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ESSAY

THE BABBITT LEGACY AT THE DEPARTMENT OF THE INTERIOR: A PRELIMINARY VIEW

BY
JOHN D. LESHY*

Bruce Babbitt was perhaps the most qualified individual to ever hold the post of Secretary of the Interior. He combined experience, enthusiasm, and a commitment to environmental protection and restoration to pursue the radical improvement of public land management. He willingly tackled some of the most complex, controversial, and problematic issues in public land management, resulting in long overdue reforms to mining, grazing, and endangered species law, and protection of millions of acres of federal land from development through the designation of several national monuments. He used his skills as an effective public advocate and teacher to counter the inevitable criticism from political opponents, and he was instrumental in defeating the environmental rollback propositions of Newt Gingrich's Contract with America. This allowed him to become the Clinton Administration's most prominent spokesperson on a wide range of environmental issues including federal fire policy and coral reef protection. Mr. Babbitt also worked effectively with a Republican Congress by fighting off unacceptable appropriations riders and trying to reach bipartisan compromises on issues whenever possible. When Congress and the Administration were hopelessly deadlocked, he still achieved many successes by using executive power to achieve reform—the most significant being Endangered Species Act reforms promulgated after Congress could not agree on reauthorization measures. All these achievements added up to a fundamental reorientation of federal land management from a general policy of resource extraction enjoyed by a few to one of resource conservation for the use and enjoyment of all.

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I. INTRODUCTION

If journalism is the first rough draft of history, what I want to do here is try a second but still rough draft (informed as it is by a scant few weeks of hindsight) of Bruce Babbitt's impact as Secretary of the Interior.¹ I will leave others to put forward a detailed compendium of accomplishments of the Babbitt-led Interior Department.² Instead, I want to offer a more impressionistic overview of where and how he left his personal stamp on the Department's missions and on American life. I make no claim to objectivity; that goal, elusive enough even with distance, is plainly impossible when one works as closely and as long as I worked with him. But I hope that I can make this more than a hagiography. Perhaps, too, my long involvement with the Department's programs, from both inside and outside, will add some credibility to my observations.

Let me offer an apology and a dedication up front. Like any good politician, Babbitt absorbed like a sponge ideas from throughout the Interior bureaucracy and beyond. A number of the Department's nearly 70,000 employees can rightfully claim credit for originating things that made his successes possible, as well as doing the hard work necessary to bring them off. I dedicate this essay to all of them. They know who they are.

II. SETTING THE CONTEXT

Bruce Babbitt became Secretary of the Interior in January 1993 at the age of fifty-four, after a distinguished career as a public official in Arizona. He was elected to statewide office on his first foray into elective politics at age thirty-six and served as Attorney General for nearly four years before fate thrust him into the Governor's chair. (Jimmy Carter appointed Governor Raul Castro as ambassador to Argentina, and Castro's successor, the Secretary of State, died suddenly.) He was twice elected to that office and served nine years in all. He stepped down in early 1987 and after a run for President in 1988, practiced law and served as head of the League of Conservation Voters before President Clinton named him the forty-seventh Secretary of the Interior.

He came to the job with a set of talents and experiences that made him perhaps the best-qualified person ever to become Secretary of the Interior. He grew up amidst one of the nation's highest concentrations of public lands and Indian reservations. His family had long been in the ranching business on federal lands and had operated trading posts on Indian reservations and

¹ This is a somewhat expanded and very modestly annotated version of the remarks I delivered on February 22, 2001 at the Northwestern School of Law of Lewis & Clark College as the Natural Resources Law Institute Distinguished Visitor. I appreciate the helpful comments of Molly McUsic, David Hayes, Ed Cohen, and Anne Shields on an earlier version of this paper.

² See, e.g., *On Our Watch*, PEOPLE, LAND, & WATER (U.S. Dep't. of the Interior) (Dec.-Jan. 2001), *forthcoming* at http://www.doi.gov/doi_plw.html (a special, 60-page issue and the last one published during the Babbitt years); *A History of the U.S. Department of the Interior During the Clinton Administration, 1993-2001* (Clinton Administration History Project) (2000), *available* at <http://library.doi.gov/master0105.pdf> [hereinafter Clinton Project].

concessions in national parks. His backyard was almost literally the Grand Canyon, one of the most outstanding features in the natural world. He had been schooled in the natural sciences, including graduate work in geology, before becoming a lawyer. He had headed large executive branch governmental institutions—three years as Attorney General and nine years as Governor of Arizona—and a national conservation organization. He was intimately familiar with the history of the West, with Indian policy, with the natural world, and with the political process. Many of his predecessors had come to office with some of this background, but no one arrived with such a complete package.

He served the full eight years of the Clinton presidency, tying Stewart Udall (who served the entire Kennedy-Johnson term) as the second-longest serving Secretary of the Interior in history, outdistanced only by Harold Ickes who served as Secretary for more than thirteen years (FDR's entire term plus a year in the Truman Administration). Although quite different in personality and style, the three shared many characteristics—enthusiasm, energy, an activist bent, and a belief in the ability of government to improve the quality of American life. Length of tenure is not always a guide to performance and impact, of course, but there seems little question that, at least among the twentieth century Secretaries, history will regard these three as the standouts.

From its founding in 1849, the Department of the Interior had generally been viewed as a sideshow on the national scene. The strong westward tilt of its responsibilities led it to be characterized as the only regional agency in the President's cabinet. Throughout the twentieth century, however, the Department gradually extended its influence over the entire country. Today there are units of the national park and wildlife refuge systems in practically every state, the Endangered Species Act³ gives the Department regulatory responsibilities on private land across the country, and the Department administers oil and gas development in the Gulf of Mexico and regulates coal mining in Appalachia.⁴ Furthermore, even though managing federal lands in the west remains a core responsibility, mobility and other features of modern life have made people in other parts of the country interested, even intensively so, in what happens on these lands.

While most Interior Secretaries have hailed from the West (Ickes, reared in Pennsylvania and a long-time Chicagoan, was a prominent exception), the days are long past when truly effective Secretaries could operate with only a regional vision. In that regard, a strong case can be made that, with the possible exception of Ickes, Babbitt has been the most nationally focused of them all. From the Flagstaff of his youth, his world view was leavened by years at Notre Dame and Harvard, by graduate school in England, by much travel around the country and abroad, and by an inquisitive mind and voracious reading on many subjects.

³ Endangered Species Act of 1973, 16 U.S.C. §§ 1531–1544 (1994).

⁴ See generally Clinton Project, *supra* note 2.

III. KNOWLEDGEABLE, ENERGETIC, FOCUSED, AND ENGAGED

Energy, focus, and perseverance were hallmarks of Babbitt's eight years in office. Ickes and Udall had these qualities too, but there is no question that Babbitt traveled more miles and met more people in more public and private settings than any of his predecessors. My informed guess is that during his eight years he was working on the road half the time, including well over one hundred separate visits to California and nearly as many to Florida and Colorado. Usually he was squeezing his lanky frame into a coach class seat, and often he found himself waiting out connections to less accessible places like Grand Island, Nebraska, Augusta, Maine, or Burns, Oregon.

The bulk of this travel was not for feel-good, ceremonial events that allow politicians to bask in the glory of delivering good news. More often, they required immersion in nitty-gritty details, and roll-up-the-sleeves meetings with a wide array of interests on an enormous range of issues. But Babbitt hardly ever hesitated to go the extra mile, to the extra place. This was a Secretary who was fully engaged in his job.

Focus and perseverance were especially valuable because Babbitt endured more than his share of vilification while in office. It is something of a puzzle as to why such a generally reasonable, open-minded, and mild-mannered person provoked such strong feelings of opposition, but he did. Part of it, I suppose, stemmed from the strong feelings aroused by the issues with which he dealt; part of it was displaced enmity felt for his boss, the President; part of it was his effectiveness; and part of it was that some, especially his political opponents, saw him as an inflexible ideologue—a zealot. That is, as I will explain in a moment, a much oversimplified view.

Whatever the reasons, there is no doubt he was seen by many as a controversial figure. Many of his trips were tinged with conflict: "I could find my way across the West by the fires of my being burned in effigy," he once said. He endured some hard times under much scrutiny, formal investigations, aggressive oversight that sometimes crossed the line to simple harassment, and congressional retaliation in the budget process. Numerous episodes during his tenure illustrated the mean-spirited culture of the nation's capital, which everyone decries and no one seems to know how to fix. But such things rarely fazed him. In pop jargon, he "compartmentalized" well—retaining an ability to see beyond the controversy of the moment and to engage constructively even some of his most fervent critics.

All these qualities do not by themselves make a good Secretary, of course. For all I know, Albert Fall of Teapot Dome infamy⁵ (Harding's Secretary of the Interior, and the only Cabinet Secretary until the Watergate era to go to jail for crimes committed while in office) may have had them too. But for Babbitt, they were the foundation for some remarkable personal achievements while in office.

⁵ See generally DAVID H. STRATTON, *TEMPEST OVER TEAPOT DOME: THE STORY OF ALBERT B. FALL* (1998); BURL NOGGLE, *TEAPOT DOME: OIL AND POLITICS IN THE 1920'S* (1962).

