

**NEW YORK STATE BAR ASSOCIATION**

**REPORT AND RECOMMENDATIONS**

**CONCERNING**

**THE CONSERVATION ARTICLE IN THE  
STATE CONSTITUTION (ARTICLE XIV)**

**ADOPTED BY**

**THE COMMITTEE ON THE NEW YORK STATE  
CONSTITUTION**

**AUGUST 3, 2016**



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## **INTRODUCTION AND EXECUTIVE SUMMARY**

The New York State Constitution mandates that every 20-years voters be asked the following question: “Shall there be a convention to revise the constitution and amend the same?”<sup>1</sup> The next such referendum will be held on November 7, 2017. What follows is a report and recommendations of the New York State Bar Association’s (“State Bar”) Committee on the New York State Constitution (“the Committee”) concerning the conservation article in the State Constitution, Article XIV.

In 1894, a New York State Constitutional Convention made world history by adopting the first constitutional provisions mandating nature conservation.<sup>2</sup> In the debates over the establishment of an Adirondack and Catskill Forest Preserve (“the Forest Preserve”), Convention delegates concurred with their President — the eminent lawyer Joseph H. Choate — when he observed: “You have brought here the most important question before this Assembly. In fact, it is the only question that warrants the existence of this convention.”<sup>3</sup>

Approved by the voters in 1894, this groundbreaking provision, known as “the forever wild clause,” is “generally regarded as the most

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<sup>1</sup> N.Y. CONST. art. XIX, § 2 (“At the general election to be held in the year nineteen hundred fifty-seven, and every twentieth year thereafter, and also at such times as the legislature may by law provide, the question “Shall there be a convention to revise the constitution and amend the same?” shall be submitted to and decided by the electors of the state; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the state, as then organized, shall elect three delegates at the next ensuing general election, and the electors of the state voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed. . . .”).

<sup>2</sup> PETER J. GALIE, *THE NEW YORK STATE CONSTITUTION: A REFERENCE GUIDE* 245 (1991) [hereinafter, “REFERENCE GUIDE”].

<sup>3</sup> *Quoted in* 2 ALFRED L. DONALDSON, *A HISTORY OF THE ADIRONDACKS* 190 (1921) [hereinafter, “HISTORY OF THE ADIRONDACKS”].

important and strongest state land conservation measure in the nation.”<sup>4</sup> It is now part of Article XIV of the State Constitution,<sup>5</sup> which currently consists of five sections.

Section 1 contains the forever wild clause, establishing and protecting the Forest Preserve, and then carving out exceptions for certain lands and uses in it. The historic language is set forth in Section 1’s first two sentences:

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.<sup>6</sup>

Section 2 provides for the creation of public reservoirs within the Forest Preserve.<sup>7</sup> Section 3 recognizes that forest and wildlife conservation are public policy and permits acquisition of additional lands outside the Forest Preserve for these purposes.<sup>8</sup> Section 4 — the so-called “Conservation Bill of Rights” — recognizes that the conservation and preservation of the natural resources and scenic beauty of the State are public policy and provides for State acquisition of lands for a “state nature

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<sup>4</sup> WILLIAM R. GINSBERG, *The Environment*, in *DECISION 1997: CONSTITUTIONAL CHANGE IN NEW YORK* 318 (Gerald Benjamin & Hendrik N. Dullea eds., 1997) (paper prepared for the New York State Temporary State Commission on Constitutional Revision established prior to the 1997 mandatory referendum vote on whether to hold a Constitutional Convention).

<sup>5</sup> PETER J. GALIE, *ORDERED LIBERTY: A CONSTITUTIONAL HISTORY OF NEW YORK* 173, 295-97, 347-49 (1996) [hereinafter, “ORDERED LIBERTY”].

<sup>6</sup> N.Y. CONST. art. XIV, § 1.

<sup>7</sup> *Id.* § 2 (on “Reservoirs”; section titles summarize content and are not part of the Constitution).

<sup>8</sup> *Id.* § 3 (on “Forest and wild life conservation; use or disposition of certain lands authorized”).

and historical preserve” located outside the Forest Preserve.<sup>9</sup> Finally, Section 5 addresses how violations of Article XIV may be enjoined.<sup>10</sup>

The Forest Preserve has stood the test of time, enjoying widespread public support since its enactment.<sup>11</sup> Constitutional Conventions held in 1915, 1938 and 1967 all concluded that the forever wild clause should be retained, and voters have defeated all efforts to dilute it. Moreover, since 1894, the State has vastly expanded the acreage of the Forest Preserve, purchasing lands with funds approved by bond acts, legislative appropriations and gifts.<sup>12</sup> Voters have only removed a relatively small volume of acres from the Forest Preserve, through surgically-precise amendments.<sup>13</sup>

In 1997, when New York held its last mandatory referendum on whether to call a Constitutional Convention, concern that a Convention might consider ill-advised changes to Article XIV prompted opposition in some quarters.<sup>14</sup> After more than 120 years, however, the forever wild

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<sup>9</sup> *Id.* § 4 (on “Protection of natural resources; development of agricultural lands”).

<sup>10</sup> *Id.* § 5 (on “Violations of article; how restrained”).

<sup>11</sup> GINSBERG, *The Environment*, *supra* note 4, at 318.

<sup>12</sup> DAVID STRADLING, *THE NATURE OF NEW YORK: AN ENVIRONMENTAL HISTORY OF THE EMPIRE STATE* 102-04 (2010).

<sup>13</sup> These amendments appear as the clauses that begin with the word “Notwithstanding” in Section 1 of Article XIV. *See infra* Appendix A (setting forth each “notwithstanding” amendment). An example of such a limited amendment occurred on November 5, 2013, when the voters approved the Raquette Lake amendments to allow 200 landowners and public facilities to clear title of legal impediments since 1848 affecting their properties, while enlarging the size of the Forest Preserve by adding 295 acres on the Marion River. *See* MIKE PRESCOTT, *Commentary: Vote Yes on the Township 40 Amendment*, *ADIRONDACK ALMANAC* (Oct. 8, 2013), <http://www.adirondackalmanack.com/2013/10/commentary-vote-yes-township-40-amendment.html>.

<sup>14</sup> For example, in 1997, a task force of the New York City Bar Association concluded that “the risk of elimination or dilution of the ‘forever wild’ provisions far outweighs the nominal or speculative gains that could be achieved at a constitutional convention.” ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, *REPORT OF THE*

clause remains intact. Throughout its history, there has never been broad-based public support for repealing or diluting the forever wild protections, and nothing in the lengthy record of past Conventions and amendments to Article XIV suggest that delegates to a 2019 Convention would seek to do so. In any event, worries over the forever wild clause’s future should not inhibit study and robust debate over other provisions in Article XIV. Simply put, while there is no reason to modify the forever wild clause, opportunities to simplify and enhance other provisions in Article XIV merit serious consideration by policymakers and the public.

Indeed, few New Yorkers know what Article XIV covers, beyond the “forever wild” clause. Analysis of this one article, illustrates how comparable studies of other articles can make a significant contribution to the public’s understanding of the State Constitution. The Committee’s review of Article XIV suggests at least four potential changes that warrant study and debate:

*First*, since the forever wild clause’s adoption in 1894, the text immediately following it has been the subject of 19 amendments, making Section 1, by far, the most amended section of the Constitution.<sup>15</sup> The net result is a series of detailed exceptions, consisting of 1,401 words, which have also rendered Section 1 one of the longest sections in the Constitution.<sup>16</sup> One way to eliminate this excessive verbiage — and thereby

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TASK FORCE ON THE NEW YORK STATE CONSTITUTIONAL CONVENTION *in* 52 THE RECORD 627-28 (1997) (hereinafter, “CITY BAR REPORT”).

<sup>15</sup> PETER J. GALIE & CHRISTOPHER BOPST, *Constitutional “Stuff”: House Cleaning the New York Constitution — Part II*, 78 ALB. L. REV. 1531, 1545-46 (2015) [hereinafter, “*House Cleaning*”]; *see also* GALIE, ORDERED LIBERTY, *supra* note 5, at 173 (“The very stringency of [the forever wild clause’s] . . . language . . . has frequently interfered with legitimate and important uses of the land, such as scientific forestry. Not surprisingly, this provision has been amended fifteen times [as of 1996] to accommodate other uses.”).

<sup>16</sup> GALIE & BOPST, *House Cleaning*, *supra* note 15, at 1540. *See* N.Y. CONST. art. XIV, § 1, *infra* Appendix A (setting forth each “notwithstanding” amendment).

enhance the forever wild mandate — would be to place it in a separately authorized constitutional document.<sup>17</sup>

*Second*, Section 2, adopted in 1913, reserving up to 3% of the Forest Preserve for constructing possible water reservoirs, has rarely been invoked, and the reasons behind its adoption may no longer exist.<sup>18</sup> An argument can thus be made that Section 2 should be eliminated.

*Third*, the mandate in the Conservation Bill of Rights (Section 4) to establish a natural and scenic preserve has been unfulfilled. The State has made little effort to implement this mandate, which lacks the clarity of the forever wild clause in Section 1. Other states have natural and scenic preserves, and their approaches could be emulated in New York.

*Fourth*, the “rights” set forth in Section 4 are not “self-executing,”<sup>19</sup> meaning that they cannot be invoked absent legislative authorization. Several other states,<sup>20</sup> such as Pennsylvania,<sup>21</sup> and 174 nations,<sup>22</sup> have adopted and implemented constitutional “environmental rights.” The object of constitutional environmental rights is to ensure that citizens have a right

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<sup>17</sup> For example, New Jersey includes a list of amendments in a constitutional “Schedule.” See N.J. CONST. art. XI.

<sup>18</sup> See *infra* notes 49 to 51, and 93 to 102, and accompanying text.

<sup>19</sup> See GINSBERG, *The Environment*, *supra* note 4, at 221-29.

<sup>20</sup> BARTON H. THOMPSON, JR., *The Environment and Natural Resources*, in 3 STATE CONSTITUTIONS FOR THE TWENTY-FIRST CENTURY: THE AGENDA OF STATE CONSTITUTIONAL REFORM ch. 10 (G. Alan Tarr & Robert F. Williams eds., 2006).

