

**Private Property and the Public Trust Doctrine
Developing New Paradigms for Government to Balance
Individual Property Rights and Public Resource Protection**

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Summary:

One pressure on government efforts to protect fish and wildlife habitat is the growing polarization of environmental activism and the private property rights movement. This paper suggests an historic and socio-political analysis of the legal framework and paradigms available for a pluralistic, democratic society which protects fish and wildlife habitat and manages complex issues of commons. It also will suggest some new approaches and strategies to argue that developing new models for habitat protection may need to return to very basic fundamentals of Jeffersonian agrarian democracy and the underpinnings of current private property movements.

The paper will review evolution of property theory from Native Indigenous cultures through private agrarian models to public stewardship ethics. Sustainability is fundamentally a problem of human social organization and not solely of biology or technology. Using various legal frameworks and community planning processes this paper suggests alternatives to traditional power conflicts-- options which are available for social and legal organizations to stop limiting thier community's creativity and to start encouraging challenged cooperation.

Water may be the issue of the nineties. Private property rights will be the rulebook and the State of Washington may be the playing field. "The future of the private property rights issues for the next decade will be centered in Washington State". (fn: Ron Arnold, Center for Free Enterprise, Seattle Post Intelligencer, 3/18/92, page A6). For local county commissioners and state officials seeking to manage their way through resource conflicts they feel caught in an ebb tide without a paddle.

How do elected officials balance popular private property rhetoric and still respond to widespread pressures and public demand for improved management of fish and wildlife habitat? The conflict and resulting issues encapsulate some of the greatest tensions of the public policy arena in America in the last century. It may be the most serious test of democracy to occur in the last decade of this century. It is also very reminiscent of the public debates which waged between Jefferson and Madison during the first decades in this republic.

The public policy debates around private property and common resources highlight some basic tensions of the American politic such as the individual versus the community. Issues of community risk allocation versus individual property incentives and the balance of state versus federal control of resources. Into this the current debates add and stir hard the issues of minority cultures and treaty rights and the scientific realities of scarce resources and threatened species. The last decade of the twentieth century will surely be the most controversial in the ongoing political debate of how we as a society can best balance individual rights and community interests. It will also be the test of whether we can adequately define justice before we know our best individual interests. It will require that we develop new property and governance models which allow us equity while we move from the our first century's frontier- cowboy model of resource development and extraction of the first century to a more appropriate community-based, space ship earth model of stewardship suitable to the twenty-first century.

One thing is clear. The debate is going to be vociferous, far reaching, and affect many other areas of the public policy arena. For example, in the Pacific Northwest, and specifically the State of Washington, the debate is escalating quickly. Water rights granted to farmers in the 19th century to encourage wide-spread irrigation in the desert are being reconsidered as building permits for growth and fishing rights set out in tribal treaties clash on a daily basis. The region is in the third year of a hundred year drought. Local economies based on a socio-economic cultures of abundant water are learning the difference between water quantity and water quality. Endangered species, particularly salmon, lead to a rethinking of such large public works successes as the Columbia River water system. For the first time in National Park Service history there is serious discussion of the federal government removing a hydroelectric dam to attempt to restore a Chinook salmon run to an Indian tribe of fewer than 500 members.

State agencies are under so much pressure that they are expanding their co-management agreements with local treaty tribes and beginning to develop entire new legal theories. One proposal is to create a "trust water" right which could provide a new incentive for conservation by granting a legal right to sell and trade conserved water to industries and growth communities.

However, of more far-reaching and systemic concern is the widespread and growing public consensus, including a cross section of all political views, that the controversy brought about by these issues reveal that local and federal governments lack the government institutions and political processes to meet the challenges of presented by these ecological imbalances and social and economic allocation issues. For example, two of three county commissioners in western Washington are being seriously challenged in the 1992 elections over issues arising from growth management. In Oregon and Idaho private property rights alliances have earned a significant power in the state legislatures. Washington and Idaho are in lengthy negotiations over instream flow and water rights issues. And after a decade of collaboration between environmentalists, the tribes, and industry it is increasingly apparent that a new era of litigation pursuant to U.S. v Washington seems imminent. (see Cohen and Pinkerton)

Politics of Scarcity- Changes in Washington Resource Management Background of Washington natural resource management.

To understand today's debate it is helpful to have a brief overview of Washington's resource history and the policy models in use. Washington State, characteristic of the Northwest region generally, has a strong culture of individual self sufficiency and loosely knit communities.

