

Pace University

DigitalCommons@Pace

Pace Law School Student Publications

School of Law

12-1-2010

"Forever Wild": Legal Aspects of Natural Resource Extraction In and Around the New York State Forest Preserve

Michael D. Henderson

Pace University School of Law

Follow this and additional works at: <https://digitalcommons.pace.edu/lawstudents>



Part of the [Environmental Law Commons](#), [Natural Resources Law Commons](#), [Oil, Gas, and Mineral Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Henderson, Michael D., "Forever Wild": Legal Aspects of Natural Resource Extraction In and Around the New York State Forest Preserve" (2010). *Pace Law School Student Publications*. 9.

<https://digitalcommons.pace.edu/lawstudents/9>

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Law School Student Publications by an authorized administrator of DigitalCommons@Pace. For more information, please contact dheller2@law.pace.edu.

**“Forever Wild”: Legal Aspects of Natural
Resource Extraction in and Around the New York
State Forest Preserve**

Michael D. Henderson

*The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.*¹

Introduction:

This language found in Article XIV, Section 1, of the New York State Constitution for the first time in history created a legally recognized wilderness. Since its inception in 1894, Article 14 has served as a baseline for environmental protection of the New York Forest Preserve. Although the impetus for this constitutional mandate was mostly utilitarian, the end result was to preserve vast swaths of forest land which unto this day stands, unfolds, and grow for their own sake, as well as the benefit of man. True, the founders of this clause, known as the “Forever Wild” clause, had other objectives in mind including watershed preservation, recreation, and to control resource exploitation. Yet today it has become apparent to those who study or simply enjoy the Adirondack and Catskill regions that our goal in preservation is much more. We preserve wilderness so we can hold on to a piece of the past, a piece of America’s history. After all, it was only 500 years ago that wilderness stretched from coast to coast. That is not

¹ N.Y. Const. art XIV, § 1.

“wilderness” used as a legal term of art, but true wildness. So in preserving a piece of wilderness we are holding on to a relic of history and reserving a place where the human spirit can be free. Wilderness is not a luxury but a necessity of the human spirit, and as vital to our lives as water and good bread.² In enacting Article XIV, New York voters have come to embrace such a concept as rule of law.³

That being said, the next issue to naturally arise is what constitutes wilderness. What is difference between an area legally designated as wilderness, wilderness as a common term, and land that embraces the “Forever Wild” aesthetic. To a casual observer, it would seem these things are one in the same. However, the State has allowed for development and resource extraction on lands that border legally designated wilderness. Standing on the edge of one of these wilderness area, the onlooker can clearly see roads, telephone poles, and perhaps evenr homes. This does not comport to any common definition of wilderness. Yet the State still designates these areas as wildernesses that embrace the Forever Wild aesthetic. It does not seem to make any sense. How has the state allowed this in light of Article 14 which says that no timber from the Forest Preserve can be removed? The answer to this is as long as it is complicated. At the root of the problem,

² EDWARD ABBEY, *DESERT SOLITAIRE: A SEASON IN THE WILDERNESS* 116 (The Random House Publishing Group 1971) (1968).

³ Nicholas A. Robinson, *“Forever Wild” : New York’s Constitutional Mandates to Enhance the Forest Preserve*, PACE LAW FACULTY PUBLICATIONS, 2007, at 1 Page 7 of the second class book.

however, is the fact that the state has given lax interpretation to Article 14.

According to the Adirondack Park Land Use and Development Plan promulgated by the Adirondack Park Agency, wilderness is an area of at least 10,000 acres of contiguous land and water. Management guidelines for Wilderness are to perpetuate a natural plant and animal community where human influence is not apparent.⁴ However, is this standard truly upheld in the Adirondacks? For example, while standing on top of certain peaks in the so-called High Peak Wilderness, a mining operation known as Tahawus is clearly visible. Human influence *is* apparent from the industrial development down to the very trails that traverse the wilderness. These are the type of questions contemplated in this paper. In any case, it can be understood that Wilderness is a large area of land where human influence is kept to a de minimus level, where human habitation and resource extraction are strictly prohibited. But is this upheld in the New York wilderness?

Before the legal aspects of resource extraction in and around the forest preserve it is imperative to understand how the Forest Preserve came to be and the historical context from which it arose. First, this section will examine a land use history of the Adirondack

⁴ Philip G. Terrie, *Cultural History of the Adirondack Park*, in THE GREAT EXPERIMENT IN CONSERVATION: VOICES FROM THE ADIRONDACK PARK 234 (William F. Porter, Jon D. Erickson & Ross S. Whaley eds., Syracuse University Press 2009).

region that reveals a cycle of use and abuse. The wasted land that resulted from years of poor land use management and a boom and bust cycle of economic resource exploitation resulted in a common change of attitude amongst the people of New York. The denuded land not only led to practical problems such as watershed maintenance and rampant forest fire, it also changed people's perception of the economic exploitation that occurred around the Forest Preserves. Consequently, these sentiments served as a foundation to the creation of the Adirondack Park, the Catskill Park and the New York Forest Preserve System, which this section then analyzes. Next, the paper examines how Article 14 has been interpreted by analyzing subsequent amendments, case law, and Attorney General opinions. This analysis reveals a less than strict application of Article 14 and unequal treatment between the northern and southern Forest Preserves. Finally, recommendations are made for how to rectify the imbalance in treatment between these two regions. With the upcoming Constitutional Convention approaching, the paper concludes by examining the probable consequences of altering Article 14. The entire analysis of the Forest Preserve and the efficacy of Article 14 is done through a lens focusing on resource extraction.

We first need to look at why the Forest Preserve exists. The Forest Preserve was created to conserve resources. Trees were needed to maintain water flow to the rivers and streams. The rivers and streams were needed to ensure a steady source of water in the Hudson

River and the newly opened Erie Canal. The water was necessary for shipping goods, a source of drinking water, and ultimately economic prosperity. Logging practices are what first lead to the conclusion that some sort of conservation scheme was imperative. Although this paper emphasizes resources extraction in and around the Forest Preserve, there were massive amounts of timber extraction before the Forest Preserve existed. Much of this occurred on land that is now designated as Forest Preserve land. In fact, unbridled resource extraction was a primary impetus in the creation of a Forest Preserve. Accordingly, the land use and resource extraction that led to the Forest Preserve's creation should be examined in some depth. There were other factors that contributed to the popular demand for conservation. This paper, however, looks at the Forest Preserve through a lens of resource extraction and the associated repercussions. Accordingly, this paper posits that the unbridled and unregulated resource extraction led to disastrous ecological results which in turn created a pro-conservation sentiment.

A Land Use and Resource Extraction History: Cycles of Use and Abuse

The Catskill and Adirondack Landscapes remained mostly a mystery in the European-American mind until relatively late.⁵ Records indicate there were no substantial Native American populations in either the Adirondacks or the Catskills due mostly to the lack of game in those regions. Nonetheless, the first stories of the region emerged from Native American hunters and traders who traveled through the mountain country. These stories conveyed an image of the Adirondacks as an area so mountainous and barren that it was not suitable for civilization. In fact, this sentiment was another reason for the lack of permanent Native American settlements in the region. Wildlife would have been more plentiful and agriculture more productive in the surrounding river valleys of Lake Champlain and the St. Lawrence River where better soils, longer growing seasons, and a warmer climate offered a more secure life than the Adirondacks.⁶

For these reasons, European-American settlers did not penetrate the Adirondack Region until the very latter part of the 18th century. Accordingly, at the time of the first European encounter with the Adirondacks, the region was a wilderness. The timber, wildlife, and landforms showed virtually no sign of civilized activity.⁷ The Catskills on the other hand offered a warmer climate and less mountainous

⁵ PHILIP G. TERRIE, *CONTESTED TERRAIN: A NEW HISTORY OF NATURE AND PEOPLE IN THE ADIRONDACKS* 3 (Alice Wolf Gilborn ed., The Adirondack Museum/Syracuse University Press 1997).

⁶ *Id.* at 3.

⁷ PHILIP G. TERRIE, *FOREVER WILD: ENVIRONMENTAL AESTHETICS AND THE ADIRONDACK FOREST PRESERVE* 15 (Allen F. Davis ed., Temple University Press 1985).

terrain. Consequently, European explorers penetrated the region much earlier. In fact, the first European's to take note of the Catskill Mountains were Henry Hudson and his crew in 1609 during the Half Moon's trip up the Hudson River.⁸ Over the next several decades some pioneers and traders explored the Catskill region but generally did not settle the region to a greater extent than the Native Americans had. All this changed very quickly, however. By the onset of the 18th century, European settlers began clearing the land and removing trees from the mighty Catskill forest.⁹ The impetus for this, however, was not to extract timber necessarily, but rather the clear the land for agriculture. Gradually, people's perception of the Catskill region changed as the timber industry began to take interest. It became seen as a region rich in resources to be exploited.

Turning back to the Adirondack Region, the vision of the Adirondacks as an impenetrable swath of barren wilderness with little or no value to humans began to change in the early 19th century. This began in earnest in 1836 when New York Secretary of State John Adams Dix submitted to the state Legislature a report on the need for a survey of the state's natural resources.¹⁰ It was argued that this would encourage the exploitation of mineral and other resources. The Legislature responded enthusiastically and a state survey began. A

⁸ MICHAEL KUDISH, *THE CATSKILL FOREST: A HISTORY* 47 (Purple Mountain Press 2000).

