

AMERICA'S PUBLIC LANDS: WHAT WILL DONALD TRUMP'S LEGACY BE?

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I. INTRODUCTION

This essay is drawn from the lecture I delivered at the College of Law in February 2025. Its title asked what President Trump's public land legacy will "likely" be. In retrospect, it was foolish of me to use that word because it had long been clear that President Trump frequently alters course.¹

I delivered that lecture only about a month into his second term. As I write this less than a year later, the challenge of predicting his legacy has grown exponentially, because his second term is unfolding very differently from his first, being much better organized, focused and staffed with Trump loyalists, with the president himself more impatient and bent on revenge and grabbing as much power as he can.² This has produced an across-the-board assault on much in the modern American political tradition, in the most aggressive assertion of presidential power since the Civil War.

Many cultural and political changes are helping make this possible. One is the vast increase in the amount of money in politics, thanks in large measure to the U.S. Supreme Court's 2010 *Citizens United*

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1. As a distinguished historian recently put it, Trump is "the epitome of self-centered, emotional impulses." Robert Kaplan, *Waste Land: A World in Permanent Crisis*, 49 (2025).

2. Long-time Trump observer Maggie Haberman put it this way in the New York Times on June 16, 2025: "[A]rmed with the backing of a Supreme Court decision last year that granted him broad immunity for official acts, he is doing some of the things he wanted to during his first term, like maximizing official power—and testing what courts will let him get away with—to dismiss inspectors general and swaths of the bureaucracy, and to use the Justice Department only as something of a personal law firm." Jess Bidgood & Maggie Haberman, *How the Trump Era Changed Trump*, N.Y. TIMES (Oct. 1, 2025), <https://www.nytimes.com/2025/06/16/us/politics/trump-decade-washington.html> [<https://perma.cc/U2QJ-GBF7>]. See also Naftali Bendavid, *Trump Undermines Watergate Ethics Laws in Massive Shift of Ethics System*, THE WASHINGTON POST (June 21, 2025), <https://www.washingtonpost.com/politics/2025/06/21/trump-watergate-presidency-congress/> [<https://perma.cc/9B5C-952V>].

decision,³ where the Court reversed a century of precedent to hold that corporations and others have a right under the Constitution's free speech clause to spend unlimited amounts of money to influence elections. The effect was entirely predictable—a huge increase in dollars flooding the political system, mostly from the wealthiest corporations and individuals.⁴

A huge rise in income inequality in recent years has fed this torrent of contributions. America's richest 1% now control one-third or more of nation's wealth, while the richest one-tenth of 1% control about 15%—shares that have increased dramatically in last few decades.⁵

This is the most inequality in the nation's history,⁶ even wider than during the famous Gilded Age of post-Civil War era.⁷ That period was characterized not only by a vast divide between the very rich and everyone else, but also by political corruption.⁸ Its excesses, which included plundering federal public lands to benefit wealthy special interests, gave rise to what the eminent historian Richard Hofstadter called the “age of reform” that took hold beginning around 1890.⁹ That flowering of what came to be known as the Progressive Era fed the movement to hold onto and protect large amounts of land in national ownership.¹⁰

3. *Citizens United v. FEC*, 558 U.S. 310 (2010); see also *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir., 2010) (en banc); and *McCutcheon v. FEC*, 512 U.S. 185 (2014). See generally <https://www.washingtonpost.com/politics/2025/12/01/speechnow-fec-citizens-united-super-pacs/>.

4. See, e.g., *15 Years of Citizens United: How Big Money Dominated the 2024 Election*, Campaign Legal (Jan. 16, 2025), <https://campaignlegal.org/events/15-years-citizens-united-how-big-money-dominated-2024-election> [<https://perma.cc/3AUL-2AJW>].

5. BD. OF GOVERNORS OF THE FED. RSRV. SYS., *Share of Net Worth Held by the Top 0.1%*, FRED (October 1, 2025), <https://fred.stlouisfed.org/series/WFRBSTP1300> [<https://perma.cc/X7PB-ZNSD>]. Federal tax policy has fueled that inequality in various ways. In his first term, President Trump signed legislation doubling the amount of assets exempt from paying any tax upon transfer to others, and the One Big Beautiful Bill Act he signed into law in July enlarged the exemption further. *One Big Beautiful Bill Act*, Pub. L. No. 119-21, 139 Stat. 72 (2025).

6. See, e.g., Paul Krugman, *Understanding Inequality Part II*, Substack (June 22, 2025), <https://paulkrugman.substack.com/p/understanding-inequality-part-ii> [<https://perma.cc/289K-AGHY>] (“beginning around 1980, inequality surged, leading to the incredibly high levels we see today,”) which he nicely captured in a chart. See *Inequality, Part IV: Oligarchs*, SUBSTACK (June 22, 2025), https://paulkrugman.substack.com/p/inequality-part-iv-oligarchs?r=2ytx6b&utm_campaign=post&utm_medium=web&triedRedirect=true [<https://perma.cc/73JD-LKQA>].

7. That era was given its name in this 1873 book. Mark Twain & Charles Dudley Warner, *The Gilded Age: A Tale of Today* (American Pub. Co. 1873).

8. *The Gilded Age*, Stanford: Journalism in the Digital Age, https://cs.stanford.edu/people/eroberts/cs181/projects/2010-11/Journalism/index5534.html?page_id=6 [<https://perma.cc/3Y3W-KSF4>] (last visited Oct. 18, 2025).

9. Richard Hofstadter, *The Age of Reform: From Bryan to F.D.R.* 5 (1955), which won the Pulitzer Prize. *1956 Pulitzer Prizes*, PULITZER, <https://www.pulitzer.org/prize-winners-by-year/1956> [<https://perma.cc/3WX5-N4Y5>].

10. See, e.g., John D. Leshy, *Our Common Ground: A History of America's Public Lands* 281, 357 (2021).

In this new Gilded Age, marked by what has been described as the “politics of plunder” practiced by the current president,¹¹ “corruption has flooded America.”¹² Leo XIV, the current Pope who spent his first 27 years in the U.S., explained to the College of Cardinals that he chose his name because Leo XIII had championed the rights of ordinary people during the original Gilded Age.¹³

The vast amount of money sloshing around in the system has greatly enhanced Trump’s power. Congressional Republicans have been almost totally silenced and intimidated in part because Trump controls an estimated two billion dollars in campaign contributions that he is not hesitating to use to get his way—threatening to fund primary opponents of Republicans who disagree with him.¹⁴ This has meant that the Republicans controlling both Houses of Congress have made little effort to shape his policies.

There is also the change in how most people in the nation get their information, from assorted siloed social media platforms like podcasts as well as other sources like Fox News.¹⁵ Many of these pay little attention to finding the truth, a tendency famously captured in the

11. Evan Osnos, *Donald Trump’s Politics of Plunder*, *New Yorker* (May 26, 2025), <https://www.newyorker.com/magazine/2025/06/02/donald-trumps-politics-of-plunder> [<https://perma.cc/Y2GF-6MJU>].

12. Ben Rhodes, *Corruption Has Flooded America. The Dams Are Breaking.*, *N.Y. TIMES* (June 8, 2025), <https://www.nytimes.com/2025/06/08/opinion/trump-corruption.html> [<https://perma.cc/25W4-6YPG>].

13. Margherita Stancati, Drew Hinshaw, Keach Hagey & Emily Glazer, *Pope Leo Take on AI as a Potential Threat to Humanity*, *WALL ST. J.* (June 17, 2025, at 21:00 ET), https://www.wsj.com/tech/ai/pope-leo-ai-tech-771cca48?mod=hp_lead_pos7 [<https://perma.cc/P2KU-RR24>]; *Biography of Pope Leo XIV, Born Robert Francis Prevost*, *VATICAN NEWS* (May 8, 2025, at 20:28 ET), <https://www.vaticannews.va/en/pope/news/2025-05/biography-of-robert-francis-prevost-pope-leo-xiv.html> [<https://perma.cc/9U9F-QD5D>].

14. Marc Caputo, *Scoop: Trump’s \$2 billion Fundraising Binge*, *AXIOS* (Nov. 5, 2025) https://www.axios.com/2025/11/05/trump-2-billion-fundraising-binge?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosam&stream=top [<https://perma.cc/RU8Z-GFS4>]; Aaron Pellish, *Trump Threatens to Withhold Endorsements for GOP Senators Who Don’t Back Rescissions Bill*, *POLITICO* (Jul. 10, 2025 at 20:20 ET) <https://www.politico.com/live-updates/2025/07/10/congress/trump-rescissions-00448150> [<https://perma.cc/DX2J-RCWX>]; Justin Boggs, *Trump Calls for Primary Challenger Against Republican Who Opposes Funding Bill*, *SCRIPPS NEWS* (last updated Mar. 11, 2025 at 11:08 ET) <https://www.scrippsnews.com/politics/president-trumps-first-100-days/republican-rep-defends-position-as-trump-pushes-for-primary-challenge> [<https://perma.cc/7F6Q-VKJL>]. As one commentator recently noted, in 2017 “Trump still felt it necessary to reassure old-line Republicans that he would be their ally,” but by 2025, he “no longer need[ed] to cater to [them],” because by then “most pre-Trump Republicans have either left the party, become Trump Republicans or resigned themselves to being at best junior partners in Trump’s coalition.” Ramesh Ponnuru, *Why Trump’s Second Term Is So Different from His First*, *WASH. POST* (June 9, 2025), <https://www.washingtonpost.com/opinions/2025/06/09/trump-second-term-policy-change/> [<https://perma.cc/XF7J-TN5B>].

15. *News Platform Fact Sheet*, *Pew Rsch. Ctr.* (Sep. 25, 2025), <https://www.pewresearch.org/journalism/fact-sheet/news-platform-fact-sheet/> [<https://perma.cc/L59Y-82AK>].

phrase “alternative facts” first used by Kellyanne Conway, an official in the first Trump Administration.¹⁶

All this has helped fuel a serious erosion, if not an outright breakdown, of the norms that have traditionally governed relationships among the different parts of our governmental system, and notions of separation of powers and checks and balances. It is exacerbated by the president’s zeal to exploit laws that allow him to take drastic action in emergencies of various kinds, and to expand all kinds of previously-little-used exceptions to bedrock laws like the “good cause” exception to the public notice and comment process in the Administrative Procedure Act, the fundamental law that governs actions by executive branch agencies.¹⁷

Then there is the ongoing erosion in the respect for science across our culture,¹⁸ which was stoked in the first Trump Administration and has increased dramatically in the second.¹⁹

While so far in 2025 Trump himself has dominated American policymaking, the Congress has played to his desires by passing the One Big Beautiful Bill Act (OBBBA). The White House touted its

16. This came in a *Meet the Press* interview on January 22, 2017, in which she defended White House Press Secretary Sean Spicer’s false statement about the attendance numbers at Trump’s first inaugural. Video posted by Meet the Press (@MeetThePress), X, “*Alternative facts are not facts. They are falsehoods.*” *Chuck Todd tells Pres. Trump’s counselor Kellyanne Conway this morning. WATCH:* (Jan. 22, 2017, at 10:03 ET), <https://x.com/MeetThePress/status/823184384559878144> [https://perma.cc/FSB8-M38W]. When pressed during the interview with Chuck Todd to explain why Spicer would “utter a provable falsehood,” *Id.* at 00:20-00:22, Conway stated that Spicer was giving “alternative facts.” *Id.* at 02:02-02:03. Conway’s use of the phrase “alternative facts” for demonstrable falsehoods was widely mocked on social media and sharply criticized by journalists and media organizations and became the quote of the year in the Yale Book of Quotations. *E.g.*, “*Alternative Facts*” *Tops This Year’s List of Notable Quotes*, CBS NEWS (Dec. 12, 2017, at 17:54 EST), <https://www.cbsnews.com/news/alternative-facts-tops-the-yale-book-of-quotations/> [https://perma.cc/VE6Y-VSA9]; Justin Green, *Today’s Top Quote: Kellyanne on “Alternative Facts”*, AXIOS (Jan. 22, 2017), <https://www.axios.com/2017/12/15/todays-top-quote-kellyanne-on-alternative-facts-1513300040> [https://perma.cc/W6HA-J6TL]. It was extensively described as Orwellian. Kimiko de Freytas-Tamura, *George Orwell’s ‘1984’ Is Suddenly a Best-Seller*, N.Y. TIMES (Jan. 25, 2017), <https://www.nytimes.com/2017/01/25/books/1984-george-orwell-donald-trump.html> [https://perma.cc/R7YJ-J3JE]. Indeed, within four days of the interview, sales of George Orwell’s novel *1984* had increased 96-fold, which *The New York Times* and others attributed to Conway’s use of the phrase, and which catapulted Orwell’s book to the top of Amazon’s best-seller list. *Id.*

17. 5 U.S.C § 553(b)(B).

