Rekindling Yellowstone's Early History: 150 Years Later

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Rekindling Yellowstone’s Early History: 150 Years Later

Sam Kalen*

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1. Introduction

A “land of burning ground” or “vapors” are both apt names today for what we call Yellowstone National Park (YNP).¹ Twenty-seven Indigenous peoples have ancestral connections to this majestic region,² part of the approximately 20 million acre Greater Yellowstone Ecosystem (GYE),³ rising over 7,500 feet in elevation and spanning lands in Wyoming, Montana, and Idaho.⁴ This vast expanse is the home not only of YNP, but also Grand Teton National Park (GTNP), five national forests—some designated as wilderness areas or wilderness study areas—three national wildlife refuges, notably including the National Elk Refuge, designated


⁴ Yellowstone: Greater Yellowstone Ecosystem, Nat’l Park Serv., https://www.nps.gov/yell/
wild and scenic rivers, Bureau of Land Management (BLM) lands, along with state, local, and private lands. In 2022, the YNP celebrates its sesquicentennial birthday. It is, after all, our nation’s prototypal national park; 150 years later seems like an opportune moment to recall some of its history.

Yellowstone and the larger GYE, after all, exemplify some of the modern challenges confronting public land management. Yellowstone and other parks emerged as recreation sites for travelers seeking an escape from the bustling urban, industrial life. And now visitorship in national parks is overwhelming the National Park Service (NPS). Within the GYE, and at Yellowstone specifically, the constant flow of human traffic is at all-time highs. This symposium presents some of those issues and modern challenges.

My goal here, however, is slightly different. It is to look back on the park’s early years, what led to its creation and expansion, and visiting some of the principal issues and concerns. This history is not intended to be comprehensive, but instead is geared toward offering at least a sufficient story of YNP’s illustrious history. Hopefully, the references to the sources will afford the interested reader insights into where to search for additional information. Part I of the article, therefore, briefly reviews the human landscape surrounding what would become Yellowstone, while Part II moves beyond the human landscape and into the exploration of that landscape that eventually led to the park’s creation. Part III then describes some of the park’s early challenges, including the efforts to expand protections around the park.


6 See infra notes 55–107 and accompanying text.


II. The Human Landscape

Professors Stark, Bernhardt, Mills, and Robison describe the relationship between Indigenous peoples and the GYE, portraying their connection to the landscape.\(^9\) After all, prior to colonization, Indigenous peoples naturally interacted with the landscape surrounding today’s YNP. Unfortunately, we sometimes too easily ignore how many groups actively engaged in activities that protected or transformed the landscape, whether through farming, fire practices, or mining. Emma Harris, for instance, notes how Indigenous practices included “prescribed burns,” or how hunting and harvesting managed a landscape.\(^10\) In Yellowstone, Indigenous groups took advantage of the resources, whether its mountains, rivers, lakes, or geysers. Indeed, historical records reveal that mining obsidian from Yellowstone dates back centuries.\(^11\) Karl Jacoby describes how Yellowstone was “part of a preexisting native world,” with a “network of Indian trails lacing” what would become a national park.\(^12\) Several Tribal Nations, for example, used the Bannock Trail to move between the Snake River region to eastern bison hunting grounds.\(^13\) As archeologist Douglas MacDonald notes, not visible to modern Yellowstone

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\(^9\) Kekek Stark et al., Re-Indigenizing Yellowstone, 22 Wyo. L. Rev. 397 (2022).

\(^10\) Emma Marris, Wild Souls: Freedom and Flourishing in the Non-Human World 63 (2021). Marris further suggests that the portrayal of Indigenous groups as having no impact on the landscape and, as such, were simply existing in a “virgin wilderness,” “has been used around the world to deny Indigenous people rights to their land.” Id. at 64. Shepard Krech III attempts to explore how some indigenous groups interacted with the landscape and resources, in Shepard Krech III, The Ecological Indian: Myth and History (1999), while Adam R. Hodge chronicles the history of the Shoshones. Adam R. Hodge, Ecology and Ethnogenesis: An Environmental History of the Wind River Shoshones, 1000–1868 (2019). See also Tory Tailor, On the Trail of the Mountain Shoshone Sheep Eaters: A High Altitude Archeological and Anthropological Odyssey (2017). Karl Jacoby notes how “Native Americans used fire for multiple purposes: to keep down underbrush, facilitating travel; to rid camping areas of insect pests; and to aid in hunting.” Karl Jacoby, Crimes Against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation 86 (2001).


\(^12\) Jacoby, supra note 10, at 83. Although contemporary park proponents would diminish the relationship of Indigenous peoples to the landscape, “[p]erceptive nineteenth-century observers found the Yellowstone landscape saturated with traces of these Indian groups,” such as with “abandoned Indian shelters.” Id. at 84. Jacoby posits that, because “[n]either the Bannock, the Shone, the Crow, nor the Blackfeet practiced agriculture, and seeing no landscapes in the Yellowstone region that had been ‘improved’ through farming, many Euro-Americans conveniently concluded that the area’s Indians’ lacked a connection to the landscape.” Id. at 85.

\(^13\) MacDonald, supra note 11, at 11. Some 26 Tribal Nations generally are considered as “traditionally associated” to the Yellowstone region. Marcus et al., supra note 11, at 17.
tourists are “hundreds of camps and other sites that were used by Native Americans over the past 11,000 years.”

