

# Denver Law Review

---

Volume 76  
Issue 2 *Symposium - Wilderness Act of 1964:  
Reflections, Applications, and Predictions*

---

Article 3

January 2021

## Talking about Wilderness

Federico Cheever

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

---

### Recommended Citation

Federico Cheever, Talking about Wilderness, 76 Denv. U. L. Rev. 335 (1998).

This Front Matter is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

# INTRODUCTION

## TALKING ABOUT WILDERNESS

FEDERICO CHEEVER\*

On those days when I bicycle home from the law school, I peddle over the prairie billows trapped under Denver's asphalt and bluegrass. I turn west onto a residential street and, as I crest a hill, I have spread before me a slice of the city and, beyond it, the ramparts of Colorado's front range. Beyond that, I can see the snow-covered flanks, gray shoulders and summit of Mount Evans in the congressionally designated Mt. Evans Wilderness. This experience is commonplace in the American West. Residents of Seattle can peer out at Mt. Baker, denizens of Albuquerque see the Sandia peaks, and citizens of Salt Lake City see Twin Peaks and Lone Peak, all in designated wilderness. These are not the nation's largest wilderness areas or its most significant. Yet to millions of people they represent the more than 100 million acres of land we have set aside as "area[s] where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain."<sup>1</sup> We see them every day, but we rarely talk about them.

Perhaps the most extraordinary thing about the National Wilderness Preservation System (NWPS)—which, as Gregory Aplet points out, has grown "beyond the wildest dreams of the early wilderness advocates"<sup>2</sup>—is how rarely it enters into our national conversation about the environment. There are no more than a handful of court cases about wilderness and wilderness preservation.<sup>3</sup> While much ink has been spilt in Congress about specific wilderness areas in specific states, these debates now rarely examine the core assumptions of the wilderness system. They tend, instead, to revolve around specific resource issues, most commonly water,<sup>4</sup> mining,<sup>5</sup> roads,<sup>6</sup> and questions of how much wilderness we should designate.

---

\* Associate Professor of Law, University of Denver College of Law. B.A., M.A., Stanford University 1981; J.D. University of California at Los Angeles School of Law 1986. I wish to thank Miranda Peterson, Natural Resources Symposium Editor, and Kent Modesitt, Editor-in-Chief, and all the other members of the *Denver University Law Review* who made this symposium possible.

1. Wilderness Act of 1964 § 2(c), Pub. L. No. 88-557, 78 Stat. 890, 890 (codified as amended at 16 U.S.C. § 1131(c) (1994)).

2. Gregory H. Aplet, *On the Nature of Wildness: Exploring What Wilderness Really Protects*, 76 DENV. U. L. REV. 347, 347 (1999).

3. See generally H. Anthony Ruckel, *The Wilderness Act and the Courts*, 76 DENV. U. L. REV. 611 (1999).

4. See generally Karin P. Sheldon, *Water for Wilderness*, 76 DENV. U. L. REV. 555 (1999).

This is, first and foremost, extremely good news. Wilderness makes sense for the United States in the late twentieth and early twenty-first century. As Patrick Shea declares, the Wilderness Act "recognizes humanity's need for solitude, reflection and regeneration."<sup>7</sup> These qualities and opportunities are not abundant in the modern world.

In the American West, where wilderness sits prominently on the landscape, it is fair to say there is some consensus about our need for it. As Pete Morton points out, we consistently value wilderness for more than recreation.<sup>8</sup> We perceive it as a scarce resource—far scarcer than the water, minerals and wood fiber we might have if we dispensed with the idea of wilderness.<sup>9</sup>

But though we value wilderness, we cannot easily articulate what it is. Wilderness is a quicksilver notion defying easy description, reflecting images of solitary wandering, fruitful introspection<sup>10</sup> and biological preservation. More than a century after we began to value it for itself and thirty-five years after its emergence as a statutory institution, wilderness remains enigmatic. We have traced its roots through our culture<sup>11</sup> and measured its biological significance.<sup>12</sup> We have designed and implemented administrative processes to discover it and reject imposters.<sup>13</sup> We develop scales for measuring its qualities,<sup>14</sup> but its core remains elusive.