⁹ *Id.* at 49

¹⁰ See TERRIE, *supra* note 7, at 27.

few years later the completed survey recommended a variety of exploitative schemes aimed at mineral and timber extraction as well as water control projects. A utilitarian attitude prevailed throughout the survey. However, amongst the geologists conducting the survey, Ebenezer Emmons led the plea for conservation of natural resources and thus initiated the kind of reasoning that effected the establishment and protection of the Adirondack Forest Preserve later in the century.¹¹

The survey conducted by Ebenezer Emmons and other prominent geologists of the time is important to study because the knowledge obtained in the survey paved the way for the first extractive industries to enter the Adirondacks. Thus began an era of vast exploitation. The first utilitarian contribution that Emmons foresaw for the Adirondacks involved mining.¹² The idea of mineral wealth in the Adirondacks was one of the major stimuli to the creation and public support of the survey.¹³ People hoped the survey would reveal a wealth of mineral resources that New York State could tap to foster its developing economy. Here, the struggle between progress and nature so prominent of the time is particularly accentuated.

Mining in the Adirondacks

Even before Emmons's description of the mineral wealth of the Adirondacks, small mining operations began in earnest near Lake

¹¹ See TERRIE, *supra* note 7, at 28.

¹² See TERRIE, *supra* note 5, at 16.

¹³ See TERRIE, *supra* note 7, at 34.

Champlain.¹⁴ The first iron mining and smelting operation began in 1801.¹⁵ For the next 180 years, iron was by far the most important mineral in the Adirondacks and the largest single employer.¹⁶ This all began rather slowly, however. While New Yorkers hoped the Adirondacks held exploitable minerals, there was no economic incentive to explore the interior regions until the Emmons Survey. After rigorous exploration, Emmons concluded that the area of Sanford Lake, just north of present day Newcomb, was rich in iron ore. In fact, he commented that “[t]he most extensive beds of this kind of ore in the district, and perhaps the world, are found...in the vicinity of Sanford Lake.”¹⁷ Emmons believed that the Sanford vein alone was worth around \$300 million. He also claimed that it was perfectly located, being surrounded by virgin forests whose trees could furnish all the charcoal needed for smelting.¹⁸

Emmons’s comments raise a point worth considering. He argues that the iron ore was ideally located because of its proximity to virgin forests. This is important because it evinces how mineral extraction is not simply limited to minerals. In order to conduct a smelting operation huge amounts of fuel are needed to keep the fires burning twenty-four hours a day in the blast furnace. Naturally, timber from

¹⁴ JERRY JENKINS & ANDY KEAL, *THE ADIRONDACK ATLAS: A GEOGRAPHIC PORTRAIT OF THE ADIRONDACKS* 15 (Syracuse University Press & The Adirondack Museum 2004).

¹⁵ See TERRIE, *supra* note 5, at 16.

¹⁶ See JENKINS & KEAL, *supra* note 14, at 16.

¹⁷ See TERRIE, *supra* note 7, at 35.

¹⁸ *Id.* at 35

the immediate vicinity was the ideal fuel. It is important to note that prior to the logging and timber industry vast areas of forested land were denuded for the sake of mineral smelting. From 1850 to 1880, forges and furnaces used 7,000,000 bushels of charcoal a year. Colliers needed 160,000 cords of wood to make that much charcoal, so up to 7,000 acres of forests were cut each year to feed the iron industry.¹⁹ In addition to fuel, smelters also required large amounts of water to be extracted from nearby streams or rivers. Water was used to cool pipes that blew air on the coals to fan the fire.²⁰ Local limestone was mined and used as flux – a substance to help remove impurities.²¹ The point is that extractive industries are not limited to the single resource they target. The imposition of one industry literally and figuratively paves the way for other industries to follow. Today, the idea of cutting down virgin forest for firewood is simply preposterous. At the time, however, it was considered a natural consequence of the imposition of mining and progress to the Adirondack region.

Mineral exploitation was slow to get started for two reasons. First, before the Emmons Survey the interior parts of the Adirondacks remained mostly a mystery. Second, mining needs a great deal of

¹⁹ THE ADIRONDACK MUSEUM, *Out of the Earth: Mining in the Adirondacks – Fuel*, <http://www.adirondackhistory.org/adkmining/fuel.html> (last visited Feb. 16, 2011).

²⁰ This information was obtained from a personal interview with the Open Space Institute conducted during the class regarding the Open Space Institute's recent acquisition of Tahawus.

²¹ THE ADIRONDACK MUSEUM, *Out of the Earth: Mining in the Adirondacks – Resources*, <http://www.adirondackhistory.org/adkmining/resources.html> (last visited Feb. 16, 2011).

infrastructure to get the goods to market. To meet this need, canal and railroad projects began. In 1823, the Champlain Canal opened, connecting Lake Champlain to the Hudson and Mohawk Rivers. Once the canal opened, the mining companies were able to ship their goods on all-water routes to cities like Albany, Troy, and New York.²² By 1860 the Adirondacks were one of the largest producers of crude iron in the United States.²³ This date is important because Article 14 did not yet exist. Mineral barons faced very little regulation. Much of this mining occurred on what is today protected Forest Preserve land. Iron ore was not the only mineral extracted from the Adirondacks. Garnet is also found in abundance in the Adirondacks. In fact, the garnet mine at Gore Mountain is the largest garnet mine in the world. Other important mineral resources include graphite, hematite, wollastonite, titanium, and feldspar.

The most lasting result of the mining industry coming to the Adirondacks was the change of people's attitudes toward the region. What was once seen as a barren region was now viewed as an economic engine for New York. This led the way for other industries to penetrate the forest. In addition to the change in people's attitudes, mining left vast areas of denuded forest that emanated like concentric circles around the forges and blast furnaces. It left open pit mines like scars

²² THE ADIRONDACK MUSEUM, *Out of the Earth: Mining in the Adirondacks – Water*, <http://www.adirondackhistory.org/adkmining/water.html> (last visited Feb. 16, 2011).

²³ See JENKINS & KEAL, *supra* note 14, at 15.

on the earth. It left piles of spoils, some of which are still visible today. It left behind an infrastructure. However, there was one positive lasting result that came from all of this. People saw the destruction that industry brought to the natural landscape of the Adirondacks. After one hundred years of haphazard extraction, it became very clear that Adirondack resources were not infinite. The concept of conservation was imposed on the Adirondacks very shortly thereafter.

Logging in the Adirondacks

The story of logging in the Adirondacks is long and complex. Logging was, nevertheless, one of the most important industries in the Adirondacks and continues to be to this day. It is a major source of income for Adirondack residents and a source of raw materials and profits for corporations located outside the region.²⁴ No other industry or practice has done more to shape the landscape of the Adirondacks. The story begins around 1800. Settlement and commercial logging were just beginning around the Adirondack's edge.²⁵ At this time, about ninety percent of the current Adirondack Park was virgin forest.²⁶ At first, the old growth Eastern White Pine was primarily targeted partly because, as a softwood tree, it could be easily floated to market. Also, their signature straight trunks made the pines ideal for use as ship masts. Hemlocks became the next victim to forestry because their bark was used by the tanning industry. Finally, spruce

²⁴ See TERRIE, *supra* note 5, at 35.

²⁵ See JENKINS & KEAL, *supra* note 14, at 99.

²⁶ *Id* at 99.

trees were heavily harvested for use in paper mills.²⁷ By 1885, one third of the Adirondack forest had been clear cut and one third remained as virgin forest. The remainder was logged, but not heavily.²⁸

In the 1880's, forest depletion in the Adirondacks was exacerbated by the onset of mechanized logging and the first railroad based sawmills. For the next forty years, the Adirondacks outside the Forest Preserve were ferociously logged. During this time, the Adirondacks became the third largest producer of lumber in the entire country. By 1915, 90% of the virgin softwoods were gone and over a fifth of the forest had been burned in logging related fires.²⁹

Other factors contributing to deforestation were the iron industry and the flooding of lowlands to create lakes. The iron industry fueled massive depletion of the Adirondack forest. By 1873, there were thirty iron smelting operations in the Adirondack region. Together, these forges produced between thirty and forty thousand tons of iron a year. To do this they used about four million log bushels and clear cut around five thousand acres of hardwoods a year to produce the charcoal.³⁰

Today, the logging that continues in the Adirondacks is sustainable and closely governed. However, this could change if bio-fuels and wood pellets become more viable. Their use could put

²⁷ See generally BARBARA McMARTIN, *THE GREAT FOREST OF THE ADIRONDACKS* (North Country Books 1994).

²⁸ See JENKINS & KEAL, *supra* note 14, at 99.

²⁹ See *id.* at 104.

³⁰ See *id.* at 100.

increasing pressure to log the Adirondacks and even the Catskills once again. For this reason, it is essential that Article 14 remain in place and receive sufficient enforcement to give it actual teeth.

Logging in the Catskills

No other industry left such a noticeable mark on the Catskill Landscape as the timber industry.³¹ The Catskills were rich in hemlock, the bark of which contains tannin, a chemical integral to the treatment of hides in making leather.³² As such, these hemlock forests drew the attention of the tanning industry. Small tanneries opened in the Catskills as early as 1800 but the industry did not rapidly expand until 1817. In that year, the first large-scale tannery opened on Kaaterskill Creek.³³ Taking advantage of both the ample hemlocks and waterpower, essential for grinding bark, the tannery successfully operated into the 1850's.³⁴ Following in its footsteps, many tanneries sprung up throughout the Catskills. In fact, by 1825, Greene County was one of the largest leather producers in the country and produced more leather than all other New York counties combined.³⁵ Throughout the mountains the transformation of the hemlock forests was staggering and rapid.³⁶

³¹ DAVID STRADLING, MAKING MOUNTAIN: NEW YORK CITY AND THE CATSKILLS 28 (University of Washington Press, 2007).

³² *Id.* at 29.

³³ *Id.* at 29.

³⁴ *Id.* at 29.

³⁵ *Id.* at 29.

³⁶ *Id.* at 31.