By the post-Civil War period, a group of Blackfoot people lived north of the Yellowstone River, while the Crows populated areas around the Yellowstone River and into Wyoming near the Powder River and the Absaroka-Wind River mountain range. To the west were the Shoshonis, who shared areas going south into Utah with the Bannocks. The Indigenous people often discussed as residing on the Yellowstone Plateau were the Tukudikas, a group of Shoshone commonly referred to as the Sheep Eaters. This group maintained its old lifestyle, less influenced by the use of horses and guns. Somewhat further from the area, were the Flatheads and the Nez Perce Indians. Sadly, the government never acknowledged any claims to the land for those who lived on the plateau, and so the Sheep Eaters were left with an unratified treaty in 1868. They, along with other groups, were removed to reservations, primarily to either Fort Washakie on the Wind River Reservation or to the Fort Hall Reservation on the Snake River Reservation, while other Bannocks and Idaho Sheep Eaters went to the Lemhi Reservation.

The presence of Indigenous groups would necessarily become one of the principal “issues” surrounding the establishment of the nation’s first national park. Jacoby’s history suggests that “[t]he vision of nature that the park backer’s sought

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14 MacDonald, supra note 11, at 23.
15 Yellowstone: Associated Tribes, supra note 2.
16 A number of distinct indigenous groups inhabited the region, today many of these groups often are broadly identified as Shoshones. See Hodge, supra note 10, at 162–63. A Forest Service commissioned history also discusses, along with a history of the region, early interactions between settlers and Tribal Nations. See Esther B. Allan, History of Teton National Forest (1973), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd534131.pdf [https://perma.cc/936L-XQ6E].
17 See Hodge, supra note 10, at 158–59 (noting debate about whether this group of Shoshones were permanent residents); Marcus et al., supra note 11, at 18–19.
18 Philip Burnham writes how, as Yellowstone’s attractiveness increased, this group “moved from being a curiosity to a nuisance to an impediment.” Philip Burnham, Indian Country, God’s Country: Native Americans and the National Parks 22 (2000); see also Spence, supra note 11, at 108 (discussing Indian removal at Yellowstone). In 1876, for instance, Congress established military posts at certain points in Yellowstone. Act of July 22, 1876, ch. 223, 18 Stat. 95.
to enact—nature as pre-human wilderness—was predicated on eliminating any Indian presence from the Yellowstone landscape.”

III. Establishing a National Park Around the Landscape

Against this background, Yellowstone’s principal historian, Aubrey Haines, describes how fur trappers began exploring and constructing outposts in the Yellowstone region following the Lewis and Clark Expedition, but active engagement with the region started roughly during the 1820s. This ostensibly is when the first account of Yellowstone reached eastern readers. It also marked the initial principal interactions between new westerners and the Indigenous groups. As the fur trade dissipated by the 1840s, the allure of mining gold later attracted miners to the region, roughly around the 1860s, but “[t]he prospectors and miners of the 1860s formed a transient population, forever on the go. Converging upon each new discovery in great numbers, they overtaxed both the source of mineral wealth and the available supplies, so that the lack of income and ruinous prices soon forced the majority to move on.” Though riches from gold mining proved elusive, the stories about the Yellowstone region circulated widely. One of the first significant mining expeditions, led by Walter Washington de Lacy in 1863, mapped part of the region and spread the word about the region’s topography and hot springs—but no gold. That same year, another expedition explored further downstream of the headwaters where de Lacy navigated, precipitating a later gold strike at Alder Gulch. Soon thereafter, prospecting moved farther away from Yellowstone plateau and into other areas in Montana. While David E. Folsom, an employee of a hydraulic mining company, did take a small crew into the region in 1869, there was only a limited circulation of the expedition’s account to the lay public, but it

21 Jacoby, supra note 10, at 87; see also Rob Hotakainen, Tribes Hope for a ‘Reboot’ as Yellowstone Marks 150 Years, E&E News (Mar. 1, 2022, 1:31 PM) (describing the history and current efforts “to do ‘bigger and better things together’ with local tribes in the future”).


23 Haines, supra note 20, at 41.

24 Id. at 9, 62.

25 Id. at 62.

26 Id. at 62–65.

27 Id. at 65.

28 Id. at 67, 73.
was in time to inform General Henry D. Washburn’s 1870 expedition. Thus, by 1870, “[t]he Yellowstone region was . . . explored quite thoroughly” and had been reasonably described for would-be visitors.

The 1870 Washburn party would set in motion the events that triggered the park’s creation. When the expedition members returned from their journey, the ensuing articles garnered a following. Indeed, the renowned artist Thomas Moran was enticed to visit the region. One member of the party, Nathaniel P. Langford, also began lecturing about the region and, while controversy surrounds exactly what he advocated, some have suggested that he floated the idea of preserving the area. He purportedly proposed that Congress ought to “secure” “its future appropriation to the public use.” Later, in 1905, Langford would publish his *Discovery of Yellowstone Park*. Some of those who attended Mr. Langford’s lecture in Washington, D.C. included Speaker of the House, James G. Blaine, and the head of the U.S. Geological Survey, Ferdinand V. Hayden, although they did not attend the lecture when the idea of preserving the area was floated.

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29 Id. at 91–103; see also Kim Allen Scott, *Yellowstone Denied: The Life of Gustavus Cheyney Doane* (2007) (describing the life of one of the party’s military participants and later acting superintendent of the park); Letter from the Sec’y of War, Communicating the Report of Lieutenant Gustavus C. Doane upon the So-Called Yellowstone Expedition of 1870, in S. Exec. Doc. No. 41-51 (1871) (report of expedition); W. Turrentine Jackson, *The Washburn-Doane Expedition into the Upper Yellowstone, 1870*, 10 Pac. Hist. Rev. 189, 206 (1941) (reporting on the expedition, the Helena Herald published accounts alerting not only Montanans but the “reading public throughout the country” of the valley’s wonders); *The Falls and Geysers of the Yellowstone River, Daily Central City Register*, Nov. 30, 1870. See generally, M. Mark Miller, *Rediscovering Wonderland: The Expedition that Launched Yellowstone National Park* (2022).

