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THE REPUBLICAN DIVIDE ON WILDERNESS POLICY

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I. INTRODUCTION

Wilderness is an issue that exposes a deep political fault line within the Republican Party. Republican leaders such as Theodore Roosevelt are credited with laying the philosophical and legal groundwork that resulted in establishment of the National Wilderness Preservation System.[1] Republicans who worked for wilderness protection cited benefits such as protecting the nation's natural and historical heritage, conserving resources for the future, and providing opportunities for beneficial outdoor recreation. Other Republican leaders, however, have fought wilderness protection on the grounds that preservation is an inappropriate government constraint on free markets and is harmful to the economy by limiting commodity production of timber, forage, and minerals.[2]

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[1] *See* William Cronon, *When the GOP Was Green*, Op-Ed, NEW YORK TIMES, Jan. 8, 2001; *see* Philip Shabecoff, *Earth Rising: American Environmentalism in the 21st Century*, Island Press, 2000.

[2] *Id.*

Wilderness disputes have roiled the Republican Party a number of times over the past century.[3] Most recently, six GOP senators broke with their party's leadership to announce their opposition to opening the Arctic National Wildlife Refuge to oil drilling via a budget bill that cannot be filibustered.[4] The themes expressed in recent disputes over oil drilling in the Arctic National Wildlife Refuge or wilderness designation of Utah's Red Rock country would sound familiar to historical figures who played a large role in land management battles decades ago, such as the damming of Yosemite's Hetch Hetchy Valley or Theodore Roosevelt's sweeping enlargement of the national forest system.

Internal Republican Party divisions over conservation reflect differing attitudes about land protection that are rooted in the nation's history as a continental industrial power that was carved out of a vast wilderness.[5] Theodore Roosevelt's battles with fellow Republicans in Congress over national forest enlargement, for example, pitted "boomers" who sought to exploit the continent's natural riches against TR's fervent advocacy of leaving a natural legacy for future generations.[6] The drive by earlier generations of Americans to subdue the wilderness and build the nation was so successful that a countervailing movement emerged in the 19th century to protect wild lands that had not yet been touched by the logger's saw and miner's shovel.[7] Those tensions are seen in the West today. Industries and their supporters in Congress and in the administration of President George W. Bush seek increased timber and mineral production on Western public lands.[8] Allied with them are off-road vehicle manufacturers and users who want more access to public lands for motorized recreation.[9] Conservationists count some Republicans as allies in their quest for permanent protection of pristine wildlands from industrial exploitation and intrusive forms of recreation.[10] For example, Repre-

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[3] *See supra* note 1; *see* Edmund Morris, *Theodore Rex*, Random House, 2001; *see* John R.E. Bliese, *The Greening of Conservative America*, Westview Press, 2001; *see* Jim DiPeso, *The Environment Is Bipartisan*, Environmental Quality Management, Summer 2002, Volume 11, Number 4.

[4] *See* Katherine Seelye, *6 G.O.P. Senators Oppose Bush Alaska Drilling Plan*, THE NEW YORK TIMES, Feb. 1, 2003, *available at* www.nytimes.com/2003/02/01 /politics/01DRIL. html (last visited Feb. 1, 2003).

[5] *See* Roderick Nash, *Wilderness and the American Mind*, Third Edition, Yale University Press, 1982.

[6] *See* Nathan Miller, *Theodore Roosevelt: A Life*, William Morrow & Company, 1992.

[7] *See supra* note 5.

[8] *See* Terry McCarthy, *How Bush Gets His Way on the Environment*, Time Magazine, January 27, 2003, *available at* www.time.com/time/magazine/article/ 0,9171,1101030127-409554 ,00.html (last visited Feb. 1, 2003).

[9] *See* Blue Ribbon Coalition, *Bush Administration to Preserve Historic Access*, news release, December 26, 2002, *available at* www.sharetrails.org/releases/media/index.cfm?story=175 (last visited Feb. 1, 2003).

[10] *See* The Wilderness Society, *Senate Wilderness Caucus Formed*, news article, November 10, 1999, *available at* www.wilderness.org/eyewash/caucus.htm (last visited Feb. 1, 2003).

sentative Nancy Johnson, a Connecticut Republican, strongly opposes oil drilling in the Arctic National Wildlife Refuge and supports designation of the coastal plain as wilderness.[11]

Most recently, the tension flared in a dispute over which Republican should succeed Representative James Hansen of Utah as chairman of the House Resources Committee in the 108th Congress.[12] The Republican with the most seniority is Representative James Saxton of New Jersey. Western Republicans voiced concerns that a Northeasterner who votes often with conservationists cannot understand Western land issues.[13] Instead of Saxton, the House leadership chose Representative Richard Pombo of California, a long-time opponent of the Endangered Species Act.[14]

The party's divisions reflect tensions between different sets of conservative values that date back centuries. American conservatism broadly falls into two schools of thought — traditional conservatism first articulated by British statesman Edmund Burke and market-oriented libertarianism that traces its origins to Adam Smith.[15] While both schools are in general agreement on what constitutes conservative philosophy, they differ on where the emphasis should lie.[16] For libertarians, individual freedom is first and foremost.[17] In the context of today's environmental issues, libertarian adherents maintain that businesses and property owners must be free to conduct their affairs and use their property in their own interest, without government constraints on their freedom of action.

Traditionalists, on the other hand, are most concerned with maintaining an orderly society and strong communities rooted in the cultural values of Western civilization.[18] Burke described society as an intergenerational contract among past, present and future citizens.[19] One of his most famous writings describes the duty that present generations owe their descendants, a passage with relevance in today's environmental

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[11] *See* Representative Nancy Johnson, *Johnson Leads Effort to Protect Arctic Refuge,* News Release, Jan. 31, 2003, *available at* www.house.gov/nancyjohnson /pr_anwrnussle letter.htm (last visited Feb. 1, 2003); *see* Thomas, Library of Congress, 107th Congress, HR 770, Morris K. Udall Arctic Wilderness Act of 2001, Thomas, *available at* www.thomas.loc.gov/cgi-bin/query/z?c107:H.R.770: (last visited Feb. 2, 2003).

[12] *See* Mike Soraghan, *Key Job on Land Sparks Battle: GOP Jostles Over West-Focused Post*, THE DENVER POST, Dec. 30, 2002, *available at* www.denverpost.com/ Stories/0,1413, 36%257E64%257E1079934,00.html (last visited Feb. 2, 2003).

[13] *See id.*

[14] *See* Mike Soraghan, *Hefley Furious at Choice for Panel: New Lands Chief Pro-Development*, THE DENVER POST, Jan. 10, 2003, *available at* www.denverpost.com/ Stories/0,1413,36%257E53%257E1100308%257E,00.html (last visited Feb. 2, 2003).

[15] *See* John R.E. Bliese, *The Greening of Conservative America*, Westview Press, 2001.

[16] *See id.*

[17] *See id.*

[18] *See id.*

[19] *See id.*

controversies over managing public lands and maintaining healthy ecosystems. Burke wrote:

> One of the first and most leading principles on which the commonwealth and the laws are consecrated is that the temporary possessors and life-renters in it should be mindful of what is due to their posterity ... and should not think it among their rights to ... commit waste on the inheritance by destroying at their pleasure the whole original fabric of society, hazarding to leave to those who come after them a ruin instead of a habitation.[20]

Since the early 1980s, an anti-government strain has dominated Republican thinking and resulted in hostility to government actions on behalf of environmental goals such as wilderness preservation, wildlife conservation, or pollution reduction.[21] The libertarian strain achieved dominance in the Republican Party with the appointment of James Watt as Interior Secretary during President Ronald Reagan's first term.[22] Watt favored increased commodity production from public lands and release of wilderness study areas for development.[23] In 1994, when Republicans took control of both houses of Congress for the first time in four decades, the libertarian strain blossomed.[24] The 104th Congress, led by Speaker Newt Gingrich, sought rollbacks of conservation laws. For example, Representative Tom Delay of Texas introduced legislation to repeal the Clean Air Act.[25] While Gingrich and his allies did not achieve all they wanted, their movement won a significant boost when George W. Bush was elected president in 2000 on a platform to devolve more environmental protection and public lands management to state and local levels, rely on voluntary measures, and boost timber production from public

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[20] *See* Constitutional Law Foundation, *Intergenerational Justice in the United States Constitution, The Stewardship Doctrine: II The Intergenerational Philosophy of the Founders and Their Contemporaries A. A Pervasive Concern for Future Generations - Edmund Burke, Thomas Paine available at* www.conlaw.org/Intergenerational-II-2.htm (last visited Dec. 24, 2002).

[21] *See* Jim DiPeso, *The Environment Is Bipartisan*, published in Environmental Quality Management, Summer 2002, Volume 11, Number 4; *see* Philip Shabecoff, *Earth Rising: American Environmentalism in the 21st Century*, Island Press, 2000.

[22] *See id.*

[23] *See* Douglas Jehl, *The 43rd President; Interior Choice Sends a Signal on Lands Policy*, THE NEW YORK TIMES, Dec. 30, 2000. *See* Ross W. Gorte, *Wilderness: Overview & Statistics*, Congressional Research Service Report for Congress, Dec. 2, 1994, 94-976 ENR, *available at* www.NCSEonline.org/nle/crsreports/natural/nrgen5.cfm?&CFID=6212965&CFTOKEN=77 421231 (last visited Dec. 24, 2002).

[24] *See* Philip Shabecoff, *Earth Rising: American Environmentalism in the 21st Century*, Island Press, 2000.

[25] *See id.*; *see* American Wind Energy Association, *Muskie, Stafford Head Group to Defend Clean Air Act*, published in WIND ENERGY WEEKLY, Number 657, *available at* www.awea.org/wew/657-3.html (last visited Feb. 2, 2003).

lands.[26] After taking office, the Bush administration moved swiftly. A rule to protect "de facto" wilderness areas in national forests was reduced in scope through a series of administrative orders.[27] The administration released a national energy policy calling for expedited energy production on public lands, including the Arctic National Wildlife Refuge, the largest and most remote unit in the nation's wildlife refuge system.[28] Policies to expedite tree-thinning projects in national forests and give national forest managers more leeway to approve commodity production projects were announced.[29] The Bush administration's actions, in short, embody libertarian ideas about reducing government intervention in the market and cultural norms about subduing wilderness for the sake of economic development.

Ironically, however, the center of support for conservation rollbacks and the "Sagebrush Rebellion," a campaign among rural Westerners to transfer federal lands to local and state control, is centered in a region that has benefited from federal largesse, including water and power development, free access to hard-rock minerals, and low-priced access to timber and livestock forage on public lands.[30] To many conservationist critics, the libertarian themes in anti-conservation rhetoric are belied by demands for continued low-priced access to commodities on the public domain.

Adherents of traditionalist thinking about conservation have become a distinct minority within the Republican Party since the early 1980s.[31] REP America, the national grassroots organization of Republicans for environmental protection, is a citizens group that was founded in 1995 in reaction to the conservation and environmental protection rollback platform of the Republican majority running the 104th Congress.[32] Since then, the organization has articulated a Burkean message that conservation and environmental protection are consistent with traditional conser-

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[26] *See* Republican National Committee, *Republican Platform 2000: Renewing America's Purpose: Together*, *available at* www.rnc.org/GOPInfo/Platform/2000plat form6.htm (last visited Feb. 2, 2003).

[27] *See* Dale Bosworth, Chief, United States Forest Service, *Delegation of Authority/Interim Protection of Roadless Areas*, June 7, 2001, *available at* www.roadless.fs .fed.us/documents/1230_ Roadless_Ltr.htm (last visited Dec. 24, 2002); *see* Federal Register, Volume 66, Number 245, Pages 65795-65804, United States Forest Service, *Forest Transportation System Analysis; Roadless Area Protection, Notice of Interim Administrative Directives, Request for Comment*, Dec. 20, 2001.

[28] *See* National Energy Policy Development Group, *National Energy Policy*, May 2001, *available at* www.energy.gov/HQPress/releases01/maypr/national_energy_policy .pdf (last visited Dec. 24, 2002)

[29] *See* United States Forest Service, *Healthy Forests Initiative*, *available at* www.fs.fed.us/projects/HFI.shtml (last visited Dec. 24, 2002).

[30] *See supra* note 15.

[31] *See supra* note 24.

[32] *See* REP America, *Mission*, *available at* www.repamerica.org/AboutREP/ mission .htm (last visited Feb. 2, 2003).

vative values of prudence, stewardship, and intergenerational equity. REP America is working to re-acquaint Americans with the history of conservation achievements, including wilderness protection, spearheaded by Republicans.

II. WILDERNESS PROTECTION IN AMERICA — BACKGROUND AND HISTORY

The Republican Party's philosophical divisions over wilderness have played out in the larger context of societal tensions between development and conservation grounded in America's unique history as a modern, powerful civilization that emerged from a wilderness in a relatively short period of time.[33] When northern and western Europeans arrived on North America's shores in the early 17th century, they faced the daunting task of creating settlements in an astonishingly wild landscape with seemingly endless, forbidding obstacles. Cultural and theological notions about the inherent evil of wild land and mankind's duty to subdue and tame the wilderness reinforced hostility to wilderness.[34] With great industriousness, the first settlers and pioneers who followed them in expanding Euro-Americans' beachhead from the Eastern Seaboard set out over the next three centuries to build a continental industrial power — sweeping away the land's aboriginal inhabitants, clearing forests, plowing soil, building cities, digging mines, stoking factories, and tying the burgeoning power together with mechanized transportation systems.[35] The drive to settle, develop and privatize the public domain was given the force of law through legislation such as the Homestead Act of 1862 (12 Stat. 392, repealed in 1976), the General Mining Law of 1872 (17 Stat. 91), the Desert Land Act of 1877 (19 Stat. 377), and the Timber and Stone Act of 1878 (20 Stat. 89).

Despite Americans' desire to clear away the wilderness, however, their encounters with wildlands were crucibles that shaped the nation's culture. In the 19th century, historian Frederick Jackson Turner described wilderness as a social force that encouraged free enterprise and mobility, demolished unequal social structures common in Europe, and thereby strengthened American democracy.[36] Romantic literature, with its intuitive understanding of man's unity with nature, was influential in shaping new attitudes toward wild nature.[37] The taming of the wilderness precipi-

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[33] *See supra* note 5.

[34] *See supra* note 5.

[35] *See supra* note 5.

[36] *See* Frederick Jackson Turner, *The Problem of the West*, The Atlantic, September 1896, *available at* www.theatlantic.com/issues/95sep/ets/turn.htm (last visited Dec. 26, 2002).

