 (Yellowstone National Park Act).

47. Lane Letter, in Dilsaver, *supra* note 11, at 48.

48. *See, e.g.*, 16 U.S.C. § 410c (providing that Everglades National Park “shall be permanently reserved as a wilderness”); 16 U.S.C. § 459a-2 (providing that portions of Cape Hatteras National Seashore “shall be permanently reserved as a primitive wilderness area”).

49. *See, e.g.*, Washington Park Wilderness Act of 1988, Pub. L. No. 100-668, 102 Stat. 3961, 3965, codified at 16 U.S.C. § 110c (2009); California Wilderness Act of 1984, Pub. L. No. 98-425, 98 Stat. 1619, 1632, codified at 16 U.S.C. § 543 (2009); California Desert Protection Act, Pub. L. No. 103-433, 108 Stat. 4471, 4485, codified at 16 U.S.C. § 410aaa (2009).

50. 16 U.S.C. § 1133; NPS MANAGEMENT POLICIES, *supra* note 24, at 6.3, 6.4 (2006). *See generally* CHAD P. DAWSON & JOHN C. HENDEE, WILDERNESS MANAGEMENT: STEWARDSHIP AND PROTECTION OF RESOURCES AND VALUES (4th ed., 2008).

51. 16 U.S.C. § 22.

52. Lane Letter, in Dilsaver, *supra* note 11, at 50.



purpose of . . . facilitating their use and enjoyment."<sup>53</sup> Mather saw the automobile as key to promoting visitation, so he built roads, hotels, and other facilities to entice people to visit the parks.<sup>54</sup> With the help of private concessionaires who ran park hotels and stores and with the support of nearby communities who viewed their economic future as hitched to the new parks, the national parks soon became regular tourist destinations with an evident commercial tinge.

Visitation numbers grew steadily before World War II, and then skyrocketed after the war, exploding from 12 million in 1945 to 172 million in 1970.<sup>55</sup> The post-war increase in visitation helped fuel the Park Service's Mission 66 program, which was conceived during the 1950s to meet the anticipated upsurge in visitation.<sup>56</sup> Under Mission 66, the Park Service embarked on an aggressive system-wide construction program designed to expand park visitor accommodations and facilities.<sup>57</sup> With Congress's financial support, the program was an instant success: new lodges, roads, campgrounds, and other facilities sprang up across the system.<sup>58</sup> The national park as wilderness stronghold was further giving way to the national park as tourist attraction.

Within a decade, however, the Park Service started to reverse course and limit the construction of new facilities inside the parks. In the 1960s, a nascent wilderness movement gained new political momentum, propelled forward, at least in part, by a growing unease with the Park Service's management policies. These policies seemed geared primarily to building more and more roads, lodges, and other visitor facilities inside the parks. Critics like the Sierra Club's David Brower went so far as to accuse the Park Service of promoting "roadside wilderness."<sup>59</sup> Congress was vocal, too, first with its passage of the Wilderness Act in 1964 and then with its creation of new wilderness-oriented national parks. In the legislative debates preceding the establishment of Canyonlands in 1964 and North Cascades in 1968, congressional supporters extolled each

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53. *Id.* at 50–51.

54. ROBERT SHANKLAND, STEVE MATHER OF THE NATIONAL PARKS 145–62 (3d ed. rev. & enlarged, 1970); RUNTE, *supra* note 7, at 155–61.

55. For national park visitation statistics, see <http://www.nature.nps.gov/stats/abstracts> (last visited Sept. 28, 2009).

56. On the Park Service's Mission 66 program, see RICHARD WEST SELLARS, PRESERVING NATURE IN THE NATIONAL PARKS: A HISTORY 180–91 (1997); Dilsaver, *supra* note 11, at 193–96 (Park Service Director Conrad Wirth's Mission 66 Special Presentation to President Eisenhower and the cabinet, Jan. 27, 1956).

57. SELLARS, *supra* note 56.

58. *Id.*

59. See *id.*, at 188. For an interesting analysis of the Park Service's road construction program, see THOMAS R. VALE, THE AMERICAN WILDERNESS: REFLECTIONS ON NATURE PROTECTION IN THE UNITED STATES 113–17 (2005).

area's wilderness characteristics, making clear that these new parks should remain mostly undeveloped. Since then, Park Service policy has shifted perceptibly toward constructing new facilities on the periphery of the parks and relying upon nearby communities to provide hotel space and other visitor services.<sup>60</sup> Despite this shift back toward the national park as a wilderness setting, the Park Service has continued to encourage visitation, though not rampant commercial development. And the people have kept coming, with system-wide visitation pushing 275 million annually as the twentieth century wound down.

From the outset, the Organic Act instructed the Park Service to promote "public enjoyment" of the new national parks, and that mandate has spurred the view of the national park as a playground. In fact, the Lane Letter to the then-new Park Service described the national parks as "this national playground system" and admonished that "recreational use of the national parks should be encouraged in every practicable way."<sup>61</sup> Since then, the Park Service has embraced recreation as a primary activity in the national parks, though it has gradually eliminated some inappropriate recreational facilities—including ski areas, tennis courts, and swimming pools—and imposed management limitations on other activities to address overcrowding and environmental degradation concerns. It has also sought to distinguish between different types of recreational activities, generally favoring contemplative and physically challenging activities over motorized or less-active forms of recreation.<sup>62</sup> In doing so, the Park Service has interpreted the Organic Act's non-impairment mandate to prioritize resource protection over recreational access, thus effectively subordinating the park's role as a playground to environmental concerns.<sup>63</sup> When confronted with challenges to these recreational limitations, federal courts have consistently endorsed the Park Service's "resource protection-first" interpretation of its legal responsibilities.<sup>64</sup> Nonetheless, recreational controversies—such as the battle over

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60. NPS MANAGEMENT POLICIES, *supra* note 24, at 9.1, 9.1.1.2.

61. Lane Letter, in Dilsaver, *supra* note 11, at 49–50.

62. On recreation in the national parks, see JOSEPH L. SAX, MOUNTAINS WITHOUT HANDRAILS: REFLECTIONS ON THE NATIONAL PARKS (1980).

63. See NPS MANAGEMENT POLICIES, *supra* note 24, at 1.4.3 (providing that "when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant"); see also *id.* at 8.1.1 (permitting only "uses" that "can be sustained without causing unacceptable impacts"); *id.* at 8.2 *et seq.*

64. See, e.g., *Southern Utah Wilderness Alliance v. National Park Service*, 387 F. Supp. 2d 1178 (D. Utah 2005); *Bicycle Trails Council of Marin v. Babbitt*, 82 F.3d 1445 (9th Cir. 1996); *Michigan United Conservation Clubs v. Lujan*, 949 F.2d 202 (6th Cir. 1991); *Organized Fishermen of Florida v. Watt*, 590 F. Supp. 805 (S.D. Fla. 1984), *aff'd*, 775 F.2d 1544 (11th Cir. 1985).

snowmobiling in Yellowstone and mountain biking on national park trails—continue to ripple across the national park system.<sup>65</sup>

The concept of the national park as a laboratory has taken several different forms over the years. The Lane Letter makes little reference to the role of science in the parks, except to suggest that the Park Service consult other government scientific bureaus to address wildlife and other management problems.<sup>66</sup> Yet the national parks have long served as literal laboratories for experimenting with different resource management policies, the most notable of these experiments being the Yellowstone-led policy of nonintervention into natural processes to enable nature to take its course and the Sequoia-initiated policy of reintroducing fire into the ecosystem.<sup>67</sup> The Park Service has also regularly made national parks available to university and other researchers for studying wildlife, fish, plant, and other ecological phenomena in a natural, largely undisturbed setting. More recently, in a move with precedential implications, the Park Service has opened Yellowstone to commercial-level research by authorizing bio-prospecting, subject to strict contractual terms that include royalty obligations.<sup>68</sup> Today, the parks offer an ideal setting to study the effects of climate change, graphically illustrated by the rapid disappearance of Glacier National Park's namesake glaciers.

