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### The Nation's First Forester-in-Chief: The Overlooked Role of FDR and the Environment

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**THE NATION'S FIRST FORESTER-IN-CHIEF:  
THE OVERLOOKED ROLE OF FDR  
AND THE ENVIRONMENT**

Review of Douglas Brinkley's *Rightful Heritage: Franklin D. Roosevelt and the Land of America* (HarperCollins Pub. 2016)

MICHAEL C. BLUMM\*

*Douglas Brinkley, biographer of Theodore Roosevelt and his environmental legacy, has produced a sequel on his distant cousin, Franklin Delano Roosevelt (FDR). In a comprehensive eco-biography, Brinkley shows in some detail how committed an environmentalist FDR was, protecting federal lands, encouraging state conservation efforts, making wildlife protection a national priority, and dedicating the federal government to soil protection and forest replanting. Although FDR's romance with federal dams undercuts the assertion somewhat, the Brinkley biography successfully shows that FDR has a legitimate claim to being the foremost of environmental American presidents.*

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\* Jeffrey Bain Faculty Scholar & Professor of Law, Lewis and Clark Law School. Dedicated to the memory of John P. Frank, who epitomized the FDR ethic, and who left a large mark on everyone he met. Kathleen Blumm provided expert editorial assistance and, in the process, became a fan of FDR herself.

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INTRODUCTION

Douglas Brinkley anointed Theodore Roosevelt (TR) as the nation’s “Wilderness Warrior” for protecting some 234 million acres of wild America during his presidency of 1901-1909.<sup>1</sup> In a *New York Times* survey of environmental groups in 2012, three years after Brinkley’s book, *The Wilderness Warrior*, TR was the overwhelming choice as the “greenest” president in United States (U.S.) history, while his distant cousin, Franklin Delano Roosevelt (FDR) barely made the list.<sup>2</sup> Brinkley’s recent environmental biography attempts to reclaim FDR’s “rightful heritage” as a legitimate contender for the claim as America’s greatest environmentalist to inhabit the White House.<sup>3</sup> Brinkley largely succeeds. After publication of *Rightful Heritage*, FDR’s environmental contributions can no longer be considered so cavalierly by those evaluating the green legacy of American presidents. If FDR’s achievements do not exceed TR’s, they certainly rival them, as Brinkley repeatedly makes clear over his 500+ page eco-biography.

This review considers Brinkley’s reevaluation of FDR’s substantial and largely overlooked environmental contributions. Section I briefly surveys useful background information that the Brinkley book supplies. Section II discusses the principal geographic places that influenced FDR’s approach to conservation, which is how most people of his era referred to environmental protection. Section III turns to people who shaped FDR’s environmental ethic and helped him carry out his environmental programs. Section IV evaluates his environmental legacy, divided temporally into actions during 1933-38 and from 1939 until the end of FDR’s presidency in 1945. This review essay agrees with Brinkley that FDR’s environmental sensitivities match any White House incumbent and tower over most. They also contrast markedly from the current occupant. Today’s environmentalists

1. See generally DOUGLAS BRINKLEY, THE WILDERNESS WARRIOR: THEODORE ROOSEVELT AND THE CRUSADE FOR AMERICA (2009).

2. See Emma Bryce, *America’s Greenest Presidents*, N.Y. TIMES (Sept. 20, 2012, 1:13 PM), [https://green.blogs.nytimes.com/2012/09/20/americas-greenest-presidents/?\\_r=0](https://green.blogs.nytimes.com/2012/09/20/americas-greenest-presidents/?_r=0) (survey by a dozen environmental organizations, ranking TR as the overwhelming favorite, followed in order by Presidents Nixon, Carter, Obama (through his first term), Jefferson, Ford, FDR, and Clinton. Only eight presidents received votes in the survey.).

3. See DOUGLAS BRINKLEY, RIGHTFUL HERITAGE: FRANKLIN D. ROOSEVELT AND THE LAND OF AMERICA (2016) [hereinafter BRINKLEY, RIGHTFUL HERITAGE].

can only hope sometime in the future for a 21<sup>st</sup> century reprise of the years in which “America’s Forester-in-Chief” headed the country.

## I. BACKGROUND

According to Brinkley, FDR—born into a Hudson Valley aristocratic family in 1882—lived the “pastoral ideal.”<sup>4</sup> He grew up on a 600-acre estate bordering the Hudson—Springwood—in Hyde Park, New York, established by his father, James.<sup>5</sup> As a boy he was an avid birder, classifying more than 300 species inhabiting Dutchess County;<sup>6</sup> he kept detailed “Bird Diaries,” and earned an associate membership in the prestigious American Ornithologists’ Union.<sup>7</sup> Roosevelt pursued his ornithological studies during several trips to Europe, which he visited regularly in his youth.<sup>8</sup>

After being tutored at Springwood in his early years,<sup>9</sup> FDR proceeded to study at Groton, an exclusive boarding school in Massachusetts outside of Boston, where the wealthy prepped for Ivy League schools, and where he was an average student quite interested in natural history.<sup>10</sup> A highlight at Groton was an 1897 visit by his cousin, TR, who regaled the students about wilderness conservation in the West.<sup>11</sup>

From Groton, FDR matriculated to Harvard University, after his father rejected his attempt to attend the Naval Academy, a product of FDR’s love of sailing.<sup>12</sup> Soon after he entered Harvard, his seventy-two year old father died, leaving FDR the responsibility of managing the grounds at Springwood, a duty he took seriously his whole life.<sup>13</sup> After his father’s death, Frederic Delano, his mother’s younger brother, became an influential figure in FDR’s life<sup>14</sup>—and would remain so throughout the White House

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4. *Id.* at 3–5.

5. *Id.* at 9. FDR later expanded the Springwood estate to more than 1400 acres. *Id.*

6. *Id.* at 17.

7. *Id.* at 21–22. After discovering drawers full of bird nests and eggs in his son’s bedroom, his father instructed young Franklin not to take more than one egg from a nest, a conservation lesson which, as Brinkley noted, “stuck.” *Id.* at 16.

8. *Id.* at 17–18.

9. *Id.* at 6, 24–25.

10. *Id.* at 26–30.

11. *Id.* at 30–31. At the time, TR had just finished serving as superintendent of the New York City police commission and was soon off to Cuba for the Spanish-American War. *Id.*

12. *Id.* at 33–34.

13. *Id.* at 34.

14. *Id.* at 35–36.

years.<sup>15</sup> Although he was an undistinguished student, FDR did become an editor and then president of the *Harvard Crimson* and joined a number societies and clubs, including the yacht club.<sup>16</sup> Although he gained most of his knowledge of American history from his “obsessive” stamp collecting (which he began at the age of ten), FDR did graduate from Harvard with a degree in history in 1903 and promptly returned to Europe for the summer.<sup>17</sup>

Upon his return, he began law school at Columbia without much enthusiasm.<sup>18</sup> But, in the summer of 1902, he ran into his fifth cousin (and TR’s niece), Eleanor Roosevelt, on a train, and within a year-and-a-half they were engaged—over his mother’s objections.<sup>19</sup> Brinkley challenges those who have suggested that FDR and Eleanor had little in common, noting their common roots in the Hudson Valley and their mutual attachment to the nearby Catskill and Shawangunk mountain ranges.<sup>20</sup> They spent their honeymoon in the Hudson Valley, at FDR’s home in Hyde Park.<sup>21</sup>

Bored with law practice, FDR ran for and scored an upset victory in a race for state senate for a traditionally Republican seat in 1910. With a “mellifluous” voice, “never grasping for the right word,”<sup>22</sup> he maintained that his neighbors, the farmers of the Hudson Valley, should plant trees to stabilize stream banks, curb soil erosion, and provide safe drinking water.<sup>23</sup> He won a narrow victory and soon became the chair of the senate’s Forest, Fish, and Game Committee.<sup>24</sup>

Many of FDR’s later policies and passions were evident during his state senate career. He promoted many forestry and wildlife protection measures, including the Roosevelt-Jones Conservation

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15. *See infra* Section III.B.

16. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 37.

17. *Id.* at 40.

18. *Id.* at 41 (“Legal studies bored him.”). He did eventually pass the bar examination, however, and joined the firm of Carter Ledyard & Wilburn, a Wall Street firm, in 1907, doing some admiralty law but resisting cases he considered boring and considering law practice to be tedious. *Id.* at 49.

19. *Id.* at 41–42.

20. *Id.* at 43.

21. *Id.* They did spend the summer on a three-month tour of Europe. *Id.* at 43–44. During the trip, FDR admired the German community forests and German forest practices. *Id.* at 44–46. He would continue to do so throughout his life. *See infra* notes 40, 57, 90–96, 114, 117 and accompanying text. As Brinkley stated, “[t]rees were more than just aesthetically pleasing to Franklin Roosevelt, they were God’s greatest utilitarian convention.” BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 46.

22. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 53.

23. *Id.* at 53–54.

24. *Id.* at 55.

Bill, which brought police power regulation to clear-cut forestry.<sup>25</sup> Among the issues he championed during his 1912 reelection campaign was sewage treatment, referring to his conservation philosophy as the “liberty of community.”<sup>26</sup> After being reelected, he became chair of the state senate’s Agricultural Committee and oversaw publication of *Woodlot Forestry* (which became his bible at Springwood), advocating government’s obligation to teach farmers how to grow hardwood forests on good land and white pine and black ash in swamps.<sup>27</sup>

FDR’s state senate career was cut short by his appointment by President Wilson as Assistant Secretary of the Navy in March 1913, and he served in that position for more than seven years.<sup>28</sup> During his Wilson Administration service, Roosevelt became close friends with Interior Secretary, Franklin Lane, both of whom were advocates for the “miracles” of hydropower, which also fostered land reclamation through irrigation.<sup>29</sup> FDR’s affinity with dams and hydroelectric power would persist throughout his political career.<sup>30</sup>

After World War I, FDR became the Democratic nominee for vice president in 1920, the first election with women voting nationwide. During the campaign, he was a conservationist when speaking in his home state of New York, but in the West he was in favor of the development of public lands.<sup>31</sup> This dichotomy was evident later in the New Deal.<sup>32</sup> His campaigning for “public

25. *Id.* at 56, 60. In support of the Roosevelt-Jones bill, FDR criticized greedy timber harvesters, who clear-cut the Adirondack Mountains for the sake of [lining] their own pockets during their own lifetime. They care not what happens after are gone, and I go further and say that they care not what happens to their neighbors, to the community as a whole, during their own lifetime. They will argue that even though they do exhaust all the natural resources, the inventiveness of man, and the progress of civilization . . . will supply a substitute when the time comes.

*Id.* at 67. FDR tried to prevent the logging of large trees, but his no-cut rule was eliminated in order to get the votes needed to pass the bill. *Id.* at 68.

26. *Id.* at 69.

27. *Id.* at 70–71.

28. *Id.* at 72. In his capacity as Navy Secretary, FDR was silent during the principal natural resources controversy of the day, the damming of Hetch Hetchy Valley in the Sierra Mountains, which Congress approved in 1913 for municipal water supply. *Id.* at 74–77. The next year, 1914, FDR unexpectedly (and without the support of the Wilson Administration) ran for U.S. Senate, but he lost in the primary to a Tammany Hall candidate. *Id.* at 80 (explaining that Roosevelt did not jeopardize his Navy position by running for office).

29. *Id.* at 76.

30. *See infra* notes 50–52, 128 and accompanying text.