30 Haines, supra note 20, at 82, 84.

31 Id. at 91.

32 Id. at 137.

33 Id. at 134–38.


35 Haines, supra note 20, at 138. Hayden was a scientist capable of translating scientific discoveries into politically understandable language. Drabelle, supra note 34, at 142. But the famed explorer and geologist John Wesley Powell disliked Hayden’s apparent pandering. See *id.* at 162 (noting Donald Worster’s assessment); cf. *id.* (as did Harvard President Charles William Elliot). Hayden reportedly first became interested in the Yellowstone region in the 1850s, while he was exploring the upper Missouri region. U.S. Geological Surv., Ferdinand Vandiveer Hayden and the Founding of the Yellowstone National Park 5 (1973) [hereinafter U.S.G.S. Hayden]; see also Dennis Drabelle, *The Man Who Put Yellowstone on the Map*, The Penn. Gazette (Aug. 25, 2016), https://thepenn gazette.com/the-man-who-put-yellowstone-on-the-map/ [https://
description of the region intrigued Hayden and, with the support from those who favored the Northern Pacific Railroad, he received $40,000 from Congress to explore Yellowstone. Hayden's 1871 expedition had the full support of the bustling railroad industry and Congress, and his party was joined by Omaha photographer William H. Jackson and the painter Thomas Moran. The railroad interests were so excited that, upon Hayden’s return to Washington, D.C. on October 27, 1871, a letter awaited his arrival suggesting that the area be reserved similar to Yosemite Valley. Two days later, the idea of creating a national reserve was officially launched. Hayden, along with a group of influential people in Montana and the railroad surrogates, worked collectively to create a tourist destination that would be protected from private exploitation.

The notion of “reserves,” or what we now label as parks, surfaced at least as early as the artist George Catlin painted vivid scenes of the west and Indigenous groups, pleading through his words and art that the nation reserve these lands as a park for both the Native Nations and the wildlife. The torch passed to literary artists such as Ralph Waldo Emerson and Henry David Thoreau, whose transcendentalists...
writings poetically moved the nation’s appreciation for nature or “wilderness” a bit further away from its formerly utilitarian, Lockean roots. But those utilitarian roots remained strong with Frederick Law Olmsted, the landscape architect who engineered New York City’s City Park and then traveled to California to champion protecting Yosemite’s scenery. In 1864, Congress ceded the Yosemite land to California to protect the area for its public enjoyment in perpetuity.

The Yosemite model could not be replicated, however, because much of the Yellowstone land was in Wyoming, which had become a territory in 1868; this meant following the Yosemite model, but with the twist that the land would be in federal ownership. Kansas Senator Samuel Clarke Pomeroy introduced the first bill to establish the park in December 1871. As one news account claimed, he sought “to have this region of unparalleled wonders dedicated to the nation at once, to prevent it falling into the hands of squatters and unscrupulous land speculators.” Meanwhile, Hayden sought to attract support by displaying artifacts and photographs, along with Thomas Moran’s sketches, at the Capitol. Only California Senator Cornelius Cole objected, questioning the need for the legislation and favored allowing private appropriation by settlers. His objection became muted, however, once the other side assured him its creation could always be rescinded if it later became problematic. It is clear that railroad interests promoted the reserve for traffic along its route to get would-be tourists to use, resort, and recreate. And with the assurance that the park’s creation would not cost the federal government any money for at least several years, the legislation passed and was signed into

42 John Clayton, Natural Rivals: John Muir, Gifford Pinchot, and the Creation of America’s Public Lands 21 (2019) (explaining how “[t]ranscendentalists believed in the inherent goodness of people and nature, the corrupting influence of society, and thus the need for individuals to be self-reliant to achieve purity”).

43 Haines, supra note 20, at 162. For descriptions of Olmsted’s influence, see Drabelle, supra note 34; Witold Rybczynski, A Clearing in the Distance: Frederick Law Olmsted and America in the Nineteenth Century (1999).

44 Act of June 30, 1864, ch. 184, 13 Stat. 325 (codified as amended at 16 U.S.C. § 48); see also Drabelle, supra note 34, at 61–114; Handbook of Yosemite National Park (Ansel F. Hall ed., 1921) (collecting early articles about Yosemite). Though the land surrounding Yosemite had not been surveyed by the 1860s and, consequently, had not become available under the preemption law, an attempt to obtain title to lands in the valley produced an opinion by the Court rejecting the notion of acquiring vested rights upon mere occupation and improvement of public lands. Hutchings v. Low (The Yosemite Valley Case), 82 U.S. (15 Wall.) 77 (1872). See generally Robert O. Binnewies, Your Yosemite: A Threatened Public Treasure (2015) (former Yosemite superintendent describing the park’s history and challenges).

45 Haines, supra note 20, at 166. The twist of federal ownership then triggered early dialogues about the need to do the same with Yosemite. See The Impending Doom of Yosemite, Wisc. State Reg., Mar. 2, 1872 (reproducing New York Times article).