The tannery operations did more than denude the forests of hemlock, it also opened up the area for development and further resource extraction. Generally speaking, after a tannery consumed all of the usable hemlock nearby, tannery operators would open a “bark road” to areas with viable hemlock populations.³⁷ Years later, these roads served as conduits to reach resources such as bluestone, timber and also as access points for people looking to clear land for agriculture. The result of decades of cutting and road clearing left a permanent change in the Catskill forest, most dramatically to the hemlock itself. It is estimated that in total the tanning industry consumed more than 7.5 million hemlocks in the Catskills, or 164 square miles of forest.³⁸

As new technologies emerged, the use of hemlock in tanning processes diminished. The tannery operations dwindled in number many of the villages nearby tanneries shrunk in population.³⁹ However, new industries followed in the place of the tanning industry. The lack of hemlock in the forest canopy created wide gaps for hardwood saplings to grow. Within ten years of the abandonment of the tanning industry, those saplings were the perfect age and size for furniture and barrel making. Both the furniture and barrel making industries took advantage of the available labor and growing hardwood

³⁷ *Id.* at 29.

³⁸ See KUDISH, *supra* note 8, at 255.

³⁹ See generally STRADLING, *supra* note 31, at 28-36.

saplings. The industry peaked in 1880, when more than forty furniture factories operated in the Catskills.⁴⁰

Over the next century, timber extraction continued in the Catskills but never on as large a scale as during the heyday of the tanning industry. In fact, the common perception of the forest as a resource driving economic engine began to change in the mid 1800's. One local artist commented in a publication about Catskill tourism that the tanning industry "destroys the beauty of many a fair landscape – discolors the once pure waters – and, what is worse than all, drives the fish from the streams!"⁴¹ These comments foreshadow the changes the Catskill economy was undergoing at the time. In the years since, the economy of the region has shifted from a resource extraction model to an economy based more on tourist services. While there remain a few timber operations in the Catskills, they are now sustainable practices and closely governed by New York Environmental Conservation Law Article 9.

Mining in the Catskills.

Despite the tanning and logging operations that endured in the Catskills, the region is more famous for another natural resource: bluestone. This distinctive, blue-hued sandstone runs very close to the surface through much of the Catskills.⁴² The stone was used to make

⁴⁰ *Id.* at 37.

⁴¹ *See id.* at 34 quoting T. Addison Richards, *The Catskills*, HARPER'S NEW MONTHLY MAGAZINE, July 1854, at 153.

⁴² *Id.* at 40.

sidewalks in fledgling cities in the Northeast, including New York City. By the 1870, quarries had sprung up all over the region and a great volume of bluestone was coming out of the Catskills. The industry flourished until the 1890's. At that time, less expensive Portland cement began to replace bluestone for use as sidewalks.⁴³ Within a few years, hundreds of abandoned quarries dotted the mountains, and in some cases the industry's collapse meant the near abandonment of nearby towns.⁴⁴ Although some bluestone is still mined in and around the Catskills, the prosperous life of a quarry is relatively short.

Although Quarries were scattered about the mountains, they had a cumulative effect on the landscape and the forest ecosystem. First off, most of the quarries were small and short-lived. As such, operators rarely concerned themselves with rock waste which tended to accumulate at the quarry. Furthermore, some quarries deposited the stone waste directly into the nearest creek bed. More importantly, however, the mining industry created pathways into the mountain forest that opened up the region to farmers. Again, as was the same scenario in the Adirondacks, the greatest impact of the mining industry did not come directly from mining. Rather, the infrastructure or roads that the industry brought to the region made is accessible to farmers looking to clear land.

The Boom and Bust Cycle:

⁴³ *Id.* at 41.

⁴⁴ *Id.* at 42.

All of the extractive industries in both the Adirondacks and the Catskills had one thing in common; they created temporary booms in economic activity that ended in busts. Consequently, the operators of quarries, logging camps, and mining operations gave little consideration to the implications and consequences of their activities. What was left behind was a landscape of ruins; abandoned quarries, stone debris fields, fire-charred forest remains, and dilapidated tanneries. For years, New York allowed this boom and bust cycle of land use and abuse to continue. The state allowed the barons of industry to exploit a piece of land for all its economically viable resources. Then, when the land was no longer of value to the industry, it would be abandoned and the state would retake possession in a tax sale. However, the onset of more urbanized living began to change the cycles of abuse of the land. As people sought refuge from the hustle and bustle of city life, the common perception of New York's mountain region changed. People began to see the Catskills and Adirondacks as having more to offer than simply a wealth of natural resources. The mountains came to be appreciated for their aesthetic value and as a refuge for city dwellers to get back to nature. The prospect of a new economy dawned. The new economy was based on tourism and service industries as opposed to resource extractive industries. As such, the vision of the vanishing New York wilderness came to be at least part of the impetus to constitutionally protect these areas.

The preceding section of this paper was designed to show the read, first and foremost, a history of extractive industries in the Catskills and Adirondacks. That is a foundation necessary to examine how these areas came to be protected. However, a corollary intention is to evince the changing attitudes of New Yorkers toward the natural world. Together, these concepts became impetus for protecting New York's great mountain ecosystems. The following section examines this in more detail and explores how and why the Catskills and the Adirondacks received constitutional protection.

Legal Protection of Resources in the Forest Preserve

The Forest Preserve System of the Adirondack and Catskill Parks originated from a common concern over the destructive and wasteful practices of the logging industry in the eighteenth and mid-nineteenth centuries.⁴⁵ The original impetus, in fact, was to conserve the forested land to ensure a steady flow of water in the Hudson River and the newly opened Erie Canal, two of New York's greatest commercial arteries.⁴⁶ Additionally, the original goal of the Forest Preserve also included the use of the region as a "pleasuring grounds" open for the

⁴⁵ ALFRED S. FORSYTH, *THE FOREST AND THE LAW: AN INQUIRY INTO THE CONSTITUTIONAL AND LEGISLATIVE BACKGROUND OF THE NEW YORK FOREST PRESERVE AND THE ADIRONDACK AND CATSKILL PARKS* 3 (1970). (This is a pamphlet published as a public service by The Sierra Club, The Association for the Protection of the Adirondacks, and the Adirondack Mountain Club.)

⁴⁶ Philip G. Terrie, *Cultural History of the Adirondack Park*, in *THE GREAT EXPERIMENT IN CONSERVATION: VOICES FROM THE ADIRONDACK PARK* 206 (William F. Porter, Jon D. Erickson & Ross S. Whaley eds., Syracuse University Press 2009).

free use of all people for their health or pleasure.⁴⁷ What brought about this change in attitude that led to constitutional and statutory protection of the Adirondacks and Catskills? The most prevalent reasons for this change in attitude are utilitarian in nature. For example the need for regulated forestry practices, continued water flow to New York's greatest rivers, and recreational activities were all factors that brought about the attitude readjustment. Moreover, at the end of the nineteenth century for the first time in America nature was popular. People recognized the benefits of the natural world and sought to preserve it. This section posits that in addition to a utilitarian approach to forest management, the Forest Preserve was developed for the sake of preserving wilderness.

Initially, conservation for the sake of nature's intrinsic value was not a consideration in the implementation of a Forest Preserve. The public sentiment in support of conservation believed that logging could exist side by side with recreation and forest maintenance.⁴⁸ Consequently, the New York Legislature created the Forest Preserve in 1885. This encompassed what was left of the public domain of the Adirondacks.⁴⁹ Originally, the Forest Preserve was to be kept forever wild as a resource bank that would ensure a steady supply of water and

⁴⁷ See FORSYTH, *supra* note 45, at 8-9.

⁴⁸ See TERRIE, *supra* note 7, at 92.

⁴⁹ Philip G. Terrie, *Cultural History of the Adirondack Park*, in THE GREAT EXPERIMENT IN CONSERVATION: VOICES FROM THE ADIRONDACK PARK 210 (William F. Porter, Jon D. Erickson & Ross S. Whaley eds., Syracuse University Press 2009).

timber.⁵⁰ Only later would the Forest Preserve come to be dedicated as wilderness.

Since the state-owned Forest Preserve constituted but a small part of the total area of the Adirondacks, the Legislature began to take a look at the proposition that the state should acquire title to a large continuous park in order to protect the watershed.⁵¹ Thus in 1892, the Legislature voted to establish the Adirondack Park. The state rapidly left the Park's original concept behind with the imposition of the "Forever Wild" clause of the State Constitution. Currently, the Park is a conglomeration of wild forests, agriculture, industry, and developed land. For the first seventy years, the lands within the park were managed no differently from any other state lands. The Forest Commission and its successor, the Department of Environmental Conservation, cut trails on public lands, fought fires, rescued hikers, licensed sportsmen, and enforced game laws. The towns managed development on private lands through zoning ordinances when they had them and let it go largely unmanaged when they didn't. There was no regulatory body or plan for large-scale planning, endangered species, or wetlands protection.⁵² In 1971, however, the state created the

⁵⁰ See TERRIE, *supra* note 7, at 96-97.

⁵¹ See *id.* at 102.

⁵² *Id.* at 26.

Adirondack Park Agency and charged it with creating and enforcing two park wide master plans for private and one for public land.⁵³

The land use and development plan created by the Adirondack Park Agency in 1973 was intended to channel new development into already developed areas and thus preserve the wildness of the remaining lands.⁵⁴ The plan, which withstood a number of legal challenges, creates a park-wide zoning code that regulates and slows development.⁵⁵ The plan does not prevent development on private lands, however. In essence, the plan and the overall management of the park is a compromise between human needs for economic, utilitarian uses of the natural resources and a desire to maintain a wilderness aesthetic.

