

Drilling in the Arctic National Wildlife Refuge: Have Decades of Debate Thawed the Political Stalemate?

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I. INTRODUCTION

In 1903, President Theodore Roosevelt addressed Stanford University’s graduating class, ushering the conservation movement into the American consciousness. He advocated public land and its governance should be implemented through “the best trained, the best educated men . . . [who] will take the lead in the preservation and right use of the forests, in securing the right use of the waters, and of seeing

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that our land policy is not twisted from its original purpose.”¹ In the speech, President Roosevelt critiqued previous policies that focused on development through grants, sales, and leases to private individuals and companies, and argued those policies created a regime of men and corporations that “obtain[ed] large tracts of soil for speculative purposes.”² As a result, President Roosevelt argued public lands were improperly transformed because those policies inappropriately developed and polluted America’s public lands.³ President Roosevelt’s speech is emblematic because it outlined a new approach to public land governance, which posited that public lands should not be developed for short-sighted gains, but conserved for future generations through preservation.⁴

President Roosevelt’s speech highlights the tension between public land development and preservation. This Comment explores this century-old debate and dichotomy by looking at the controversy found in the Alaska National Wildlife Refuge (ANWR). The controversy regarding the ANWR is between proponents that seek to develop the land for economic purposes and those that look to preserve and conserve the arctic land. In the ANWR, congressional legislation—the Coastal Plain Oil and Gas Leasing Program (2017 Leasing Act)—allowed the leasing, exploration, and development of public lands in the arctic area.⁵ However, the Biden Administration—following conservationist principles—imposed a moratorium on ANWR’s leases and instructed the Department of the Interior (DOI) to perform additional environmental assessments halting exploration efforts. Interested parties sued the Biden Administration contesting the executive order’s legality and the extent to which the DOI can obstruct congressional legislation.⁶

This Comment’s primary focus is not on the executive order’s legality, or previous executive orders overturning differing presidential agendas. Rather, this Comment demonstrates how public land use theories centered on development and preservation shaped Alaska’s

1. Remarks at Leland Stanford Jr. University in Palo Alto, *The American Presidency Project*, UC SANTA BARBARA (May 12, 1903), <https://www.presidency.ucsb.edu/documents/remarks-leland-stanford-jr-university-palo-alto-california>.

2. *Id.*

3. *Id.*

4. *Id.*

5. An Act to Provide for Reconciliation Pursuant to Titles II and V of the Con. Res. on the Budget for Fiscal Year 2018, Pub. L. No. 115-97, § 20001, 131 Stat. 2054 (2017) [hereinafter 2017 Leasing Act].

6. Exec. Order No. 13990, 86 Fed. Reg. 7037 (Jan. 20, 2021).

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policies and regulations. Then, utilizing the ANWR controversy as a case study, it highlights how the debate between development and preservation is far from settled. The ANWR controversy has taken special symbolic and political importance. As one side argues, Alaska possesses untapped mineral wealth, which could fuel economic growth and improve America's energy security; others argue that because it is the last unspoiled wilderness, it should be preserved.⁷ Thus, the tension of President Roosevelt's speech—the debate between public land development and preservation—is still active and central to the question of if and how the ANWR should be developed.

This Comment starts with this brief introduction and proceeds into Part II, which explores public land law's background, examining the federal government's authority, main statutes, agencies, and characteristics of National Wildlife Refuges. Part III reviews Alaska's public land laws, which include an overview of the state's evolution from a territory to statehood, Alaska's main statute for public land use, and an overview of the ANWR. Part IV examines the ANWR controversy in greater detail and highlights the tension between development and preservation. Part V examines the main arguments advanced by proponents of development and preservationists, which will lead into the final conclusory section.

II. BACKGROUND

Public land's purpose in the United States has shifted to meet the nation's needs at different historical moments. Inevitably, shifting public policy objectives altered public land law and created a complex system of regulations. This section provides a broad overview by first examining the federal government's authority over public lands and how it sometimes conflicts with states' objectives. Then it examines the United States' broad historical public land-use trends, leading to the modern federal legislation that provides the framework for the current ANWR controversy. After, this section briefly examines the National Wildlife Refuge System's (NWRS) characteristics that will contextualize the origins and competing theories regarding public land use, enabling a fuller analysis of the ANWR controversy.

7. Sarah Fecht, *Arctic National Wildlife Refuge: How Drilling for Oil Could Impact Wildlife*, COLUMBIA CLIMATE SCH. (Dec. 6, 2017), <https://news.climate.columbia.edu/2017/12/06/arctic-national-wildlife-refuge-drilling-oil-impact-wildlife/>.

A. *Constitutional Authority for Federal Governance on Public Lands*

Public land's classical definition was broad and enabled the government to grant rights over federal lands to states, corporations, or private individuals because "[public lands] of the United States [are] subject to disposition under the general land laws."⁸ However, the creation of different types of federally owned lands created a byzantine administration system because each classification had different permissions and limitations, along with different agencies governing those lands. Congress passed the Federal Land Policy and Management Act (FLMPA) to rectify this issue and it established the Bureau of Land Management (BLM) as the principal agency administering all federally owned land.⁹ Thus, public land law's modern definition encompasses all BLM-managed lands, or interests in lands, along with all federally-owned lands owned or governed by other agencies, such as the National Park Service, Forest Service, and the United States Fish and Wildlife Service (FWS).¹⁰

Though Congress delegated public land administration to the BLM—a sub-agency within the DOI—congressional authority over public lands comes from three constitutional provisions. These are the Enclave Clause,¹¹ Property Clause,¹² and Commerce Clause.¹³ Though the Enclave and Commerce Clauses provide Congressional authority over public lands, they are not as relevant to this inquiry as the Property Clause. The Property Clause provides: "[t]he Congress shall have the Power to dispose of [and] make all needful Rules and Regulations respecting the Territory or other property belonging to the United States."¹⁴ Though the Property Clause's scope was initially debated, the Supreme Court affirmed Congress's plenary powers over public lands and determined Congress could exercise all rights and privileges associated with land ownership.¹⁵ This included congressional authority to legislate "every aspect of federal land management, including all wildlife living on lands"

8. Marla E. Mansfield, *A Primer of Public Land Law*, 68 WASH. L. REV. 801, 802 (1993).

9. *Id.*

10. *Id.* at 802–03.