46 Drabelle, supra note 34, at 155.


48 Haines, supra note 20, at 169.

49 Id. at 169–70; see also Drabelle, supra note 34, at 156.
law on March 1, 1872. It not only generally garnered praise, but also reflected the power of “market capitalism.” The first Superintendent, Langford, would soon report “[o]ur Government, having adopted [Yellowstone] should foster it and render it accessible to the people of all lands, who in the future will come in crowds to visit it.” The Act’s language provided that this new place, Yellowstone, would be “dedicated and set apart as a public park or pleasure-ground for the benefit and enjoyment of the people; and all persons who shall locate or settle upon or occupy the same, or any part thereof, except as hereinafter provided, shall be considered trespassers and removed therefrom.”

IV. Managing and Enlarging the Landscape

The park’s early years centered around efforts to promote tourism as it confronted a lack of funding, struggles surrounding the railroad industry and concessioners, occasional poor management, and a lack of adequate supervision and protection of resources, particularly the bison. Hayden had promised Congress that the park would be financially supported by the railroads and its customer tourists—a veiled promise. Instead, federal dollars ultimately rolled in and Montanans successfully lobbied for more roads through the park, such that in roughly a decade the area

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51 See Drabelle, supra note 34, at 165–77. The park’s first appropriation occurred in 1878. Id. at 169. During the early years, the Yellowstone Park Improvement Company maintained a prized ten-year lease for some of the “park’s signature features,” which Congress diminished with the 1884 park appropriations language. Id. at 170, 172. Some of the early park superintendent reports addressed negotiations with the surrounding indigenous peoples, as well as the lack of adequate funding. P. W. Norris, Annual Report of the Superintendent of the Yellowstone National Park to the Secretary of the Interior for the Year 1880, at 1, 6, 7 (1881) [hereinafter, all annual reports for Yellowstone National Park are cited as [Author], [Year] Superintendent’s Report]. Superintendent Norris, moreover, feared the prospect of continued vandalism, as nearby lands witnessed increased population growth. Id. at 52. Subsequent reports, once the park began to receive funds, focused on roads, housing, facilities in the park, and preventing fires. See, e.g., D. W. Wear, Report of the Superintendent of the Yellowstone National Park to the Secretary of the Interior 4 (1886). For a description of the park’s early years by two park historians, see Kiki Leigh Rydell & Mary Shivers Culpin, Managing the “Matchless Wonders”: A History of Administrative Development in Yellowstone National Park, 1872–1965 (2006). https://www.nps.gov/yell/learn/historyculture/upload/MatchlessWonders.pdf [https://perma.cc/PKW3-ETDL].
went from 32 miles of roads and 108 miles of trails to 153 miles of roads and 204 miles of trails. By the turn of the century, enough privately operated transportation companies could accommodate all those who sought to travel through the park. But to facilitate construction of park facilities and to manage the protection of park resources, Congress in 1883 enlisted the U.S. Army with supervising the struggling park. The park’s early years were further marred by what Aubrey Haines describes as “the First Yellowstone war,” with the railroads and the “commercial enterprises they spawned” as the protagonists. Hiram Chittenden’s 1895 book on Yellowstone

56 Drabelle, supra note 34, at 165. While the park experienced incidents with a group from the non-treaty Nez Perce Nation, id. at 166–67, early observers noted how the Native Americans and their culture were threatened with extinction. With the Shoshones on the Wind River Reservation dependent upon the Indian Service as the wildlife population (buffalo, elk, deer or antelope) had become severely depleted, and the “Sheep Eater” band of the Snakes along with the Bannocks had been relocated to reservations near the Salmon River and the Snake River—with “no game in their country except a few mountain sheep . . . .” The Nez Perce, Crow, Blackfeet and others seemed to be doing better. The Indian Tribes: Their Numbers, Wealth and Power—Present Condition, Prospects., etc., Daily Even. Bull., Sept. 28, 1871. Native American incursions into the park, according to Jacoby, also left Yellowstone managers concerned with the Native American presence. Jacoby, supra note 10, at 88–92.

57 Haines, supra note 20, at 214, 243, 246. Prior to 1877, there were no more than five hundred visitors annually. Id. at 196. Of course, the railroad industry, particularly the Union Pacific Railway (and Jay Cooke & Co.), had financial troubles that delayed additional construction of railway lines for potential visitors, but those troubles eased by the end of the 1870s. Id. at 194; see also Drabelle, supra note 34, at 159–61. Indeed, lower visitation rates in 1887 than the previous year were attributed to issues with the railroads. Moses Harris, Report of the Superintendent of the Yellowstone National Park to the Secretary of the Interior 5 (1887). And the desire to construct more roads reflected the sentiment that the park was to be “open and render[ed] accessible to all.” Id. at 10; see also George S. Anderson, Report of the Acting Superintendent of the Yellowstone National Park to the Secretary of the Interior 3–4, 7 (1895) (discussing increase in the road system). Later lower visitation rates than expected were attributed to increased American recreation abroad and lack of awareness. George S. Anderson, Report of the Acting Superintendent of the Yellowstone National Park to the Secretary of the Interior 5 (1896). And the Park continued to complain of inadequate funding for road construction and maintenance. Id. at 8. Visitation rates increased in 1897. James B. Erwin, Report of the Acting Superintendent of the Yellowstone National Park to the Secretary of the Interior 5 (1898).