For much of its history, while promoting the national parks as a laboratory setting and invoking science to frame its resource management policies, the Park Service has lacked an explicit legal mandate that recognized science as part of its basic mission. Without such a mandate, the agency has been regularly criticized for ignoring science to pursue scenic preservation and to accommodate park visitors—or façade management, according to one historian.<sup>69</sup> Congress finally remedied the lack of an official mandate in 1998, when it passed the National Parks Omnibus Management Act, directing the Secretary of the Interior “to assure that management of units of the National Park System is enhanced by the availability and utilization of a broad program of the highest quality

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65. See *Int'l Snowmobile Mfrs Ass'n v. Norton*, 304 F. Supp. 2d 1278 (D. Wyo. 2004); *Fund for Animals v. Norton*, 294 F. Supp. 2d 92 (D.D.C. 2003); *Bicycle Trails Council of Marin v. Babbitt*, 82 F.3d 1445 (9th Cir. 1996).

66. Lane Letter, in Dilsaver, *supra* note 11, at 50.

67. See RUNTE, *supra* note 7, at 201–08; SELLARS, *supra* note 56, at 243–62.

68. For a description of bioprospecting in the national parks, see *Edmonds Institute v. Babbitt*, 93 F. Supp. 2d 63 (D.D.C. 2000); Holly Doremus, *Nature, Knowledge and Profit: The Yellowstone Bioprospecting Controversy and the Core Purposes of America's National Parks*, 26 *ECOLOGY L.Q.* 401 (1999). See also 16 U.S.C. § 5935(d) (authorizing the Secretary of the Interior to “enter into negotiations with the research community and private industry for equitable, efficient benefits-sharing arrangements”).

69. SELLARS, *supra* note 56, at 4.

science and information.”<sup>70</sup> Moreover, the Park Service’s Management Policies mandate that “in managing parks to preserve naturally evolving ecosystems . . . the Service will use the findings of science and the analyses of scientifically trained resource specialists in decision-making.”<sup>71</sup> Thus, science now figures even more prominently in the management and potential expansion of the national park system.

Laboratories also serve teaching functions, and the Park Service has long been in the business of educating the American public about national parks and the natural world. In the Lane Letter, the Park Service was admonished that “the educational . . . use of the national parks should be encouraged,” including access for university classes and the establishment of museums of display park specimens.<sup>72</sup> Over the years, drawing upon the early inspirational writings of John Muir and Enos Mills, the Park Service has burnished its interpretive credentials and embraced public education as a vital part of its larger preservationist mission. Freeman Tilden, whose 1955 book, *Interpreting Our Heritage*, is still regarded as a classic among Park Service interpreters, not only set forth key principles for effective engagement with the visiting public, but also pushed the agency to include environmental education as part of its interpretive programs.<sup>73</sup> The Management Policies document clearly conveys that message. It links interpretation with fostering a sense of stewardship, promotes reaching out to park neighbors and multi-ethnic audiences to encourage civic dialogue, and directs the parks to address contentious resource management issues in their interpretive and educational programs.<sup>74</sup> With this broad educational role, the Park Service is well-positioned to explore the role of national parks in the larger landscape and to engage the public in a provocative dialogue about that role.

Both the original Yellowstone legislation and the 1916 Organic Act expressly provide for conserving park wildlife, so it is not surprising that national parks have long been viewed as wildlife reserves. Not only did

70. National Parks Omnibus Management Act, Pub. L. No. 105-391 § 202, 112 Stat. 3497, 3499, codified at 16 U.S.C. § 5932. To incorporate scientific research into the Park Service’s management responsibilities, the act provides for cooperative study units for multi-disciplinary research on national park system resources, mandates an inventorying and monitoring program for park system resources, and establishes a process for soliciting and handling scientific research requests. *Id.* at § 203, 12 Stat. at 3500, codified at 16 U.S.C. § 5933.

71. See NPS MANAGEMENT POLICIES, *supra* note 24, at 4.1. See also *id.* at 2.1.2 (“Decision-makers and planners will use the best available scientific and technical information and scholarly analysis to identify appropriate management actions for protection and use of park resources.”).

72. Lane Letter, in Dilsaver, *supra* note 11, at 50.

73. FREEMAN TILDEN, *INTERPRETING OUR HERITAGE* 1–21 (4th ed. 2007).

74. NPS MANAGEMENT POLICIES, *supra* note 24, at 7.0, 7.3.4, 7.5.3.

Yellowstone, with assistance from its early military caretakers, serve as the last remaining refuge for the bison, but the park also supplied elk to several states, enabling them to reestablish decimated big game populations. Curiously, the Lane Letter said little about wildlife management in the parks, merely outlawing hunting in the parks and calling for consultation with other government bureaus about “the care of wild animals, and the propagation and distribution of fish.”<sup>75</sup> But the Park Service did not welcome all wildlife equally. It participated in early federal predator extermination campaigns that eliminated wolves from Yellowstone and elsewhere, introduced exotic species into the parks for recreational and other purposes, and intensively managed its wildlife populations, even establishing a Buffalo Ranch where its bison were managed like domestic livestock.<sup>76</sup> These practices have changed dramatically over the years, and its Management Policies now commit the Park Service to promoting native biodiversity, returning extirpated species to the parks, eliminating exotic species, and minimizing interventionist management practices.<sup>77</sup> Not surprisingly, many visitors regard the national parks much as they would a wildlife refuge, and we have come to rely upon the parks as a vital bastion for such species as grizzly bears, bison, wolves, cougars, big horn sheep, and various native fish and bird populations.

The national parks are subject to political and commercial pressures emanating from the states and local communities where they are located. Indeed, it is not unusual to hear the parks referred to as “cash cows” for the gateway communities.<sup>78</sup> Beginning with the 1872 Yellowstone legislation authorizing the Secretary of the Interior to enter into commercial leases, the national parks have been linked to private business in the form of concession contracts and, more informally, through the proximity of nearby towns and businesses that cater to park visitors. The Lane Letter addressed the role of private businesses in the parks: Besides providing that “the national interest must dictate all decisions

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75. Lane Letter, in Dilsaver, *supra* note 11, at 50.

76. For a history of the Park Service’s wildlife management policies, see SELLARS, *supra* note 56. See also R. GERALD WRIGHT, *WILDLIFE RESEARCH AND MANAGEMENT IN THE NATIONAL PARKS* (1992); Robert B. Keiter, *Preserving Nature in the National Parks: Law, Policy, and Science in a Dynamic Environment*, 74 DENVER U. L. REV. 649 (1997); FREDERIC H. WAGNER ET AL., *WILDLIFE POLICIES IN THE U.S. NATIONAL PARKS* (1995).

77. See NPS MANAGEMENT POLICIES, *supra* note 24, at 4.1, 4.4.

78. Tom Kenworthy, *A Cramped Grand Canyon; Plan Aims to Ease Tourist Congestion*, WASH. POST, Sept. 3, 1999, at A3; Jim Robbins, *Snow in July? A Mixed Blessing in the Rockies*, N.Y. TIMES, July 2, 2008, at A12; National Park Service News Release, *Visitor Spending in National Parks Means Green to Local Economies* (Dec. 8, 2008), available at <http://home.nps.gov/applications/release/print.cfm?id=831> (last visited July 20, 2010); JARED HARDNER & BRUCE MCKENNEY, NAT’L PARKS CONSERVATION ASSOCIATION, *THE U.S. NATIONAL PARK SYSTEM: AN ECONOMIC ASSET AT RISK* (2006).

affecting public or private enterprise in the parks,” it also endorsed concessioner-run camps and hotels, and instructed the Park Service to cooperate with “chambers of commerce, tourist bureaus, and automobile highway associations, for the purpose of spreading information about our national parks and facilitating their use and enjoyment.”<sup>79</sup> Although concessionaires and gateway communities provide important services to park visitors that the government cannot readily supply, the linkage between the two has taken a toll on national park management policies. Examples include the pressures brought to bear on Yellowstone to continue allowing winter snowmobiling despite strong evidence of its environmentally harmful impacts, the longstanding resistance to reducing the commercial imprint in Yosemite Valley, and the continued controversy over commercial versus private rafting permits to float the Grand Canyon.<sup>80</sup> Given the intensity of these persistent pressures, it may be difficult to avoid the perception of the national parks as commodities shaped as much by local commercial concerns as by conservation principles.