The framework has allowed the Adirondack Park to balance human use and natural resource conservation for more than a century and to withstand increasing development pressure of the past thirty years.⁵⁶ Although the Adirondack Park land use and development plan is often criticized for either restricting development or allowing too much development, it has successfully maintained a functioning economy and

⁵³ William F. Porter & Ross S. Whaley, *Public and Private Land-Use Regulation of the Adirondack Park*, in THE GREAT EXPERIMENT IN CONSERVATION: VOICES FROM THE ADIRONDACK PARK 230-231 (William F. Porter, Jon D. Erickson & Ross S. Whaley eds., Syracuse University Press 2009).

⁵⁴ See JENKINS & KEAL, *supra* note 14, at 28.

⁵⁵ Robert Malmshiemer, *Legal Structure and Defense of the Adirondack Park*, in THE GREAT EXPERIMENT IN CONSERVATION: VOICES FROM THE ADIRONDACK PARK 225-226 (William F. Porter, Jon D. Erickson & Ross S. Whaley eds., Syracuse University Press 2009).

⁵⁶ See *id.* at 225.

a healthy ecosystem. Evidence of a healthy ecosystem lies in the return of large animals such as the moose and the cougar.⁵⁷

Despite all of the pro-environment statutes and regulations that have arisen to give a codified structure to Article 14 specifically for the protection of the Adirondacks, the Catskills have been treated like the ugly stepdaughter of the New York regulatory authorities. Whereas the Adirondacks have its own Act (The Adirondack Park Act), its own agency (The Adirondack Park Agency), and its own specific land use plan, the Catskills have none of these things. While there are statutes such as SEQRA and agencies like DEC that govern land use and resource extraction in the Catskills, in theory these apply even handedly to the whole Forest Preserve. There is no specific protection for the Catskills. A later section of this paper analyzes the reasons for the unequal treatment of New York's great mountain ecosystems, why the Forest Preserve is treated differently in the northern and southern parts of the state, and finally offers one way to fill the legislative and administrative gaps that persist in the Catskills.

Interpretation of Article 14 and Reasonable Extraction:

At first glance, Article 14, the so-called Magna Charta of the New York Forest Preserve, appears air tight.⁵⁸ A literal reading of the phrase "the forest preserve as now fixed by law, shall be forever kept as

⁵⁷ See JENKINS & KEAL, *supra* note 14, at 49-50.

⁵⁸ William H. Kissel, *Permissible Uses of New York's Forest Preserve Under "Forever Wild"*, 19 SYRACUSE L. REV. 969, 971 (1968).

wild forest lands” connotes that any land thereafter acquired by the state would be completely safe from resource extraction. How then have there been ski runs and highways built through Forest Preserve land? How have New York courts, in their interpretation of Article 14 and the associated statutes, allowed for certain reasonable extractions on Forest Preserve Land when Article 14 appears so black and white? These questions and more are answered in this section through an analysis of constitutional amendment, case law, and Attorney General opinions that interpret Article 14. The analysis reveals a less than strict application of Article 14 and a gradual erosion of the values Article 14 was intended to uphold. Furthermore, the force which Article 14 carries has varied over the years with socio-economic changes. This gives rise to another question; what should be the standard of consistency in applying Article 14? In understanding what Article 14 means and how it has been interpreted the first thing to look at is the subsequent amendments to the article.

Constitutional Amendments 1941-1959:

Since its inception, Article 14 has been amended twenty times. Most of these amendments have been minor and allow for some timber extraction to increase the size of a local airport or cemetery. Two amendments in particular have allowed for substantial resource extraction. The implications of those amendments are analyzed here.

Because amending the New York State Constitution is deliberately cumbersome and requires the approval of both the Assembly and the Senate followed by public approval at the next general election, private enterprises such as the logging and mining industry have met little success in amending Article 14. That does not mean they have not tried, however. The real threat to the wilderness values espoused by Article 14 in fact comes from within the Legislature itself. Beginning in November of 1941, a chain of amendments specifically allowed for resource extraction. The 1941 amendment authorized the state to construct and maintain twenty miles of ski trails thirty to eighty feet wide on the north, east, and northwest slopes of Whiteface Mountain.⁵⁹ The obvious effect of this is that a twenty mile swath of forest land, thirty to eighty feet wide, had to be cleared of its trees and regraded to make for smooth ski runs. Arguably, the wilderness character of the Forest Preserve in the Whiteface region is but minimally affected by this clearing of land. However, there are corollary effects of this amendment that have more devastating effects upon the wilderness. For example, a ski operation is of little value without roads connecting people from more populous regions to the mountain. Eventually, the need for transportation led to another amendment discussed next. Also, to guarantee a return on the investment, the state must ensure that the ski run is usable all winter. This means water must be diverted for use in snow-making machines. These machines, in

⁵⁹ N.Y. Const. art XIV, § 1 (amended 1941).

addition to the ski lifts, and ski lodge require a great deal of electricity. In sum, the 1941 amendment doesn't simply allow for a ski run to be cleared on the Forest Preserve, it allows for modern infrastructure to encroach into the Forest Preserve. Modern infrastructure, in turn, leads to population growth which of course leads to more resource extraction. This evinces how the effects of this amendment are not limited to the resource extraction it expressly permits.

When considered in a vacuum, the 1941 amendment sounds reasonable. After all, it only allows for one ski mountain to be developed. The economic gains of a ski mountain surely outweigh any detriment to the Forest Preserve caused by the associated resource extraction and loss to the wilderness aesthetic of the Forest Preserve, right? Furthermore, the people of New York desired a ski run for recreation. Recreation was an original consideration in the development of the Forest Preserve. However, what the 1941 amendment and subsequent amendments fail to realize is the cumulative effect on wilderness that resource extraction will have. The 1941 amendment allowed for the introduction of modern infrastructure to Whiteface Mountain. This in turn led to subsequent amendments allowing for more ski runs and a major highway to get tourists from the cities downstate to the ski runs upstate. The cumulative effect of these amendments is a drastic reduction in the quality and wilderness character of the Forest Preserve. This raises the question whether these amendments are in line with the original intent of Article 14 and

the associated “forever wild” character of the Forest Preserve. Obviously, these amendments cannot be called unconstitutional for their weakening of the original Article 14 because they are contained in the Constitution itself. However, it is clear that these amendments have weakened the original Article 14 not simply by allowing for specific projects in the Forest Preserve but allowing the associated infrastructure. These projects are not “wild” in any natural sense, and although the People of New York have expressly authorized these projects it cannot be said that they endorse a forever wild aesthetic. It can be argued that Forever Wild applies only to the public land of the Forest Preserve and not the adjacent private land within the Adirondack and Catskills Parks. What this argument overlooks, however, is that fragmentation of the Forest Preserve parcels does in fact degrade the wild nature of the Forest Preserves themselves. First of all, biodiversity is diminished by fragmenting the Forest Preserve. Biodiversity does not only mean a great array of species, it also entails healthy and complex connections between species. If biodiversity is part of Forever Wild, and biodiversity is diminished by fragmentation specifically authorized by amendments, than those amendments cannot be said to support the Forever Wild aesthetic of the original Article 14. This demonstrates how Article 14 has been weakened by subsequent amendments. It has been weakened not just physically but its spirit has been weakened.

Between 1947 and 1959, three more amendments following in the footsteps of the 1941 amendment opened up stretches of the Forest Preserve to modern infrastructure and development. A 1947 amendment allowed for ski runs to be built on Gore Mountain and Pete Mountain in the Adirondacks and Belleayre Mountain in the Catskills. However, these projects were overshadowed by a 1959 amendment which allowed for construction of the Northway highway through parts of the Adirondacks. The effects of the Northway have been far-reaching for the Adirondack region. In fact, no other single project has done more to change the face of the Adirondack Region. It follows that with the newly opened ski runs, the state would want a highway to get skiers to the mountain. However, the effects of the highway are not limited to the Forest Preserve it overlaps. Easy transportation to the Adirondack Region has led to development of private parcels around the Forest Preserve. Since these developed tracts are not within the Forest Preserve they are not constitutionally controlled. A wide range of New York Environmental Conservation Laws, SEQRA, and land use controls promulgated by the Adirondack Park Agency govern the development of tracts of land outside or adjacent to Forest Preserve land. As it is currently interpreted, the conservation mandate of Article 14 does not reach beyond the boundaries of the Forest Preserve. Considering the affirmative mandate imposed by Article 14, this type of development is problematic. Although the Forest Preserve itself remains intact, the resource extraction and development that occurs

around its borders detract from the wild character of the Forest Preserve. This is especially true when the development is visible from within the Forest Preserve. Perhaps the New York courts and Legislature should recognize the affirmative mandate of Article 14 as having implications that reach outside the borders of the Forest Preserve. If the Forest Preserve is to remain forever wild, the circumstances and repercussions of resource extraction and development around its edges must fall under the scope of Article 14.

In the Adirondacks, however, there is a safety net that protects the forest land from resource extraction and development pressures outside and on the edges of the Forest Preserve. That safety net is the Adirondack Park Act, implemented by the Adirondack Park Agency. One of the agency's main tasks was to devise and implement a land use master plan. Generally speaking, the lands surrounding the state owned wilderness areas that make up the Forest Preserve are classified under the land use master plan to reflect Article 14's mandate of keeping the Forest Preserve forever wild. Yet the Forest Preserve is not limited to the Adirondack Park region. What statutory protections are in place in the land surrounding the Catskills Forest Preserve system? The answer lies in SEQRA and the New York Environmental Conservation Laws. The efficacy of these statutes will be analyzed along with reasons for unequal treatment of the Forest Preserve in the following section.