18. M. Anthony Mills, *Why So Many Americans Are Losing Trust in Science*, N.Y. TIMES (Oct. 3, 2023). <https://www.nytimes.com/2023/10/03/opinion/science-americans-trust-covid.html> [https://perma.cc/5E3M-XNZY].

19. See, e.g., Brad Plumer & Coral Davenport, *Science Under Attack: How Trump Is Sidelining Researchers and Their Work*, N.Y. TIMES (Dec. 28, 2019), <https://www.nytimes.com/2019/12/28/climate/trump-administration-war-on-science.html> [https://perma.cc/LWS5-GVAT]; Darya Minovi, *Science and Democracy Under Siege*, Union of Concerned Scientists (Jul. 21, 2025) <https://www.ucs.org/resources/science-and-democracy-under-siege> [https://perma.cc/6VRP-UK52].

terms as making “good on his campaign promises.”²⁰ It made major changes in federal law in a whole host of areas, including public lands.²¹

Many dozens of lawsuits are already wending their way through the federal courts testing various Trump actions.²² But it is far from clear what the overall impact of this litigation will be. For one thing, the federal courts have grown considerably more conservative in recent years. This is in no small measure due to the appointments Trump himself made in his first term, when he named three new Justices of the Supreme Court, more than 50 to the federal courts of appeals, and more than 170 to the district courts.²³ For another, the legal process can be slow and can sidestep many issues, so that it may be years before definitive rulings emerge on many issues, if they ever do.

So far in his second term President Trump's aggressive actions have affected a wide range of foreign and domestic policy, from tariffs to withdrawing from various international arrangements to renaming the Gulf of Mexico to ramping up the deportation of undocumented immigrants and moving aggressively to challenge major universities, law firms, cultural and other American institutions²⁴.

Amid all this domestic and foreign policy turmoil, it is easy for public lands policies to be overlooked, as they rarely register in national political consciousness. Still, the changes in those policies launched in the second Trump Administration could well lead to a paradigm shift that fundamentally alters the long trajectory of public land policy.

I warned of this possibility during Trump's first term in office, in two essays published in 2020 before that fall's presidential election. I noted that the Trump Administration was “posing a stress test for the public lands,” and that it could signal “a turning point in American

20. *President Trump's One Big Beautiful Bill Is Now the Law*, THE WHITE HOUSE (Jul. 4, 2025) <https://www.whitehouse.gov/articles/2025/07/president-trumps-one-big-beautiful-bill-is-now-the-law/> [<https://perma.cc/5T7Q-ESGY>].

21. One Big Beautiful Bill Act, Pub. L. No. 119-21, §§ 50301-50305, 139 Stat. 72, 146-52 (2025); *see infra* text accompanying notes 81-94 (discussing the public lands provisions of the One Big Beautiful Bill Act); THE WHITE HOUSE, *supra* note 20.

22. *Trump Administration Litigation Tracker*, Lawfare, <https://www.lawfaremedia.org/projects-series/trials-of-the-trump-administration/tracking-trump-administration-litigation> [<https://perma.cc/7WPD-P9AN>] (last visited Oct. 19, 2025).

23. *Federal Judicial Appointments by President*, Ballotpedia, https://ballotpedia.org/Federal_judicial_appointments_by_president [<https://perma.cc/6MU6-RBLU>] (last visited Oct. 19, 2025); *List of Federal Judges Appointed by Trump*, WIKIPEDIA, (last updated Nov. 24, 2025) https://en.wikipedia.org/wiki/List_of_federal_judges_appointed_by_Donald_Trump [<https://perma.cc/F3V2-9RAS>].

24. Michael S. Schmidt, *When the Trump Guardrails Fail*, N.Y. Times (Oct. 15, 2025) <https://www.nytimes.com/2025/10/15/us/politics/trump-second-term-guardrails.html> [<https://perma.cc/PU4S-YKQP>].

public land policy away from the long bipartisan tradition of adding more protections to more public lands,” and whether that proved to be the case “very likely depends on whether Trump is reelected this fall.”²⁵ If not, I suggested, “history will probably view his administration as just one more hiccup in the modern history of public lands,” because “[m]ainstream public opinion still seems solidly in favor of strong protection,” and many of the Trump initiatives can be readily reversed.²⁶

After Trump was defeated in 2020, President Biden did reverse practically all of his predecessor’s public lands initiatives. But now that Trump has been regained the presidency, and set in motion even more far-reaching initiatives in this space, the question I posed in 2020 remains valid, because President Trump could fundamentally change the course of public land policy.

Before exploring these matters in more depth, I will first set the stage by describing America’s public lands and how they have evolved through history. I will do this in two tranches, the first up to Trump’s election in 2017, and the second covering his first term in office and that of his successor, Joe Biden.²⁷

II. THE PUBLIC LANDS UP TO 2017

These lands include more than 600 million acres of public forests, plains, mountains, wetlands, deserts, and shorelines, which are managed by the four federal agencies depicted here.²⁸ For comparison, the entire state of Florida occupies about 42 million acres of land (including waters).²⁹

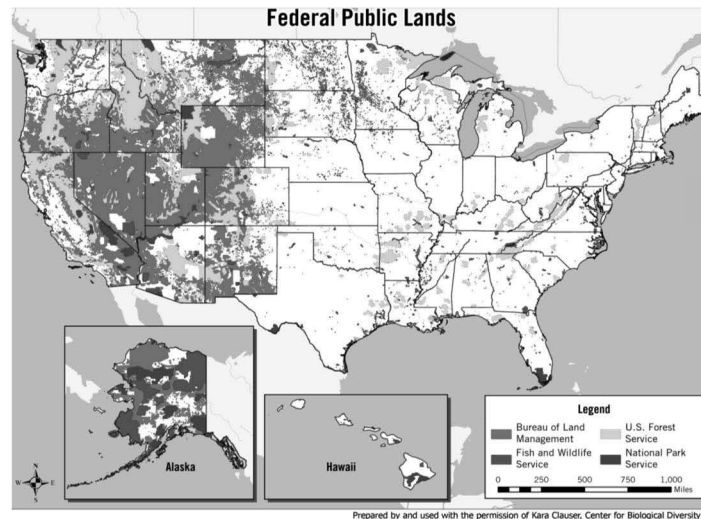
25. John D. Leshy, *Still Made for You and Me?*, 89 AM. SCHOLAR 34, 44 (2020);

26. *Id.*; see also John D. Leshy, *Public Land Policy After the Trump Administration: Is This a Turning Point?*, 31 COLO. NAT. RES., ENERGY & ENV’T L. REV. 471 (2020).

27. See generally, JOHN D. LESHY, OUR COMMON GROUND: A HISTORY OF AMERICA’S PUBLIC LANDS (2022) [hereinafter LESHY, *Our Common Ground*] (providing a comprehensive history of America’s public lands and their evolution over time); John Leshy, *America’s Public Lands: What History Suggests About Their Future*, 34 COLO. ENV’T L.J. 1 (2023) (discussing the history and evolution of America’s public lands).

28. Laura A. Hanson & Carol Hardy Vincent, Cong. Rsch. Serv., R42346, *Federal Land Ownership: Overview and Data* (2020).

29. See *Florida*, WIKIPEDIA (last updated Nov. 28, 2025) <https://en.wikipedia.org/wiki/Florida> [<https://perma.cc/8HDA-35QR>]. Note that on this map Alaska, which contains a huge amount of public land, is not depicted on the same scale as the lower 48, as it is more than twice the area of Texas. I will address Alaska public lands further below; see *infra* text accompanying notes 78-79; 108-115.



These lands benefit America and humanity in many ways. Generally open to all, they are now managed primarily for conservation, recreation, inspiration and education.³⁰ Every year they offer many millions of visitors life-changing encounters with nature, activities that furnish an economic anchor for many communities.³¹ While most are located in the West and Alaska, they are found in all states.³²

The breadth and character of this national asset are remarkable, considering that respect for private property and distrust of government, particularly the national government, are baked into American culture and politics. Indeed, the typical response I have encountered from persons seeing such a map is “I had no idea—how did that happen?”

I sought to answer that question in my 2022 book *Our Common Ground*. Of course, it didn’t “just happen.” It came about because of a long series of decisions—political decisions—made by our representatives in government. What those decisions were, and how they came to be made, are the core of the book.

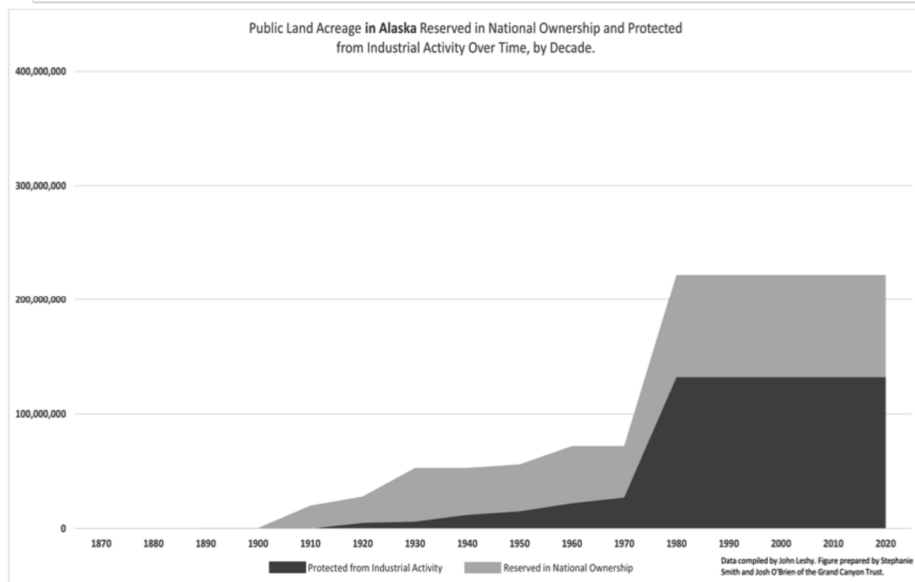
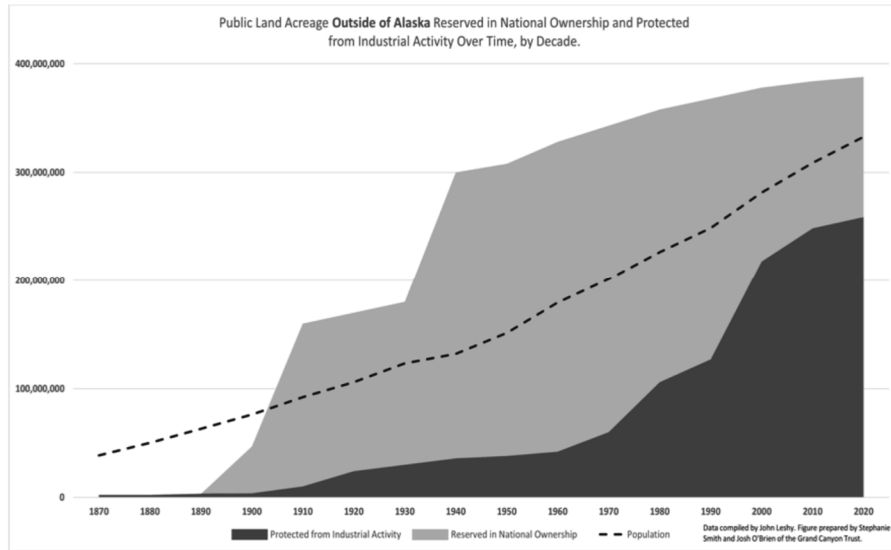
The following two charts provide a capsule summary of the timeline, in ten-year increments, by which public lands came to be held in national ownership and mostly protected from industrial activities.