<sup>21</sup> See PA. CONST. art. I, § 27 ( “The people have a right to clean air, pure water, and the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of the people.”); see generally, James R. May & William Romanowicz, *Environmental Rights in State Constitutions*, in PRINCIPLES OF CONSTITUTIONAL ENVIRONMENTAL LAW 305 (James. R. May ed., 2011).

<sup>22</sup> DAVID R. BOYD, *THE ENVIRONMENTAL RIGHTS REVOLUTION* (2012).

— and government has a duty — to provide resilient and effective responses for environmental problems.<sup>23</sup> Whether New York should amend Article XIV to include an enforceable “Environmental Bill of Rights” to address contemporary environmental challenges is a question worthy of consideration.

This report takes no position on whether a Constitutional Convention should be called in 2017, or if called, how in 2019 it should address potential changes to Article XIV. Even so, if the voters wish to simplify and enhance the present Constitution, Article XIV provides opportunities to do so.

To provide background for public discussion and debate, this report summarizes the Committee’s background and study of Article XIV, provides a historical overview of its provisions, and evaluates potential amendments.

## **I. BACKGROUND OF THE REPORT**

On July 24, 2015, State Bar President David P. Miranda announced the creation of The Committee on the New York State Constitution. The Committee serves as a resource for the State Bar on issues relating to or affecting the State Constitution; makes recommendations regarding potential constitutional amendments; provides advice and counsel regarding the mandatory referendum in 2017 on whether to convene a State Constitutional

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<sup>23</sup> For discussion of other states’ constitutional environmental rights provisions, *see infra* notes 119 to 126, and accompanying text. New York State and local governments have begun to address sea level rise and storm surges, such as experienced in Superstorm Sandy in 2012. In 2014, for example, the State Legislature enacted, and Governor Cuomo signed, The Community Risk and Resilience Act, 2014 N.Y. Sess. Laws ch. 355 (S-6617B) (McKinney) (codified as amended in scattered sections of N.Y. ENVTL. CONSERV. LAW, N.Y. PUB. HEALTH LAW, and N.Y. AGRIC. & MKTS. LAW), which provides for planning to cope with ongoing sea level rise, larger numbers of extreme weather events, and other impacts of climate change. Some other states provide constitutional provisions to cope with climate change impacts. *See, e.g.*, N.J. CONST. art. VIII, § 6(a) (directing, in Tax and Finance Article, that funds shall be available for flood and storm damage). It may be asked whether or not climate change today is an environmental issue comparable to the need in 1894 to save forest lands, or in 1967 to abate extreme pollution through framing a “Conservation Bill of Rights” (adopted just before “Earth Year,” 1969), which led to the enactment of laws for pollution control, wetlands preservation, and other environmental legislation of the 1970s and 1980s.

Convention; and promotes initiatives designed to educate the legal community and public about the State Constitution.

On March 10, 2016, the Committee began its study of Article XIV, by listening to a presentation delivered by Committee member Nicholas A. Robinson, Gilbert and Sarah Kerlin Distinguished Professor of Environmental Law Emeritus at the Elisabeth Haub School of Law at Pace University.

At the Committee's next meeting on April 29, 2016, it heard from two additional distinguished experts on environmental law: Michael B. Gerrard and Philip Weinberg. Professor Gerrard is the Andrew Sabin Professor of Professional Practice at Columbia Law School, teaches courses on environmental law, climate change law, and energy regulation, and is director of the Sabin Center for Climate Change Law. Professor Weinberg taught constitutional and environmental law at St John's Law School, after establishing and heading the Environmental Protection Bureau in the New York State Department of Law under Attorney General Louis J. Lefkowitz, and is currently an adjunct member of the faculty of the Elisabeth Haub School of Law at Pace University. Professors Gerrard and Weinberg discussed Article XIV, including its relevance to emerging environmental issues, such as the impacts of climate change in New York.

After further discussion and review, the Committee concluded that the public and legal profession would be well served by a report that provided a review of significant issues concerning Article XIV. On June 2, 2016, the Committee met and reviewed a first draft of this report. The final report and recommendations were considered and generally agreed at a meeting held on July 14, 2016, with final unanimous approval, after reviewing editorial refinements, on August 3, 2016.

## II. **THE HISTORICAL DEVELOPMENT OF ARTICLE XIV**<sup>24</sup>

Since 1894, the New York State Constitution has included an article addressing nature conservation. In that year the Constitutional Convention adopted and voters approved the forever wild clause that conferred constitutional protection of the Forest Preserve.<sup>25</sup> Over time, and through numerous amendments, the current provisions of Article XIV took shape. To understand the opportunities that exist for simplifying and enhancing Article XIV, it is essential to recall the history of how it came to be.

### A. **The Dawn of Constitutional Conservation**

New York inaugurated constitutional conservation in the last quarter of the 19th century because citizens were increasingly troubled by mismanagement of forests in both the Catskill and Adirondack regions of the State.<sup>26</sup> Verplank Colvin, appointed State Surveyor in 1870, had been

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<sup>24</sup> The Committee acknowledges the research on the legal history of Article XIV by its member Professor Nicholas A. Robinson.

<sup>25</sup> See J. HAMPDEN DOUGHERTY, CONSTITUTIONAL HISTORY OF NEW YORK 350 (2d ed. 1915) (In 1894, “[t]he convention initiated the sound policy of protecting the lands of the State known as the forest preserve, forbade their being leased, sold or exchanged or taken . . . This was the first constitutional recognition of forestation . . .”). Previously, the Forest Preserve had been established by statute. 1885 N.Y. Laws ch. 283, §§ 7 & 8. The Forest Preserve is today defined in Article 9 of the Environmental Conservation Law. See N.Y. ENVTL. CONSERV. LAW § 9-0101(6) (“The ‘forest preserve’ shall include the lands owned or hereafter acquired by the state within the county of Clinton, except the towns of Altona and Dannemora, and the counties of Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Warren, Washington, Greene, Ulster, and Sullivan . . .”).

<sup>26</sup> Extreme forest fires, erosion, flooding and loss of flora and fauna accompanied extensive logging operations, in the Catskills and Adirondacks. In THE ADIRONDACK PARK, Frank Graham, Jr. described the public debates and legislative lobbying of the time. The issues included: intense debates about economic trade-offs between advocates of scientific forestry as opposed to unbridled timber exploitation; distress about unlawful corruption by lumber interests; concerns to preserve watersheds to ensure water supplies for many uses, especially the flow for the Erie Canal; and vocal calls to preserve resources for fish and game, other recreation, health and for spiritual values. See FRANK GRAHAM, JR., THE ADIRONDACK PARK *passim* (1978) [hereinafter, “THE ADIRONDACK PARK”].

mapping the Adirondacks for the first time. He and others alerted the State to growing environmental degradation in the wake of undisciplined timbering. As early as 1868, Colvin had urged “the creation of an Adirondack Park or timber preserve under the charge of a forest warden and deputies.”<sup>27</sup> Vast areas of trees were being clear-cut and the lands abandoned to fires and erosion. Based on Colvin’s topographical survey reports, in 1883, the Legislature banned sales of State lands in the 10 Adirondack counties, appropriated funds for the first time to buy lands, and directed Colvin to locate and survey all State lands.<sup>28</sup> In 1884, the State Comptroller issued a report of investigations into unpaid taxes on abandoned lands. That report featured maps of the State’s lands in the Forest Preserve, along with a more extensive map depicting the wider Adirondack region as a “park,” with its borders delineated in blue. This is the origin of the term “Blue Line,” which continues to refer to the Adirondack Park’s borders, an area encompassing both the Forest Preserve and other public and private lands.<sup>29</sup>

On May 15, 1885, the Legislature adopted legislation to establish the Forest Preserve in both the Catskills and Adirondacks, with a State Forest Commission to oversee it.<sup>30</sup> Just prior to the Forest Preserve’s

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<sup>27</sup> DONALDSON, HISTORY OF THE ADIRONDACKS, *supra* note 3, at 164-65.

<sup>28</sup> *Id.* at 171-75.

<sup>29</sup> The Forest Preserve was defined by the N.Y. Laws of 1885 (ch. 283) to be situated in “the counties of Clinton, excepting the towns of Altona and Dannemora, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence, Warren, Washington, Greene, Ulster and Sullivan.” The Adirondack Park was established by the N.Y. Laws of 1892 (ch. 707). The Adirondack and Catskill Forest Preserve and the Adirondack Park were re-enacted in the N.Y. Laws of 1893 (ch. 332, §§ 100 & 120).

<sup>30</sup> N.Y. Laws of 1885 (ch. 283, § 7) provided:

All the lands now owned or that any hereafter be acquired by the State of New York within the counties of Clinton, excepting the towns of Altona and Dannemora, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence, Warren, Washington, Greene, Ulster, and Sullivan, shall constitute and be known as the Forest Preserve.

establishment, on April 20, 1885, the Legislature had transferred the mountain lands and forests, then held by Ulster County, to the State in settlement of the State's outstanding claims for tax revenues.<sup>31</sup> Many parcels of land in the North Woods had escheated to the State,<sup>32</sup> because loggers, after clear-cutting the timber had ceased to pay annual taxes due and abandoned their properties.<sup>33</sup> These damaged lands became the first Forest Preserve acreage.

In the decade after 1885, despite the Forest Commission's oversight, 100,000 acres of forest were logged unlawfully in the Adirondacks. These years saw both increased land degradation and public demands for enhanced protection. In 1886, William F. Fox, a representative of the State Forest Commission, visited the Forest Preserve in the Catskills and noted its value for watershed and recreation, encouraging its protection.<sup>34</sup> By 1890, the Forest Commission had issued a special report, "Shall a Park be established in the Adirondack Wilderness?"<sup>35</sup> However, in 1893 the Forest Commission

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The statute further provided that the lands of the Forest Preserve "shall be kept forever wild" and "shall not be sold, nor shall they be leased or taken by any person or corporation, public or private." *Id.* § 8.