For years, I have shied away from discussions of the meaning of wilderness. I am not alone in doing this. I feared that the elusiveness of wilderness may lead good-hearted skeptics to conclude that it was an illusion, a sham, a sanctimonious pretext for depriving federal land management agencies of discretion. However, after reading the extraordinarily broad and deep analysis in the articles included in this symposium, I

5. See generally Kenneth Hubbard et. al, *The Wilderness Act's Impact on Mining Activities: Policy Versus Practice*, 76 DENV. U. L. REV. 591 (1999).

6. See generally H. Michael Anderson & Alike Moncrief, *America's Unprotected Wilderness*, 76 DENV. U. L. REV. 413 (1999).

7. Patrick A. Shea, *Foreword to Natural Resources Symposium, Wilderness Act of 1964: Reflections, Applications, and Predictions*, 76 DENV. U. L. REV. 331 (1999).

8. See Pete Morton, *The Economic Benefits of Wilderness: Theory and Practice*, 76 DENV. U. L. REV. 465 (1999).

9. Cf. *id.* at 473.

10. See generally JOSEPH SAX, *MOUNTAINS WITHOUT HANDRAILS* (1980) (noting the incompatibility of preservationist ideals and those of lay nature enthusiasts and arguing that preservationist leadership, despite its ill repute, should guide government action respecting National Park Service management).

11. See generally RODERICK NASH, *WILDERNESS AND THE AMERICAN MIND* (1967) (chronicling the development of wilderness protection and America's steadily increasing appreciation of its value).

12. See generally Dave Foreman, *The Wildlands Project and the Rewilding of North America*, 76 DENV. U. L. REV. 535 (1999).

13. See generally Mathew J. Ochs, Note, *Defining Wilderness: From McCloskey to Legislative, Administrative and Judicial Paradigms*, 76 DENV. U. L. REV. 659 (1999).

14. Cf. Aplet, *supra* note 2.

decided that I have been wrong to avoid the subject. We need to talk about wilderness far more than we have. The concept will bear examination. Understanding it cannot help but lead us to practical solutions to many public lands issues and, perhaps, to a deeper understanding of who we are and what we need.

### I. WHAT WE AGREE ON

For most of the 1990s, the epicenter of the "Battle for Wilderness"<sup>15</sup> has been southern Utah. The vast holdings of the BLM in the canyon, desert, and mountain country drained by the Colorado River and in the basin and range country on the other side of the state's mountainous spine, have been the first priority of wilderness champions from Utah, around the country, and around the world. At the same time, these lands are the backyard of many people with little trust of or patience with the federal government and its land management policies. The battle has been joined in Congress. Utah wilderness has spawned a series of bills,<sup>16</sup> covering the entire state or small portions of it, providing for extensive wilderness preservation or very little. Nowadays, however, few are questioning the basic notion of wilderness or the wisdom of wilderness designation.

On October 7, 1998, the United States House of Representatives "crushed" an enormous public lands bill by a vote of 302 to 123.<sup>17</sup> The bill, proposed by sixty-seven members of Congress, included provisions covering park expansions and land exchanges in thirty-six states. Many of these proposals, including a pact between Utah Governor Mike Leavitt and Interior Secretary Bruce Babbitt that would have traded out state school-trust parcels surrounded by national forests and parks in Utah,<sup>18</sup> had broad support.<sup>19</sup> However, the bill also included something the vast majority of the members of the 105th Congress found unacceptable, Utah Representative Chris Cannon's bill to form a national conservation and heritage area in Utah's San Rafael Swell.<sup>20</sup> As Representative Sherwood Boehlert, a leader of moderate, pro-environment Republicans who voted against the bill observed, the combined bill was like taking medication

---

15. I borrow the phrase, "Battle for Wilderness," from wilderness scholar Michael Frome. See MICHAEL FROME, *BATTLE FOR WILDERNESS* (1997).