31. BRINKLEY, RIGHTFUL HERITAGE, *supra* note 3, at 86–87. Roosevelt even said in Montana that “what is needed is development rather than conservation.” *Id.* at 86. The territorial governor of Alaska interpreted FDR’s Montana speech to be a rejection of “Pinchotism,” which he claimed “all the West [is] rabid against . . .” *Id.*

32. *See infra* notes 50–52, 128 and accompanying text.

dams”<sup>33</sup> was no doubt as much a product of his dislike of the monopoly power associated with private utility dams as it was for enhancing water supplies. After the election, in which the James Cox-FDR ticket lost by a landslide to the Republican ticket of Warren Harding and Calvin Coolidge, Brinkley reports that FDR “rediscovered his conservationist footing, only now with state parks instead of reforestation as his preferred mantra.”<sup>34</sup>

Always a Boy Scout enthusiast, FDR attended and served as toastmaster at a July 1921 jamboree held at Bear Mountain state park, forty miles north of New York City, which was drawing a million visitors annually.<sup>35</sup> Unfortunately, Roosevelt went for a swim at the park, the waters of which were contaminated with coliform bacteria (due to poor sanitary conditions at the park’s toilets), and he contracted poliovirus.<sup>36</sup> Almost immediately after traveling to his summer home at Campobello Island in New Brunswick along the Maine border, his legs were paralyzed.<sup>37</sup> He would never again walk without assistance.

During the next few years, FDR fought unsuccessfully to regain strength in his legs, although he found time to join the state park movement, work with the newly formed Isaac Walton League to combat water pollution, became president of the Boy Scout Foundation, and be a founding member of the Adirondack Mountain Club (dedicated to enforcing the “forever wild” provisions of the New York Constitution).<sup>38</sup> In 1922, his friend Gifford Pinchot was elected governor of Pennsylvania, who at the time of his election was president of the National Coast Anti-Pollution League and campaigned against private utilities as monopolists and exploiters of natural resources.<sup>39</sup> Brinkley observed that Pinchot’s campaign “captured Roosevelt’s attention.”<sup>40</sup>

During 1923, FDR took a winter vacation in Florida and discovered the Everglades, which would redound to the benefit of

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33. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 89.

34. *Id.* at 91.

35. *Id.* at 92–95.

36. *Id.* at 94–95.

37. *Id.* at 96.

38. *Id.* at 98–99.

39. *Id.* at 100.

40. *Id.* During the mid-1920s, FDR unsuccessfully sought to convince the president of the American Forestry Association to embrace a community-based kind of forestry comprised of both public and private lands that existed in Germany and Austria. This community-based kind of forestry would pursue sustainable “wise management” of the forest while producing a profit, as FDR did from his own management of Springwood. The president, George DuPont Pratt, did not believe the model would attract sufficient private investors. *Id.* at 100–01.

that land-water sea of grass in the future.<sup>41</sup> The next year, he encountered Warm Springs in Georgia, which within a decade would become the southern White House.<sup>42</sup> As he did in the Hudson Valley, FDR often drove (with the assistance of a hand-controlled car) through the country roads surrounding Warm Springs, stopping frequently to discuss crops and animal husbandry with his neighbors.<sup>43</sup> Perhaps understandably given his physical condition, he believed that the automobile was a vehicle for the democratization of nature, as it made accessible to the masses places like Yosemite and Yellowstone as well as closer state parks.<sup>44</sup> Affinity to places such as the Everglades, Warm Springs, and the Hudson Valley encouraged FDR to write his “conservation manifesto” in 1923, in which he pledged to 1) support wildlife refuges on both public and private land; 2) eliminate laws allowing open hunting seasons on federal lands; 3) educate the public that songbirds are not game species; and 4) standardize licensing and improving the “morale of the hunter.”<sup>45</sup> He would remain true to these principles until he died.

Appointed to the Taconic State Park Commission by Governor Al Smith in 1925, he scoured his beloved Hudson River Valley for potential state parks, promoted the Taconic State Parkway, and actually planned that parkway’s route in some detail in order to preserve natural features as much as possible.<sup>46</sup> After becoming the Democratic Party’s presidential nominee in 1928, Governor Smith persuaded FDR, after some reluctance, to run for governor.<sup>47</sup> His ensuing campaign “preached the gospel of state parks, soil conservation, public utilities, and scientific forestry... .”<sup>48</sup> After he won a narrow victory (at the same time that

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41. *Id.* at 101–04. See *infra* notes 109–111 and accompanying text.

42. BRINKLEY, *RIGHTFUL Heritage*, *supra* note 3, at 105–12. FDR was attracted to Warm Springs for its pine forests, clean air, and thermal pools. The latter induced a fish hatchery that interested Roosevelt, especially its sturgeon ponds. *Id.* at 109, 111.

43. *Id.* at 110. Roosevelt demonstrated that the land in the Warm Springs area, depleted from years of cotton planting, could ably support grazing beef cattle. *Id.*

44. *Id.* at 113.

45. *Id.* at 106.

46. *Id.* at 115. The great urban architect, Lewis Mumford—often critical of highways—considered FDR’s Taconic Parkway to be “masterly combination of modern engineering and conservation.” *Id.* at 124 (noting that the parkway, when finally finished in 1963, closely followed the route that Roosevelt established in 1929). However, another advocate for automobile recreation, Robert Moses, was often in conflict with FDR, so much so that Brinkley labeled Moses as Roosevelt’s “archenemy” of the 1920s. *Id.* at 113. Although both men believed in state and federal funding of roads, and both advocated preserving state parkland, Moses was focused on developments on Long Island; FDR, on projects in the Hudson River Valley and farther upstate. But both believed that beaches and coastal areas should be open to the public. *Id.* at 113–14.

47. *Id.* at 116.

48. *Id.* (also noting that FDR “took a stand against corruption”).



Al Smith was being trounced in the presidential election by Herbert Hoover), FDR became the unofficial leader of the Democratic Party.<sup>49</sup>

From the governor's house in Albany, according to Brinkley, he proved to be "a genius at making conservation a promise of exercise of self-worth and skill, not simply a warning that abstinence and caution were needed," promoting scientific forestry, public hydropower, land rehabilitation, and pollution control.<sup>50</sup> Thus, he was a supporter of old-growth forest preservation, tree planting, and land restoration as well as public dam building, a dichotomy that would also characterize New Deal policies.<sup>51</sup> His support for public hydropower development was a product of his distrust of the monopoly power that private utilities then seemed to have in setting consumer rates.<sup>52</sup> Roosevelt also clashed with preservationists over constructing a bobsled run at Lake Placid within the Adirondack Forest Preserve and over a proposed highway to the top of Whiteface Mountain, in both cases favoring recreational developments over preservation.<sup>53</sup>

FDR's response to the stock market crash of late 1929 and the ensuing economic depression was to provide tax relief for farmers and public work projects involving reforestation, pollution control, soil conservation, waterpower, and crop restoration.<sup>54</sup> But he opposed old-growth, commercial timber harvests and would continue to do so later in the White House.<sup>55</sup> The inveterate auto traveler also promoted tree planting near highways and opposed what he called the "excrescences on the landscape known as advertising signs"—efforts to improve highway scenery more than three decades before Congress enacted the Highway Beautification Act that Lyndon Johnson signed in 1965.<sup>56</sup>

By the time FDR was reelected governor in 1930, the Great Depression was well underway. He successfully lobbied for a state constitutional amendment authorizing state funding to purchase cut-over and abandoned lands in order to replant and, eventually, harvest timber from the reforested lands in the

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49. *Id.* at 120–21.

50. *Id.* at 122.

51. *Id.* 89, 122, 128–129.

52. *Id.* at 128–29 (also calling for "hyperregulation" of private utilities).

53. *Id.* at 124–26. The bobsled run for the 1932 Olympics eventually was constructed on private lands after the state's highest court thought it was inconsistent with the "forever wild" provisions of the New York Constitution. *Id.* at 125.

54. *Id.* at 129.

55. *Id.* Brinkley claimed that "there remains no better way to understand Roosevelt's land ethic and historical preservation instincts than by reading copies of [*American Forests*] magazine," which FDR read religiously. *Id.*

56. *Id.* at 132–33.

manner of the German community forests he so admired.<sup>57</sup> Fellow Hudson Valley resident, Robert Morgenthau, Jr.—whom Roosevelt appointed head of the state’s Conservation Department—proceeded to scout and purchase soil-depleted and clear-cut lands at discounted prices due to the economic depression.<sup>58</sup> FDR and Morgenthau’s plan was to replant with young, unemployed men with funding provided by an agency established in 1931, the Temporary Emergency Relief Administration (TERA), placed under the control of fellow progressive, Harry Hopkins.<sup>59</sup> Brinkley suggested that the 1931 constitutional amendment, coupled with its implementation by TERA’s youth “conservation corps,” was the birth of New Deal conservation.<sup>60</sup>

FDR announced he was running for president in January 1932, one week before his fiftieth birthday, beginning a campaign that would keep conservative Democrats from the South in his camp by “staying mum” on Jim Crow segregation laws and avoiding criticism of business.<sup>61</sup> He also supported the proposed Great Smoky Mountains National Park, sewage treatment to restore the Potomac River, and the preservation of the Okefenokee Swamp with its centuries-old cypress trees along the Georgia-Florida border from timbering.<sup>62</sup> After brokering a deal with Speaker of the House John Nance Garner to accept the vice-presidential nomination, FDR defeated Al Smith on the fourth ballot for the

57. *Id.* at 138–40 (also explaining that FDR enlisted Gifford Pinchot’s support for the constitutional amendment). The amendment encountered unexpected opposition when Al Smith led outdoors enthusiasts, who were concerned that the amendment would limit the expansion of the Adirondack Park, by countenancing nearby timber harvesting. *Id.* at 139. The amendment passed by a three to two margin in November 1931. *Id.* at 140.

58. *Id.* at 137–38. For more on Morgenthau, see *infra* note 153.

59. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 135–36. As governor, in 1930, FDR wrote an article in the journal *Country Home* expressing his deep concern over the fact that each year Americans consumed five times more timber than they planted. *Id.* at 133. Sounding very much like the ecologically sensitive forester that he was, he maintained that forests were necessary for soil conservation

to break the force of rainfall to delay the melting of snows, to sponge up the moisture that would otherwise pour down the slopes and grades, carrying with it invaluable fertility and creating floods that destroy. Much of the water that falls in forested land never needs to be carried away, for it is said that one average white oak tree will give off by evaporation one hundred and fifty gallons of water on a hot day.

*Id.* Roosevelt was heavily influenced by *Soil Erosion: A National Menace*, a 1928 pamphlet of U.S. Department of Agriculture, written by Hugh Bennett, the “father of soil conservation,” who accurately predicted the onset of the Dust Bowl. *Id.* at 42. FDR thought the pamphlet was, in Brinkley’s words, “a moral call to action.” *Id.*

60. *Id.* at 138–40 (citing the *New York Times*’ opinion that the passage of the amendment was the beginning of FDR’s presidential campaign).

61. *Id.* at 144.

62. *Id.* at 145–47.

presidential nomination.<sup>63</sup> Roosevelt's acceptance speech not only mentioned a "new deal" for the American public, but also emphasized reforestation of cut-over and abandoned lands that would, through a "conservation corps," supply a million jobs for the unemployed and simultaneously address both the soil erosion and "timber famine" problems.<sup>64</sup> He also called for doubling the number of national forests and wildlife refuges.<sup>65</sup> Conservation has never since been so prominent a feature of a presidential campaign.<sup>66</sup>

In the 1932 election, FDR won a landslide, carrying every western state. Roosevelt's coattails were long, as the Democrats won overwhelming majorities in both the Senate and the House.<sup>67</sup> Consulting with both Gifford Pinchot and Bob Marshall, the president-elect began to formulate a conservation program involving a large land acquisition program and use of the unemployed to restore and rehabilitate forestlands.<sup>68</sup> Work relief, land acquisition, and the institution of scientific forestry to heal the land would all work together in the forthcoming New Deal.<sup>69</sup>

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63. *Id.* at 148–49. Garner served two terms as FDR's vice-president, but he had so many policy disagreements with the Roosevelt Administration that he was ostracized from FDR's inner circle and famously described the vice-presidency as not worth "a bucket of warm piss." *Id.* at 149.