30. See LESHY, *Our Common Ground*, *supra* note 10, *passim* (2022).

31. *Id.* at 586-88; Joint Econ. Comm., Public Lands Boost Local, State, and National Economies (2023), <https://www.jec.senate.gov/public/index.cfm/democrats/2023/10/public-lands-boost-local-state-and-national-economies#:~:text=These%20same%20counties%20with%20large%20shares%20of,population%20and%20personal%20income%20growth%20on%20average> [https://perma.cc/8DHA-7D3T].

32. Laura A. Hanson & Carol Hardy Vincent, Cong. Rsch. Serv., R42346, Federal Land Ownership: Overview and Data (2020).

Alaska is charted separately because it has far more public lands and a different history compared to every other state.³³



From the nation's founding almost 250 years ago until 1890, U.S. policy was to give away most of the lands it acquired from Indigenous

33. The acreage figures here do not include submerged lands off the nation's coasts, nor do they include acreage where the U.S. owns only the mineral rights and not the land surface. A note of caution: considerable judgment had to be employed in determining these acreage figures, so the charts should be understood as providing a general lay of the land rather than precision.

peoples and foreign governments.³⁴ The recipients of these lands were primarily settlers, new states, miners, railroads and other industrial interests and a variety of speculators.³⁵

Beginning around 1890, in a major political shift driven by reaction to the political corruption and huge wealth inequalities of the Gilded Age, the U.S. began retaining ownership of large tracts of land and protecting some of them from major developments. Ever since, the U.S. has decided to withhold from divestiture more and more lands it already owned, and to acquire additional lands. It has also generally put more and more of these lands off limits to intensive development like mining and roadbuilding.

As this has happened, some myths have grown up about the public lands, including: they have generally been a divisive force in American life; they have tended to divide Americans along partisan lines; and they mostly represent a land grab by the national government, carried out over local and state opposition.³⁶

My book is replete with examples showing just the opposite. Consider, for example, Congress's adoption of the so-called Weeks Act of 1911. It launched a major program that led to the U.S. acquiring more than 20 million acres in the upper reaches of eastern, southern, and midwestern watersheds and establishing more than 50 national forests on these lands.³⁷ Many of these lands had been denuded by logging, and Congress was motivated in large part by a desire to restore forests, reduce erosion, and help prevent destructive floods.³⁸ Almost all these lands were acquired from willing sellers and, in accordance with the terms of the Weeks Act, with the approval of the state where such lands were found.³⁹ Republican governors from New England and Democratic governors from the Southern states jointly testified before Congress in strong support of the legislation, one of them noting how it was the first time in American history that governors from the two regions had appeared jointly before Congress "to ask for something for the common welfare of the United States."⁴⁰

34. The original U.S. public lands grew out of cessions made by seven of the original thirteen colonies of their inchoate claims, based on their colonial charters, to lands in the Appalachian Mountains and beyond. LESHY, *Our Common Ground*, *supra* note 10, at 3-13.

35. *Id.* at 49-122.

36. John Leshy, *America's Public Lands: A Sketch of Their Political History and Future Challenges*, 62 Nat. Res. J. 341, 342, 344 (2022).

37. LESHY, *Our Common Ground*, *supra* note 10, at 307-14.

38. *Id.*

39. *Id.*

40. *Id.* at 310. Another example is how Everglades National Park came to be established in south Florida. The state had sold off much of the land containing the Everglades after acquiring it from the United States in the nineteenth century. Efforts to protect the Everglades began at the grassroots in the 1920s, and starting in the 1930s the state acquired the land from the private owners, using state funds, and then donated the

Another common myth that my book seeks to correct is that this movement has been led by the president and others in the executive branch, while Congress remained mostly on the sidelines. Now it is true that around the turn of the twentieth century, Congress enacted two landmark laws that did delegate broad authority to the president to safeguard lands in national ownership. One was the Forest Reserve Act of 1891, by which a series of presidents (nearly all Republicans) established the national forests that today are found in the Western states and Alaska.⁴¹

The other was the Antiquities Act of 1906. It gave the president authority to protect public lands that contain features of “historic or scientific interest” as national “monuments.” The “monument” label appears to have been chosen primarily to distinguish areas protected by presidents from national “parks,” a label Congress has always made its prerogative to apply.⁴² Eighteen of the twenty-one presidents who have served since the Antiquities Act has been on the books—nine Republicans and nine Democrats—have used it to establish some 150 protected areas covering nearly 100 million acres of public lands onshore, and, starting with Republican George W. Bush, huge areas of submerged lands offshore.⁴³

While the executive did use the authority Congress had given it to establish forest reserves or national monuments, Congress nearly always put its stamp of approval on the executive actions. For example, about half of the 63 so-called “crown jewels,” the areas Congress has labeled national “parks,” were first protected by presidents using the Antiquities Act.⁴⁴

Moreover, Congress increasingly took a leadership role in conserving more and more public lands beginning with enactment of the Wilderness Act in 1964.⁴⁵ In so doing, it illustrated how deferential the congressional process is to local control when making policy for particular areas. The Wilderness Act created a new, very protective category. Public lands given “wilderness” designation generally remain free from roads, motorized vehicles, and extractive activities

lands to the U.S. so that Everglades National Park could be established in the 1940s—hardly a “land grab”! MICHAEL GRUNWALD, *THE SWAMP: THE EVERGLADES, FLORIDA, AND THE POLITICS OF PARADISE* 206-15 (Simon & Schuster, 2006). The establishment of Big Bend National Park in Texas followed a similar path. LESHY, *Our Common Ground*, supra note 10, at 411.

41. *Id.* at 170-84.

42. *Id.* at 257.

43. *Id.* at 253-62, 523, 538; List of National Monuments of the United States, Wikipedia (last edited Oct. 11, 2025) https://en.wikipedia.org/wiki/List_of_national_monuments_of_the_United_States [<https://perma.cc/6CZM-U2WA>].

44. Will De Man, *Almost Half of Your National Parks Were Created by the Antiquities Act*, Nat'l Park Explorer (Dec. 18, 2024), <https://natlpark.com/2024/12/almost-half-of-your-national-parks-were-created-by-the-antiquities-act/> [<https://perma.cc/9RHL-482W>].

45. Pub.L. No.88-577, 78 Stat. 890 (codified as 16 U.S.C. §§ 1331-1336).

like logging and mining.⁴⁶ A key player in its enactment, a curmudgeonly Congressman from western Colorado named Wayne Aspinall, was not enthusiastic about limiting intensive industrial uses of public lands, so he insisted that Congress be the gatekeeper of this new National Wilderness Preservation System.⁴⁷

What Aspinall wanted from this, and got, was to give people in close proximity to these lands more political power over them.⁴⁸ This was because a powerful, long-standing congressional custom holds that, regardless of party or ideology, members are very uncomfortable dictating how public lands are to be managed (or other matters, such as the appointment of federal judges⁴⁹) in other members' districts, for fear the tables could be turned on them.⁵⁰ Aspinall knew, in other words, that making Congress the gatekeeper would make it nearly impossible to put particular areas of public lands into the Wilderness system without the approval or at least acquiescence of the most directly affected members of Congress.

Aspinall seriously underestimated the support that would develop at the grassroots for limiting such intensive uses of public lands. In fact, since 1964 Congress has enacted many dozens of individual pieces of legislation that altogether have put more than 800 separate areas of public land, more than 111 million acres in forty-four states, into the Wilderness system.⁵¹ It has been a decidedly bipartisan enterprise.

The Wilderness Act helped usher in a new era of congressional “zoning”—where Congress spells out in specific laws what uses can and cannot take place on particular areas of public lands. Over the decades since, Congress has enacted many dozens of such laws, giving areas labels like national recreation area, national conservation area, national scenic area, national preserve, wild and scenic river, and so forth.⁵² Each one makes conservation and recreation the primary objectives of management. Each one limits agency discretion by ruling out or strongly discouraging roadbuilding, mining, timber harvesting and the like.⁵³ Each label highlights the area's natural and cultural qualities, attracting more recreational uses and stimulating recreation-related economic activity.⁵⁴ And almost without exception,

46. 16 U.S.C. §§ 1131, 1133.

47. LESHY, *Our Common Ground*, *supra* note 10, at 468-69.

48. *Id.*

49. See, e.g., Barry J. McMillion, *The Appointment Process for U.S. Circuit and District Court Nominations: An Overview*, CRS Report No. R43762 (2016).

50. LESHY, *Our Common Ground*, *supra* note 10, at 468-69.

51. LESHY, *Our Common Ground*, *supra* note 10, at 471-72.

52. *Id.* at 477-80.

53. *Id.*

54. *Id.*

each was enacted with the full support of members of Congress representing that area.⁵⁵

Congress has generally not discriminated among the four principal land management agencies in emphasizing conservation and recreation on public lands. Thus today, the Bureau of Land Management, the Fish & Wildlife Service, the Forest Service, and the National Park Service each looks after many millions of acres in the wilderness system, numerous wild and scenic river segments, and other places with labels that emphasize protection and conservation. All this has substantially blurred distinctions among the four agencies. The net effect is that, regardless of which agency is in charge, America's public lands are generally managed more for open space conservation and recreation than anything else.⁵⁶

This is neatly captured in the change in the logo of the Bureau of Land Management, the most obscure of the federal land agencies, but one that manages more land than any of the others.⁵⁷ Long derided as the "Bureau of Livestock and Mining," it has, with a strong, bipartisan prod from the U.S. Congress, made conservation, protection of cultural resources and recreation a major focus of its management.⁵⁸ Indeed, some have suggested that the BLM should now be referred to as the Bureau of Landscapes and Monuments!⁵⁹

Logo of Bureau of Land Management Original (L) and Modern (R)



55. *Id.*

56. See, e.g., LESHY, *Our Common Ground*, *supra* note 10 at 586-88, 597-98.

57. Laura A. Hanson & Carol Hardy Vincent, Cong. Rsch. Serv., R42346, *Federal Land Ownership: Overview and Data* (2020).

58. Leshy, *Our Common Ground*, *supra* note 10 at 490-502.

59. Bruce Babbitt, *The Heart of the West: BLM's National Landscape Conservation System*, in *From Conquest to Conservation: Our Public Lands Legacy* 100, 101 (Michael P. Dombeck et al. eds., 2003).

Congressional zoning also enhances the durability of these protections. Indeed, generally speaking, once protections for public lands have been put in place, weakening or rescinding them has been almost unknown—until recently, as discussed further below. It is not hard to see why. While assembling measures to protect particular areas of public lands can require a good deal of negotiation to resolve differing points of view, overall, the public lands represent a great, largely bipartisan success story—showing the political process working as it is supposed to work, where Congress responds to and accurately reflects public opinion.