16. See, e.g., America's Red Rock Wilderness Act of 1997, S. 773, 105th Cong.; Utah Wilderness and School Trust Lands Protection Act of 1997, H.R. 1952, 105th Cong.; Utah Public Lands Management Act of 1995, S. 884, 104th Cong.

17. Lee Davidson, *House Buries Hansen's Lands Bill*, DESERET NEWS, Oct. 8, 1998, at A01; see also Omnibus National Parks and Public Lands Act of 1998, H.R. 4570, 105th Cong.; 144 CONG. REC. H9870 (daily ed. Oct. 7, 1998) (providing roll call for the House vote on H.R. 4570).

18. See H.R. 4570, § 553.

19. See John Heilprin & Brent Israelsen, *House Kills Hansen's Lands Bill*, SALT LAKE TRIB., Oct. 8, 1998, at A1.

20. See San Rafael Swell National Heritage and Conservation Act, H.R. 3625, 105th Cong. (1998). The San Rafael Swell bill was included in Title V of the Omnibus National Parks and Public Lands Act of 1998. See H.R. 4570, §§ 501-555.

“that is 90 percent penicillin and 10 percent arsenic.”<sup>21</sup> Cannon’s San Raphael Swell bill was the poison.

Cannon’s bill, H.R. 3625, was a wilderness bill, or, to be more accurate, an antiwilderness bill. Its primary sin was eliminating wilderness study area status—an administrative prewilderness designation afforded protection under the Wilderness Act—for 140,000 acres of BLM land in the breathtaking wild country in and around Emery County, Utah.<sup>22</sup> Mike Matz, director of the Southern Utah Wilderness Alliance, termed the October 7 vote “a stunning defeat for the anti-wilderness coalition in Congress and a great victory for the people of Utah who want to see wilderness protected.”<sup>23</sup>

It seems reasonable to assume that the San Raphael Swell bill contained the latest word in antiwilderness extremism. It came out of the wilderness battleground of southern Utah. It could not garner significant support in the conservative 105th Congress and, indeed, was considered so repulsive by a solid majority of that body that it sank a raft of other popular proposals. As a result, it becomes a very useful artifact in determining where we are in our national conversation about wilderness.

The news, of course, is that the bill was not really that awful. H.R. 3625, introduced in the House of Representatives on April 1, 1998, was without a doubt a pro-development bill. It referred to the San Rafael Swell as “one of the country’s last frontiers”<sup>24</sup> and remarked on the area’s “notable history of coal and uranium mining.”<sup>25</sup> Yet, in another time, it would have seemed a conservationist measure. The bill designated a 630,000-acre “San Rafael Swell National Conservation Area.”<sup>26</sup> The bill prohibited “all commercial sale of trees, portions of trees, and forest products located in the conservation area.”<sup>27</sup> The bill created four (admittedly modest) wilderness areas within the conservation area, totaling roughly 130,000 acres,<sup>28</sup> and another 250,000 of wilderness acres outside

21. Davidson, *supra* note 17, at A01.

22. See Heilprin & Israelsen, *supra* note 19, at A1.

23. *Id.*

24. The bill’s introductory provisions state:

The San Rafael Swell region of the State of Utah . . . possesses important historical, cultural, and natural resources that are representative of the central themes associated with the history of the American West, including themes of pre-Columbian and Native American culture, exploration, pioneering, settlement, ranching, outlaws, prospecting and mining, water development and irrigation, railroad building, industrial development, and the utilization and conservation of natural resources.

H.R. 3625, 105th Cong. § 101(a)(2). The exact nature of “pre-Columbian and Native American . . . mining, . . . railroad building [and] industrial development,” remains unexplained.

25. *Id.* § 101(b)(5).

26. *Id.* § 202(b).

27. *Id.* § 202(e).