11. U.S. CONST. art. I, § 8, cl. 17.

12. U.S. CONST. art. I, § 3, cl. 2.

13. U.S. CONST. art. I, § 8, cl. 3.

14. U.S. CONST. art. IV, § 3, cl. 2.

15. Mansfield, *supra* note 8, at 808–09.

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and the ability to delegate management to the Executive branch.¹⁶ Because the Court interpreted the Property Clause broadly, it is the “most important constitutional grant of power for public lands.”¹⁷ Periodically, congressional authority over federally governed lands conflicts with states’ ability to regulate activities within their borders, bringing forth the question: who exercises jurisdiction over the public land?¹⁸

B. Preemption, Controlling Statutes, and Agencies

Though Congress has authority over public lands, it does not always legislate for the lands, and sometimes state law controls them. However, preemption requires state law to yield to federal law, and it can occur through statutes or agency regulations related to statutory authority. The primary way of determining if preemption applies in public land administration is through analyzing congressional intent. There are three possibilities for Congress to establish intent. First is through explicit preemption, which occurs when Congress clearly indicates it intends to void state law for federal law.¹⁹ The two other routes establishing Congressional intent are through implied preemption. The first type of implied preemption is a subjective approach, and it posits that though Congress did not expressly indicate its desire to preempt state law, if Congress intends federal law to control a specific domain, then that state law is void.²⁰ Second, even if Congress did not intend for federal law to control, if compliance with state law conflicts with federal law or “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” then state law is void.²¹ For example, implied preemption may apply if a state seeks to develop a parcel adjacent to federally owned land and the activity affects federal land.

Demonstrated by President Roosevelt’s quote at the introduction of this Comment, the initial policy towards American public lands was disposition. Disposition’s policy objective focused on the land’s development, and the government’s purpose was “to sell or give away the

16. Colin Foley, *The Grand Staircase—Escalante National Monument: Balancing Public and Private Rights in the Nation’s Lands*, 25 B.C. ENV’T. AFF. L. REV. 743, 746 (1998).

17. Mansfield, *supra* note 8, at 805–06.

18. *Id.* at 806.

19. Mansfield, *supra* note 8, at 813–14; *Arizona v. United States*, 567 U.S. 387, 405 (2012).

20. Mansfield, *supra* note 8, at 814; *Arizona*, 567 U.S. at 438 (Thomas, J., concurrence in part).

21. Mansfield, *supra* note 8, at 814; *Arizona*, 567 U.S. at 399.

public lands and resources to private owners and states so that the Nation would be tamed, farmed, and developed.”²² Federal policy promoting land disposition included statutory land acts and legislation allowing parties to extract natural resources on public lands. This occurred because “the federal government viewed the vast public domain as a tremendous resource it could use for the growth and development of the nation, as well as a primary source of revenue.”²³ These several land acts encouraged the settlement and development of much of the western United States, and Congress realized that to sustain the growth they had to “provide settlers with easy access, through rail lines, to eastern goods,” and subsidized construction of rail lines created a trans-continental supply-chain mechanism.²⁴ This provided the initial infrastructure for the federal government to promote land disposition policies for resource extraction.

An early example of federal legislation for resource extraction through land disposition is the Mineral Leasing Act of 1872, which allowed an individual to locate minerals and place a mining claim on federal lands. The initial act did not establish much regarding government regulations and broadly defined minerals, including gold, copper, silver, uranium, coal, and petroleum.²⁵ Subsequent amendments—such as the Mineral Leasing Act of 1920—more narrowly defined the government’s objective as disposition, which intended to promote the development of oil and gas deposits in publicly owned lands of the United States through private enterprise. As a result, it removed the leasing of public lands for petroleum, natural gas, and other hydrocarbons from the previous framework and established a different leasing and development system for mining on federal lands. Additionally, the amendment gave the DOI authority to manage the exploitation of leasable minerals on public lands through the granting of permits for drilling and extraction and the ability for government compensation in extracting minerals on federal lands.²⁶ Further amendments included the Multiple Mineral Use Act of 1954 and the 1976 Federal Land Management and Policy Act (FLMPA).

At the end of the nineteenth century, Congress’s disposition policy met the federal government’s goals, including promoting the population and economic development of the western United States. Although the

22. Foley, *supra* note 16, at 747.

23. *Id.*

24. *Id.* at 748.

25. 30 U.S.C. § 21.

26. 30 U.S.C. § 181.

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dominant policy was still disposition, the transition into the twentieth century also brought the conservation movement that sought to recognize that “the resources of the nation were limited and in need of preservation” and a slow movement in public land policy began towards retention. The shift from disposition to retention embodied preservationist principles based on the growing environmental consciousness, which is evident in a series of federal legislation, the most important being the FLMPA.²⁷

Congress passed the Federal Land Management and Policy Act in 1976 that ended the federal government’s official policy of disposition of federal lands. The FLMPA established that the role of the federal government was to manage and preserve public lands, not to simply hold the lands until they were ready for economic use.²⁸ The FLMPA attempted to resolve the confusing public land administration with a more centralized system. It did so by placing all public land management under the BLM while still allowing different sub-agencies to regulate federally owned lands, which included the National Forests, National Parks, Wilderness Areas, and National Wildlife Refuge Systems. As a result, the BLM became the main agency for land management and established its role in managing and planning different types of public lands and activities on those lands.²⁹ Thus, the FLMPA established the BLM as the central authority for leasing, exploration, development, production, and preservation of interests for federally owned lands in the United States.

C. *National Wildlife Refuge Systems*

National Wildlife Refuge Systems (NWRS) are federally owned lands that comprise over 90 million land acres and account for 14 percent of all federally owned land.³⁰ The Fish and Wildlife Service—an agency within the DOI—manages the systems with the mission to “administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations.”³¹ In 1903, emblematic of America’s shifting conception toward public lands, President Roosevelt designated Florida’s Pelican Island as the first NWRS. Soon after, Congress enacted the

27. Foley, *supra* note 16, at 750–52.

28. *Id.* at 752; Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701.

29. Mansfield, *supra* note 8, at 833.

30. *National Wildlife Refuge System*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/program/national-wildlife-refuge-system/what-we-do> (last visited Mar. 30, 2022).

31. 16 U.S.C. § 668dd(a)(2).