### C. Reconceiving the National Park Idea

One stark fact emerges from these traditional conceptions of the national parks: Though each treats the park as an entity unto itself, the national parks are not isolated entities separate from the larger world. The island metaphor, long used to describe national parks, may no longer apply in the increasingly complex and interconnected world in which the parks exist.<sup>81</sup> As a scientific matter, modern ecologists perceive the landscape as a whole, finding linkages between species and their environment that transcend the conventional boundary lines we have imposed on the landscape to define the national parks. As an economic matter, though we have long recognized that the presence of a national park can stimulate local commercial activity, we now understand that

79. Lane Letter, in Dilsaver, *supra* note 11, at 48, 51.

80. On these controversies, see MICHAEL J. YOCHIM, *YELLOWSTONE AND THE SNOWMOBILE: LOCKING HORNS OVER NATIONAL PARK USE* (2009); ALFRED RUNTE, *YOSEMITE: THE EMBATTLED WILDERNESS* (1990); RODERICK NASH, *WILDERNESS AND THE AMERICAN MIND* 329–39 (3d ed. 1982) (discussing Grand Canyon rafting).

81. On the island metaphor, see JOHN C. FREEMUTH, *ISLANDS UNDER SIEGE: NATIONAL PARKS AND THE POLITICS OF EXTERNAL THREATS* (1994); Joseph L. Sax & Robert B. Keiter, *Glacier National Park and Its Neighbors: A Study of Federal Interagency Relations*, 14 *ECOLOGY L.Q.* 207 (1987). Though the traditional notion of national parks as isolated islands may not hold in today’s more interconnected world, the metaphor still resonates given the extensive development now occurring on national park borders nearly everywhere. See Joseph L. Sax & Robert B. Keiter, *The Realities of Regional Resource Management: Glacier National Park and Its Neighbors Revisited*, 33 *ECOLOGY L.Q.* 233 (2006) [hereinafter *Realities*].

national parks and other protected areas serve as a magnet for new businesses and residents, who add vitality and diversity to the local economy. In an increasingly diverse and urbanized world, national parks provide an important opportunity for people to connect with the natural environment, learn about sustainable conservation practices, and commemorate civil rights struggles, all of which promote civic dialogue. Moreover, with climate change and nature-deficit disorder becoming accepted facts of modern life, national parks are becoming important venues to address these issues for the benefit of future generations.

The principles of modern ecology have replaced static conceptions of the national parks as merely a wildlife reserve or wilderness enclave with the idea that national parks serve as the vital core of larger ecosystems essential to sustain ecological processes and biodiversity conservation efforts. Scientific studies reveal species loss in the national parks during the past century, primarily because the protected park lands were insufficient to meet habitat and related life-sustaining needs.<sup>82</sup> Other studies document the adverse impact that development and other activities on adjacent public and private lands have on the national parks, creating external threats that could destabilize park wildlife populations and critical ecosystem services, such as clean water and flood control.<sup>83</sup>

To address these external problems, scientists and conservation organizations advocate treating national parks as critical parts of larger ecosystems. They have promoted the “greater ecosystem” concept at Yellowstone, Glacier, and elsewhere, as well as related ecosystem management concepts designed to promote coordination between the Park Service and its neighbors.<sup>84</sup> For its part, the Park Service’s Management Policies document notes that “ecological processes cross park boundaries” and instructs park managers to engage in “cooperative conservation beyond park boundaries,” in order to “creat[e] seamless networks of parks” and “establish corridors that link together . . . open spaces such as those found in parks, other protected areas, and compatibly managed private lands.”<sup>85</sup> The ultimate goal is to ensure connectivity across the landscape to allow migration and ecological processes to occur unimpeded. Although some have criticized this view of the national parks as

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82. See William D. Newmark, *Legal and Biotic Boundaries of Western North American National Parks: A Problem of Congruence*, 33 *BIOLOGICAL CONSERVATION* 197 (1985); William D. Newmark, *Extinction of Mammal Populations in Western North American National Parks*, 9 *CONSERVATION BIOLOGY* 512 (1995); LARRY D. HARRIS, *THE FRAGMENTED FOREST: ISLAND BIOGEOGRAPHY THEORY AND THE PRESERVATION OF BIOTIC DIVERSITY* 72 (1984).

83. See *supra* note 4.

84. See KEITER, *supra* note 42, at 190–91; Sax & Keiter, *Realities*, *supra* note 81, at 300–09.

85. NPS MANAGEMENT POLICIES, *supra* note 24, at 1.6.

vital ecosystem cores as an ill-advised expansionist effort or land grab,<sup>86</sup> others acknowledge the need to begin thinking and planning at the landscape scale to sustain our biological heritage.

The traditional view of the national park as a local cash cow holds that the park's presence creates an array of related business opportunities, mostly associated with the hospitality industry, guiding services, and related businesses. Recent studies, however, suggest that the presence of a national park (or other federally protected area) is a major attraction for new residents interested in relocating to scenic venues and engaging in outdoor activities.<sup>87</sup> In the Glacier region, for example, the local economy has flourished with an influx of new residents drawn to the quality of life associated with proximity to the park, including the area's scenic beauty and outdoor recreational attractions.<sup>88</sup> Not only do these new residents—or amenity refugees—often bring substantial financial resources with them that will be spent in the local community, but many of them also bring entrepreneurial skills that may translate into new businesses, employment opportunities, and local tax revenues. With improved transportation facilities, the Internet, and other such linkages, it is now possible to locate business operations in more remote areas, thus prompting new economic activity not necessarily related to a nearby national park. But the presence of a national park is often an important draw, and most such newcomers will be committed to protecting the park and its amenities, not in treating it primarily as a cash cow. For these residents, ensuring the integrity of the national park and its resources takes precedence over the notion of harvesting these resources for local economic gain—an important shift in attitude that foretells a new relationship between many local communities and nearby national parks.

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86. See WILLIAM PERRY PENDLEY, *WAR ON THE WEST: GOVERNMENT TYRANNY ON AMERICA'S GREAT FRONTIER* (1995); see also LAND RIGHTS: THE 1990s' PROPERTY RIGHTS REBELLION (Bruce Yandle, ed., 1995); A WOLF IN THE GARDEN: THE LAND RIGHTS MOVEMENT AND THE NEW ENVIRONMENTAL DEBATE (Philip D. Brick & R. Mcgreggor Cawley eds., 1996).

87. See generally JIM HOWE ET AL., *BALANCING NATURE AND COMMERCE IN GATEWAY COMMUNITIES* (1997); THOMAS MICHAEL POWER, *LOST LANDSCAPES AND FAILED ECONOMIES: THE SEARCH FOR A VALUE OF PLACE* (1996); THOMAS MICHAEL POWER AND RICHARD N. BARRETT, *POST-COWBOY ECONOMICS: PAY AND PROSPERITY IN THE NEW AMERICAN WEST* (2001); Raymond Rasker, *A New Look at Old Vistas: The Economic Role of Environmental Quality in Western Public Lands*, 65 U. COLO. L. REV. 369, 377–86 (1994).

88. NAT'L PARKS CONSERVATION ASS'N, *GATEWAY TO GLACIER: THE EMERGING ECONOMY OF FLATHEAD COUNTY* (2003); see also NAT'L PARKS CONSERVATION ASS'N, *GATEWAYS TO YELLOWSTONE: PROTECTING THE WILD HEART OF OUR REGION'S THRIVING ECONOMY* (2006); SONORAN INSTITUTE, *PROSPERITY IN THE 21ST CENTURY WEST: THE ROLE OF PROTECTED PUBLIC LANDS* (2004).



Two important yet seemingly disconnected concerns—climate change and nature-deficit disorder—may actually play complementary roles in shaping the future national park system and management priorities. Each of these problems is a symptom of modern society, divorced, as it is, from the consequences of its actions on the natural world, and mostly ignorant of nature. To address these concerns, the national parks can serve as critical laboratories or teaching facilities to instruct the American public on the seriousness of the problems and how to begin correcting them. This is not a new role for the parks, which have long been regarded as nature's laboratory, but it does cast this laboratory role in a new and more vital light. It not only highlights the need to preserve the parks in a pristine condition to better comprehend and mitigate the effects of climate change, but it also highlights the need for new parks proximate to urban areas where nature-deprived children live. Simply put, just as the national park system evolved to address past societal concerns, the challenges of tomorrow will shape our view of parks in the years ahead.