<sup>31</sup> ALF EVERS, *THE CATSKILLS: FROM WILDERNESS TO WOODSTOCK* ch. 77 (1972) [hereinafter, "CATSKILLS"].

<sup>32</sup> *See, e.g., People v. Turner*, 72 Sickels 227, 117 N.Y. 227, 22 N.E. 1022 (1889) (involving a plea that defendant had not cut state trees unlawfully based on defects in an 1877 tax sale of lands in default of taxes for the years 1864 through 1871).

<sup>33</sup> In 1885, New York State owned 681,374 acres in the Adirondacks and 34,000 acres in the Catskills. Today, the State owns 2.6 million acres in the Adirondack Preserve and 286,000 acres in the Catskill Preserve. N.Y. DEPT. ENVTL. CONSERV., <http://www.dec.ny.gov/lands/4960.html>.

<sup>34</sup> EVERS, *CATSKILLS*, *supra* note 31, at 579-80.

<sup>35</sup> NEW YORK STATE FOREST COMMISSION, *THE SPECIAL REPORT OF THE NEW YORK FOREST COMMISSION ON THE ESTABLISHMENT OF AN ADIRONDACK STATE PARK* (1891).

also approved extensive wood cutting contracts, which the State Surveyor and the State Engineer disapproved.<sup>36</sup>

## **B. 1894: The Forever Wild Clause**

Concerns over the destruction of the State's forests, and the resulting impact on the public's health and well-being, became a central issue during the 1894 Constitutional Convention.<sup>37</sup> A delegate from New York City, David McClure,<sup>38</sup> introduced an amendment to the Constitution that was supported by delegates committed to nature conservation, led by Louis Marshall, a prominent constitutional lawyer.<sup>39</sup> The heart of the proposed amendment read: "The lands now or hereafter constituting the forest preserve shall be forever kept as wild forest lands. They shall not be sold, nor shall they be leased or taken by any person or corporation, public or private."<sup>40</sup> This language was refined a bit and during the Convention's debates, Judge William P. Goodelle, a delegate from Syracuse, proposed the addition of a few extra words. The Convention adopted the revised text of New York's first "forever wild" clause by a vote of 122 to 0, which made it the only amendment to be unanimously embraced at that Convention or any prior Convention.<sup>41</sup>

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<sup>36</sup> *Id.* at 186.

<sup>37</sup> GALIE, ORDERED LIBERTY, *supra* note 5, at 173.

<sup>38</sup> DONALDSON, HISTORY OF THE ADIRONDACKS, *supra* note 3, at 189-92.

<sup>39</sup> OSCAR HANDLIN, *Introduction*, in LOUIS MARSHALL: CHAMPION OF LIBERTY xi, (Charles Reznikoff ed., 1957). *See also* HENRY M. GREENBERG, *Louis Marshall: Attorney General of the Jewish People*, in NOBLE PURPOSES: NINE CHAMPIONS OF THE RULE OF LAW at 111 (Norman Gross ed., 2006).

<sup>40</sup> GEORGE A. GLYNN, ed., DOCUMENTS AND REPORTS OF THE [1894] CONSTITUTIONAL CONVENTION 172 (1895).

<sup>41</sup> *See* JOURNAL OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK, BEGUN AND HELD AT THE CAPITOL, IN THE CITY OF ALBANY, ON TUESDAY, THE EIGHTH DAY OF MAY, 1894 786-87; DONALDSON, HISTORY OF THE ADIRONDACKS, *supra* note 3, at 189-92.

The 1894 Convention also addressed how violations of the forever wild clause were to be enjoined. The delegates settled on an enforcement mechanism (the current Section 5) that authorized proceedings brought for this purpose by the State, or by a private citizen with the consent of the Appellate Division of the Supreme Court, on notice to the State Attorney General.<sup>42</sup>

The forever wild clause and its companion enforcement mechanism were placed in Article VII, Section 7, which was approved by the voters on November 6, 1894.<sup>43</sup> Opponents of the forever wild mandate immediately challenged the scope of the provision. In 1896, the Legislature placed before the electorate an amendment that would allow timbering on State lands. However, the proposed amendment was resoundingly defeated, by a vote of 710,505 to 321,486.<sup>44</sup>

New York courts soon took notice of the forever wild clause. In an 1899 case, the Court of Appeals observed: “The primary object of the park, which was created as a forest preserve, was to save the trees for the threefold purpose of promoting the health and pleasure of the people, protecting the water supply as an aid to commerce and preserving the timber for use in the future.”<sup>45</sup>

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<sup>42</sup> Former N.Y. CONST. art. VII, § 7 (now N.Y. CONST. art. XIV, § 5). Examples of such lawsuits include: *Helms v. Reid*, 90 Misc.2d 583, 394 N.Y.S.2d 987 (Sup. Ct. Hamilton Cnty. 1977); *Slutzky v. Cuomo*, 128 Misc. 2d 365, 490 N.Y.S.2d 427 (Sup. Ct. Albany Cnty. 1985).

<sup>43</sup> DONALDSON, HISTORY OF THE ADIRONDACKS, *supra* note 3, at 193.

<sup>44</sup> See HISTORICAL SOCIETY OF THE NEW YORK COURTS, VOTES CAST FOR AND AGAINST PROPOSED CONSTITUTIONAL CONVENTIONS AND ALSO PROPOSED CONSTITUTIONAL AMENDMENTS, [https://www.nycourts.gov/history/legal-history-new-york/documents/Publications\\_Votes-Cast-Conventions-Amendments.pdf](https://www.nycourts.gov/history/legal-history-new-york/documents/Publications_Votes-Cast-Conventions-Amendments.pdf) [hereinafter, “VOTES CAST FOR AND AGAINST”].

<sup>45</sup> *People v. Adirondack Ry. Co.*, 160 N.Y. 225, 248, 54 N.E.2d 689, 696 (1899), *aff'd*, 176 U.S. 335 (1900).

Nearly every year since the forever wild clause's enactment, the State has acquired lands in the Catskills and Adirondacks to add to the Forest Preserve, with funds provided by Bond Acts approved by the voters, or from appropriations enacted by the Legislature.<sup>46</sup> For example, in 1916, by a majority of 150,496, voters approved a Bond Act to acquire lands for the Palisades Interstate Park and to increase lands in the Forest Preserve.<sup>47</sup> Many subsequent Bond Acts have financed acquisitions expanding the Forest Preserve.<sup>48</sup>

### C. 1913: The Burd Amendment

In 1911, a constitutional amendment (known as the “Burd Amendment”) was proposed allowing up to 3% of the Forest Preserve to be flooded for reservoirs. This would allow water to be diverted for municipal drinking water, wells, canals, and flood control.<sup>49</sup> Voters approved the Burd Amendment in 1913, and it appears today in Section 2 of Article XIV.<sup>50</sup>

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<sup>46</sup> JANE EBLEN KELLER, *ADIRONDACK WILDERNESS: A STORY OF MAN AND NATURE* 194-95 (1980). After the great “blowdown” of 1950, a storm of hurricane proportions, on the advice of the New York Attorney General, the Legislature authorized the removal of vast amounts of destroyed trees to avert forest fires and disease, and funds from the wood collected and sold were used to buy more lands to add to the Forest Preserve. *Id.* at 228-30.

<sup>47</sup> 1916 N.Y. Laws ch. 569.

<sup>48</sup> For example, Bond Acts approved by the voters in 1960, 1965, 1986, 1993, and 1996 authorized acquisitions of parks lands. See N.Y. State Fin. Law § 97-d (entitled, Environmental Quality Bond Act Fund”). Legislative appropriations and gifts have also enabled additions to the Forest Preserve. As of July 2016, the Forest Preserve contains three million acres in the Adirondacks and 287,500 acres in the Catskills. See N.Y. Dep’t of Env’tl. Conserv., *New York’s Forest Preserve*, <http://www.dec.ny.gov/lands/4960.html>.

<sup>49</sup> STACEY LAUREN STUMP, “Forever Wild,” *A Legislative Update on New York’s Adirondack Park*, 4 ALB. GOV’T L. REV. 682, 694 (2011) [hereinafter, “Forever Wild”].

<sup>50</sup> Former N.Y. CONST. art. VII, § 16 (now N.Y. CONST. art. XIV, § 2).

However, this allotment of potential reservoir sites has been rarely invoked.<sup>51</sup>

**D. 1915, 1938 and 1967: Constitutional Conventions  
Affirm the Forever Wild Mandate**

Delegates to the 1915 Constitutional Convention reaffirmed the 1894 forever wild mandate.<sup>52</sup> Similarly, the 1938 Constitutional Convention restated the “forever wild” clause and its enforcement mechanism in a revised Article XIV, with Sections 1 and 5 protecting the Forest Preserve.<sup>53</sup> Additionally, the 1938 Convention added forest and wildlife conservation measures in Section 3.1, in order to facilitate increasing the land area of the Forest Preserve;<sup>54</sup> and Section 3.2, to provide that State lands, situated

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<sup>51</sup> See *infra* notes 93 to 102, and accompanying text.

<sup>52</sup> GINSBERG, *The Environment*, *supra* note 4, at 318 (“The commitment to forest preservation and a strict interpretation of the ‘Forever Wild’ clause was reaffirmed by delegates to the 1915 Constitutional Convention.”) (citing N.Y. CONSTITUTIONAL CONVENTION, UNREVISED RECORD 1336 (1915)). See also *Ass’n for the Protection of the Adirondacks v. MacDonald*, 228 A.D. 73, 79-80, 239 N.Y.S. 31, 38 (3d Dept. 1930) (“The constitutional convention of 1915 incorporated the 1894 provision verbatim, except that it added the words ‘trees and’ before the word ‘timber’ and then expressly added provisions for reforestation, for the construction of fire trails, for the removal of dead trees and dead timber for reforestation and fire protection solely, and for the construction of a state highway from Long Lake to Old Forge.”), *aff’d* 253 N.Y. 234, 170 N.E. 902 (1930).