IV. A STYLE OF PERSONAL DIPLOMACY

A salient characteristic of his tenure was Babbitt's highly personal, engage-the-details type of diplomacy on tough issues. In my experience, high-ranking public officials are usually most content skating over the fine points of complex issues of public policy, but Babbitt was willing to go into the trenches. It was a technique he had mastered soon after becoming Governor of Arizona, when he almost literally locked representatives of major water interests in his office for months while, under his strong direction, in 1980 they hammered out the first meaningful groundwater management law in the state's history.⁶ It was an astonishing act of political statesmanship. He orchestrated both the substance and the politics so well that, after decades of struggling unsuccessfully to come to grips with massive overdrafts of heavily-relied-upon underground water resources, in June 1980 Arizona adopted the most comprehensive, detailed, far-reaching groundwater code in U.S. history after a scant few hours of debate in the state legislature, without a single amendment, and with few dissenting votes.⁷

What made this approach work was his intelligence, savvy, generally sure instincts in quickly reading situations to look for common ground, and his willingness to do his homework and to take some calculated risks. He was typically the most knowledgeable person in the room, no matter how complicated the issues. Most of the time he was also, if talks reached impasse, the last person to admit that further discussions were hopeless. He would come back again and again if necessary until the other parties acceded; sometimes, it seemed, out of sheer weariness. Most of the major accomplishments during his tenure—the national monuments,⁸ the California Bay-Delta accord,⁹ the lower Colorado River management reforms,¹⁰ and the Everglades restoration project¹¹—carried the stamp of these intense personal efforts.

I have mentioned that many of Babbitt's opponents regarded him as an ideologue—an unyielding environmental protection zealot. Truly, he is an

⁶ ARIZ. REV. STAT. §§ 45-401 to 45-655 (1994). See generally Groundwater Management Code ch. 1, 1980 Ariz. Legis. Serv. A-575 (West). The best account is Desmond Connall, *A History of the Arizona Groundwater Management Act*, 1982 ARIZ. ST. L.J. 313 (1982).

⁷ ARIZ. REV. STAT. §§ 45-401 to 45-655 (1994).

⁸ See *infra* Part VI.

⁹ PRINCIPLES FOR AGREEMENT ON BAY-DELTA STANDARDS BETWEEN THE STATE OF CALIFORNIA AND THE FEDERAL GOVERNMENT (Dec. 15, 1994). See also Elizabeth Ann Rieke, *The Bay-Delta Accord: A Stride Toward Sustainability*, 67 U. COLO. L. REV. 341 (1996).

¹⁰ See, e.g., Bureau of Reclamation Colorado River Interim Surplus Criteria, 64 Fed. Reg. 68,373 (Dec. 7, 1999); Record of Decision, 66 Fed. Reg. 7772 (Jan. 25, 2001); SECRETARY OF THE INTERIOR, CHARTER FOR THE ADAPTIVE MANAGEMENT WORK GROUP FOR GLEN CANYON DAM 3-4 (1997).

¹¹ See, e.g., U.S. DEP'T OF THE INTERIOR, A COMPREHENSIVE PLAN FOR THE RESTORATION OF THE EVERGLADES, (Jan. 19, 1996), available at <http://everglades.fiu.edu/taskforce/comprehensive.html> (last visited Mar. 19, 2001); Water Resources Development Act of 2000, Pub. L. No. 106-541, § 601, 114 Stat. 2572 (Dec. 11, 2000) (authorizing the Everglades Restoration Project).

ideologue in the sense that he was motivated primarily by ideas. He has a generally clear vision of where the country ought to head on the issues he dealt with. He is genuinely, indeed ardently, committed to environmental protection and restoration; it was a touchstone of his tenure.

But he was not an ideologue in the sense that ideas blinded him to mundane political reality. Like all seasoned politicians, he was a pragmatist. He was not captured by environmental orthodoxy. He genuinely liked to do deals that would make progress on his and the Administration's agenda. He could be absolutely relentless in searching for places where flexibility would allow the deal to be struck, without compromising core principles. He relished making the judgment calls that such situations demanded. In doing so, he was almost always willing to entertain solutions that did not conform to conventional wisdom. He had, in this regard, little use for those who were willing, in his eyes, to sacrifice an important step forward for the sake of preserving an abstract principle. His willingness to entertain solutions outside the box occasionally created tensions with his strongest constituency, environmentalists.

V. BABBITT, SCIENCE, AND THE BULLY PULPIT

While Babbitt did some of his most effective work in intensive, behind-the-scenes discussions, there was another important side to his performance in office—as public advocate and teacher. Although some of his predecessors have shunned this role, over the course of his tenure, Babbitt became the country's leading spokesperson on natural resource management, land conservation, and ecosystem health. In this role, he assiduously championed, among other things, the importance of bringing the teachings of science to bear on natural resource policy.

The biggest test of his rhetorical advocacy came halfway through the Administration's first term, when the Republicans took over the Congress, and Newt Gingrich was brandishing the Contract with America, eager to rollback three decades of environmental gains. The attack was multifaceted—limiting the government's ability to regulate (through various rulemaking “reforms” and ill-conceived schemes for compensating property owners), gutting important environmental protections (e.g., the Clean Water Act and the Endangered Species Act), and doing various other forms of mischief (e.g., downsizing the national park system and opening the Arctic National Wildlife Refuge to oil and gas drilling).

Early in the spring of 1995, as the dimensions of this assault became clear, Babbitt was perhaps the first major figure in Washington to recognize the threat it posed to the environmental gains achieved in the quarter century since the first Earth Day and to appreciate that the best way to blunt it was to mobilize the grassroots. In April of 1995, he began what came to be known as his Natural Heritage Tours. Visiting sixty-seven cities in one hundred days, he met with local officials, the press, and ordinary citizens, effectively articulating how the successes of environmental legislation had translated into economic gains and a higher quality of life all across America. He even led the press on a float trip down a river in the new House Speaker's

suburban Atlanta district that had been restored under the aegis of the very legislation the Speaker was then seeking to undermine. Those tours were instrumental in turning the tide against these anti-environmental initiatives.

This experience gave him the footing, when the Contract with America died within a few months, to become the Administration's most prominent spokesperson on a wide range of natural resource issues. For example, Babbitt had from his youth fought wildland fires, but he was also a student of these fires and had come to appreciate what some scientists were saying about the role of fire in natural landscapes.¹² As wildland fires coursed through the West in the mid-1990s, Babbitt worked to educate other policymakers and the public with reports and speeches explaining how fires were becoming a bigger problem in part because the fire suppression policy that had been dogma for more than a century was misguided. His efforts helped lead to a remarkably swift turnaround in public opinion and federal policy. When a Park Service prescribed burn in the year 2000 led to the destruction of hundreds of structures at Los Alamos, New Mexico, Babbitt worked to make sure that demagoguery did not thwart the reforms in federal policy that were by that point well underway.¹³ Through his leadership, he turned what could have been a fire policy reform disaster into a substantial victory. Congress awoke to the dimensions of the problem and largely accepted Babbitt's prescription for a solution, resisting those who wanted to use the threat of fires to shortcut the environmental laws and increase commercial timber harvesting on public lands.¹⁴

Babbitt was also the first prominent national figure to identify coral reef decline as a major concern, and the marine environment in general as threatened by insufficient regulation. This led to a series of executive orders and other actions that breathed new life into the cause of marine protection.¹⁵ Two of President Clinton's national monuments expanded protection for reefs under National Park Service jurisdiction in the U.S. Virgin Islands.¹⁶ Babbitt's strong push to protect the largest single collection of coral reefs under U.S. control, in the northwest Hawaiian Islands,

¹² See, e.g., Federal Wildland Fire Management Policy and Program Review, 60 Fed. Reg. 32,485 (June 22, 1995); ROBERT W. MUTCH & WAYNE A. COOK, U.S. FOREST SERVICE GENERAL TECHNICAL REPORT INT-GTR-341, RESTORING FIRE TO ECOSYSTEMS: METHODS VARY WITH LAND MANAGEMENT GOALS (1996); U.S. GENERAL ACCOUNTING OFFICE CED 99-65, WESTERN NATIONAL FORESTS: A COHESIVE STRATEGY IS NEEDED TO ADDRESS CATASTROPHIC WILDFIRE THREATS (1999).

¹³ See MANAGING THE IMPACT OF WILDFIRES ON COMMUNITIES AND THE ENVIRONMENT: A REPORT TO THE PRESIDENT IN RESPONSE TO THE WILDFIRES OF 2000 (2000).

¹⁴ See Department of Interior and Related Agencies Appropriations Act of 2001, Pub. L. No. 106-291, tit. IV, 114 Stat. 922 (2000). Title IV of the Bill called for development of a new strategy for protecting communities and sustaining resources in fire-adapted systems. The strategy was subsequently published in 65 Fed. Reg. 67,480 (Nov. 9, 2000).

¹⁵ See, e.g., Exec. Order No. 13,089, 63 Fed. Reg. 32,701 (June 16, 1998) (establishing procedures for federal agencies to protect and enhance coral reef ecosystems when performing agency actions); Exec. Order No. 13,158, 65 Fed. Reg. 34,909 (May 31, 2000) (expanding marine protection areas).

¹⁶ Establishment of the Virgin Islands Coral Reef National Monument, Proclamation No. 7399, 66 Fed. Reg. 7364 (Jan. 22, 2001); Boundary Enlargement and Modifications of the Buck Island Reef National Monument, Proclamation No. 7392, 66 Fed. Reg. 7335 (Jan. 22, 2001).

eventually led the President to create a vast offshore marine reservation there.¹⁷ That the Department of Commerce rather than the Interior manages this area should not obscure the fact that Babbitt's strong advocacy made it happen.