64. *Id.* at 150–51. Brinkley concluded that the "conservation corps" idea was the product of numerous influences, including the TERA corps in New York, FDR's own experiences with his lands in Hyde Park and Warm Springs, his fondness for German working forests, conversations with Gifford Pinchot, and FDR's Boy Scout experiences. *Id.* See also *infra* notes 103–105, 138–139, 190–199 and accompanying text (discussing the Civilian Conservation Corps).

65. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 154.

66. An FDR letter, which the incumbent Hoover Administration unsuccessfully attempted to use against Roosevelt, stated:

I believe in the inherent right of every citizen to employment at a living wage and pledge my support to whatever measures I may deem necessary for inaugurating self-liquidating public works, such as utilization of our water resources, flood control and land reclamation, to provide employment for all surplus labor at all times.

*Id.* at 154–55.

67. *Id.* at 155 (Senate majority of 60–35; House majority of 310–117). The FDR–Garner ticket won the electoral vote 472–59. *Id.*

68. Pinchot enlisted Marshall, who wrote the recreation portion of a report entitled *A National Plan for American Forestry* for the Senate, known as the Copeland Report, which recommended putting ten percent of federal forests into recreation zones. The report also recommended that the government purchase some 240 million acres of private woodlands. *Id.* at 161.

69. One prominent policy that FDR's New Deal pursued was to prioritize local recreational opportunities through encouraging the establishment of state park systems in each state. *Id.* at 162.

## II. FDR'S PLACES

One way to understand FDR's environmental policies is to consider the places he held sacred. Roosevelt, as the novelist Wallace Stegner said, was a "placed person,"<sup>70</sup> someone who learned from his association with diverse geographic places, although he was first and foremost a Dutchess County/Hudson Valley resident.

A. *Springwood/Hudson Valley*

FDR's boyhood was spent on his father's Springwood estate adjacent to the Hudson River in Hyde Park. At Springwood, he lived the "pastoral ideal" as a youth, riding horses and sleighs, sailing little boats on the Hudson and, as an only child tutored at home, developing an intimate relationship with the land he wandered, its trees, and its wildlife.<sup>71</sup>

Situated among fellow Hudson Valley aristocratic families like the Rockefellers, the Astors, and the Vanderbilts, the Roosevelts—like their wealthy neighbors—opposed industrial logging practiced by large companies like the Hudson River Pulp Company.<sup>72</sup> Living in harmony with nature was something FDR's parents preached, especially maintaining woodlands.<sup>73</sup> Hudson Valley timberlands were predominantly privately owned, so there was a felt necessity to acquire more public forests.<sup>74</sup> In 1894, the state shored up its forest preserves in the Adirondack and Catskill Mountains by adopting a constitutional amendment calling for all state forests to be "forever kept as wild," outlawing timber harvests, and restricting harvests on adjacent private lands as well.<sup>75</sup> The Roosevelts, supporters of Democratic president Grover Cleveland, took young Franklin to meet the President who, ironically enough, wished the youngster would "never be president of the United States."<sup>76</sup>

One of FDR's cousins, Robert Barnwell Roosevelt, was one of the earliest "riverkeepers" of the Hudson; he castigated the industries polluting the Hudson, wrote books about game fish and

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70. *Id.* at 26.

71. *Id.* at 5–6.

72. *Id.* at 15.

73. *Id.* at 9.

74. *Id.* at 7.

75. *Id.* Brinkley maintained that the "forever wild" commitment in the New York Constitution was the "birth [of] the modern wilderness preservation movement." *Id.*

76. *Id.* at 12.

birds, and helped establish state fish hatcheries.<sup>77</sup> Combatting water pollution of the Hudson not only from industries but also from human waste became a cause of the wealthy families along the river, who thought of the river as America's Rhine because it seldom flooded.<sup>78</sup> No matter how far he traveled, FDR thought himself connected to the Hudson Valley: a "sanctified landscape" of "transcendent importance to a regional and national cultural identity."<sup>79</sup> FDR's conservation impulse grew out of his concern for the Hudson Valley and its environs.

### *B. Campobello Island*

In 1883, the Roosevelts began summer vacationing at Campobello Island, a fifteen square-mile island where the St. Croix River meets the Bay of Fundy in New Brunswick, just across the water from Maine.<sup>80</sup> The family liked it well enough to purchase a four-acre tract, where they built a thirty-four-room mansion, finished in 1895.<sup>81</sup> FDR became his father's first mate; the two would navigate the fierce winds of Passamaquoddy Bay, an inlet of the Bay of Fundy.<sup>82</sup> It was at Campobello that FDR's polio became paralyzing in 1921.<sup>83</sup> He would not return until after he was elected president, as a respite from the frenetic first "Hundred Days," in 1933.<sup>84</sup> At Campobello, Roosevelt plotted the "second hundred days" of his administration, which emphasized restoring wildlife populations, especially migratory waterfowl—a New Deal priority.<sup>85</sup>

The fishing and sailing FDR learned at Campobello would stay with him throughout his life. He was an acknowledged "old salt," with instinctive navigation skills that he used to good advantage when exploring the North Carolina and Florida coasts.<sup>86</sup> Campobello likely was also a motivating force behind FDR's interest in preserving Cape Hatteras as a national seashore, which

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77. *Id.* at 13.

78. *Id.* at 14.

79. *Id.* at 26. FDR believed that Hyde Park was a model village for the rest of America. *Id.*

80. *Id.* at 14.

81. *Id.*

82. *Id.*

83. *Id.* at 95–96. See also *supra* notes 36–37 and accompanying text.

84. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 214.

85. *Id.* at 221.

86. See, e.g., *id.* at 436 (describing FDR as having possessed a "blue mind," with no anxiety on the sea, "[d]ismissive of landlubbers . . . [and] blessed with an intuitive feel for favorable currents and perfect fishing grounds . . .").

Congress approved in 1937,<sup>87</sup> and which later became a model for President Kennedy in establishing national seashores at Cape Cod, Massachusetts, South Padre Island, Texas, and Point Reyes, California.<sup>88</sup> In 1938, FDR embarked on a twenty-four-day excursion to the Galapagos Islands, off Ecuador, to study marine biology with the Smithsonian Institution, during which he landed a sixty-pound shark.<sup>89</sup> No sitting president has taken such a scientific expedition since, nor landed such an impressive fish.

### *C. German Community Forests*

On one of his frequent European trips as a youth and young man, FDR encountered German community forests in 1891 near the cities of Cologne and Heidelberg, the management of which, he was surprised to learn, eliminated the need for local taxes.<sup>90</sup> On a later trip to Europe, after his marriage to Eleanor in 1905, he revisited the German forests and was impressed that German timber cutting took place based on science and aimed to serve community, not individual, ends.<sup>91</sup> He was particularly taken with the fact that German citizens could receive tax incentives for maintaining community forests.<sup>92</sup> Exposure to German forestry had a profound effect on FDR: upon his return, he began to argue that New York should assume a guardianship over cut-over lands and replant them, and began, in 1906, to transform Springwood into a model tree farm.<sup>93</sup>

Roosevelt, however, was unable to convince the president of the American Forestry Association, George DuPont Pratt, in the 1920s to advocate for a system of public and privately owned forests like those in Germany's Black Forest. Pratt doubted that investors would find it attractive, since any economic returns from community forest harvest would be realized a quarter-century into the future.<sup>94</sup> But when FDR became president, he instructed the Forest Service to begin to study European forests, where community forests existed "for hundreds of years."<sup>95</sup> The selective

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87. *Id.* at 375–80.

88. *Id.* at 584–85.

89. *Id.* at 439.

90. *Id.* at 15–16, 20.

91. *Id.* at 45.

92. *Id.*

93. *Id.*

94. *Id.* at 101.

95. *Id.* at 170, 394 (mentioning the "admirable profits" German communities earned from their selective cutting).

cutting that the Germans practiced—and which he instituted on his own lands at Springwood—would be a hallmark of New Deal forestry.<sup>96</sup>

#### *D. Warm Springs*

FDR discovered Warm Springs, Georgia, in 1924, when a friend told him about its thermal pools, and he mistakenly thought he would find a cure—or at least some relief—from his paralysis.<sup>97</sup> Roosevelt was attracted to Warm Springs not only for its eighty-eight degree pools, but also its pine forests, red clay, clean air, and for a fish hatchery he admired.<sup>98</sup> FDR proceeded to invest two-thirds of his fortune rehabilitating the spa-town, spending Thanksgivings there during his presidency, and showing Georgians that their lands could support cattle grazing even after it was worn out due to exclusive reliance on cotton.<sup>99</sup> Roosevelt made sixteen trips to his “Little White House” at Warm Springs as president; on his last trip, he would die in April 1945.<sup>100</sup>

Warm Springs was significant to FDR not only for its promised therapy, but also because his experience there influenced his approach to land reclamation.<sup>101</sup> He learned that most rural southerners misunderstood the soil composition necessary to grow robust crops, so he instructed the Department of Agriculture to begin educating southerners on the importance of crop rotation on soil renewal.<sup>102</sup> The New Deal’s Civilian Conservation Corps (CCC) would have no fewer than fifty-eight camps in the President’s adopted home state.<sup>103</sup> The CCC produced a good deal of land restoration, but also planted the invasive species of kudzu, which bedevils the southern landscape to this day.<sup>104</sup> As part of a silent

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96. *Id.* at 543. Brinkley saluted FDR for not losing his conservation ethic during the pressure of World War II: “It’s hard to allot credit in history for *preventing* something, but Roosevelt’s insistence that national forests and national wildlife refuges not be pillaged for natural resources during the war was indeed proof of a brave conservation policy.” *Id.*

97. *Id.* at 109–10.

98. *Id.* at 109–11.

99. *Id.* at 232.

100. *Id.* at 231, 574–75. Earlier, FDR made thirteen visits to Warm Springs between 1924 and his election as governor in 1928. *Id.* at 112.

101. *Id.* at 231 (“Georgia was Roosevelt’s demonstration plot in the American South. If Georgia could be saved from ecological ruin, he believed, so, too, could Alabama, Mississippi, South Carolina, and the rest.”).

102. *Id.* at 220.

103. *Id.* at 233.