<sup>53</sup> See GALIE, *ORDERED LIBERTY*, *supra* note 5, at 295 (“The 1938 convention created a separate article for the conservation provisions of the constitution. At that time these provisions were primarily, but not exclusively, concerned with the forest preserves of the state. The central provision placed an absolute prohibition on the use of the preserve in the desire to keep it ‘forever . . . wild.’”).

<sup>54</sup> N.Y. CONST. art. XIV, § 3.1 (“Forest and wild life conservation are hereby declared to be policies of the state. For the purpose of carrying out such policies the legislature may appropriate moneys for the acquisition by the state of land, outside of the Adirondack and Catskill parks as now fixed by law, for the practice of forest or wild life conservation. The prohibitions of section 1 of this article shall not apply to any lands heretofore or hereafter acquired or dedicated for such purposes within the forest preserve counties but outside of the Adirondack and Catskill parks as now fixed by law, except that such lands shall not be leased, sold or exchanged, or be taken by any corporation, public or private.”).

outside contiguous Forest Preserve acres, might be sold in order to permit further acquisitions within the Forest Preserve.<sup>55</sup>

The last Constitutional Convention of the 20th century occurred in 1967. Then, as before, there was little partisan disagreement. The delegates left the historic language of the forever wild clause intact.<sup>56</sup>

### **E. 1969: The Conservation Bill of Rights**

At the 1967 Constitutional Convention, significant amendments to strengthen the State’s environmental stewardship were adopted, without a single dissenting vote, and became known as the “Conservation Bill of Rights.”<sup>57</sup> These amendments failed when the voters rejected the Convention’s proffered Constitution in 1967.<sup>58</sup> These same provisions were again presented to the electorate in 1969 as a separate constitutional amendment, and adopted by a vote of 2,750,675 to 656,763.<sup>59</sup> It now appears as Section 4 of Article XIV and reads as follows:

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<sup>55</sup> *Id.* § 3.2 (“As to any other lands of the state, now owned or hereafter acquired, constituting the forest preserve referred to in section one of this article, but outside of the Adirondack and Catskill parks as now fixed by law, and consisting in any case of not more than one hundred contiguous acres entirely separated from any other portion of the forest preserve, the legislature may by appropriate legislation, notwithstanding the provisions of section one of this article, authorize: (a) the dedication thereof for the practice of forest or wild life conservation; or (b) the use thereof for public recreational or other state purposes or the sale, exchange or other disposition thereof; provided, however, that all moneys derived from the sale or other disposition of any of such lands shall be paid into a special fund of the treasury and be expended only for the acquisition of additional lands for such forest preserve within either such Adirondack or Catskill park.”).

<sup>56</sup> HENRIK N. DULLEA, CHARTER REVISION IN THE EMPIRE STATE: THE POLITICS OF NEW YORK’S 1967 CONSTITUTIONAL CONVENTION 245 (1996) [hereinafter, “1967 CONSTITUTIONAL CONVENTION”].

<sup>57</sup> *Id.* at 250 (“The Conservation Bill of Rights was adopted, 175-0, with support from all sides.”).

<sup>58</sup> *Id.* at 349-50.

<sup>59</sup> VOTES CAST FOR AND AGAINST, *supra* note 44.

The policy of the state shall be to conserve and protect its natural resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. The legislature, in implementing this policy, shall include adequate provision for the abatement of air and water pollution and of excessive and unnecessary noise, the protection of agricultural lands, wetlands and shorelines, and the development and regulation of water resources. The legislature shall further provide for the acquisition of lands and waters, including improvements thereon and any interest therein, outside the forest preserve counties, and the dedication of properties so acquired or now owned, which because of their natural beauty, wilderness character, or geological, ecological or historical significance, shall be preserved and administered for the use and enjoyment of the people. Properties so dedicated shall constitute the state nature and historical preserve and they shall not be taken or otherwise disposed of except by law enacted by two successive regular sessions of the legislature.<sup>60</sup>

Following the adoption of this provision, Governor Nelson A. Rockefeller reconstituted the New York State Conservation Department into the Department of Environmental Conservation. Additionally, in the 1970s the Legislature enacted laws dealing with air and water pollution and other environmental issues.<sup>61</sup> These developments fulfilled the spirit of Section 4 while rendering some provisions of little practical effect.<sup>62</sup>

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<sup>59</sup> DULLEA, 1967 CONSTITUTIONAL CONVENTION, *supra* note 56, at 349-50.

<sup>60</sup> N.Y. CONST. art. XIV, § 4.

<sup>61</sup> GINSBERG, *The Environment*, *supra* note 4, at 319 n.12.

<sup>62</sup> *See* N.Y. STATE BAR ASS'N, NEW YORK ENVIRONMENTAL LAW HANDBOOK §1.1, at 1-4 (Nicholas A. Robinson ed., 1988) (“The Rapid Development of Environmental Law”); *cf.* GINSBERG, *THE Environment*, *supra* note 4, at 319 n.12 (“It cannot be ascertained whether these statutes were to some degree a consequence of the

## F. Adjustments to the Forest Preserve (1894-present)

Voters have periodically approved small changes to remove or exchange discrete parcels of land from the Forest Preserve to permit clearly defined developments.<sup>63</sup> Such decisions to remove lands have always been narrowly framed and today appear immediately after the forever wild clause in Section 1 of Article XIV.

Examples of such voter approved exceptions include the following:

- 1918: construction of a State Highway from Saranac Lake to Long Lake, and on to Old Forge by way of Blue Mountain Lake and Raquette Lake;<sup>64</sup>
- 1927: construction of a road to the top of Whiteface Mountain as a Memorial to veterans of World War I;<sup>65</sup>
- 1941, 1947 & 1987: ski trails on Whiteface, Belleayre, Gore, South and Peter Gay Mountains;<sup>66</sup>
- 1957 & 1959: 400 acres to eliminate dangerous curves and grades on state highways, as well as lands for the “Northway” Interstate highway, in response to Congress’s enactment of the Interstate Highway Act.<sup>67</sup>

Conversely, voters have periodically rejected attempts to carve exceptions to the forever wild mandate. In 1930, for example, Robert Moses campaigned for adoption of the “Closed Cabin Amendment,” which would

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constitutional mandate or a reflection of nationwide federal and state legislative activity concerning the environment in the 1970s and 1980s.”).

<sup>63</sup> GALIE, ORDERED LIBERTY, *supra* note 5, at 347-349.

<sup>64</sup> DONALDSON, HISTORY OF THE ADIRONDACKS, *supra* note 3, at 248-49.

<sup>65</sup> VOTES CAST FOR AND AGAINST, *supra* note 44.

<sup>66</sup> GINSBERG, The Environment, *supra* note 4, at 319.

<sup>67</sup> *Id.*

have allowed construction of lodges, hotels and recreational facilities on Forest Preserve lands. The Legislature approved the placement of this amendment on the ballot in 1932, but voters overwhelmingly defeated it.<sup>68</sup>

The voters have also approved exchanges of parcels of Forest Preserve for other parcels of equal or greater acreage and value. For example:

- 1963: 10 acres conveyed to the Village of Saranac Lake in exchange for 30 other acres;<sup>69</sup>
- 1965: 28 acres exchanged for 340 acres in the Town of Arietta;<sup>70</sup>
- 1979: 8,000 acres exchanged with the International Paper Company for an equivalent acreage;<sup>71</sup>
- 1983: conveyance of Camp Sagamore and its historic buildings, to the Sagamore Institute, in exchange for 200 acres;<sup>72</sup>
- 2013: swap of land for a mining operation to expand into Forest Preserve Lands by removing those lands in exchange for a larger expansion of the Forest Preserve elsewhere.<sup>73</sup>

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<sup>68</sup> GRAHAM, THE ADIRONDACK PARK, *supra* note 26, at 187; STUMP, “Forever Wild,” *supra* note 49, at 696.

<sup>69</sup> GINSBERG, The Environment, *supra* note 4, at 319 n.10.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> The proposal placed before the voters for this amendment was as follows:

The proposed amendment to section 1 of article 14 of the Constitution would authorize the Legislature to convey forest preserve land located in the town of Lewis, Essex County, to NYCO Minerals, a private company that plans on expanding an existing mine that adjoins the forest preserve land. In exchange, NYCO Minerals would give the State at least the same

This pattern of carefully framing and debating amendments to Article XIV on a case-by-case basis, in order to adjust the strictures of the “forever wild” Forest Preserve, has persisted until today. The forever wild clause itself is preserved as first adopted.

In sum, over the 122 years that the forever wild clause has been a part of the Constitution, it has been debated and amended, but the mandate to safeguard the Forest Preserve remains as critical a component of the Constitution as when adopted in 1894.<sup>74</sup> The provision is unique among state constitutions in the United States. It rightly occupies a treasured place in our State Constitution and has been consistently protected but never weakened.<sup>75</sup>

### **III. THE FOREST PRESERVE, SECTIONS 1, 2 & 5**

Today, the Constitutional provisions for the Forest Preserve are found in Sections 1, 2 and 5 of Article XIV. While the Forest Preserve is renowned worldwide,<sup>76</sup> it has a unique legal status under New York law.<sup>77</sup>

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amount of land of at least the same value, with a minimum assessed value of \$1 million, to be added to the forest preserve. When NYCO Minerals finishes mining, it would restore the condition of the land and return it to the forest preserve.

*New York Land Swap With NYCO Minerals Amendment, Proposal 5 (2013)*, Ballotpedia.org, [https://ballotpedia.org/New\\_York\\_Land\\_Swap\\_With\\_NYCO\\_Minerals\\_Amendment,\\_Proposal\\_5\\_\(2013\)#cite\\_note-quotedisclaimer-5](https://ballotpedia.org/New_York_Land_Swap_With_NYCO_Minerals_Amendment,_Proposal_5_(2013)#cite_note-quotedisclaimer-5). Implementation of this amendment is the subject of judicial review as of July 2016.

<sup>74</sup> ALFRED S. FORSYTHE & NORMAN J. VAN VALKENBURGH, *THE FOREST PRESERVE AND THE LAW* (1996).