In many such efforts, interestingly, Babbitt became the Administration's chief public advocate on a subject that was not central to his Department's jurisdiction. It was Babbitt, not EPA, who took the lead on defending clean air and water in the Natural Heritage Tours; it was Babbitt, not the Forest Service, who led the fire policy turnaround. And it was Babbitt, not the National Marine Fisheries Service, who effectively drove the coral reef and marine areas protection campaign.

His primary motivation in these initiatives was not a quest for the limelight (Babbitt has his ego more firmly under control than any political figure I have known). Instead, it was his deep commitment to environmental health, his abiding respect for the teachings of science, his belief that government has a fundamental responsibility to deal with environmental problems, his well-developed taste for problem-solving, and his general passion for public policy. Here, as elsewhere, he was helped by his knack for explaining complicated problems in understandable ways, and his generally good relationship with the press.

Babbitt combined his scientific understanding and his commitment to a healthy environment with his effective use of his public platform on a lengthy list of topics. He convened gatherings of scientists to promote more understanding of worrisome global environmental problems such as the disruptive and costly spread of exotic, invasive species, and the mysterious decline of amphibian populations. He spent a significant amount of time chairing a body few have ever heard of—the Federal Geographic Data Committee—because he recognized the power of Geographic Information Systems (GIS) mapping as a tool for environmental protection and restoration, and he knew that a significant push would be needed to disseminate it across the government and the country.

Early in his tenure, he attempted to insulate research science from applied science in the Department by creating the National Biological Survey (NBS). Babbitt saw NBS, staffed with research scientists drawn from the Department's several bureaus, as the biology counterpart of the venerable U.S. Geological Survey, founded by the icon John Wesley Powell. The idea quickly became a political lightning rod for reasons that, other than simply a knee-jerk counter reaction to a Babbitt initiative, are obscure. Eventually, Congress abolished NBS, but the core idea has been preserved, at least for the moment, by moving NBS scientists to a new Biological Research Division within the U.S. Geological Survey.

Babbitt's advocacy and educational efforts were not limited to science alone. Fusing his advocacy on behalf of endangered species with his interest in the spiritual side of public issues, Babbitt helped broaden the political

¹⁷ Exec. Order No. 13,178, 65 Fed. Reg. 76,903 (Dec. 7, 2000), *amended by* Exec. Order No. 13,196, 66 Fed. Reg. 7395 (Jan. 23, 2001) (Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve).

base of the environmental movement by directly engaging the religious community to help defend the Endangered Species Act (ESA) as a moral obligation to God's creation. He understood the profoundly ethical power of the idea behind the ESA, and his sounding this theme infuriated the law's opponents, because even the most rabid of them could not deny finality of extinction.

Outside the environmental area, he drew on his experience as a participant (as a law student) in the original Selma-to-Montgomery march to return to Selma thirty-five years later, and used it as a springboard for encouraging the National Park Service to make the historical and educational parts of its mission more relevant to modern America.

Babbitt was one of the first national figures to grasp that the defeat of the Contract with America's regulatory rollbacks made the climate ripe for a shift in emphasis from simply minimizing pollution to restoring degraded environments. He effectively used the enormous outpouring of interest in restoration of wolves to the Yellowstone ecosystem to foster support for environmental restoration. He fastened onto the generative power of the idea of restoration, as opposed to preservation, emphasizing that restoration speaks appealingly of optimism and hope as well as change.

He gave particular impetus to an emerging movement for river restoration. Just before he took office, Congress had ratified a deal that authorized the removal of two dams on the Elwha River on the north side of the Olympic peninsula,¹⁸ but this was widely regarded as an isolated aberration, not the beginning of a trend. Babbitt thought otherwise. He set out to educate the country that the nation's 75,000 dams more than six feet tall—one for every day since George Washington was President—did not have to be regarded as equivalent to the Pyramids of Egypt, but rather were simply tools that sometimes outlived their usefulness. He dramatized the cause by seizing on an obscure federal relicensing process involving the Edwards Dam in Maine, an antiquated, inefficient structure that had been erected in 1837 under the gaze of Nathaniel Hawthorne (who lamented the resulting loss of fish habitat in his *The American Notebooks*¹⁹). Edwards became Exhibit A in his crusade to reexamine the value of existing dams and more generally, to reengineer river management to better mimic the natural system. He traveled the country everywhere there was a dam to remove, wielding a sledgehammer and preaching the river restoration gospel. Once again, he adroitly caught a shift in the winds of public opinion before most others, and used his command of the facts and his eloquence to put this idea squarely on the agenda in many parts of the country.

His interest in using the persuasive powers at his command led him to range widely. He vociferously advocated moving a huge uranium mill tailings pile away from the bank of the Colorado River in Utah until the Department of Energy finally agreed to move it. He made a well-publicized

¹⁸ Elwha River Ecosystem and Fisheries Restoration Act, Pub. L. No. 102-495, 106 Stat. 3173 (1992).

¹⁹ NATHANIEL HAWTHORNE, *THE AMERICAN NOTEBOOKS* (Randall Stewart ed., Oxford Univ. Press 1932) (1894).

visit to the site of a large proposed DuPont open pit mine that threatened to severely degrade its neighbor, the Okefenokee National Wildlife Refuge in Georgia, and successfully persuaded the company to look at alternatives. He vigorously promoted mass transit in heavily used national parks like Yosemite, Zion, Acadia, and the Grand Canyon, preaching that the problem was not too many people, but too many cars. He personally pushed through to completion a proposal to buy and tear down an ugly observation tower that had marred the Gettysburg National Battlefield for a quarter of a century. For those of us scrambling to try to keep up with him, there was never a dull moment in eight years.

VI. BABBITT AND THE CONGRESS

One sharp contrast emerges from any comparison of Babbitt's tenure to those of his long-serving predecessors Ickes and Udall. The earlier giants both served their entire terms in unified governments, where the legislative and executive branches were both under Democratic control. This allowed them to focus on bold new legislative schemes, such as industrial recovery and public works and conservation projects, for Ickes; and the Wilderness Act, Wild and Scenic Rivers Act, and the Land and Water Conservation Fund, for Udall.

For most of his term, by contrast, Babbitt served in a divided government, with the House and the Senate under Republican control. This was a huge factor in Babbitt's conduct of business. This is not to say it was easy to work even with a Democratic Congress, as shown by Udall's sometimes unhappy experiences with House Interior Committee Chairman Wayne Aspinall, and Babbitt's own experience in his first two years as Secretary. But party identification still counts for a lot in the clinches, and the divided government meant that Babbitt's record on legislative issues has to be measured somewhat differently.

Most fundamentally, it meant he had to play more defense than offense. It subjected him to a level of congressional scrutiny that sometimes crossed the line dividing legitimate oversight from invidious harassment. He could thus be forgiven a certain envy of the commanding Democratic majorities in Congress that characterized both the New Deal era and the Kennedy/Johnson years.

For a number of reasons, Babbitt's performance in working with Democratic majorities in both houses of Congress in the first two years of the Administration was not particularly notable. The Administration's congressional focus was elsewhere: on the economic recovery package, social issues, and other things not directly related to the Interior Department. Most natural resource issues that did command attention—the Northwest Forest Plan,²⁰ the Everglades restoration,²¹ water policy,²² and

²⁰ FOREST SERV., U.S. DEP'T OF AGRIC., RECORD OF DECISION FOR AMENDMENTS TO FOREST SERVICE AND BUREAU OF LAND MANAGEMENT PLANNING DOCUMENTS WITHIN THE RANGE OF THE NORTHERN SPOTTED OWL AND STANDARDS AND GUIDELINES FOR MANAGEMENT OF HABITAT FOR LATE-SUCCESSIONAL AND OLD-GROWTH RELATED SPECIES WITHIN THE RANGE OF THE NORTHERN

endangered species program reforms²³—did not directly involve Congress, but were instead pursued vigorously inside the Executive Branch. The few issues that did involve Congress, principally major legislation to create new public land protections in the California Desert,²⁴ required just a final push to get pending legislation long sought by environmentalists across the congressional finish line. I will return to the two major new legislative initiatives, a mostly ill-fated attempt to legislate public land grazing and Mining Law reform, further below.

Once the Republicans took over the Congress in the fall 1994 elections, Babbitt found firmer footing. This may seem ironic, but a case may be made that Babbitt's approach was perhaps better suited to a Republican Congress than a Democratic one. His experience as Governor made him used to, and effective at, dealing with a conservative Republican legislature. Here his pragmatism, his command of the issues, and his energy and focus came to the fore. He was skilled at recognizing when it was necessary or advantageous to engage disparate interests in discussions to find the common ground and he knew when he could use the bully pulpit to move public opinion in his direction.

Babbitt understood that, despite the constant barrage of tactical maneuvers that characterizes the Washington political maelstrom, genuine forward motion on policy issues tends to be agonizingly slow. The advent of divided government in 1995 made the process even more sclerotic, so it was even harder and took even longer to resolve issues that required legislation. This told him, accurately, that a second four years as Secretary would likely lead to much more accomplishment than the first. His stamina mixed well with his native curiosity and his appetite to digest information about people and issues. He remained open to new ideas and strategies until his last day on the job. All these things combined to make him more effective, particularly with the Congress, as his tenure wore on.

With the Republican takeover of Congress, the Administration's natural resource legislative agenda conflated into two relatively narrow goals. The first was to play effective defense and damage control, fighting off unacceptable legislation in a host of areas often in the form of substantive riders on appropriations bills. The Interior Appropriations bill seemed to attract mischievous riders like flies. The White House led the mostly successful fight against them, but it often required a substantial personal commitment of the Secretary.