104. *Id.* at 444. Kudzu, a Japanese climbing vine introduced to the U.S. at the centennial exposition in Philadelphia in 1876, supplied good livestock feed but suffocated native plants. *Id.*

deal between the New Deal and southern Democrats, the CCC camps were segregated; there were 150 “all-Negro” CCC camps with some 250,000 enrolled black men.<sup>105</sup>

### *E. Everglades/Okefenokee*

Growing up adjacent to the Hudson River and traveling regularly by water to Campobello Island, FDR had a special affinity for waterfowl. Thus, when approached about saving the Okefenokee Swamp on the Georgia-Florida border from the industrial harvesting of old-growth cypress trees, Roosevelt was quite sympathetic and determined to save the swamp, where timber companies had harvested over 1.9 million board-feet.<sup>106</sup> He helped block a plan to channelize the Okefenokee to provide a ship canal through the swamp, authorized the buying out of private lands, and established the Okefenokee National Wildlife Refuge in 1937.<sup>107</sup> Roosevelt would proclaim many more national wildlife refuges during his time in office.<sup>108</sup>

South of the Okefenokee was the Everglades, Florida’s “river of grass,” threatened by the water diversions of sugar growers. A Florida fishing trip in 1924 introduced FDR.<sup>109</sup> Many south Floridians thought that the Everglades was a nuisance in need of draining, not preservation.<sup>110</sup> But after receiving a report from the great landscape architect, Frederick Law Olmstead, who catalogued sixteen species of wading birds and both alligators and crocodiles in the Everglades, the Roosevelt Administration pushed through national park designation in 1934, which FDR declared to be the year of the national park.<sup>111</sup>

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105. *Id.* at 185. Women were largely excluded from the CCC, although Eleanor Roosevelt pushed for women’s CCC camps, and a few participated in a “female camper” program in which they did mostly housework and were paid far less than the men. *Id.* at 244, 255. Only 8,500 women participated, compared to 3.5 million men. *Id.* at 255. For more on Eleanor Roosevelt’s unsuccessful attempt to overcome the sexism in the CCC program, see *infra* note 173 and accompanying text.

106. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 146–47. The swamp was also devastated by a 1922 runaway wildfire, fueled by drought and poor timber practices. *Id.* at 147.

107. *Id.* at 146–47.

108. See *infra* note 251 and accompanying text (noting that FDR established 140 national wildlife refuges).

109. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 104–05.

110. *Id.* at 239.

111. *Id.* at 238, 241–42. The statute creating the nation’s first tropical national park promised that it would be “permanently reserved as a wilderness” and barred development that would disturb the “unique flora and fauna” of the area. The law also promised preservation of the park’s “essential primitive natural conditions.” *Id.* at 242. But the statute prohibited the federal government from acquiring private lands in the park; it was instead the responsibility of the state of Florida to donate lands for the park. *Id.*



Okefenokee and the Everglades were early signals that the New Deal was quite serious about conservation. FDR's interest in both was predictable from his background—and his efforts were mere harbingers of numerous conservation efforts to come.<sup>112</sup>

### *F. Adirondack Park*

The “forever wild” provisions of the Adirondack Park were established when FDR was a boy.<sup>113</sup> He was of course a big supporter of the park, but he had a somewhat uneasy relationship with it, since its timbering ban was not consistent with his vision of replicating German community forests.<sup>114</sup> For example, his advocacy of bobsled run for the Olympics and his support for a road to the top of Whiteface Mountain both were conflicts in which he favored recreation over preservation.<sup>115</sup>

FDR was a founding member of the Adirondack Mountain Club, dedicated to implementing the “forever wild” provisions of the state constitution, even though with his paralysis he could no longer scale its peaks.<sup>116</sup> The fact that many lands in the Adirondack reserve were privately owned also influenced Roosevelt, resembling the German forests of which he was so fond.<sup>117</sup> In an era long before there was legal wilderness, a man who could not access roadless areas became a defender of the “forever wild” provisions of his state's constitution.<sup>118</sup>

### III. PERSONAL INFLUENCES ON FDR'S ENVIRONMENTALISM

Another way to understand FDR and his approach to the environment is to focus on those who were his primary influences. Of course, his father, James, and his Springwood estate loomed large in FDR's boyhood, where he became a serious

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Landowners raised the prices for their land after Congress enacted the statute, making acquisitions difficult, which Interior Secretary Ickes labeled as “holding the land for ransom.” *Id.* at 334.

112. See *infra* text accompanying notes 251, 257 and note 269 and accompanying text (cataloguing FDR's numerous conservation achievements).

113. See *supra* notes 38, 75 and accompanying text.

114. See *supra* notes 90–96 and accompanying text (discussing German community forests).

115. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 124–26. Wilderness proponents, including Bob Marshall, often criticized FDR for his attachment (perhaps understandable, given his paralysis) to creating scenic drives atop mountain ranges. *Id.* at 319.

116. *Id.* at 99.

117. See *supra* notes 90–96 and accompanying text.

118. Disagreements over the Olympic bobsled run and the Whiteface road, see *supra* text accompanying note 115, were perhaps exceptions.

ornithologist.<sup>119</sup> His father taught him to ride a horse at the age of four and to sail at six,<sup>120</sup> and took him to Europe seven times by the time he was fourteen.<sup>121</sup> But his father died shortly after FDR entered Harvard in 1900.<sup>122</sup> His mother, Sara, who idealized the Hudson Valley, painted Hudson Valley landscapes, and lived a long life at Springwood, doted over her only child and raised him to be a Dutchess County gentleman.<sup>123</sup> Brinkley does not suggest that she played an active role in FDR's conservation efforts, however.<sup>124</sup>

### A. TR/Gifford Pinchot

Beyond his parents, the origin of FDR's conservation ethic is clearly traceable to his distant cousin, TR, as well as TR's close friend and ally, Gifford Pinchot. FDR shared with "Uncle Theodore" a passion for natural resources conservation, particularly for restoration of soil, polluted water, clear-cut forests and depleted wildlife according to scientific management.<sup>125</sup> Although both advocated preservation of large forests and wildlife, TR was attracted to the Rocky Mountains and the Badlands; FDR to more pastoral settings. TR was a big-game hunter; FDR was a bird-watcher. TR got seasick; FDR was a "first-class salt" on the water.<sup>126</sup> FDR joked on his trip to the Galapagos Islands in 1938 that TR was a grizzly bear hunter, while he was a collector of crustaceans.<sup>127</sup> Both were advocates of dams that would reclaim arid lands with irrigation water and provide public power to serve as a yardstick for measuring the reasonableness of private utility

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119. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 16–23.

120. *Id.* at 24.

121. *Id.* at 15.

122. *Id.* at 34.

123. *Id.* at 10–12. Sara wrote what Brinkley termed a "nostalgic forward" to a 1938 locally published book in which she regretted the local disappearance of a scented vine with blue grapes that was destroyed by misguided local farmers. *Id.* at 12. FDR's mother died at Springwood in 1941 at the age of eighty-six. *Id.* at 511 (recounting the story of tallest deciduous tree at Springwood falling to the ground with a thunderous boom upon her death).

124. Sara's domineering ways did induce FDR to build a separate house for his wife, Eleanor, at Springwood to give her some space. Named Val-Kill, the house became a retreat for Eleanor and a permanent residence for her activist friends, Marion Dickerman and Nancy Cook. *Id.* at 108.

125. *Id.* at 11. Both Roosevelts championed their hometowns—Oyster Bay and Hyde Park—as model towns, with tree-lined streets and parks. Both were concerned that many New York City neighborhoods had deteriorated "into hellholes of squalor." *Id.*

126. *Id.* at 32.

127. *Id.* at 437.

electric rates.<sup>128</sup> But cowboys were heroes to TR; they were likely viewed as overgrazers by FDR.<sup>129</sup>

Gifford Pinchot, who was like a son to TR, was his first chief of the Forest Service and helped the President establish over 100 national forests in the West. FDR said that although they were members of different political parties, Pinchot set him “on the conservation road.”<sup>130</sup> Both TR and Pinchot believed that large trees reaching a certain height should not be harvested, because they were worth more for their watershed value than for timber.<sup>131</sup> FDR went farther than TR, however, believing that trees were not merely aesthetically pleasing but “God’s greatest utilitarian invention.”<sup>132</sup>

As a state senator in 1911, FDR invited Pinchot (recently fired as Forest Service chief by TR’s successor, William Howard Taft, for insubordination), to address a joint committee of the New York legislature concerning his study of the Adirondacks, which recommended a constitutional amendment to authorize state regulation of private lands exclusively based on scientific principles.<sup>133</sup> When Pinchot’s speech expanded the focus of his scientific forestry beyond trees and water to include soils and wildlife, FDR “experienced an epiphany.”<sup>134</sup> He consulted with Pinchot regularly thereafter on forest issues.<sup>135</sup>

Pinchot was elected governor of Pennsylvania in 1922 (and again in 1930). After the presidential election in 1932, FDR summoned Pinchot to consult with him concerning the development of a New Deal forest conservation strategy.<sup>136</sup> Pinchot enlisted Bob Marshall—who wrote a plan for American Forestry for the U.S. Senate the year before, which called for a massive government land acquisition and forest rehabilitation program to be implemented by the unemployed—to help chart the New Deal

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128. *Id.* at 51–55.

129. *Id.* at 60. FDR brought grazing regulation to the public domain when he signed the Taylor Grazing Act in 1934. *Id.* at 306 (observing that the New Deal established fifty-nine grazing districts, regulating 168 million acres of land, under the Taylor Act). *See infra* notes 226–228 and accompanying text.

130. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 39 (noting that TR and Pinchot wrestled with each other, bird-watched together, hiked with each other in the Adirondacks, and “scorned lumber interests that plundered forests”).

131. *Id.*

132. *Id.* at 46.

133. *Id.* at 65–66.

134. *Id.* at 66.

135. *Id.* at 63–64 (noting that FDR read and was influenced by Pinchot’s 1910 book, *The Fight for Conservation*).

136. *Id.* at 159.

approach.<sup>137</sup> Within months, Congress approved the CCC to implement an emergency conservation program based on Marshall's study.<sup>138</sup> Pinchot helped organize CCC camps in Pennsylvania, and successfully argued that the CCC enrollees should be from the rural areas that they were restoring.<sup>139</sup>

### B. Frederic Delano

After FDR's father's death in 1900, when FDR was just eighteen, his uncle, Frederic Delano—his mother's brother—became a father figure.<sup>140</sup> A devotee of Frederick Law Olmstead's "city beautiful" movement, Delano advocated keeping the Chicago lakefront undeveloped, helped to conserve several sites associated with George Washington, and worked on the plan for parks in the District of Columbia.<sup>141</sup> He considered trees to be "the great givers of life."<sup>142</sup> Delano taught FDR how to plant violets at Springwood and how to transplant trees.<sup>143</sup>

Delano, who referred to FDR as a "twice-born man" after his paralysis in 1921,<sup>144</sup> was particularly influential in FDR's historic preservation efforts, and he became known as a person who could get ideas to FDR.<sup>145</sup> Delano wanted nothing less than for all American roads to have scenic quality; he supported tree planting to green industrial areas; and he advocated sewage treatment plants, among other reforms, for urban areas.<sup>146</sup> He encouraged FDR to build the Blue Ridge Parkway in Virginia and North

137. *Id.* at 161 (calling for the federal purchase of 240 million acres of private woodland).

138. *Id.* at 169. Marshall, who would be one of the founders of the Wilderness Society in 1935 and helped develop the Forest Service "U-regulations," which preserved wilderness-like areas, died unexpectedly from heart failure in 1939 at the age of thirty-eight. *Id.* at 160–61, 480.

139. *Id.* at 181. Fifty-five percent of CCC enrollees were from rural areas. *Id.* at 182. For recent calls for a revival of the CCC, see *infra* note 199.

140. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 35.

141. *Id.*

142. *Id.* Brinkley explained that Delano introduced FDR to a large cottonwood tree in Newburg (the Balmville tree), which was the oldest example of its species in the U.S. FDR would often park at the Balmville tree to ponder life when visiting Delano in Newburg. *Id.* at 35–36.

143. *Id.* at 36.

144. *Id.* at 136.

145. *Id.* at 193. Brinkley observed that "Delano's gravitas was never built on claiming 'personal credit for anything.'" *Id.* (citing the *Washington Evening Star*).