The bottom line with these amendments is that they weaken the original language of Article 14 but there is little room for environmentalists to argue. Simply put, the amendments came into existence via a democratic process and received a majority vote from the people of New York. Since they are incorporated into the original amendment there is no room to argue the constitutionality of them. If environmentalists hope to attack the amendments or change the direction the amendments have taken Article 14, the only avenue is the next New York Constitutional Convention. In one final note, future generations must consider the cumulative effect of the preceding amendments. It is difficult to foresee a major change coming to the entire Adirondack or Catskill region by simply adding one more ski mountain, or straightening one more road. Yet over the years, these amendments when taken as a whole have drastically changed both regions. If people want to preserve the current condition of the Forest Preserve and the Adirondack and Catskill regions more generally, they must be aware of this slippery slope phenomenon. This is complicated by the fact that the ecosystemic and land use changes to both the Catskills and Adirondacks have been intergenerational and therefore, not readily apparent to the casual observer. However, a quick study of history reveals the dramatic changes that have occurred as a result of the amendments to Article 14. Environmentalists need to bear that in mind when arguing to either maintain Article 14 or to argue against a proposed amendment to Article 14.

Case Law and the Reasonable Use Standard:

As the previous sections demonstrate, Article 14 has been interpreted by a number of legal institutions including the courts, Legislature, Attorney General's office, and the DEC. In justifying various uses within the Forest Preserve, these legal institutions have loosely developed several principles.⁶⁰ This section analyzes the courts' role in developing those principles.

Constitutional protection was first afforded the Forest Preserve to bring a halt to commercial exploitation of the state's forest land, and presumably to protect them for use by all the people of the state.⁶¹ This notion has been reflected in opinions by the New York Court of Appeals and has given rise to the basic principle upon which a number of activities have been permitted in the Forest Preserve. The principle, as prescribed by the Court of Appeals, is that the Forest Preserve is for the benefit and use of the people.⁶² In the past, the Legislature has used the so-called public use argument to justify certain amendments such as the Northway amendment and the ski area amendments. The argument has been put forth that these projects and the associated tree removal are in line with the spirit of Article 14 because they increase the public use of the Forest Preserve. However, the Legislature has

⁶⁰ See Kissel, *supra* note 59, at 974.

⁶¹ N.Y. State Office of Legislative Research, Report on Constitutional Protection of the Forest Preserve, at 7 (June 1967).

⁶² *People v. Adirondack Ry. Co.*, 160 N.Y. 225, 237 (1899).

used this argument haphazardly and at its own convenience. The public use approach could well be used to justify nearly any project, so long as it was not limited to private enterprise. In 1930, the New York Court of Appeals finally addressed this issue.

In 1929, the New York Legislature authorized the Conservation Commission, the predecessor to DEC, to construct and maintain a bobsled run on Forest Preserve land near Lake Placid. The proposed project would require a great number of trees to be removed from the Forest Preserve. The Court of Appeals found the act unconstitutional in the landmark case *Association for the Protection of the Adirondacks v. MacDonald*, finding that “[h]owever tempting it may be to yield to the seductive influences of outdoor sports and international conquests, [the court] must not overlook the fact that constitutional provisions cannot always adjust themselves to the nice relationships of life.”⁶³ In so holding, the court considerably restricted the “public use” argument as applied by the State Legislature. In addition, the court announced a standard still in effect today. The so-called reasonable use doctrine sprang from this case. The court realized that some reasonable cutting or removal of timber might be necessitated in order to properly preserve the State Park. Examples include removal of blighted trees for disease control⁶⁴, healthy timber for trail maintenance, and finally

⁶³ *Association for the Protection of the Adirondacks v. MacDonald*, 253 N.Y. 234, 241-242 (1930).

⁶⁴ B. Grisi, *Forest Pests that have Significantly Impacted the Adirondack Forest*, THE ADIRONDACK PARK AGENCY,

for forest fire preventative measures. Resource extractions such as these arguably uphold the concept of Forever Wild. The question left by the *MacDonald* court is just what constitutes a reasonable use.

Prior to *MacDonald*, the lower courts of New York were uncertain how to interpret Article 14. For instance, the Appellate Division had even gone as far as to state that a single tree, and even fallen timber and dead wood, cannot be removed under the plain language of Article 14.⁶⁵ Contrastingly, Attorney General Opinions and briefs cited by the Appellate Division indicated that under Article 14 the erection and maintenance of facilities within the Forest Preserve were permissible so long as such facilities were for public use and did not call for the removal of resources to a *material degree*.⁶⁶ Thus it was not until *MacDonald* that the Court of Appeals set the standard at reasonable use. By examining the plain language of Article 14 along with its legislative history, the Court of Appeals determines that it was the framer's intent to stop the willful destruction of trees upon the forest lands, and to preserve these things in the wild state now existing.⁶⁷ Accordingly, the court determines the State Legislature acted beyond the scope of Article 14 in allowing the timber removal associated with the bobsled run. Notably, the Court stated that it was not called upon

http://www.apa.state.ny.us/Research/ADK_Forest_Pest_Chart.htm (last visited Mar. 6, 2011).

⁶⁵ Association for the Protection of the Adirondacks v. MacDonald, 253 N.Y. 234, 238 (1930).

⁶⁶ *Id.* at 238.

⁶⁷ *Id.* at 241-241.

at this time to decide what is reasonable cutting and removal of timber.⁶⁸ That was a question left open for later cases. Nonetheless, the *MacDonald* decision is of great importance and must necessarily be the guiding light in the analysis of the Forever Wild clause.⁶⁹

Although the Court of Appeals left many questions open in the *MacDonald* decision, the lower courts clarified these questions to some extent in subsequent cases. In 1972, a dispute arose over the use of seaplanes on lakes within the Forest Preserve. Pursuant to a rule promulgated by the Commissioner of ENCON (the predecessor of DEC), seaplanes were prohibited to land on said lakes. The challengers of this rule, a seaplane taxi service, alleged that the rule violates Article 14 because the landing of seaplanes on lakes is no more deleterious to the wilderness character of the Forest Preserve than other uses the Commissioner has allowed.⁷⁰ Although the case does not deal directly with resource extraction, the New York Supreme Court took the opportunity to discuss and interpret the *MacDonald* decision. From a careful reading of *MacDonald*, the New York Supreme Court gleans that it was the Court of Appeal's feeling that some cutting and timber extraction is permissible so long as it is not a substantial amount.⁷¹ The Forest Preserve "was to be preserved, not destroyed. Therefore, all things necessary were permitted, such as the measures to prevent

⁶⁸ *Id.* at 240.

⁶⁹ *Helms v. Reid*, 394 N.Y.S.2d 987, 1000 (N.Y. Sup. Ct. 1977).

⁷⁰ *Id.* at 992.

⁷¹ *Id.* at 999.

forest fires, the repairs to roads and proper inspection, or the erection and maintenance of proper facilities for the use by the public which did not call for the removal of timber to any material degree.”⁷² This language indicates the court’s recognition of the fact that even though the Constitution was intended to protect and preserve our natural forest lands, such protection does not prohibit use and enjoyment of the areas by the people of the State.⁷³ Such a principle is based on the theory that the Forest Preserve was for the use and benefit of the people and was not to be an isolated area in which no man would wander.⁷⁴

What this means to the *Helms* court, is that reasonable cutting and removal of timber is permitted, so that campers and others may receive their full recreational benefit from the area, always remembering that such enjoyment must not harm or injure the wild forest nature of the preserve in any way.⁷⁵ More specifically, the court enumerates certain instances in which some resource extraction would not violate the Forever Wild clause. These instances include reasonable cutting necessary to protect the Forest Preserve such as fire towers and access roads, and public safety. On the other hand, the court opines that any commercial venture that removes resources from the Forest Preserve is per se unreasonable under Article 14. In essence, the court is grappling

⁷² Association for the Protection of the Adirondacks v. MacDonald, 253 N.Y. 234, 242 (1930).

⁷³ Helms v. Reid, 394 N.Y.S.2d 987, 997 (N.Y. Sup. Ct. 1977).

⁷⁴ People v. Adirondack Ry. Co., 160 N.Y. 225, 237 (1899).

⁷⁵ Helms v. Reid, 394 N.Y.S.2d 987, 1002 (N.Y. Sup. Ct. 1977).

with the conundrum that the Forest Preserve must remain wild under Article 14, but must also be accessible to modern humans. These two interests are diametrically opposed in the court's view. Therefore, it is necessary to arrive at a formula or balance in order to fully satisfy the Constitutional mandate. Thereafter, the court announces a reasonableness standard. "The definition of reasonableness in these situations should be a cutting that is necessary for the purpose but does not injure in any way the wild forest character of the very preserve which the Constitution seeks to protect."⁷⁶

A few questions remain after Helms. First of all, did the court really do anything to clarify what is a reasonable extraction and what is not? It appears at first glance that the New York Supreme Court may have shed light upon this standard. After closer inspection, however, it appears that perhaps the court simply perpetuated the confusion surrounding the reasonable use standard. Despite the lengthy analysis of *MacDonald* and the exhaustive discussion of what is reasonable, the court does not appear to add anything to MacDonald, with the exception of the references to specific permissible extractions. There are only three specific instances of timber removal the court gives a stamp of approval, and even those are found in dicta. Furthermore, a narrow reading of Helms would suggest that the court only weighs in on whether seaplanes comport with Article 14.

⁷⁶ *Id.* at 1002.

Another question that remains regards the word choice used by the court on several occasions within the opinion. In announcing its definition of reasonable extraction, the New York Supreme Court states that to be reasonable, the extraction must not injure the wild forest character *in any way*. First off, this standard seems to ignore the court's own advice that a balance needs to be struck between zero extraction and public use of the Forest Preserve. Assuming that even the removal of one tree injures the wild character in some way, albeit a de minimus change of character, this definition indicates that no extraction can be allowed under any circumstances. This is not, however, the true nature of the standard the *Helms* court is putting forth. Consequently, the plain language of this definition of reasonableness does not comport with the actual standard the court is drawing. As such, the true definition of what is reasonable or permissible extraction under Article 14 is confounded by the *Helms* court.