28. Specifically, the bill created the following four areas:

- (1) Crack Canyon Wilderness Area, consisting of approximately 16,676 acres.
- (2) Mexican Mountain Wilderness Area, consisting of approximately 29,953 acres.
- (3) Muddy Creek Wilderness Area, consisting of approximately 37,010 acres.

the conservation area.<sup>29</sup> The bill then “released” from further consideration as wilderness all other public lands in Carbon and Emery Counties<sup>30</sup> an area of perhaps 1.5 million acres.<sup>31</sup>

On April 23, 1998, the Subcommittee on National Parks and Public Lands of the dreaded Committee on Resources of the House of Representative held hearings on the ill-fated bill. The hearings were notable for the absence of wilderness bashing. Utah Governor Michael Leavitt emphasized the bill’s protective provisions and its designation of 240,000 acres of land “we would all agree should be wilderness.”<sup>32</sup> The most violent attack on wilderness came from Emery County Commissioner Randy Johnson, who declared, “Wilderness was meant to apply only to those exemplary lands which truly qualify. It was never intended as a management tool for all public lands.”<sup>33</sup>

William Meadows, President of The Wilderness Society, while praising the “the work of many in Emery, Carbon, and Sanpete Counties who have sought to address the important issues before us,” opposed the bill and pointed out that it did “not address the full range of wilderness quality lands in Utah” and “actually reduces the level of protection that wilderness resources currently receive, by eliminating [Wilderness Study Area] protection for over 140,000 acres.”<sup>34</sup>

Patrick Shea, Director of the Bureau of Land Management at that time—the agency with land holdings at issue—also weighed in against the bill. While praising the “genuine concern” of the bill’s authors for “preservation, conservation and interpretation of very significant heritage

(4) San Rafael Reef Wilderness Area, consisting of approximately 46,079 acres.

*Id.* § 221(a). Acreages for these wilderness areas were updated in the second and final version of the bill, adding approximately 10,000 acres.

29. These areas were designated as follows:

- (1) Desolation Canyon Wilderness Area (Carbon County), consisting of approximately 109,050 acres.
- (2) Desolation Canyon Wilderness Area (Emery County), consisting of approximately 119,650 acres.
- (3) Turtle Canyon Wilderness Area, consisting of approximately 31,450 acres.
- (4) Horseshoe Canyon Wilderness Area, consisting of approximately 16,600 acres.

*Id.* § 301(a). This provision was subsequently omitted in the second and final version of the bill.

30. *See id.* § 304(b).

31. *See* BUREAU OF LAND MANAGEMENT, U.S. DEP’T OF THE INTERIOR, FACTS AND FIGURES FOR UTAH 62 (1997).

32. *The San Rafael Swell National Heritage and Conservation Act: Hearings on H.R. 3625 Before the Subcomm. on Nat’l Parks and Public Lands of the House Comm. on Resources*, 105th Cong. 78 (1998) [hereinafter *Hearings*] (statement of Michael Leavitt, Governor, State of Utah).

Consider what Emery County has proposed: Protection of 240,000 acres of wilderness. Areas we would all agree should be wilderness. Beyond wilderness the bill also proposes a National Conservation Area that gives statutory protection to the San Rafael Swell. In a bold step for which they have been widely criticized by many of their sister counties, they have removed the threat of commercial extractive development by proposing to exclude oil drilling, mining, and timbering activities from the Swell.

*Id.*

33. *Id.* at 69 (statement of Randy Johnson, Chairman, Emery County Board of Commissioners).