146. *Id.* at 194.

Carolina and the Natchez Trace Parkway in Mississippi, Alabama, and Tennessee.<sup>147</sup>

Delano was FDR's "confidential adviser on all things related to conservation and preservation."<sup>148</sup> He chaired the Natural Resources Planning Board, which recommended large-scale federal land purchases, looking ahead twenty years to the nation's needs in 1960.<sup>149</sup> Brinkley maintained that Delano was instrumental in getting his nephew to "think[] big" about conservation, and, sounding like a twenty-first century reformer, Delano advocated a bill of rights to guarantee adequate food, clothing, shelter, medical care, and the "right to rest, recreation, and adventure" for everyone.<sup>150</sup> Delano even helped pick the architect who built the new Interior Department building in Washington, still in use to this day.<sup>151</sup> As chair of the National Capital Park and Planning Commission, he oversaw the restoration of the Chesapeake & Ohio Canal adjacent to the Potomac River for use as a path for recreation and hiking, which is also still a landmark in the nation's capital.<sup>152</sup>

### C. Harold Ickes

Harold Ickes, FDR's only Interior Secretary, was the chief implementer of New Deal conservation policies.<sup>153</sup> Ickes was from Chicago, a supporter of TR during his 1912 Bull Moose campaign, an inveterate antimonopolist, a civil rights advocate, and a

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147. *Id.* According to the historian Arthur Schlesinger, Jr., "Few Americans had had more impressive experience in city and regional planning than Delano. . . . Chicago, New York, and Washington all bore his mark in their programs for urban development." *Id.*

148. *Id.* at 213.

149. *Id.* at 214 (recommending the purchase of 75 million acres of farmland, 244 million acres of timberland, and 114 million acres for recreation and conversation).

150. *Id.*

151. *Id.* at 237.

152. *Id.* at 246.

153. Another cabinet member, Secretary of the Treasury, Henry Morgenthau, Jr., also had a considerable influence on FDR's conservation policy. Morgenthau, from a wealthy New York family and publisher of the *American Agriculturalist* (which FDR read), moved to the Hudson Valley not far from FDR's Springwood (where Roosevelt would take what he thought were therapeutic swims in Morgenthau's pool). He and Roosevelt found that they both were committed to responsible farming and natural resources conservation. *Id.* at 117-19. It was Morgenthau's hiring of unemployed workers to maintain his estate that caught FDR's attention, and when Roosevelt became governor, he appointed Morgenthau Conservation Commissioner. Morgenthau and Roosevelt soon established a Boy Scout-like program of taking urban youth to work on forest restoration in the Catskills and Hudson River highlands. *Id.* at 132, 138. When a constitutional amendment authorized the state's purchase of abandoned farmland for forest restoration, FDR put Morgenthau in charge of the land purchases, and the conservation-reforestation program served as a kind of test-run for what later became the New Deal's CCC. *Id.* at 170.

wilderness protector.<sup>154</sup> FDR and Ickes collaborated in declaring that 1934 was the “Year of the National Park” and planned to expand the park system to include the Everglades, the Dry Tortugas, the Sonoran Desert, and the Cascades.<sup>155</sup> Ickes became the environmental conscience of the New Deal, sometimes tempering FDR’s penchant for parkways and hydropower where they threatened wilderness.<sup>156</sup>

In 1936, at the North American Wildlife Conference arranged by FDR, Ickes asserted that conservation was the foremost duty of government, promised to resist new roads in national parks, and declared that Roosevelt was the most environmentally conscious president in American history.<sup>157</sup> In 1938, Ickes, celebrating the establishment of Olympic National Park before a Seattle audience, promised to keep the park in a wilderness condition, a speech on which Brinkley remarked, “Never before—or since—did a secretary of the interior speak out so forcefully for primeval zones in national parks.”<sup>158</sup>

Later, Ickes was able to successfully argue to the Sierra Club to support Kings Canyon National Park, a fact that Brinkley considered “quite an amazing moment in U.S. environmental history,” since the Secretary was arguing to the environmentalists for a national park in the Sierra—“not the other way around.”<sup>159</sup> Stung by criticism from the great ecologist, Aldo Leopold, over the social and environmental costs of the Grand Coulee Dam in Washington—the construction and operation of which displaced some three thousand people, mostly Native Americans, and devastated their salmon-based livelihoods—Ickes hired the singer-songwriter, Woody Guthrie, to celebrate the wonders of the hydroelectric transformation taking place on the Columbia and its tributaries.<sup>160</sup>

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154. *Id.* at 62–63.

155. *Id.* at 238, 244–45.

156. *Id.* at 244–45.

157. *Id.* at 324 (“What other President in our history has done so much to reclaim our forests, to reclaim submarginal lands, to harness our floods and purify our streams, to call a halt to the sinful waste of our oil resources? In his conservation program he ought to have the enthusiastic assistance of every true conservationist.”). The National Wildlife Federation was born in the wake of the 1936 conference. *Id.* at 325.

158. *Id.* at 430.

159. *Id.* at 431. The Sierra Club and the Wilderness Society preferred Forest Service management of Kings Canyon to national park designation, fearing that a park would produce roads and commercialization. But Ickes promised “roadless wilderness.” *Id.* at 431–32.

160. *Id.* at 415. Guthrie wrote twenty-six songs in his unlikely role as a “New Deal propagandist,” some of them—like “Roll on Columbia” and the “Grand Coulee Dam”—quite memorable. *Id.* On Native American salmon harvests on the Columbia, see MICHAEL C. BLUMM, SACRIFICING THE SALMON: A LEGAL AND POLICY HISTORY OF THE DECLINE OF

Ickes served FDR for the entirety of his presidency, despite several attempts to resign, which Roosevelt always rejected.<sup>161</sup> Ickes helped the New Deal establish national monuments and parks like Organ Pipe (Arizona), Channel Islands (California), the Everglades (Florida), Dry Tortugas (Florida), Kings Canyon (California), Isle Royale (Michigan), Jackson Hole (Wyoming), and Joshua Tree (California), among others, in addition to the Cape Hatteras National Seashore (North Carolina) that Congress approved.<sup>162</sup> Ickes' department was also the beneficiary of the numerous national wildlife refuges and game ranges established by FDR and managed by U.S. Fish and Wildlife Service, which Roosevelt created out of the old Biological Survey and the Bureau of Fisheries in 1940.<sup>163</sup>

One achievement that eluded Ickes, however, was his dream of transferring the Forest Service from the Department of Agriculture to his jurisdiction under a new Department of Conservation.<sup>164</sup> The idea was under consideration in 1940, but the Senate quashed it as too risky in an election year, causing Ickes to offer another resignation, which FDR again refused.<sup>165</sup> Brinkley's assessment of Ickes' influence on FDR was that the Interior Secretary was a considerable force:

It was [Ickes], more so than FDR, who moved beyond the wise-use confines of conservation and became a genuine environmental warrior in the tradition of John Muir. Roosevelt leaned away from commercial interests more than other presidents, before or since, but he was indeed a tree farmer and saw some room for compromise. Ickes didn't.<sup>166</sup>

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COLUMBIA BASIN SALMON 53–56 (Bookworld Pub. 2002); *id.* at 87–102 (discussing the dam building and its effects).

161. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 244.

162. *Id.* at 354–55, 422–23, 334–35, 386, 430–33, 491, 546–47, 210–12, 376–81. National parks and seashores require congressional approval; however, the president may declare national monuments, authorized by the Antiquities Act, unilaterally. *See id.* at 45–46. Ickes, a Native American rights crusader, was also instrumental in FDR's naming of John Collier, a progressive reformer, to head the Bureau of Indian Affairs, and Bob Marshall, the visionary wilderness advocate, as the chief forester for that agency. *Id.* at 165–66. *See also supra* notes 68, 137–138 and accompanying text.

163. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 493 (suggesting that the reorganization was a consolation prize for Ickes after his failure to convince FDR to transfer the Forest Service to the Interior Department). *See also infra* notes 164–165, 241 and accompanying text.

164. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 486–87 (noting that Gifford Pinchot also opposed the Forest Service's transfer to the Interior Department).

165. *Id.* at 487–89.

166. *Id.* at 488 (explaining that "Like FDR, [Ickes] hoped future generations would be able to wander among the New England hills, Utah canyonlands, Missouri bottoms, Georgia

The environmental warrior of the New Deal would be fired by President Truman in 1946, over his opposition to allowing California to lease offshore areas to oil companies.<sup>167</sup>

*D. Eleanor Roosevelt*

The marriage of Eleanor and Franklin Roosevelt may have been irretrievably damaged due to FDR's dalliance with Lucy Mercer Rutherford, Eleanor's social secretary, before his paralysis,<sup>168</sup> but Eleanor was a fellow traveler on FDR's conservation journey. Brinkley claimed "Franklin and Eleanor made an exceedingly good match," citing their shared devotion to the flora and fauna of the Hudson Valley and the Catskill Mountains.<sup>169</sup> Eleanor knew her husband's conservation policy was to avoid wasting land or its resources, since, as she explained, "Where land is wastefully used and becomes unprofitable, the people go to waste too. Good land and good people go hand in hand."<sup>170</sup> She led protests against the destruction of wilderness areas, and knew that the best way for conservation advocates to persuade FDR to protect an area was to meet with him and show him photos.<sup>171</sup> She wrote a syndicated newspaper column, "My Day," from 1935 until 1962, in which she lauded pastoralism even more than feminism or Democratic politics.<sup>172</sup> She fought against the all-male CCC, but was largely unable to overcome the rampant sexism of the 1930s.<sup>173</sup>

After Pearl Harbor, Eleanor tried to remind Americans that conservation and Democratic values were intimately related; as she wrote in one of her "My Day" columns, "One important lesson we still must learn is that we cannot ask anything which comes from our soil and not return something to the soil for the use of

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pine woods, and Dakota grasslands and see stretches of America just as it had been when the *Mayflower* arrived in the New World. That was part of Ickes's soul . . .").

167. *Id.* at 581. Ickes wanted to see the entire California coast from Camp Pendleton to the Oregon border protected "as a public trust." *Id.* at 380.

168. *Id.* at 77, 565.

169. *Id.* at 42–43.

170. *Id.* at 154.

171. *Id.* at 244, 541.

172. *Id.* at 312.

173. *Id.* at 255–56 (noting that Eleanor established a CCC camp for women at Bear Mountain State Park—where FDR had contracted the polio virus years earlier—but the women were only taught sewing and were not paid).



generations to come.”<sup>174</sup> She touted conservation education, stating that young people needed to understand the “interdependence of human kind—the animals, the oceans, the Earth, and human beings.”<sup>175</sup>

After FDR’s death, President Truman named Eleanor a delegate to the United Nations, where she became “the most respected human rights activist in the world.”<sup>176</sup> After resigning in 1952, she traveled the world, often advocating global reforestation projects and became an elder political leader of the Democratic Party by the time she died in 1962—still writing her “My Day” columns.<sup>177</sup>

### *E. William O. Douglas*

William O. Douglas was a former law professor and poker-playing partner of FDR’s, who appointed him chair of the Securities and Exchange Commission in 1937.<sup>178</sup> Douglas was a committed environmentalist who hiked throughout the West, and encouraged the President to obtain national park status for the Olympic Mountains in his home state of Washington.<sup>179</sup> Douglas touted the CCC as an incubator of good citizenship. He thought the CCC experience developed individual self-sufficiency and discipline by exposing the urban poor to the public lands of the West.<sup>180</sup>

Douglas was a strong supporter of FDR’s ill-fated “court-packing plan,” which died in the summer of 1938, and his reward was an unexpected nomination to the Supreme Court to fill retiring Justice Louis Brandeis’ seat.<sup>181</sup> His champion was Ickes, who advocated for him over another candidate that FDR initially favored, because Ickes thought it important that an environmentalist be in the Court.<sup>182</sup> The pick was a shrewd one; Douglas was indeed the most environmental of all justices on the

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174. *Id.* at 518–19. Practicing what she preached, the First Lady had the scrawny-looking squirrels on the White House grounds captured, put on a special diet at the national zoo, and then returned when they were no longer scrawny. *Id.* at 565.