Nonetheless, in other parts of the opinion the *Helms* Court upholds the constitutionality of the State Land Master Plan and finds the commissioner's rule regarding seaplanes to bear a reasonable relation to a bona fide purpose.⁷⁷ Accordingly, the court is taking a pro-wilderness, pro-environmental stance. However, the court does not do the wilderness of the State Forest Preserve any favors in terms of delineating what makes for a reasonable extraction or what types of

⁷⁷ *Helms v. Reid*, 394 N.Y.S.2d 987, 1012 (N.Y. Sup. Ct. 1977).

extractions violate Article 14. This would not be the last chance for the New York Court system to interpret what is reasonable in light of resource extraction within the Forest Preserve.

Beginning in 1985, DEC adopted the Catskill Park State Land Master Plan to establish certain policies and guidelines relating to the management of State-owned lands located in the Catskill Forest Preserve.⁷⁸ As part of that plan, the DEC promulgated specific plans for different regions of the Catskills. The plan for a region known as Balsam Lake Mountain created controversy because it called for the construction of five parking lots, two campsites, a cross-country ski loop, the relocation of existing trails, and the construction of a new trail on State Forest Preserve Land. A neighbor challenged the management plan as violating the Forever Wild mandate of Article 14. For better or worse, the Third Department of the Appellate Division did not accept the petitioner's argument. Following the precedent established in *MacDonald*, the Appellate Division determines that even though Article 14 would appear on its face to prohibit any cutting or removal of timber from the Forest Preserve, a reasonable interpretation allows for removal of timber that is not substantial. Again, what is substantial, reasonable, or to a material degree is a factual inquiry for which the court has not made specific guidelines.

⁷⁸ Matter of Balsam Lake Anglers Club v. Department of Env'tl. Conservation, 199 A.D.2d 852, 852(N.Y. App. Div. 2d. Dept. 1993)

In this case, the court reasoned that the removal of 350 mature trees to build a new hiking trail did not qualify as *substantial* timber removal. The Court indicates that only those activities that would involve timber removal to any material degree would run afoul of Article 14.⁷⁹ Therefore, the court does not consider the removal of 350 trees to be a removal of *any* material degree. Quite simply, the court's logic does not compute. The court further reasoned that the removal of several hundred saplings to be a no consequence because the DEC does not define them as timber.⁸⁰ Again, the court overlooks the Forever Wild mandate of Article 14 and instead dodges the issue by focusing solely on timber. Article 14 encompasses an ecosystemic approach and does not specifically focus on certain resources. Until the court adopts a more holistic view of Forever Wild, it appears that bits and pieces of the Forest Preserve can be cleared to grant easier access to the interior regions of the Preserve. Essentially, what we have here is the Appellate Division loosely interpreting the Court of Appeal's lax interpretation of Article 14. The end result is a poor application of the Forever Wild standard.

The preceding analysis reveals that the New York Courts are giving less than strict interpretation to Article 14. From this, several pressing questions arise. Is the court system doing justice to the framer's intent? Was article 14 intended to be strictly interpreted? Is

⁷⁹ *Id.* at 853.

⁸⁰ *Id.* at 854.

the court just yielding to “progress”? Has the court been a friend of the Wilderness aesthetic? It has been a friend of the wild nature of the Forest Preserve in that it denies any commercial use of the Forest Preserve resources. On the other hand, the court has furthered the rights of the public to gain access and recreate in and on the Forest Preserve which may or may not be in line with the framer’s intent. But at what cost? The court seems to ignore the cumulative impact that reasonable extractions have. A few trees less trees here and there, a few more parking lots here and there, and all of the sudden, a drive through the Adirondacks feels like a drive in the ‘burbs. The roadside wilderness character (if such a phenomenon can exist) has been slowly eroded by the court’s view on Article 14. The court certainly hasn’t followed the plain language of Article. So what do we have now? We have a court made rule, interpreting Article 14, that does not give as much credence to a Forever Wild aesthetic as the plain language warrants.

Attorney General Opinions:

The New York Attorney General advises the Executive branch of New York’s government and defends actions on behalf of the state. Accordingly, the Attorney General issues opinions regarding agency action. For example, an applicant will approach the Department of Environmental Conservation (DEC) with a proposed project. DEC may request an opinion from the Attorney General advising whether the proposed project comports with environmental law and Article 14.

DEC's mission is "To conserve, improve and protect New York's natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being."⁸¹ Despite this, DEC on numerous occasions has sought to issue and has issued permits for certain activities within the Forest Preserve. The real question this presents is why DEC whose duty it is to *improve* the New York environment would seek to do so. In any case, the Attorney General Opinions shed light upon the interpretation of Article 14. It is important to bear in mind that the Attorney General opinions regarding Article 14 have varied over the years in their sentiment toward conservation. This is due to there being multiple Attorneys General and changing public opinion regarding the Forest Preserve.

Beginning in 1948, the Conservation Department sought to remove browse from within the forest preserve for the purpose of feeding wild deer.⁸² Browse is defined as the "tender shoots, twigs, and leaves of trees and shrubs used by animals for food."⁸³ This presented the Attorney General with two questions: first, would the cutting of browse change the character of the lands embraced within the Forest Preserve, and second, would cutting the browse constitute removal or destruction

⁸¹ DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DEC'S MISSION STATEMENT, <http://www.dec.ny.gov/24.html>. (last visited Mar. 18, 2011).

⁸² Cutting of Browse in the Forest Preserve, 1948 N.Y. Op. Att'y. Gen. 159 (1948).

⁸³ Merriam Webster Dictionary.

of timber?⁸⁴ Attorney General Nathaniel Goldstein answered both questions in the negative and issued an opinion holding that the removal of browse complies with Article 14. The logic relied on by the Attorney General is flawed for several reasons. Furthermore, his opinion evinces a less than strict interpretation of Article 14. First of all, Attorney General Goldstein in justification of his opinion immediately delved into the congressional intent of Article 14 without first considering its plain language. Furthermore, not only was forest growth intended to be conserved, but the lives of the wild denizens of the forest were to be protected. Flaws persist in this argument both procedurally and substantively. Procedurally speaking, Attorney General Goldstein should have first considered the plain language of Article 14 before jumping into a drafters' intent argument. The plain language of the Article suggests that the practice of cutting the browse to feed deer elsewhere would be strictly forbidden. However, in bypassing the plain language of Forever Wild, the Attorney General managed to circumvent the clear language of Article 14.

Substantively speaking, the assumption that the framers intended wild denizens of the forest to be protected is misplaced. Perhaps this is the case, even though there is no express language to that end in Article 14. Nevertheless, to add this language to Article 14 to bolster his stance misframes the issue. Under Article 14, the real

⁸⁴ Cutting of Browse in the Forest Preserve, 1948 N.Y. Op. Att'y. Gen. 159 (1948).

issue is whether the cutting of browse changes the Forest Preserve's character as *wild* forest land. The removal of brush most certainly changes the wild character of the forest as saw marks will be evident and the wild denizens of the affected region will need to alter their feeding habits. Second, Attorney General Goldstein relied on *Association for the Protection of the Adirondacks v. MacDonald* to find that browse removal would not constitute timber removal.⁸⁵ That case held that timber removal from the Forest Preserve was strictly forbidden absent a Constitutional Amendment unless the timber removal was so insubstantial it would not alter the wild character of the land to any material degree.⁸⁶ The Attorney General's narrow reading of the case creates a standard the court did not intend. Based on his analysis, since browse is not technically timber it could be removed from the Forest Preserve without inflicting harm to Article 14. The court, however, did not intend timber to be a standard for what is allowed to be extracted from the Forest Preserve. Timber just happened to be the resource of concern in that case. Therefore, the Attorney General's reliance on that case is misguided.

Although Attorney General opinions are not binding, they are important to consider because they evince a lax interpretation of Article 14. On the other hand, some Attorney General opinions have given great force to the Constitutional mandate of Article 14. For example, in

⁸⁵ *Association for the Protection of the Adirondacks v. MacDonald*, 253 N.Y. 234, 242 (1930).

⁸⁶ *See id.* at 242.

1954, DEC wanted to issue permits to drill for gas and oil on State Forest Preserve land in the Town of Shandaken in the Catskills. Again, Attorney General Nathaniel Goldstein issued the opinion. This time, however, he opined that the proposed drilling and extraction would interfere with the spirit and plain language of Article 14. In this opinion, Attorney General Goldstein argues that Article 14 was comprehensive and ironclad in its mandate to preserve a truly wild “forest primeval” in which even a dead tree should be allowed to lie and rot where it falls, and whose timber “not a tree of a branch of one” should be sold, removed, or destroyed.⁸⁷ Suddenly not even branches can be extracted from the Forest Preserve! What is the reason for this inconsistent treatment?

There are several possible explanations for the inconsistent treatment given to the Forest Preserve. First of all, Attorney General’s sudden ironclad interpretation of Article 14 could simply be an argument of convenience. Strict application of Article 14 works well to block extractive projects with which the Attorney General disagrees. However, when the Attorney General favors a project he can use distorted logic and linguistic semantics to apply a less than strict application of Article 14. Another possibility for the inconsistent treatment lies in the scale of the projects. Perhaps, the Attorney General considered browse removal to be such a minor infraction of

⁸⁷ Prospecting for Gas and Oil in the Forest Preserve, 1954 N.Y. Op. Att’y. Gen. 170 (1954).