The second legislative goal was to try to work out bipartisan compromises on those issues where such compromises might be possible. Babbitt played an instrumental role in several such cases. He identified national park concession reform as an important priority, and he vigorously

SPOTTED OWL (1994).

²¹ See *supra* note 11 (Department of the Interior's comprehensive restoration plan for the Everglades and statute authorizing the Everglades Restoration Project).

²² See Clinton Project, *supra* note 2, at 125-48.

²³ *Id.* at 1-6.

²⁴ See California Desert Protection Act of 1994, 16 U.S.C. §§ 410aaa to 410aaa-83 (1994).

asserted unilateral authority to make reforms in order to keep the pressure on the Congress to act. When an impasse developed as reform legislation was wending its way through Congress, he worked intensively to bridge the gap between the Republicans, led by Senators Craig Thomas and Robert Bennett, and the Democratic reformers, led by Senator Dale Bumpers and Congressman George Miller. His eleventh-hour push was a key factor in achieving the first significant reform of national park concessions in thirty-five years—one that promises to bring more competition, better service to park visitors, and a greater return to the Treasury.²⁵

His personal efforts were even more telling in crafting the final version of long-sought organic legislation for the national wildlife refuge system.²⁶ Here he perceived, correctly, that a workable compromise was attainable between “hook and bullet” interests (sport hunters and fishers) and environmentalists. Echoing his gubernatorial performance on groundwater management, he conducted a series of meetings of key players in his office and helped them craft the compromises that allowed the bill to be enacted into law. He also saw an opportunity to work with congressional appropriators to cut the Gordian knot that had long stalled efforts to reform federal land visitor fee policy, and his efforts eventually helped bring about this path-breaking legislation. He took a similar approach with the Animas-La Plata water project, an old-line water project that, he thought, deserved support if it were downsized so that it primarily benefited Indians. He took on both environmentalists, who wanted no project, and developers, who wanted the project to subsidize non-Indian farmers and others as well. He split the opposition and persuaded Congress to move forward.²⁷

In each of these situations, the core ideas had long been discussed and debated, but battle lines had been drawn, often on partisan lines, over some features. In each case, Babbitt weighed in to help find acceptable compromises and push the matter to conclusion.

He also played a key role in several major congressionally approved land transactions. His willingness to engage with Governor Leavitt of Utah soon after President Clinton's controversial proclamation of the Grand Staircase Escalante National Monument in 1996 led to the largest state-federal land exchange in American history.²⁸ In one fell swoop hundreds of thousands of acres of state school trust land inholdings—not only within the Grand Staircase but also in all of Utah's national park system units, most of its national forests, and two of its Indian reservations—were exchanged for federal holdings of equal value elsewhere. At about the same time, Babbitt set in motion discussions that eventually led Congress to fund buyouts of all

²⁵ See National Parks Omnibus Management Act of 1998, 16 U.S.C. §§ 190, 5901, 5911–5914, 5931–5937, 5951–5966, 5981–5982, 5991–5995, & 6011 (Supp. IV 1998).

²⁶ See National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. § 668dd (Supp. III 1997).

²⁷ See Colorado Ute Indian Water Rights Settlement Act Amendments of 2000, Pub. L. No. 106-554, §210, 114 Stat. 2763 (2000).

²⁸ See Utah Schools and Lands Exchange Act of 1998, Pub. L. No. 105-335, 112 Stat. 3139 (1998).

the federal coal leases in the Grand Staircase.²⁹ Together these actions ended, with remarkable swiftness, decades of controversy over whether to industrialize one of the most spectacular and remote parts of the lower forty-eight states.

The year 2000 crowned this achievement with a remarkable skein of legislation triggered by Babbitt's willingness to recommend that the President create national monuments on federal lands under the Antiquities Act of 1906.³⁰ I will come back to the monuments initiative further below. Here, I want to underscore that Babbitt spurred Congress to provide equivalent and sometimes better protection for worthy areas of federal land through the legislative process. His interest in improving protection for Steens Mountain in eastern Oregon led to engagement with Governor Kitzhaber and the Oregon congressional delegation, many months of visits and negotiations by the Secretary, and ultimately to enactment of protective legislation that included some features—such as designation of new, cattle-free wilderness areas—that could not have been achieved unilaterally.³¹ Something similar happened in the Las Cienegas area east of Tucson,³² in the Colorado Canyons in western Colorado,³³ and in the Black Rock Desert north of Reno,³⁴ where national conservation area legislation, and sometimes wilderness designation as well, resulted from Babbitt visits and negotiations with key interests and members of Congress. In the Santa Rosa Mountains behind Palm Springs, California, the result of similar efforts was a legislated national monument.³⁵ In the Great Sand Dunes in Colorado, Babbitt's personal involvement led to legislation that authorized a major land acquisition and expansion of the existing national monument into a national park.³⁶

In each situation, most of the key members of Congress with whom the final deals were cut were Republican. Once again, Babbitt kept the bigger picture—better protection for federal lands—firmly in mind. While unilateral executive action might have produced more glory for the President and the Secretary, Babbitt understood that, if sufficiently protective, legislation provided a firmer base for protection over the long run.

There were, inevitably, some failures on the legislative record. The

²⁹ See Consolidated Appropriations Act of 2000, Pub. L. No. 106-113, tit. IV, 113 Stat. 1501 (1999) (setting aside up to \$19,500,000 for acquiring mineral rights within the Monument).

³⁰ Antiquities Act of 1906, 16 U.S.C. §§ 431-433 (1994 & Supp. II 1996).

³¹ Steens Mountain Cooperative Management and Protection Act of 2000, Pub. L. No. 106-399, § 113(e), 114 Stat. 1655 (2000).

³² An Act to Establish the Las Cienegas National Conservation Area in the State of Arizona, Pub. L. No. 106-538, 114 Stat. 2563 (2000).

³³ Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000, Pub. L. No. 106-353, 114 Stat. 1374 (2000).

³⁴ An Act to Establish the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area, Pub. L. No. 106-554, app. D-1, 114 Stat. 2763 (2000).

³⁵ Santa Rosa and San Jacinto Mountains National Monument Act of 2000, Pub. L. No. 106-351, 114 Stat. 1362 (2000).

³⁶ Great Sand Dunes National Park and Preserve Act of 2000, Pub. L. No. 106-530, 114 Stat. 2527 (2000).

biggest involved reform of the Endangered Species Act (ESA). As I will recount further below, Babbitt compiled a remarkable record in reforming ESA administration without the help of Congress. But he knew that if a congressional consensus could be built to both ratify these reforms and make a few other improvements that were beyond the reach of unilateral executive action, then efforts to cripple the ESA would likely be taken off the congressional agenda for many years. To this end, he spent many hours in 1997, 1998, and 1999 with key members of Congress (principally, a bipartisan "gang of four" in the Senate, Republicans John Chafee and Dirk Kempthorne, and Democrats Harry Reid and Max Baucus) and others to fashion a bipartisan reform bill, which would have done just that.³⁷ Numerous proposals to reauthorize the ESA were floating around the Congress at that time, but they spanned the political spectrum and none commanded anything approaching majority support.³⁸ The package of reforms he helped craft was the only one that would have preserved the basic strength of this complicated and controversial Act, improved its administration, and found enough of the center to gain the votes needed for passage. The Senate Majority Leader and the House leadership had other ideas, however, and effectively blocked its forward progress. It was his most notable legislative failure.

There were some other disappointments as well, but in the end, Babbitt was instrumental in compiling a significant record of legislative successes from a Congress whose leadership was largely unsympathetic, even hostile, to his conservationist goals.

VII. WHO NEEDS CONGRESS?: ACTIVISM WITHOUT LEGISLATION

While Babbitt had some successes dealing with Congress, he was perhaps at his best in filling the vacuum left when Congress was gridlocked and could not act. Here again his Arizona experience stood him in excellent stead as Secretary. When he became Governor, the office had long been derided as constitutionally weak, yet it did not take him long to demonstrate otherwise.³⁹ Once he moved to Washington, Secretary Babbitt appreciated as much as Governor Babbitt that the governing process often leaves spaces that can be filled successfully by bold exercises of power that can be plausibly maintained.

While he acquired something of a reputation as a zealously aggressive proponent of executive power, he was actually somewhat cautious. He did not fully subscribe to the Teddy Roosevelt credo of "show me exactly where it says I can't do what I want to do, or else I will."⁴⁰ He understood that

³⁷ Endangered Species Recovery Act of 1997, S. 1180, 105th Cong. (1998).

³⁸ See, e.g., Endangered Species Land Management Reform Act, H.R. 4554, 105th Cong. (1998); Endangered Species Fair Regulatory Process Reform Act, H.R. 4556, 105th Cong. (1998); Endangered Species Recovery Act of 1999, H.R. 960, 106th Cong. (1999); Common Sense Protection for Endangered Species Act, H.R. 3160, 106th Cong. (1999).

³⁹ See John D. Leshy, *The Making of the Arizona Constitution*, 20 ARIZ. ST. L.J. 1, 71-72 (1988).

⁴⁰ See THEODORE ROOSEVELT, *THEODORE ROOSEVELT: AN AUTOBIOGRAPHY* 357 (1923).

executive power had to be exercised with surgical care in a divided government, where the Republican Congress had many tools to wield in opposition, and the courts stand ready to strike down executive actions that are not in full compliance with the law.