175. *Id.* at 565.

176. *Id.* at 583.

177. *Id.*

178. *Id.* at 565.

179. *Id.* at 348–49.

180. *Id.* at 348. Douglas also worked to have Hart Mountain in Oregon designated as a National Antelope Range, which FDR proclaimed in 1935, in order to benefit pronghorn antelope that were threatened with extinction. *Id.* at 317, 349.

181. *Id.* at 350.

182. *Id.*

Court, and he would serve on the Court until 1975—the last vestige of the New Deal in high office.<sup>183</sup>

Douglas wrote that the New Deal was the model for “the environmental justice movement of the 1960s and beyond.”<sup>184</sup> Ironically, in perhaps his most famous environmental law majority opinion, Douglas interpreted the Federal Power Act to require an alternative analysis concerning the wisdom of issuing a license to build the High Mountain Sheep Dam in Idaho, which would have blocked all salmon migration into central Idaho.<sup>185</sup> The decision saved Idaho’s remaining salmon runs, and the dam was never built. FDR, the champion of both hydropower generation and wildlife protection, might have had mixed feelings over the High Mountain Sheep Dam decision, but he certainly would have cheered Douglas’ long and distinguished career on the Court as its leading environmentalist.<sup>186</sup>

#### IV. FDR’S ENVIRONMENTAL LEGACY

FDR’s environmental legacy is a long one. He was persistent in adding protection to federal lands and, indeed, in adding lands to the federal estate, even during the war years. This section divides his accomplishments into those between 1933 and 1938, when FDR and his party suffered a significant electoral setback in the wake of an economic recession and the congressional defeat of FDR’s “court-packing” plan,<sup>187</sup> and those that occurred between 1939 and Roosevelt’s death in 1945.

##### A. 1933-38

FDR’s 1933 inaugural speech, in which he famously proclaimed, “the only thing we have to fear is fear itself,”<sup>188</sup> began

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183. *Id.*

184. *Id.* at 585.

185. See *Udall v. Fed. Power Comm’n*, 387 U.S. 428 (1967); see also Michael C. Blumm, *Saving Idaho’s Salmon: A History of Failure and a Dubious Future*, 28 IDAHO L. REV. 667, 675–77 (1991) (discussing the case and its significance).

186. See generally STEPHEN L. WASBY, “HE SHALL NOT PASS THIS WAY AGAIN”: THE LEGACY OF JUSTICE WILLIAM O. DOUGLAS (1990).

187. In the 1938 mid-term elections, the Democrats lost seventy-two seats in the House and seven in the Senate, but they retained majorities in both; the first time that the party of a six-year president had not lost control of either house. However, after the election, the Roosevelt Administration largely lost control of the congressional agenda to a coalition of Republicans and conservative southern Democrats.

188. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 167–68. Eleanor later picked the “fear itself” speech as FDR’s greatest public moment. *Id.* at 168. Brinkley ranks it with Washington’s first inaugural in 1789 and Lincoln’s first in 1861 (although he may have meant Lincoln’s second, now memorialized on the walls of the Lincoln Memorial). *Id.*

a dizzying first hundred days of his presidency in which he convinced Congress to pass fifteen major emergency statutes.<sup>189</sup> Included among this outpouring of legislation were conservation measures calling for the establishment of the CCC, the Soil Conservation Service, and the Tennessee Valley Authority.<sup>190</sup> CCC camps, along with Works Program Administration projects, soon employed some 250,000 young men, “bring[ing] ecological integrity to public lands.”<sup>191</sup> In the years after World War II, Brinkley claims that CCC enrollees eventually became “environmental warriors, challenging developers who polluted aquifers and unregulated factories that befouled the air.”<sup>192</sup> However, Congress authorized the CCC only as a temporary work-relief agency, and FDR was—to his great regret—unable to convince Congress to give permanent status for the agency, which was dismantled shortly after the war began in 1942.<sup>193</sup> During its first six years, CCC enrollees planted some 1.7 billion trees, put 2.5 million men to work, and paid enrollees over \$500 million.<sup>194</sup> The massive tree-planting program had its critics, including the ecologist, Aldo Leopold, who accused the agency of planting the wrong types of trees in some locations, including some invasive species.<sup>195</sup>

By the time of its demise in 1942, the CCC had enrolled more than 3.4 million men to work on environmental and economic revitalization, brought erosion-control to some 40 million acres, and produced numerous infrastructure projects like bridges, fencing, and fire lookout towers.<sup>196</sup> The CCC also helped establish over 700 state parks, restored close to 4,000 historic structures, rehabilitated some 3,400 beaches, and conserved more than 118 million acres of public land.<sup>197</sup> In the end, FDR’s “boys” planted roughly three billion trees, in what Brinkley referred to as “the single best land-rehabilitation idea ever adopted by a U.S. president.”<sup>198</sup> One in every six men drafted to serve

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189. *Id.*

190. *Id.* at 169.

191. *Id.*

192. *Id.* at 172.

193. *Id.* at 173, 338, 380, 583. The only African-American member of the House of Representatives, Oscar S. DePriest of Illinois, objected to the racial segregation of the CCC—to no avail. *Id.* at 173, 475.

194. *Id.* at 474.

195. *Id.* at 475.

196. *Id.* at 526–27.

197. *Id.* at 527, 582.

198. *Id.* at 527.

in World War II was a former CCC enrollee toughened for the military by his conservation efforts.<sup>199</sup>

A less well-recognized achievement of the early New Deal was its elevation of the National Park Service to perhaps the most prominent federal conservation agency.<sup>200</sup> One vehicle was the 1933 Reorganization Act, under which FDR was able to transfer national military parks of the Defense Department and national monuments of Forest Service to the Park Service.<sup>201</sup> With the consolidation of national parks, monuments, and battlefields under Park Service jurisdiction, FDR gave birth to the modern National Park Service.<sup>202</sup> By the time his presidency ended, Roosevelt had expanded the areas under Park Service jurisdiction by more than five times the number that existed at the agency's founding in 1916.<sup>203</sup>

But Brinkley considered FDR's "most enduring accomplishment" to be the New Deal's expansion of the National Wildlife Refuge system.<sup>204</sup> In 1933, FDR inherited some sixty-seven wildlife areas of confusing names.<sup>205</sup> By 1940, Roosevelt had developed a coherent system of 252 marshes, prairie potholes, deserts, mountains, and coastal areas that protected 700 species of birds, 220 species of mammals, 250 types of reptiles and amphibians, more than a thousand kinds of fish, and countless invertebrates and plants.<sup>206</sup> To manage these diverse areas,

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199. *Id.* For a spirited call for a 21<sup>st</sup> century CCC, see Gundars Rudzitis, *How Can We Protect Our National Parks? Here's an Idea*, HIGH COUNTRY NEWS (Oct. 31, 2016), [http://www.hcn.org/issues/48.18/we-need-a-new-civilian-conservation-corps/print\\_view](http://www.hcn.org/issues/48.18/we-need-a-new-civilian-conservation-corps/print_view) (noting that in 2011 the Obama Administration proposed a \$1 billion program that would have employed veterans returning from Iraq and Afghanistan, but Congress refused to fund it). See also Paul J. Bachich, *The U.S. Needs a New Civilian Conservation Corps*, THE NATION (Oct. 25, 2017), <https://www.thenation.com/article/the-us-needs-a-new-civilian-conservation-corps/> (explaining how a new CCC could use vocational training to prepare for quality union jobs and create the skills needed for green-infrastructure projects).

200. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 581. FDR could wax eloquent about the national parks:

There is nothing so American as our national parks . . . The scenery and wildlife are native. The fundamental idea behind the parks is native. It is, in brief, that the country belongs to the people, that it is in the process of making for the enrichment of the lives of all of us. The parks stand as the outward symbol of this great human principle.

*Id.* at 262–63.

201. *Id.* at 581. Still, by 1935, FDR had acquired more than twice as much acreage for national forests as acquired prior to the New Deal. *Id.* at 308.

202. *Id.* at 189–92.

203. *Id.* at 581 (claiming that Roosevelt and Ickes made the Park Service into "perhaps the most beloved agency in the U.S. government").

204. *Id.* at 497.

205. *Id.*

206. *Id.* In 1934, FDR directed the Biological Survey to develop a coherent system of wildlife refuges. *Id.* at 268.

Roosevelt created a new Fish and Wildlife Service (from Agriculture's Biological Survey and the Bureau of Fisheries) in the Interior Department, whose director, Dr. Ira Gabrielson, proceeded to negotiate a Pan-American wildlife agreement to preserve wildlife, and whose responsibilities would soon include implementing the Bald Eagle Act of 1940.<sup>207</sup>

The early New Deal's conservation achievements included a 1934 executive order that established the Prairie States Forestry Project, commonly called Shelterbelt. The program involved planting trees and scrubs to serve as windbreaks at the borders of croplands and pastures in order to reduce wind speeds and decrease evaporation, thereby protecting crops and livestock and limiting Dust Bowl's clouds of dust.<sup>208</sup> The idea was to plant these buffers from Texas to the Canadian border to anchor the soil, in what the Forest Service chief called "the largest project ever undertaken in the country to modify the climate and agricultural conditions in an area now consistently harassed by winds and drought."<sup>209</sup> Like the CCC, Shelterbelt "was essentially FDR's 'own idea,'" and "the most ambitious afforestation program in world history."<sup>210</sup> However, it did offend some Great Plains farmers, who considered it "socialistic and a pseudo-scientific experiment."<sup>211</sup> The program unfortunately had the shortcoming of relying on the more durable cottonwood trees, which grew fast in hostile conditions, instead of using conifers, which were more sensitive but more effective in the long run.<sup>212</sup> On the other hand, FDR's antidote to desertification mostly achieved its promise of stabilizing the soil, reducing dust, warding off winter injury, providing shade for livestock, and restoring wildlife habitat.<sup>213</sup> Shelterbelt also provided employment and an influx of money to the economically depressed Great Plains.<sup>214</sup>

Also in 1934, FDR signed the Migratory Bird Hunting and Conservation Stamp Act into law, which required those purchasing state hunting licenses to buy a "duck stamp" for one dollar as a condition of obtaining a state hunting license.<sup>215</sup> Ninety-eight percent of the proceeds of the stamps went toward purchasing and

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207. *Id.* at 497–98. See also *supra* note 163 and accompanying text on the founding of the U.S. Fish and Wildlife Service.

208. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 287.

209. *Id.* at 288.

210. *Id.* (citation omitted).

211. *Id.* at 289.

212. *Id.* at 289–90.

213. *Id.* at 290–91.

214. *Id.* at 291.