[37] *See* Max Oelschlaeger, *The Idea of Wilderness*, Yale University Press, 1991.

tated the emergence of a countermovement in the mid-19th century that valued nature as a special fount of vitality and called for protection of remaining wild lands. Travel literature in periodicals and books in the mid-19th century stimulated a broad "nature appreciation" movement.[38] Writers, poets, and painters gave flesh to the ideas by depicting nature's beauty and taking patriotic pride in the monumental scale of America's mountains, forests, and rivers. The philosophical groundwork was laid by the insights of Henry David Thoreau and John Muir, who realized that mankind was indissolubly connected with nature.[39] Wanton destruction of American wildlife such as passenger pigeons and bison shocked leading Americans into realizing that the nation's increasing numbers and wasteful habits were depleting nature's bounty. As early as 1849, Commissioner of Patents Thomas Ewbank warned in a report to Congress that America would come to regret the destruction of forests and bison.[40] Wealthy sportsmen, led by Theodore Roosevelt and George Bird Grinnell, fought the slaughter of wildlife by market hunters and allied big-game sport hunters with the conservation movement.[41]

The emerging conservation attitude was given a solid academic footing in an influential book, *Man and Nature*, written in 1864 by George Perkins Marsh was a lawyer, businessman, and diplomat.[42] In the book, a seminal work in the growth of environmental consciousness, Marsh urged his contemporaries to restrain their headlong alterations of nature, if only to protect their own welfare.[43] Franklin Hough, who in 1876 became the first federal forestry agent, drew from Marsh's book in an 1873 speech to the American Association for the Advancement of Science urging government action to protect forests.[44] In a remarkable analogy similar to modern thinking about "natural capitalism," Hough likened a forest to a long-term capital investment "increasing annually in value as it grows, like money at interest, and worth at any time what it

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[38] *See supra* note 5; *see* Library of Congress, *The Evolution of the Conservation Movement, available at www.*memory.loc.gov/ammem/amrvhtml/cnchron1.html (last visited Feb. 2, 2003).

[39] *See supra* note 5.

[40] *See* Library of Congress, *The Evolution of the Conservation Movement, available at* www.memory.loc.gov/ammem/amrvhtml/cnchron1.html (last visited Feb. 2, 2003).

[41] *See* Richard E. McCabe, *The Noblest Roman of Them All*, Outdoor Writers Association, *available at* www.owaa.org/grinnell.htm (last visited Dec. 26, 2002).

[42] *See* Library of Congress, *The Evolution of the Conservation Movement,, available at* www.memory.loc.gov/cgi-bin/query/r?ammem/consrvbib:@FIELD(NUMBER (vg07)) (last visited Feb. 2, 2003).

[43] *See* Craig W. Allin, *The Politics of Wilderness Preservation*, Greenwood Press, 1981

[44] *See* Franklin B. Hough, *On the Duty of Governments in the Preservation of Forests*, Proceedings of the American Association for the Advancement of Science, 1873, Library of Congress, The Evolution of the Conservation Movement, *available at* www.memory.loc.gov/ammem/amrvhtml/cnchron2.html (last visited Dec. 26, 2002).

has cost — including the expense of planting, and the interest which this money would have earned at the given date."[45]

In 1878, John Wesley Powell, chief geologist for the United States Geological Survey, published his seminal report on the arid regions of the United States.[46] Powell's report was an early forerunner of modern ecosystem management principles in its recommendation that lands be divided on watershed boundaries.[47] Powell cautioned that the conventional land division methods used in the humid East would not be practical in a region with scarce water.[48]

The Republican Party, founded in 1854, came into its own with the election of Abraham Lincoln to the presidency in 1860.[49] The history of the party's wilderness protection achievements dates to the party's earliest years. In 1864, Congress and Lincoln approved the cession of Yosemite Valley and the Mariposa Big Tree Grove to the state of California for protection as a public preserve and recreation site (the valley was ceded back to the federal government in 1906).[50] At the time, few thought the valley would have any economic value, but nevertheless, an important conservation precedent had been set.[51] In a remarkable report about the new park that was commissioned by the state, landscape architect Frederick Law Olmsted wrote in 1865 that democratic governments have a duty to protect scenic lands for all citizens, thus ensuring that ordinary people without access to the private preserves of the wealthy can enjoy the healthful benefits of outdoor recreation.[52] Olmsted wrote:

> It is a scientific fact that the occasional contemplation of natural scenes of an impressive character, particularly if this contemplation occurs in connection with relief from ordinary cares, change of air and change of habits, is favorable to the health and vigor of men and especially to the

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[45] *See id.*

[46] *See* John Wesley Powell, *Report on the Arid Region of the United States, With a More Detailed Account of the Lands of Utah*, Library of Congress, *The Evolution of the Conservation Movement*, *available at* www.memory.loc.gov/ammem/amrvhtml/cnc hron2.html (last visited Dec. 26, 2002).

[47] *See* National Public Radio, The True Legacy of John Wesley Powell, aired Sept. 22, 2002 , *available at* www.npr.org/programs/atc/features/2002/sept/powell/ (last visited Feb. 2, 2003).

[48] *See supra* note 46.

[49] *See* Encyclopedia Americana, *Republican Party*, *available at* www.gi.grolier. com/presidents/ea/side /rparty.html (last visited Feb. 2, 2003).

[50] *See* Library of Congress, *The Evolution of the Conservation Movement*, *available at* www.memory.loc.gov/cgi-bin/query/D?consrvbib:1:./temp/~ammem_6JXe:: (last visited Feb. 2, 2003); *see* National Park Service, *Yosemite National Park History*, *available at* www.nps.gov/yose/nature/history.htm (last visited Feb. 3, 2003).

[51] *See supra* note 43.

[52] *See* Frederick Law Olmsted, Draft of Preliminary Report Upon the Yosemite and Big Tree Grove, Library of Congress, *The Evolution of the Conservation Movement*, *available at* www.memory.loc.gov/cgi-bin/query/r?ammem/consrv:@field(DOCID+@lit (vm021) (last visited Feb. 2, 2003).

> health and vigor of their intellect beyond any other conditions which can be offered them, that it not only gives pleasure for the time being but increases the subsequent capacity for happiness and the means of securing happiness.[53]

Olmsted correctly predicted that in a century's time, millions of people would travel to Yosemite to enjoy its natural wonders.[54] He urged the state to enforce rigorous laws to keep Yosemite's special features intact for future generations.[55]

Similar concerns about protecting "natural curiosities" led to the establishment of Yellowstone National Park in 1872, the nation's first.[56] Yellowstone's unusual geological features and stunning beauty came to public light following a series of private and government expeditions. A report by the U.S. Geological Survey documenting Yellowstone's wonders led to passage of legislation establishing a 2.2 million-acre park "for the benefit and enjoyment of the people." [57] Republican President Ulysses S. Grant signed the legislation (17 Stat. 32) into law.[58] The establishment of Yellowstone National Park reinforced the Yosemite precedent.[59] Three more national parks — Yosemite, Sequoia and General Grant were established in 1890 (General Grant National Park was incorporated into Kings Canyon National Park in 1940).[60]

At that time, a groundswell was building to protect American forests. New York City business interests led successful campaigns for sweeping measures to protect the Adirondack Mountain forests as a source of fresh water for the city's burgeoning population and commerce. In 1885, New York's state Legislature established an Adirondack forest preserve.[61] Businessmen, however, wanted the strongest possible protection, and successfully fought off timber interests in winning voter approval of the famous "forever wild" amendment to the state Constitu-

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[53] *See id.*

[54] *See id.*

[55] *See id.*

[56] *See supra* note 43.

[57] *See* Library of Congress, *The Evolution of the Conservation Movement*, *available at* www.memory.loc.gov/cgi-bin/query/D?consrvbib:4:./temp/~ammem_aqEs:: (last visited Feb. 2, 2003); *see* Aubrey L. Haines, *Yellowstone National Park: Its Exploration and Establishment*, National Park Service, 1974, *available at* www.cr.nps.gov/history/online_books/haines1/iee3c.htm (last visited Feb. 2, 2003).

[58] *See supra* note 43.

[59] *See* Aubrey L. Haines, *Yellowstone National Park: Its Exploration and Establishment*, National Park Service, 1974, *available at* www.cr.nps.gov/history/online_ books/haines1/iee3c.htm (last visited Feb. 2, 2003).

[60] *See supra* note 43; *see* National Park Service, *Sequoia & Kings Canyon National Parks*, *available at* www.nps.gov/seki/index.htm (last visited Feb. 3, 2003).

[61] *See* Elizabeth Thorndike, *New York's Adirondack Park: Where U.S. Wilderness Preservation Began*, International Journal of Wilderness, April 1999, Volume 5, Number 1.

tion in 1894, which protects 2.5 million acres of forest preserve.[62] Article XIV of the New York State Constitution reads: "[t]he lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed."[63]

In the meantime, federal action to conserve forests for the future slowly took shape. In 1877, Carl Schurz took office as Interior Secretary for Republican President Rutherford B. Hayes and advocated establishment of federal forest reserves and a forest service to manage them.[64] Schurz's vision came to pass in 1891, when Congress passed and Republican President Benjamin Harrison signed the Forest Reserve Act (26 Stat. 1095), which empowered presidents to withdraw land from the public domain as forest reserves.[65] Harrison established the first forest reserve a few weeks later in an area of the public domain adjacent to Yellowstone National Park.[66] By the turn of the century, Presidents Harrison, Grover Cleveland and William McKinley had withdrawn more than forty-six million acres from the public domain as forest reserves.[67] Congress in 1897 passed the Organic Act (30 Stat. 11) stipulating a utilitarian conservation mission for national forests — to protect water supplies and to furnish a continuous supply of timber.[68]

The presidency of Theodore Roosevelt, a New York Republican who succeeded to the presidency following McKinley's assassination, wired conservation deeply into the nation's political architecture. Roosevelt established 150 national forests, enlarging the system to 172 million acres.[69] The United States Forest Service (formerly known as the Bureau of Forestry) was re-organized in 1905 and placed in the Agriculture Department under the firm and wily hand of Chief Forester Gifford Pinchot,

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[62] *See id.*

[63] *See id.*

[64] *See supra* note 43.

[65] *See* Library of Congress, *The Evolution of the Conservation Movement, available at* www.memory.loc.gov/ammem/amrvhtml/cnchron3.html (last visited Feb. 2, 2003).

[66] *See* Library of Congress, *The Evolution of the Conservation Movement, available at* www.memory.loc.gov/cgi-bin/query/r?ammem/consrvbib:@FIELD(NUMBER (vl138)), (last visited Feb. 2, 2003).

[67] *See* United States Forest Service, *National Forest System Growth from 1891 to Present, available at* www.fs.jorge.com/archives/History_National/NFS_Employees_Growth.htm (last visited Dec. 26, 2002).

[68] *See* Library of Congress, *The Evolution of the Conservation Movement, available at* www.memory.loc.gov/cgi-bin/query/r?ammem/consrvbib:@FIELD(NUMBER (vl009)) (last visited Feb. 2, 2003).

[69] *See id.*; *see* Theodore Roosevelt Association, *Conservationist: Life of Theodore Roosevelt, available at* www.theodoreroosevelt.org/life/conservation.htm (last visited Feb. 2, 2003).

an advocate of scientific forest management.[70] During Roosevelt's presidency, the number of national parks doubled, from five to ten.[71] Roosevelt established the national wildlife refuge system, which today numbers 538 units and thousands of waterfowl areas covering more than ninty-four million acres.[72] The establishment of the first wildlife refuge, on Pelican Island, Florida, in 1903, typified Roosevelt's flair for bold action.[73] At the time, feathers were a fashionable adornment for women's hats. When Roosevelt learned that feather collectors were slaughtering pelicans and other shorebirds frequenting the island, he asked his aides whether any law prohibited him from establishing Pelican Island as a federal bird sanctuary. When told that none existed, Roosevelt said: "Very well, then, I so declare it."[74] In 1906, a Republican Congress passed and Roosevelt signed the Antiquities Act (34 Stat. 225), which authorizes presidents to establish national monuments on federal land in order to protect sites that have special scientific or historic significance.[75] Roosevelt used the Antiquities Act to establish eighteen national monuments, including lands that later were re-designated by Congress as Grand Canyon, Olympic, Petrified Forest, and Lassen Volcanic national parks.[76]

Roosevelt had a lifelong interest in natural history, birds, and other wildlife. In his time, he was considered one of the world's foremost authorities on large North American game mammals.[77] He wrote acclaimed, eloquent books on Western life and natural history, including *Hunting Trips of a Ranchman* and *Ranch Life and the Hunting Trail*.[78] For Roosevelt, however, conservation reflected much more than personal interests. Alarmed by the growth of unfettered commercial power and its influence over democracy, Roosevelt fought to tame corporations and trusts. Conservation was one of the tools in his arsenal. Echoing Burke's ideas about the intergenerational contract, Roosevelt saw conservation as

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[70] *See* United States Forest Service, Office of Communications, *The Forest Service in 1905: Change in Management of the Forest Reserves and Name Change from Bureau of Forestry to Forest Service*, 1999.

[71] *See* Theodore Roosevelt Association, *Conservationist: Life of Theodore Roosevelt, available at* www.theodoreroosevelt.org/life/conservation.htm (last visited Feb. 2, 2003).

[72] *See id.*; *see* United States Fish and Wildlife Service, America's National Wildlife Refuge System: Celebrating a Centennial of Conservation, *available at* www.refuges.fws.gov/centennial/index.html (last visited Dec. 26, 2002).

[73] *See* Edmund Morris, Theodore Rex, Random House, 2001.

[74] *See id.*

[75] *See* National Park Service, *American Antiquities Act of 1906*, *available at* www.cr.nps.gov/local-law/anti1906.htm (last visited Dec. 26, 2002).

[76] *See* The Wilderness Society, *The Antiquities Act: Protecting America's Natural Treasures*, 2001.

[77] *See* Theodore Roosevelt Association, *Theodore Roosevelt: A Brief Biography by Tweed Roosevelt, available at* www.theodoreroosevelt.org/life/biotr.htm (last visited Feb. 2, 2003).