58 S. B. M. Young, Annual Report of the Superintendent of the Yellowstone National Park to the Secretary of the Interior 9 (1907). Most of the visitors entered through the main gate, on the north, at the Gardiner station, with the second most by the Madison River, to the west, at the Riverside station, the latter was expected to increase with the addition of a railroad spur. Id. at 10. 1902 witnessed the first automobile in the park. Schullery, supra note 11, at 134. Yet, the first officially allowed car did not enter the park until 1915. Drabelle, supra note 34, at 174; see also Haines, supra note 22, at 267, 269 (noting April 1915 communication authorizing cars in the park); Robert Shankland, Steve Mather of the National Parks 64–66 (3d ed. 1970) (describing how Mather set up a commission to examine motorized use and that Yellowstone was the last park to allow motorized vehicles, initially opposed by threatened concessioners).

59 Act of Mar. 3, 1883, ch. 143, 22 Stat. 603, 626–27. (“The Secretary of War . . . is hereby authorized and directed to make the necessary details of troops to prevent trespassers or intruders from entering the park for the purpose of destroying the game objects of curiosity therein . . . .”). The Army could protect park resources against poachers as well as construct and refine the park infrastructure and roads. Schullery, supra note 11, at 108–18. John Muir reportedly “rejoiced” at having the Army become involved. Jacoby, supra note 10, at 99. The Army also could channel tourists by controlling entrances and managing trails. Id. at 107–08.
warned about the evil that would accompany allowing one railroad inside the park, and emphasized the urgency of protecting park resources. The railroads wanted lines in the park and concessioners joined with the railroads in promoting tourism (and securing leases). Park supporters conversely wanted enlarged park boundaries, and by 1883, a crusade to protect threatened wildlife resources began to blossom.

Protecting wildlife, though, became problematic. Surrounding states allowed killing wandering wildlife that left the park’s boundaries. When, for instance, Wyoming entered the union, its laws could not protect the bison because the federal government retained exclusive jurisdiction over wildlife resources. Not until 1894 would Congress pass the Yellowstone Game Protection Act (1894 Lacey Act), prohibiting killing bison in the park. Indeed, the bison that had once numbered roughly 60 million head had dwindled to under 600 by 1886, with roughly 22 head in 1893—later increased to about 273 head in 1916, primarily as a consequence of concerted efforts. During Langford’s tenure as park superintendent, Interior Secretary Delano championed protecting the large ungulates in the park. But little progress occurred during Langford or his successor Philetus W. Norris’s supervision, although Norris promoted having the park serve as a center for wildlife.

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61 Chittenden, supra note 22, at 270–84.

62 Haines, supra note 22, at 30–99. Many of these issues remained into the next century, while additional ones surfaced, such as Park Service Director Steve Mather’s fight against the use of the water in Yellowstone for irrigation. See Shankland, supra note 58, at 212–15; see also id. at 114–27 (discussing issues with concessioners in Yellowstone).

63 Montana, in 1901, passed a temporary measure to prevent killing antelope. Haines, supra note 22, at 83. An 1883 Order prohibited killing some park wildlife, although not wolves or bears, and there was little ability to enforce regulatory prohibitions. Id. at 80, 97.

64 An Act to Provide for the Admission of the State of Wyoming into the Union, ch. 664, § 2, 26 Stat. 222 (July 10, 1890). In 1884, Wyoming’s territorial assembly had “place[d] the park under Wyoming jurisdiction, an action that gave the Department of the Interior’s regulations at Yellowstone the force of law in Wyoming”, but this was insufficient to address poaching. Jacoby, supra note 10, at 97.

65 Act of May 7, 1894, ch. 72, 28 Stat. 73 (codified as amended at 16 U.S.C. §§ 24–30a). The bill easily passed Congress once senators became assured that the legislation did not address park boundaries or railroads. 26 Cong. Rec. 4315 (1894). After 1894 when Congress passed the legislation prohibiting killing animals in the park, reportedly this “had a most healthy effect upon the poachers who surround and prey on the Park.” Anderson, 1895 Superintendent’s Report, supra note 57, at 11.

once the Smithsonian and others began to recognize the need for action to protect the bison, park management (starting principally with its 1899 superintendent Captain Frazier Boutele) lamented the need for increased funding and protection of park resources.69 The channel between Yellowstone and the Smithsonian, by the 1890s, resulted in a sort of wildlife reserve, albeit limited, in Yellowstone, with animals arguably awaiting shipment back east.70 “After 1894, those seeking American wildlife specimens would have to look elsewhere or, for the first time, face stiff penalties and some real time in the Fort Yellowstone jail, built later that year for that specific purpose.”71

(1995). Dobak seems correct that hunting and innovations in tanning (and possibly sport) rather than a deliberate policy drove the decimation. See M. Scott Taylor, Buffalo Hunt: International Trade and the Virtual Extinction of the North American Bison, 101 Am. Econ. Rev. 3162 (2011); Brown, supra note 22, at 362–69. A similar fate confronted the pronghorn, with an 1880 report observing “[n]o other animal has suffered such severe slaughter, not alone within the Park, but upon the great plains, below the Gate of the Mountains, and upon the Yellowstone, where in their migrations they were want to winter.” Norris, 1880 Superintendent’s Report, supra note 55, at 40. Oddly, the report of the bison omitted such a lament. Id. at 38; cf. Wear, 1886 Superintendent’s Report, supra note 55, at 4 (suggesting “more game in the Park now of every kind than was ever known before”), at 8 (suggesting an abundance of game). By 1895, however, with the nearby state of Idaho allowing hunting bison, the Park reported on the “now so nearly extinct” bison and urgency of “game protective measures.” Anderson, 1895 Superintendent’s Report, supra note 57, at 12.