215. *Id.* at 281.

maintaining “inviolable” wetland and wildlife habitat for refuges.<sup>216</sup> FDR, a habitual stamp collector, took a special interest in the artwork on the stamps, drawn by his Biological Survey head, Ding Darling.<sup>217</sup> The President’s keen interest in the stamps produced considerable publicity, and in the first year the fund generated \$600,000 for wildlife habitat.<sup>218</sup> Having a dedicated fund was an invaluable asset for habitat acquisition; over the years (through 2009), the fund provided over \$500 million to purchase some five million acres managed for wildlife.<sup>219</sup> Duck stamp revenues remain an important federal program to this day.<sup>220</sup>

A potentially overlooked accomplishment of the early New Deal was enactment of the Fish and Wildlife Coordination Act, which authorized migratory bird refuges on federal lands managed by the Forest Service and the Interior Department, so long as the authorization was consistent with major purpose of the lands.<sup>221</sup> As amended in 1958, the Coordination Act today requires “equal consideration” of fish and wildlife with other purposes of federal or federally permitted projects.<sup>222</sup> According to Brinkley, the Coordination Act, together with the duck stamp program and a 1934 “National Plan for Wild Life Restoration”—that called for the federal purchase of millions of acres of wildlife habitat<sup>223</sup>—meant that within three years FDR had “done more for wildlife conservation than all his White House predecessors, including Theodore Roosevelt.”<sup>224</sup> By the end of 1935, the New Deal had acquired more than 1.5 million acres of wildlife habitat, more than all previous acquisition efforts; migratory waterfowl numbers rebounded, jumping from thirty million birds in 1933 to more than one hundred million by the beginning of World War II.<sup>225</sup>

Another important conservation initiative of 1934 was enactment of the Taylor Grazing Act, which brought regulation to

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216. *Id.*

217. *Id.* at 282–83.

218. *Id.*

219. *Id.* at 283.

220. See *Duck Stamp Dollars at Work*, U.S. FISH & WILDLIFE SERV., DEP’T OF THE INTERIOR, <https://www.fws.gov/birds/get-involved/duck-stamp/duck-stamp-dollars-at-work.php> (last updated Sept. 12, 2017); *Federal Duck Stamp Program*, U.S. FISH & WILDLIFE SERV., DEP’T OF THE INTERIOR (Aug. 2016), <https://www.fws.gov/migratorybirds/pdf/get-involved/DSOfactsheet.pdf> (fact sheet).

221. BRINKLEY, RIGHTFUL HERITAGE, *supra* note 3, at 296–97.

222. 16 U.S.C. § 661 (2012).

223. BRINKLEY, RIGHTFUL HERITAGE, *supra* note 3, at 278–80 (recommending the purchase of four million acres of migratory waterfowl and shorebird habitat, two million acres for mammals, one million acres for breeding and nesting of other birds, and five million acres for upland game species).

224. *Id.* at 297.

225. *Id.*

168 million acres of federal grazing lands in the West.<sup>226</sup> Unregulated grazing had allowed grazers to essentially monopolize, without charge, the unreserved federal public domain to the detriment of wildlife, which consumed the same grasslands.<sup>227</sup> The Taylor Act was one of the most important New Deal wildlife initiatives, because it effectively ended a century-and-a-half of federal lands disposition to private parties; although it is not clear that Brinkley fully appreciated the long-term significance of the statute.<sup>228</sup>

A potentially overlooked statute of conservation significance was the Historic Sites Act of 1935, which made protection of historic sites a National Park Service obligation.<sup>229</sup> Two years earlier, FDR had put historic battlefields into the agency's portfolio, and the same 1933 executive order "brought the National Park Service into urban areas."<sup>230</sup> Preserving history was a priority for FDR, who believed that historic sites "instilled in citizens a sense of pride in, and ownership of, the United States."<sup>231</sup> The New Deal's historic preservation achievements included Aquatic Park in San Francisco, Metropolitan Park in Cleveland, and the Saratoga Battlefield.<sup>232</sup>

By the end of 1938, five years into the New Deal, Roosevelt had protected many special areas, including the Great Smoky Mountains National Park (Tennessee and North Carolina, 1934), the Okefenokee National Wildlife Refuge (Georgia, 1937), Everglades National Park (Florida, 1934), Olympic National Park (Washington, 1937), Organ Pipe Cactus National Monument (Arizona, 1937), Hart Mountain National Antelope Refuge (Oregon, 1935), Cape Hatteras National Seashore (North Carolina, 1937), Channel Islands National Monument (California, 1938), Desert Game Range (Nevada, 1936), Joshua Tree National Monument (California, 1936), Capital Reef National Monument (Utah, 1936), and Cape Meares National Monument (Oregon, 1938).<sup>233</sup> There was more conservation to come in the post-1938 era.

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226. *Id.* at 306.

227. For more on the antimonopolistic effect of the Taylor Act, see Michael C. Blumm & Kara Tebeau, *Antimonopoly in American Public Land Law*, 28 GEO. ENVTL. L. REV. 155, 195-97 (2016).

228. Brinkley's book devoted only four sentences to the Taylor Act. See BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 306, 499.

229. *Id.* at 190.

230. *Id.* at 192-93.

231. *Id.* at 191.

232. *Id.*

233. *Id.* at 248 (Great Smoky National Park); *Id.* at 352 (Okefenokee National Wildlife Refuge); *Id.* at 266 (Everglades National Park); *Id.* at 419 (Olympic National Park); *Id.* at

## B. 1939-45

FDR's unsuccessful effort to change the composition of the Supreme Court crashed in mid-1938<sup>234</sup> and, in the fall elections, Democrats lost the landslide majorities they gained in the 1932 and 1936 elections.<sup>235</sup> The congressional setbacks did not deter FDR from his conservation mission, however.

In early 1939, FDR established the Kofa and Cabeza Game Ranges in Arizona over the objections of grazers and miners, in order to protect desert bighorn sheep.<sup>236</sup> About the same time, CCC camps staged celebrations for FDR on his 57<sup>th</sup> birthday, but Congress failed to deliver the birthday present he wanted: permanent status of the CCC.<sup>237</sup> Despite that disappointment, Roosevelt, with assistance from the Sierra Club,<sup>238</sup> worked throughout 1939 to establish national park protection for King's Canyon, located south of Yosemite in the Sierra—including engaging in “one of the fiercest congressional battles on record.”<sup>239</sup> In 1940, the Administration succeeded in convincing Congress to establish Kings Canyon National Park, ending a conservation battle ongoing since the 1920s.<sup>240</sup>

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355 (Organ Pipe Cactus National Monument); *Id.* at 317 (Hart Mountain National Wildlife Refuge); *Id.* at 381 (Cape Hatteras National Seashore); *Id.* at 423 (Channel Islands National Monument); *Id.* at 328 (Desert National Game Range); *Id.* at 341 (Joshua Tree National Monument); *Id.* at 196 (Capital Reef National Monument); *Id.* at 423 (Cape Meares National Monument).

234. In 1936, in a landslide reelection, FDR won 46 of 48 states over the Republican candidate, Alfred Landon, and 523 electoral votes to Landon's 8. On his coattails, the Democrats won both the Senate—76 to 16—and the House—334 to 88. In the wake of that election, Roosevelt decided to expand the size of the Supreme Court—which had stymied a number of his initiatives as unconstitutional, including the National Industrial Recovery Act and the Agricultural Adjustment Act, through a restrictive version of the federal Commerce Clause power. FDR's plan called for appointment of a new justice for each justice reaching seventy years of age, up to fifteen justices. These appointments would have likely assured a broader interpretation of the federal commerce power. But the plan threatened to expose the political nature of the Court and undermine its alleged role as an unbiased arbiter of the Constitution. Partly because the Court began to interpret federal authority more generously, partly because of the opposition of the sitting Court, partly because one justice resigned (giving FDR his first appointment opportunity; he would have seven opportunities over the next four years), and partly because the Senate majority leader unexpectedly died, FDR's court expansion plan failed to win congressional approval. *See generally* JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW, §§ 4.7, 11.4 (7th ed. 2004).

235. *See supra* notes 67, 187 and accompanying text.

236. BRINKLEY, RIGHTFUL HERITAGE, *supra* note 3, at 457–60.

237. *Id.* at 451.

238. The Sierra Club's support was due to the unprecedented lobbying of Secretary Ickes. *See supra* note 159 and accompanying text.

239. BRINKLEY, RIGHTFUL HERITAGE, *supra* note 3, at 452.

240. *Id.* at 106–07 (“since the 1920s”), 452–53. On the other hand, in 1940, in an action not mentioned in the Brinkley book, FDR did reduce the size of the Grand Canyon National Monument by about one-fourth, in response to complaints by the local livestock grazers. *See*



In 1940, Ickes efforts to convince FDR to transfer the Forest Service to the Interior Department, in an effort to create a Department of Conservation, failed.<sup>241</sup> But the President proceeded to expand the Ickes' Interior Department by creating the U.S. Fish and Wildlife Service to manage national wildlife refuges and monuments.<sup>242</sup>

Roosevelt also secured congressional approval for Isle Royale National Park (Michigan); Mammoth Cave (Kentucky) and Big Bend (Texas) were soon to follow.<sup>243</sup> Even after the onset of World War II, he proceeded with conservation efforts, designating the Kenai National Moose Range days after Pearl Harbor, in December 1941.<sup>244</sup>

During the war, conservation initiatives obviously took a back seat. Nonetheless, in 1943, FDR proclaimed the Jackson Hole National Wildlife Refuge and several other refuges, even though they lacked federal funding.<sup>245</sup> But the war years produced numerous long-term environmental problems, including serious toxic pollution issues.<sup>246</sup> Still, FDR continued to emphasize sound forestry practices on the campaign trail, such as his statement dedicating Great Smoky Mountain National Park in September 1940 (two months before the presidential election), in which he proclaimed, "we shall conserve these trees, the pine, the red-bud, the dogwood, the azalea, and the rhododendron, we shall conserve the trout and the thrush for the happiness of the American people."<sup>247</sup> Four years later, during his last campaign, he was still preaching the conservation gospel, discussing the benefits

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Jennifer Yachnin, *Fans of Abolishing Site Aim to Build on Past Examples*, GREENWIRE (Feb. 8, 2017), <http://www.eenews.net/greenwire/2017/02/08/stories/1060049750>.

241. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 490; *see also supra* note 163 and accompanying text.

242. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 493. On the Fish and Wildlife Service, *see supra* notes 163, 207.

243. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 507.

244. *Id.* at 517.

245. *Id.* at 540, 544, 590. Congress attempted to overturn the Jackson Hole monument in 1944, but FDR vetoed the bill. *Id.* at 564. The Republican presidential candidate in 1944, Thomas E. Dewey, tried to make a campaign issue of the monument, claiming that it represented "land grabbing" and "anti-American collectivism." *Id.* at 563. But the American public apparently did not agree, reelecting FDR to an unprecedented fourth term, on an electoral vote of 432 to 99. *Id.* at 566.

246. *Id.* at 570–71 (describing increased use of pesticides, including DDT to combat tropical diseases like malaria).

247. *Id.* at 503.

of healthy forests at every campaign stop, explaining their ability to absorb rainfall; their importance in refilling aquifers; and their role in slowing storm runoff.<sup>248</sup>

Among Roosevelt's chief post-war hopes was an international conservation conference. He consulted with Gifford Pinchot on the matter just weeks after D-Day, agreeing with Pinchot that "[c]onservation is the basis of permanent peace."<sup>249</sup> The day before he died of a cerebral hemorrhage, he discussed with Henry Morgenthau how to repastoralize Germany and make it into the breadbasket of post-war Europe. He was planning a speech to the first United Nations conference that no doubt would have touted the virtues of conservation and the international conference.<sup>250</sup> FDR was a conservationist until his last breath.