### III. ENVISIONING TOMORROW'S NATIONAL PARK SYSTEM

The national park system has grown constantly, if unevenly, since its inception nearly 100 years ago. Fueled by an evolving understanding of the national park idea, that growth has significantly increased the size of the national park system while expanding the types of areas incorporated into the system. Much of the growth has been achieved by adding other federal lands to the system, usually a less-costly and more politically expedient way to expand in comparison to acquiring private or state lands for new parks.<sup>89</sup> As we look ahead, the question is what opportunities are available to further expand or strengthen the system to address the needs of tomorrow. One obvious option involves pursuing the same conventional expansion strategies that have worked in the past, though at a significantly different scale. Another involves envisioning new national parks as part of a larger federal natural resources restoration campaign. A third involves *de facto* rather than *de jure* expansion of the system. Yet another involves redesigning parks to better fit the nation's increasingly diverse, urban, and removed-from-nature populace. Whatever visions and strategies emerge, the concept of national significance must be redefined to effectively address new conservation challenges.

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89. This is not to suggest that park system expansion by acquiring other federal lands is without cost. This type of expansion has often soured relations between the Park Service and the other federal land management agencies, perhaps most notably the Forest Service. See *supra* note 32, and accompanying text.

### A. Expansion with Forethought

Rather than promote new national parks or park expansion in the abstract or as political opportunities arise, national park system expansion should be linked to a broader vision of the national parks, one that promotes ecological integrity and related biological conservation objectives. This expansive vision holds that national parks should be large enough to allow nature to exist on its own terms and to protect the various species and ecosystem services connected to the site. Although few of our current national parks are large enough to do this, we must learn the lessons of ecosystem science and conservation biology and begin thinking in landscape-scale terms. While inevitably slow to respond, the political system is not immune to such new ideas, and we are gradually re-stitching the landscape back together in several locations.

Congress, of course, holds the key to new national park designations or to the expansion of existing parks. Over time, Congress has gradually increased the number and size of national parks and expanded several existing parks to enhance their ecological integrity. With its passage of ANILCA in 1980, Congress signaled that it understood the need to view parks in an ecosystem context.<sup>90</sup> Not only did ANILCA dramatically expand Denali and other Alaskan national parks, but it also created several large, new national parks, such as Wrangell-St. Elias, Lake Clark, and Gates of the Arctic. Before ANILCA, Congress designed Washington State's North Cascades National Park, the abutting Lake Chelan National Recreation Area, Ross Lake National Recreation Area, and Glacier Peak Wilderness Area with some degree of ecological forethought.<sup>91</sup> The 1978 congressional decision to expand Redwood National Park to address upstream ecological degradation problems is another example of conscious expansion.<sup>92</sup> The more recent congressional expansion of the California desert parks—Death Valley, Joshua Tree, and the Mojave National Preserve—along with nearby BLM wilderness area designations shows a similar sensitivity to reconnecting a fragmented landscape.<sup>93</sup> Over the years, designation of new wilderness areas on national forest and BLM lands adjacent to many western national parks effectively has served as a type of de facto park expansion that promotes landscape-scale conservation objectives.

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90. 16 U.S.C. § 3101(b) (2009).

91. 16 U.S.C. § 90 (2009); see DAVID LOUTER, WINDSHIELD WILDERNESS: CARS, ROADS, AND NATURE IN WASHINGTON'S NATIONAL PARKS 134–64 (2006).

92. 16 U.S.C. § 79c (2009). For an overview of this controversy, see *Sierra Club v. Dep't of the Interior*, 398 F. Supp. 284 (N.D. Cal. 1975).

93. 16 U.S.C. § 410aaa *et seq.* (2009); see FRANK WHEAT, CALIFORNIA DESERT MIRACLE: THE FIGHT FOR DESERT PARKS AND WILDERNESS (1999).

Whether and where Congress might be persuaded to take similar actions in the foreseeable future is hard to predict, but linking this type of conventional park system expansion approach to ecosystem preservation is vital to ensuring the long-term viability of the national park system. Several proposals have been advanced that would promote these ends: creating a new North Woods national park on acquired private timberlands in northern Maine, designating a new Klamath-Siskiyou national park on national forest lands straddling the California-Oregon border, incorporating adjacent BLM lands into Canyonlands National Park to create a geologically complete park, amalgamating Sonoran desert public lands into an expansive new park, and attaching the Valles Caldera federal trust lands to Bandelier National Monument to ensure compatible management. Each of these proposals has ecological merit, but the politics of national park system expansion are complex and will turn on much more than scientific merit.

Any expansion campaign must enlist nearby communities and leaders by demonstrating how a new or expanded national park will generate local economic and other benefits. As we have seen, those communities that have embraced nearby protected public lands have often been the beneficiaries of new economic opportunities not necessarily directly connected to the land itself.<sup>94</sup> Other options include incorporating local citizen councils into the park management scheme, packaging a new park or park expansion proposal with other community development proposals such as strategic federal land exchanges and sales, or providing local employment in ecotourism and other park-related jobs. In any event, making these connections explicit can only help establish the political case for ecologically based park creation or expansion.

## **B. National Restoration Areas**

Another approach to expanding the national park system is to target damaged landscapes for inclusion into the system following a period of restoration. Over the years, both the Park Service and the Forest Service have completed massive restoration projects that have effectively expanded and enriched their land holdings. A 1972 Conservation Foundation report entitled "National Parks for the Future" endorsed a similar "restoration reserves" strategy to expand the national parks portfolio.<sup>95</sup> Public and private lands that have been heavily scarred by commercial activities may represent one of the few sites where a new protective designation might be imposed with broad public support. Major restoration

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94. See *supra* notes 87 and 88, and accompanying text.

95. THE CONSERVATION FOUNDATION, NATIONAL PARKS FOR THE FUTURE 12, 20 (1972).

efforts will create local business and employment opportunities, not to mention the long-term economic benefits associated with national park designation. But this restoration-area approach must be reconciled with the Park Service's longstanding national significance criteria for new parks. Moreover, the selection of appropriate restoration sites must take into account the ultimate ecological value of the lands once restored, either as a biodiversity refuge, a unique and unrepresented ecosystem, or as part of a larger conserved landscape.<sup>96</sup>

Several of the major eastern national parks, including Great Smoky Mountains and Shenandoah, were created from previously disturbed lands.<sup>97</sup> In both cases, the park was created mostly from private lands acquired by the state during the Depression era, either through purchase or condemnation, and later transferred to federal ownership. But in a highly controversial move, the federal government required removal of all residents from the new park lands, thus provoking significant resentment among the local populace that still endures in some places. Over time, the Park Service supervised restoration of the logged-over areas, which now contain mature forests. Similar restoration efforts have reduced the scars of farming, grazing, and other human activities. In some locations, the mere passage of time has allowed restoration to occur naturally. As a result, we have two revered and popular national parks located near the eastern seaboard and thus readily accessible to millions of citizens seeking to experience wild nature or just escape the travails of modern urban life.

Similar federal restoration strategies have been successfully pursued elsewhere for conservation purposes. In the case of Redwood National Park, confronted with destructive upstream logging and extensive flooding, Congress expanded the original park boundaries to encompass the entire watershed by acquiring privately owned timbered lands in the upper drainage and directing the Park Service to restore these lands to ensure the ecological integrity of the newly expanded park.<sup>98</sup> Beyond the

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96. In addition, when acquiring disturbed lands as a restoration area, the Park Service (or any other federal agency) will need to do due diligence to guard against potential Superfund or other liabilities that might either render the setting inappropriate for restoration or too costly as a restoration project. It may be possible, however, to incorporate cost-sharing arrangements into any such transaction with the current (or past) owners, perhaps with targeted tax incentives or other such carefully structured inducements.