Nowhere was this more ably demonstrated than with the ESA. Complex, seemingly inflexible, bristling with opportunities for litigation, this powerful "pit bull of environmental statutes" had already spawned some intense local and regional controversies by the time the Clinton Administration assumed office. The ESA had been adopted by large congressional majorities near the end of the Nixon Administration, but this may have owed something to the fact that, as Babbitt's immediate predecessor (who had been a member of the Congress that enacted it) once ruefully observed, "we thought we were just protecting lions and tigers," without realizing that its protections extended equally to less exalted forms of life like minnows and snails.

When Babbitt took office, the ESA's bite was spreading across the nation to the Pacific Northwest, to Texas, to southern California, to the pine forests of the South, and elsewhere, and its congressional support was steadily eroding. Moreover, the Act was two decades old, had not been amended in any significant way for more than a decade, and inevitably some problems were emerging in its design—there was nothing unusual about this, as in light of experience, all complex environmental laws require occasional retooling.

Although matters needed fixing, Congress was sorely divided, hopelessly divided as it turned out, on what should be done. Into this breach stepped Babbitt. He perceived that a major reason the Act was foundering was that it was not being administered with an eye toward success—when success was measured not only by effectiveness in protecting species, but also by common sense principles of administration that could enlist rather than alienate public opinion. He judged that a series of reforms could be implemented unilaterally and consistently with the statute, which would accomplish both goals.

He reached out to the forest products industry, land developers, state and local governments, water districts, utilities, environmentalists, and others to devise ways to serve the needs of the species while minimizing economic disruption. He also reached out to the military, emphasizing the long historical bond between military and civilian land managers in exploring, mapping, and protecting America's natural heritage, from Lewis & Clark to the present, where military bases are often oases of biodiversity.

He encouraged taking protective steps before species in trouble required formal listing and also encouraged broadening the focus from single species to entire habitats. During his tenure, hundreds of millions of acres of public and private land in the country came directly under the ESA's influence, through habitat conservation plans, safe harbor agreements,

(asserting his "duty [as President] to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws").

candidate conservation agreements, and other tools.⁴¹ Many of these devices were crafted without express sanction in the statute.

His judgment proved correct. The administrative reforms crafted under his leadership smoothed out some of the statute's rough edges and helped build political support for it. Some of these reforms—for example, more peer review of science in the species listing process, and more public consultation at various points—were so commonsensical as to provoke no complaint from anyone. Yet they salved sore points in the way the Act had been administered. A few, such as the “no surprises” policy for habitat conservation plans were more controversial and even sparked some litigation by environmentalists.⁴²

The record of Babbitt's ESA policy speaks for itself. Not one of these reforms has yet been held by any court to be beyond executive authority. No insoluble ESA problems marred his tenure. No debilitating legislation emerged from the Congress. While Congress has not fully and officially bought into the Babbitt reforms, clearly the movement to cripple the Act has substantially diminished in strength. It is a measure of Babbitt's success on the ESA that both the current President Bush and Babbitt's successor Gale Norton cited the importance of protecting endangered species in announcing her nomination.⁴³ All told, his efforts to preserve and improve the ESA will stand as one of his finest achievements. Under his guidance, the ESA has become, more than ever before, a powerful tool to promote environmental restoration around the country.

I've already mentioned Babbitt's particular interest in river restoration. Part of this stemmed from the fact that the ESA loomed large on many river systems. The country's long love affair with dams and water diversions, especially for irrigated agriculture in the West, had drastically changed many riverine ecosystems, with doleful effects on native fish and riparian species. But there was more to Babbitt's interest than species in peril. He understood that rivers have enormous spiritual as well as economic value, and, thus, were a prime battleground for large forces contending for America's soul. Their management in the emerging age of environmental restoration posed major challenges for public policy, and Babbitt liked to be where the challenges were. He left his mark on many waterways around the country.

Under his leadership, Florida's “river of grass,” the Everglades, was transformed in eight years from a nightmare of failed policies, polarization, and litigation into the largest environmental restoration project in history, a multi-billion dollar effort that enjoys wide support throughout Florida and in the U.S. Congress.⁴⁴ He oversaw much the same thing at the other end of the

⁴¹ See Clinton Project, *supra* note 2, at xix-xxd, 3-4.

⁴² See, e.g., *Nat'l Wildlife Fed'n v. Babbitt*, No. Civ. S-99-274 DFL JFM, 2000 WL 33152075 (E.D. Cal. Aug. 15, 2000) (finding that plaintiff's claims that the U.S. Fish and Wildlife Service violated the Endangered Species Act by arbitrarily providing a “no surprises” assurance regarding future changes in a habitat conservation plan were unripe).

⁴³ See Federal Document Clearing House, Confirmation of Gale Norton for Interior Secretary (Jan. 18, 2001), *available at* 2001 WL 43991.

⁴⁴ See *supra* note 11.

country, in the Sacramento-San Joaquin Delta, the water fulcrum of the nation's most populous state.⁴⁵ There, multiple listings of endangered species accelerated an environmental crisis that had been building for decades to the point where all-out conflict loomed among the state's powerful agricultural, urban, and environmental interests. In both of these situations, a public policy meltdown—a “train wreck,” to use one of Babbitt's favorite labels—was avoided in substantial part because of his personal diplomacy, attention to detail, and stubborn refusal to accept gridlock. In both places, he left office with the architecture of environmental restoration in place.

In 1996, he demonstrated the symbolic power of river restoration by turning a valve in Glen Canyon Dam that unleashed a “spike flow” of water coursing down the Colorado River through the Grand Canyon to help restore a more natural river environment. Although the press interest in that event was enormous,⁴⁶ it was but one small feature of a much larger Babbitt-led effort to introduce more flexibility into the administration of the complex assortment of treaties, interstate compacts, statutes and regulations that governed the Colorado—the vaunted “Law of the River.”

Aptly described as the most fought-over river system in the country, by the early 1990s, management of the Colorado River was in serious disarray. Its relatively paltry flows were vital to the fastest growing urban areas in the nation, yet were captive to institutional arrangements designed many decades ago when irrigated agriculture was king. Moreover, it had long been known that the legal allocations of water to each of the basin states were hopelessly unrealistic. They had been based originally on a wildly optimistic view of average annual flow and had been further undermined by highly uneven and somewhat unexpected patterns of population growth. California had for many decades used up to a million more acre-feet of water than the Law of the River allocated to it, and finally the time had come to pay the piper: Emerging demands in other states meant that Southern California had to find a way to wean itself from this excessive use. Doing so was not a simple matter. Southern California's alternative supplies from other parts of the state were also under siege. One of its neighbors to the east, Nevada, was bumping up against its full allocation and had no ready alternatives to satiate booming Las Vegas. Arizona, its other eastern neighbor, had finally started taking its full allocation of river water. Emerging Indian and environmentalist demands only added to the pressure.

Drawing on his experience in Colorado River matters as Governor, and recognizing the surpassing political importance of bringing peace to the fractious basin states—which cumulatively command more than one-seventh of the members of both the House and the Senate—Babbitt set about cajoling all these interests to find common ground. Discussions over this lifeblood of the Southwest were in some ways a domestic equivalent of Middle East peace talks. Babbitt kept track of the progress in an annual

⁴⁵ See *supra* note 9.

⁴⁶ See, e.g., Steve Yozwiak, *Bringing Floods Back to Nature: Bold Bid to Revive Canyon Environment*, ARIZ. REP., Mar. 26, 1996, at A1, available at 1996 WL 7695046.

"state of the river" address to the basin water users in Las Vegas each year. Although the details are complex and not all loose ends have been tied up, unquestionably Colorado River management in the year 2001 is heading in a radically different direction from where it was aimed in 1992. The agricultural and urban interests in California have agreed upon a plan to bring the state's use of Colorado River water down to its entitlement over the next fifteen years.⁴⁷ The other Basin states have essentially agreed to give California some breathing space to make this a soft landing. An institutional structure has been created that will allow states to bank excess water in good water years and allow other states to use some of it in dry years.⁴⁸ So far, consensus has achieved these huge advances without legislation and litigation. These advances could not have happened without the engagement and leadership of Bruce Babbitt.

There were other important, if less monumental, successes on rivers. Babbitt's personal involvement helped spur management reforms on the Platte River to better protect the spectacular bird migrations.⁴⁹ Late in his term, he brought to a successful conclusion a long effort to restore flows to the Trinity River in Northern California, drastically depleted decades ago by diversions to the farms in California's Central Valley.⁵⁰ Under his guidance, Interior's Bureau of Reclamation, the west's leading dam builder and water manager, underwent the most profound change in its history, to focus almost exclusively on better managing existing supplies.⁵¹

VIII. BABBITT AND THE REORIENTATION OF FEDERAL LAND MANAGEMENT

Federal land conservation was a major focus for Babbitt from the beginning, but the effort took on a new dimension during the July 4 weekend in 1996, when the President asked the Secretary to give him a confidential recommendation for how the spectacular resources of southern Utah might be protected through the Antiquities Act. Babbitt responded a few weeks later by urging the President to establish the largest single national monument ever in the lower forty-eight: the nearly two million acre Grand Staircase-Escalante. The President accepted the Secretary's recommendation with almost no change, and in September of that year the deed was done.

This proclamation, which followed more than one hundred others since

⁴⁷ See CAL. WATER CODE § 1812.6 (West 2001).

⁴⁸ See Colorado River Interim Surplus Guidelines, 66 Fed. Reg. 7772 (Jan. 25, 2001).