Migratory Bird Treaty Act of 1918, which created specific areas protected for avian species.³² NWRS can be created through executive initiatives or congressional statutes with specific public land orders, and the proclamation or statute's designation determines what uses are allowed in NWRS.³³

Though NWRS were designed to protect and manage wildlife, they are “not inviolate sanctuaries for animals.”³⁴ As such, Congress can provide for additional uses on NWRS lands, including hunting and fishing, recreational uses, and leasing lands for mineral exploration, development, and extraction.³⁵ Additional activities that can occur on NWRS can be authorized through direct congressional authorization, or through the specific legislation that created the system to see what additional uses Congress provided.³⁶ The FWS provides oversight for NWRS and has specific permit and approval processes subject to the BLM. Though Congress can authorize additional uses of NWRS, the secretary of the DOI (Secretary) must still approve the activity. Though NWRS has other uses than solely wildlife conservation, existing law establishes FWS “must give priority to wildlife management” in authorizing any additional use.³⁷

This presents the primary paradox in NWRS administration. They are intended to promote wildlife conservation and protection, however, because of the presence of oil and gas in many refuges—like in the ANWR—there are policies to develop NWRS lands and extract the land's valuable minerals.³⁸ For states such as Alaska, this is seen as an untapped reservoir to stimulate economic development, and state and federal policymakers alike encourage resource development following the nation's early disposition model. This is because these are sparsely populated areas and encouraging development helps populate remote areas and increase economic output. However, stemming from the retention movement and with FLMPA's passage, legislation and directives promoting preservation have blocked attempts in public land

32. Mansfield, *supra* note 8, at 846.

33. *Id.*

34. *Id.*

35. *Id.* at 846–47.

36. *Id.*

37. *Id.* at 848.

38. R. ELIOT CRAFTON ET AL., CONG. RSCH. SERV., R45192, OIL AND GAS ACTIVITIES WITHIN THE NATIONAL WILDLIFE REFUGE SYSTEM (2018).

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development, and because federal legislation preempts state policies, preservationist measures have been largely successful.

III. ALASKA'S DEVELOPMENT, ANILCA, AND THE ANWR

In 1980 Congress passed the Alaska National Interest Lands Conservation Act (ANILCA), which established Alaska-specific legislation related to federal lands, protections, leasing, and development.³⁹ This section provides an overview leading to ANILCA's enactment, ANILCA's relationship to oil and gas leasing activities, and ANILCA's role in creating the ANWR. Where Part II provides a more general introduction to public land administration, this section provides more specific insight into Alaska's public lands and the ANWR.

A. *Origins and History Leading to the Alaska National Interest Lands Conservation Act*

In 1867, Secretary of State William Seward negotiated with Russia to purchase Alaska at two cents per acre for a total of \$7.2 million.⁴⁰ Though the United States acquired 365 million acres of land, contemporaries dismissed the purchase as an unnecessary land acquisition that wasted taxpayers' money.⁴¹ Alaska remained sparsely populated until the Klondike Goldrush in 1896, which started Alaska's inchoate natural resources export economy and brought settlers that continued the trend through mining, fishing, and trapping.⁴² Though Alaska possessed abundant natural resources, its growth in population and economic activity was slow during the early part of the twentieth century. In the 1950s, however, Congress considered Alaskan statehood viable because of its strategic position in the Pacific and Arctic, its abundance of natural resources—particularly oil—and because Alaskan residents favored incorporation into the United States.⁴³

Alaska's entrance into the United States, however, posed a problem. Because the federal government owned ninety-eight percent of the land, much of Alaska's land could not be privately purchased, and without private industry, it reduced potential private economic development as

39. Alaska National Interests Lands Conservation Act, Pub. L. No. 96-487, 94 Stat. 2371 (1980) (codified as amended in scattered sections 16 and 43 U.S.C.).

40. Treaty Concerning the Cession of the Russian Possessions in North America, Russ.-U.S. (Mar. 30, 1867), 15 Stat. 539.

41. *Sturgeon v. Frost*, 577 U.S. 424, 428 (2016).

42. *Id.*

43. *Id.* at 428–29.

investors could not purchase state lands. Therefore, Alaska would lack a revenue system to support a state tax base, and instead, it would rely on the federal government to support its expenditures.⁴⁴ The 1958 Alaska Statehood Act attempted to resolve this problem by granting Alaska the ability to select 103 million acres of “vacant, unappropriated, and unreserved land” for state ownership. The selected lands included title to mineral deposits and lands beneath navigable waterways for the state to “manage, administer, lease, develop, and use the said lands and natural resources.”⁴⁵

Though the 1958 Alaska Statehood Act established Alaska as a state, much of the land the state claimed from the federal government included areas where Alaska’s natives asserted aboriginal title.⁴⁶ In 1971, Congress passed the Alaska Native Claims Settlement Act (ANCSA), which removed native land claims and allocated \$960 million for settlement and “permitted corporations organized by groups of Alaska Natives to select 40 million acres of federal land to manage within the State.”⁴⁷ Additionally, ANCSA directed the secretary to select 80 million acres as federal land for National Parks, Forest, Wildlife Refuges, and Wild and Scenic River Systems for congressional approval.⁴⁸ Congress rejected the Secretary’s selection, and Alaskan senator, Theodore Steven, argued the amount of land withdrawn into federally owned parks and refuges demonstrated an imbalance between preservation and development.⁴⁹ In response, President Carter issued an executive action that designated 56 million acres as federally owned land in Alaska. President Carter’s actions were unpopular because Alaskans feared the withdrawn federal lands would be subject to restrictive federal regulations prohibiting general use.⁵⁰ Thus, though Alaska was formally a state, there was considerable

44. *Id.* at 429 (quoting S. Rep. No. 1163, at 2, “The expenses of the State of Alaska will be comparatively high, partially due to the vast land areas within the State; but the State would be able to realize revenues from only 2 percent of this vast area unless some provision were made to modify the present land-ownership conditions.”).

45. *Id.*

46. *Id.*

47. *Id.* at 430; *see* Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601, 1605, 1610–15.

48. *Id.*; 43 U.S.C. § 1616(d)(2).

49. *Alaska National Interest Lands Part 1: Hearings on H.R. 39, H.R. 2219 Before the Subcomm. on Fisheries and Wildlife Conservation and the Environment of the House Comm. on Merchant Marine and Fisheries*, 96th Cong. 774–76 (1979).

50. *Sturgeon v. Frost*, 577 U.S. 424, 430–31 (2016).

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disagreement over Alaskan lands, along with disputes regarding native claims to lands.

In 1980, Congress responded with the ANILCA to settle these tensions. Congress's attempt to resolve development and preservationist concerns is evidenced by ANILCA's two primary objectives. First, ANILCA provides "sufficient protection for the national interest in the scenic, natural, cultural and environmental values on public lands in Alaska."⁵¹ Second, ANILCA is to supply "adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people."⁵² Congress attempted to structure ANILCA to balance development and preservationist interests and placed lands into conservation units, which would be administered through their respective agencies. Because this Comment's focus is on oil and gas leases in NWRS, examining ANILCA's relationship with NWRS is fundamental to the ANWR controversy.