34. *Id.* at 79 (statement of William H. Meadows, President, The Wilderness Society).

resources present in the San Rafael Swell,"<sup>35</sup> Shea pointed out that "the wilderness areas proposed for the region encompassed by the proposal fall far short of previous wilderness bills considered in this Subcommittee."<sup>36</sup> He went on to state, "Given these deficiencies, if passed in its present form, the Secretary would recommend that the President veto H.R. 3625."<sup>37</sup>

On October 7th, the House voted a complete victory for Meadows and Shea and a complete defeat for the proponents of H.R. 3625. Back in Utah, representatives who had supported the bill had already taken their lumps in the press. On October 1, the *Salt Lake Tribune* ran an opinion letter remarking "how flagrantly Utah's politicians disregard public opinion about environmental issues."<sup>38</sup> On October 4, a similar letter in the *Deseret News* declared, "It is incomprehensible how out of touch our congressional leaders are with the desires of their electorate," pointing out that, "[a] recent survey . . . found that the average Utahn wants 9.25 million acres as wilderness [designated in the state]."<sup>39</sup>

The impression one takes away from the short and unhappy life of H.R. 3625 is that wilderness and support for wilderness protection have sunk deep roots in Utah and throughout the West. Wilderness meets a need, or satisfies a demand, that will be satisfied. When the worst thing that a county commissioner from southern Utah can say about wilderness—in a public forum—is that it should not replace other public land management tools, we have reached a place that Bob Marshall, Howard Zahniser, Stewart Udall, and Aldo Leopold could only dream about.

This transformation is not limited to Congress and county government. John Baden and Pete Geddes's article, *Environmental Entrepreneurs: Keys to Achieving Wilderness Conservation Goals?*,<sup>40</sup> shows us a new brand of conservative thinker—one who cites David Quammen<sup>41</sup> and Michael Bean<sup>42</sup> and describes a class of "environmental entrepreneurs" who find methods of extending many of the virtues of wilderness management onto private land.

35. *Id.* at 74 (statement of Patrick A. Shea, Director, BLM, U.S. Dep't of the Interior).

36. *Id.*

37. *Id.*

38. *Real Conservatives*, SALT LAKE TRIB., Oct. 1, 1998, at A14.

39. *Utah Delegation Out of Step*, DESERET NEWS, Oct. 4, 1998, at AA2.

40. John A. Baden & Pete Geddes, *Environmental Entrepreneurs: Keys to Achieving Wilderness Conservation Goals?*, 76 DENV. U. L. REV. 519 (1999).

41. See *id.* at 529 nn.59, 60 (citing DAVID QUAMMEN, *THE SONG OF THE DODO: ISLAND BIOGEOGRAPHY IN AN AGE OF EXTINCTIONS* (1996)).

42. See *id.* at 530-32 nn.62, 63, 68. (citing Michael J. Bean & David S. Wilcove, *The Private-Land Problem*, 11 CONSERVATION BIOLOGY 1 (1997); Robert Bonnie & Michael Bean, *Habitat Trading for Red Cockaded Woodpeckers: Enhancing Recovery, Reducing Conflicts*, ENDANGERED SPECIES UPDATE, Apr./May 1996, at 7; Michael J. Bean, *Environmental Economics and Policy Analysis: A Seminar for Professors of Environmental Law*, Address at the Foundation for Research on Economics and the Environment Seminar (July 17, 1998)).

Ed Quillen, a veteran of Colorado journalism, encountered the same development when he filled in for the publisher of the Wet Mountain Tribune in Westcliffe, Custer County, Colorado, at the eastern foot of the Sangre de Cristo Mountains and the recently designated Sangre de Cristo Wilderness. "I expected the usual hollering about 'locking up resources' and consequent economic disaster if mining or logging were forbidden in much of the Sangres."<sup>43</sup> Quillen heard instead an "almost ecstatic" representative of the chamber of commerce who "cited some study that predicted a three-fold increase in visits to the Sangres with formal wilderness designation."<sup>44</sup> Quillen concluded, "The rabid rural denunciations of wilderness designation, so familiar during my years editing the Kremmling newspaper 20 years earlier that I could recite them as easily as the alphabet, had vanished from public discourse, at least in Custer County."<sup>45</sup> Custer County is not alone.