97. ISE, *supra* note 7, at 248–70; see also DANIEL S. PIERCE, *THE GREAT SMOKIES: FROM NATURAL HABITAT TO NATIONAL PARK* (2000); CARLOS C. CAMPBELL, *BIRTH OF A NATIONAL PARK IN THE GREAT SMOKY MOUNTAINS* (1960); Dennis Elwood Simmons, *The Creation of Shenandoah National Park and the Skyline Drive 1924–1936* (1978) (Ph.D. thesis, University of Virginia).

98. 16 U.S.C. § 79c (2009); see also RUNTE, *supra* note 7, at 147–54.

national parks, the Weeks Act of 1911 authorized the fledgling Forest Service to acquire devastated eastern, southern, and midwestern timber lands, which it then proceeded to restore.<sup>99</sup> These re-acquired national forest lands now provide myriad wilderness, recreational, and other resources to a large segment of the nation's populace. The U.S. Fish and Wildlife Service has often undertaken major restoration efforts of depleted agricultural lands to reestablish native habitat for waterfowl, birds, and other species in national wildlife refuges.<sup>100</sup> In short, the notion of federal acquisition and restoration of damaged lands for conservation purposes is an old idea that has been successfully deployed over the years with impressive results.

Adding damaged but restorable lands to the national park system will require a new long-term perspective regarding the goals and purposes of the park system. Presently, disturbed landscapes offer neither outstanding scenic attractions nor attractive recreational settings and thus may not meet the traditional "national significance" standard for new park designations. But, in a restored condition, these lands may offer important ecological benefits as new wildlife habitat or new ecosystem types, connective corridors or extensions to existing park lands, ecosystem services reservoirs, or as mitigation for climate change impacts. In a restored condition, lower elevation Pacific Northwest forest lands that were previously logged could serve as an important complement to the higher-elevation lands already protected at Rainier and Olympic national parks, providing park wildlife additional habitat or migration routes, or mitigating the impacts of global climate change on regional ecosystems. Similar ecological benefits might accrue by adding the heavily logged national forest lands on Yellowstone's western border to the park. In a restored condition, these lower elevation forest lands could facilitate wildlife migration out of the park during harsh winter months, provide additional sanctuary for the region's grizzly bear population, and afford visitors new recreational opportunities. Moreover, the restoration process itself holds the promise of new jobs in economically depressed rural areas.

The national restoration area concept is not without potential problems, however, and would undoubtedly generate political opposition. The notable problem of meeting the Park Service's "national signifi-

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99. On the Weeks Act and eastern forest restoration, see DANA & FAIRFAX, *supra* note 32, at 111–14; WILLIAM E. SHANDS & ROBERT G. HEALY, *THE LANDS NOBODY WANTED* (1977).

100. See J. Gregory Mensik & Fred L. Paveglio, *Biological Integrity, Diversity, and Environmental Health Policy and the Attainment of Refuge Purposes: A Sacramento National Wildlife Refuge Case Study*, 44 NAT. RESOURCES J. 1161 (2004); Richard L. Schroeder et al., *Managing National Wildlife Refuges for Historic or Non-Historic Conditions: Determining the Role of the Refuge in the Ecosystem*, 44 NAT. RESOURCES J. 1185, 1195–1208 (2004).

cance” criteria for new national park areas could be avoided by approaching the national restoration area concept as a two-step process. Only after the lands were restored would they be expected to meet the national significance criteria. This approach would reduce the question at the restoration stage to whether the proposed site has the potential to enhance the national park system.<sup>101</sup>

Another problem involves the likelihood of opposition from other federal land management agencies if their damaged lands are targeted for restoration and eventual national park status. There is no easy answer, but the degraded condition of the lands is an argument against leaving them in their current ownership status, and their potential for meeting national significance criteria once restored is an argument that favors transfer and restoration.<sup>102</sup> As for damaged private lands that may qualify for national restoration area status, the owners of such properties may actually be amenable to disposing of them, and local opposition may be minimal if it is clear the targeted lands will eventually be restored to a productive ecological state even if not for commercial use. In sum, this two-step national restoration area strategy is an opportunity to strengthen the park system, taking the long-range view that dynamic ecological processes and climate change concerns have injected into our modern conservation efforts.

### C. De Facto Growth and Ecosystem Protection

Growth in the national park system has frequently occurred by converting other public lands to national park status. But as the nation’s public land system has matured and as wilderness and other protective designations have taken hold, there are far fewer opportunities to transfer undeveloped lands from one agency to another. Instead, conservation proponents have resorted to alternate strategies designed to expand de facto the influence of national parks and their protective management policies. The basic strategy is to knit the landscape together into a more coherent ecological entity through better coordinated management arrangements, wildlife dispersal corridors, strategic conservation ease-

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101. For additional discussion of the “national significance” criteria, see *infra* note 138 and accompanying text.

102. The BLM and the Forest Service may rejoin that they can restore and protect damaged landscapes as well as the Park Service but their track records, especially in recent years, indicate both agencies are prone to being whipsawed by the changing political tides. During the Clinton years, both agencies tilted in the direction of greater preservation of their lands, but during the ensuing Bush years, they each tilted back toward commodity development, particularly the BLM, which pursued an all-out energy development agenda. See Robert B. Keiter, *Breaking Faith with Nature: The Bush Administration and Public Land Policy*, 27 J. LAND RESOURCES & ENVTL. L. 195 (2007).

ments, and other similar approaches. Though the actual acreage under Park Service management may not change, the overall tenor and direction of resource management across the landscape would be better aligned with the Park Service's basic protectionist policies and resource-management objectives.

One strategy involves the creation of a new landscape-scale overlay designation to protect targeted landscapes for conservation purposes. Congress could use special designations to overlay an array of contiguous federal lands that extend across a particularly sensitive, vital, or treasured landscape, such as the Greater Yellowstone area, the Crown of the Continent ecosystem, or the Greater Grand Canyon region. Without changing ownership or administrative responsibilities in the designated national ecological reserve or wildlife heritage area, new resource-management standards would be devised to better protect the larger ecosystem and thus ensure the biological integrity of the area. Though they employ different terminology and would operate on a different scale, the Wildlands Project, the Northern Rockies Ecosystem Protection Act proposal, and the Yellowstone to Yukon initiative are based on this type of ecosystem-scale strategy built around existing national parks and wilderness areas to promote more effective regional conservation.<sup>103</sup> Linking a carefully designed "greater ecosystem" legislative proposal with climate change mitigation needs and local economic concerns might make such a proposal politically attractive enough to secure congressional consideration.

While this type of large-scale legislative proposal is inevitably a hard sell in Congress, there are non-legislative means to achieve the same objective. At the executive level, the President has the authority under the Antiquities Act to create new ecosystem-based or landscape-scale national monuments that transcend existing boundary lines.<sup>104</sup> The President could, for example, designate a new "Crown of the Continent National Monument" or a "Greater Grand Canyon National Monument" that would cover (or overlay) the surrounding public lands within the region and establish more consistent and coordinated management standards for these interconnected lands. This approach expands upon the Clinton-Babbitt era landscape-scale national monument designation strategy. That model, which was sustained by the courts,<sup>105</sup> intentionally designed new national monuments at a large scale, yet usually left man-

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103. For a description of these projects, see KEITER, *supra* note 42, at 190–92.