ANILCA's oil and gas leasing program functions similarly to the Mineral Leasing Act of 1920, though it provides additional environmental considerations specific to Alaska.⁵³ ANILCA's general oil and gas leasing provisions contain specific excluded areas. First, this includes defined areas where applicable law prohibits leasing.⁵⁴ Second, ANILCA's leasing provisions exclude NWRS units where after the Secretary considers the national interest in producing oil and gas, the Secretary determines whether the exploration, development, and production would be incompatible with the purpose of the NWRS unit.⁵⁵

Because of the competing interests and different conceptions of public land use, Alaskan lands were the subject of much debate in the 1970s, and ANILCA's enactment was intended to resolve the political deadlock between development and preservation interests. However, Congress was unable to fully settle the dispute—specifically related to the ANWR—rendering ANILCA's applicable provisions to the ANWR as a modest resolution that "prohibited oil and gas production and leasing until further congressional action occurred and authorized only a limited oil

51. 16 U.S.C. § 3101(d).

52. *Id.* (Congress additionally stated the Act represents "a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition . . .").

53. 2 ROCKY MOUNTAIN MINERAL LAW FOUNDATION, LAW OF FEDERAL OIL AND GAS LEASES, § 27.03 LexisNexis (database updated 2021).

54. *Id.*; 16 U.S.C. § 3148(a).

55. 16 U.S.C. § 3148(a).

and gas exploration program.”⁵⁶ Because Congress could not fully resolve the dispute related to oil and gas activities in the ANWR, it determined future congressional legislation would be necessary to approve oil and gas activities in the ANWR.

IV. THE ARCTIC NATIONAL WILDLIFE REFUGE

In 1960, Secretary Fred Seaton demarcated and withdrew 8.9 million acres of land in northeast Alaska and created the Alaska National Wildlife Refuge.⁵⁷ Secretary Seaton stated the Fish and Wildlife Service would manage the ANWR, and its establishment was to “preserve unique wildlife, wilderness, and recreational values.”⁵⁸ While Secretary Seaton’s withdrawal and classification of the area as a refuge removed the ANWR from ANILCA’s general mining laws, the laws governing the disposal of certain materials and mineral leasing laws still applied.⁵⁹ Though leasing for mineral extraction was not expressly prohibited, there was no significant interest in mineral leasing or sales on the ANWR during the 1960s and 1970s.⁶⁰

The ANILCA’s passage altered the ANWR’s legal and land status. First, ANILCA increased ANWR’s size from 9 million acres to about 18 million acres.⁶¹ Congress then designated about 8 million acres of the ANWR to the National Wilderness Preservation System, which meant the areas could not be conveyed to the Alaska native villages or regional corporations under the Alaska Native Claims Settlement Act.⁶² Secondly, ANILCA prohibited all oil and gas leasing, production, or development on ANWR lands without congressional approval.⁶³ Thus, without Congress explicitly signifying their intent, oil and gas leasing activities were prohibited in the ANWR, except for a small carveout subject to congressional approval designated as the Coastal Plain (referred to as the “1002 Area”). Finally, ANILCA carved the ANWR into conservation units for geographical study. From those conservation units, Congress formed the 1002 Area and permitted limited oil exploration.⁶⁴ Although

56. 2 ROCKY MOUNTAIN MINERAL LAW FOUNDATION, LAW OF FEDERAL OIL AND GAS LEASES, § 27.05 LexisNexis (database updated 2021) [hereinafter LEASING IN THE ANWR].

57. *Id.*; Pub. Land Order No. 2214, 25 Fed. Reg. 12598 (Dec. 9, 1960).

58. LEASING IN THE ANWR, *supra* note 56.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

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Congress granted limited oil exploration in the 1002 Area, Congress withdrew the conservation units from all forms of entry or appropriation from general mining laws and federal mineral leasing laws “[u]ntil otherwise provided for in law enacted after December 2, 1980.”⁶⁵

The Alaska National Interest Lands Conservation Act attempted to create a measured approach to developing the 1002 Area with preservationist considerations, which included the DOI providing a detailed report that examined the effects of oil and gas exploration on the 1002 Area. Thus, after ANILCA’s passage, the Secretary was to provide Congress with a report on 1002 Area’s possible future leasing. The report regarding possible future leasing was to include: (1) identification of areas having oil and gas potential, along with volume estimates, (2) the types of wildlife within the areas identified for oil and gas exploration, (3) an evaluation of how furthering oil and gas exploration would negatively harm identified wildlife, (4) how oil and gas would be transported within the area, (5) evaluation of how additional domestic oil and gas relates to the national need, and (6) the Secretary’s recommendation in permitting further exploration, development, or production of oil and the legal authority to minimize impacts.⁶⁶

In 1987, Secretary Donald Hodel submitted the report to Congress after analyzing available geological data and ANWR’s resource potential. The report indicated that leasing for oil and gas activities should occur because the “area is one of the most outstanding prospective oil and gas areas remaining in the United States.”⁶⁷ In a maneuver to allay future environmentalist’s fears of despoliation, Secretary Hodel’s report concluded that “[a]lthough the entire area should be considered for leasing, only a percentage would actually be leased, an even smaller percentage would be explored, and—if oil is discovered—a still smaller percentage would be developed.”⁶⁸ However, because the ANWR became a central focus for wildlife and wilderness protection, government efforts in developing or protecting the area became highly politicized, and the resulting political pressures stymied the 1002 Area’s further development.

65. *Id.*; 16 U.S.C. § 3142(a).

66. 16 U.S.C. § 3142(h).

67. U.S. DEP’T OF THE INTERIOR, ARCTIC NATIONAL WILDLIFE REFUGE, ALASKA, COASTAL PLAIN RESOURCE ASSESSMENT: REPORT AND RECOMMENDATION TO THE UNITED STATES AND FINAL LEGISLATIVE ENVIRONMENTAL IMPACT STATEMENT (1987).

68. *Id.*

Despite political resistance, the oil industry has still held an interest in leasing, exploring, developing, and producing the 1002 Area because of its potential for oil and gas and proximity to infrastructure for transportation.⁶⁹ Though oil and gas estimates have varied, it remains economically viable to investors. For example, in 1998 the USGS estimated the technical quantity of recoverable oil held a mean of 10.4 billion barrels, with a high and low between 16 and 5.7 billion barrels of oil.⁷⁰ However, more recent studies have altered those estimates. In 2018, a Congressional Research Service report determined that the 1002 Area's mean technical quantity of recoverable oil was 7.3 billion barrels, with a high and low between 10.9 and 4.0 billion barrels of oil.⁷¹ Subsequently, the Energy Information Administration—the agency within the Department of Energy responsible for collecting, analyzing, and promoting information regarding energy policy decisions—concluded that, compared to the previous Congressional Research Service report, recoverable oil quantities held a mean of 3.4 billion barrels, with a high and low of 5.1 and 2.0 billion barrels of oil respectively.⁷²

As this Comment has demonstrated, there has been over three decades of controversy since Secretary Hodel's report between proponents of development and preservationists. This controversy has centered on the larger theme established in Part II over the different conceptions of public land use: whether to develop or preserve. However, in 2017 the political stalemate regarding the 1002 Area was altered when Congress passed and President Trump signed leasing legislation that approved oil and gas leasing, exploration, and development in ANWR's 1002 Area.