In 1897, the Park estimated that there were only twenty-four buffalo left in the park. S. B. M. Young, Report of the Acting Superintendent of the Yellowstone National Park to the Secretary of the Interior 8 (1897). That number increased to fifty the next year. Erwin, 1898 Superintendent’s Report, supra note 57, at 11. The following year the Park lacked information on the number and whether they were increasing. Oscar J. Brown, Report of the Acting Superintendent of the Yellowstone National Park to the Secretary of the Interior 7 (1899); cf. George W. Goode, Report of the Acting Superintendent of the Yellowstone National Park to the Secretary of the Interior 8 (1900) (suggesting possibly thirty-nine head of buffalo, in 1900). See generally Haines, supra note 22, at 59–60 (noting differing numbers and suggesting they effectively were guesses); Schullery, supra note 11, at 220–27, 232 (noting difficulty with scientific research surrounding ungulates pre-twentieth century).

67 See Diane Smith, Yellowstone and the Smithsonian: Centers of Wildlife Conservation 31 (2017) [hereinafter Yellowstone and the Smithsonian]. The first game keeper (often called a ranger) in the park was in 1880. Id. at 36. In 1880, he pleaded for establishing a small police force to protect the park’s wildlife from tourists and mountaineers, and to enforce the park’s regulations. Norris, 1880 Superintendent’s Report, supra note 55, at 50. A few years later, the superintendent would report on the “entire inadequacy of the laws to provide punishment for violations of the regulations for the protection of the Park.” Wear, 1886 Superintendent’s Report, supra note 55, at 4.

68 Yellowstone and the Smithsonian, supra note 67, at 32–33. Though it never gained traction, the idea for the center, in the words of Diane Smith, was “that visitors would see living specimens of the same animals that the Smithsonian exhibited in its museum in Washington.” Id. at 34. Norris favored privatization of work inside the park. Id. at 39.

69 Id. at 74–82.

70 Id. at 92–93; see also Anderson, 1895 Superintendent’s Report, supra note 57, at 13–14 (noting the Park’s receipt of three thousand dollars from the Smithsonian to help build an inclosure [sic] for a “small herd” to “keep them nearly in a state of nature” and for shipment to Washington, D.C.); Haines, supra note 22, at 68–69 (discussing the Smithsonian project).

71 Yellowstone and the Smithsonian, supra note 67, at 101.
By the end of the century, however, the park was at a crossroads: Americans had to decide whether to protect the bison in a wildlife reserve, promote the bison to support the desire of the surrounding states for food and sport, or utilize the bison as a source of wildlife to support the Smithsonian or other institutions.\textsuperscript{72} Some in Washington, D.C. even considered Yellowstone as a possible zoological park.\textsuperscript{73} The new superintendent in the 20th century choose the first option.\textsuperscript{74} In the mold of Olmsted, he sought to create a manicured landscape,\textsuperscript{75} even with “tame” wildlife readily observable.\textsuperscript{77} And he “used patrols, supplemental feeding, and other management techniques to increase the park’s wildlife populations.”\textsuperscript{77} Eventually, combined efforts to restore the bison population brought the species back from near extinction.\textsuperscript{78} Of course, preservation and management of the bison remains a critical issue today in the GYE.

The nascent decades of the new century witnessed marketing efforts to attract tourists, the emergence of management planning and enhancing the park’s roads and facilities, along with plans for protecting wildlife and resources by expanding protected areas around Yellowstone. One of the park’s pre-eminent early superintendents, Horace Albright, echoed the importance of enhancing tourism and would later write that the park was “the world’s greatest museum of natural history,” welcoming travelers to explore “its roads, trails and paths; to its public automobile camp grounds, hotels and permanent camps.”\textsuperscript{79} The railroad even published park tourism brochures.\textsuperscript{80} “Roads,” though, Albright lamented, “were a constant source of exasperation to us at Yellowstone” as it sought to promote tourism.\textsuperscript{81} When he first arrived at Yellowstone, as a new superintendent for the

\textsuperscript{72} Id. at 115.

\textsuperscript{73} Id. at 131.

\textsuperscript{74} Id. at 116. The park began a captive breeding program, with “an overarching goal of transforming Yellowstone into a public pleasure ground with wildlife displays. Bison not corralled for public viewing would roam freely but only within the partially fences confines of the park.” Id. at 119. The notion of “corralling the remaining buffalo” lost favor by the end of the century. See Young, 1897 SUPERINTENDENT’S REPORT, supra note 66, at 9.

\textsuperscript{75} YELLOWSTONE AND THE SMITHSONIAN, supra note 67, at 121.

\textsuperscript{76} Id. at 123.

\textsuperscript{77} Id. at 125.

\textsuperscript{78} Efforts included a bison restoration project, allowing Yellowstone managers to purchase and raise bisons from private ranchers. See MARCUS ET AL., supra note 11, at 155 (discussing bison); SCHULLERY, supra note 11, at 120–21 (discussing saving the bison). For a history, see History of Bison Management in Yellowstone, Nat’l Park Serv., https://www.nps.gov/articles/bison-history-yellowstone.htm [https://perma.cc/LL3F-CCJP] (last visited Apr. 15, 2022).

\textsuperscript{79} J. E. Haynes, Haynes (New) Guide and Motorists Complete Road Log of Yellowstone National Park 5 (35th ed. 1923). Schullery describes this guide as “the park’s most famous, best loved guidebook.” SCHULLERY, supra note 11, at 141; see also HAINES, supra note 22, at 100 (discussing tourism).

\textsuperscript{80} E.g., Northern Pacific Railroad, Yellowstone National Park (1923–1928) (on file with author).

park, he even touted tourism and the economic benefits of the park and possibly increasing park acreage—not appreciating how many in Jackson Hole apparently feared, in his words, “tourists cluttering up the area.”