[78] *See supra* note 6.

a fulfillment of the democratic ideal. The following passage from his 1916 book, *A Book-Lover's Holidays in the Open*, illustrates his reasoning:

> If in a given community unchecked popular rule means unlimited waste and destruction of the natural resources—soil, fertility, water-power, forests, game, wild-life generally—which by right belong as much to subsequent generations as to the present generation, then it is sure proof that the present generation is not yet really fit for self-control, that it is not yet really fit to exercise the high and responsible privilege of a rule which shall be both by the people and for the people. The term 'for the people' must always include the people unborn as well as the people now alive, or the democratic ideal is not realized.[79]

For Roosevelt, conservation was essential for keeping the nation strong and secure over the long haul.[80] At the opening of 1908's conservation Conference of Governors, Roosevelt said:

> We have become great in a material sense because of the lavish use of our resources, and we have just reason to be proud of our growth. But the time has come to inquire seriously what will happen when our forests are gone, when the coal, the iron, the oil, and the gas are exhausted, when the soils shall have been still further impoverished and washed into the streams, polluting the rivers, denuding the fields, and obstructing navigation. These questions do not relate only to the next century or to the next generation. One distinguishing characteristic of really civilized men is foresight; we have to, as a nation, exercise foresight for this nation in the future; and if we do not exercise that foresight, dark will be the future! We should exercise foresight now, as the ordinarily prudent man exercises foresight in conserving and wisely using the property which contains the assurance of well-being for himself and his children.[81]

Roosevelt was both a utilitarian conservationist in the Pinchot mold and a preservationist who liked and respected John Muir. He believed in preserving wildlife and scenic landscapes for their own sake for sport and inspiration. *In A Book-Lover's Holidays in the Open*, Roosevelt wrote:

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[79] *See* Theodore Roosevelt, *A Book-Lover's Holidays in the Open*, *available at* http://www.bartleby.com/57/ (last visited Dec. 26, 2002).

[80] *See* Daniel Filler, Theodore Roosevelt: Conservation as the Guardian of Democracy, *available at* www.pantheon.cis.yale.edu/~thomast/essays/filler/filler.html (last visited Feb. 2, 2003).

[81] *See* Library of Congress, Evolution of the Conservation Movement, *Proceedings of a Conference of Governors, Opening Address by the President, available at* www.memory.loc.gov/ammem/amrvhtml/cnchron5.html (last visited Dec. 26, 2002).

> Birds should be saved for utilitarian reasons; and, moreover, they should be saved because of reasons unconnected with dollars and cents. A grove of giant redwoods or sequoias should be kept just as we keep a great and beautiful cathedral.[82]

Where utilitarian conservation and preservation clashed most dramatically, in the battle over building a dam in Yosemite's Hetch Hetchy Valley, Roosevelt was torn. Proponents believed the dam would be an appropriate and carefully managed water development project serving the citizens of San Francisco. Opponents said the dam would desecrate an area of exceptional beauty.[83] With reservations, he backed Pinchot's argument for the dam, then urged Congress to keep Yosemite "wholly unmarred."[84] The issue was not decided until 1913, when President Woodrow Wilson signed legislation authorizing the dam.[85] An outcome of Hetch Hetchy was the enactment of the Organic Act (39 Stat. 535) for national parks and the establishment of the National Park Service in 1916, with the mission "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 and by such means as will leave them unimpaired for the enjoyment of future generations."[86]

During his eight years in the White House, Roosevelt's conservation initiatives faced significant and bitter opposition from fellow Republicans favoring aggressive development of the nation's timber, range, and mineral resources.[87] In 1907, Roosevelt fought off a challenge from a fellow Republican with an administrative tour de force. Seeking to prevent Roosevelt from "locking up" more federal land from timber cutting, Oregon Senator Charles Fulton proposed a rider to an agricultural appropriations bill taking away the president's authority to establish forest reserves in six Western states.[88] Unable to avoid vetoing an appropriations bill and facing a Constitutional deadline for acting on the legislation, Roosevelt worked with Pinchot to establish twenty-one new national forests and enlarge eleven others in the six states, rendering Fulton's rider moot.[89]

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[82] *See supra* note 79.

[83] *See* Library of Congress, Evolution of the Conservation Movement, *Hearing Held Before the Committee on the Public Lands of the House of Representatives, Dec. 16, 1908, on House Joint Resolution 184, available at* www.memory.loc.gov/cgi-bin/query/r?ammem/consrv:@field(DOCID+@lit(vg25T000)):@@@REF (last visited Feb. 2, 2003).

[84] *See supra* note 43.

[85] *See id.*

[86] *See* National Park Service, The National Park Service Organic Act, *available at* www.nps.gov/legacy/organic-act.htm (last visited Dec. 26, 2002).

[87] *See supra* note 6.

[88] *See supra* note 73.

[89] *See supra* note 67; *see supra* note 6.

Roosevelt's legacy laid a foundation for wilderness conservation initiatives later in the 20th century by both Republican and Democratic leaders. One of the most significant, if less well known, conservation achievements of the early 20th century was the Weeks Act of 1911 (36 Stat. 961).[90] Named after John Weeks, a Republican congressman from Massachusetts, the Weeks Act authorized federal purchase of private timberland, which became the basis of national forests in the East where there was little land left in the public domain.[91] Like the Forest Reserve Act of 1891 and the Organic Act of 1897, a central purpose of the Weeks Act was to protect water supplies.[92] The presidency of Herbert Hoover is not often noted for its conservation achievements, but Hoover played a significant role in expanding the national park system. His administration took steps to create new parks in the East, including Great Smoky Mountains and the Everglades.[93] Hoover's conservation initiatives stemmed from his belief that the nation needed outdoor recreation as a counterbalance to what he viewed as the moral dangers of affluence and the consumer culture.[94] Hoover established nine national monuments, including lands protected today within Grand Canyon, Arches, Death Valley, and Saguaro national parks.[95]

During the 1920s and 1930s, ideas were taking shape that would serve as philosophical seeds for the 1964 Wilderness Act.[96] Until then, wilderness protection was a spinoff benefit of conservation initiatives designed chiefly to protect scenery, recreation opportunities, wildlife, watersheds, and future resources. The Forest Service took an interest in recreational use of national forests, partly as a result of its rivalry with the National Park Service. The Forest Service feared that wild portions of national forests would be re-designated national parks and transferred out of the Forest Service's control. Since the Park Service's founding in 1916, most national parks had been taken from national forest land.[97]

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[90] *See* Library of Congress, Evolution of the Conservation Movement, *available at* www.memory.loc.gov/cgi-bin/query/r?ammem/consrvbib:@FIELD(NUMBER(vl024)) (last visited Feb. 2, 2003).

[91] *See id.*; *see* Gerald W. Williams, United States Forest Service, *Background and References on the Weeks Act of 1911 and the Eastern National Forests*, 1999, *available at* www.fs.jorge.com/archives/Reference/Biblio_1911%20Weeks.htm (last visited Dec. 26, 2002).

[92] *See* Gerald W. Williams, United States Forest Service, *Background and References on the Weeks Act of 1911 and the Eastern National Forests*, 1999 *available at* www.fs.jorge.com/archives/Reference/Biblio_1911%20Weeks.htm (last visited Dec. 26, 2002).

[93] *See* Kendrick A. Clements, *Hoover, Conservation, and Consumerism: Engineering the Good Life*, University Press of Kansas, 2000.

[94] *See id.*

[95] *See supra* note 76.

[96] *See* Douglas W. Scott, *A Wilderness-Forever Future: A Short History of the National Wilderness Preservation System*, A Pew Wilderness Center Research Report, 2001.

[97] *See id.*; *see* Dennis M. Roth, *The Wilderness Movement and the National Forests*, Intaglio Press, 1995.

But wilderness thinkers within the Forest Service — Aldo Leopold, Arthur Carhart, and Bob Marshall — were the pioneers whose work led to policies giving administrative protection to "primitive areas" in national forests for their intrinsic wilderness value.[98] Leopold articulated a wilderness stewardship ethic grounded in the emerging science of ecology.[99] Through his efforts, the first administratively designated wilderness, the Gila area in New Mexico, was established in 1924.[100] The Gila was incorporated into the National Wilderness Preservation System when Congress passed the Wilderness Act forty years later.[101]

In 1929, the Forest Service adopted "L-20" regulations for national forest "primitive areas," giving high priority to maintaining "primitive conditions of transportation, subsistence, habitation and environment to the fullest degree compatible with their highest public use with a view to conserving the values of such areas for purposes of public education and recreation."[102] The L-20 regulations served the Forest Service in its rivalry with the Park Service by allowing the agency to argue that transfers of wild areas to national parks were unnecessary. By 1939, fourteen million acres had been classified as "primitive" by the Forest Service.[103] During the 1930s, Marshall worked at the Department of Interior's Bureau of Indian Affairs. He campaigned within the department for a strong Park Service commitment to protect national park wilderness areas, but the Park Service was preoccupied with recreational development. When he moved to the Forest Service in 1937, he renewed his wilderness campaign, this time for the national forests. Through Marshall's efforts, the L-20 regulations were replaced in 1939 by the stronger U-Regulations, which prohibited timber cutting, roads, and permits for homes, resorts and recreational camps within primitive areas.[104]

Many roadless areas in national forests were left wild because there was little demand for their timber before World War II. After the war, a combination of factors — pressure from timber companies, changes in forestry education, and budget incentives to cut timber — resulted in greatly increased timber removal from national forests.[105] In 1950, the annual "allowable cut" in the national forests was 5.6 billion board-

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[98] *See supra* note 96.

[99] *See* Dennis M. Roth, *The Wilderness Movement and the National Forests*, Intaglio Press, 1995.

[100] *See id.*

[101] *See id.*

[102] *See id.*

[103] *See id.*

[104] *See id.*

[105] *See* Michael Frome, *Battle for the Wilderness*, Revised Edition, The University of Utah Press, 1997; *see* Randal O'Toole, *Reforming the Fire Service: An Analysis of Federal Fire Budgets and Incentives*, published by Thoreau Institute, 2002, *available at* www.ti.org/firesvc.pdf (last visited Feb. 2, 2003).

feet.[106] By 1960, the allowable cut had nearly doubled, to 10.6 billion board-feet.[107] In that year, Congress passed the Multiple-Use Sustained-Yield Act (74 Stat. 215), which gave the Forest Service a great deal of discretion to manage national forests for delivery of products — timber, livestock forage, minerals, recreation, fish, and wildlife, based on the "most judicious use of the land for some or all of these resources." [108] The Multiple-Use Sustained-Yield Act also explicitly recognized wilderness as a legitimate use of national forests.[109]

Fearing for the future of wilderness areas that had only administrative protection, conservationists led by Howard Zahniser of the Wilderness Society, David Brower of the Sierra Club, and others began the long battle for a national wilderness protection policy codified into federal law. Those battles again exposed fault lines in the Republican Party between pro-conservation and pro-development factions.

III. THE WILDERNESS ACT OF 1964

The Wilderness Act was first introduced in 1956, by Democrat Hubert Humphrey in the Senate and Republican John P. Saylor in the House.[110] Eight years elapsed before a bill establishing the National Wilderness Preservation System was passed and signed into law by President Lyndon B. Johnson.[111] During that period, more than five dozen wilderness bills were introduced, 18 hearings held, and thousands of pages of hearing transcripts and committee reports were compiled.[112] Republicans played key roles on both sides of the issue. The leading GOP advocate of the bill was Saylor, a Pennsylvania conservative who served in the House from 1949 until his death in 1973.[113] Saylor built a strong record opposing any project that would compromise the integrity of national parks and favoring protection of the nation's remaining wild areas.[114] In the early 1950s, Saylor lent his support to conservationists' successful efforts

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[106] *See* Michael Frome, *Battle for the Wilderness*, Revised Edition, The University of Utah Press, 1997.

[107] *See id.*

[108] *See* United States House of Representatives Committee on Resources, *Multiple-Use Sustained-Yield Act of 1960*, *available at* www.house.gov/resources/105cong /reports/105_a/musya 60_.pdf (last visited Feb. 2, 2003).

[109] *See id.*

[110] *See supra* note 43.

[111] *See supra* note 96.

[112] *See id.*

[113] *See supra* note 43; *see* United States Congress, *Biographical Directory of the United States Congress, 1774 - Present*, *available at* www.bioguide.congress.gov (last visited Dec. 26, 2002).

[114] *See* Michael Frome, *A Plea for the National Parks*, Cosmos Journal, published by the Cosmos Club, 1996, *available at* www.cosmos-club.org/journals/1996/frome.html (last visited Feb. 2, 2003).

to block the Echo Park Dam, which was proposed on the Green River within Dinosaur National Monument.[115] The Echo Park battle was a crucial testing ground where conservationists successfully waged a national grassroots campaign of media outreach and citizen mobilization for the cause of land protection.[116]

Saylor articulated numerous reasons why legislative action was necessary to protect wilderness. On the floor of Congress in July 1956, he elaborated on them. They included national strength and fitness; refuge and recreation; and humility and perspective.

Regarding national strength and fitness, Saylor stated:

> Shall we, exploiting all our resources, reduce also every last bit of our wilderness to roadsides of easy access and areas of convenience, and allow ourselves to soften into an easy-going people deteriorating in luxury and ripening for the hardy conquerors of another century? I hope not, Mr. Speaker, and in our preservation of wilderness and our encouragement of the hardy recreation that puts a man or a woman or a red-blooded child on his own in the face of primitive hardships, we can help meet this need for maintaining a nation of strong, healthy citizens.[117]

Regarding refuge and recreation, Saylor stated:

> The stress and strain of our crowded, fast-moving, highly-mechanized and raucously noisy civilization create another great need for wilderness — a deep need for areas of solitude and quiet, for areas of wilderness where life has not given way to machinery. This is a need for relief for jaded minds and tense nerves, a need for the restoration of peace and the reassurance of sanity.[118]

Regarding humility and perspective, Saylor stated:

> In the wilderness, we can get our bearings. We can keep from getting blinded in our great human success to the fact that we are part of the life of this planet, and we would do well to keep our perspectives and keep in touch with some of the basic facts of life.[119]

Another key Republican who worked for passage of wilderness legislation was Senator Thomas Kuchel of California. Kuchel, the ranking

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[115] *See* Thomas G. Smith, *Voice for Wild and Scenic Rivers: John P. Saylor of Pennsylvania*, Pennsylvania History, Autumn 1999; *see* Mark W.T. Harvey, *A Symbol of Wilderness: Echo Park and the American Conservation Movement*, University of New Mexico Press, 1994.

[116] *See supra* note 96.

[117] *See Congressional Record*, Volume 102.