Indeed, practically every opinion poll taken for decades show that an overwhelming majority of people all across the nation, of all political persuasions, regard the public lands with great pride, and are very happy that we have kept them in public ownership and protected them.⁶⁰ The vast majority of people who live in areas with abundant public lands feel this way,⁶¹ as they appreciate their value not only to local quality of life, but also because they provide many opportunities for private enterprise. Tourism and recreation-dependent businesses have become a major economic driver in many smaller communities in the West as well as elsewhere,⁶² making the economic contributions of traditional activities like mining, logging, and livestock grazing pale by comparison.⁶³ The number of visits to public lands is breaking records.⁶⁴

60. For example, a poll commissioned by The Nature Conservancy in 2012 showed broad support for public lands everywhere. *National Poll Shows Great Support For Conservation Of Public Lands*, NATIONAL PARKS TRAVELER (July 9, 2012), <https://www.nationalparkstraveler.org/2012/07/national-poll-shows-great-support-conservation-public-lands10181> [<https://perma.cc/HQA4-UGJN>]. See also Christopher Keyes, *The Feculent Bucket of the Culture War, Re:Public* (Oct. 17, 2025) <https://www.republic.land/politicizing-our-public-lands/?ref=the-good-the-bad-and-the-ugly-newsletter> [<https://perma.cc/76S9-WJQH>].

61. Colorado College's State of the Rockies Project has since 2011 polled a cross-section of the public in numerous western states each year asking a variety of questions about public land policy. The results can be found here. Isabel Devito, *2025 Conservation in the West Poll*, COLORADO COLLEGE (2025), https://www.coloradocollege.edu/other/stateoftherockies/conservationinthewest/2025.html?utm_source=1500+CWP+List+Daily+Clips+and+Updates&utm_campaign=d431af2579-EMAIL_CAMPAIGN_2025_06_23_03_50&utm_medium=email&utm_term=0_d431af2579-77300637 [<https://perma.cc/6PMA-62Y5>] (last visited Oct. 1, 2025).

62. Joint Econ. Comm., *Public Lands Boost Local, State, and National Economies* (2023), <https://www.jec.senate.gov/public/index.cfm/democrats/2023/10/public-lands-boost-local-state-and-national-economies#:~:text=These%20same%20counties%20with%20large%20shares%20of%20population%20and%20personal%20income%20growth%20on%20average> [<https://perma.cc/8DHA-7D3T>].

63. See e.g., The Wildlife Society, *Outdoor Rec A Major Economic Driver in the West, Study Finds*, THE WILDLIFE SOCIETY (Oct. 1, 2018) <https://wildlife.org/outdoor-rec-a-major-economic-driver-in-the-west-study-finds/> [<https://perma.cc/6JK8-W6QF>].

64. See e.g., LESHY, *Our Common Ground*, *supra* note 10, at 597-98; Alec Sills-trausch, *National Parks Set Record For Visitation In 2024; Operational Challenges Looming*, KSL.COM (May 17, 2025, at 21:02 ET), <https://www.ksl.com/article/51312175/national-parks->

Bringing more attention to political success stories is particularly important in our polarized era, where many are skeptical that anything good can come out of the Nation's capital. It was a major reason why I wrote *Our Common Ground*.

III. PUBLIC LANDS 2017-2025 (UNDER TRUMP I AND BIDEN)

Early on, the first Trump Administration appeared determined to break the historic pattern of holding and protecting more and more public lands. In December 2017, it made a huge splash in the public lands world by shrinking by approximately two-thirds the Grand Staircase-Escalante and the Bears Ears National Monuments that Presidents Clinton and Obama, respectively, had established on more than 3 million acres of public land in southern Utah.⁶⁵ A few days later, Trump signed into law a bill Congress had enacted on a strict party-line vote that lifted the ban Congress had enacted in 1980 on oil and gas leasing in the iconic 1.5 million-acre coastal plain of the Arctic National Wildlife Refuge in northeast Alaska⁶⁶. His Administration took numerous other steps to bend public land policy away from conservation and toward industrial exploitation, especially by the fossil fuel industry.⁶⁷

The on-the-ground effects of these actions were actually quite limited, however. Trump only shrank the Utah national monuments, rather than abolishing them outright. Moreover, contrary to the recommendations of subordinates, he left almost completely undisturbed the dozens of other large monuments his predecessors had established over the previous couple of decades.⁶⁸ Also, when the Interior Department put petroleum leases for several hundred thousand acres of land in the Arctic Refuge's coastal plain up for auction shortly before Trump left office in January 2021, the results

set-record-for-visitation-in-2024-operational-challenges-looming [https://perma.cc/FFS5-BBXJ].

65. See e.g., *Presidential Proclamation Modifying the Bears Ears National Monument*, THE WHITE HOUSE (Dec. 4, 2017) <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-proclamation-modifying-bears-ears-national-monument/> [https://perma.cc/XT2T-KUY3]; *Presidential Proclamation Modifying the Grand Staircase-Escalante National Monument*, THE WHITE HOUSE (Dec. 4, 2017) <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-proclamation-modifying-grand-staircase-escalante-national-monument/> [https://perma.cc/9GQF-NT3D].

66. Laura B. Comay et al., Cong. Rsch. Serv. RL33872, Arctic National Wildlife Refuge (ANWR): An Overview (2025).

67. LESHY, *Our Common Ground*, *supra* note 10, at 581-84.

68. Hannah Grover, *Here's What Happened to National Monuments Under Trump's Last Administration*, N. M. POLITICAL REPORT (Apr. 28, 2025) <https://nmpoliticalreport.com/2025/04/28/heres-what-happened-to-national-monuments-under-trumps-last-administration/> [https://perma.cc/Y8LZ-URPJ].

were remarkable.⁶⁹ Not a single bid was made by a major petroleum company. Instead of the billions of dollars proponents of the action said it would raise to reduce the federal budget deficit, the total amount of all bids (nearly all of which were submitted by a unit of the Alaska state government), was only about \$14 million.⁷⁰

Moreover, while in office Trump signed two major pieces of bipartisan public land protection legislation into law. One, enacted in 2019, added more than a million acres in several states to the National Wilderness System, expanded several National Park System units, and added protections to nearly a million acres of public land in the so-called San Rafael Swell area of southern Utah.⁷¹ This last piece had been crafted primarily by the Republicans in the Utah congressional delegation not long after Trump had shrunk the nearby Bears Ears!

In 2020 Trump signed into law the Great American Outdoors Act.⁷² Culminating a half-century-long campaign by protection advocates, it made the Land and Water Conservation Fund (LWCF) that Congress had established in 1964 into a true revolving fund. The Fund's objective is to provide a stream of money (derived primarily from oil and gas leases offshore and onshore) for federal, state, and local government agencies to buy more land for conservation and recreation.⁷³ Before the Great American Outdoors Act, however, it was not a true revolving fund. Instead, Congress had to decide each year how much to spend of the money that was accruing to it, and in fact between 1965 and 2019, less than half of the more than \$40 billion that had accrued to it had been spent.⁷⁴ The Great American Outdoors Act permitted its revenues to be spent as they are accrued—a major victory for public lands everywhere, with some calling it the most important land conservation measure in a generation.⁷⁵

69. Ellen Montgomery, Why No One Bid to Drill in the Arctic Refuge Lease Sale, *Env't America Rech & Pol'y Ctr.* (Jan. 21, 2024) <https://environmentamerica.org/center/articles/why-no-one-bid-to-drill-in-the-arctic-refuge-lease-sale/> [https://perma.cc/A2QH-R6YQ].

70. *Id.*

71. John D. Dingell, Jr. Conservation, Management, and Recreation Act, Pub. L. No. 116-9, 133 Stat. 580 (2019).

72. Great American Outdoors Act, Pub. L. No. 116-152, 134 Stat. 682-87 (2020); LESHY, *OUR COMMON GROUND*, *supra* note 10, at 477, 584.

73. Carol Hardy Vincent, Cong. Rsch. Serv., RL3351, Land and Water Conservation Fund: Overview, Funding History, and Issues (2019).

74. LAND AND WATER CONSERVATION FUND: OVERVIEW, FUNDING HISTORY, AND ISSUES 2 (2019).

75. Before the Administration left office in early 2021, Interior Secretary Bernhardt issued a secretarial order that imposed a host of restrictions on one category of federal acquisitions using LWCF funds, including giving state and local governments veto power over any federal acquisition of inholdings, even where private inholders wanted to sell to the federal government. SEC'Y OF INTERIOR, ORDER. NO. 3388, LAND AND WATER CONSERVATION FUND IMPLEMENTATION BY THE U.S. DEPARTMENT OF THE INTERIOR (2020). The Biden Administration rescinded the Order in its first month in office. In September 2025, Secretary

President Biden promptly restored the two Utah national monuments Trump had downsized.⁷⁶ He also established several large new national monuments, including in so-called purple states like Nevada and Arizona.⁷⁷ He also imposed strict conditions to protect the environment in holding the second congressionally-mandated sale in the Arctic Refuge’s coastal plain.⁷⁸ It attracted no bids.⁷⁹ He also restored and expanded other public land protections Trump I sought to undo or weaken, and worked with Congress to craft legislation, the Inflation Reduction Act, that among other things employed a variety of incentives to promote renewable energy, especially wind and solar.⁸⁰

IV. PUBLIC LANDS AND TRUMP II

In contemplating the future of public land policy, the planet’s destabilizing climate is an elephant in the room—an obvious issue mostly ignored because of the discomfort it can cause. There is no fundamental disagreement about science at the heart of it. The more greenhouse gases humans put into the atmosphere—with fossil fuels being a primary culprit—the more the climate destabilizes.⁸¹ There is some debate about how fast this is happening, but no denying that all of the hottest years in recorded history have occurred in the last decade.⁸² There is also uncertainty about how much a particular event like a drought or hurricane or fire or flood is “caused” by it, but there

Burgum drew criticism for taking steps to limit the use of the Fund for conservation. *See, e.g.*, NPT Staff, *UPDATE: Changes to Land And Water Conservation Fund Draw Criticisms* NATIONAL PARKS TRAVELER (Sep. 2, 2025) <https://www.nationalparkstraveler.org/2025/09/update-changes-land-and-water-conservation-fund-draw-criticisms> [https://perma.cc/JNL6-VT5K].

76. The White House, *FACT SHEET: President Biden Restores Protections for Three National Monuments and renews American Leadership to Steward Lands, Waters, and Cultural Resources* (Oct. 7, 2021) www.bidenwhitehouse.archives.gov/briefing-room/statements-releases/2021/10/07/fact-sheet-president-biden-restores-protections-for-three-national-monuments-and-renews-american-leadership-to-steward-lands-waters-and-cultural-resources/ [https://perma.cc/9LLF-WPW7].

77. *Id.*

78. Andrew Kitchenman, *Biden Administration Includes Restrictions in Arctic Refuge Oil Lease Sale*, ALA. BEACON (Dec. 9, 2024) <https://alaskabeacon.com/briefs/biden-administration-includes-restrictions-in-arctic-refuge-oil-lease-sale/> [https://perma.cc/BF4A-HAFC].

79. *Arctic Refuge Lease Sale Yields No Interest*, U.S. DEPT OF THE INTERIOR (last updated Jan. 8, 2025) <https://www.doi.gov/pressreleases/arctic-refuge-lease-sale-yields-no-interest> [https://perma.cc/39Y4-Y2AD].

80. *See, e.g.*, Sam Zeno & Jenny Rowland-Shea, *The Biden Administration Took Record-Breaking Conservation Action*, CENTER FOR AMERICAN PROGRESS (Jan. 17, 2025), <https://www.americanprogress.org/article/the-biden-administration-took-record-breaking-conservation-action/> [https://perma.cc/7WHZ-RHD3].

81. *Causes and Effects of Climate Change*, UNITED NATIONS <https://www.un.org/en/climatechange/science/causes-effects-climate-change> [https://perma.cc/EYX4-89JM].