104. See the American Antiquities Act of 1906, 16 U.S.C. § 431 (2006).

105. *Mountain States Legal Found. v. Bush*, 306 F.3d 1132 (D.C. Cir. 2002); *Tulare County v. Bush*, 306 F.3d 1138 (D.C. Cir. 2002); *Utah Ass'n of Counties v. Bush*, 316 F. Supp. 2d 1172 (D. Utah 2004), *appeal dismissed by* 455 F.3d 1094 (10th Cir. 2006).

agement with the existing agency but under new national monument guidelines.<sup>106</sup> In several instances, President Clinton employed this approach to create new national monuments on public lands adjacent to existing national parks: The Giant Sequoia National Monument modestly expanded Sequoia National Park onto national forest lands while curtailing logging, road building, and other industrial activities on the national forest lands within the new monument,<sup>107</sup> and the Grand Canyon-Parashant National Monument and the Vermillion Cliffs National Monument designations imposed new conservation-oriented management restraints on BLM lands abutting Grand Canyon National Park.<sup>108</sup> Although this more expansive national monument designation approach would not formally expand the national park system, it would effectively link existing national parks with adjacent public lands under a more conservation-oriented resource management framework designed to ensure ecological integrity at the regional scale.<sup>109</sup>

Another strategy contemplates the establishment of formal wildlife corridors that extend outward from core national park areas onto the surrounding landscape, designed to enable park wildlife to migrate seasonally or to disperse in response to climate change impacts. Scientists universally recognize the need for migration corridors to meet the basic habitat needs of migratory species and to facilitate genetic interchange for biodiversity conservation purposes. They also agree that dispersal corridors are critical to enable species to respond effectively to climate change, enabling them to move to more suitable habitat as their tradi-

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106. See BRUCE BABBITT, *CITIES IN THE WILDERNESS: A NEW VISION OF LAND USE IN AMERICA* 165–72 (2005); John D. Leshy, *The Babbitt Legacy at the Department of the Interior: A Preliminary View*, 31 ENVTL. L. 199, 216–19 (2001).

107. Proclamation No. 7295, 65 Fed. Reg. 24,095 (April 15, 2000); see also California *ex rel.* Lockyer v. U.S. Forest Service, 465 F. Supp. 2d 942 (N.D. Cal. 2006) (enjoining a Forest Service fuels treatment proposal for the Giant Sequoia National Monument).

108. Proclamation No. 7265, 65 Fed. Reg. 2825 (Jan. 11, 2000) (Grand Canyon-Parashant); Proclamation No. 7374, 65 Fed. Reg. 69,227 (Nov. 9, 2000) (Vermillion Cliffs).

109. As an alternative, the President has the apparent authority under the Antiquities Act to shift management responsibility for existing monuments from one agency to another. A President, might, for example, consider shifting administration of the Giant Sequoia National Monument from the Forest Service to the Park Service, particularly given the monument's proximity to the national park and the ecological connections between the areas. Although the Antiquities Act does not designate any particular agency to oversee national monuments, Congress has otherwise expressed its view in the National Parks Organic Act that the Park Service will ordinarily oversee national monuments as part of the national park system. 16 U.S.C. § 1 (2009). *But cf.* Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 GA. L. REV. 473, 550–68 (2003) (suggesting that the President has very limited authority to modify existing national monument proclamations, but not addressing the administering agency question).



tional habitats are altered.<sup>110</sup> But many of the lands surrounding national parks face significant development pressures that make safe passage treacherous at best and lethal at worst. The problem is exemplified by the extensive natural gas development occurring in the Upper Green River Valley south of Yellowstone and Grand Teton national parks, which has limited migration routes for the region's signature elk and pronghorn herds.<sup>111</sup>

The concept of protected wildlife corridors has already been endorsed by the Western Governors' Association (WGA), largely in response to the growing impacts that energy activities, subdivision expansion, and other developments have on the surrounding public lands. Thus far, the WGA has created a Western Wildlife Habitat Council to identify potential wildlife corridors and designed a process to protect these corridors. It recently entered into a Memorandum of Understanding with federal agencies to cooperate in developing wildlife data.<sup>112</sup> New federal wildlife corridor legislation could be modeled after the National Trails System Act of 1968,<sup>113</sup> which designated and funded several such trails and created a process for future trail designations. To create this system, Congress might direct federal land managers and state wildlife officials to collaboratively determine optimal corridor locations. On federal public lands, new corridor designations could simply overlay the existing landscape, imposing some new management restraints and planning obligations to ensure adequate protection. On private lands, federal funds or tax breaks could provide landowners with an incentive to participate in the corridor program. As in the case of national trails, it should be possible to design a national wildlife corridor program that

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110. See Donald McKenzie et al., *Climatic Change, Wildfire, and Conservation*, 18 CONSERVATION BIOLOGY 890 (2004); see also NAT'L PARKS CONSERVATION ASS'N, CLIMATE CHANGE AND NATIONAL PARK WILDLIFE: A SURVIVAL GUIDE FOR A WARMING WORLD (2009); ROBERT L. PETERS, DEFENDERS OF WILDLIFE, BEYOND CUTTING EMISSIONS: PROTECTING WILDLIFE AND ECOSYSTEMS IN A WARMING WORLD (2008), available at [http://www.defenders.org/resources/publications/programs\\_and\\_policy/gw/beyond\\_cutting\\_emissions.pdf](http://www.defenders.org/resources/publications/programs_and_policy/gw/beyond_cutting_emissions.pdf).

111. See THE WILDERNESS SOCIETY, WILDLIFE AT A CROSSROADS: ENERGY DEVELOPMENT IN WESTERN WYOMING, EFFECTS OF ROADS ON HABITAT IN THE UPPER GREEN VALLEY (2005); THE WILDERNESS SOCIETY, TOO WILD TO DRILL (2006).

112. See Western Governors' Ass'n, *Protecting Wildlife Corridors and Crucial Wildlife Habitat in the West*, Policy Resolution 07-01 (Feb. 27, 2007), <http://www.westgov.org/wga/policy/07/wildlife-corridors07-01.pdf>; Western Governors' Ass'n, Western Wildlife Habitat Council Established (June 29, 2008), <http://www.westgov.org/wga/publicat/wildlife08.pdf>; U.S. Dep't of the Interior, U.S. Dep't of Agriculture, U.S. Dep't of Energy, and Western Governors' Ass'n, Memorandum of Understanding Regarding Coordination Among Federal Agencies and States in Identification and Uniform Mapping of Wildlife Corridors and Crucial Habitat (June 15, 2009), <http://www.westgov.org/wga/initiatives/corridors/wildlifeMOU.pdf>.

113. 16 U.S.C. §§ 1241–1249 (2009).

will address wildlife migration needs without disrupting land-ownership patterns.

Yet another strategy for strengthening and protecting the national park system is the alluring but still ill-defined concept of ecosystem management. During the Clinton administration, all of the federal land management agencies endorsed ecosystem management to guide their approach to resource management, and these principles remain a part of their management policies.<sup>114</sup> In fact, the Park Service's revised Management Policies document directs park managers to "maintain all the components and processes of naturally evolving park ecosystems" and to engage in "cooperative conservation beyond park boundaries . . . to preserve the natural and cultural resources of parks."<sup>115</sup> At its core, ecosystem management means that agency planning and decisions must take account of the entire affected ecosystem and ensure meaningful coordination among the various agencies responsible for the ecosystem. Despite much lip service and some progress, the goal of meaningful interagency coordination still remains elusive, as illustrated by the recent high-profile controversy over the BLM's proposal to lease lands adjacent to several Utah national parks for oil and gas exploration.<sup>116</sup>

Given these realities, Congress might consider legislatively strengthening the case for more effective management coordination to promote landscape-scale conservation. Within the federal agencies, the options include amending the National Environmental Policy Act (NEPA) to require a new interagency coordination statement as part of the Environmental Impact Statement (EIS) process,<sup>117</sup> adopting a new consultation requirement whenever an agency action might adversely affect national park resources,<sup>118</sup> or mandating such cooperation through new statutory consistency requirements modeled on a similar provision

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114. See INTERAGENCY ECOSYSTEM MANAGEMENT TASK FORCE, *THE ECOSYSTEM APPROACH: HEALTHY ECOSYSTEMS AND SUSTAINABLE ECONOMIES* (1996); WAYNE A. MORRISSEY ET AL., *ECOSYSTEM MANAGEMENT: FEDERAL AGENCY ACTIVITIES* (1994), <http://ncseonline.org/nle/crsreports/biodiversity/biodv-4.cfm>; ECOLOGICAL STEWARDSHIP: A COMMON REFERENCE FOR ECOSYSTEM MANAGEMENT (N.C. Johnson et al., eds., 1999); KEITER, *supra* note 42.

115. NPS MANAGEMENT POLICIES, *supra* note 24, at 1.6, 4.1.

116. See Katie Howell, *Oil and Gas: BLM, Park Service Squabble over Lease Sale Near Utah Parks*, LAND LETTER, Nov. 13, 2008.