[118] *Id.*

[119] *Id.*

minority member of the Senate Interior Committee, played a key role in resolving concerns that wilderness legislation would impede development of water resources in California.[120]

One of the leading Republicans leading opposition to the Saylor-Humphrey wilderness legislation was Senator Gordon Allott of Colorado. Allott articulated the argument, expressed often by Theodore Roosevelt's adversaries, that protecting land for its wilderness and scenic values would prevent economically beneficial development of natural resources in order to serve the wishes of a small minority.[121] In 1963, for example, he argued that the wilderness bill was wrong "because it would give to a very few people in the United States the unbridled use of the land to the detriment of every other public use, whether it be mining, grazing, forestry, or just plain recreation."[122]

Opposition to the Saylor and Humphrey bills was immediate and vociferous, coming from timber, grazing, and mining interests, and backed up by the Forest Service and, to a lesser extent, the National Park Service. The leading opponent, who was in a position to make or break the legislation, was Democrat Wayne Aspinall of Colorado, chairman of the House Interior Committee.[123] After the Senate passed wilderness legislation in 1961, Aspinall's committee passed a heavily amended version that was unacceptably weak for wilderness proponents.[124] For example, the Aspinall version called for review of each wilderness area every twenty-five years to determine whether wilderness designation remained appropriate.[125] As a result of opposition from Saylor and his allies, Aspinall's bill never made it to the House floor.[126]

The Senate passed legislation again in 1963.[127] An unsuccessful amendment by Senator Peter Dominick, a Colorado Republican, touched on an issue that was the core of a breakthrough compromise allowing the bill to pass the House the following year.[128] Dominick's amendment required congressional approval of future additions to the National Wilderness Preservation System.[129] When Saylor re-introduced wilderness legislation in 1964, his new bill required an act of Congress to expand the system beyond an initial designation of 9.1 million acres.[130] The bill

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[120] *See supra* note 43.
[121] *See* Congressional Record, Volume 109.
[122] *See id.*
[123] *See supra* note 43.
[124] *See id.*
[125] *See id.*
[126] *See id.*
[127] *See id.*
[128] *See id.*
[129] *See id.*
[130] *See id.*

passed the House nearly unanimously and was signed into law on September 3, 1964.[131] Conservationists had favored earlier language allowing the president to designate wilderness areas, but as it turned out, the compromise language worked to their advantage in later battles over expanding the system.[132] Giving Congress the final say created an opening for citizen activists to develop grass-roots wilderness proposals and create political support for them through hearings leading up to wilderness legislation.[133]

The final text of the 1964 Wilderness Act (78 Stat. 890) contained remarkably eloquent language establishing a wilderness protection system "for the permanent good of the whole people."[134] It defined wilderness areas as those lands "where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain."[135] The law gives further definition, as follows:

> An area of wilderness is further defined to mean in this act an area of undeveloped federal land retaining its primeval character and influence, without permanent improvements or human habitation and which 1) generally appears to have been affected primarily by the forces of nature, 2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation, 3) has at least 5,000 acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition, and 4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.[136]

The Wilderness Act also accomplished the following:

- Immediate wilderness designation of 9.1 million acres of national forest land with administrative designation as "wilderness," "wild," or "canoe area" lands.[137]
- A single management directive for all wilderness lands managed by federal lands agencies, including a ban on roads and commercial enterprises. Compromise language allowed for mineral prospecting in national forest wilderness areas until 1984. Language also allows the president to authorize water development in national forest wilderness areas, and continued livestock grazing.[138]

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[131] *See id.*

[132] *See supra* note 96.

[133] *See id.*

[134] *See* United States Forest Service, *The Wilderness Act, available at* www.fs.fed.us/outernet/htnf/wildact.htm (last visited Dec. 26, 2002).

[135] *See id.*

[136] *See id.*

[137] *See supra* note 96.

[138] *See id.*

- A review process, including local public hearings, requiring agencies to study specific roadless lands designated as "primitive" by the Forest Service, and roadless lands exceeding five thousand acres in national parks and wildlife refuges and then make wilderness designation recommendations to Congress.[139]

The review process dominated wilderness debates over the next twenty years, culminating in enactment of nineteen wilderness bills in 1984.[140] Conservationists took advantage of language in Section 3 (b) to take the Forest Service to court over the agency's roadless area reviews, and to campaign for wilderness designation of national forest roadless lands that were "de facto wilderness" — unclassified, undeveloped areas that conservationists believed met the definition of wilderness.[141] With both help and opposition from Republicans, conservationists successfully won passage of legislation establishing wilderness areas east and west of the Mississippi River, bringing the "forgotten" public domain lands of the BLM under wilderness study mandates, and adding fifty-six million acres of Alaska's vast landscapes to the National Wilderness Preservation System.[142]

IV. BEYOND THE WILDERNESS ACT: LEGISLATION AND LITIGATION, 1964-1984

After the Wilderness Act became law, Congress steadily expanded the National Wilderness Preservation System beyond the initial designation of 9.1 million acres, adding lands in national forests, parks, and wildlife refuges.[143] Often, conservationists persuaded Congress to expand wilderness areas beyond what the land management agencies proposed.[144] An early addition to the system was the San Rafael wilderness area in southern California, one of the areas administratively protected in the 1930s under the old L-20 regulations.[145] The primitive area covered 74,900 acres, but at the behest of local conservationists, Republican Senator Thomas Kuchel introduced a bill designating 158,000 acres, including 2,200 acres on a ridge that the Forest Service wanted to use as a firebreak.[146] In Senate hearings, the acreage was compromised down to

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[139] *See id.*

[140] *See id., See* Douglas W. Scott, *A Brief History of Wilderness Time*, published by the Pew Wilderness Center in *Return of the Wild*, Island Press, 2001.

[141] *See supra* note 96. *See also supra* note 99.

[142] *See supra* note 43. *See also supra* note 96 and note 99.

[143] *See supra* note 43. *See also supra* note 96.

[144] *See supra* note 43.

[145] *See supra* note 99.

[146] *See id.*

145,000 acres, without the 2,200 acres.[147] When the bill reached the House, Saylor amended the 2,200 acres back into the wilderness boundaries, angering the Forest Service and House Interior Committee Chairman Aspinall.[148]

Saylor took the Forest Service to task for trying to impose bureaucratic control over wilderness expansion:

> The Washington headquarters staff of the Forest Service, trying to run this nation's public forests as though they were European forestmasters instead of public servants, have dictated their San Rafael boundaries to us, and we are expected to accept them without question.[149]

In conference committee, the Forest Service won the day on excluding the 2,200 acres, but the battle emboldened conservationists and their congressional allies to battle the Forest Service harder on future bills, especially those over "de facto" wilderness.[150]

Under the 1964 Wilderness Act, the Forest Service was directed to study five million acres of administratively designated "primitive areas" and recommend which, if any, should be recommended for congressional wilderness designation.[151] During the study process, the primitive areas enjoyed statutory protection, with their final disposition left to Congress.[152] However, the "primitive areas" did not include millions of acres of unclassified, undeveloped "de facto" wilderness areas in the national forest system.[153] With Congress having the final say on wilderness designations, citizens realized they could bypass the Forest Service, initiate their own wilderness studies, and prepare citizen wilderness recommendations for congressional consideration as alternatives to official Forest Service proposals. The first citizen proposal to add a "de facto" wilderness area to the National Wilderness Preservation System was the Lincoln-Scapegoat proposal in Montana, which passed Congress in 1972.[154] "De facto" wilderness battles often pitted conservationists against development interests. An example was French Pete, a popular hiking area east of Eugene, Oregon that the Willamette National Forest planned to log. The battle over French Pete divided Oregon's two Republican senators, with Bob Packwood supporting conservationists and Mark Hatfield supporting the timber industry.[155] The issue was not resolved until 1978,

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[147] *See id.*
[148] *See id.*
[149] *See id.*
[150] *See id.*
[151] *See supra* note 43.
[152] *See id.*
[153] *See supra* note 99.
[154] *See id.*
[155] *See id.*

when the 45,000-acre area was designated as wilderness through the Endangered American Wilderness Act (92 Stat. 40), which expanded the National Wilderness Preservation System by 1.3 million acres.[156]

Conservationists seeking designation of "de facto" wilderness found a powerful tool in Section 3 (b) of the Wilderness Act: "Nothing herein contained shall limit the President in proposing, as part of his recommendations to Congress, the alteration of existing boundaries of primitive areas or recommending the addition of any contiguous area of national forest lands predominantly of wilderness value."[157] The Forest Service believed the agency had the discretion to develop such contiguous areas, while conservationists believed the agency could not, so as not to fetter the president's discretion to send wilderness recommendations to Congress.[158]

The issue came to a legal head with the East Meadow Creek case of 1970.[159] East Meadow Creek was the name of 2,400 acres of land adjacent to the Gore Range-Eagles Nest Primitive Area, in the White River National Forest of Colorado.[160] A proposed timber sale in East Meadow Creek was challenged in *Parker v. United States*.[161] Plaintiffs argued that East Meadow Creek met the Wilderness Act's wilderness standards, thereby requiring the Forest Service to conduct a wilderness study and make a recommendation to the president.[162] Defendants argued that the Wilderness Act was not intended to curtail the Forest Service's administrative discretion under the Multiple Use and Sustained Yield Act of 1960.[163] United States District Court Judge William Doyle found for the plaintiffs, enjoining the timber sale and agreeing that the president's and Congress' power to add contiguous lands to wilderness areas would be rendered ineffectual unless they were administratively protected by the Forest Service.[164] The court ordered the Forest Service to include East Meadow Creek in its wilderness study and report to the president. The court's judgment was upheld in 1971 on appeal to the United States Court of Appeals, Tenth Circuit.[165]

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[156] *See id. See also* Forest History Society, *1978 Endangered American Wilderness Act, available at* www.lib.duke.edu/forest/usfscoll/policy/Wilderness/1978_ Endangered.html (last visited Feb. 2, 2003).

[157] *See supra* note 43.

[158] *See supra* note 43. *See also* Environmental Law Reporter, 1 ELR 20489-20491, *Parker v. United States*.

[159] *See supra* note 43. *See also supra* note 99.

[160] *Id.*

[161] *Id.*

[162] *See supra* note 43.

[163] *See* Environmental Law Reporter, 1 ELR 20489-20491, referring to *Parker v. United States*.

[164] *See supra* note 99.

[165] *See supra* note 163.

The East Meadow Creek ruling was a body blow to Forest Service efforts to limit expansion of the National Wilderness Preservation System. Strengthening the hand of conservationists was the National Environmental Policy Act of 1970, or NEPA, (83 Stat. 852).[166] NEPA requires federal agencies to report on the environmental impacts of federal projects and programs and disclose the information to the public.[167] Conservationists employed NEPA to challenge the results of the Roadless Area Review and Evaluation (RARE I), which took place from 1971 to 1972. RARE I was launched by the Forest Service to get ahead of the curve on the disposition of "de facto" wilderness areas.[168] The Forest Service proposed further wilderness study for 12.3 million of fifty-six million acres examined. In the 1972 litigation *Sierra Club v. United States Forest Service*, the plaintiffs sought protection of all fifty-six million acres until they could be thoroughly studied.[169] United States District Court Judge Samuel Conti granted a preliminary injunction to that effect.[170] In an out-of-court settlement, the Forest Service promised to conduct environmental impact studies under NEPA before any "de facto" wilderness area was released for multiple-use management.[171]

RARE I was a failed administrative process and prompted new efforts to take wilderness proposals directly to Congress.[172] One result was enactment of the Eastern Wilderness Areas Act of 1975, in which Republican senators played a crucial role.[173] An issue that came up during congressional debate was disagreement between the Forest Service and conservationists over the so-called "purity principle."[174] The Forest Service argued that any land which bore minor imprints of man, such as abandoned roads or old mines, could not qualify as wilderness and was best suited for multiple-use management.[175] Conservationists argued that the Forest Service was misapplying the law in order to maximize lands available for commodity production.[176] They pointed to language in Section 2 (c) (1) of the Wilderness Act specifying that the impacts of man in wilderness-quality lands must be "substantially unnoticeable," not nonexistent.[177]

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[166] *See supra* note 43.
[167] *See id.*
[168] *See supra* note 99.
[169] *See id.*
[170] *See supra* note 43.
[171] *See supra* note 99.
[172] *See supra* note 96.
[173] *See id.*
[174] *See supra* note 43. *See also supra* note 106.
[175] *See supra* note 43.
[176] *See supra* note 43.
[177] *See supra* note 106.

The "purity principle" debate had special salience in the East, where development had been taking place for centuries and cutover forests were growing back. Nevertheless, pressure was building to designate Eastern wilderness lands. In his environmental message to Congress in 1972, President Richard Nixon ordered the Forest Service and Interior Department to speed up identification of Eastern areas with wilderness potential.[178] To both respond to the pressure and retain the "purity principle," the Forest Service proposed a separate "wild areas" system for the East.[179] Republican Senator George Aiken of Vermont and Democratic Senator Herman Talmadge of Georgia introduced a bipartisan bill establishing such a system.[180] Rival legislation, sponsored by Republican Senator James L. Buckley of New York, brother of conservative columnist William F. Buckley, and Democratic Senator Henry Jackson of Washington, proposed Eastern wilderness areas under auspices of the 1964 act.[181] Through difficult negotiations, the Eastern Wilderness Areas Act (88 Stat. 2096) emerged as the compromise.[182] The idea of a separate "wild areas" system for the East was dropped, sixteen areas were added to the National Wilderness Preservation System and seventeen wilderness study areas were established.[183]

Agreement on the legislation came largely through the efforts of Aiken, for whom the Eastern Wilderness Areas Act was the capstone of a thirty-one year Senate career.[184] A farmer by trade, Aiken had a long interest in conservation. In May 1974, Aiken told his Senate colleagues that "if Congress does not act promptly to protect primitive areas in the Eastern United States, the possibility of enjoying this type of recreation could be forever foreclosed to many Americans because of the population and development pressures on eastern forest lands."[185]

Another outcome of the failed RARE I process was renewed pressure to designate "de facto" wilderness areas before they were roaded and logged.[186] Conservationists proposed the Endangered American Wilderness Act, which won the endorsement of newly elected President Jimmy Carter and was enacted into law in 1978.[187] The Endangered American Wilderness Act was an omnibus bill, a legislative approach

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[178] *See* President Richard M. Nixon, *Special Message to the Congress Outlining the 1972 Environmental Program, Feb. 8, 1972, available at* www.nixonfoundation.org /Research_Center /1972_pdf_files\1972_0051.pdf (last visited Dec. 26, 2002).

[179] *See supra* note 96.

[180] *See supra* note 43.

[181] *See supra* note 99.

[182] *See supra* note 43.

[183] *See id.*

[184] *See id.*

[185] *See Congressional Record*, Volume 120.

[186] *See supra* note 96.