V. THE ARTIC NATIONAL WILDLIFE CONTROVERSY

Though the 2017 Leasing Act legislation primarily focused on budget reconciliation, a portion provided for oil and gas lease sales in the 1002 Area.⁷³ This section provides an overview of the 2017 Leasing Act's

69. Henry Fountain and Steve Eder, *The White House Saw Riches in the Arctic Refuge, But Reality May Fall Short*, N.Y. TIMES (Aug. 21, 2019), <https://www.nytimes.com/2019/08/21/us/oil-drilling-arctic.html>.

70. U.S. GEOLOGICAL SURVEY, ARCTIC NATIONAL WILDLIFE REFUGE, 1002 AREA, PETROLEUM ASSESSMENT, 1998, INCLUDING ECONOMIC ANALYSIS (2001).

71. LAURA B. COMAY ET AL., CONG. RSCH. SERV., RL33872, ARCTIC NATIONAL WILDLIFE REFUGE (ANWR): AN OVERVIEW (2018).

72. DANA VAN WAGENER, ENERGY INFO. ADMIN., DOE/EIA-0383(2016), ANALYSIS OF PROJECTED CRUDE OIL PRODUCTION IN THE ARCTIC NATIONAL WILDLIFE REFUGE (2018).

73. 2017 Leasing Act, Pub. L. No. 115-97, § 20001, 131 Stat. 2054 (2017).

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provisions affecting the 1002 Area and examines the department's process in enacting the legislation. After examining the 2017 Leasing Act, this section examines the Biden Administration's moratorium resulting in the pending litigation over the 1002 Area. In examining the ANWR controversy in greater depth, this section contextualizes the main arguments in the next section.

The 2017 Leasing Act included exemptions and different requirements that enabled the commencement of the 1002 Area's oil and gas leasing program. The legislation determined ANILCA's restriction into the ANWR and 1002 Area was no longer applicable, and that the secretary of the DOI was to implement a program for the leasing, developing, and producing of the 1002 Area.⁷⁴ Furthermore, the 2017 Leasing Act required the secretary to hold at least two sales within ten years for lands in the 1002 Area, which included areas with the highest potential for hydrocarbon discovery.⁷⁵ It also stipulated that each parcel be at least 400,000 acres and include any necessary rights-of-way or easements, with up to 2,000 surface acres for production and support facilities.⁷⁶ Finally, the 2017 Leasing Act also stipulated the royalty rate at 16.67 percent and that Alaska would receive half of all revenues from sales and production.⁷⁷

The 2017 Leasing Act provided congressional authorization within the 1002 Area while still prohibiting leasing, exploration, production, and development to the rest of the ANWR.⁷⁸ This is because Congress did not alter ANILCA's general restrictions on activities in the ANWR as the legislation was enacted through budget reconciliation, as opposed to amending ANILCA. Thus, Congress only authorized limited oil and gas leasing and exploration with legislation that contained leasing mandates that adhered to ANILCA's statutory requirements but were under a new statute.⁷⁹

Congress did not determine the leasing details and left the Secretary to administer the program. Congress only instructed that the program be administered similarly to previous leasing sales and that in executing the program provide rights-of-way and easements, including access and

74. LEASING IN THE ANWR, *supra* note 56.

75. *Id.*; 2017 Leasing Act, Pub. L. No. 115-97, II, § 20001, 131 Stat. 2054, 2236 (2017).

76. Pub. L. No. 115-97, II, § 20001, 131 Stat. 2236-37.

77. *Id.* at § 20001, 131 Stat. 2236.

78. *Id.* at § 20001, 131 Stat. 2253-36.

79. *Id.*

pipelines.⁸⁰ In September 2019, the Secretary released the final environmental impact statement (EIS) with the BLM as the overseeing agency in conjunction with the Fish and Wildlife Service, the Environmental Protection Agency, and Alaskan agencies, which provided data and input for how the oil and gas activities would be managed. Of the possible leasing options, the DOI adopted Alternative B, which provided 1,563,500 acres for leasing, with an allotment subject to no surface occupancy and timing limitations.⁸¹ In November 2020, the BLM published the call for nominations and comments on the lease sale. In December, the notice of availability and detailed statement of available tracts noted the sale would take place on January 6th, 2021. The BLM received bids on eleven tracts for an amount of \$14.4 million⁸² with the most winning bids submitted by AIDEA—an Alaskan state corporation—along with Knik Arm Services LLC and Regenerate Alaska obtaining tracts.⁸³

After taking office, the Biden Administration issued EO 13990, which introduced the administration’s new national environmental policies and objectives. EO 13990 amended many of the environmental policies the Trump Administration implemented and included a moratorium on the 1002 Area leasing program.⁸⁴ The moratorium halted “all activities of the Federal Government relating to the implementation of the Coastal Plain Oil and Gas Leasing Program” and instructed the Secretary to conduct a new environmental analysis of the oil and gas program.⁸⁵ Secretary Deborah Haaland—President Biden’s appointed Secretary of the DOI—directed the BLM and FWS to suspend all activities related to the 1002 Area as there were legal deficiencies in the initial permitting process.⁸⁶ This included all permitting for leasing, exploration, and development.⁸⁷ The Secretary argued that the NEPA analysis was insufficient because it failed to consider reasonable alternatives stemming from the EIS and that the previous Secretary’s

80. *Id.* at § 20001, 131 Stat. 2236-37.

81. BUREAU OF LAND MGMT., COASTAL PLAIN OIL AND GAS LEASING PROGRAM FINAL ENVIRONMENTAL IMPACT STATEMENT (2019).

82. BUREAU OF LAND MGMT., COASTAL PLAIN LEASE SALE HISTORY 2021 (2021).

83. BUREAU OF LAND MGMT., COASTAL PLAIN LEASE SALE RESULTS MAP (2021).

84. Exec. Order No. 13990, 86 Fed. Reg. 7037 (Jan. 20, 2021).

85. *Id.*

86. U.S. DEP’T OF INTERIOR, ORDER NO. 3401, COMPREHENSIVE ANALYSIS AND TEMPORARY HALT ON ALL ACTIVITIES IN THE ARCTIC NATIONAL WILDLIFE REFUGE RELATING TO THE COASTAL PLAIN OIL AND GAS LEASING PROGRAM (2021).