But it would be precisely that, the area surrounding Yellowstone, that would capture considerable attention. The desire to expand park boundaries or at least establish buffer zones to protect wildlife animated many park supporters. Forest and Stream ran an article in 1882 highlighting General Philip Sheridan’s proposal to expand the park to the east and south. A Senate bill the next year proposing an expansion went nowhere, however. Shortly thereafter, Yale educated United States Geological Survey geologist Arnold Hauge visited Yellowstone and he too began a campaign to expand the park. And by the 1890s, the “idea of a Grand Teton National Park surfaced with a burst of conservation energy.” Following the 1891 passage of the General Revision Act (Forest Reserve Act), Hauge, along with an attorney colleague, drafted a proposed presidential proclamation to create the 1.2 million acre Yellowstone Park Timber Land Reserve, with boundaries similar to those floated during the early 1880s. Pursuant to Section 24 of the Act, Presidential Proclamation 303 established the Yellowstone Park Timberland Reserve, establishing a buffer around part of the park. Paul Schullery observed that, while the idea of having a greater Yellowstone surfaced in 1917, in the years following the Timberland Reserve “it was unclear whether these areas would become

82 Id. at 98. The surrounding areas in the 1890s had witnessed the rise of “discernable settlements” “at Jackson, Moose, Moran, Wilson, and Kelly.” ROBERT W. RIGHTER, CRUCIBLE FOR CONSERVATION: THE STRUGGLE FOR GRAND TETON NATIONAL PARK 6 (1982). Park visitation jumped from fifty-two thousand visitors in 1915 to roughly half a million by 1940, and well over a few million by the end of the century. SCHULLERY, supra note 11, at 135. And just between 1922 and 1923, visitation rose from 98,223 to 138,352. RIGHTER, supra note 82, at 34.

83 Robert Righter suggests that General Philip Sheridan first promoted a “Greater Yellowstone” in 1882. RIGHTER, supra note 82, at 22.

84 CLAYTON, supra note 42, at 134.

85 Id.

86 RIGHTER, supra note 82, at 22.


88 CLAYTON, supra note 42, at 134–35, 138–39. A preservationist like John Muir, Hague “very much envisioned the reserve as a temporary status for land that needed to be included in the national park.” Id. at 139.

89 26 Stat. at 1108 (“That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof.”).

part of the park.”91 In 1898, however, park officials recommended legislation that would reserve areas toward the south to protect wildlife.92 As all this was occurring, elk wintering near Jackson Hole surfaced as a matter of concern, and a now century-old story would begin to unfold about how to best manage the elk population, both before and since the establishment of the National Elk Refuge in 1912.93

Additional measures would further adjust park boundaries and lay the foundation for the eventual establishment of Grand Teton National Park in 1929.94 At a conference in Yellowstone in 1915, Albright expressed his desire to protect the Tetons.95 This, of course, was the year before Congress passed the National Park Service Organic Act. During the years following the Organic Act, Albright and others worked to expand Yellowstone.96 Those who opposed the expansion, according to Righter, were mostly dude ranchers, livestock interests, and members of the Forest Service.97 Things changed by the early 1920s, when conversations

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92 Schullery, supra note 11, at 200–02.

93 Erwin, 1898 Superintendent’s Report, supra note 57, at 10 (“I would also recommend that the necessary legislation be enacted, bringing the forest reserves bordering the park under the provision of the National Park protective Act, approved May 7, 1894, to preserve and protect the game.”).


96 Id. at 27.

97 Id. at 29. According to the National Park Service, Horace “Albright’s papers from the early
surrounded about the possible use of the Antiquities Act to establish a monument.98 In 1928, NPS Director Mather testified that extending the park’s boundaries “has been a matter of study of at least 10 years.”99 Horace Albright, as well, would later reflect back on how “during 1927 and 1928, a great deal of my time had to go into the behind-the-scenes work on acquiring the lands for the proposed Grand Teton National Park.”100 The following year Congress responded and established Grand Teton National Park as a small 96,000 acre park.101

The next several decades would witness forces aligning to expand the park. “For 18 years,” as reported in 1950, “recurrent efforts have been made to settle the matter to the satisfaction of the people of Teton County, Wyo., the people of the State of Wyoming, the State government, agencies of the Federal Government administering lands within Teton County” and to “settle[] a controversy which first arose late in the 1920’s when John D. Rockefeller, Jr., sponsored the purchase in the name of the Snake River Land & Livestock Co.” for eventual donation to the federal government for the park.102 Robert Righter’s masterful book, *Crucible for Conservation*, chronicles how the Rockefeller Foundation (through the Snake River Land Company), Congress, and the Executive branch, worked alongside key players toward what would become the Jackson Hole plan, which culminated in expanding Grand Teton National Park.103 President Roosevelt, for instance, propelled the issue when, on March 15, 1943, he issued Executive Order 2578 establishing the

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98 Righter, *supra* note 82, at 104. In 1925, a special park service commission recommended establishing a small Grand Teton National Park and extending the “eastern boundary of Yellowstone to follow the crest of the Absaroka Mountains, including the land around the headwaters of the Yellowstone River.” Albright & Cahn, *supra* note 81, at 189.