[187] *See supra* note 43.

used for making significant additions of national park lands to the National Wilderness Preservation System in 1978.[188] The National Parks and Recreation Act (92 Stat. 3467) established eight national park wilderness areas totaling nearly two million acres.[189]

With the advent of the Carter administration and its support for expanding the National Wilderness Preservation System, the Forest Service embarked on another round of Roadless Area Review and Evaluations (RARE II).[190] In 1979, the Forest Service announced a recommendation for fifteen million acres of new wilderness, release of thirty-six million acres for multiple-use management, and eleven million acres for further planning.[191] In response, the state of California filed suit in federal court to stop development of forty-eight areas of "de facto" wilderness in the state.[192] In 1980, the court agreed with the state that the Forest Service's RARE II environmental impact statement had violated NEPA. The ruling was upheld on appeal to the United States Court of Appeals, Ninth Circuit, in 1982.[193]

The legal battles over RARE II and the election of Ronald Reagan as president in 1980 set the political stage for legislative resolution of the wilderness issue through state-by-state wilderness bills.[194] Under a compromise that halted further RARE analysis in 1984, Congress passed and President Ronald Reagan signed nineteen state wilderness bills adding more than eight million national forest acres to the National Wilderness Preservation System, even in states where political support for wilderness has never been strong, such as Arkansas, Texas, Utah and Wyoming.[195] Roadless lands not designated were released from wilderness study status, but only for the duration of one national forest management planning cycle.[196] When plans were revised under the National Forest Management Act (88 Stat. 476), a fresh look at wilderness-quality lands would be required.[197]

While the RARE II controversy was playing out, the biggest wilderness bill in history was embroiling Congress. In Alaska, the federal government held 375 million acres of land, almost twice the size of the entire national forest system.[198] Before the future of Alaska lands could be de-

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[188] *See id.*
[189] *See id.*
[190] *See id.*
[191] *See id.*
[192] *See supra* note 99.
[193] *See* Environmental Law Reporter, California v. Block, *available at* www.elr.info/litigation/vol13/13.20092.htm (last visited Feb. 2, 2003).
[194] *See supra* note 43. *See also supra* note 99.
[195] *See supra* note 96.
[196] *See id.*
[197] *See id.*
[198] *See id.*

cided, aboriginal land claims had to be settled. As Congress took on the issue of resolving the claims, conservationists realized that native claims settlement legislation needed a provision reserving some federal lands for future consideration as national parks, wildlife refuges, and as wilderness.[199] An amendment to that effect, co-authored by John Saylor and Democratic Congressman Morris Udall of Arizona, was defeated in 1970, but the idea remained part of the debate. As a result, Section D-2, reserving eighty million acres for further study, was included in the Alaska Native Claims Settlement Act of 1971 (85 Stat. 688).[200]

In 1977, the first version of what later became the Alaska National Interest Lands Conservation Act was introduced.[201] Disposition of Alaska lands was the most sweeping conservation debate of the 20th century. At stake was an overpowering landscape of remote mountain ranges, wild rivers, and vast forests, untouched by man and his works. Virtually the entire national conservation community joined together in the Alaska Coalition to lobby for the legislation. Opposing them were timber, mining, and oil and gas production interests in Alaska. As in the debate that led up to the 1964 Wilderness Act, the Alaska lands legislative process featured numerous rival bills and committee hearings.[202] Republicans could be found on both sides of the debate. Leading the commodity interests was Alaska's congressional delegation, led by Republican Congressman Don Young and Republican Senator Ted Stevens.[203] Republicans allied with conservationists included Senator William Roth of Delaware and Illinois Congressman John B. Anderson, who won nearly seven percent of the popular vote in an independent run for the presidency in 1980.[204]

In 1978, the House passed a strong Alaska lands bill, including 65.6 million acres of wilderness, but the bill was derailed by the threat of a Senate filibuster from Alaska Democrat Mike Gravel.[205] In 1979, the House passed a bill including 68.6 million acres of Alaska wilderness, but the Senate again proved to be a stumbling block[206]. Following Reagan's election to the presidency in 1980, however, the House yielded

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[199] *See id.*

[200] *See supra* note 43.

[201] *See id.*

[202] *See id.*

[203] *See id.*

[204] *See supra* note 43; *see* National Park Service, *The National Park Service and the Alaska National Interest Lands Conservation Act: Administrative History, available at* www.cr.nps.gov/history/online_books/williss/adhi4h.htm (last visited Feb. 2, 2003); *see* Infoplease website - *Presidential Elections, 1789-2000, available at* www.infoplease.com/ipa/A0781450.html (last visited Feb. 3, 2003).

[205] *See supra* note 43.

[206] *See id.*

to the new political dynamic and agreed to a weaker Senate bill.[207] The resulting compromise was signed into law by outgoing President Jimmy Carter in December 1980. The final text of the Alaska National Interest Lands Conservation Act (94 Stat. 2371) was the largest conservation achievement in world history.[208] The bill added fifty-six million acres to the National Wilderness Preservation System within national forests, parks and wildlife refuges, more than doubling its size.[209] The legislation added ten units to the national park system and expanded three existing parks.[210] Wilderness designations in Alaska's national parks expanded national park wilderness by a factor of ten. Ten national wildlife refuges were established, more than doubling the system's size.[211] The Alaska bill enlarged wilderness designations in national wildlife refuges from fewer than 800,000 acres nationwide to more than 18.5 million acres, a twenty-three-fold increase.[212] Finally, wilderness acreage in national forests rose thirty percent, through designations in the Tongass National Forest.[213]

Reagan's election signaled a dramatic shift in the Republican Party against ambitious conservation measures. Reagan appointed James Watt secretary of the Interior.[214] Hostile to land preservation efforts, Watt was the voice of a new breed of conservatives, indifferent or even hostile to land preservation and strongly sympathetic toward the commodity interests that Theodore Roosevelt had fought eight decades earlier. Pro-conservation factions within the Republican Party became increasingly marginalized and less influential. The new political dynamic played a strong role in 1980s and 1990s debates over wilderness on public domain lands overseen by the Bureau of Land Management, conservation of the remaining "de facto" wilderness areas of national forests, and the fate of the Arctic National Wildlife Refuge, America's largest.[215]

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[207] *See id.*

[208] *See supra* note 96.

[209] *See id.*

[210] *See supra* note 43.

[211] *See id.*

[212] *See id.*

[213] *See id.*

[214] *See supra* note 99.

[215] *See supra* note 43; *see supra* note 24; *see supra* note 1; *see* Jim DiPeso, *The Environment Is Bipartisan*, published in Environmental Quality Management, Volume 11, Number 4, Summer 2002.

V. A HOUSE DIVIDED: THE NEW, POLARIZED POLITICS OF WILDERNESS CONSERVATION, 1984-2002

In 1976, Congress passed an "organic act" for the 264 million acres of public domain managed by the Bureau of Land Management, which are predominantly in the West.[216] Like the 1964 Wilderness Act, Section 603 of the Federal Land Policy and Management Act (FLPMA) (90 Stat. 2744) directed the BLM to inventory all roadless areas in its jurisdiction, identify wilderness study areas, and preserve them "so as not to impair the suitability of such areas for preservation as wilderness."[217] Between 1977 and 1980, the BLM designated 700 "wilderness study areas" covering 27.5 million acres, less than half the amount that conservationists believed should have been included.[218] Almost all roadless BLM lands are in the West, where congressional delegations are relatively hostile to wilderness.[219]

Wilderness bills including BLM lands started moving through Congress in the 1980s. Since 1983, when Congress enacted the first BLM wilderness legislation, BLM areas covering 6.7 million acres have been added to the National Wilderness Preservation System.[220] Two of the larger bills were the Arizona Desert Wilderness Act of 1990 (104 Stat. 4496), which designated 1.1 million acres, and the California Desert Protection Act of 1994 (108 Stat. 4471), which designated 3.5 million acres.[221] As occurred with national forest wilderness, congressional decisions often were at odds with BLM recommendations.[222] In June 2002, Interior Department Deputy Assistant Secretary Nina Rose Hatfield described BLM wilderness legislative history in congressional testimony:

> In some cases, the Congress has generally followed BLM's suitability recommendations. Far more frequently, Members of Congress and Congressional delegations have conducted their own investigation into

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[216] *See* United States Bureau of Land Management, *Public Lands Managed by the Bureau of Land Management (BLM)*, *available at* www.blm.gov/nhp/facts/maps/ landsmap_m.htm (last visited Dec. 26, 2002).

[217] *See* United States Bureau of Land Management, *FLPMA*, *available at* www.ut.blm.gov/wilderness/flpma.html (last visited Feb. 2, 2003).

[218] *See supra* note 96.

[219] *See id.*

[220] *See* United States Bureau of Land Management, *Bureau of Land Management Wilderness*, *available at* www.blm.gov/nhp/Preservation/wilderness/wild_blm. html (last visited Dec. 26, 2002).

[221] *See* The National BLM Wilderness Campaign, A Summary of BLM Wilderness Laws, *available at* www.blmwilderness.org/laws.html (last visited Feb. 2, 2003); *see supra* note 95.

[222] *See* United States Bureau of Land Management, *Testimony of Nina Rose Hatfield, Deputy Assistant Secretary, Budget and Finance, House Resources Committee Subcommittee on Parks, Recreation and Public Land, HR 4620, America's Wilderness Protection Act, June 6, 2002*, *available at* www.blm.gov/nhp/news/legislative/pages/ 2002/te020606b.htm (last visited Dec. 26, 2002).

> proposed wilderness reaching their own separate conclusions. These have included releasing areas recommended suitable, designating areas originally recommended nonsuitable, designating areas which were not (wilderness study areas), as well as creating (wilderness study areas) legislatively.[223]

Issues common to BLM wilderness debates included off-road vehicles and "release" language.[224] For recreationists who use public lands to ride dirt bikes, all-terrain vehicles, four-wheel drive trucks, snowmobiles, and swamp buggies, the issue is clear — wilderness designation prohibits entry of any motorized or mechanical form of transport.[225] Off-road vehicle users have joined with timber and mining advocates who oppose wilderness designations on the grounds that they "lock up" federal lands from commodity production.[226] The off-road vehicle lobby was a significant player in congressional debate over the California Desert Protection Act of 1994.[227] The leading off-road vehicle lobby is the Blue Ribbon Coalition, which in 1999 formed the "Wilderness Act Reform Coalition," to revise what it calls an "antiquated" law.[228] The coalition's initial "limited reform" agenda seeks authorization for "resource management" activities in wilderness areas, entry by mountain bicycles, and decennial surveys of wilderness areas and wilderness study areas for mineral, oil and gas potential.[229] Members of the Wilderness Act Reform Coalition include the Blue Ribbon Coalition; Arctic Power, which is lobbying to open the coastal plain of the Arctic National Wildlife Refuge to oil development, and various counties in Colorado, Idaho, Nevada, New Mexico, and Utah.[230]

Another issue that has arisen in connection with BLM wilderness is "release" language.[231] "Soft" release language removes a specific land

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[223] *See id.*

[224] *See* Blue Ribbon Coalition, *The Wilderness Act Reform Coalition*, *available at* www.wildernessreform.com (last visited Dec. 26, 2002); *see* Ross W. Gorte, Congressional Research Service, *Utah Wilderness Legislation in the 104th Congress, 95-1191 ENR*, 1995, *available at* www.NCSEonline.org/nle/crsreports/legislative/leg-13.cfm?&CFID=6229062&CFTOKEN=3988411 (last visited Dec. 26, 2002).

[225] *See* Blue Ribbon Coalition, *No More Wilderness*, *available at* www.sharetrails.org/index.cfm?page=490 (last visited Feb. 2, 2003).

[226] *See* Blue Ribbon Coalition, *The Wilderness Act Reform Coalition*, *available at* www.wildernessreform.com (last visited Dec. 26, 2002).

[227] *See* Frank Wheat, *California Desert Miracle: The Fight for Desert Parks and Wilderness*, Sunbelt Publications, 1999.

[228] *See supra* note 226.

[229] *See id.*

[230] *See id.*

[231] *See* Ross W. Gorte, Congressional Research Service, *Utah Wilderness Legislation in the 104th Congress, 95-1191 ENR*, 1995, *available at* www.NCSEonline.org/nle /crsreports/legislative/leg-13.cfm?&CFID=6229062&CFTOKEN=3988411 (last visited Dec. 26, 2002).

from wilderness study area status, but does not preclude future consideration for a wilderness recommendation.[232] Under "soft" release, protection of an area's wilderness characteristics is not required. "Hard" release language, favored by some Western Republicans, bars future study of an area for possible wilderness designation, either for a fixed period or forever, and can even require management for non-wilderness multiple uses.[233] Soft-release language was first used in the national forest wilderness bills of the early 1980s and has been used in BLM wilderness bills as well.[234] For example, the Arizona Desert Wilderness Act of 1990, the first large-scale BLM wilderness legislation, specified that Arizona BLM wilderness study areas, with two exceptions, "are no longer subject to the requirement of section 603(c) of such Act pertaining to the management of wilderness study areas in a manner that does not impair the suitability of such areas for preservation as wilderness."[235]

The largest BLM wilderness law passed to date was the California Desert Protection Act.[236] The law, twenty years in the making, re-designated Death Valley and Joshua Tree National Monuments as national parks, established the Mojave National Preserve, and added more than 3.5 million acres of BLM land to the National Wilderness Preservation System.[237] As in previous wilderness battles, the California legislation pitted Republicans against each other, dramatically so in the final hours of the 103rd Congress when the fate of the bill hung in the balance.[238] Leading the opposition were Republicans Malcolm Wallop of Wyoming in the Senate and Jerry Lewis of California in the House.[239] Lewis initially proposed legislation to designate 2.1 million acres of BLM land as wilderness, but with significant weakening of actual wilderness protection — motorized access for cattle and sheepmen grazing livestock, establishment of motorized recreation trails, and "hard" release language.[240] During the final congressional debate on the desert legislation that eventually passed, Lewis and his allies in the House tried to kill the bill with a series of debilitating amendments.[241] In the Senate, with the 1994 session approaching adjournment, Wallop threatened a filibus-

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[232] *See id.*

[233] *See id.*

[234] *See id.*

[235] *See* Thomas, Library of Congress, 101st Congress, H.R. 2570, Arizona Desert Wilderness Act of 1990 (Enrolled as Agreed to or Passed by Both House and Senate), *available at* www.thomas.loc.gov/cgi-bin/query/z?c101:H.R.2570.ENR: (last visited Dec. 26, 2002).

[236] *See supra* note 96.

[237] *See supra* note 227.