<sup>75</sup> See CITY BAR REPORT, *supra* note 14, at 627 (“The ‘forever wild’ provision is important and uniquely protective of the environment, and should be retained in the constitution.”).

<sup>76</sup> In 1969, it was included by UNESCO in the Champlain-Adirondack Biosphere Reserve. See UNESCO, *Champlain-Adirondack* [sic], in MAB BIOSPHERE RESERVES DIRECTORY, <http://www.unesco.org/mabdb/br/brdir/directory/biores.asp?code=USA+45&mode=all>.

## A. Sections 1 & 5

The clarity and mandatory nature of the “forever wild” clause is a classic illustration of an enforceable constitutional norm. Through periodic amendments to Section 1 proposed by the Legislature and approved by the voters, the State has determined the appropriateness of any derogation from the Constitution’s “forever wild” mandate. These discrete adjustments to allow non-wilderness uses within the Blue Line boundaries of the Forest Preserve are of relatively little moment, in light of the substantial enlargements to the Forest Preserve over the years. Once placed in the Forest Preserve, new acreage enjoys “forever wild” status and constitutional protection.

Although there has been little litigation under Article XIV,<sup>78</sup> the enforceability of the forever wild clause is not open to question. A violation of Article XIV may be enjoined under Section 5, which authorizes the State to seek such relief through a judicial proceeding, or a private citizen with the

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<sup>77</sup> The Forest Preserve exists in the Catskills and Adirondacks, where it is distinct from the Adirondack Park. It is under the stewardship of the New York State Department of Environmental Conservation. *See, e.g., Matter of Balsam Lake Anglers Club v. Dep’t of Env’tl. Conserv.*, 153 Misc. 2d 606, 583 N.Y.S. 2d 119 (Sup. Ct. Ulster Cnty. 1991), *aff’d*, 199 A.D.2d 852, 605 N.Y.S. 2d 795 (3d Dep’t 1993), *app. withdrawn*, 83 N.Y.2d 907, 637 N.E.2d 280, 614 N.Y.S.2d 389 (Table) (1994). The Legislature recognized the Adirondack Park in the N.Y. Laws of 1892 (ch. 707). The Forest Preserve is not legally in the purview of local authorities or the Adirondack Park Agency, both of which govern privately-held lands in the Adirondack Park, or the local authorities in the Catskills, or the New York City Department of Environmental Protection, which manages the reservoirs in the Catskills. When State agencies, such as the Department of Transportation, violate the Forest Preserve’s “forever wild” status, enforcement proceedings result. *See* 26 THE N.Y. ENVTL. LAWYER (N.Y. State Bar Ass’n Sec. on Env’tl. Law), spring 2006, at 31-34; *id.*, summer 2006, at 9-20.

<sup>78</sup> GALIE, REFERENCE GUIDE, *supra* note 2, at 251. *See also Helms v. Reid*, 90 Misc. 2d at 586, 394 N.Y.S.2d at 992 (“There is almost a total absence of court decisions construing this important provision in our State Constitution and the time has now come for a judicial interpretation of this provision so as to guide the future preservation of the unique Adirondack region of our State.”).

consent of the Appellate Division.<sup>79</sup> The intent of Section 5 was to remove the Forest Preserve from the control of the legislature and to vest oversight of its mandates within the powers of the judiciary.<sup>80</sup>

Soon after the 1894 Convention, several New Yorkers formed a civic group to monitor compliance with the “forever wild” mandate. In the 1920s, the Association for the Preservation of the Adirondacks availed itself of its constitutional rights and sought judicial enforcement of the “forever wild” clause.<sup>81</sup> Specifically, the Association opposed siting Winter Olympic facilities in the Forest Preserve. The Appellate Division, Third Department, determined that the Constitution required that the Forest Preserve be preserved “in its wild nature, its trees, its rocks, its streams. It must be a great resort for the free use of all the people, but it must be a wild resort in which nature is given free rein.”<sup>82</sup> The Court of Appeals affirmed, declaring that

[t]he Forest Preserve is preserved for the public; its benefits are for the people of the State as a whole. Whatever the advantages may be of having wild forest lands preserved in their natural state, the advantages are for everyone within the state and for the use of the people of the State.<sup>83</sup>

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<sup>79</sup> Formerly N.Y. CONST. art VII, § 9, renumbered and approved on November 8, 1938.

<sup>80</sup> See CHARLES Z. LINCOLN, 3 CONSTITUTIONAL HISTORY OF NEW YORK 395 (1906) (“By including these subjects in the Constitution they are withdrawn from legislative control, and this withdrawal is in most cases the chief reason for constitutional interference.”).

<sup>81</sup> *Association for the Protection of the Adirondacks v. MacDonald*, 228 A.D. 73, 239 N.Y.S. 31 (3d Dept.), *aff’d* 253 N.Y. 234, 170 N.E. 902 (1930).

<sup>82</sup> *Id.* at 82.

<sup>83</sup> *Association for the Protection of the Adirondacks v. MacDonald*, 253 N.Y. 234, 238, 170 N.E. 902, 904 (1930).

Thus, the State’s highest court has recognized that the people’s rights in the Forest Preserve, established under Section 1, are effective and enforceable through Section 5. The means by which the public may access or enjoy the Forest Preserve can be regulated by the Legislature, but only if it does not infringe on the “wild” characteristics.<sup>84</sup> Courts have had no difficulty construing and applying these straightforward principles.<sup>85</sup>

Although the “forever wild” clause itself is a model of clarity, the balance of Section 1 is unwieldy and unreadable. After the first two elegant sentences comes a dreary and prolix recitation of each specific exception amending the Constitution’s rule of “forever wild.”<sup>86</sup>

The text of Section 1 could easily be shortened and improved by authorizing a public roster of Forest Preserve Amendments. The roster can be maintained as an official record of amendments’ terms, along with a record of land and waters that have been added to enlarge the Forest Preserve. Once an amendment has been adopted, derogation from “forever wild” is realized (such as when a road is built or lands transferred to allow a rural cemetery expanded in exchange for adding wild river lands to the Forest Preserve), and there would seem to be no reason for the Constitution

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<sup>84</sup> See *id.* at 238-39, 170 N.E. at 904 (“Unless prohibited by the constitutional prohibition, the use and preservation are subject to the reasonable regulations of the Legislature.”).

<sup>85</sup> See CITY BAR REPORT, *supra* note 14, at 627 (“This provision, first enacted in 1894, has been consistently enforced by the courts as a powerful tool to protect New York’s irreplaceable natural resources.”). For example, construing Court of Appeals precedent, the court in *Matter of Balsam Lake Anglers Club v. Dep’t of Env’tl. Conserv.*, Supreme Court, Ulster County, found it clear “that insubstantial and immaterial cutting of timber-sized trees was constitutionally authorized in order to facilitate public use of the forest preserve so long as such use is consistent with the wild forest lands.” 153 Misc. 2d 606, 609, 583 N.Y.S. 2d 119, 122 (Sup. Ct. Ulster Cnty. 1991), *aff’d*, 199 A.D.2d 852, 605 N.Y.S. 2d 795 (3d Dep’t 1993), *app. withdrawn*, 83 N.Y.2d 907, 637 N.E.2d 280, 614 N.Y.S.2d 389 (Table) (1994).

<sup>86</sup> One commentator has referred to the amendments in Article XIV, Section 1, as reading like a road “gazetteer.” PHILLIP G. TERRIE, *CONTESTED TERRAIN: A NEW HISTORY OF NATURE AND PEOPLE IN THE ADIRONDACKS* (2d ed. 2008).

to be used as an historical record of enactments. Indeed, when acres are added to the Forest Preserve, this fact does not appear in the Constitution, even though the “forever wild” safeguard applies to them at once.<sup>87</sup>

Also, the implicit reference in the first sentence of Section 1 to the 1885 Forest Act,<sup>88</sup> through the use of the phrase “as now fixed by law,” appears redundant, since “now” has evolved and the Forest Preserve is defined today in the State Environmental Conservation Law.<sup>89</sup> The excision of this phrase would shorten Section 1 without any substantive impact.

While subject to debate, the Forest Preserve’s judicial enforcement provisions in Section 5 have proven to be effective.<sup>90</sup> Section 5 anticipated by 78 years the enactment in 1972 of procedures for citizen suits, which appear in many environmental statutes, such as Section 505 of the federal Clean Water Act<sup>91</sup> and its New York State analogue.<sup>92</sup> Section 5 was

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<sup>87</sup> In a similar vein, two noted commentators have suggested condensing the exceptions into a general exception. “For example, the section could be amended to delete everything after the second sentence and simply add to the end of the first sentence the words ‘as heretofore guaranteed by constitutional provision.’” GALIE & BOPST, *House Cleaning*, *supra* note 15, at 1546.

<sup>88</sup> 1885 N.Y. Laws ch. 283.

<sup>89</sup> See N.Y. ENVTL. CONSERV. LAW § 9-0101(6) (“The ‘forest preserve’ shall include the lands owned or hereafter acquired by the state within the county of Clinton, except the towns of Altona and Dannemora, and the counties of Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida, Saratoga, Saint Lawrence, Warren, Washington, Greene, Ulster, and Sullivan . . .”).

<sup>90</sup> Compare GINSBERG, *The Environment*, *supra* note 4, at 320 (“This section is unusually restrictive in its limitation on citizens’ suits. It may also prohibit other remedies such as damages. Thus, if trees are wrongfully destroyed in the Forest Preserve, the wrongdoer can be enjoined from further cutting, but a court may not be able to award damages to the state for the value of the trees destroyed.” (citing *Matter of Oneida County Forest Preserve Council v. Wehle*, 309 N.Y 152, 128 N.E.2d 282 (1955))).

<sup>91</sup> 33 U.S.C. § 1365.

<sup>92</sup> See N.Y. DEP’T OF ENVTL. CONSERV., DEE-19: CITIZEN SUIT ENFORCEMENT POLICY (July 23, 1994), <http://www.dec.ny.gov/regulations/25226.html>.

adopted to permit enforcement of the “forever wild” mandate, and has not been used to enforce other potential rights within Article XIV.