100 Albright & Cahn, *supra* note 81, at 214. “Beginning in 1927,” according to a Park official guide, “several congressional acts began to close off homesteading, and by 1930, it was over.” Craighead, *supra* note 11, at 28. For a discussion of homesteading around Yellowstone, see Daugherty et al., *supra* note 92, at ch. 8, https://www.nps.gov/parkhistory/online_books/grte2/hr8.htm [https://perma.cc/7KB4-UXUU]. For a similar and detailed history of what occurred during this period, see id. at ch. 17, http://www.npshistory.com/publications/grte/hr/chap17.htm [https://perma.cc/7X8W-RL4X].

101 Act of Feb. 26, 1929, ch. 331, 45 Stat. 1314 (repealed 1950); see also Righter, *supra* note 82, at 33–40; Albright & Cahn, *supra* note 81, at 215–17. The 1929 legislation applied the Park Service’s Organic Act to the newly established park. § 2, 45 Stat. at 1316. It would be “dedicated and set apart as public park or pleasure ground for the benefit and enjoyment of the people of the United States.” Id. § 1. The legislation also limited any new hotels, camps, or roads, except those pursuant to congressional appropriations. Id.


103 Righter, *supra* note 82, passim.
Jackson Hole National Monument. After unsuccessful congressional efforts to overturn the designation, Wyoming challenged the designation in court. That challenge proved unsuccessful in Wyoming v. Franke. And when Congress passed the park legislation in 1950, President Truman remarked how “[t]he legislation provides a practical and equitable solution of the controversial issues which, in the past, have impeded effective use of the lands incorporated in the new Grand Teton National Park.”

V. Conclusion

Bernard DeVoto wrote a series of articles in the 1950s about how the national parks were plagued by too many visitors and not enough resources, suggesting the solution of possibly closing Yellowstone temporarily. As Paul Schullery explains, management plans and policies had to be constantly adjusted to respond to these challenges. The NPS would implicitly respond to DeVoto’s plea with the NPS’s Mission 66 program, and specifically for Yellowstone having a management staff with the goal of “effective presentation, interpretation, and protection of the resources.” The NPS would soon begin critically examining its management plans and analyzing how best to protect the park’s iconic resources and wildlife. For instance, should the NPS take seriously journalist Robert Cahn’s portrayal of Yellowstone with fewer roads and cars, and instead shuttle visitors by electric minibuses whose overnight stays at campgrounds might then be limited?

108 See Schullery, supra note 11, at 174–75 (describing the articles).
109 Id. at 177, 180–87, 191.
History, of course, does not answer these questions. It does not tell us how to resolve today’s challenges: climate change, overcrowding, enhanced recreational opportunities, or wildlife management—whether for elk,\(^{112}\) bison,\(^{113}\) grizzly bears,\(^{114}\) or wolves.\(^{115}\) This short foray back into the early history of Yellowstone, if anything, reflects a shining vision that has remained strong and evolved for 150 years. It can, as well, inform how we proceed by illustrating the persistency of some of its challenges. Overcrowding, for instance, was a concern during the pre-WWII period; it surfaced again during the post-WWII period; and it was a principal issue addressed during the Park’s 75th anniversary and later with the development of the Vail Agenda.\(^{116}\) Overcrowding remains a dominant systemic problem today, exacerbated by the effects of climate change on the park’s resources.\(^{117}\)

As the Park’s centennial approached, Yellowstone would be heralded by those in Congress as having “advance[d] a new concept of land use in setting aside an outstanding natural area in perpetuity for the benefit and enjoyment of the

\(^{112}\) See generally Bruce L. Smith, Where Elk Roam: Conservation and Biopolitics of Our National Elk Herd (2012); Bruce Smith et al., Imperfect Pasture: A Century of Change at the National Elk Refuge in Jackson Hole, Wyoming (2004). In response to a critique of Park Service management regarding wildlife in Yellowstone by Alston Chase, a former NPS director observed that “Mr. Chase [was] hunting the wrong rabbits; they are not in Yellowstone. There were in Washington,” intimating that the issue is a political one. George B. Hartzog, Jr., Battling for the National Parks 254 (1988); see also Alston Chase, Playing God in Yellowstone: The Destruction of America’s First National Park (1987).


\(^{117}\) Adam Popescu, Yellowstone and Warming: An Iconic Park Faces Startling Changes, Yale Environment 360 (June 23, 2021), https://e360.yale.edu/features/yellowstone-and-warming-an-iconic-park-faces-major-change [https://perma.cc/2L1V-KGA7].
And shortly thereafter the park would explain how this would mean “perpetuating the natural ecosystems within the park in as near pristine conditions as possible for their recreational, education, cultural, and scientific values for this and future generations,” and that it would require coordinated planning within the GYE. Much would happen in the years since, but hopefully this brief rekindling of the park’s history illustrates that the park’s challenges today are capable of being navigated when enough people coalesce around an idea—like a vision for protecting an iconic landscape that in the 18th century was referred to by some as Roche Jaune, or today Yellowstone.

118 Commemoration of Yellowstone National Park: Hearings Before the Subcomm. No. 4 of the Comm. on the Judiciary on H.J. Res. 309 and H.J. Res. 546, Authorizing the Secretary of the Interior to Provide for the Commemoration of the 100th Anniversary of the Establishment of Yellowstone National Park, and for Other Purposes, 91st Cong. 1 (1969). Wyoming Congressman John S. Wold commented that “these are the times when man’s technology and greed threaten his environment. The point has been reached where we can no longer classify any natural resource as infinite,” further adding that the anniversary “can be used as a time of rededication of the concept inherent in Yellowstone—the setting aside in perpetuity of an outstanding natural area for the enjoyment of every citizen.” Id. at 3–4.


120 See Chittenden, supra note 22, at 2.