[238] *See id.*

[239] *See id.*

[240] *See id.*

[241] *See id.*

ter.[242] In the Senate session's final hours, with senators leaving town to campaign, uncertainty prevailed over the fate of a cloture motion to shut off debate and permit an up-or-down vote on the bill.[243] A Republican supporter of the desert protection bill, Rhode Island's John Chafee, played a key role in persuading fellow Republican senators to stay in the Capitol to vote.[244] Seven Republicans defied pressure for a "no" vote on cloture and voted to shut off debate. They included Chafee, Delaware's William Roth, Maine's William Cohen, Minnesota's David Durenberger, New Hampshire's Judd Gregg, Oregon's Mark Hatfield, and Vermont's Jim Jeffords.[245] Their support was crucial for winning passage.[246]

The California Desert Protection Act was the final wilderness bill Congress passed before the historic midterm election of 1994, when Republicans took control of both houses of Congress for the first time since 1952.[247] Members of the new congressional majority sought to weaken or repeal bedrock laws, including the Clean Air Act and Clean Water Act.[248]

On land management and wilderness issues, two of the key players in the new House majority were Don Young, an Alaskan who took over chairmanship of the panel renamed the House Resources Committee, and James Hansen, a Utahan who took over the Resources Committee chairmanship from Young in 2001.[249] Young and Hansen were in the thick of congressional land management debates, and frequently butted heads with fellow House Republicans, such as Sherwood Boehlert of New York, who emerged as the leader of pro-conservation House Republicans.[250] In 1995, Boehlert and his allies were a distinct minority in the

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[242] *See id.*

[243] *See id.*

[244] *See id.*

[245] *See id.*

[246] *See id.*

[247] *See* Office of the Clerk, United States House of Representatives, *Political Divisions of the House of Representatives (1789 to Present)*, *available at* www.clerk.house.gov/histHigh/Congressional_History/partyDiv.php (last visited Feb. 2, 2003); *see* United States Senate, *Party Division in the Senate , 1789-Present*, *available at* www.senate.gov/pagelayout/history/one_item_and_teasers/partydiv.htm (last visited Feb. 2, 2003).

[248] *See* Thomas, Library of Congress, 104th Congress, H.R. 479, To Repeal the Clean Air Act Amendments of 1990 (Public Law 101-549) (Introduced in House), *available at* www.thomas.loc.gov/cgi-bin/query/z?c104:H.R.479 (last visited Dec. 26, 2002); *see* Thomas, Library of Congress, 104th Congress, H.R. 961, Clean Water Act Amendments of 1995 (Referred to Senate Committee after Being Received from House), *available at* www.thomas.loc.gov/cgi-bin/query/D?c104:3:./temp/~c104c1W51F: (last visited Dec. 26, 2002).

[249] *See* Biographical Directory of the United States Congress, *available at* www.bioguide.congress.gov/scripts/biodisplay.pl?index=H000172 (last visited Feb. 2, 2003); *see* Biographical Directory of the United States Congress, *available at* www.bioguide.congress.gov/scripts/biodisplay.pl?index=Y000033 (last visited Feb. 2, 2003).

[250] *See* Robin Toner, *He's the Man in the Middle and Loving It*, THE NEW YORK TIMES, July 30, 2001, *available at* www.house.gov/boehlert/publiclives.htm (last visited Feb. 2, 2003).

party, illustrating the change that had taken place in the Republican Party since the early 1980s and the dominance of the faction skeptical of conservationism and sympathetic to interests seeking to develop public lands for commodity production and motorized recreation.[251] Boehlert played a key role in rounding up Republican votes to block seventeen legislative riders that would have weakened the Environmental Protection Agency's ability to enforce environmental laws.[252] For Boehlert, conservation was a simple matter of following the wishes of his constituency. "If I weren't an environmentalist, my constituents would find someone else to represent them," he told Washington Post columnist E.J. Dionne in 2001.[253]

In 1996, Republican Senator John McCain of Arizona warned his party against anti-conservation extremism.[254] In an op-ed published in the New York Times, McCain wrote:

> Republicans should not allow the fringes of the party to set a radical agenda that no more represents the mainstream of Republicans than environmental extremists represent the mainstream of the Democratic Party. Only by faithfully fulfilling our stewardship responsibilities can we expect to remain the majority party.[255]

Ongoing battles over Utah wilderness illustrated the Republican divide. Following requirements of the Federal Land Policy Management Act, President George H.W. Bush submitted wilderness recommendations for Utah BLM land to Congress in 1992.[256] The BLM recommended designation of 1.96 million acres as wilderness, out of 3.2 million acres of wilderness study areas.[257] During ensuing congressional sessions, competing bills were introduced. Typical of the bills supported by Hansen and his allies was HR 1745, introduced in the 104th Congress.[258] The bill would have designated 1.8 million acres as wilderness, with significant exceptions to Wilderness Act protection standards, including motorized access to maintain water facilities, road construction in specified areas, and construction of a natural gas pipeline through one area.[259] In addition, the bill contained "hard" release language. In contrast, HR 1500 would have designated 5.7 million acres, including lands

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[251] *See supra* note 24.

[252] *See id.*

[253] *See* E.J. Dionne, Op-Ed, *Playing for One Run at a Time*, WASHINGTON POST, August 24, 2001.

[254] *See* Senator John McCain, Op-Ed, *Nature Is Not a Liberal Plot*, THE NEW YORK TIMES, Nov. 22, 1996.

[255] *See id.*

[256] *See supra* note 229.

[257] *See id.*

[258] *See id.*

[259] *See id.*

not classified as wilderness study areas.[260] Among the Republican co-sponsors of HR 1500 were Wisconsin's Scott Klug, Connecticut's Christopher Shays, and Maryland's Connie Morella.[261]

In the 107th Congress, the latest version of the conservationists' preferred bill, America's Red Rock Wilderness Act of 2001, was co-sponsored by a handful of Republicans, none from the West.[262] They included Illinois Senator Peter Fitzgerald and Representatives Christopher Shays of Connecticut, Jim Leach of Iowa, and Connie Morella of Maryland.[263] Ten years after wilderness recommendations were submitted to Congress, Utah's BLM wilderness issue has not been resolved.[264]

The battle over Utah public lands reached a crescendo in 1996, when President Bill Clinton designated 1.7 million acres as the Grand Staircase-Escalante National Monument, the first monument to be managed by BLM.[265] The designation was the first of twenty monuments, covering 5.3 million acres that Clinton either established or enlarged under the authority conferred by the Antiquities Act.[266] Clinton's actions enraged Western Republicans, who denounced them as federal "land grabs" that could harm local economies based on logging, mining, and grazing.[267] In 2001, Hansen and other Western Republicans introduced HR 2114, which would significantly change the Antiquities Act by allowing Congress to veto any new monument or enlargement of an existing monument exceeding 50,000 acres in size.[268]

Another Clinton policy that enraged Western Republicans but won the support of Northeastern and some Midwestern Republicans was the

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[260] *See id.*

[261] *See* Thomas, Library of Congress, 104th Congress, HR 1500, America's Red Rock Wilderness Act of 1995, *available at* www.thomas.loc.gov/cgi-bin/query/z?c104:H.R.1500: (last visited Feb. 2, 2003)

[262] *See* Thomas, Library of Congress, 107th Congress, S. 786, America's Red Rock Wilderness Act of 2001, *available at* www.thomas.loc.gov/cgi-bin/query/z?c107:S.786: (last visited Dec. 27, 2002); *see* Thomas, Library of Congress, 107th Congress, H.R. 1613, America's Red Rock Wilderness Act of 2001, *available at* www.thomas.loc.gov/cgi-bin/query/z?c107:H.R.1613 (last visited Dec. 27, 2002).

[263] *See id.*

[264] *See id.*

[265] *See* United States Bureau of Land Management, *Bureau of Land Management-Grand Staircase-Escalante National Monument, available at* www.blm.gov/nlcs/ monuments/index.html (last visited Dec. 27, 2002).

[266] *See supra* note 76.

[267] *See* Carol Hardy Vincent, Congressional Research Service, *Grand-Staircase-Escalante National Monument, ENR 98-993*, 1998, *available at* www.NCSEonline.org/nle/crsreports/public/pub-4.cfm?&CFID=6235932&CFTOKEN=57649885 (last visited Dec. 27, 2002).

[268] *See* Thomas, Library of Congress, 107th Congress, H.R. 2114, National Monument Fairness Act of 2001, *available at* www.thomas.loc.gov/cgi-bin/query/z?c 107:H.R.2114: (last visited Dec. 27, 2002).

Roadless Area Conservation Rule.[269] The rule, adopted in 2001 after exhaustive public hearings, prohibited most road construction and timber cutting projects on 58.5 million acres of "inventoried roadless areas," "de facto" wilderness lands which had been the focus of wilderness potential reviews in the two RARE processes.[270] Typical of the reaction from Western Republicans was a 2000 statement from Idaho Senator Larry Craig, chairman of the public lands subcommittee of the Senate Energy and Natural Resources Committee, that the Forest Service was "clinically delusional" for advancing the roadless rule.[271] But in 2002, Boehlert and seventeen other House Republicans, along with two Republican senators, Lincoln Chafee of Rhode Island (son of the late John Chafee) and John Warner of Virginia, co-sponsored legislation, HR 4865 and S. 2790, respectively, to codify the rule into federal law.[272]

The political hand of Western Republicans was greatly strengthened by the election of George W. Bush, the son of the 41st president, as Clinton's successor in 2000. Bush promised increased emphasis of commodity production on public lands. For example, Bush supports oil drilling in the Arctic National Wildlife Refuge.[273] Bush's appointments were a clear signal of the change in direction. To head the Interior Department, he named Gale Norton, a James Watt protégé and proponent of expanded commodity production from federal lands.[274] As overseer of the Forest Service, Bush appointed Mark Rey as Undersecretary of Agriculture for Natural Resources and the Environment.[275] Rey was a former vice presi-

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[269] *See* REP America, *Letter of Thanks to 22 GOP Representatives for Urging President Bush to Uphold the Roadless Area Conservation Rule, available at* www.repamerica.org/opinions/thank-you letters/30.htm (last visited Feb. 2, 2003); *see* Charles Pope, *Potomac Watch: A Forest Of Obstacles Lie in Way of 'Roadless Rule,'* SEATTLE POST-INTELLIGENCER, June 8, 2002, *available at* www.seattlepi.nwsource.com/national/73893_ pot08.shtml (last visited Feb. 2, 2003).

[270] *See* United States Forest Service, *Forest Service Roadless Area Conservation, Final Impact Statement*, 2000.

[271] *See* John Hughes, Associated Press, *Senator Says Roadless Plan Threatens Conservation Bill, Article*, THE SEATTLE DAILY JOURNAL OF COMMERCE, July 27, 2000.

[272] *See* Thomas, Library of Congress, 107th Congress, H.R. 4865, National Forest Roadless Area Conservation Act of 2002 (Introduced in House), *available at* thomas.loc.gov/cgi-bin/query/z?c107:H.R.4865 (last visited Dec. 27, 2002); *see* Thomas, Library of Congress, 107th Congress, S. 2790, Roadless Area Conservation Act of 2002 (Introduced in Senate), *available at* www.thomas.loc.gov/cgi-bin/query/z?c107:S.2790: (last visited Dec. 27, 2002).

[273] *See* Public Broadcasting System, *Bush and the Environment*, aired March 29, 2001, *available at* www.pbs.org/newshour/bb/environment/jan-june01/bushenv_3-29.html (last visited Feb. 2, 2003).

[274] *See* Earthjustice Legal Defense Fund, *Policy and Legislation: White House Watch Administration Profiles: Interior Department: Gale Norton - Interior Secretary, available at* www.earthjustice.org/policy/profiles/display.html?ID=1004 (last visited Feb. 3, 2003).

[275] *See* Hal Bernton, *Nominee for Forest Service Post Has Strong Timber Ties*, THE SEATTLE TIMES, June 24, 2001, *available at* www.seattletimes.nwsource.com /html/localnews/134310125 _markrey24m0.html (last visited Dec. 27, 2002); *see* United States Department of Agriculture, *Biographical Sketch, Mark E. Rey, Undersecretary for Natural Resources and Environment, available at* www.usda.gov/agencies/gallery/ rey.htm (last visited Dec. 27, 2002).

dent of the American Forest and Paper Association, a wood products industry trade association.[276] Rey, who also worked as a Senate committee aide, was an author of the 1995 "salvage logging rider."[277] The Interior Department's assistant secretary in charge of BLM is Rebecca Watson, an attorney who served on the board of the Mountain States Legal Foundation, which both Watt and Norton hailed from.[278] Watson denounced a 1999 Montana Supreme Court ruling that Montanans have the right to a clean and healthful environment.[279]

In May 2001, the Bush administration announced it would propose amendments to the Roadless Area Conservation Rule to give forest managers more discretion in their management. Shortly thereafter, in response to litigation from the state of Idaho, Boise Cascade and other plaintiffs, United States District Court Judge Edward Lodge imposed a preliminary injunction blocking implementation of the rule.[280] Conservationists criticized the administration for offering only a minimal defense of the rule.[281] In his injunction order, Lodge noted that the federal government agreed with the plaintiffs on certain issues.[282] The injunction was lifted on appeal to the United States Court of Appeals, 9th Circuit, which returned the case to Judge Lodge, noting that the district court had "abused its discretion."[283]

Other Bush administration initiatives that have alarmed conservationists in the past two years include:

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[276] *See id.*

[277] *See* Earthjustice Legal Defense Fund, *Policy and Legislation, White House Watch Administration Profiles, Mark Rey, Undersecretary for Natural Resources and Environment, available at* www.earthjustice.org/policy/profiles/display.html?ID=1014 (last visited Dec. 27, 2002).

[278] *See* United States Department of Interior, *Rebecca W. Watson, available at* www.doi.gov/bio/watsbio.html (last visited Dec. 27, 2002); *see* Ron Selden, *Pending Nomination of Rebecca Watson Raises Red Flags*, INDIAN COUNTRY TODAY, Nov. 11, 2001, *available at* www.indiancountry.com/?2798 (last visited Dec. 27, 2002).

[279] *See* Associated Press, *Montana High Court Ruling Could Have Sweeping Impact*, Livestock Weekly, Nov. 14, 1999, (last visited Dec. 27, 2002), http://www.livestock weekly.com/papers/99/11/04/whlmontana.asp; *see* Supreme Court of the State of Montana, Case No. 97-455, 1999 MT 248, 296 Mont. 207, 988 P2d. 1236, *Montana Environmental Information Center et. al. v. Department of Environmental Quality et. al.*, www.lawlibrary.state.mt.us/dscgi/ds.py/Get/File-1825/97-455.htm (last visited Dec. 27, 2002).

[280] Order Granting Preliminary Injunction, Kootenai Tribe of Idaho et. al. v. Ann Veneman et. al., Case No. CV01-10-N-EJL (District of Idaho, 2001) www.id.uscourts .gov/ECM/dc_ images/__0UF0T7ZW110069011.pdf (last visited Dec. 27, 2002)

[281] *See* Environmental News Network, *Bush Is No Environmental Defender, Attorneys Charge*, Jan. 11, 2002, www.enn.com/news/enn-stories/2002/01/01112002/s_ 46094.asp (last visited Feb. 2, 2003)

[282] *See supra* note 280.