117. See KEITER, *supra* note 42, at 309.

118. Cf. Endangered Species Act, 16 U.S.C. § 1536 (2009) (requiring federal agencies to consult with the appropriate federal fish and wildlife agency whenever contemplating an action that might adversely affect a federally protected species). The proposed consultation requirement could extend beyond national parks to any protected area, including wilderness areas, national wildlife refuges, and wild and scenic rivers.

in the Coastal Zone Management Act.<sup>119</sup> Outside the federal agencies, a new model for coordinating natural resource conservation efforts might be derived from the cultural preservation program, which establishes an interlocking series of federal and state entities responsible for overseeing these resources, whether located on public or private land.<sup>120</sup> Any such meaningful and enforceable coordination policy would help promote more ecologically sound management practices on landscapes shared by the national parks, other federal land management agencies, and state, tribal, and private owners.<sup>121</sup>

#### D. Responding to Societal Changes

The profile of American society looks quite different today than it did at the outset of the national park system in the early twentieth century. In addition to doubling in size over the past 60 years, the populace has become significantly more diverse. Individuals identified as minority group members account for one third of the total population.<sup>122</sup> Civil rights and social justice are mainstay issues in our political culture. Where most people lived in a rural or semi-rural setting a century ago, Americans now reside primarily in urban communities where wild nature is not an integral part of their daily lives. These demographic changes have not diminished visitation to the national parks. Rather, visitation levels have risen dramatically during most of the past half century. This increase is due in part to an improved national transportation system and to the advent of new, urban-focused parks located closer to the nation's population centers and the seacoasts. Nonetheless, minority citizens are not frequent park visitors, and many children are no longer exposed to nature on a regular basis.

New parks established near urban centers and designed to introduce the general public (and especially children) to the natural world represent one potential way to revitalize the spirit of nature conservation in mainstream American life. These new urban-based parks might be managed by the Park Service or by a state or local park authority. With

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119. 16 U.S.C. § 1456(c) (2009); *Millennium Pipeline Co. v. Gutierrez*, 424 F. Supp. 2d 168 (D.D.C. 2006); *California v. Norton*, 311 F.3d 1162 (9th Cir. 2002).

120. See NAT'L PARKS SECOND CENTURY COMMISSION, *ADVANCING THE NATIONAL PARK SCIENCE AND NATURAL RESOURCE COMMITTEE REPORT*, 6 (2009), available at <http://www.nps.gov/yose/naturescience/upload/Second.Century.Science.Report.pdf>.

121. Extending federal ecosystem management principles or strategies onto nearby private lands raises quite different legal issues and is beyond the scope of this article. For an overview of potential strategies for promoting coordinated ecosystem-management efforts on private lands, see KEITER, *supra* note 42, at 208–18; Robert B. Keiter, *Ecosystems and the Law: Toward an Integrated Approach*, 8 *ECOLOGICAL APPLICATIONS* 332, 336–38 (1998).

122. U.S. Census Bureau News, *supra* note 43.

its highly regarded interpretation and educational programs and newly strengthened commitment to science, the Park Service is uniquely positioned to educate our urban populace about natural history and such critical environmental issues as climate change, endangered species, and sustainability. The important point is to create new parks near where most people live and make the park experience more accessible to an increasingly diverse public while providing additional open space, wildlife habitat, and recreational opportunities currently unavailable.

Several options are available to establish new urban-based parks. Although not perfect models, the parks at Santa Monica Mountains, Golden Gate, and New York City's Gateway offer a glimpse of how a system of urban national parks focused on nature education, wildlife conservation, and recreation might be structured.<sup>123</sup> An alternative model can be found in the growing number of national heritage areas that have been created over recent years, giving the Park Service a role in preserving and interpreting local natural and historical properties without transferring ownership of the sites to the federal government.<sup>124</sup> Another model is the national restoration area concept, which could be applied to restore damaged landscapes near urban areas for eventual management as park sites and which might provide employment and educational opportunities during the restoration process.<sup>125</sup> Under any of these models, the creation of such protected sites would begin to address nature-deficit disorder concerns for the next generation by providing an opportunity to experience nature close to home while also encouraging these same people to begin visiting other national parks.

Whether it is due to socioeconomic, cultural, or other factors, the non-Caucasian population does not seem to have a strong attachment to the national parks. Park visitation figures for minority populations are telling: One survey indicates that 36 percent of whites had visited a national park unit within the prior two years, but only 13 percent of the African American population had made such a visit.<sup>126</sup> In recent years,

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123. 16 U.S.C. § 460kk (2009) (establishing Santa Monica Mountains); 16 U.S.C. § 460bb (2009) (establishing Golden Gate); 16 U.S.C. § 460cc (2009) (establishing New York's Gateway National Recreation Area).

124. See *supra* note 40 and accompanying text for information on national heritage areas.

125. See *supra* notes 95–102 and accompanying text. Using this model, the Park Service's role might simply involve providing leadership or technical or financial assistance during the restoration process without any expectation that the restored site would become a Park Service-administered site. Such an approach would still enable the Park Service to educate public participants about conservation and related subjects critical to the future of the national park system.

126. NAT'L PARKS SECOND CENTURY COMMISSION, ADVANCING THE NATIONAL PARK IDEA, CONNECTING PEOPLE AND PARKS COMMITTEE REPORT 3 (2009); FREDERIC I. SOLOP ET AL., THE

the Park Service has sought to make the parks more attractive to a diverse audience, not only to connect with increasingly important political constituencies but also to instill in them an interest in nature and a new commitment to conservation.

The challenge is to make the national parks relevant and accessible to the extraordinarily diverse communities of color that now cover the national landscape. New urban-based parks designed to meet diverse cultural needs might include, for example, large picnic areas where extended families may gather. New historical or cultural sites might be established to honor the cultural experience of specific populations and provide opportunities to enjoy and learn about nature, as now occurs at several battlefield and historical parks. Existing national park interpretation programs could also incorporate the minority experience or contributions. One such example is already happening at Yosemite, where the Park Service highlights the important role African American soldiers played in safeguarding the park during its early days.<sup>127</sup> Given the powerfully democratic origins of the national parks, these efforts to connect with the nation's changing population base can only strengthen the future role and position of the parks.

Although several Indian reservations abut national parks, Native American experiences with the national parks have not always been positive ones. Not only were tribal treaty rights often disregarded in the establishment of several parks, but these same rights and tribal concerns have been overlooked in many park management decisions, including the interpretation of important historical events involving Native Americans. It was not until 1991 that Congress changed the name of the Custer Battlefield and National Monument in southern Montana to the Little Big Horn National Battlefield Monument and authorized a memorial to the Indian warriors who died there protecting their homeland. As the nation's sense of social justice has matured and as Native American legal rights have secured greater recognition, the Park Service has responded

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NATIONAL PARK SERVICE COMPREHENSIVE SURVEY OF THE AMERICAN PUBLIC: ETHNIC AND RACIAL DIVERSITY OF NATIONAL PARK SYSTEM VISITORS AND NON-VISITORS TECHNICAL REPORT 1 (2003). See also Myron F. Floyd, *Managing National Parks in a Multicultural Society: Searching for Common Ground*, 18 GEO. WRIGHT FORUM 41 (2001), available at <http://www.geogewright.org/183floyd.pdf>; REBECCA STANFIELD ET AL., RACIAL DISCRIMINATION IN PARKS AND OUTDOOR RECREATION: AN EMPIRICAL STUDY 247 (2005); Jack Goldsmith, *Designing for Diversity*, 68 NAT'L PARKS 20 (1994); see also AUDREY PETERMAN & FRANK PETERMAN, *LEGACY ON THE LAND: A BLACK COUPLE DISCOVERS OUR NATIONAL INHERITANCE AND TELLS WHY EVERY AMERICAN SHOULD CARE* (2009).