⁴⁹ See COOPERATIVE AGREEMENT FOR PLATTE RIVER RESEARCH AND OTHER EFFORTS RELATING TO ENDANGERED SPECIES HABITATS ALONG THE CENTRAL PLATTE RIVER, NEBRASKA, *available at* <http://www.platteriver.org/library/CooperativeAgreement/index.htm> (last visited Mar. 19, 2001); Platte River Endangered Species Partnership, *at* <http://www.usbr.gov/platte> (last modified Feb. 5, 2001). The Agreement is discussed at length in J. David Aiken, *Balancing Endangered Species Protection and Irrigation Water Rights: The Platte River Cooperative Agreement*, 3 GREAT PLAINS NAT. RESOURCES J. 119 (1999).

⁵⁰ See 65 Fed. Reg. 69,570 (Nov. 17, 2000) (describing the EIS accompanying the Secretary's recommendations for developing permanent instream fishery flow requirements, habitat restoration projects, and operating criteria and procedures for the Trinity River).

⁵¹ Clinton Project, *supra* note 2, at 126.

Congress gave the President the authority to proclaim national monuments ninety years earlier, contained several noteworthy features that reflected the Babbitt touch. It was the most detailed and descriptive proclamation in history. It carefully outlined the "objects of scientific and historic interest" that qualified the area for protection under the Act, and it carefully explained why the area protected was, in the language of the Act, the "smallest area compatible with the proper care and management of the objects to be protected." It explicitly addressed a number of issues of concern: water rights, grazing, mining activity, off-road vehicle travel, and hunting and fishing. On each one, the Secretary accurately gauged how he could advance the cause of conservation in the proclamation without creating a debilitating backlash. The predominant management emphasis would be on conservation. However, restrictions would be tailored to the local situation, and there would be an open, participatory planning process to hammer out the details. Perhaps most importantly, in an unprecedented stroke, the proclamation gave management authority over the newly minted monument to the Bureau of Land Management (BLM). This proclamation formed the template for many others that would follow between January 2000 and the end of the term. Babbitt had hit on a formula that opened a new chapter in federal land management history, with BLM at its center.

After Grand Staircase-Escalante, President Clinton invited Babbitt to forward other Antiquities Act recommendations, but Babbitt held off until the controversy over Grand Staircase diminished. In late 1998, Babbitt decided the time was ripe to move forward elsewhere, but this time with a difference. He had taken careful note that the controversy provoked by the Grand Staircase focused almost exclusively on process—specifically, the lack of much advance public notice or discussion—rather than on the substance of what was done. Therefore, he modified the Grand Staircase model in one important respect: he determined to engage in a vigorous, open discussion of possible protection measures before submitting recommendations to the President. In this way, he would give Congress a chance to make Presidential action unnecessary by enacting equally protective legislation and he would take "process" objections away from the opponents in the bargain.

His choice of the next place was also adroit. The last piece of federal land in the Grand Canyon that did not have a conservation designation was a remote part of the Arizona Strip north of the Colorado River that had almost been included in a major expansion of Grand Canyon National Park in 1975 but was dropped out of the legislation shortly before it was enacted. In November 1998, Babbitt visited the area and announced he was considering recommending it as a national monument under BLM management—except for a piece already being managed by the National Park Service as part of the Lake Mead National Recreation Area—unless Congress was willing to provide equivalent protection. He followed up with several more trips and many meetings with interested parties. The conservative congressional

delegation squirmed and eventually came up with a legislative proposal.⁵² But it was counterfeit; astonishingly, it would have weakened rather than strengthened the limited protections found in existing law. After more than a year of debate, discussion, and maneuvering, the Secretary recommended that the President create a new one million acre monument, following the Grand Staircase formula, and the President implemented the recommendation in January 2000.⁵³

The same process was followed at the same time for another area just north of metropolitan Phoenix, which contained numerous archeological treasures and spectacular Sonoran Desert scenery. Here too, the President accepted his recommendation and established the Agua Fria National Monument,⁵⁴ which over the long run will provide a welcome buffer greenbelt on the north edge of the metropolitan Phoenix. On the same day Clinton also acted favorably on Babbitt recommendations to create one new and enlarge one existing monument in California.⁵⁵

At that point Babbitt shifted into high gear and spent much of his last year in office identifying places, making visits, leading public discussions, and then—where it became clear Congress was uninterested or unable to legislate—forwarding recommendations to the President to act. Eventually, the President created twenty-one new monuments,⁵⁶ and as I described earlier, legislation spurred by Babbitt's initiative protected several other places, which became legislated national monuments, national conservation areas, a national park, and other protected areas.⁵⁷ All told, several million acres of spectacular resources on federal land came under new conservation management. A few of these areas were added to familiar federal land management systems; for example, the National Wildlife Refuge System (Hanford Reach⁵⁸), the National Park System (Grand Canyon, Pinnacles, Buck Island and Virgin Island coral reefs, and Craters of the Moon additions⁵⁹), and the National Forest System (Sequoia⁶⁰).

⁵² H.R. 2795, 106th Cong. (1999); S. 1560, 106th Cong. (1999).

⁵³ Establishment of the Grand Canyon-Parashant National Monument, Proclamation No. 7265, 65 Fed. Reg. 2825 (Jan. 11, 2000).

⁵⁴ Establishment of the Agua Fria National Monument, Proclamation No. 7263, 65 Fed. Reg. 2817 (Jan. 11, 2000).

⁵⁵ Establishment of the California Coastal National Monument, Proclamation No. 7264, 65 Fed. Reg. 2821 (Jan. 11, 2000); Boundary Enlargement of the Pinnacles National Monument, Proclamation No. 7266, 65 Fed. Reg. 2831 (Jan. 11, 2000).

⁵⁶ See Clinton Project, *supra* note 2.

⁵⁷ *Id.*

⁵⁸ Establishment of the Hanford Reach National Monument, Proclamation No. 7319, 65 Fed. Reg. 37,253 (June 9, 2000).

⁵⁹ Establishment of the Grand Canyon-Parashant National Monument, Proclamation No. 7265, 65 Fed. Reg. 2825 (Jan. 11, 2000); Boundary Enlargement of the Pinnacles National Monument, Proclamation No. 7266, 65 Fed. Reg. 2831 (Jan. 11, 2000); Boundary Enlargement and Modifications of the Buck Island Reef National Monument, Proclamation No. 7392, 66 Fed. Reg. 7335 (Jan. 22, 2001); Establishment of the Virgin Islands Coral Reef National Monument, Proclamation No. 7399, 66 Fed. Reg. 7364 (Jan. 22, 2001); Boundary Enlargement of the Craters of the Moon National Monument, Proclamation No. 7373, 65 Fed. Reg. 69,221 (Nov. 9, 2000).

⁶⁰ Establishment of the Giant Sequoia National Monument, Proclamation No. 7295, 65 Fed. Reg. 24,095 (Apr. 15, 2000).

But BLM remained the centerpiece of this initiative. In Babbitt's view, there were many reasons to push BLM into the forefront of the new conservation era on federal lands. This once obscure agency had the largest land base of any federal agency, nearly three hundred million acres. It managed some areas of spectacular beauty and outstanding, if mostly overlooked, geological, archeological, paleontological, biological, and historical resources. Babbitt also knew BLM needed a conservation challenge if it was to attract and keep the kind of workforce that would enable it to flower as a progressive manager of federal land. Long derided by environmentalists as the "Bureau of Livestock and Mining," this description had become a self-fulfilling prophecy as, piece by piece, some of the marvelous resources it managed had been peeled off and given to the Park Service or other agencies to manage. Babbitt also knew the other federal land management agencies would benefit from some competition in conservation management. Finally, putting BLM in charge also made political sense because it made the monuments more acceptable to local interests. BLM was a familiar face, and existing uses like hunting and livestock grazing could be permitted in some of these areas without creating a troublesome precedent, which would have been the case if the areas had been folded into the national park system.

Babbitt's efforts to give BLM responsibility to manage worthy areas for conservation and recreation predated his becoming Secretary. As Governor of Arizona, he had engineered several major trades of state and federal land designed in part to improve BLM's holdings of land predominantly valuable for conservation and recreation. One such trade resulted in BLM gaining control of the biologically rich San Pedro river corridor in southeast Arizona. In a move that forecast the future, Governor Babbitt played an important role in Congress's eventual decision, in 1988, to designate the upper San Pedro as the Nation's first National Riparian Conservation Area and to keep BLM in charge.⁶¹

The BLM conservation initiative illustrated Babbitt's ability to break the bonds of environmental orthodoxy. Environmentalists had long fought to change the focus of BLM land management toward conservation, but they had concentrated their efforts on persuading Congress to designate more and more BLM land as wilderness. However, after some success in California and Arizona, helped along by then-Governor Babbitt, that effort had stalled in the early 1990s. When the Republicans took over Congress in early 1995, much of the remaining steam went out of the pro-wilderness forces. By promoting the national monument/national conservation area model, Babbitt was able to neatly move around the bitter stalemate between traditional users and environmentalists over the issue of wilderness, and he measurably advanced the transformation of BLM to a conservation-oriented agency, all without eliminating the possibility that a future, more hospitable Congress might eventually designate some of these lands as wilderness. Babbitt's efforts have had more impact on this agency than almost anything

⁶¹ 16 U.S.C. §§ 460xx to 460xx-5 (1994).

else since it was founded more than a half-century ago.