### CONCLUSION

Franklin Roosevelt's effect on the American environment was profound. Brinkley includes several appendices that reflect just how staggering that effect was: 64 battlefields, monuments, and historic sites transferred to the jurisdiction of the National Park Service; 140 national wildlife refuges established; 29 new national monuments; and 216 national forests established or enlarged.<sup>251</sup> From the Everglades and the Okefenokke to the Olympics and the Kenai, from desert landscapes to waterfowl wetlands, no part of the country was unaffected by FDR and his New Deal. No president can match his record of protected lands, including his aggressive federal acquisition of cut-over lands that would be unthinkable today, an era of widespread distrust of federal land ownership.<sup>252</sup> To FDR, "public lands were the heart and soul of the nation."<sup>253</sup> He had a particular aversion to clear-cut timber harvests, favoring selective cutting by small woodlot owners (like himself).<sup>254</sup>

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248. *Id.* at 559. When a member of his audience accused FDR of speaking more about trees, soil, and water than the World War, he responded, "I fear that I must plead guilty to that charge." *Id.*

249. *Id.* at 560–61.

250. *Id.* at 575. For more on Morgenthau and FDR, see *supra* notes 58–59, 153.

251. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 596–623.

252. Many acquisitions were under the authority of the Weeks Act, authorizing the purchase of lands or interests in lands for eastern national forests. See Weeks Act, ch. 186, 36 Stat. 961 (1911).

253. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 588.

254. See *id.* at 579 (observing that FDR's will required that the half million trees he planted at Springwood be preserved in perpetuity, and that if any died, they had to be replaced). For more on Roosevelt's steadfast opposition to clear-cutting, see *supra* notes 25, 55, 72, 96 and accompanying text.

Roosevelt's monumental environmental legacy, it is true, is undermined by his attachment to dams and the hydropower generation and irrigation they brought. Dams like Grand Coulee were "holy causes" to FDR, according to Brinkley, despite devastating environmental consequences for salmon and those that harvested that species.<sup>255</sup> Roosevelt's instinctive distrust of private utilities led him to favor public power and to countenance the damage that public dams produced. Brinkley succinctly captures the New Deal legacy: "While FDR deserves high marks for forestry, wildlife protection, state and national parks management, and soil conservation, his dams in the name of the 'public interest' devastated numerous riverine ecosystems."<sup>256</sup>

Among Roosevelt's most notable achievements was the CCC, which not only responded to the unemployment crisis of the Great Depression, but also did remarkable conservation work—conserving some 118 million acres, more land than in the state of California.<sup>257</sup> Perhaps his greatest conservation regret was his inability to convince Congress to make the CCC permanent,<sup>258</sup> something some of his successors have attempted unsuccessfully to replicate.<sup>259</sup> In an era threatened with potential catastrophic consequences due to climate change, the tree-planting program of the CCC would be, according to a leading environmental voice, a therapeutic antidote.<sup>260</sup>

Over seventy years after the New Deal, we now have an Administration that questions climate change and the Paris deal to curb greenhouse gas emissions and approves fossil-fuel pipelines over widespread local opposition.<sup>261</sup> We have a Congress that

255. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 571.

256. *Id.* (mentioning not only the Columbia, *see supra* note 160, but also the Tennessee Valley and the Colorado). One might also criticize FDR for not anticipating the problems that widespread use of pesticide like DDT, would pose to the environment. *See supra* note 246 and accompanying text. But that would require wisdom few possessed twenty years before publication of Rachel Carson's *Silent Spring* in 1965, which Brinkley credits as the birth of "the modern environmental movement." BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 468. A more trenchant criticism would concern both FDR's and his CCC's willingness to plant non-native species. *Id.* at 498 ("planting" fish in wildlife refuges.). *See also supra* notes 195 (criticism of Aldo Leopold), 212 and accompanying text.

257. *Id.* at 582.

258. *See supra* notes 193, 237 and accompanying text.

259. BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 585–86 (discussing Bill Clinton's AmeriCorps and Barrack Obama's twenty-first century Conservation Corps, neither of which Congress funded at the level of the CCC); *see supra* note 199 (discussing calls for a revival of the CCC).

260. *Id.* at 586 (quoting Bill McKibben, founder of 350.org).

261. President Trump has vowed to cancel Paris climate change, although he later stated that he is keeping an "open mind" about it. *See* Coral Davenport, *Donald Trump Could Put Climate Change on Course for 'Danger Zone'*, N.Y. TIMES, Nov. 10, 2016, <https://www.nytimes.com/2016/11/11/us/politics/donald-trump-climate->

rejected a carbon tax and scuttled regulatory initiatives designed to curb methane emissions and improve federal land planning.<sup>262</sup> We have states challenging national regulations curbing power plant emissions and restoring federal jurisdiction over activities damaging the nation's waters,<sup>263</sup> and trying to convince Congress to gift federal lands to the states.<sup>264</sup> With most branches of government apparently committed to anti-environmental, anti-federal government agenda, it may be of some consolation to know that there was a time, now some seventy years ago, when the federal government was looked upon as a large part of the solution

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[change.html](#) ("Mr. Trump has called human-caused climate change a 'hoax.' He has vowed to dismantle the Environmental Protection Agency 'in almost every form.'"); Timothy Cama, *Trump Softens Stance on Paris Climate Pact*, THE HILL (Nov. 22, 2016, 1:35 PM), <http://thehill.com/policy/energy-environment/307211-trump-i-have-an-open-mind-on-paris-climate-pact>. Mr. Trump also revived the Keystone XL pipeline that was rejected by President Obama and the Dakota Access pipeline. Both had stirred an intense debate and fierce opposition from local communities. See Peter Baker & Coral Davenport, *Trump Revives Keystone Pipeline Rejected by Obama*, N.Y. TIMES, Jan. 24, 2017, <https://www.nytimes.com/2017/01/24/us/politics/keystone-dakota-pipeline-trump.html>. See generally Michael C. Blumm & Olivier Jamin, *The Trump Public Lands Revolution: Redefining "the Public" in Public Land Law*, 48 ENVTL. L. no. 2 (forthcoming 2018), <https://ssrn.com/abstract=3051026>.

262. The House passed a GOP-backed resolution concluding that a carbon tax "would be detrimental to American families and businesses, and is not in the best interest of the United States." Timothy Cama, *House Votes to Condemn Carbon Tax*, THE HILL (June 10, 2016, 12:52 PM), <http://thehill.com/policy/energy-environment/283029-house-condemns-carbon-tax>. Congress rescinded a BLM regulation that would have made federal land use planning more efficient and accessible to the public and nearly did the same to the previous administration's methane-gas emission rule. See Chelsea Harvey, *Congress's Latest Target for Reversal: An Obama Attempt to Modernize How We Mangle Public Lands*, WASHINGTON POST, Feb. 15, 2017, [https://www.washingtonpost.com/news/energy-environment/wp/2017/02/15/a-public-land-management-rule-should-be-non-controversial-say-environmentalists-but-congress-is-trying-to-overturn-it/?utm\\_term=.fa256d9144e9](https://www.washingtonpost.com/news/energy-environment/wp/2017/02/15/a-public-land-management-rule-should-be-non-controversial-say-environmentalists-but-congress-is-trying-to-overturn-it/?utm_term=.fa256d9144e9); Matthew Daly, *House Votes to Overturn Obama Rule on Natural Gas 'Flaring'*, AP NEWS (Feb. 3, 2017), <https://apnews.com/d84e8dd2a74042ed8d9e864fdb59d069/house-poised-to-overturn-obama-rule-natural-gas-flaring>. See also Blumm & Jamin, *supra* note 261 (discussing these issues).

263. At least fifteen states challenged a rule curbing power plant emissions, while twenty-seven states challenged the new Clean Water rule. See Maureen Groppe, *States Must Wait to Challenge EPA Greenhouse Gas Curbs*, U.S. COURT RULES, USA TODAY (June 9, 2015, 5:39 PM), <http://www.usatoday.com/story/news/politics/2015/06/09/states-must-wait-to-challenge-epas-greenhouse-gas-curbs/28758529/>; Timothy Cama, *27 States Challenge Obama Water Rule in Court*, THE HILL (June 30, 2015, 12:02 PM), <http://thehill.com/policy/energy-environment/246539-27-states-challenge-obama-water-rule-in-court>.

264. See Crady deGolian, *Western Lawmakers Call for Return of Public Lands to States*, CAPITOL IDEAS (CSG, Lexington, KY) (July–Aug. 2017), [http://www.csg.org/pubs/capitolideas/enews/issue136\\_2.aspx](http://www.csg.org/pubs/capitolideas/enews/issue136_2.aspx) (for Utah, Nevada, New Mexico, and Montana); Kirk Siegler, *Push to Transfer Federal Lands to States Has Sportsmen on Edge*, NPR, (Jan. 5, 2017, 5:00 AM), <http://www.npr.org/2017/01/05/508018599/push-to-transfer-federal-lands-to-states-has-sportsmen-on-edge>. Utah's transfer efforts may fail, but there is little question that the Zinke Interior Department aims to make federal public lands the centerpiece of a fossil fuel-dominated energy policy. See Blumm & Jamin, *supra* note 261.

to conservation problems, when a president was a tireless promoter of federal and state parks and forests, national monuments and wildlife refuges, and who put some three million people to work on conservation projects.<sup>265</sup> One hopes that the conservation ethic that drove FDR and his Administration will someday again be ascendant in American political life.<sup>266</sup>

An environmentalist's regret concerning the Roosevelt years would be the willingness of FDR to allow Harry Truman to be on the ticket with him in 1944 instead of the other finalist, William O. Douglas.<sup>267</sup> Douglas in the White House would have surely changed environmental history.<sup>268</sup> But whether he would have the remarkable legacy of FDR may well be doubted. Brinkley's book makes that clear that historians need to rethink the place of FDR in the environmental pantheon.<sup>269</sup> TR is surely not the only Roosevelt who deserves mention at the top of the list of environmentalist presidents.

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265. *See supra* notes 68–69 (federal and state parks and forests); note 233 and accompanying text (national monuments and wildlife refuges); note 69 (putting the unemployed to work on conservation).

266. *See supra* note 45 and accompanying text (describing Roosevelt's conservation ethic). FDR explained the New Deal environmental philosophy in the following terms: "Long ago, I pledged myself to a policy of conservation which would guard against the ravaging of our forests, the waste of our good earth and water supplies, the squandering of irreplaceable oil and mineral deposits, the preservation of our wildlife and the protection of our streams." BRINKLEY, *RIGHTFUL HERITAGE*, *supra* note 3, at 344.

267. *Id.* at 559 (explaining that FDR gave a list to the Democratic National Committee Chairman that had Douglas first and Truman second, but the chair, Robert E. Hannigan of Missouri, switched the names so that his fellow Missourian was on the top of the list).

268. Brinkley quotes Douglas as follows:

We have lost much of our environment. We allow engineers and scientists to convert nature into dollars and into goodies. A river is a thing to be exploited, not to be treasured. A lake is better as a repository of sewage than as a fishery or canoe-way. We are replacing a natural environment with a symbolic one.

*Id.* at 559.

269. *See, e.g.*, Barbara Basbanes Richter, *A Tale of Two Roosevelts*, HIGH COUNTRY NEWS (Mar. 20, 2017), <http://www.hcn.org/issues/49.5/a-tale-of-two-roosevelts> (noting that despite FDR's attachment to highways and hydropower: "no president has done more to protect America's wilderness," and observing that Brinkley's book took a hundred pages of appendices to list all of Roosevelt's achievements, including conservation of 118 million acres, planting over three billion trees, and establishing hundreds of federal bird sanctuaries).