[283] Opinion, Kootenai Tribe of Idaho et. al. v. Ann Veneman et. al., Case No. CV01-10-N-EJL (District of Idaho, 2001), United States Court of Appeals for the Ninth Circuit, www.ca9.uscourts.gov/ca9/newopinions.nsf/BF7AED3870353A3E88256C8D00576B6C/$file/0135 472.pdf?openelement (last visited Dec. 27, 2002).

- Withdrawal of U.S. participation in the Kyoto treaty to reduce carbon dioxide emissions and reversal of a 2000 campaign pledge to establish carbon dioxide emissions standards for power plants[284]
- Proposed revisions in "New Source Review" requirements for existing power plants under the Clean Air Act[285]
- Proposed changes in forest planning regulations that would allow forest supervisors to forego drafting environmental impact statements on updated forest management plans[286]
- No recommendation for additional wilderness in the new management plan for the Tongass National Forest[287]
- Proposal to expedite forest thinning projects[288]
- Increase in the number of snowmobiles permitted in Yellowstone National Park[289]
- National Energy Policy proposals to expedite oil and gas production on public lands, including the Arctic National Wildlife Refuge[290]
- Proposals to drill coalbed methane wells on BLM land in Wyoming and Montana[291]
- Repeal of the Interior Department's authority to veto permits for hard-rock mining on public lands that would cause irreparable harm[292]

For one long-time Republican lawmaker, the conservation stance of the Bush administration and congressional leaders became intolerable. Senator Jim Jeffords, who had represented Vermont in the House and Senate as a Republican since 1975, announced in May 2001 he was changing his party status to Independent but would caucus with the De-

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[284] *See* Joan Lowy, Scripps Howard News Service, *From Air to Sewage, Bush Has Reshaped Agenda*, SEATTLE POST-INTELLIGENCER, Dec. 23, 2002, *available at* www.seattlepi.nwsource.com /national/101150_bushenviro23.shtml (last visited Dec. 27, 2002).

[285] *See id.*

[286] *See id.*

[287] *See* Alaska Rainforest Campaign, *Bush Administration Sides with Timber Industry in Alaska Wilderness Decision: Administration Ignores Overwhelming Public Support for Wilderness*, Press Release, May 16, 2002, *available at* www.akrain.org /press_room (last visited Dec. 27, 2002).

[288] *See* Katharine Q. Seelye, *Bush Proposes Change to Allow More Thinning of Forests*, THE NEW YORK TIMES, Dec. 12, 2002.

[289] *See* Greater Yellowstone Coalition, *Administration Chooses Snowmobiles Over a Healthy Yellowstone*, Press Release, Nov. 8, 2002, available at www.greater yellowstone.org/snowmobiles_in _yellowstone.html (last visited Dec. 27, 2002).

[290] *See* The Wilderness Society, *Energy and Public Lands Report*, 2002, available *at* www.wilderness.org/newsroom/pdf/bigoil2002.pdf (last visited Dec. 27, 2002).

[291] *See* The Wilderness Society, *Fragmenting Our Lands: The Ecological Footprint of Oil and Gas Development: A Spatial Analysis of a Wyoming Gas Field*, 2002 (copy in author's files).

[292] *See supra* note 282.

mocrats, thus throwing control of the Senate to the Democrats for the remainder of the 107th Congress.[293] Jeffords' switch was a dramatic illustration of the transformation that had relegated pro-conservation Republicans to the party's margins. At his public statement announcing his switch, Jeffords said: "Given the changing nature of the national party, it has become a struggle for our leaders to deal with me, and for me to deal with them."[294] He listed energy and environmental policy as two of the issues with which he had fundamental disagreements with President George W. Bush and other party leaders.[295] Since becoming an Independent, Jeffords has been outspokenly critical of the Bush administration's policies on energy priorities and clean air policy.[296]

Jeffords was not the only Republican to defy Bush's wishes on specific environmental issues. In 2001, the House turned down oil drilling off the Florida coast, in the Great Lakes, and inside national monuments, thanks to the votes of Republicans.[297] More than two-dozen, including Boehlert, Connecticut's Christopher Shays and Nancy Johnson, Pennsylvania's Jim Greenwood, and Michigan's Vern Ehlers, voted against all three proposals.[298] In the Senate, a Great Lakes drilling ban amendment co-sponsored by Fitzgerald and Democrat Debbie Stabenow of Michigan was enacted into law in 2001 and recently the Senate voted to extend the moratorium until 2005.[299]

A dramatic public lands issue to come before the Senate during the 107th Congress was the proposal to open the coastal plain of the Arctic National Wildlife Refuge to oil drilling.[300] Opening of the 1.5 million-acre coastal plain requires an act of Congress as a result of Section 1002 of the Alaska National Interest Lands Conservation Act of 1980, which directed the Interior Department to study the area's biological resources and potential for oil production.[301] Opening of the refuge has been a key

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[293] *See* Senator James Jeffords, *Statement of Senator Jeffords: "Declaration of Independence," May 24, 2001, Burlington, Vermont*, available at <http://jeffords.senate. gov/declaration_of_ independence.html (last visited Dec. 27, 2002).

[294] *See id.*

[295] *See id.*

[296] *See id.*

[297] *See* REP America, *Proud to Praise 'Em!*, The Green Elephant, Summer 2001, available at www.rep.org/news/ge5.1_proud.htm (last visited Dec. 27, 2002).

[298] *See id.*

[299] *See* Senator Peter Fitzgerald, *Senate Approves Stabenow-Fitzgerald Two Year Moratorium on Great Lakes Drilling*, News Release, July 17, 2001, available at www.fitzgerald.senate.gov/legislation/drilling/releases/greatlakes.htm (last visited Dec. 27, 2002); *see* Senator Peter Fitzgerald, Senate Extends Fitzgerald's Great Lakes Drilling Moratorium, News Release, Jan. 27, 2003, *available at* www.fitzgerald.senate. gov/currentnews/current8.htm (last visited, Feb. 3, 2003).

[300] *See* David E. Rosenbaum, *Senate Blocks Fuel Drilling in Alaska Wildlife Refuge*, THE NEW YORK TIMES, April 19, 2002.

[301] *See* United States Geological Survey, *Arctic Refuge Coastal Plain Terrestrial Wildlife Research Summaries*, *available at* www.absc.usgs.gov/1002/section1.htm (last visited Feb. 3, 2003).

goal of Alaska's all-Republican congressional delegation since 1980.[302] Other Republicans, however, have proposed legislation to add the coastal plain to the National Wilderness Preservation System, which would bar drilling.[303] Those Republicans include former Senator William Roth of Delaware and Connecticut Representative Nancy Johnson.[304] The pro-drilling effort in the 107th Congress was led by then-Senator Frank Murkowski of Alaska, who sought to include language opening the coastal plain in an energy policy bill that went to the floor of the Senate in 2002.[305] The previous year, the House had passed an energy bill with language opening the refuge.[306] An amendment by Representative Johnson to prohibit drilling was defeated narrowly.[307] The Senate, however, rejected drilling by a fifty-four to forty-six vote on a cloture motion, with eight Republicans joining the majority.[308] The Republicans were Maine's Olympia Snowe and Susan Collins, Rhode Island's Lincoln Chafee, New Hampshire's Bob Smith, Illinois' Peter Fitzgerald, Ohio's Mike DeWine, Oregon's Gordon Smith, and Arizona's John McCain. Jeffords, the former Republican, also voted against drilling.[309]

The pro and con arguments of Republicans echoed earlier debates about public lands — Theodore Roosevelt's battles over national forests, the damming of Hetch Hetchy, the rejection of the Echo Park Dam, the passage of the Wilderness Act, and subsequent legislation to expand the National Wilderness Preservation System. The values of Western Republicans allied with businesses and rural communities seeking access to timber, mineral and other resources clashed with Republicans, many from the Northeast, who emulated TR in a fight to conserve America's

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[302] *See* Senator Ted Stevens, Stevens States that Iraq is Using Oil as a Weapon Against the U.S., News Release, April 8, 2002, *available at* www.stevens.senate.gov/ pr040802.htm (last visited Feb. 3, 2003); *see* Representative Don Young, Rep. Young Announces Victory on ANWR: House Votes to Open 1002 Area, News Release, August 1, 2001, *available at* www.house.gov/donyoung/press/p20010801_1.htm (last visited Feb. 3, 2003).

[303] *See* Thomas, Library of Congress, 107th Congress, HR 770, Morris K. Udall Arctic Wilderness Act of 2001, Thomas, *available at* www.thomas.loc.gov/cgi-bin/query/z?c107:H.R.770: (last visited Dec. 22, 2002).

[304] *See* Alaska Wilderness League, A History of the Arctic National Wildlife Refuge, *available at* www.alaskawild.org/timeline.html (last visited Dec. 27, 2002); *see* Thomas, Library of Congress, 107th Congress, H.R. 770, Morris K. Udall Arctic Wilderness Act of 2001 (Introduced in House), *available at* www.thomas.loc.gov/cgi-bin/query/z?c107:H.R.770: (last visited Dec. 27, 2002).

[305] *See* David E. Rosenbaum, *Senate Blocks Fuel Drilling in Alaska Wildlife Refuge*, THE NEW YORK TIMES, April 19, 2002.

[306] *See id.*

[307] *See* About.com U.S. Gov Info/Resources, House Okays Arctic Drilling: Bush Energy Policy Awaits Senate Test, August 2, 2001, *available at* www.usgovinfo.miningco.com/library/weekly/aa080201b.htm (last visited Feb. 3, 2003).

[308] *See* REP America, Letter Thanking Eight Republican Senators for Voting to Protect the Arctic National Wildlife Refuge, April 19, 2002, *available at* www.repamerica.org/opinions/thankyou letters/43.htm (last visited Feb. 3, 2003).

[309] *See generally* Congressional Record, Volume 148.

heritage on behalf of future generations.[310] Examples of pro-drilling and anti-drilling statements are below.

Said Senator Kay Bailey Hutchison of Texas in a 2002 statement:

> A tiny sliver of land in the northeast corner of Alaska could hold the key to America's energy independence. The Arctic National Wildlife Refuge, or ANWR, has been at the center of the energy debate in Washington, D.C., and around the country. The entire refuge is 19.5 million acres, roughly the size of South Carolina. But the area we need to develop is only 2,000 acres — smaller than many Texas ranches. Underneath its soil is a vast pool of oil that could help us reduce our reliance on other countries, particularly those in the Middle East.[311]

In contrast, Chafee said that Arctic drilling was not worth damaging a pristine environment:

> I'm prepared to support a national energy policy that balances our energy needs with strong environmental protection. Reducing our dependence on foreign oil is a national priority, but should not come at the expense of our nation's precious natural resources. Allowing oil exploration in this pristine coastal plain promises only short-term benefits that may irreparably damage the wildlife values and unique vitality of the Arctic refuge.[312]

Yet despite divisions between parties, party factions, and regions, a few wilderness bills got through Congress and were enacted into law after 1994. For many such bills, bipartisan support was essential. After a prolonged and bitter battle between conservationists and loggers, the Opal Creek wilderness area in Oregon was designated with the support of Senator Mark Hatfield, a Republican, in 1996.[313] With the support of Republican Representative Scott McInnis, several areas in western Colo-

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[310] *See* Senator Kay Bailey Hutchison, *ANWR - Protecting a Natural Resource*, Statement, March 20, 2002, *available at* www.hutchison.senate.gov/ccanwr.htm (last visited Dec. 27, 2002); *see* Senator Lincoln Chafee, *Chafee Votes Against Oil Drilling in Arctic Refuge*, Press Release, April 18, 2002, *available at* www.chafee.senate.gov /press_releases/04180201.pdf> (last visited Dec. 27, 2002).

[311] *See* Senator Kay Bailey Hutchison, *ANWR - Protecting a Natural Resource*, Statement, March 20, 2002, available *at* www.hutchison.senate.gov/ccanwr.htm (last visited Dec. 27, 2002).

[312] *See* Senator Lincoln Chafee, *Chafee Votes Against Oil Drilling in Arctic Refuge*, Press Release, April 18, 2002, *available at* www.chafee.senate.gov /press_releases/04180201.pdf (last visited Dec. 27, 2002).

[313] *See* Thomas, Library of Congress, 104th Congress, Omnibus Parks and Public Lands Management Act of 1996 (Enrolled as Agreed to or Passed by Both House and Senate), *available at* www.thomas.loc.gov/cgi-bin/query/z?c104:H.R.4236.ENR: (last visited Dec. 27, 2002); *see* Tim Lillebo, A History of Oregon Wilderness Protection, Wild Oregon, Newsletter of Oregon Natural Resources Council Fund, Fall 1999, Volume 26, Number 3, *available at* www.onrc.org/wild_oregon/wo99/wofall99p2.html (last visited Dec. 27, 2002).

rado were added to the National Wilderness Preservation System.[314] Black Canyon of the Gunnison National Monument was re-designated a national park and the wilderness area within the park was expanded in 1999.[315] The following year, the 75,000-acre Black Ridge Canyons wilderness area was established, along with the adjacent Colorado Canyons National Conservation Area on BLM land.[316] The Spanish Peaks wilderness area, covering 18,000 acres, was designated in 2000.[317]

In 2002, Nevada's split Senate delegation, Democrat Harry Reid and Republican John Ensign, co-sponsored wilderness legislation for southern Nevada, while Republican Representative Jim Gibbons sponsored a House version.[318] The drafting of the compromise bill required extensive negotiations among southern Nevada interests, including land developers.[319] The Clark County Public Lands and Natural Resources Act added 444,000 acres of mostly BLM land to the National Wilderness Preservation System and "soft-released" 231,000 acres of wilderness study areas.[320] President George W. Bush signed the bill into law on November 6, 2002.[321]

In the 108th Congress, the Senate is still almost as closely divided as it was during the 107th Congress, but the adherents of Western Republicans' point of view on public lands are in a stronger position.[322] With the enthusiastic support of President Bush, oil drilling in the Arctic refuge,

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[314] *See* Representative Scott McInnis, *Public Lands, available at* http://www.house.gov/mcinnis/publiclands.htm (last visited Dec. 27, 2002).

[315] *See* Thomas, Library of Congress, 106th Congress, H.R. 1165, Black Canyon National Park and Gunnison Gorge National Conservation Area Act of 1999 (Introduced in House), *available at* www.thomas.loc.gov/cgi-bin/query/z?c106:H.R.1165: (last visited Dec. 27, 2002).

[316] *See* Thomas, Library of Congress, 106th Congress, H.R. 4275, Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000 (Enrolled as Agreed to or Passed by House and Senate), *available at* www.thomas.loc.gov/cgi-bin/query/z?c106:H.R.4275.ENR: (last visited Dec. 27, 2002).