Babbitt sought to improve BLM's stature in federal land conservation in other ways as well. He recognized the importance of reconfiguring public land ownership patterns—created as a result of nineteenth century land policies—to meet twenty-first century needs. He knew that many federal landholdings, especially those managed by BLM, were characterized by awkward, difficult-to-manage checkerboard patterns, or scattershot inholdings, or other locations not well suited to conservation management. He also knew that the federal government owns millions of acres of land lacking features of genuine national interest and, therefore, better positioned for state or private ownership. At the same time, he knew there were millions of acres of other lands that were well-suited for federal ownership—for example, inholdings and lands of high national conservation interest. Yet a major program of federal land disposition and acquisition would be opposed both by conservation interests, who feared a revival of Reagan-era privatization, and by an equally powerful coalition of interests opposed to any more federal land acquisition. This led him to promote land exchanges as the way to better rationalize federal and non-federal landholdings. Here again he drew on his Arizona experience, where as Governor he helped remake the map with some large trades of state and BLM land.

But Babbitt also appreciated how negotiated land exchanges could be political footballs, especially because there was no way to immunize them from criticism that the federal government was being shortchanged in the bargaining. This led him to promote reform of the land exchange process, both legislatively and administratively, throughout his tenure. For example, he instituted more careful reviews of land exchanges involving private parties—he saw less reason for concern about valuation issues in land exchanges with state governments, because the lands remained in public ownership and each side had sovereign, as well as financial, interests at stake, which mitigated the concern that private interests were ripping off the federal treasury.

Babbitt also understood that a major reason BLM and other public land agencies have emphasized land exchanges rather than sales and purchase is because only through land exchanges do the agencies actually reap the benefits of the value of the lands they disgorge. That is, under long-prevailing law, revenues generated by BLM land sales disappear into the U.S. Treasury, leaving BLM entirely dependent on the congressional appropriations process for funds to acquire other land for its programs. This gives BLM no institutional incentive to sell, and every incentive to exchange, its surplus lands. But exchanges are slow and difficult, and they mean that negotiation rather than the marketplace would determine the value of the surplus federal land, heightening concern about whether Uncle Sam was getting full value.

To cure this problem, Babbitt worked with the Nevada congressional delegation to craft an innovative model for public land reconfiguration that

was later, with some modification, extended throughout the west.⁶² Under this legislation, BLM may auction off its surplus land competitively.⁶³ This provides some assurance that full value will be realized. The proceeds of these competitive sales are then put in a revolving fund that BLM can tap, without going through the full appropriations process, to buy lands of high conservation or other management value (e.g., inholdings) elsewhere in the same state.⁶⁴ This combines the advantages of the exchange process with the advantages of the marketplace in valuing property for disposition.

In all these efforts, Babbitt was acting on his vision that the west needed, to borrow from Wallace Stegner, public land management that matched its scenery. That meant more sensible land ownership patterns and a management emphasis on conservation (i.e. on values like clean, free-flowing streams and unmarred open spaces to provide the region's burgeoning populations a high quality of life and tourism-based economic benefits). Measured against this vision, he left the federal land estate in far better condition to meet the demands of the twenty-first century than he found it.

IX. BABBITT AND GRAZING AND MINING

The final public land policies I want to address were among the first prominent natural resources initiatives of the Clinton Administration in 1993: reforming public land grazing and mining policies, initially through the budget process, with an emphasis on raising grazing fees to market value, and levying royalties on hardrock (e.g., gold and silver) mineral production from federal lands. With the benefit of 20/20 hindsight this opening foray seems badly misplaced. In the great sweep of things, grazing and mining fees on public lands are hardly issues of the first rank. Relatively small amounts of money are involved: a few hundred million dollars in revenue (pocket change by Pentagon standards). Yet ending the subsidies for these traditional extractive industries was a powerful symbol for environmental groups who had worked hard to elect President Clinton, and seemed attainable.

However, this was a political miscalculation and the Administration rather quickly abandoned efforts to use the budget process for mining and grazing reform. It then compounded the problem by attempting to legislate public land grazing reforms, which eventually cratered in the U.S. Senate even though it was still controlled by Democrats. These failures cost the new Administration (and Babbitt) substantial political capital and credibility. But characteristically, Babbitt bounced back. Following the grazing defeat, he moved into high gear to salvage what reforms he could by flying to Colorado for many weeks of public meetings and workshops with grazing stakeholders. This effort eventually led to administrative reforms, most

⁶² See Southern Nevada Public Land Management Act of 1998, Pub. L. No. 105-263, 112 Stat. 2343 (1998); Federal Land Transaction Facilitation Act, 43 U.S.C. §§ 2301-2306 (2000).

⁶³ 43 U.S.C. § 2304.

⁶⁴ *Id.* § 2305.

notably new grazing standards and guidelines crafted to meet national standards by Resource Advisory Councils (RAC).⁶⁵ These RACs, as they came to be known, were required to be composed of a cross-section of public land users, rather than being dominated by ranchers, which had been the case in earlier incarnations of the public land advisory councils. Centering reform on the RACs took into account how much grazing practices varied across the west, and how much ranching was woven into the national and local culture, and it dampened down political opposition to rangeland reform.

The jury is still out on the long-term effectiveness of these reforms. On paper, however, the new rangeland regulations are the most significant change in public land grazing management since the Taylor Grazing Act of 1934.⁶⁶ The ranching industry challenged them in court but came away practically empty handed, the long court battle culminating in a unanimous Supreme Court decision upholding the principle that ecosystem health is the primary consideration in public land grazing.⁶⁷ What started out so badly, in other words, ended on a positive note. While the route to reform was somewhat tortuous, public land grazing almost everywhere is being carried out in more environmentally sensitive ways than before. Moreover, in an increasing number of fragile areas—especially in the hot deserts of the Southwest—grazing is being eliminated altogether, through consensual buyouts of private ranches funded by nonprofit conservation groups.

Hardrock mining is a more complicated story, but with a similar end. When Stewart Udall stepped down as Secretary in January 1969, he said that complete replacement of the Mining Law⁶⁸ was the "most important piece of unfinished business on the nation's resource agenda."⁶⁹ For a time, it seemed that Babbitt might leave office with a similar lament. The initial effort to legislate a first-time-ever royalty on production of hardrock minerals from federal lands met the same fate as grazing fee increases. Some months later, with the Democrats still controlling the Congress, each House passed very different Mining Law reform bills,⁷⁰ but the two bodies could not bridge the gap and agree on the details of a compromise before time ran out on the congressional session in the fall of 1994.

Despite repeated efforts by Babbitt and the Clinton Administration, Congress has never been persuaded to enact a meaningful royalty. A "sham" royalty, so riddled with loopholes and exceptions that it would have raised, according to Congress's own budget office calculations, a paltry \$1 million a year from the entire multi-billion dollar industry, had been included in the giant budget reconciliation bill vetoed by President Clinton in early 1996.

⁶⁵ Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration, 43 C.F.R. § 4180.1 (2001).

⁶⁶ 43 U.S.C. §§ 315 to 315o-2 (1994).

⁶⁷ Public Lands Council v. Babbitt, 529 U.S. 728, 764 (1999).

⁶⁸ The General Mining Act of 1872 (Mining Law of 1872), 30 U.S.C. §§ 22-47 (1994).

⁶⁹ Jerrold J. Marcus, *MPC Mineral Policy Center*, ENG'G & MINING J., Nov. 30, 1998, available at 1998 WL 10430919.

⁷⁰ See Mineral Development and Exploration Act of 1993, H.R. 322, 104th Cong. (1993); Hardrock Reform Act of 1993, S. 775, 104th Cong. (1993).

But almost everything else about the antiquated Mining Law of 1872 eventually did change under Babbitt's leadership. Throughout 1994 Babbitt effectively highlighted the existing law's most glaring deficiency, the notorious "patenting" provisions that allowed companies to privatize enormously valuable federal mineral resources for no more than \$5.00 per acre—a price fixed in 1872 and never changed.⁷¹ In one memorable press conference in May of that year, Babbitt ceremoniously signed a patent he was powerless to deny under the law against the backdrop of a fake check from the "American taxpayer" recording that the company was receiving title to federal land containing an estimated ten billion dollars worth of gold for a total payment to the Treasury of less than \$10,000. At another press conference called to showcase another patent giveaway, the Secretary signed the patent with a quill pen, reminiscent of that used by President Grant when he signed the Mining Law upon enactment in 1872. These gestures helped persuade (shame might be a better word) Congress to adopt, in the fall of 1994, a moratorium on further patenting, except for a few hundred applications already well along in the pipeline.⁷² This moratorium has been renewed annually ever since, and, unless the prevailing political winds change, the end of patenting is at long last in view.

The first Congress to sit after the Republican takeover included, as mentioned, a sham reform bill in the giant budget reconciliation bill vetoed by President Clinton.⁷³ After the dust settled on that, Babbitt decided to move forward unilaterally to remedy as many shortcomings in the Mining Law as he could. The centerpiece was a new set of environmental regulations adopted late in the year 2000, after running a substantial congressional gauntlet—expressed through a series of appropriation riders—aimed at delaying and weakening them.⁷⁴ These new rules require all mining operators on public lands to a) obtain government approval before engaging in significant land disturbance activities; b) provide adequate financial assurance so that the taxpayer is not saddled with the cleanup costs if the operator defaults; c) meet higher environmental performance standards; and d) show that they will not engage in "undue degradation" of the public lands, as the law has required since 1976, or else be denied permission to operate.⁷⁵ With these rules in place and patenting essentially at an end, the Mining Law has—excepting the lack of a royalty—been effectively upgraded to modern standards. Babbitt relentlessly promoted reform, understanding that it not only benefits the environment and the taxpayers but also carries the powerful symbolism of burying, at the dawn of the twenty-first century, the last important survivor of nineteenth century

⁷¹ 30 U.S.C. §§ 27, 29, & 30 (1994).