82. Delger Erdensanaa, *Earth’s Hottest Years on Record Are the Last 10*, N.Y. TIMES (last updated Mar. 22, 2025) <https://www.nytimes.com/2025/03/18/climate/global-temperatures-wmo-report.html> [https://perma.cc/YEU6-U9Y2].

is no doubt that climate change contributes to the severity of such events.⁸³ The changing climate's impact is hardly trivial. It was recently estimated that nearly one trillion dollars are being spent in the United States each year to repair or otherwise cope with climate damage,⁸⁴ a sum just about equal to the total discretionary spending in the fiscal year 2024 federal budget.⁸⁵

While a global problem, climate change has many implications for public land policy. Some relate to the causes of climate change; for example, about a quarter of our oil production currently comes from public lands, including submerged lands off our shores,⁸⁶ and public lands also furnish sites for solar and wind energy projects that lessen greenhouse gas emissions.⁸⁷ Other implications relate to the effects of climate change, which contribute to an escalating loss of biodiversity, the protection of which has long been a major goal of public land policy.⁸⁸

"Facts," as Aldous Huxley wrote, "do not cease to exist because they are ignored."⁸⁹ Most of the world is waking up to this new reality, and what has been called an "energy transition"—a move away from fossil fuels and increasing use of renewable energy like solar and wind power—has been underway for some time. By some estimates, worldwide twice as much new investment is now going into renewables than fossil fuels.⁹⁰

Nevertheless, on the first day of his second term, President Trump signed an executive order declaring that the nation is in a "national energy emergency" and therefore needed to bend every effort to develop fossil fuel resources wherever and however possible, including on the public lands.⁹¹

83. UNITED NATIONS, *supra* note 82.

84. Eric Roston, *US Spending on Climate Damage Nears \$1 Trillion Per Year*, BLOOMBERG (Jun. 17, 2025), <https://www.bloomberg.com/news/articles/2025-06-17/us-spending-on-climate-damage-nears-1-trillion-per-year?leadSource=uverify%20wall> [<https://perma.cc/XJL5-DTK3>].

85. CONG. BUDGET OFF., DISCRETIONARY SPENDING IN FISCAL YEAR 2024: AN INFOGRAPHIC (2025), <https://www.cbo.gov/publication/61184> [<https://perma.cc/7EHT-AVBD>].

86. USAFacts Team, *How Much Oil and Gas Comes From Federal Territory?*, USAFACTS (last updated Apr. 6, 2023) <https://usafacts.org/articles/how-much-oil-and-gas-comes-from-federal-territory/> [<https://perma.cc/MET5-YNJB>].

87. *Wind Projects on Public Lands*, U.S. DEP'T OF ENERGY, <https://windexchange.energy.gov/projects/public-lands> [<https://perma.cc/FCB9-UJEX>].

88. LESHY, *Our Common Ground*, *supra* note 10, at 597.

89. ALDOUS HUXLEY, *PROPER STUDIES* 205 (1927).

90. *Global Energy Investment Set to Rise to \$3.3 Trillion in 2025 Amid Economic Uncertainty and Energy Security Concerns*, INTERNATIONAL ENERGY AGENCY (Jun. 5, 2025), <https://www.iea.org/news/global-energy-investment-set-to-rise-to-33-trillion-in-2025-amid-economic-uncertainty-and-energy-security-concerns> [<https://perma.cc/8M78-NW9J>].

91. The Order even sought to revive the production of coal, which has been in decline for well over a decade. LEXIE RYAN, CONG. RSCH. SERV., R48587, U.S. COAL INDUSTRY TRENDS (2025).

Considered against the seriousness of the climate challenge, it is remarkable—astonishing, really—that this “energy emergency” order and related directives say not a word about the increasingly unstable climate.⁹² Equally disturbing is the Administration’s withdrawal from international agreements and other efforts to address climate change, and its aggressive moves to dismantle government support for climate-related science.⁹³

Alongside its zealous promotion of fossil fuels, the Trump Administration has—reflecting the President’s many-year-old grudge when he was unable to stop an offshore wind energy development from being built in the viewshed of a resort he was building in Scotland⁹⁴—shown outright hostility to wind energy and has remained largely indifferent to solar energy. While this direction seems bound to end badly for the planet, here I will focus primarily on its implications for public land policy.

The Trump II Administration has also taken very aggressive steps to promote logging on those public lands managed by the Forest Service and the BLM. Early on the President issued an Executive Order requiring these agencies to expedite timber harvesting.⁹⁵ The Administration has also moved to rescind the so-called “roadless rule” adopted in the Clinton Administration that protects tens of millions of acres of national forest lands from most logging and other industrial development.⁹⁶

While flashy pronouncements in executive orders and similar actions might be discounted as having no more binding effect than New Year’s resolutions, which is to say very little, it is a different matter if Congress has taken steps to implement them. The massive OBBBA that Trump signed into law on July 4 contained numerous provisions that require concrete actions to implement these policies,

92. Some observers have characterized Trump’s approach to the climate issue in his second term as “lean[ing] less on climate denial and more on what might be called climate dismissal: diminishing, ridiculing or rejecting the idea that climate change is worth any effort to study or try to slow.” Eric Roston & Brian Kahn, *Climate Change Denial Gets a Trump Twist*, BLOOMBERG LAW (Jun. 17, 2025) <https://news.bloomberglaw.com/health-law-and-business/climate-change-denial-gets-a-trump-twist> [<https://perma.cc/6U99-C8QQ>].

93. See, e.g., Exec. Order No. 14,162, 90 Fed. Reg. 8455 (Jan. 20, 2025).

94. Ron Bousso, *Trump Demands End to North Sea ‘Windmills’ in Swiipe at UK Energy Policy*, REUTERS (Jan. 4, 2025, at 8:33 ET), <https://www.reuters.com/businesses/energy/trump-calls-open-up-north-sea-get-rid-windmills-2025-01-03/> [<https://perma.cc/KCE9-DJUP>].

95. Exec. Order No. 14,223, 90 Fed. Reg. 11359 (Mar. 1, 2025). The Administration suggested that timber imports from Canada pose a risk to the nation’s security. Exec. Order No. 14,225, 90 Fed. Reg. 11365 (Mar. 1, 2025).

96. See *Secretary Rollins Rescinds Roadless Rule, Eliminating Impediment to Responsible Forest Management*, U.S. DEPARTMENT OF AGRICULTURE (June 23, 2025), <https://www.usda.gov/about-usda/news/press-releases/2025/06/23/secretary-rollins-rescinds-roadless-rule-eliminating-impediment-responsible-forest-management> [<https://perma.cc/TME5-LQYA>].

after the President exerted enormous pressure on the Republican members of Congress to unite and enact it.⁹⁷

Regarding timber production from public lands, for example, the OBBBA requires the Forest Service to more than double the amount of timber that can be harvested from the national forests and the BLM to nearly double the amount that can be harvested from its lands, and also requires both agencies to enter into dozens of long-term timber contracts to lock the increased logging in for at least two decades.⁹⁸ These provisions, coupled with the repeal of the roadless rule now in process, open the door to widespread logging on vast amounts of public lands.

Regarding onshore oil and gas, the OBBBA requires the government to offer to lease—on generous terms it specifies—tens of millions of acres of public land for fossil fuel development.⁹⁹ Not to consider, or even plan for it, but in fact to conduct lease sales of specified scope and terms on a schedule specified in the law.¹⁰⁰ Under it, oil and gas lease sales must be held a minimum of four times a year.¹⁰¹ Reversing a prohibition in existing law, the OBBBA allows public lands to be leased without open competition for just \$1.50 an acre.¹⁰² It also encourages speculators to nominate public lands for lease by abolishing the \$5 per acre nomination fee that was previously required.¹⁰³ And, it requires BLM to offer up at least 50% of such nominated acreage.¹⁰⁴ It reduces the royalty rate producers of petroleum from federal lands pay down to the statutory minimum Congress adopted way back in 1920.¹⁰⁵ These leases convey a legal right in public lands for a minimum of ten years, with a maximum tenure that could extend for many decades.¹⁰⁶

97. One Big Beautiful Bill Act, §§ 50301-05.

98. *Id.* at §§ 50301-02.

99. *Id.* at §§ 51301-05.

100. *Id.*

101. *Id.* at § 50301(b)(1).

102. *Id.* at § 51301.

103. One Big Beautiful Bill Act, § 51301.

104. *Id.*

105. One Big Beautiful Bill Act, §§ 50101, 50103-05; see 30 U.S.C. § 226; *General Oil and Gas Leasing Instructions*, U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT: GENERAL LEASING, <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/general-leasing> [<https://perma.cc/6T2Q-KRD3>] (last visited Sep. 29, 2025). The OBBBA also includes aggressive provisions to boost the sale of oil and gas leases on federal lands off the nation's coasts, including off Alaska. § 50102. It does, however, preserve "existing oil and gas leasing moratoria," thus allowing many places like Mar-A-Lago and other areas off Republican strongholds to be exempted from the leasing promotion.

106. 30 U.S.C. § 226 (e) provides that a lease "shall continue so long after its [ten-year] primary term as oil or gas is produced in paying quantities." The Interior Department proposed in 2023 to update its oil and gas regulations in response, among other things, to recently enacted legislation and to criticism that they are too lax in interpreting this

The OBBBA's provisions regarding Alaska—which holds a special place in the pantheon of public lands because of its scale and largely intact natural splendor—are even more jaw-dropping. Following up the 2017 legislation that first opened the iconic coastal plain of the Arctic National Wildlife refuge to oil and gas leasing, it requires the Interior Department to conduct four more lease sales there over the next seven years, of a minimum of 400,000 acres each.

The OBBBA's provisions regarding the 23-million-acre National Petroleum Reserve (NPR) in northwest Alaska are even more far-reaching.¹⁰⁷ In 1923, as the Navy was shifting from coal to oil as a primary fuel, President Harding established the NPR by executive order.¹⁰⁸ In 1976 Congress renamed it the NPR-Alaska, transferred it from the Navy to the Interior Department, and directed the president to prepare a study to “determine the best overall procedures” for exploring, developing, and transporting its petroleum resources.¹⁰⁹ Congress explicitly sought to strike a balance between petroleum development and “protection of environmental, fish and wildlife, and historical or scenic values” by authorizing the Secretary to promulgate such rules and regulations that as “he deems necessary and appropriate for the protection of such values within the reserve.”¹¹⁰ The legislation went on to direct that

Any exploration within . . . areas designated by the Secretary of the Interior containing any significant subsistence, recreational, fish and wildlife, or historical or scenic value, shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve.¹¹¹

provision, allowing leases to be extended indefinitely where there are no active wells. See generally Fluid Mineral Leases and Leasing Process, 88 Fed. Reg. 47562 (to be codified at 43 C.F.R. pt. 3000, 3100, 3110, 3120, 3130, 3140).

107. One Big Beautiful Bill Act, § 50104; Maxine Joselow, *Trump Opens Pristine Alaska Wilderness to Drilling in Long-Running Feud*, N.Y. TIMES (Oct. 23, 2025) <https://www.nytimes.com/2025/10/23/climate/trump-arctic-national-wildlife-refuge-oil-drilling.html?nl=Climate+Forward> [<https://perma.cc/3YCK-E4NX>]; Emily Gardner, *1.5 Million Acres of Alaskan Wildlife Refuge to Open for Drilling*, EOS (Oct. 23, 2025) <https://eos.org/research-and-developments/1-5-million-acres-of-alaskan-wildlife-refuge-to-open-for-drilling> [<https://perma.cc/6JHP-L7FB>].

108. Mark K. DeSantis & Lexie Ryan, Cong. Rsch. Serv., IF13119, National Petroleum Reserve in Alaska (NPR-A): A Summary (2025).

109. Pub. L. 94-258, §105(b)(c), 90 Stat. 305 (1976), codified at 42 U.S.C. § 6505(b).

110. 42 U.S.C. § 6503(b). The Conference Report on this legislation called on the Secretary to “take every precaution to avoid unnecessary surface damage and to minimize ecological disturbances throughout the reserve.” H.R. REP. NO. 94-942, at 21 (1976) (Conf. Rep.).