Article 14 it would not offend its spirit; whereas a large scale mining operation cannot be ignored under Article 14. Finally, a third possibility is that the Attorney General is reflecting a public sentiment and increased awareness in the value of the Forest Preserve remaining truly wild. After all, six years elapsed between the browse opinion and the opinion at hand. In any event, this opinion demonstrates a much stricter application of Article 14 and a more well-reasoned rationale for Attorney General's stance. Furthermore, the juxtaposition of these two opinions indicates the true ironclad nature of Article 14 has been followed loosely on occasion. It appears that it requires logical gymnastics to overcome the "forever wild" language. From time to time, this has been done.

Finally, a more recent Attorney General opinion from 1990 displays a modern sentiment towards very strict application of Article 14. In this instance, the DEC sought an opinion on whether it had the authority to grant a permit to the town of Arietta to remove 131 trees within the Forest Preserve.⁸⁸ Pursuant to a 1965 Constitutional Amendment, the town was conveyed 28 acres of Forest Preserve land for the purpose of removing the trees and building an airport. At the time of application, the town sought to remove trees that had grown substantially taller since the amendment and were creating a hazard at

⁸⁸ Allowing the Town of Arietta to Remove 131 Trees from the Forest Preserve, 1990 N.Y. Op. Att'y. Gen. 15 (1990).

the end of the main runway.⁸⁹ To comply with FAA regulations, the trees had to be removed. Here, the economic interests of the town were pitted against the environmental ethic of Article 14 and the Forest Preserve. This predicament arises on numerous occasions. In this instance, the strict language of Article 14 carried the day. Attorney General Robert Abrams reasoned that the removal of the trees would be clearly violative of Article 14.

In coming to this conclusion, Attorney General Abrams was faced with several strong arguments for the removal of the trees. He overcomes each argument by a strict adherence to the language of Article 14. This evinces a strict application of the “forever wild” aesthetic. For instance, it was argued that the 1965 amendment that allowed for the removal of trees to build the airport impliedly authorized the removal of trees outside the conveyed plot to maintain the regular functioning of the airport.⁹⁰ Again, this is a fairly airtight argument. Nonetheless, the Attorney General found the prohibition against cutting trees in the Forest Preserve to be unequivocal and absolute. By examining the history of the 1965 amendment, Attorney General Abrams overcame the first argument by reasoning that the amendment only intended 28 acres to be cleared for the airport and no more. Had the framers of the amendment intended trees outside the conveyance to be removed when needed, they would have included such

⁸⁹ *Id.* at 2.

⁹⁰ *Id.* at 3.

language. Next, the Attorney General was confronted with the argument that the airport will be substantially limited in use if the trees could not be cleared. He acknowledged this, but simply put it aside reasoning, that while it may be true, it is not an argument against the language of Article 14 but rather an unfortunate circumstance.⁹¹

The Attorney General's ability to overcome the arguments in favor of tree removal evinces a strict adherence to Article 14. In contrast to the "browse" opinion, a stark difference is evident in the Attorneys General's attitudes between 1948 and 1990. In the "browse" opinion, the Attorney General espoused flimsy arguments to circumvent Article 14. In the instant opinion, the Attorney General rejects strong arguments and adhered to Article 14. This could be a product of reflecting societal changes or simply a difference of opinion between Attorneys General. In any case, the trend appears to be moving towards a more environmentally friendly standpoint among the Attorneys General.

Two questions remain from the analysis of the Attorney General opinions. First off, what can be done to combat the age old conflict between advancing economic prosperity and environmental conservation? Many people do not see this as a conflict since conservation produces employment and reduces energy costs.

⁹¹ *Id.* at 5.

Conversely, many people, particularly those tied to resource extractive industries, recognize this as a conflict. This view is couched in the notion that the Forest Preserve ties up resources, hinders revenue producing free enterprise, and denies the most productive economic use of land. At a time, this argument carried some weight. When the Adirondacks were seen as a resource rich, economic engine for New York, the most common industries in and around what has become the Forest Preserve were extractive in nature. Accordingly, any hindrance on free enterprise's ability to extract resources would be met with some resistance. As pointed out earlier, however, the state of resource extraction around the Forest Preserve is in flux. Gone are the days of mass clear cutting and large scale mining operations. The logging that endures in the Adirondack Region is sustainable. Considering this change of events, acceptance of the argument that the Forest Preserve is an economic barrier is like holding onto a relic of the past. Most likely, the people of New York will recognize that the Forest Preserve is an economic engine because it is what attracts people to the region. Prosperity will follow suit. This has already occurred via the development of tourist industries in the Catskills and Adirondacks. The transition has been slow, but natural, and the economy has shifted from a resource extraction economy to a service oriented tourist economy. Therefore, the argument that pits economic prosperity against environmental conservation will most likely lose steam.

A second question posed by this section, is why DEC has constantly sought to exceed its authority and grant licenses for activities in the Forest Preserve that are inconsistent with Article 14. These opinions seem to evince that DEC has taken on the ministerial role of acting as a licensing conduit for parties interested in extracting resources from the Forest Preserve. DEC, however, has the potential not to simply adhere to Article 14, but to affirmatively enforce it. To put it blatantly, DEC has failed to uphold the affirmative mandate of Article 14 by seeking to license extractive activities in the Forest Preserve. This concept will be explored more in the following section. Before that, however, an analysis of the case law regarding resource extraction in the Forest Preserve is presented.

Legal Analysis: The Failures of DEC and Legal Mechanisms to Protect Natural Resources in and Around the Forest Preserve

This section of the paper examines the statutory structure already in place designed to protect the natural resources in and around the Forest Preserve. Although some of the laws examined cater specifically to certain resources, this section analyzes them through a lens of natural resource conservation and general ecosystemic integrity of the Adirondack and Catskill regions. Thus far, the paper has analyzed the actual language of Article 14. It is quite clear that the constitutional mandate inherent in Article 14 prevents resource removal from within the Forest Preserve but allows minor exceptions for reasonable use or

extraction. This paper also posits that the mandate of Article 14 impliedly reaches beyond the Forest Preserve to maintain the integrity of the resources within the Forest Preserve. At this point, the paper turns to the regulatory and statutory structure and reveals that they are applied inconsistently to different regions of the Forest Preserve. For instance, the Adirondack Forest Preserve system and surrounding areas, in addition to Article 14, is protected by the Adirondack Park Agency (APA), which enforces its own rules and orders, in addition to the State Environmental Quality Review Act (SEQRA). There, DEC works alongside the APA in protecting the Adirondack Region. On the other hand, the Catskill Park has never been delegated an agency specifically for its own protection as was the Adirondack Park. Accordingly, DEC is left to regulate and protect the Catskills.

Clearly, Article 14 applies evenhandedly to both Forest Preserve Systems. Why then, has the State treated the regions so inconsistently? This section seeks to answer that question along with an analysis of SEQRA. The latter analysis reveals that SEQRA is the most feasible way to afford the Catskills with the same protection of the Adirondacks. Agency inefficacy is the major obstacle in the path of this goal and an analysis of what DEC can do with SEQRA is included.

SEQRA Is the Answer:

The Department of Environmental Conservation (DEC) is responsible for the great majority of environmental regulation in New

York.⁹² In addition to regulating sources of water pollution, air pollution, mining, and hazardous waste, DEC directly manages state forests and other public lands.⁹³ DEC also oversees implementation of SEQRA. SEQRA is a comprehensive statute that requires all state, county, and municipal bodies to consider and mitigate adverse environmental impacts likely to result from their discretionary actions. Within the Adirondack Park, this responsibility is shared with the APA, which also has the duty of implementing its own mandates.⁹⁴ There is, however, no agency specifically engaged in protection of the Catskills. This gap can be filled if DEC implements SEQRA in the Catskills with as much vigor as it is implemented in the Adirondacks by both DEC and the APA.

First, it is imperative to examine the structure of the APA, what it has accomplished, and how it has treated SEQRA, in order to understand the statutory gaps in the Catskills. As mentioned earlier, the affirmative mandate of Article 14 should by implication have power in the regions just beyond the Forest Preserve. This is reflected in the Adirondack Park Land Use and Development Plan promulgated by the APA. Under the Land Use plan, areas surrounding the Forest Preserve parcels receive greater protection, generally speaking. The plan recognizes that development and resource extraction along the edges of

⁹² NYPRAC-COMM § 105.6, page 1.

⁹³ Id at 1.

⁹⁴ Id at 1.

the Forest Preserve has impacts on the Forest Preserve itself.⁹⁵ These impacts arguably do not comport with the Forever Wild standard of Article 14. Accordingly, public land around the Forest Preserve is usually designated Primitive or Wild Forest. Resource extraction and development is controlled and curtailed in within these designations. The plan has withstood a great number of challenges including the argument that the plan imposes a total freeze on private development. This argument was overcome because the plan allows for a great number of permissible uses for each land classification with the park.⁹⁶ Furthermore, the land use plan also controls development on private land in the Adirondack Park. Again, wilderness values associated with the Forest Preserve and Article 14 are reflected in the plan's designation of private lands. The plan seeks to channel development into already developed areas so the wilderness areas can retain that character.⁹⁷ Generally speaking, private land surrounding the Forest Preserve is designated as a low intensity area. The plan carries with it a list of compatible uses in low intensity areas which allow for some resource extraction but generally comport with Forever Wild.⁹⁸

⁹⁵ See McKinneys Consolidated Laws Of New York, Chapter 18, Article 27, § 805, page 1.

⁹⁶ Adirondack Park Agency v. Ton-Da-Lay Associates, 61 A.D.2d 107, 112 (N.Y. App. Div. 3d. Dept. 1978).