It's time to face the truth. The NWPS exists, it is large, and it will not go away. Indeed, as Robert Glicksman and George Coggins suggest, the trend for wilderness designation, both nationally and internationally, may be nowhere near its culmination.<sup>46</sup> We need to talk about it, talk about our need for it, decide publicly what we will and will not allow within it, and how we will undertake the daunting task of preserving it—as we need it—for future generations.

## II. WHAT WE MUST DISCOVER

Unfortunately, just because we all seem to agree that wilderness has value, that it satisfies a need many, many of us feel, does not mean we agree about what wilderness is or how to preserve it. Obviously, our failure in comprehending what it is we value may frustrate our ability to preserve what we need. This flaw in the foundation may slowly destroy the architecture no matter how attractive we find the structure.

On May 27, 1998, the Office of the Chief of the United States Forest Service issued a four-page response to an administrative appeal filed by George Nickas of Wilderness Watch concerning a Forest Service decision about the use of "fixed anchors" left by rock climbers in the Sawtooth Wilderness in the Sawtooth National Forest. The decision document applies straight-forward logic to find that permanent climbing aids are permanent "installations" and therefore prohibited by the Wilderness Act:

While rock climbing is an authorized activity in wilderness areas, providing rock climbing opportunities where equipment or installa-

---

43. Ed Quillen, *Wilderness Also Obeys the Law of Unintended Consequences*, DENV. POST, Sept. 1, 1998, at B09.

44. *Id.*

45. *Id.*

46. See Robert L. Glicksman & George Cameron Coggins, *Wilderness in Context*, 76 DENV. U. L. REV. 383, 383 (1999).



tions is required that violates the Act's prohibitions is not permissible under the Act. Administration of wilderness areas pertains primarily to the Forest Service's responsibility to care for and protect the wilderness resource, not for wilderness users to undertake their recreational activities by whatever means necessary.<sup>47</sup>

The decision loosed an avalanche of criticism that forced the Forest Service to beat a hasty retreat, pursued by angry Senators from Washington State, in unlikely alliance, and REI.<sup>48</sup> The rockslide unearthed one of many wilderness issues we still need to resolve.

Much of the abuse directed at the Forest Service threw back versions of the values that underlie the concept of wilderness and inspired the NWPS. In the *Denver Post*, Alison Osius offered this personal narrative:

One July day, two good friends and I were a few hundred feet up a remote thousand-foot cliff when we got slammed by a storm we never saw coming. From behind the mountain top, a black cloud plowed overhead, and below us the valley slopes lighted up creepy yellow. To the north, purple-lined clouds scudded together, lightning gleaming behind them. As we shouted for the third person on the rope to hurry, a white wall of rain swung around the skyline buttress, and then over the summit swept another wall, this one of hail, white marbles against the charcoal sky. A curtain, it moved in front of us and hung there, 50 feet wide, rippling and swaying and sometimes gaping to reveal the green hillsides opposite; in spots, hail blew upwards. On our ledge, ropes whipped through our hands, and hailstones piled around my feet. Thick, newly formed waterfalls blew and splashed all around us. Yet Dan Lepske's voice was gentle as he checked each rappel set-up by our friend Jeff Brewer. We were all getting cold and clumsy. I kept thinking, "This is when bad stuff happens—do everything right." I had known someone who got killed in rain and chaos like this, slipping off a ledge. Doubling our ropes through slings tied to old pitons at stations 150 feet apart, we rappelled, freezing brown water spurting from the ropes down our legs. And then we reached the ground, and the storm was over, and water sliced down the wall in a billion tiny ripples, and we three were laughing and closer even than we had been before.<sup>49</sup>

---

47. Darrel L. Kenops, *Discretionary Review of April 13, 1998 Appeal Decision on Sawtooth Wilderness Management Direction* (visited Dec. 5, 1998) <[http://www.fs.fed.us/recreation/climbing\\_anchor\\_frame.html](http://www.fs.fed.us/recreation/climbing_anchor_frame.html)> (correspondence from Darrel L. Kenops, Reviewing Officer for the Chief of the Forest Service, U.S. Dep't of Agriculture, to Sam Davidson, The Access Fund).