87. *Id.*

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decision improperly interpreted § 20001 of the 2017 Leasing Act.⁸⁸ Thus, despite congressional approval from the 2017 Leasing Act, and execution of the lease sales, the exploration program was halted.

In August 2021, the BLM followed the Secretary’s directive and started the supplemental environmental impact statement (SEIS) on the 2017 Leasing Act’s legislation. The SEIS’s purpose was to address the deficiencies identified in the Secretary’s order and further analyze the potential environmental impacts.⁸⁹ Shortly after, the DOI published its final scoping report and indicated BLM’s SEIS’ purpose was to identify leasing alternatives and address and incorporate issues from the comment period into the anticipated draft publication in June 2022.⁹⁰ Further, the final scoping report detailed “[t]hese alternatives will address issues identified during scoping and will meet goals and objectives to be developed by the BLM’s interdisciplinary team in coordination with cooperating agencies.”⁹¹

Subsequently, AIDEA—the Alaskan-controlled corporation that purchased seven leases in the 1002 Area—filed their complaint against the Biden Administration seeking declaratory and injunctive relief. At the heart of their complaint, AIDEA argues that the moratorium “directly contravenes Congress’s mandate on development of the Coastal Plain’s oil and gas resources” and that the Secretary halting BLM and FWS permitting process illegally prohibits AIDEA from developing their purchased leases.⁹² The primary issue—providing the backdrop within this Comment—is the tension between development and preservation: the Department blocked the leases as a policy resembling retention, while the lessees (i.e., AIDEA) are looking to develop the land and its potential mineral resources.

VI. TO DRILL OR NOT TO DRILL?

The ANWR is the largest piece of publicly owned land in the United States. It contains over 700 species of plants and animals, while also sitting atop a large reservoir of extractable oil. This section highlights the

88. *Id.*

89. Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program, Alaska, 86 Fed. Reg. 41989 (Aug. 4, 2021).

90. BUREAU OF LAND MGMT., COASTAL PLAIN OIL AND GAS LEASING PROGRAM SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT, FINAL SCOPING REPORT (Nov. 2021).

91. *Id.*

92. Complaint at 22, AIDEA v. U.S. Dep’t. of Interior et al., No. 3:21-cv-00245-SLG (9th Cir. 2021).

dominant public land use theories applied to ANWR's 1002 Area and demonstrates the major tensions confronting policymakers in public land governance between development and preservation. In doing so, this section focuses on arguments that advocate for development, which include the beneficial economic and social uses, along with the political stance that Alaskans should have the right to advance activities within their borders. After reviewing the arguments for development, this section then examines environmental and preservationist considerations following a similar analysis.

A. *To Drill*

President Biden's domestic energy policies have been criticized for continuing the decades-long error of relying on foreign oil imports, which some argue is augmenting record oil prices as the nation forgoes imported Russian oil without adequate domestic production to supplant the loss.⁹³ Proponents of ANWR development advance several economic arguments, which posit that commencing with exploration, development, production, and transportation efforts in the ANWR and 1002 Area will reduce reliance on imports, decrease the price of oil, create jobs, and provide economic rents and tax revenues.⁹⁴ In advancing this position, Senator Lisa Murkowski—architect of ANWR's provisions in the 2017 Leasing Act—commented that “[opening the ANWR] will create thousands of good jobs, keep energy affordable for families and businesses, ensure a steady long-term supply of American energy, generate new wealth, reduce the federal deficit, and strengthen our national security.”⁹⁵

The ranking member on the House Committee on Natural Resources, Congressman Bruce Westerman, detailed many of these arguments as policy positions to develop the ANWR. The committee's Republican members propose that developing a fractional percentage of the available lands would provide access to the majority of ANWR's

93. Brett Samuels, *Biden Defends Energy Policies Amid GOP Attacks*, THE HILL (Mar. 8, 2022), <https://thehill.com/homenews/administration/597330-biden-defends-energy-policies-amid-gop-attacks>.

94. Matthew J. Kotchen & Nicholas E. Burger, *Should We Drill in the Arctic National Wildlife Refuge? An Economic Perspective*, 35 ENERGY POL'Y 4720, 4720–21 (2007).

95. *Potential Development in the Non-Wilderness Area “1002 Area,” or Coastal Plain, in the Arctic National Refuge, Hearing Before the Comm. on Energy and Natural Res.*, [congress number/legislative session number] S. Hrg. 115-491 (2017) (statement of Senator Lisa Murkowski) [hereinafter *S. Hrg. 115-491*] <https://www.energy.senate.gov/2017/11/energy-committee-advances-chairman-s-mark-to-meet-fy2018-budget-instruction>.

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resources and that “advancements in technology allow for energy production to occur safely and with minimal environmental impact.”⁹⁶ Though ANWR’s recoverable oil assessments have varied through different studies—a mean of 10.4, to 7.3, and 3.4 billion barrels of recoverable oil—the already built and operable Trans-Alaskan Pipeline System, which is only operating at quarter capacity, would provide a ready mechanism to transport the oil. This would allow oil transportation on an established route with capable infrastructure that would marginally impact the environment.⁹⁷

The proposed estimates from the committee’s Republican members in developing ANWR’s resources would create \$150 to \$296 billion in new federal revenue that they contend would “help pay down our Nation’s debt” and be dispersed through local, state, and federal expenditures.⁹⁸ Additionally, proponents argue that developing ANWR would create “tens of thousands of American jobs” and stimulate economic growth in Alaska’s economy, where the oil industry accounts for one-quarter of Alaskan jobs and one-half of overall economic output.⁹⁹ Furthermore, developing ANWR’s 1002 Area would lower overall imports and decrease the “dependence on oil from hostile countries,” strengthening the nation’s energy independence and security.¹⁰⁰

Development proponents also maintain that the ANWR should be developed because many Alaskans support the initiative, including native populations.¹⁰¹ Some Alaskan native groups support ANWR’s development because of the jobs and economic benefits it brings to the remote communities. For example, Matthew Rexford, the tribal administrator for the native village of Kaktovik and member of the Inupiat community, testified to the Senate on behalf of the Kaktovik village and the Inupiat in support of ANWR’s development.¹⁰² In his testimony,

96. *ANWR: Producing American Energy and Creating American Jobs*, HOUSE COMMITTEE ON NATURAL RESOURCES RANKING MEMBER BRUCE WESTERMAN, <https://republicans-naturalresources.house.gov/anwr/> (last visited Mar. 31, 2022) [hereinafter *ANWR Development*].