## **B. Section 2**

Adopted by the voters in 1913, Section 2 (known as the Burd Amendment) reserves up to 3% of the Forest Preserve for reservoirs and dams. However, in stark contrast to the forever wild mandate in Section 1, Section 2 is rarely used,<sup>93</sup> and has been contested whenever its provisions have been invoked.<sup>94</sup>

Most notably, in 1953, by a vote of 1,002,462 to 697,279, the electorate approved an amendment that revoked the Legislature’s power to provide for use of portions of the Forest Preserve for the construction of reservoirs to regulate the flow of streams.<sup>95</sup> As a consequence, Section 2 “was cancelled and withdrawn” to the extent that “the People of the State . . . rendered the lands of the State Forest Preserve inviolate for use in regulating the flow of streams.”<sup>96</sup>

Another example of public opposition to the placement of reservoirs and dams in the Forest Preserve occurred in 1955. Voters then defeated (1,622,196 to 613,727) a proposed amendment to use Forest Preserve lands

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<sup>93</sup> In 1915, the Legislature enacted the Machold Storage Law, which allowed a Water Power Commission in the Conservation Department to authorize dams. 1915 N.Y. Laws ch. 662. In general, use of Section 2 to site reservoirs for waterpower in the Forest Preserve has been highly contested; and section 2 has gone largely unused for municipal water supplies. While the Stillwater Reservoir was expanded in 1924, little other use was sought to be made of Forest Preserve lands, until the City of New York in the 1960s sought additional water sources.

<sup>94</sup> For example, when proposals were made to flood the Moose River Valley with a dam, they were challenged in *Adirondack League Club v. Board of Black River Regulating Dist.*, 301 N.Y. 219, 93 N.E.2d 647 (1950).

<sup>95</sup> VOTES CAST FOR AND AGAINST, *supra* note 44.

<sup>96</sup> *Black River Regulating Dist. v. Adirondack League Club*, 307 N.Y. 475, 484, 121 N.E.2d 428, 430-31 (1954), *rearg. denied*, 307 N.Y. 906, 123 N.E.2d 562 (1954), *app. dismissed*, 351 U.S. 922 (1956).

for the construction and operation of the Panther Mountain reservoir to regulate the flow of the Moose and Black rivers.<sup>97</sup> Likewise, in 1947 Governor Thomas E. Dewey opposed proposals for constructing the proposed Higley Mountain Dam, which the Legislature authorized in the 1920s.<sup>98</sup>

In recent years, few reservoirs and dams have been constructed nationally, and even less in New York.<sup>99</sup> Worries that cities would deplete their water supplies have dissipated. Moreover, statutes enacted long after the adoption of Section 2 would constrain future attempts to place reservoirs, dams and the like in the Forest Preserve. For example, among the provisions of the Environmental Conservation Law is protection of the extensive fresh water wetlands found in the Adirondacks,<sup>100</sup> along with rules for environmental impact assessment,<sup>101</sup> both of which would restrict any contemplated use of Section 2.<sup>102</sup>

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<sup>97</sup> VOTES CAST FOR AND AGAINST, *supra* note 44; GRAHAM, THE ADIRONDACK PARK, *supra* note 26, at 206-07.

<sup>98</sup> PAUL SCHNEIDER, THE ADIRONDACKS: A HISTORY OF AMERICA'S FIRST WILDERNESS 291-94 (1998).

<sup>99</sup> In 2014, the Lake Placid Village Dam was removed from the Chubb River. In 2015, the Saw Mill Dam in Willsboro was removed from the Bouquet River. There is an increasing nationwide trend of dam removals to restore ecological systems. *See* AMERICAN RIVERS, MAP OF U.S. DAMS REMOVED SINCE 1916, <https://www.americanrivers.org/threats-solutions/restoring-damaged-rivers/dam-removal-map/>.

<sup>100</sup> *See* N.Y. ENVTL. CONSERV. LAW art. 24; N.Y. COMP. CODES R. & REGS. tit. 6.

<sup>101</sup> N.Y. ENVTL. CONSERV. LAW art. 8 (the "State Environmental Quality Review Act" or "SEQRA").

<sup>102</sup> Beyond locating possible dam sites, enabling legislation would be required to select the sites, in addition to further constitutional amendments to remove the sites chosen along with access roads for construction equipment, eminent domain procedures to condemn private or other public rights unavoidably impacted by the dam and reservoirs, and appropriations to pay for the dam construction.

Thus, a question exists as to whether Section 2 continues to serve a constitutional purpose and should remain part of New York's fundamental law. As noted, Section 2 has rarely been invoked, and any future use of it would be constrained by statute. Arguably, too, the repeal of Section 2 from the Constitution would enhance Section 1's "forever wild" norms.

#### **IV. THE CONSERVATION BILL OF RIGHTS, SECTION 4**

Although Section 4 was intended to be a "Conservation Bill of Rights,"<sup>103</sup> it is debatable whether it has attained fundamental constitutional stature. After Section 4's adoption, and at the request of Governor Rockefeller in 1970, the legislature authorized a codification of the 1911 Conservation Law, which it then re-enacted in 1972 as the Environmental Conservation Law. The Legislature thereafter enacted new legislation, including the State's Endangered Species Act,<sup>104</sup> Tidal and Freshwater Wetlands Acts,<sup>105</sup> Wild and Scenic Rivers Act,<sup>106</sup> and New York's implementing statutes for the federal Clean Air Act,<sup>107</sup> Clean Water Act,<sup>108</sup> and laws on solid<sup>109</sup> and hazardous wastes.<sup>110</sup>

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<sup>103</sup> Proposals for strengthening the environmental rights in the Constitution predate the 1967 Convention. See, e.g., ANNUAL REPORT OF THE JOINT LEGISLATIVE COMM. ON CONSERV., NAT'L RES. AND SCENIC BEAUTY, Legislative Document No. 13 (1967). On the continuing debate over a broader environmental rights, see CAROLE L. GALLAGHER, *Movement to Create an Environmental Bill of Rights: From Earth Day 1970 to the Present*, 9 FORDHAM ENVTL. L.J. 107, 107 (1997).

<sup>104</sup> 1970 N.Y. Laws ch. 1047 & 1048; N.Y. ENVTL. CONSERV. LAW § 11-0535.

<sup>105</sup> N.Y. ENVTL. CONSERV. LAW art. 24 (Freshwater wetlands) and art. 25 (Tidal wetlands).

<sup>106</sup> 1972 N.Y. Laws ch. 869 ; N.Y. ENVTL. CONSERV. LAW art. 24, tit. 22.

<sup>107</sup> The Clean Air Act of 1970, Pub. L. No. 88-206, 77 Stat. 392 (1970), *codified at* 42 U.S.C. §§ 7401, *et seq.*, implemented in New York as N.Y. Comp. Codes R. & Regs. tit. 6, §§ 200, *et seq.*; see *Friends of the Earth v. Carey*, 552 F.2d 25 (2d Cir. 1977), *cert denied* 434 U.S. 902 (1977).

<sup>108</sup> See Federal Water Pollution Control Act Amendments of 1972, Pub. L. No. 92-500, 86 Stat. 816 (1972), *codified at* 33 U.S.C. § 1251, *et seq.* (the "CLEAN WATER

In one sense, the broad policy goals of the Conservation Bill of Rights have been realized through federal and State environmental statutes.<sup>111</sup> In fact, Section 4 was enacted on the eve of the first “Earth Day” in 1970, which was a time when the State suffered severe water and air pollution, acute loss of wetlands and species, and widespread contamination of hazardous and toxic waste. It was apparent that the voters in 1969 wanted a constitutional mandate to oblige government to restore and secure their environmental public health and quality of life, and the Legislature responded accordingly.

In another sense, the more profound environmental rights contemplated by Section 4 have not been effectuated. Section 4 expressly provides for State acquisition of lands for a “state nature and historical preserve” located outside the Forest Preserve.<sup>112</sup> Although this provision has been on the books for nearly fifty years “with questionable effect,”<sup>113</sup> the State has not established a “Preserve” for natural resources and scenic beauty, either on par with the Forest Preserve or with such preserves in other states.<sup>114</sup>

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ACT”); N.Y. ENVTL. CONSERV. LAW art. 17; N.Y. Comp. Codes R. & Regs. tit. 6, §§ 750, *et seq.*

<sup>109</sup> The Resource Conservation and Recovery Act of 1976 (RCRA), Pub. L. No. 94-580, 90 Stat. 2795 (1976), *codified at* 42 U.S.C. 6901, *et seq.*; N.Y. ENVTL. CONSERV. LAW art. 27.

<sup>110</sup> N.Y. ENVTL. CONSERV. LAW art. 27, tit. 9 *and* N.Y. Comp. Codes R. & Regs. tit. 6, §§ 200, *et seq.*

<sup>111</sup> *See* GALIE, REFERENCE GUIDE, *supra* note 2, at 251 (“Protection of the kind envisaged by this section had already been provided by statute, at least in part. . . . The broad policy goals of this section were implemented by statutes in the 1970s.”).

<sup>112</sup> N.Y. CONST. art. XIV, § 4.

<sup>113</sup> GINSBERG, The Environment, *supra* note 4, at 326.

<sup>114</sup> Comparable provisions are found in the states of Arkansas, Florida, Hawaii, Illinois, Indiana, Maryland, Michigan, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, Virginia and Washington. *See* Frank P. Grad, 10 TREATISE ON

Furthermore, Section 4 does not appear to be self-executing. At least one court has held that Section 4's provisions afford no constitutionally-protected property right enforceable by courts.<sup>115</sup> Hence, the provision amounts to little more than an exhortation for the government to act.<sup>116</sup> Citizens apparently cannot seek judicial enforcement of the Conservation Bill of Rights, as they can the "forever wild" clause.<sup>117</sup>

Over 20 years ago, Professor William R. Ginsberg argued that New York should move "toward 'self-executing' status for the existing constitutional statement of environmental goals."<sup>118</sup> He recommended converting the general language of Section 4 into a specific "environmental right," such as exists in other states. For example, the constitution for the Commonwealth of Pennsylvania provides:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment. Pennsylvania's public natural resources are

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ENVIRONMENTAL LAW § 10.03(v) (1986). Although laws in New York exist to protect wild plants and biodiversity, sufficient funding has not been provided to implement them nor integrated them with Article XIV's provisions. See PHILIP WEINBERG, *Practice Commentaries*, N.Y. ENVTL. CONSERV. LAW § 3-0302, at 54 (McKinney's 2005).