111. 42 U.S.C. § 6504(a). Based on this authority, the Interior Secretary has designated several areas in the NPR-A as having significant subsistence and other values requiring such special protection. These included the Teshekpuk Lake Special Area, created to protect migratory waterfowl and shorebirds, the Colville River Special Area, created to protect the

In 1980 Congress authorized “an expeditious program of competitive leasing of oil and gas” in the NPRA that would include “such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on” the NPRA’s surface resources.¹¹²

A small fraction of the NPR is currently under lease. Whereas the Biden Administration would have permitted leasing on only about half the NPR, the second Trump Administration is proposing to lease nearly 19 million acres.¹¹³ The OBBBA overrides the Biden NPRA rules and instead directs the Secretary to “restore and resume” oil and gas leasing under policies President Trump had adopted in June 2020, and to “conduct not fewer than 5 lease sales” of at least 4 million acres each within 10 years after the Act’s enactment.¹¹⁴

The OBBBA contains similar mandates regarding leasing submerged lands off the nation’s coasts. Moreover, it reduces royalties that oil and gas lessees must pay the federal Treasury down to a minimum that Congress established when it enacted the Mineral Leasing Act in 1920.¹¹⁵ Estimates are this will reduce federal revenues by tens of billions of dollars over the next couple of decades, with half of that loss being borne by states under the Act’s revenue-sharing provision.

Regarding federal coal, the OBBBA requires the Interior Department to offer leases, at a significantly reduced royalty rate, on at least four million acres of known coal reserves on public lands.¹¹⁶ In response, the Administration recently announced that it is putting more than 13 million acres of federally-owned coal up for leasing.¹¹⁷

arctic peregrine falcon, and the Utukok River Uplands Special Area, created to protect critical habitat for caribou of the Western Arctic Herd. *Biden-Harris Administration Takes Critical Action to Protect Alaska Native Substance, Lands and Wildlife*, U.S. DEP’T. OF INTERIOR (last updated Apr. 19, 2024) <https://www.doi.gov/pressreleases/biden-harris-administration-takes-critical-action-protect-alaska-native-subsistence> [<https://perma.cc/S26H-26D6>].

112. Act of Dec. 12, 1980, Pub. L. No. 96-514, 94 Stat. 2957, 2964 (1980).

113. Interior Department Press Release on implementing the Trump “Unleashing” Executive Order, §3(b)(ix),(x),(xii-xv).§§ 3(b)(i)-(vii), (xx); Yereth Rosen, *Trump Administration Moves Toward an Arctic Alaska Oil Lease Sale Despite the Government Shutdown*, ALASKA BEACON (Oct. 22, 2025) <https://alaskabeacon.com/2025/10/22/trump-administration-moves-toward-an-arctic-alaska-oil-lease-sale-despite-the-government-shutdown/> [<https://perma.cc/X3ZB-XE39>].

114. One Big Beautiful Bill Act, Pub. § 50105.

115. *Id.* at § 50101(a).

116. *Id.* at §§ 50202-03; *see* 30 USC § 201.

117. *Interior Unleashes American Coal Power In Bold Move To Advance Trump Administration Priorities*, BUREAU OF LAND MANAGEMENT, <https://www.blm.gov/press-release/interior-unleashes-american-coal-power-bold-move-advance-trump-administration> [<https://perma.cc/JA28-M4BM>]; Timothy Gardner, *Trump Administration to Expand Coal Leasing, Fund Coal Plant Upgrades*, REUTERS (Sep. 29, 2025, at 12:56 ET), <https://www.reuters.com/sustainability/climate-energy/trump-officials-announce-plan-boost-coal-output-2025-09-29/> [<https://perma.cc/49KA-7P2J>].

Whether these provisions actually result in more extraction of fossil fuels and timber from public lands is not so clear. Market forces are an important driver of industry interest, and how much public land is available is but one component of that calculation.¹¹⁸

Nevertheless, the OBBBA and related Administration actions will make vast amounts of public lands available to petroleum, mining, timber and other industrial enterprises and speculative investors on generous terms. Under current law the tenure of such arrangements can be lengthy, even open-ended. While not transferring complete ownership, the effect of creating many thousands of potentially long-lasting partial property rights to mine and log public lands should not be underestimated.

So long as they remain outstanding, these property rights will affect the management of many millions of acres of public lands. They will greatly complicate, and in some cases simply thwart, efforts to conserve wildlife and other natural values, and interfere with recreation dependent on such values, not simply on the lands that are leased, but on other public lands in the vicinity.¹¹⁹ Their overall effect may not, in other words, be radically different from an outright permanent transfer of complete title.

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All that said, two things are worth noting about the Trump II public lands actions to date. First, the Administration has not openly endorsed transferring full ownership of public lands to states or private interests. It did not take a public position on a proposal advanced by Utah Senator Mike Lee to include in the OBBBA an authorization to sell millions of acres of public land managed by the

118. See, e.g., Travis D. Stice, Letter to Stockholders Issued by Diamondback Energy, Inc., Diamondback Energy (May 5, 2025), <https://www.diamondbackenergy.com/news-releases/news-release-details/letter-stockholders-issued-diamondback-energy-inc-7> [<https://perma.cc/T9MS-VA3D>]. Diamondback Energy letter to stockholders May 5, 2025, projecting that future activity in, and production from, the Permian Basin in New Mexico and Texas---much of it centered on public lands---will decline). *But see* Mary Cunningham, *Trump Administration Fast-Tracks Oil and Mining Projects, Angering Environmentalists*, CBS NEWS (Apr. 5, 2025, 13:20 ET), <https://www.cbsnews.com/news/trump-drilling-mining-permitting-process-shortened/> [<https://perma.cc/GNZ9-HPP2>].

119. See, e.g., Alysha Lundgren, *Interior Opens Lands Adjacent to Zion, Other National Parks to Coal Leasing*, ST. GEORGE NEWS (Nov. 2, 2025) https://www.stgeorgeutah.com/news/interior-opens-lands-adjacent-to-zion-other-national-parks-to-coal-leasing/article_1ef2fb92-cbf3-47b0-a994-0c79f31a9ddb.html?utm_source=1500+CWP+List+Daily+Clips+and+Updates&utm_campaign=1a409eabdb-EMAIL_CAMPAIGN_2025_11_02_11_39&utm_medium=email&utm_term=0_1a409eabdb-77300637 [<https://perma.cc/QWJ5-MM3Q>]; Mike Koshmrl, *Proposed Wyoming Oil and Gas Leases Overlap Wildlife Corridors*, HIGH COUNTRY NEWS (Oct. 29, 2025) https://www.hcn.org/articles/proposed-wyoming-oil-and-gas-leases-overlap-wildlife-corridors/?utm_source=wcnl&utm_medium=email&utm_campaign=2025-10-31-Newsletter [<https://perma.cc/GG6D-SQP4>].

U.S. Forest Service and the Bureau of Land Management.¹²⁰ Lee's proposal failed in large part because of opposition from several Republican members of the House and the Senate from the West.¹²¹

Second, the Trump II Administration has largely refrained reversing or limiting the many actions its predecessors took to establishing national monuments, using their authority under the Antiquities Act, as the Trump I Administration did by shrinking two large national monuments in Utah.¹²² In May the Department of Justice's Office of Legal Counsel issued a lengthy formal legal opinion overruling a 1938 Attorney General opinion and concluding that the president had the authority to abolish national monuments established by earlier presidents.¹²³ But as of this writing no action has been taken to implement the new opinion.

It is worth asking why, as seems to be the case, the Administration is wary of endorsing outright transfers of full title to public lands, or weakening or abolishing national monument protections for such lands, even though right-wing opponents of federal public lands have long advocated for such things¹²⁴.

The most obvious explanation, at least to this observer, is that the Administration has been made cautious by the opinion polls I referred to earlier¹²⁵ which consistently show how most Americans support

120. Drew McConville, Mariel Lutz & Jenny Rowland-Shea, *The Trump Administration's Expansive Push to Sell Out Public Lands to the Highest Bidder*, CTR. FOR AM. PROGRESS (Sep. 22, 2025) <https://www.americanprogress.org/article/the-trump-administrations-expansive-push-to-sell-out-public-lands-to-the-highest-bidder/> [<https://perma.cc/ZJ5W-7EGC>].

121. See e.g., Maxine Joselow, *A Conservative's Plan to Sell Public Lands Faces MAGA Pushback*, N.Y. TIMES (June 29, 2025), <https://www.nytimes.com/2025/06/27/climate/public-lands-sell-off-maga.html> [<https://perma.cc/TWQ7-ZXKG>].

122. The Trump II Administration has removed the prohibition on commercial fishing that Presidents G.W. Bush and Obama included in vast national monuments they established on submerged public lands offshore. But it has not weakened, shrunk or abolished onshore national monuments, though it has danced around the idea. Internal documents leaked in the first few months suggested the Administration had such direct actions under serious consideration, but when pressed on it the Administration retreated. See Jennifer Yachnin, Heather Richards & Scott Streater, *Here Are National Monuments Trump Could Dismantle*, POLITICO: E&E NEWS (June 17, 2025, at 01:52 ET), https://www.eenews.net/articles/here-are-national-monuments-trump-could-dismantle/?utm_source=1500+CWP+List+Daily+Clips+and+Updates&utm_campaign=95edd2e5a7-EMAIL_CAMPAIGN_2025_06_18_01_00&utm_medium=email&utm_term=0_95edd2e5a7-77300637 [<https://perma.cc/3UJ5-A2GX>].

123. Revocation of Prior Monument Designations, 49 Op. O.L.C. (May 27, 2025) (slip op. at 50).

124. See e.g., Alexander Annett, *The Federal Government's Poor Management of America's Land Resources*, THE HERITAGE FOUND. (May 17, 1999) <https://www.heritage.org/environment/report/the-federal-governments-poor-management-americas-land-resources> [<https://perma.cc/QZE3-EFSQ>]; Stuart M. Butler, *Privatizing Federal Services: A Primer*, THE HERITAGE FOUND. (Feb. 20, 1986) <https://www.heritage.org/budget-and-spending/report/privatizing-federal-services-primer> [<https://perma.cc/9BAC-Y2DR>]; see also sources *infra* note 109.

125. See sources cited *supra* notes 26-27.

protecting public lands, even in deeply red states like Utah and Montana.¹²⁶

Perhaps they are also mindful of the experience of the Reagan Administration in the early 1980s. When he was campaigning for president in 1980 against Jimmy Carter, Ronald Reagan characterized himself as a “sagebrush rebel,” endorsing a rightwing movement that was then advocating for transferring many public lands in the West to the states.¹²⁷ Once in office, he proposed selling off some 35 million acres of public land he called “surplus” supposedly to help balance the federal budget.¹²⁸

Reagan’s proposed selloff of public lands triggered a huge amount of opposition, nationally and locally.¹²⁹ It failed to gain much support even among congressional Republicans (who at the time controlled the Senate), and fell flat.¹³⁰ Reagan got the message, and abruptly started working with Congress to protect more public lands.¹³¹ Recall that I mentioned earlier Congress’s creation of the National Wilderness System in 1964; in fact, before he left office in early 1989, Reagan signed 28 separate bills that altogether put more acreage in the lower 48 states in the wilderness system, the most protective category, than any president before or since.¹³²

Reagan also appointed a flamboyant right-winger from Wyoming, James Watt, as Interior Secretary.¹³³ Watt immediately launched an effort to lease every acre of public land legally open to oil and gas development.¹³⁴ It too triggered a good deal of opposition and he eventually resigned, but not before issuing oil and gas leases in some areas, like the Rocky Mountain Front in northern Montana, that many wanted to see protected. Illustrating my earlier point about how the property rights contained in such leases can make it hard to retire, it took forty years and tens of millions of dollars of federal and private

126. Jason Chaffetz, a Republican member of the House from Utah, provided a vivid illustration of this in 2017 when in the early days of the first Trump Administration, he introduced legislation proposing to sell off 3.3 million acres of public land, only to encounter such immediate, withering criticism that he voluntarily withdrew the measure within a few days. See Juliet Eilperin, *Facing Backlash, Utah Rep. Jason Chaffetz Withdraws Bill to Transfer Federal Land to the States*, WASH. POST, (February 2, 2017), <https://www.washingtonpost.com/news/energy-environment/wp/2017/02/02/facing-backlash-utah-rep-jason-chaffetz-withdraws-bill-to-transfer-federal-land-to-the-states/> [<https://perma.cc/H3JT-8SRB>].