97. *Alaska’s Oil & Gas Industry*, RESOURCE DEV. COUNCIL, <https://www.akrdc.org/oil-and-gas> (last visited Mar. 31, 2022).

98. ANWR DEVELOPMENT, *supra* note 96.

99. *Id.*; see *Alaska’s Oil & Gas Industry*, *supra* note 97.

100. ANWR DEVELOPMENT, *supra* note 96.

101. Nathaniel Herz, *With ANWR Drilling on its Doorstep, an Alaska Native Village is Poised to Profit*, ALASKAN PUBLIC MEDIA (July 29, 2019), <https://www.alaskapublic.org/2019/07/29/with-anwr-drilling-on-its-doorstep-an-alaska-native-village-is-poised-to-profit/>.

102. S. Hrg. 115-491, *supra* note 95 (statement of Matthew Rexford).

Rexford stated that the oil and gas industry provided “basic services most Americans take for granted” and that it “supports our communities by providing jobs, business opportunities and infrastructure investments, has built our schools, hospitals” and moved many Alaskan natives from penurious living conditions to leading more comfortable lives.¹⁰³ As a result, he recommended that the ANWR’s 1002 Area leasing program should be opened to limited exploration and development.¹⁰⁴

Developing the ANWR does provide tangible benefits to Alaska’s citizens because the state economy is dependent on exports. As Alaska’s policymakers and its citizens seek to develop and the federal government intervenes and halts that development because of preservation interests, at what point is the government overstepping the state’s authority? Policymakers and Alaskans find that the federal government oversteps when it halts such economically useful activities and argue that those far-removed fail to consider the realities of Alaskan life. Specifically, because preservation measures unnecessarily curtail the Alaskan constitution’s stated objective “[i]t is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.”¹⁰⁵ Thus, the development and use of Alaska’s lands following its constitutional objectives are preempted by preservation interests from those thousands of miles away, with no relation to the state or life in Alaska. Thus, as Governor Mike Dunleavy of Alaska emphatically opined in an op-ed, Alaska’s right to develop the ANWR’s lands would grant Alaskans their full autonomy and responsible development would enable the Alaskan economy that depends on natural resource extraction its chance to develop and succeed.¹⁰⁶

B. *Not to Drill*

Though the 2017 Leasing Act passed, and lease sales were executed, many environmental advocates are looking for the Biden Administration to cancel ANWR’s lease sales and implement greater and more permanent protections for ANWR’s preservation. This section will briefly highlight preservationists’ arguments and demonstrate the main economic

103. *Id.*

104. *Id.*

105. ALASKA CONST., art. VIII, §1.

106. Mike Dunleavy, *Don’t Tell Us Alaskans Not to Drill in the Arctic Nat’l Wildlife Refuge*, SEATTLE TIMES (Oct. 4, 2020), <https://www.seattletimes.com/opinion/dont-tell-us-alaskans-not-to-drill-in-the-arctic-national-wildlife-refuge/>.

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advantages that fall short of stated proposals. As a result, the benefits of development fall short when compared to harming the ANWR's fragile ecosystem and endangered species, combined with the inevitable possibility of environmental accidents. Furthermore, although some Alaskan natives support ANWR's development, it is not a monolithic consensus.

Addressing the economic concerns to preserve ANWR's public lands, environmental groups highlight drilling in the ANWR would not decrease the price of oil or reduce reliance on imported oil. Because domestic oil prices are determined in a world market, ANWR's production—though the recoverable amount is uncertain—is unlikely to affect world oil reserves.¹⁰⁷ Furthermore, because domestic oil consumption is so large, ANWR's output could not suitably replace foreign oil imports.¹⁰⁸ Advocates also point out that the proposed amounts from the federal lease revenues and lease sales fall far short of the initial proposals.¹⁰⁹ In 2017, the bonus bids—the price paid at a lease sale for an oil and gas lease¹¹⁰—encompassing all 1.5 million acres of the 1002 Area was to generate \$2.2 billion between 2018 and 2027.¹¹¹ In 2019, after the department published its EIS, the estimates changed to reflect updated information and it was indicated between 2019 and 2024, the 1002 Area was to generate \$1.8 billion.¹¹² However, when the first 600,000 of 1.5 million acres were sold, the amount was far less and only generated \$14.4 million.¹¹³ The price per acre for each tract was severely less than the proposed figures, with nine tracts selling for \$25, one for \$32.90, and one for \$33.80.¹¹⁴ (are the numbers representative of 32/33 dollars, or 32 thousand/million dollars—unsure if second decimal digit should be present)

107. Kotchen, *supra* note 94, at 421.

108. *Id.*

109. Joel K. Bourne Jr., *This Wilderness Crown Jewel is Opening for Drilling. Why is Industry Interest so Weak?*, NAT'L GEOGRAPHIC (Jan. 5, 2021), <https://www.nationalgeographic.com/environment/article/wilderness-crown-jewel-opening-for-drilling-industry-interest-weak?loggedin=true>.

110. U.S. DEP'T OF THE INTERIOR, REPORT ON THE FEDERAL OIL AND GAS LEASING PROGRAM (2021).

111. CONG. BUDGET OFF., A LEGISLATIVE PROPOSAL RELATED TO THE ARCTIC NATIONAL WILDLIFE REFUGE (2017).

112. CONG. BUDGET OFF., H.R. 1146, COST ESTIMATE ARCTIC CULTURAL AND COASTAL PLAIN PROTECTION ACT (2019).

113. BUREAU OF LAND MGMT., COASTAL PLAIN LEASE SALE HISTORY 2021, *supra* note 82.

114. BUREAU OF LAND MGMT., COASTAL PLAIN SALE BID RECAP (2021).

Combined with the low prices on the lease sales, environmentalists argue it is not economically viable to develop because of uncertainty in the quantity of recoverable oil. Estimates from studies have varied dramatically, and the amount of recoverable oil has been questioned from official estimates stemming from an exploratory well in 1986. The results of that joint venture are presumed to be a dry hole, and because the data has been kept from public record, there is speculation that the amount of oil is less than what is officially stated.¹¹⁵ Further, the increasing difficulty and risk in financing arctic ventures have also shifted. Several major banks have stopped financing arctic oil and gas programs, and the world's largest insurer noted they will stop insuring similar activities.¹¹⁶ Because drilling in the ANWR is unlikely to affect changes in domestic oil prices or reduce imported oil, combined with already overestimated figures of revenue generation and the lack of certainty in the amount of recoverable oil, environmental advocates argue the potential economic benefits from developing the ANWR do not exceed the environmental costs.