⁹⁷ JERRY JENKINS & ANDY KEAL, THE ADIRONDACK ATLAS: A GEOGRAPHIC PORTRAIT OF THE ADIRONDACKS 28 (Syracuse University Press & The Adirondack Museum 2004).

⁹⁸ McKinneys Consolidated Laws Of New York, Chapter 18, Article 27, § 805, page 8.

Contrastingly, it has been argued that the Land Use Plan has been too tepid in embracing Article 14 and that the APA too often acts as a regional land use authority and not as a steward for the buffer lands around and amidst the Forest Preserve.⁹⁹ This argument carries a great deal of weight. It is, however, important to consider that the APA met considerable resistance from those who call the Adirondack Park home. Second, compared to the Catskill Park, the Adirondack Park at least receives some administrative protection. This paper does not posit that the APA and DEC are fulfilling their constitutional duties to the utmost in the Adirondacks, but simply that the Catskills have fallen by the wayside under the constitutional and statutory regime.

Since there is no agency equivalent to the APA in the Catskills, DEC must implement and enforce SEQRA more strictly in the Catskills in order to comply with the Constitutional mandate of Article 14. Literal compliance with the letter and spirit of SEQRA is required, and substantial compliance with SEQRA is not sufficient to discharge an agency's responsibility under the act.¹⁰⁰ Accordingly, DEC must adhere strictly to the rules set out by SEQRA. There are two ways this can be accomplished. First, DEC can promulgate rules and regulations specifically tailored to enhance the affirmative mandate of Article 14 in the Catskill region. DEC could promulgate a substantial body of rules

⁹⁹ See generally BARBARA McMARTIN, PERSPECTIVE ON THE ADIRONDACKS: A THIRTY YEAR STRUGGLE BY PEOPLE PROTECTING THEIR TREASURE (Syracuse University Press, 2002).

¹⁰⁰ *Stony Brook Village. v. Reilly*, 299 A.D.2d 481, 484. (N.Y. App. Div. 2d Dept. 2002).

that give force to Article 14 in the Catskill Forest Preserve. However, it would behoove DEC and more practically the wilderness values of the Catskill Forest Preserve, if DEC promulgated rules that affect private land as well. Whereas the public lands of the Catskills are not under development or resource extraction pressure, the private lands are. DEC would need to promulgate rules that effect how, when, and which resources can be extracted from private land. DEC would most certainly be met with opposition from local industry. However, any pro-environment rules promulgated by DEC would most likely receive the support of the New York City inhabitants and government, as the Catskills are the watershed for the city's drinking water.

Another way this could be accomplished is legislatively. However, there is no sign on the horizon of this taking place, so the chance remains slim. DEC could push the State Legislature to put into law a new agency specifically for the Catskills as the APA is to the Adirondacks. This agency would be in charge of promulgated and enforcing a Land Use Master Plan for the Catskill region. Much as the land use plan for the Adirondacks, the Catskill plan would need to regulate both public and private lands. In order to reflect the values of Article 14, the master plan must create buffers around the Forest Preserve as to maintain the ecosystemic integrity of those parcels.

Future Implications of Article 14

With the upcoming New York State Constitutional Convention, Article 14 is at risk of being weakened. On the other hand, there remains the slight chance that the legislature and the people of New York agree that Article 14 should be strengthened. Most likely, Article 14 will remain intact. In any case, a thorough analysis of the implications of each possible outcome of the Constitutional Convention in the context of resource extraction is warranted at this point. So far, this paper has been analyzing retrospectively, first by examining the industries themselves and how the public's attitude towards the Forest Preserve have changed. Second, the paper evaluated the Legislature's, the courts' and the Attorney General opinions that interpret Article 14. This revealed a less than strict application of Article 14. However, the situation has improved slightly from an environmentalist's perspective. Next, followed a legal analysis of the role of DEC, or non-role, in the implementation of Article 14. This section conjectured that DEC and SEQRA should be to the Catskill Park what the Adirondack Park Agency and the APA is to the Adirondacks. The DEC regime of inefficacy could be curtailed via a strengthening of Article 14. Now, it is time to analyze prospectively. This section includes an evaluation of how each possible outcome for Article 14 will affect the governmental institutions which implement "forever wild" and how the people of New York and the Forest Preserve itself will be affected.

Article 14 Is Weakened:

In the event that Article 14 is weakened or completely done away with, the repercussions might not be as far reaching as one would suspect. For example, in the Adirondacks the Adirondack Park Agency has promulgated a comprehensive land use plan. The plan gives statutory effect to the Forever Wild clause and also regulates private land. Theoretically, if the Forever Wild clause of Article 14 was simply done away with, the Adirondack Land Use Master Plan would act as a safety net. The parcels of Forest Preserve are recognized in the Land Use Master Plan. Simply because the Forever Wild clause would no longer exist does not mean the statutory safety net that has arisen to support it would disappear as well. Furthermore, since Article 14 has been given lax interpretation as it is, weakening it might not really change anything. It might, however, invite more pressure from developers and industry. That is hard to foresee because it depends a lot on future socio-economic fluctuations that cannot be easily predicted.

As things stand now, however, there is not a great deal of pressure to log the Catskill or Adirondack regions. In fact, many of the large industrial freeholders such as International Paper have sold their land in the Adirondack Park. What this all means, is that the problem is not really with Article 14, the problem is with how it has been enforced. It has been loosely interpreted and at times leniently enforced. As such, a change to the plain language of Article 14 might not make much difference if it continues to be poorly executed.

Article 14 Remains Unchanged:

In the likely event that Article 14 remains the same after the Constitutional Convention, the likely result will be business as usual. DEC will continue to neglect its responsibilities as the lead agency in all development and resource extraction activities in and around the Catskill Forest Preserve. DEC will continue not utilizing SEQRA to protect the Forest Preserve. Years from now, the end result will be that the Forest Preserve parcels will become increasingly isolated by adjacent development. The Forest Preserve parcels themselves will remain intact, but isolated from one and other.

Article 14 Is Strengthened:

A strengthening of Article 14 would have the most noticeable impact of any of these three options. However, any change in the amendment would need to be very carefully spelled out. Since Article 14 has been subject to so many readings and received less than strict application, the language of any amendment strengthening it must be articulated with detail to avoid the same problem. One way that it could be strengthened would be to expressly state that Article 14 shall be recognized as an affirmative mandate thus imputed a duty on DEC and the APA to enhance the quality of wilderness. What would this mean for the Forest Preserve and the Catskill and Adirondack Park?

This would mean that DEC and the APA would be delegated two jobs. First they would need to promulgate stricter land use regulations and rules regarding the extraction of resources from around the Forest

Preserve. Second, both agencies would be responsible for initiating projects that enhance the wilderness such as better trail maintenance procedures, cleaning up of viewsapes, and even putting more rangers out in the wilderness to police these areas. This would also likely mean that a challenge will come before the New York Court system. Under the proposed enhancements to Article 14, the court would need to re-examine its *MacDonald* opinion. Reasonable extraction of trees would most likely be interpreted to be those extractions which are necessary to preserve the wilderness value of the Forest Preserve. This would move the court away from reliance on the argument that greater public access to the wilderness is in line with the framer's intent. Instead, the court would have to embrace what it should have been embracing all these years; that timber shall not be removed from the wilderness to grant the public better access. Under an enhanced Article 14, the only extractions allowed would be those absolutely necessary to maintain the wilderness. Examples of this include removing blighted and diseased trees and forest fire prevention.

The problem with this is that such an amendment would not be popular with a large portion of the local residents of the Adirondack and Catskill parks. Many of those people desire greater access to the wilderness via motorboat or snowmobile. Furthermore, they might resent that people downstate get to tell them what they can and cannot do in their backyards. The bottomline is that every situation makes a winner and a loser out of somebody. For those that care for the

wilderness, such an amendment would clearly be desirable. On the other hand, developers, industrialists, and some local inhabitants would oppose such an amendment. It is particularly hard to strengthen a pro-environment constitutional article in the face of modern development and social inertia. In any case, strengthening Article 14 is the only option that will have lasting and noticeable effects.

Conclusion

The most important thing the reader must bear in mind is that nothing is permanent, even a constitutional article such as Article 14. Secondly, “protected” really only means defended. The Forest Preserve and the Adirondack and Catskill Parks are defended against development and resource extraction pressures, but these forces still manage to exert themselves with some success in both regions. And the areas are changing climatically, ecologically and in usership. These are force beyond the control of Article 14. Nonetheless, without the protection that these areas have been afforded, New York would not have such remarkable wildernesses that drive local and regional economies, combat climate change, and rejuvenate the human spirit. While this paper spent a great deal of time criticizing the enforcement of Article 14, it also embraces the plain language of Article 14 as something truly special and unique to New York. Despite the fallbacks of executing Article 14, it has still done a remarkable job at defending the Wilderness of New York from unbridled resource extraction. And it is for this reason that New Yorkers can today celebrate the wonderful

Forest Preserve and New York City inhabitants drink some of the cleanest municipal water on earth.

In closing, the problems with executing Article 14 can be dealt with at the upcoming Constitutional Convention, if the people of New York so desired. In light of the oncoming climate change, it seems to be the most appropriate time to the enhance Article 14. In fact, it might be necessary. In any case, what is important is that people recognize the importance of the New York Forest Preserve in light of the changes that are occurring in usership and resource extraction. If this is to occur, there is every chance that the new place, though different from the present Adirondacks and Catskills, will have a new consistency and new beauties and will be as love, and as rewarding to its lovers, as the Adirondacks and Catskills are now.¹⁰¹

¹⁰¹ JERRY JENKINS & ANDY KEAL, THE ADIRONDACK ATLAS: A GEOGRAPHIC PORTRAIT OF THE ADIRONDACKS 251 (Syracuse University Press & The Adirondack Museum 2004).