48. See Terry Richard, *It's a Break for Fixed Anchors*, PORTLAND OREGONIAN, Sept. 30, 1998, at F03. As Richard reported:

Enlisting the help of Washington's senators, Republican Slade Gorton and Democrat Patty Murray, climbers have received a reprieve from the June decision by the Forest Service to ban fixed climbing anchors in wilderness areas. . . . At the urging of the Seattle-based outdoor sports industry, Washington's senators, who seldom agree on anything about the environment, have come to the climbing community's rescue.

*Id.*

49. Alison Osius, *Forest Service Push to Ban Fixed Anchors Is Off the Wall*, DENV. POST, Aug. 30, 1998, at H01.

Osius continues:

In climbing, anything can happen, including retreat. That, however, is an option the Forest Service in June virtually banned on many routes at over 40 climbing areas. And uncertain retreats mean much more dangerous climbing—if you're willing to go to these places at all.<sup>50</sup>

In the *Idaho Statesman*, Armando Menocal recalled:

My skin still tingles when I recall our helplessness as the thunder and flash of lightning struck simultaneously. My rock-climbing partner and I had just reached the summit of a long climb in California's High Sierra, when a fast-moving thunderstorm broke over us.

I yelled to my partner to start climbing down and gripped the rope that would hold her if she fell. A short way down the back side, the mountain became less steep, and we started to scramble toward the bottom, unroped and unanchored.

But we hadn't counted on the hail. In moments, our escape route was buried in slippery ball bearings. My metal climbing gear buzzed as I put a nylon loop, or sling, around a rock jammed in a crack. We fed our rope through the sling, then rappelled to safety.<sup>51</sup>

Menocal continues:

That narrow escape was six years ago. Today, the experience would be a federal crime: We had left the nylon sling around the chockstone, an act the U.S. Forest Service now says defiles federally protected wilderness.<sup>52</sup>

In the *Los Angeles Times*, Edward Everett Vaill joined the pack:

The climber was nearing the top of a difficult rock-climbing route on one of the polished granite domes above Tuolumne Meadows in the high country of Yosemite. These routes are known for their long run-outs—unprotected sections where the lead climber is in danger of a long fall. The climber was 50 feet out from her last "protection," a three-eighths-inch-wide expansion bolt and a two-inch-long bolt hanger placed in the crackless face, to which her climbing rope was secured through a snaplink called a carabiner. A 100-foot fall, which climbers call a "screamer," was likely if she didn't find the next bolt.

Suddenly, like a golden nugget nestled in a stream bed, she spotted the bolt and carefully climbed over and clipped her rope into it. Breathing a huge sigh of relief, she thanked the climber who years before took the time to drill the hole for that bolt in the seamless face.<sup>53</sup>

---

50. *Id.*

51. Armando Menocal, *Restrictions on Climbers in Wilderness Go Too Far*, IDAHO STATESMAN, Aug. 24, 1998, at 9B.

52. *Id.*

53. Edward Everett Vaill, *Environmental Wolf in Sheep's Clothing*, LOS ANGELES TIMES, Aug. 23, 1998, at M5.

Vaill, predictably, continues by declaring that the Forest Service's decision on fixed anchors has made this sort of experience impossible or life threatening.

The apparently spontaneous development of this genre of editorial memoir during the summer of 1998 tells us something. These stormy, sweaty polemics suggest that, for some people, the Forest Service balancing of the "wilderness resource" against rock climbing makes no sense because rock climbing helps us satisfy the needs that lead us to protect wilderness in the first place.

In August, James Lyons, Undersecretary of Agriculture, in charge of the Forest Service, reversed the "no anchors" decision and announced that the Forest Service would undertake a rulemaking on the subject.<sup>54</sup> The analysis and comment associated with that rulemaking, if and when it happens, will contribute to developing a national consensus about what wilderness is. George Nickas suggests the issue may finally be resolved in federal court.<sup>55</sup> Litigation will continue to shape our notion of wilderness. In his article for this symposium, George Nickas identifies this process of defining wilderness as a "step toward its *enduring* preservation."<sup>56</sup> Nickas also identifies many of the issues around which we will shape the process of definition.