127. LESHY, *Our Common Ground*, *supra* note 10 at 576-78.

128. *Id.*

129. <https://www.nytimes.com/1982/04/17/us/west-upset-by-reagan-plan-to-sell-some-federal-lands.html>; <https://time.com/archive/6859568/land-sale-of-the-century/>.

130. *Id.*

131. LESHY, *Our Common Ground*, *supra* note 10, at 577.

132. *Id.* at 351-52, 499, 576-77.

133. *Id.* at 576-77.

134. *Id.* at 577.

philanthropic money to finally retire the leases and protect this area from industrial activity.¹³⁵

The Trump Administration is also likely mindful of the Supreme Court's rejection earlier this year of Utah's attempt to have it establish constitutional limits on Congress's power to hold public lands for the benefit of all.¹³⁶

Another piece of evidence supporting this interpretation is the changing position of the Heritage Foundation, a very conservative think-tank. Practically since its founding in 1973, it has consistently advocated for transferring many public lands out of national ownership.¹³⁷ But its recommendations for the incoming Trump Administration in its so-called Project 2025 were curiously silent on the subject.¹³⁸

To this long-time observer of public lands politics, the decisions of the Foundation and the Trump II Administration to take a pass on this issue did not represent a change of objective, but rather a change of tactics. Those who think holding large amounts of lands in public ownership and protecting most of them from industrialization is a bad (and even possibly unconstitutional¹³⁹) policy have not gone away. But for President Trump now to support divesting significant amounts of public land seems plainly out of step with mainstream public opinion everywhere, including in the intermountain West.

This has, I believe, led the Heritage Foundation and its allies to change strategy. Rather than calling for divestiture of public lands, they now seek to hobble its management and make it ineffective.

135. See Badger Bulletin, Victory for the Badger- Two Medicine, Glacier-Two Med. All. (Sept. 10, 2023) <https://www.glaciertwomedicine.org/victory-for-the-badger-two-medicine/>. [<https://perma.cc/H6TW-ZYL2>].

136. *Utah v. United States* 604 U.S. ____; 145 S. Ct. 1134 (2025); Nate Raymond, *US Supreme Court Rejects Utah Challenge to Federal Land Control*, REUTERS (January 14, 2025, at 09:16 ET), <https://www.reuters.com/legal/government/us-supreme-court-rejects-utah-challenge-federal-land-control-2025-01-13/> [<https://perma.cc/2BH4-JKBZ>]; see also John D. Leshy, *Utah Wants the Supreme Court to Give It Land Owned by All Americans*, N.Y. TIMES (Jan. 8, 2025) <https://www.nytimes.com/2025/01/08/opinion/utah-parks-supreme-court.html> [<https://perma.cc/8JR5-3UJM>].

137. The 2016 Republican Party platform made a similar recommendation, calling it “absurd” to think that all public lands should “remain under the absentee ownership or management of official Washington,” and instead calling on Congress to “immediately pass universal legislation providing for a timely and orderly mechanism requiring the federal government to convey certain federally controlled public lands to states,” and calling on “all national and state leaders and representatives to exert their utmost power and influence to urge the transfer of those lands, identified in the review process, to all willing states for the benefit of the states and the nation as a whole.” See U. Cal. Santa Barbara, *2016 Republican Party Platform*, THE AMERICAN PRESIDENCY PROJECT, (July 18, 2016),

<https://www.presidency.ucsb.edu/documents/2016-republican-party-platform> [<https://perma.cc/JLJ6-MQ2M>].

138. See generally, MANDATE FOR LEADERSHIP: PROJECT 2025, THE HERITAGE FOUND. (2023) https://static.heritage.org/project2025/2025_MandateForLeadership_FULLL.pdf [<https://perma.cc/43VE-4DR8>].

139. See, Leshy, *supra* note 136 and accompanying text.

Trump's Director of the Office of Management and Budget, Russell Vought, a long-time Heritage Foundation official who was the principal architect of Project 2025, has aggressively implemented this strategy inside the Trump Administration.¹⁴⁰

This hobbling of management comes primarily through slashing the budgets and workforces of the managing agencies,¹⁴¹ including their capacity for developing and applying the science that is a key component of managing natural areas.¹⁴² This will degrade both the lands and the experiences of the recreating public who use them. The barely disguised objective is to so discredit federal land management in the public's mind that many will conclude the best thing to do is to let someone else—states, local governments, private interests—take up that responsibility. It is clear that if the lands were given to the states, especially if unaccompanied by federal dollars, they would very likely have little choice but to privatize them.¹⁴³

Even if this strategy does not significantly reduce the amount of land in national ownership before the Trump Administration leaves office, the hollowing out will be nearly impossible to reverse quickly, even if Trump were to be succeeded by an ardent defender of public lands. Thus the strategy could still work in the longer run.

And if large quantities of public lands are put up for sale, who would be likely buyers? As I noted earlier, we are in a second Gilded Age. Like the one that dominated American political culture in the last few decades of the nineteenth century, it is characterized by huge wealth

140. See, e.g., Sophia Cai & Megan Messerly, *Like Elon Musk, Russ Vought Wants to Break Washington. Unlike the Billionaire, the Budget Guru Might Just Succeed.*, POLITICO (June 7, 2025 at 14:00 ET) <https://www.politico.com/news/2025/06/07/russ-vought-elon-musk-00392931> [<https://perma.cc/NGJ5-QGKR>]. Former House Speaker Newt Gingrich recently noted that Trump and Vought are mounting a “very methodical, aggressive cultural and political and economic offensive” to shrink the government. Erica L. Green, *Deepfakes, Insults and Job Cuts: Government Shutdown Like No Other*, N. Y. TIMES, Oct. 2, 2025, <https://www.nytimes.com/2025/10/02/us/politics/shutdown-trump-clinton-gingrich.html> [<https://perma.cc/WC7J-SKQ3>].

141. I have described public land management as a “great bargain—by practically every measure one of the most cost-effective things the U.S. government does.” JOHN D. LESHY, *DEBUNKING CREATION MYTHS ABOUT AMERICA'S PUBLIC LANDS* 26 (2018). The total budget of the four principal federal land management agencies is less than one third of one per cent of the total federal budget, and only about 2% of the non-defense, discretionary (non-entitlement) portion of the federal budget. The four agencies collectively employ only about 3% of the total U.S. government civilian workforce, not counting the U.S. Postal Service. See *id.*

142. See, e.g., *Here's What Trump's Budget Proposal Cuts by Agency*, THE WASHINGTON POST (May 2, 2025) <https://www.washingtonpost.com/politics/interactive/2025/trump-budget-proposal-cuts/> [<https://perma.cc/ZY6N-CU34>].

143. As New Mexico Senator Martin Heinrich posted on Facebook on February 26, 2025, “Republicans’ Plan: Step One: Fire thousands of workers who manage our public lands. Step Two: Say these lands aren’t being managed and need to be transferred to states. Step Three: Sell the lands off to the highest bidder.” Senator Martin Heinrich, FACEBOOK (Feb. 26, 2025) <https://www.facebook.com/SenatorHeinrich/posts/republicans-planstep-one-fire-thousands-of-workers-who-manage-our-public-landsst/1179622110189067/> [<https://perma.cc/M87W-WVPZ>].

disparities and manipulation of the political system by the very wealthy.¹⁴⁴

The first Gilded Age facilitated the plundering of public land assets to benefit wealthy special interests.¹⁴⁵ The Trump policies, aimed at turning over vast amounts of public lands to petroleum and other industrial enterprises and speculative investors for little or no return, certainly raise the specter of closing or restricting access to public lands currently open to all.

Other examples can be found in contemporary conflicts between wealthy private landowners and recreational users of public land. Not long ago, a wealthy North Carolinian bought 22,000 acres of land in Wyoming that was interspersed in a checkerboard pattern with about the same amount of public land—the legacy of a giant federal land grant Congress made to the first transcontinental railroad in 1864.¹⁴⁶ When three sport hunters stepped momentarily into the airspace over a corner of his land in order to access the public lands where they planned to engage in lawful hunting, he sued them for trespass, demanding \$8 million in damages even though they had not set foot on his land or otherwise cause him any tangible harm.¹⁴⁷ Other plutocrats have done similar things in other parts of the West.¹⁴⁸

Another illustration of the growth of plutocratic influence on public lands is the changing profile of the typical holder of a permit to graze livestock on those lands. Studies suggest that these days perhaps several thousand grazing permittees might be characterized as hobbyists or amenity-seekers, who get most of their income elsewhere.¹⁴⁹ And increasingly they have fabulous wealth; for example, in 2021, a large ranch that includes permits to graze many thousands of acres of public land in Montana's beautiful Centennial Valley changed

144. See *supra* text accompanying notes 5-13.

145. See *supra* text accompanying notes 5-13.

146. Will Walkey, *Corner Crossing Lawsuit is the Latest Fight Over Mountain West Land Access*, WYO. PUBLIC MEDIA (Sep. 23, 2022) <https://www.wyomingpublicmedia.org/open-spaces/2022-09-23/corner-crossing-lawsuit-is-the-latest-fight-over-mountain-west-land-access> [<https://perma.cc/J8SZ-GMWR>].

147. The lower courts rejected his lawsuit and the Supreme Court recently denied review. *Iron Bar Holdings, LLC v. Cape*, 674 F. Supp. 3d 1059, 1064 (D. Wyo. 2023), *aff'd*, 131 F.4th 1153 (10th Cir. 2025), *cert. denied* (___ S Ct. ___, Oct. 20, 2025).

148. Nicole Blanchard, *Texas Billionaire Brothers Block Another Idaho Road, Prompting Criticism Over Public Access*, IDAHO STATESMAN (June 12, 2019, 2:24 PM) <https://www.idahostatesman.com/outdoors/article231467743.html> [<https://perma.cc/8TT2-TLZH>].

149. See, e.g., John Leshy & Molly McUsic, *Where's the Beef, Facilitating Voluntary Retirement of Federal Lands from Livestock Grazing*, 17 N.Y.U. ENVTL L.J. 368, 371 n. 11 (2008); Bradley J. Gentner & John A. Tanaka, *Classifying Federal Public Land Grazing Permittees*, 55 J. RANGE MGMT. 2, 8 (2002); see also E. Tom Bartlett et al., *Valuing Grazing Use on Public Land*, 55 J. RANGE MGMT. 426, 426 (2002).

hands.¹⁵⁰ The seller: a Koch Brothers enterprise. The buyer: Rupert Murdoch and his spouse.¹⁵¹

Another manifestation is in key Trump Administration appointments. For example, Interior Secretary Doug Burgum, a tech billionaire before he entered politics, has close ties to the petroleum industry and repeatedly has spoken of the public lands as a gigantic fiscal asset on the national “balance sheet.”¹⁵² Michael Boren, the founder of a multi-billion-dollar tech company, was recently confirmed by the Senate as Undersecretary of the Agriculture Department for Natural Resources and the Environment. There he supervises the Forest Service, even though he has had numerous disputes with that agency over his use of lands he owns in Idaho that are within the Sawtooth National Recreation Area it manages.¹⁵³

Considered all together, these modern-day Gilded Age initiatives pose a major threat to the public lands, and especially to its important function as a great equalizer. To the extent they take hold, these lands will no longer provide readily accessible, affordable opportunities for millions of ordinary citizens to recreate in and be inspired by encounters with wild nature. While the recent controversy over Senator Lee’s proposal to include a public land sales provision in the OBBB Act resulted in many voices being raised in opposition from a wide variety of interests, it remains to be seen whether the Trump Administration’s less overt but much more widespread efforts toward the same end will be opposed with the same fervor.