127. See NATIONAL PARK SERVICE, *BUFFALO SOLDIERS*, <http://www.nps.gov/yose/historyculture/buffalo-soldiers.htm> (last visited Oct. 8, 2009); see also SHELTON JOHNSON, *GLORYLAND: A NOVEL* (2009) (providing a fictional account of Yosemite's buffalo soldiers).

by seeking to address Native American concerns, both in park management policies and interpretive programs. At Devil's Tower National Monument, for example, the Park Service admonishes rock climbers to forego climbing during certain times of the year when tribal members are engaged in spiritual ceremonies related to the site's sacred character.<sup>128</sup> Occasionally, Congress has demonstrated sensitivity to Native American rights, as reflected in the early legislation that established a co-management relationship between the Park Service and the Navajo at Canyon de Chelly National Monument,<sup>129</sup> the recent legislation authorizing a tribal-management role for part of Death Valley,<sup>130</sup> and the ANILCA legislation that allows traditional subsistence hunting in most of the Park Service-administered units in Alaska.<sup>131</sup> Moreover, federal legislation empowers tribes to adopt environmental regulations on their reservation lands, which could have a positive impact on adjacent national park lands.<sup>132</sup> The net result of these varied yet related developments is a heightened sensitivity to tribal interests in national parks and a growing willingness within the Park Service to coordinate with Native American governments and perhaps even entertain collaborative management arrangements.

### E. The Designation Criteria Revisited

The Park Service, ever since the Lane Letter, has viewed "national significance" as the primary criteria for designating new national park units. Congress eventually affirmed this standard in 1976 amendments to the National Parks Organic Act,<sup>133</sup> which also incorporated "suitability" and "feasibility" as additional criteria and then reaffirmed these cri-

128. *Bear Lodge Multiple Use Ass'n v. Babbitt*, 175 F.3d 814 (10th Cir. 1999).

129. 16 U.S.C. § 445 (2009); see DAVID M. BRUGGE AND RAYMOND WILSON, NATIONAL PARK SERVICE, ADMINISTRATIVE HISTORY: CANYON DE CHELLEY NATIONAL MONUMENT, ARIZONA (1976), [http://www.nps.gov/cach/historyculture/upload/CACH\\_adhi.pdf](http://www.nps.gov/cach/historyculture/upload/CACH_adhi.pdf).

130. Timbisha Shoshone Homeland Act, Pub. L. No. 106-423, 114 Stat. 1875, codified at 16 U.S.C. § 410aaa note (2009).

131. 16 U.S.C. §§ 3111-3222 (2009); see also Williams, *supra* note 23.

132. On tribal authority to establish environmental standards on reservation lands, see *City of Albuquerque v. Browner*, 97 F.3d 415 (10th Cir. 1996); *Arizona Public Service Co. v. EPA*, 211 F.3d 1280 (D.C. Cir. 2000); Allison M. Dussias, *Asserting a Traditional Environmental Ethic: Recent Developments in Environmental Regulation Involving Native American Tribes*, 33 NEW ENG. L. REV. 653 (1999). On possible Park Service-Tribe management partnerships, see Mary Ann King, *Co-Management or Contracting? Agreements Between Native American Tribes and the U.S. National Park Service Pursuant to the 1994 Tribal Self-Governance Act*, 31 HARV. ENVTL. L. REV. 475 (2007).

133. 16 U.S.C. § 1a-5.

teria in the 1998 National Parks Omnibus Management Act.<sup>134</sup> In its Management Policies, the Park Service elaborates upon these criteria for natural areas, explaining that “national significance” requires that an area must meet four criteria: It must (1) be an outstanding example of a particular type of resource; (2) possess exceptional value or quality illustrating or interpreting the nation’s natural heritage; (3) offer superlative opportunities for public enjoyment or scientific study; and (4) retain a high degree of integrity as an accurate and relatively unspoiled example of a resource.<sup>135</sup>

Although these criteria seemingly set rigid standards for new additions to the national park system, they have been honored in the breach by Congress. Over the years, the national park idea has been transformed into a smorgasbord of new designations, including national recreation areas, national seashores, and national heritage areas. At the same time, the original focus on grandiose scenery has given way to new ecological concerns, as reflected in the addition of Everglades National Park and other wildlife-rich units to the system, creation of the new and expanded Alaskan parks, and the California desert park expansions.

Put simply, the concept of “national significance”—like beauty, justice, and other such majestic terms—is in the eye of the beholder. It is a concept that has evolved over time and has proven inherently malleable to meet the perceived needs of the day. Congress has not viewed the “national significance” criteria as a real constraint nor should the Park Service or advocates for a larger, more ecologically representative national park system. Today, science rather than scenery has become a touchstone for the nation’s conservation efforts, and this commitment to science will only intensify in coming years as we confront the challenges of climate change and biodiversity protection. One of the lessons derived from ecology is the need for redundancy; it is not sufficient to protect just one representative species population or one ecosystem type, rather it is necessary to protect several to provide against unexpected events that could destroy the protected area or species entirely.<sup>136</sup> This critical

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134. See National Parks Omnibus Management Act, *supra* note 16, and accompanying text.

135. NPS MANAGEMENT POLICIES, *supra* note 24, at 1.3.1. According to the Park Service, “suitability” focuses on whether the resource type is already adequately represented in the national park system or elsewhere, while “feasibility” addresses whether the area is of sufficient size and configuration to ensure adequate resource protection and whether it is capable of efficient administration. *Id.* at 1.3.2, 1.3.3.

136. See Jordan S. Rosenfeld, *Functional Redundancy in Ecology and Conservation*, 98 OIKOS 156 (2002); Shahid Naem, *Species Redundancy and Ecosystem Reliability*, 12 CONSERVATION BIOLOGY 39 (1998); see also NAT’L PARKS SECOND CENTURY COMMISSION, *supra* note 120, at 4–6.

point argues in favor of park system expansion to ensure adequate protection, whether by creating new parks, adding onto existing ones, creating secure migration corridors, or extending preservation efforts to adjacent lands. The need to meet these new conservation challenges is in the national interest, thus park system expansion proposals and strategies that address these challenges should meet the “national significance” standard. By similar logic, the creation or expansion of park units near urban population centers to meet new demographic and social justice pressures is also in the national interest.

Whether the concept of national restoration areas would satisfy the current criteria for new park designations may be open to question. The Park Service’s “national significance” standard requires that any proposed new area must be “a true, accurate, and relatively unspoiled example of a resource.”<sup>137</sup> It is unclear that such iconic parks as Great Smoky Mountains, Shenandoah, or Redwoods could have initially met this standard, given their condition when incorporated into the system. But in today’s world, where the human presence is ubiquitous nearly everywhere, some developed and degraded lands can have real ecological value, especially if they can be restored to near-original condition and connected to nearby national parks or other protected lands. When long-term ecological value can be demonstrated, whether to protect entire landscapes or to ensure adequate representativeness, the “national significance” criteria should not deter us from vesting the Park Service with restoration responsibilities designed to ultimately bring ecologically significant lands into the system. If approaching the national restoration area concept as a two-step process makes it more politically viable,<sup>138</sup> this process also fits comfortably with the now well-accepted tradition of converting national monuments to national park status over time.

#### IV. CONCLUSION

Just as our concept of a national park has evolved over time, the nature of the national park system is also changing in response to new circumstances, knowledge, and values. American society looks and thinks quite differently today than it did nearly 100 years ago when the national park system was created. Better informed by science about ecological imperatives, climate change, and species-conservation needs, we have the opportunity to reassess the purpose of the national parks and to continue redesigning the system to meet these challenges. Though it may

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137. See *supra* note 24, at 1.3.1 and accompanying text.

138. On a two-step process proposal for creating national parks from national restoration areas, see *supra* note 101 and accompanying text.



be difficult to implement a new vision for the national park system on our fragmented landscapes, this challenge must be met in order to strengthen and grow the system to ensure a sustainable future. Among the available strategies are ecosystem-based expansions, new national restoration areas, new multi-agency landscape-based national monuments, new federal wildlife corridor legislation, better coordinated ecosystem-management arrangements, and new urban-based and minority-focused park sites, though each presents its own political challenges. Nonetheless, without creative thinking and courageous initiatives, we risk diminishing the extraordinary national park legacy that our ancestors so selflessly bequeathed to us. If we squander that legacy, we will have betrayed the very future generations to whom our national park system has been dedicated since its inception.