On October 9, 1998, U.S. District Court Judge Lawrence Kahn in Albany, New York, applied the Americans with Disabilities Act (ADA)<sup>57</sup> to wildlands—New York's "forever wild" Adirondack State Park. In *Galusha v. New York State Department of Environmental Conservation*,<sup>58</sup> Kahn ordered the state to issue special permits to use motorized vehicles on roads in the wildlands park.<sup>59</sup> The ruling was the fruit of a modest campaign by activists for the disabled to gain motorized access to the Adirondacks.<sup>60</sup>

The Adirondacks State Park is not part of the Federal National Wilderness Preservation System and the presence of maintenance roads would preclude much of it from being included in that system. Further, Federal laws like the ADA preempt state laws like the ones protecting the Adirondacks. Nonetheless, the question of disabled access to wilder-

---

54. See Richard, *supra* note 48, at F03.

55. See *id.*

56. George Nickas, *Preserving an Enduring Wilderness: Challenges and Threats to the National Wilderness Preservation System*, 76 DENV. U. L. REV. 449, 449 (1999).

57. 42 U.S.C. §§ 12101–12213 (1994).

58. 27 F. Supp.2d 117 (N.D.N.Y. 1998); see *Police Conduct Requires Reversal of Convictions*, 220 N.Y. L.J. 73 (1998).

59. See *Galusha*, 27 F. Supp.2d at 125. Judge Kahn observed: "Given the state's extensive and often unnecessary current use of motorized vehicles on Forest Preserve roads, extending necessary motorized access to a limited number of persons with disabilities on those very same roads can hardly be said to 'fundamentally' alter the Park program." *Id.*

60. See *Disabled Seek to Expand Vehicle Use in State Park*, BUFFALO NEWS, Aug. 3, 1998, at A9.

ness is another important issue about what wilderness is and how we can satisfy our need for it. While no one would wish to deprive disabled people of wilderness experience, the plaintiff, disabled Theodore Galusha, and his six-wheel all terrain vehicle—"It'll go in water; it'll go up trees; it'll go through trees—it'll go anywhere"<sup>61</sup>—would send chills down the spine of many wilderness advocates.

I could continue to catalogue the variety of significant issues that touch on the meaning of wilderness, but the authors of the articles that follow do a far better job of it than I could. My point is simple. We should overcome our fear of talking about what wilderness is and begin an energetic conversation to help solve a host of practical problems. Strikingly, few of the authors in this symposium offer off-the-shelf solutions to the problems associated with wilderness. Instead, they initiate a rich, multi-layered discussion which may, eventually, lead toward solutions.

Even at this early point in the conversation, it doesn't take much perception to realize that solutions to the problems wilderness raise may exceed the bounds of the wilderness frame of reference. For example, Robert Glicksman and George Coggins use wilderness as a springboard to advocate a complete reorganization of federal land management agencies—with a National Park and Wildlife Service to deal with preservation and recreation and a National Forest and Range Service to oversee resource extraction.<sup>62</sup> The National Wilderness Preservation system is big, but the conversation is bigger.

\* \* \*

The wilderness we see shapes how we think about wilderness. Most of the days I encounter Mt. Evans, on my bicycle, it looks like a mountain. Occasionally, some demented turn of mind compels me to project some other image upon it: the haunch of some enormous beast or the fin of a rolling whale. But most often, on those days, I see a castle—a citadel against the onslaught of human stupidity and insignificant human time. The sturdier I perceive that citadel to be, the happier I am in my journey across the transformed landscape of the city. I am still happy when my path dips down toward the shopping center and the mountain disappears. I cannot tell you why. But I am willing to talk about it.

---

61. *Id.*

62. See Glicksman & Coggins, *supra* note 46, at 394.