<sup>115</sup> See *Leland v. Moran*, 235 F.Supp.2d 153, 169 (N.D.N.Y. 2002) ("Article 14, section 4 of the New York State Constitution requires the legislature to include adequate provision for the abatement of various types of pollution. It has done so by enacting the ECL [Environmental Conservation Law]. Nothing in the language of this constitutional provision sufficiently restricts the DEC's discretion in enforcing the ECL such that it provides plaintiffs with a source of a constitutionally protected property right."), *aff'd*, 80 Fed. Appx. 133, 2003 WL 22533185 (2d Cir. 2003).

<sup>116</sup> See GINSBERG, *The Environment*, *supra* note 4, at 320 ("This section is similar to other provision of other state constitutions that mandate state legislatures to enact environmentally protective legislation. The efficacy of such provisions is limited. Courts usually refuse to compel legislatures to act on the basis of constitutional mandates. Since the judiciary is a coordinate branch of government, it does not have the power to compel the legislature to act in a purely legislative function.") (citations omitted).

<sup>117</sup> *See id.*

<sup>118</sup> *Id.* at 326 (Conclusion #2).

the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of the people.<sup>119</sup>

Florida,<sup>120</sup> Hawaii,<sup>121</sup> Illinois,<sup>122</sup> and Montana<sup>123</sup> provide comparable constitutional environmental rights (as do 174 nations),<sup>124</sup> and 19 states provide constitutional rights for hunting and fishing.<sup>125</sup> Establishing such rights in state constitutions serve varied objectives,<sup>126</sup> and afford a unique dimension of environmental protection.<sup>127</sup>

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<sup>119</sup> PA. CONST. art. I, § 27. The Pennsylvania Supreme Court gave direct effect to this provision in *Robinson Township, Washington Cnty., Pa. et al. v. Commonwealth*, 623 Pa. 564, 683-87, 83 A.3d 901, 974-977 (Pa. 2013).

<sup>120</sup> FLA. CONST. art. II, § 7 (“It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise.”).

<sup>121</sup> HAW. CONST. art. XI, § 9 (“Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.”).

<sup>122</sup> ILL. CONST. art. XI, § 2 (“Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.”).

<sup>123</sup> MONT. CONST. art. II, § 3 (“All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life’s basic necessities . . .”).

<sup>124</sup> DAVID R. BOYD, *THE RIGHTS REVOLUTION passim* (2012).

<sup>125</sup> See NAT’L CONFERENCE OF STATE LEGISLATURES, *State Constitutional Right to Hunt and Fish* (Nov. 9, 2015), <http://www.ncsl.org/research/environment-and-natural-resources/state-constitutional-right-to-hunt-and-fish.aspx>.

<sup>126</sup> See ART ENGLISH & JOHN J. CARROL, *State Constitutions and Environmental Bills of Rights, in COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES 18* (2015), <http://knowledgecenter.csg.org/kc/content/state-constitutions-and-environmental->

But it is by no means clear that New York would benefit from the inclusion in the State Constitution of a self-executing environmental right. Current State and federal law provide ample environmental protections, and regulators already police environmentally harmful conduct. Judicial review of most environmental issues is readily available under Article 78 of the Civil Practice Law & Rules, and citizen suits can be brought to authorize enforcement of most environmental statutes.<sup>128</sup> Thus, it is debatable whether the addition of a self-executing constitutional environmental right could do more; indeed, it might even lead to needless, duplicative litigation, which would discourage economic development, especially in economically-depressed regions of the State.

To be sure, though, there is another side of the argument. Arguably, the narrow scope of Section 4 in Article XIV is insufficient to address New York's new environmental challenges. In 1894, the destruction of forests was deemed a crisis worthy of constitutional reform. The "forever wild" mandate was thus born. In 1969, pollution presented a comparable crisis. The "Conservation Bill of Rights" was thus created.<sup>129</sup> Today's analogue may be impacts associated with climate change, as evaluated in reports by

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bills-rights; *see also* JAMES R. MAY, PRINCIPLES OF CONSTITUTIONAL ENVIRONMENTAL LAW *passim* (2011).

<sup>127</sup> *See generally*, JOHN C. DERNBACH, JAMES R. MAY & KENNETH T. KRISTL, *Robinson Township v. Commonwealth of Pennsylvania: Examination and Implications*, 67 RUTGERS L.J. 1169 (2015).

<sup>128</sup> *See, e.g.*, CLEAN WATER ACT § 505; *supra* note 92.

<sup>129</sup> Environmental constitutionalism began in New York, and was expanded in 1969, influenced in part by Dr. Rachel Carson's seminal book, *Silent Spring*. Dr. Carson wrote that "[i]f the Bill of Rights contains no guarantees that a citizen shall be secure against lethal poisons distributed either by private individuals or by public officials, it is surely only because our forefathers, despite their considerable wisdom and foresight, could conceive of no such problem." RACHEL CARSON, *SILENT SPRING* 12-13 (1962).

the New York Academy of Sciences,<sup>130</sup> the U.S. National Academy of Sciences,<sup>131</sup> and the Intergovernmental Panel on Climate Change.<sup>132</sup>

## CONCLUSION

In 2017, voters will have a unique opportunity to debate whether the provisions of the State Constitution’s conservation article, Article XIV, are sufficient to meet current needs or can otherwise be improved. As this report illustrates, Article XIV presents opportunities to simplify its text, address obsolete aspects, and to consider how to enhance its effectiveness. At a minimum, if and when the State establishes a preparatory constitutional commission, it has ample reason to carefully study Article XIV.

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<sup>130</sup> See NEW YORK CITY PANEL OF CLIMATE CHANGE, *Building the Knowledge Base for Climate Resiliency: New York City Panel on Climate Change 2015 Report*, 1336 ANNALS N.Y. ACAD. SCI. 1-150 (2015), <http://onlinelibrary.wiley.com/doi/10.1111/nyas.2015.1336.issue-1/issuetoc>.

<sup>131</sup> See U.S. NAT’L ACAD. OF SCI. & U.K. ROYAL SOCIETY, *Climate Change: Evidence and Causes* (2014), [nas-sites.org/americanclimatechoices](http://nas-sites.org/americanclimatechoices).

<sup>132</sup> See INTERGOVT’L PANEL ON CLIMATE CHANGE, *Fifth Assessment Report* (2013-14), <https://www.ipcc.ch/report/ar5/>. *Fifth Assessment Report*.

## APPENDIX A

### ARTICLE XIV

#### CONSERVATION

{Text, annotated with subject headings in brackets }

#### **[Forest preserve to be forever kept wild; authorized uses and exceptions]**

Section 1.<sup>1</sup> *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.* (Italics added.)

Nothing herein contained shall prevent the state from constructing, completing and maintaining any highway heretofore specifically authorized by constitutional amendment, nor from constructing and maintaining to federal standards federal aid interstate highway route five hundred two from a point in the vicinity of the city of Glens Falls, thence northerly to the vicinity of the villages of Lake George and Warrensburg, the hamlets of South Horicon and Pottersville and thence northerly in a generally straight line on the west side of Schroon Lake to the vicinity of the hamlet of Schroon, then continuing northerly to the vicinity of Schroon Falls, Schroon River and North Hudson, and to the east of Makomis Mountain, east of the hamlet of New Russia, east of the village of Elizabethtown and continuing northerly in the vicinity of the hamlet of Towers Forge, and east of Poke-O-Moonshine Mountain and continuing northerly to the vicinity of the village

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<sup>1</sup> Article 14 was formerly Section 7 of N.Y. CONST. art. VII in the Constitution of 1894. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 4, 1941; November 4, 1947; November 5, 1957; November 3, 1959; November 5, 1963; November 2, 1965; November 6, 1979; November 8, 1983; November 3, 1987; November 5, 1991; November 7, 1995; November 6, 2007; November 3, 2009; November 5, 2013.

of Keeseville and the city of Plattsburgh, all of the aforesaid taking not to exceed a total of three hundred acres of state forest preserve land, nor from constructing and maintaining not more than twenty-five miles of ski trails thirty to two hundred feet wide, together with appurtenances thereto, provided that no more than five miles of such trails shall be in excess of one hundred twenty feet wide, on the north, east and northwest slopes of Whiteface Mountain in Essex county, nor from constructing and maintaining not more than twenty-five miles of ski trails thirty to two hundred feet wide, together with appurtenances thereto, provided that no more than two miles of such trails shall be in excess of one hundred twenty feet wide, on the slopes of Belleayre Mountain in Ulster and Delaware counties and not more than forty miles of ski trails thirty to two hundred feet wide, together with appurtenances thereto, provided that no more than eight miles of such trails shall be in excess of one hundred twenty feet wide, on the slopes of Gore and Pete Gay mountains in Warren county, nor from relocating, reconstructing and maintaining a total of not more than fifty miles of existing state highways for the purpose of eliminating the hazards of dangerous curves and grades, provided a total of no more than four hundred acres of forest preserve land shall be used for such purpose and that no single relocated portion of any highway shall exceed one mile in length.

Notwithstanding the foregoing provisions, the state may convey to the village of Saranac Lake ten acres of forest preserve land adjacent to the boundaries of such village for public use in providing for refuse disposal and in exchange therefore the village of Saranac Lake shall convey to the state thirty acres of certain true forest land owned by such village on Roaring Brook in the northern half of Lot 113, Township 11, Richards Survey.