⁷² Department of the Interior and Related Agencies Appropriations Act of 1995, Pub. L. No. 103-332, § 112, 108 Stat. 2499 (1995); Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 322, 110 Stat. 1321 (1996).

⁷³ See Seven-year Balanced Budget Reconciliation Act of 1995, H.R. 2491, 104th Cong. §§ 5371-5382 (1995).

⁷⁴ See Mining Claims Under the General Mining Laws, 45 Fed. Reg. 69,998 (Nov. 21, 2000) (codified at 43 C.F.R. pts. 2090, 2200, 2710, 2740, 3800, & 9260).

⁷⁵ 43 C.F.R. § 3809 (2001).

land public land policies.

Of the personal attention Babbitt devoted to mineral activities on federal lands, the focus, not surprisingly, was mostly on reining in and more carefully controlling those activities. But Babbitt was not hostile to mineral development as a matter of principle, and had the good sense not to interfere in a substantial way in the Department's ongoing successful fossil fuel development programs. As the economy picked up speed in the 1990s, mineral activity also proceeded apace. Federal coal production increased by 30% during the Babbitt tenure, and the proportion of national production coming from federal lands rose from about one-quarter to one-third. By the end of his term, federal lands offshore and onshore accounted for more than a quarter of domestic oil and gas production, up substantially from when he took office. Most people are surprised to learn that more federal acreage was leased offshore for oil and gas development during the Clinton Administration, quietly, and with appropriate safeguards, than during the Reagan Administration. Oil production from federal leases in the Gulf of Mexico, aided by a surge in interest in the deep water, rose more than 50% during his term.

Babbitt balanced his vigorous opposition to opening the Arctic National Wildlife Refuge in Alaska to oil and gas leasing by personally overseeing the Department's favorable response to a proposal by the State of Alaska and the oil industry to reopen, after many years, the National Petroleum Reserve-Alaska (NPRA), a large area west of Prudhoe Bay on Alaska's north slope. Over nearly two years, Babbitt directed a deliberate, consultative and open process that reached out to all interested stakeholders, which culminated in his October 1998 decision to open 87% of the NPRA's northeast planning area to leasing.⁷⁶ All the tracts receiving bids were leased in May 1999, and winter exploration (using ice roads so as not to damage the tundra) has already begun. As this illustrates, while conservation was central to his vision of public land management, extractive uses were also possible in the right places under the right supervision.

X. BABBITT AND INDIAN ISSUES

I have hesitated to say anything at all about Indian issues in this essay. While Indian programs are a central mission of the Department of the Interior, which was created by the 1849 merger of the Indian Bureau from the Department of War and the old General Land Office from the Department of the Treasury, the Department's responsibilities to Indian tribes are different enough from its other missions to deserve a thorough separate treatment. Still, because the Indian area provided two of the most noteworthy controversies of the Babbitt tenure as Secretary, I will offer some very terse observations on his performance in this area.

In the main, Babbitt was an articulate and effective defender of Indian interests. He had been thoroughly schooled in these issues from early life,

⁷⁶ See Northeast National Petroleum Reserve—Alaska Final Integrated Activity Plan/Environmental Impact Statement, 63 Fed. Reg. 42,431-02 (Aug. 7, 1998).

and he understood the importance, both symbolically and substantively, of the Secretary of the Interior's role as principal bearer of the federal government's centuries-old trust responsibility to American Indians. He fought vigorously for more appropriations for Indian programs, and he helped to wrest the largest such increases in history from the Congress in the final years of his tenure. He vigorously defended the Indian Gaming Regulatory Act⁷⁷ from damaging amendments, and he sought to keep intact the opportunity for Indian tribes to derive economic benefit in this area. When the Supreme Court's *Seminole* decision⁷⁸ effectively handed the states a veto over Indian gaming opportunities by allowing them to assert an eleventh amendment immunity against tribal lawsuits attacking their failure to bargain in good faith with tribes over gaming compacts, the Secretary designed a strategy to restore the Congress's original vision.⁷⁹ This involved, characteristically, asserting a Secretarial authority to prescribe gaming procedures when a state asserted such an immunity. This approach has not yet been tested in court, but it has kept alive the possibility that tribes are not consigned to gridlock if a state balks. Babbitt also expended a significant amount of personal effort defending the preference right of rural Alaskans, principally Alaska Natives, to subsistence hunting and fishing, which Congress enacted into legislation in the Alaska National Interest Lands Conservation Act of 1980.⁸⁰ He actively promoted Indian water rights and land claims settlements⁸¹ and prodded the National Park Service and the U.S. Fish & Wildlife Service to be more sensitive to Indian cultural issues in their management and regulatory policies.

Two unfortunate episodes involving Indian matters are somewhat painful to recount but deserve mention. One was an independent counsel investigation growing out of a controversy over the Department's July 1995 decision to deny an application by several Wisconsin Indian tribes to take land far from their reservations into trust as a casino site. This decision set in motion a rather Orwellian chain of events that eventually led the Secretary to write two letters to Senators characterizing a conversation he had in his office with an old friend who was lobbying for the applicant tribes. These letters and his subsequent testimony before a Senate committee persuaded the Attorney General that Babbitt had tripped the hair trigger of the now-expired and largely discredited statute, and she initiated an independent counsel investigation of the propriety of the Department's decision and the Secretary's conduct. The counsel's thorough investigation led to its report, in the spring of 2000, that the Department made the right decision on the casino site land-in-trust application for the right reasons and

⁷⁷ 25 U.S.C. §§ 2701-2721 (1994).

⁷⁸ *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996).

⁷⁹ See Class III Gaming Procedures, 64 Fed. Reg. 17,535 (Apr. 12, 1999) (codified at 25 C.F.R. pt. 291) ("regulations prescribing procedures to permit Class III gaming when a State interposes its immunity from suit by an Indian tribe in which the tribe accuses the state of failing to negotiate in good faith").

⁸⁰ 16 U.S.C. §§ 3101-3233 (1994).

⁸¹ See Clinton Project, *supra* note 2, at 172-73.

that there were no credible grounds to proceed against the Secretary regarding his conduct in the matter.⁸²

The second was a well-publicized contempt citation—issued in late 1999 against Secretary Babbitt and Secretary of the Treasury Rubin by a federal district judge in Washington D.C.—that grew out of litigation challenging the federal government's many decades of inadequate management of Indian trust funds. The citation did not involve the merits of the case, but rather a dispute involving the production of documents in the discovery phase of the litigation. It resulted from strategic mistakes by lawyers for the United States and aggressive, headline-grabbing tactics by plaintiffs' counsel. Secretary Babbitt had already, even before the contempt citation, moved out smartly to secure the necessary funds from Congress and to install the systems necessary to begin addressing this very old set of problems. He also successfully promoted legislation to reform the heirship system that fractionates Indian landownership to ridiculous levels and compounds the problem of managing trust accounts.⁸³ Indeed, a case can be made that, in the long sweep of history, the Babbitt tenure will be regarded as a turning point in reforming trust fund management. One indication of this is that, after a trial evaluating the Department's reform efforts (where Babbitt personally testified over two days about the nature of the problems and his commitment to reform), the judge was impressed enough to reject plaintiffs' request that the court take management responsibility for trust reform away from the Department.⁸⁴

XI. CONCLUSION

Predicting the judgment of history is, of course, a hazardous enterprise. Nevertheless, with the benefit of these few weeks of hindsight, and leavened by the bias that familiarity bred respect, not contempt, I believe a powerful case can be made that Bruce Babbitt was one of the most commanding and influential Secretaries of the Interior this nation has ever seen. There is a certain appropriateness that his tenure closed out both the twentieth century and the 150th anniversary of the Department of the Interior. It was a time of ferment and substantial change—toward closure on many issues, and marking new beginnings on others. His was, by almost any measure, a highly productive term of office, and his breadth and depth of engagement, as well as his accomplishments, set the standard against which future Secretaries will be measured.

His performance fit the definition of a successful politician in the best sense: a good person who struggled to reconcile personal conviction and popular opinion into a combined force that could lift the nation to higher

⁸² See U.S. OFFICE OF INDEP. COUNS., FINAL REPORT OF THE INDEPENDENT COUNSEL IN RE: BRUCE EDWARD BABBITT (2000).

⁸³ Indian Land Consolidation, Department of the Interior and Related Agencies Appropriations Act, 2001, Pub. L. No. 106-291, 114 Stat. 922.

⁸⁴ See *Cobell v. Babbitt*, 91 F. Supp.2d 1 (D.D.C. 1999) *aff'd and remanded by* *Cobell v. Norton*, No. 00-5081, 00-5084, 2001 WL 173299 (D.C. Cir. Feb. 23, 2001).

ground.⁸⁵ His most remembered legacies will likely be his advocacy of environmental restoration, his efforts to safeguard and build support for the ESA and the biodiversity that it helps protect, and the public land conservation measures that flowered on his watch.

⁸⁵ Paraphrased from part of President Clinton's speech at the memorial service for Democratic political consultant Bob Squier. Remarks at a Memorial Service for Bob Squier, 36 WEEKLY COMP. PRES. DOC. 181 (Feb. 7, 2000), *available at* 2000 WL 13120587.