Though there are practices to mitigate accidents, not all disasters can be averted and a large concern for environmentalists is unintended accidents. For example, thawing permafrost strains infrastructure because it was built for frozen ground. In June 2020, an oil reservoir in Russia's tundra sank into the ground and spilled 157,000 barrels of oil.¹¹⁷ Similarly, Alaska has experienced thawing of its tundra and uses similar infrastructure, leading to fears of a comparable accident. Further, opponents of development contend that the initial EIS conducted by the Trump Administration was insufficient because it was rushed, used old data, and failed to include environmental considerations such as how seismic testing would harm endangered species, along with failing to address other aspects of climate change.¹¹⁸ Opponents also argue that opening the ANWR to development is a backward policy when we have committed to burning fewer fossil fuels to mitigate climate change and should focus policies on renewables.

115. Steve Eder and Henry Fountain, *A Key to the Arctic's Oil Riches Lies Hidden in Ohio*, N.Y. TIMES (Apr. 2, 2019), <https://www.nytimes.com/2019/04/02/us/arctic-oil-drilling-well-data.html>.

116. See Bourne Jr., *supra* note 109.

117. *Id.*

118. Brad Plumer & Henry Fountain, *Trump Administration Finalizes Plan to Open Arctic Refuge to Drilling*, N.Y. TIMES (Aug. 17, 2020), <https://www.nytimes.com/2020/08/17/climate/alaska-oil-drilling-anwr.html>.

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Although some Alaskan native groups favor ANWR's development, not all are in favor of leasing and exploration activities. For example, members of the Gwich'in tribe that live south of the refuge attempted to judicially block the DOI's sale. While the district court for the District of Alaska dismissed the plaintiffs' motions for a preliminary injunction allowing the sale to continue, their suit demonstrates an indigenous group's opposition to the sale.¹¹⁹ The Gwich'in's primary issue was that the activities would affect the Porcupine caribou population. Members of the Gwich'in have criticized native corporations because, though they are supposed to develop lands for their shareholders, the native population, tribes do not always condone their actions in extracting the land's resources.¹²⁰ Further, though native corporations were created by Alaska Native Claims Settlement Act to aid natives, they often rely on non-native managers and employees in their projects. Thus, though the Inupiat Tribal Administrator Rexford supports ANWR development, it is because Kaktovik directly benefits as they own surface rights in ANWR, and drilling would increase revenues for their community.¹²¹ This is unlike the Gwich'in tribe who fear ANWR's development will lead to environmental disasters and create an indelible stain on their lands.

VII. CONCLUSION

The debate over drilling in the ANWR has continued for decades, and it seemed briefly resolved by the 2017 Leasing Act. However, Biden's executive order halting the leases placed the issue, again, at an impasse.¹²² Though this stalemate started with Alaska entering statehood and the complex land status it occupied, it was placed within the backdrop of the central policy discussion between development and preservation. Within these two public land policies the United States employed, Congress attempted to resolve the uniquely Alaska question—how public lands should be governed—through ANILCA, though Congress's attempt never resolved the issue. Implementing limited exploration in the 1002 Area did not satisfy either party; proponents were given the ability to potentially explore the 1002 Area at a future undefined date, while the

119. *Gwich'in Steering Comm. v. Bernhardt*, No. 3:20-cv-00204, 2021 WL 46703 (D. Alaska 2021).

120. Henry Fountain & Steve Eder, *In the Blink of an Eye, A Hunt for Oil Threatens Pristine Alaska*, N.Y. TIMES (Dec. 3, 2018), <https://www.nytimes.com/2018/12/03/us/oil-drilling-arctic-national-wildlife-refuge.html>.

121. Herz, *supra* note 100.

122. Exec. Order No. 13990, 86 Fed. Reg. 7037 (Jan. 20, 2021).

conservationists believed the ANWR failed to receive the protections it deserved.¹²³ As a result, each side advocated for further development or preservation when it was politically expedient, resulting in the issue becoming embedded within political positioning.¹²⁴

From this position, it is evident that Alaska's public land policies were part and parcel of the conservationist movement, while federal and state policymakers sought to employ disposition policies. When much of the nation was being developed during the nineteenth century, the Land Acts and federal government's subsidization were paramount. This is because those policies helped populate the western United States and transition those states into functioning economic and independent entities. With the shift in public land policy, Alaska's entrance into statehood faced different obstacles evidenced by Congress's ANILCA legislation, which expanded federally protected lands and limited the activities that could be conducted on those lands. This put Alaska at a disadvantage in developing an economy not dependent on exports because it did not receive the initial subsidization that promoted individuals to move to Alaska or full investment policies that could have further transitioned and strengthened the state's economic positioning. In short, the retention policies placed on Alaska through ANILCA stymied its economic growth. However, Alaska's strategic importance in mineral wealth still encouraged numerous companies to develop the land through the complex permitting processes that were devised under the statutory scheme.

Proponents of development are right to assert that opening the ANWR would provide certain benefits, and Alaska should be able to avail itself of similar policies that developed much of the nation during disposition.¹²⁵ Additionally, proponents of development are right to assert there are real tangible benefits to opening the ANWR to commercial activity. It would provide jobs, increase state and federal revenues, and better secure the United States' energy supply. However, stemming from Alaska's establishment as an exportation economy, opening the ANWR to drilling only offers limited benefits without solving Alaska's real political and economic issues. Especially as the United States and much of the world transition from hydrocarbons, it brings forth the question: is it sound public and economic policy to further invest in promoting

123. See Jerry Fish, *Preservation and Strategic Mineral Development in Alaska: Congress Writes a New Equation*, 12 ENV'T L. 137 (1981).

124. See Kotchen, *supra* note 94 at 421.

125. See generally Foley, *supra* note 16.

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mineral extraction with a nebulous future payoff that does not seem to keep in line with previously estimated calculations?

Because of the uncertainty involved, policymakers, economists, and interested parties have been kept in a gridlock debate: whether to drill or not to drill. Though it would seem Congress has spoken on the issue, the executive and its agencies have changed course. Therefore, without a unified approach, either within energy production or public policy and land use, it will continue to resemble the preceding decades of debate and inaction, consisting of trench warfare through suits advancing each position's respective goal inches at a time. It seems, then, that opening the ANWR to drilling only offers limited benefits without solving Alaska's real political and economic issues, and the proposed solution is short-sighted. The benefits do not fix the real and difficult problem of transitioning Alaska's oil-dependent economy into something altogether different and only bolsters the paradox that the more things change and advance, it does not affect the situation other than cementing the status quo.