Notwithstanding the foregoing provisions, the state may convey to the town of Arietta twenty-eight acres of forest preserve land within such town for public use in providing for the extension of the runway and landing strip of the Piseco airport and in exchange therefor the town of Arietta shall convey to the state thirty acres of certain land owned by such town in the town of Arietta.

Notwithstanding the foregoing provisions and subject to legislative approval of the tracts to be exchanged prior to the actual transfer of title, the state, in order to consolidate its land holdings for better management, may convey to International Paper Company approximately eight thousand five hundred acres of forest preserve land located in townships two and three of Totten and Crossfield's Purchase and township nine of the Moose River Tract, Hamilton county, and in exchange therefore International Paper Company shall convey to the state for incorporation into the forest preserve approximately the same number of acres of land located within such townships and such County on condition that the legislature shall determine that the lands to be received by the state are at least equal in value to the lands to be conveyed by the state.

Notwithstanding the foregoing provisions and subject to legislative approval of the tracts to be exchanged prior to the actual transfer of title and the conditions herein set forth, the state, in order to facilitate the preservation of historic buildings listed on the national register of historic places by rejoining an historic grouping of buildings under unitary ownership and stewardship, may convey to Sagamore Institute, Inc., a not-for-profit educational organization, approximately ten acres of land and buildings thereon adjoining the real property of the Sagamore Institute, Inc. and located on Sagamore Road, near Racquette Lake Village, in the Town of Long Lake, county of Hamilton, and in exchange therefor; Sagamore Institute, Inc. shall convey to the state for incorporation into the forest preserve approximately two hundred acres of wild forest land located within the Adirondack Park on condition that the legislature shall determine that the lands to be received by the state are at least equal in value to the lands and buildings to be conveyed by the state and that the natural and historic character of the lands and buildings conveyed by the state will be secured by appropriate covenants and restrictions and that the lands and buildings conveyed by the state will reasonably be available for public visits according to agreement between Sagamore Institute, Inc. and the state.

Notwithstanding the foregoing provisions the state may convey to the town of Arietta fifty acres of forest preserve land within such town for

public use in providing for the extension of the runway and landing strip of the Piseco airport and providing for the maintenance of a clear zone around such runway, and in exchange therefor, the town of Arietta shall convey to the state fifty-three acres of true forest land located in lot 2 township 2 Totten and Crossfield's Purchase in the town of Lake Pleasant.

Notwithstanding the foregoing provisions and subject to legislative approval prior to actual transfer of title, the state may convey to the town of Keene, Essex county, for public use as a cemetery owned by such town, approximately twelve acres of forest preserve land within such town and, in exchange therefor, the town of Keene shall convey to the state for incorporation into the forest preserve approximately one hundred forty-four acres of land, together with an easement over land owned by such town including the riverbed adjacent to the land to be conveyed to the state that will restrict further development of such land, on condition that the legislature shall determine that the property to be received by the state is at least equal in value to the land to be conveyed by the state.

Notwithstanding the foregoing provisions and subject to legislative approval prior to actual transfer of title, because there is no viable alternative to using forest preserve lands for the siting of drinking water wells and necessary appurtenances and because such wells are necessary to meet drinking water quality standards, the state may convey to the town of Long Lake, Hamilton county, one acre of forest preserve land within such town for public use as the site of such drinking water wells and necessary appurtenances for the municipal water supply for the hamlet of Raquette Lake. In exchange therefor, the town of Long Lake shall convey to the state at least twelve acres of land located in Hamilton county for incorporation into the forest preserve that the legislature shall determine is at least equal in value to the land to be conveyed by the state. The Raquette Lake surface reservoir shall be abandoned as a drinking water supply source.

Notwithstanding the foregoing provisions and subject to legislative approval prior to actual transfer of title, the state may convey to National Grid up to six acres adjoining State Route 56 in St. Lawrence County where it passes through Forest Preserve in Township 5, Lots 1, 2, 5 and 6 that is

necessary and appropriate for National Grid to construct a new 46kV power line and in exchange therefore National Grid shall convey to the state for incorporation into the forest preserve at least 10 acres of forest land owned by National Grid in St. Lawrence county, on condition that the legislature shall determine that the property to be received by the state is at least equal in value to the land conveyed by the state.

Notwithstanding the foregoing provisions, the legislature may authorize the settlement, according to terms determined by the legislature, of title disputes in township forty, Totten and Crossfield purchase in the town of Long Lake, Hamilton county, to resolve longstanding and competing claims of title between the state and private parties in said township, provided that prior to, and as a condition of such settlement, land purchased without the use of state-appropriated funds, and suitable for incorporation in the forest preserve within the Adirondack park, shall be conveyed to the state on the condition that the legislature shall determine that the property to be conveyed to the state shall provide a net benefit to the forest preserve as compared to the township forty lands subject to such settlement.

Notwithstanding the foregoing provisions, the state may authorize NYCO Minerals, Inc. to engage in mineral sampling operations, solely at its expense, to determine the quantity and quality of wollastonite on approximately 200 acres of forest preserve land contained in lot 8, Stowers survey, town of Lewis, Essex county provided that NYCO Minerals, Inc. shall provide the data and information derived from such drilling to the state for appraisal purposes. Subject to legislative approval of the tracts to be exchanged prior to the actual transfer of the title, the state may subsequently convey said lot 8 to NYCO Minerals, Inc., and, in exchange therefor, NYCO Minerals, Inc. shall convey to the state for incorporation into the forest preserve not less than the same number of acres of land, on condition that the legislature shall determine that the lands to be received by the state are equal to or greater than the value of the land to be conveyed by the state and on condition that the assessed value of the land to be conveyed to the state shall total not less than one million dollars. When NYCO Minerals, Inc. terminates all mining operations on such lot 8 it shall remediate the site and

convey title to such lot back to the state of New York for inclusion in the forest preserve. In the event that lot 8 is not conveyed to NYCO Minerals, Inc. pursuant to this paragraph, NYCO Minerals, Inc. nevertheless shall convey to the state for incorporation into the forest preserve not less than the same number of acres of land that is disturbed by any mineral sampling operations conducted on said lot 8 pursuant to this paragraph on condition that the legislature shall determine that the lands to be received by the state are equal to or greater than the value of the lands disturbed by the mineral sampling operations.

**[Reservoirs]**

§2.<sup>2</sup> The legislature may by general laws provide for the use of not exceeding three per centum of such lands for the construction and maintenance of reservoirs for municipal water supply, and for the canals of the state. Such reservoirs shall be constructed, owned and controlled by the state, but such work shall not be undertaken until after the boundaries and high flow lines thereof shall have been accurately surveyed and fixed, and after public notice, hearing and determination that such lands are required for such public use. The expense of any such improvements shall be apportioned on the public and private property and municipalities benefited to the extent of the benefits received. Any such reservoir shall always be operated by the state and the legislature shall provide for a charge upon the property and municipalities benefited for a reasonable return to the state upon the value of the rights and property of the state used and the services of the state rendered, which shall be fixed for terms of not exceeding ten years and be readjustable at the end of any term. Unsanitary conditions shall not be created or continued by any such public works.

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<sup>2</sup> An addition made in 1913 to former N.Y. CONST. art. VII, §7, which was renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November of 1953, and November of 1955.

**[Forest and wild life conservation; use or disposition of certain lands authorized]**

§3.<sup>3</sup> 1. Forest and wild life conservation are hereby declared to be policies of the state. For the purpose of carrying out such policies the legislature may appropriate moneys for the acquisition by the state of land, outside of the Adirondack and Catskill parks as now fixed by law, for the practice of forest or wild life conservation. The prohibitions of section 1 of this article shall not apply to any lands heretofore or hereafter acquired or dedicated for such purposes within the forest preserve counties but outside of the Adirondack and Catskill parks as now fixed by law, except that such lands shall not be leased, sold or exchanged, or be taken by any corporation, public or private.

2. As to any other lands of the state, now owned or hereafter acquired, constituting the forest preserve referred to in section one of this article, but outside of the Adirondack and Catskill parks as now fixed by law, and consisting in any case of not more than one hundred contiguous acres entirely separated from any other portion of the forest preserve, the legislature may by appropriate legislation, notwithstanding the provisions of section one of this article, authorize: (a) the dedication thereof for the practice of forest or wild life conservation; or (b) the use thereof for public recreational or other state purposes or the sale, exchange or other disposition thereof; provided, however, that all moneys derived from the sale or other disposition of any of such lands shall be paid into a special fund of the treasury and be expended only for the acquisition of additional lands for such forest preserve within either such Adirondack or Catskill park.

**[Protection of natural resources; development of agricultural lands]**

§4.<sup>4</sup> The policy of the state shall be to conserve and protect its natural

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<sup>3</sup> Formerly N.Y. CONST. art. VII, §16, this provision as renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 5, 1957; November 6, 1973.

<sup>4</sup> First proposed and accepted by the Constitutional Convention in 1967, whose proposed constitution was not accepted, and thereafter added by amendment adopted by

resources and scenic beauty and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. The legislature, in implementing this policy, shall include adequate provision for the abatement of air and water pollution and of excessive and unnecessary noise, the protection of agricultural lands, wetlands and shorelines, and the development and regulation of water resources. The legislature shall further provide for the acquisition of lands and waters, including improvements thereon and any interest therein, outside the forest preserve counties, and the dedication of properties so acquired or now owned, which because of their natural beauty, wilderness character, or geological, ecological or historical significance, shall be preserved and administered for the use and enjoyment of the people. Properties so dedicated shall constitute the state nature and historical preserve and they shall not be taken or otherwise disposed of except by law enacted by two successive regular sessions of the legislature.

**[Violations of article; how restrained.]**

§5.<sup>5</sup> A violation of any of the provisions of this article may be restrained at the suit of the people or, with the consent of the supreme court in the appellate division, on notice to the attorney-general at the suit of any citizen.

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the legislature and approved by vote of the people November 4, 1969.

<sup>5</sup> Initially adopted in 1894 in former N.Y. CONST. art. VII, §7; retained by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938, and renumbered §5 by vote of the people November 4, 1969.