[317] *See* Thomas, Library of Congress, 106th Congress, S. 503, Spanish Peaks Wilderness Act of 2000 (Enrolled as Agreed to or Passed by House and Senate), *available at* www.thomas.loc.gov/cgi-bin/query/D?c106:8:./temp/~c106ZBJtHy:: (last visited Dec. 27, 2002).

[318] *See* Thomas, Library of Congress, 107th Congress, S. 2612, Clark County Conservation of Public Land and Natural Resources Act of 2002, *available at* www.thomas.loc.gov/cgi-bin/query/z?c107:S.2612: (last visited Feb. 3, 2003); *see* Thomas, Library of Congress, 107th Congress, HR 5200, Clark County Conservation of Public Land and Natural Resources Act of 2002, *available at* www.thomas.loc.gov/cgi-bin/query/z?c107:H.R.5200.ENR: (last visited Feb. 3, 2003).

[319] *See* Richard Lake, *Management Plan: Land Bill: Something for Everyone*, LAS VEGAS REVIEW-JOURNAL, Oct. 19, 2002, *available at* www.reviewjournal.com/lvrj_home /2002/Oct-19-Sat-2002/news/19880212.html (last visited Feb. 3, 2003).

[320] *See* Representative Jim Gibbons, Clark County Lands Bill Passes House, Press Release, Oct. 16, 2002, (last visited Dec. 27, 2002), *available at* www.house.gov/apps/list/press/nv02_gibbons/pr.landsbill2.html (last visited Dec. 27, 2002).

[321] *See* White House, *President Signs Bills into Law*, Press Release, Nov. 6, 2002, *available at* www.whitehouse.gov/news/releases/2002/11/20021106-3.html (last visited Dec. 27, 2002).

[322] *See* THE NEW YORK TIMES, *Environmental War Clouds*, editorial, Nov. 25, 2002; *see* Katharine Q. *Seelye*, *Industry Seeking Rewards from GOP-Led Congress*, THE NEW YORK TIMES, Dec. 3, 2002.

one of America's wildest landscapes, may well be approved by Congress' Republican majority, precluding its addition to the National Wilderness Preservation System for the foreseeable future. A Western Republican, Idaho's Larry Craig, chairs the Public Lands and Forests Subcommittee of the Energy and Natural Resources Committee, a subcommittee that has jurisdiction over wilderness designations on BLM and national forest lands.[323]

VI. THE FUTURE OF THE NATIONAL WILDERNESS PRESERVATION SYSTEM

Today, nearly forty years after the passage of the Wilderness Act, Congress has placed more than 106 million acres — f 4.4 percent of the nation's total area — within the National Wilderness Preservation System.[324] Wilderness lands include nearly 700 individual units, including approximately thirty-five million acres inside national forests, forty-three million acres in national parks, twenty-one million acres in national wildlife refuges, and nearly seven million acres of BLM lands.[325] Conservationists assert that millions of acres of "de facto" wilderness are eligible for inclusion in the National Wilderness Preservation System.[326] The Campaign for America's Wilderness has calculated that national forests and BLM lands include 319 million acres of unprotected roadless lands.[327] The Wilderness Society, founded by Aldo Leopold, Bob Marshall, and six others in 1935, is working to add 200 million acres to the National Wilderness Preservation System.[328]

Conservationists worry that much of the nation's unprotected "de facto" wilderness is vulnerable to development, such as roads for logging and mining, oil and gas drilling, the spread of off-road vehicles, and urban encroachment, both at the edges of the nation's metropolitan areas and in rural areas.[329] For example, the Bush administration supports in-

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[323] *See* United States Senate Committee on Energy and Natural Resources, *Subcommittees, available at* www.energy.senate.gov/about/about_subommittees.html (last visited Feb. 3, 2003).

[324] *See* Wilderness Information Network, *National Wilderness Preservation System, available at* www.wilderness.net/nwps (last visited Feb. 3, 2003).

[325] *See* Wilderness Information Network, *Agency Administration of the National Wilderness Preservation System*, Table, *available at* www.wilderness.net/nwps/db/table _4.cfm (last visited Dec. 27, 2002).

[326] *See* Campaign for America's Wilderness, *America's Wilderness Heritage in Crisis: Our Vanishing Wild Landscape*, 2002 (on file with author).

[327] *See id.*

[328] *See* The Wilderness Society, *Celebrate Wilderness*, *available at* www.wilderness.org /wild/celebrate/ (last visited Dec. 28, 2002).

[329] *See supra* note 321.

creased energy development on Western public lands.[330] In Wyoming's Powder River Basin, the Bureau of Land Management is completing plans to open eight million acres to drilling of nearly 40,000 coalbed methane wells to feed the nation's growing appetite for natural gas.[331] Conservationists fear that a sympathetic Bush administration will support Western state and local government right-of-way claims under the now-repealed 1866 Mining Act, leading to roads that would render roadless public lands ineligible for wilderness designation.[332]

For some conservationists, a leading threat to wilderness runs deeper than drilling rigs and expanding roads — the specter of technological alterations that would eliminate wildness at the most fundamental levels, through the development and spread of genetically engineered organisms. Author Jack Turner wrote:

> Something disturbing is at stake with all these replacements, something that strikes deeper into our souls than degraded ecosystems, the loss of species, or even new levels of risk brought on by the ever-accelerating advances of technology. It goes unnoticed because it cannot be seen with the eye, but it entails a vast disappearance with metaphysical, or, to be precise, ontological consequences: the material effect will hasten the end of evolution; the psychological effect will hasten the loss of the Other.[333]

For many Western Republicans, the issue is more prosaic — possible wilderness designations are hanging like a cloud over the rural constituencies they speak for. The BLM, for example, manages more than seventeen million acres as "wilderness study areas."[334] The Forest Service has recommended 4.2 million acres of "inventoried roadless areas" for wilderness designation.[335] Wilderness study areas must be managed to preserve their suitability for wilderness designation until Congress decides otherwise. To end uncertainty, a handful of wilderness skeptics in the House — all Western Republicans — introduced HR 4620 in the

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[330] *See* Charles Levendosky, Bush Turns BLM into Energy Machine, High Country News, March 18, 2002, *available at* www.hcn.org/servlets/hcn.Article?article _id=11094 (last visited Feb. 3, 2003).

[331] *See* Blaine Harden and Douglas Jehl, *Ranchers Bristle as Gas Wells Loom on the Range*, THE NEW YORK TIMES, Dec. 29, 2002 (on file with author).

[332] *See* Christopher Lee, *Ruling Paves the Way for Wilderness Roads*, WASHINGTON POST, Dec. 25, 2002 (on file with author).

[333] *See* Jack Turner, *The Wild and Its New Enemies*, published *in Return of the Wild: The Future of Our Natural Lands*, Pew Wilderness Center, Island Press, 2001.

[334] *See* United States Bureau of Land Management, *National Landscape Conservation System: Map of Wilderness Areas and Wilderness Study Areas*, *available at* www.blm.gov/nlcs/wild _map.htm (last visited Feb. 3, 2003).

[335] *See* United States Forest Service, *Inventoried Roadless Area Acreage: Categories of NFS Land Summarized by State*, *available at* www.roadless.fs.fed.us/documents /feis/data/sheets/acres /appendix_state_acres.html (last visited Feb. 3, 2003).

107th Congress.[336] The bill, sponsored by Hansen, Arizona's Bob Stump, Idaho's Butch Otter and Mike Simpson, Colorado's Joel Hefley, California's Richard Pombo (now chairman of the House Resources Committee), George Radanovich and Duncan Hunter, and Nevada's Jim Gibbons, would give Congress ten years to act on wilderness study areas, or else they would be "hard-released."[337] The bill was favorably received by the Bush administration's Interior Department.[338] In testimony before a House subcommittee, Deputy Assistant Secretary Nina Rose Hatfield pointed out there are nearly forty-eight million acres of wilderness study areas on BLM, national park, and national wildlife refuge land.[339] "The holding pattern of the last decade continues to frustrate people on all sides of the issue. We are hopeful that Congress' consideration of H.R. 4620 will spur this debate," she testified.[340]

In the West, the political dynamic is changing, however. Urban areas are growing as migrants seek out the beauty of Western landscapes, even as rural constituencies fight to protect an older way of life based on growing and extracting resources from the land. Protected landscapes can serve as an economic driver for Western states, as University of Montana economist Thomas M. Power has argued.[341] "Economic research has shown that areas with intact natural environments, protected by official wilderness or park status, have attracted higher levels of economic activity than otherwise comparable areas without intact natural environments," Power wrote.[342] For example, an analysis of six thousand land parcels in Vermont found that parcels near designated wilderness sold at prices thirteen percent higher than parcels not located near wilderness.[343]

The changing dynamic has compelled Western Republicans, grudgingly perhaps, to support some land protection initiatives. Following conservationists' failed campaign to persuade President Bill Clinton to establish a national monument in southwestern Idaho's Owhyee region, local officials and conservationists formed the "Owhyee Initiative" to find consensus on protecting local landscapes.[344] The initiative, which

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[336] *See* Thomas, Library of Congress, 107th Congress, H.R. 4620, America's Wilderness Protection Act (Introduced in House), *available at* www.thomas.loc.gov/cgi-bin/query/D?c107:1:./temp/~c107E6cngh:: (last visited Dec. 27, 2002).

[337] *See id.*

[338] *See supra* note 222.

[339] *See id.*

[340] *See id.*

[341] *See generally* Thomas Michael Power, *"Gifts of Nature" in an Economic World*, published *in Return of the Wild: The Future of Our Natural Lands*, Pew Wilderness Center, Island Press, 2001.

[342] *See id.*

[343] *See id.*

[344] *See generally* Mike Matz, *The Politics of Protecting Wild Places*, published *in Return of the Wild: The Future of Our Natural Lands*, Pew Wilderness Center, Island Press, 2001.

has the support of Republican Senator Mike Crapo, may develop wilderness recommendations for congressional consideration.[345]

What does the future hold for wilderness? Can a large, industrial democracy with a growing population, ever-advancing technologies, and a voracious appetite for energy, water, wood, and other resources preserve an "enduring resource of wilderness"? Can sufficient areas be protected where nature can continue its four billion-year experiment in biological evolution, untrammeled by man? Conservationists and present and former land managers have sketched out perspectives and policies for guiding wilderness protection in the 21st century.

Michael Soule, a conservation biologist and a founder of The Wildlands Project, argues that in some cases, careful human intervention in protected wilderness areas, especially small units vulnerable to "edge" and "island" effects, will be necessary to restore historic conditions of wildness and allow for natural evolution to occur:

> Ideally, wilderness areas should be large enough for evolution to occur. Sadly, though, the small size of most wilderness areas in North America south of the 50th parallel precludes this possibility, at least for critters equal to or greater than the size of a badger. Thus, to assume that the current set of designated wilderness areas in the United States can be crucibles of evolutionary self-renewal for nature is a delusion, though in the short run such areas may have the appearance of being self-willed or untrammeled.[346]

While biological diversity preservation was not a central purpose of the Wilderness Act, wilderness areas could serve as a foundation for new forest management policies to protect wildlife diversity, according to plant scientists William S. Alverson and Donald M. Waller at the University of Wisconsin-Madison:

> A new diversity policy should be cognizant of the fact this country had the political will to designate wilderness areas, albeit reluctantly, largely on Forest Service land. Moving forward from these bases, a new diversity policy should redefine the public's and the (Forest Service's) consciousness of wild conditions as a biological imperative which transcends the legal, political, recreational, and aesthetic senses in which the notion of wilderness areas presently exists in our culture.[347]

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[345] *See id.*

[346] *See generally* Michael Soule, *Should Wilderness Be Managed?* published *in Return of the Wild: The Future of Our Natural Lands*, Pew Wilderness Center, Island Press, 2001.

[347] *See generally* William S. Alverson, Walter Kuhlmann, and Donald M. Waller, *Wild Forests: Conservation Biology and Public Policy*, Island Press, 1994.

Wilderness unavoidably exists in culture because its protection grew from cultural roots, as former National Park Service Director Roger Kennedy wrote. In the 19th century, lands were protected from immediate consumption because Americans took pride in them.[348] As Kennedy wrote:

> Yellowstone, Yosemite, and the Grand Canyon were established with the language of patriotism ... Few people speak against growth and expansion, yet a potent tide of environmental conservation has developed in (the 20th century) to slow the headlong rush of blind progress. This concern reflects not opposition to progress but rather a deep-seated uneasiness about how narrowly progress has been construed. We care about some other things than making a living. We have some values not governed by market forces. And this tension between U.S. citizens' deep concern for their environment and the fatalistic rush to the myth of progress constitutes the dynamic in which wilderness stewardship takes place.[349]

In the 21st century, Kennedy wrote, wilderness will exist in an America that is more heavily populated, much more ethnically diverse, and with higher numbers of aging citizens.[350] Land stewards will need to manage lands collegially with communities, business, and non-profit organizations. Land stewards will have to reach beyond park boundaries and make wilderness relevant to "citizens in south Tucson, Miami's Little Havana, St. Maries in Idaho, and East Harlem ... We have many potential allies, but we need better ways and many other places besides our parks to reach them."[351]

Kennedy called for a stronger ethic of obligation and stewardship, which Edmund Burke spoke of in the 18th century and Aldo Leopold reframed in the first half of the 20th century.[352] "What we need more of, perhaps, is an ethic and aesthetic under which humans, practicing the qualities of prudence and moderation, may indeed pass on to posterity a good earth, a diversity of wilderness."[353]

Ultimately, values will drive the workings of the political system where Americans make decisions about conservation and countless other public policy issues. Those values will inform, influence, shape, and reshape political parties. To a significant extent, the future of wilderness depends on what the future holds for the Republican Party. Will more

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[348] *See generally* Roger Kennedy, *Managing Wilderness in Perpetuity and in Democracy*, International Journal of Wilderness, December 1996, Volume 2, Number 3.

[349] *See id.*

[350] *See id.*

[351] *See id.*

[352] *See id.*

[353] *See id.*

lawmakers from the party of Theodore Roosevelt and John Saylor go the way of Jim Jeffords? Or, will Sherwood Boehlert's lonely band of allies serve as a beachhead for the return of conservationists to the party's ruling circle? If the latter proves to be the case, the party's leaders once again will champion conservation values, as articulated by William Milliken, Republican governor of Michigan during the 1970s and a leading light among conservation-oriented public servants of that time: "I believe that we should not measure human progress solely on what we have built, but also on what we have preserved and protected."[354]

[354] *See generally* Dave Dempsey, *Ruin and Recovery: Michigan's Rise as a Conservation Leader*, University of Michigan Press, 2001.