Before closing, let me suggest that the stakes regarding the future of the public lands are particularly high in the state of Alaska.¹⁵⁴ Its stupendous scale and breathtakingly gorgeous, largely intact natural landscapes, many of which are found on the more than 200 million acres of public lands found there, have long fired the American

150. Forbes Global Properties Staff, *Rupert Murdoch Buys Koch Family Ranch in Montana For \$200 Million*, FORBES GLOBAL PROPERTIES <https://www.forbesglobalproperties.com/insights/rupert-murdoch-buys-koch-family-ranch-in-montana-for-200-million> [https://perma.cc/AS5X-PBNG]; E.B. Solomont & Candace Taylor, *Rupert Murdoch Buys \$200 Million Montana Ranch From the Koch Family*, WALL STREET JOURNAL (Dec. 9, 2021 at 11:02 AM ET) https://www.wsj.com/real-estate/luxury-homes/rupert-murdoch-buys-200-million-montana-ranch-from-the-koch-family-11639065752?mod=hp_trending_now_article_pos1. [https://perma.cc/SM3B-CTDM].

151. Forbes Global Properties Staff, *supra* note 150.

152. Heather Richards, *4 things to know about Doug Burgum’s ‘balance sheet’ pitch*, E&E NEWS BY POLITICO, (April, 25, 2025 at 1:43 PM EDT), <https://reason.com/volokh/2024/07/04/what-the-declaration-of-independence-said-and-meant-6/> [https://perma.cc/3XP2-BNV8].

153. Hiroko Tabuchi, *Trump’s Pick to Run the Forest Service Has a History With the Agency*, The New York Times (June 3, 2025) <https://www.nytimes.com/2025/06/03/climate/michael-boren-forest-service-nomination.html> [https://perma.cc/465F-MGS2]; PN13-1 - Nomination of Michael Boren for Department of Agriculture, 119th Congress (2025-2026), PN13-1, 119th Cong. (2025).

154. See, John D. Leshy, *The Cloudy Future of Alaska’s Magnificent Public Lands*, 40 NAT. RES. & ENV’T (Winter, 2026).

imagination. A good many of these lands have been accorded considerable protection, primarily as a result of the landmark Alaska National Interest Lands Conservation Act (ANILCA), enacted in 1980 after a national, bipartisan grassroots campaign.¹⁵⁵ But gaps and other shortcomings in these protections have emerged and become more prominent in recent years.¹⁵⁶ The problems are being exacerbated by climate change, including rapidly thawing permafrost, as the Arctic has warmed 3-4 times faster than the rest of the earth in the past few decades.¹⁵⁷ Growing threats to these lands are exemplified by President Trump's January 20, 2025 executive order calling for developing Alaska's resources "to the fullest extent possible."¹⁵⁸ A national grassroots movement like the one that persuaded Congress to enact ANILCA in 1980 is now in the process of being revitalized, led by organizations like Americans for Alaska.¹⁵⁹

V. CLOSING SPECULATIONS ABOUT THE FUTURE

At this point, less than a quarter of the way through his second term, it remains entirely possible that Donald Trump will preside over a paradigm shift in America's public land policy.

On the scale of public concern, public lands rank far below issues like war and peace and economic and human health. On those and many other issues, Americans seem to be divided into two more or less equal camps. Moreover, our political system is more dysfunctional than it has been in a very long time. All this suggests that it may not be realistic to expect that the longstanding trend of protecting more and more lands in public ownership will continue, especially given the President's belief that climate change is not a serious problem, his support for using all available public lands to produce fossil fuels, and his efforts to roll back many policies and programs aimed at protecting the environment.

I have mentioned the Reagan experience with public lands, where his initial efforts to make fundamental changes failed, and he ended up continuing rather than altering the long trend favoring protecting

155. LESHY, *Our Common Ground*, *supra* note 10, at 520-27.

156. For example, the Trump Administration recently announced its approval of a long-contested proposal to proceed with a land exchange that would result in a road being built through the Izembek National Wildlife Refuge in the Aleutian Islands, adopting an interpretation of ANILCA that could be used to shred protections for most of the lands that statute protected. *See, e.g.*, Katie Umphlett, *What Public Lands Will Alaska Have Left Once Trump is Through with Them?*, ALASKAN WILDERNESS LEAGUE (Oct. 30, 2025) <https://alaskawild.org/blog/what-public-lands-will-alaska-have-left-once-trump-is-through-with-them/> [<https://perma.cc/S2XH-4EEP>].

157. Mika Rantanen, et al., *The Arctic Has Warmed Nearly Four Times Faster than the Globe Since 1979*, 30 *COMM'NS. EARTH & ENV'T* 1, 1 (2022).

158. Exec. Order No. 14153, 90 Fed. Reg. 144 (Jan. 20, 2025).

159. *See, e.g.*, AMERICANS FOR ALASKA, <https://americansforalaska.org/> [<https://perma.cc/2H4S-WRUH>] (last visited Oct. 21, 2025).

more and more public lands.¹⁶⁰ There are, however, many differences between then and now. Social media did not then exist, Americans were less siloed, the courts were far less conservative, Democrats controlled the House, and the Republicans who controlled the Senate were not wholly supine to the President like they are today. Perhaps most important, money did not control politics the way it does today, a situation exacerbated by the ever-growing gulf between the very rich and everyone else.¹⁶¹

It seems clear that many people who voted for President Trump in 2024 did not do so with expectation that he would make major changes in public land policy. Nevertheless, it is currently an open question whether defenders of protected public lands can mount an effective national campaign to galvanize the large but ordinarily mostly silent majority that supports strong protections for those lands, before many become persuaded by the “hollowing out” strategy that the U.S. government cannot manage them effectively. That is, the Trump Administration’s strategy of slashing the budgets and capacity of the agencies managing those lands could succeed in undermining public support for continuing U.S. ownership.¹⁶²

Ultimately, of course, public land policy is set through the political process. Nothing in the U.S. Constitution says we must have public lands. All it takes is an ordinary act of Congress to transfer every last acre out of U.S. ownership, even iconic treasures like the Everglades or Yellowstone.¹⁶³

What it boils down to is this: Each new generation of Americans must effectively decide what it wants to do with these lands. Without political support, they and the values they bring to our way of life can be lost. Their future will be determined largely by how Americans react to the changes now underway.

There’s another way to think about the challenges we face, including the destabilizing climate. Dealing effectively with these challenges requires mustering the political will to decide that society’s collective, long-term interest in ensuring that future generations have a world worth living in must prevail over shorter-term, narrower interests.

As *Our Common Ground* shows, the basic theme that emerges from the history of America’s public lands is that, time and time again, our political system *has done exactly that*, by preserving iconic places for future as well as present generations to enjoy, by restoring denuded

160. See *supra* text accompanying notes 127-134.

161. See *supra* text accompanying notes 3-13.

162. See *supra* text accompanying notes 139-42.

163. See, e.g., *Kleppe v. New Mexico*, 426 U.S. 529, 539 (1976) (“we have repeatedly observed that ‘[t]he power over the public land thus entrusted to Congress is without limitations.’” (citations omitted) (unanimous)).

forest lands and acquiring wildlife habitat to rebuild migratory bird populations, while at the same time producing jobs and stimulating an outdoor-recreation based economy. Public land policy has also begun, admittedly tardily, to better reflect societal diversity and to acknowledge past injustices to indigenous peoples.

But will the long-standing, bipartisan consensus on the general direction of public land policy endure, or will it unravel as land management agencies are hollowed out, as climate change takes its toll, and as biodiversity suffers? Will rejecting rather than respecting the teachings of science becomes the dominant attitude? Will partisan rhetoric intensify and voices become more shrill and minds become more closed? Will the American political system become even more dysfunctional?

Good policy doesn't just happen; it comes about because people advocate for it, speaking up and engaging in the political process. And for those who may be skeptical that politics---and particularly politics at the national level---can really make a difference to our daily lives, I would simply say this: Cynicism and apathy will not alter what is unfolding on a daily basis in our nation's capital these days. It is more important than ever for rising generations to engage with the political system that will determine their future, and that includes the future of the public lands.

In his 1961 inaugural address, John Kennedy famously said the "torch has been passed to a new generation of Americans"¹⁶⁴—but as Denis Hayes, key promoter of the first Earth Day in 1970, once said, "Don't expect anyone to pass you a torch. Power is an aphrodisiac and no one in power wants to give it up. It is up to you to find it, seize it and carry it to your destiny."¹⁶⁵

Engaging with the public lands is a concrete way for people to express what kind of world they want to leave for future generations. Our lives are, as has been noted, "not meant to be optimized through a screen, but to be lived,"¹⁶⁶ and one way to do that is by engaging with the natural world—both directly and through involvement in public land policymaking.

The more people do that—and the more the nation continues to adhere to Theodore Roosevelt's advice, offered as he was leaving office

164. John F. Kennedy, Inaugural Address (Jan. 20, 1961), in John F. Kennedy Presidential Library & Museum, <https://www.jfklibrary.org/Asset-Viewer/BqXIEM9F4024ntF17SVAjA.aspx> [<https://perma.cc/URJ8-2UNC>].

165. Communications staff, *Washington State University, Earth Day Founder Says Youth Must Seize Torch*, WSU INSIDER, (MAY 13, 2008), <HTTPS://NEWS.WSU.EDU/NEWS/2008/05/13/EARTH-DAY-FOUNDER-SAYS-YOUTH-MUST-SEIZE-TORCH/> [<HTTPS://PERMA.CC/USE3-ZJ9D>].

166. Adrienne LaFrance, *The Rise of Techno-Authoritarianism*, ATLANTIC, (Jan. 30, 2024), <https://www.theatlantic.com/magazine/archive/2024/03/facebook-meta-silicon-valley-politics/677168/> [<https://perma.cc/4YLX-NEQY>].

in 1909, to use the public lands “for permanent public good, instead of merely for temporary private gain”¹⁶⁷—the more likely it is that these lands will continue to supply what President Richard Nixon once called the nation’s “breathing space.”¹⁶⁸

Even the champion of free-market capitalism, the Scottish philosopher Adam Smith, carved out an important exception when he made his strong case for private ownership of land in his seminal work *The Wealth of Nations*. A “great and civilized” nation, he wrote, ought to hold lands “for the purposes of pleasure and magnificence” for everyone’s benefit.¹⁶⁹

Finally, as Daniel L. Reardon has noted, while “[i]n the long run, the pessimist may be proved right, the optimist has a better time on the trip!”¹⁷⁰

167. Theodore Roosevelt, *Special Message*, THE AMERICAN PRESIDENCY PROJECT (Jan. 22, 1909), <https://www.presidency.ucsb.edu/documents/special-message-368> [<https://perma.cc/JWX6-46ZM>].

168. Richard Nixon, *Special Message to the Congress Proposing the 1971 Environmental Program*, THE AMERICAN PRESIDENCY PROJECT (Feb. 8, 1971), <https://www.presidency.ucsb.edu/documents/special-message-the-congress-proposing-the-1971-environmental-program> [<https://perma.cc/E44D-AXKD>].

169. 2 ADAM SMITH, *THE WEALTH OF NATIONS* 471 (Oxford Univ. Press 1904) (1776).

170. Daniel L. Reardon Quotes, GOODREADS, <https://www.goodreads.com/quotes/468521-in-the-long-run-the-pessimist-may-be-proved-right> [<https://perma.cc/CU7R-TBJW>].