During the indigenous period the Northwest Tribes were characterized by small clans and population groupings with extensive nomadic "usual and accustomed" resource management and harvest areas. Similar to some of the Plains Indian cultures it was totally acceptable for a tribal member in most of the northwest tribes to register his disagreement with tribal consensus by not accompanying them to war or moving his family to a new long house without any social ostracization. There were many tribes that disagreed with treaty making and a few tribes today have not signed treaties or disagree with the way they were forced by officials to join other treaty signing tribes.

Today there is still intense political activity within the Tribes, particularly on natural resource issues. A local government or industry seeking to develop governance relations with a Northwest Tribe must become aware of an entire set of cultural nuances, family ties, and protocols. These are often confusing for non-Indians who too often then avoid initiating contact. Interestingly, in Washington and the Northwest generally, it has been the timber industry, with its vast forest reserves adjacent to tribal lands, which pioneered some of the first efforts to understand and build cooperative management agreements with tribal leadership. Local governments and state agencies have not been in a leadership role in these efforts and, in fact, have often been more involved in groups that oppose treaty management or co-management alternatives. Some local governments are just now beginning to consider co-management or process protocols with various individual tribes.

During the early 1800s Washington resource history was affected when the wagon trains began to arrive. Historians note that the trains with family and agrarian skills tended to head south to Oregon where a strong farming and mercantile, family and community oriented culture and economy, began to develop. Other wagons, primarily with single laboring men, moved north to Washington and the Puget Sound area. While Oregon quickly developed public ownership of shorelines and town hall governments, Washingtonians worked in isolated timber camps and developed a culture of rugged individualism and healthy suspicion of any social complexities. This early serendipity cast its mark on resource management today. In Oregon there is over ten years of experience with complicated state administered land use planning and public ownership of shorelines. In Washington, the State just recently began requiring local governments to identify, classify, and regulate natural resource areas and there is extensive litigation and public policy conflict over historic private ownership of tidelands.

For its first one hundred years Washington, like much of the United States, had its communities and economies based on the extraction and development of abundant forestry, fisheries, and water resources. Now in its second century Washington, similar to other Northwest areas in Oregon, Idaho, Montana, and British Columbia, is just beginning to experience its first decade of resource scarcity. Washington agriculture, industry, and development are being challenged by serious water shortages.

Conservation closures of the entire salmon fisheries were proposed for the first time in 1992, and the Federal courts, for the second time in twenty years, have federalized the State's resource management by ordering extensive habitat conservation management areas for the northern spotted owl. The State, as well as the Nation, is beginning its evolution from resource extraction and development to an era focusing on resource sustainability and stewardship.

During any transition such as this there are several public policy options available. Voters and elected officials can fight any new changes or do nothing. They can embrace any new alternative, develop new models to work together or wait to be sued. Or they can develop new models and then implement any combination of the successful strategies.

Management Options for Resource and Community Development

In the Northwest, there are at least four major paradigms under discussion. First, Washington has had some success in systems of co-management and collaborative planning. Second, a new "Wise Use" agenda is being proposed by private property and free enterprise proponents. Third, state agencies and attorneys are proposing a return to relying on the public trust doctrines to argue that the public has retained all necessary elements to ensure ecological well-being. Fourth, this paper proposes developing a common community paradigm which could continue to develop to watershed-community based planning but look to new tax and economic theories to reallocate issues of economic good and risks. This option would take into account the need to reevaluate ecological externalities and manage for sustainability. At various times, and on a variety of issues, Washington public policy has flirted with all these public policy options with varying success. It is an arena that needs intensive monitoring, research and development by all those involved in common property management, researchers and theoreticians, practitioners and managers.

1. Co-management and collaborative resource management

Washington has received national attention for its successful efforts to utilize alternative dispute resolution methods to develop negotiated, industry-wide management agreements. During the early 1980s timber, environmental, and tribal interests were able to forge a multi-party agreement to amend the States Forest Practices Act (the Timber, Fish, and Wildlife Agreement).

This accord developed new models such as an interdisciplinary team consultation before permits could be issued, and a watershed based analysis of cumulative impacts. In the mid- 1980s, an estuary protection program, the Puget Sound Water Quality Authority, mandated a comprehensive system of local community based, watershed planning processes. State regulations required that all affected parties be involved in issue orientations, mutual education, plan development, and implementation. The State specifically encouraged consensus based negotiations. (WAC 400-12). This model had the potential to develop unparalleled relationship- building between traditional adversaries. It also began to open up an entirely previously untapped volunteer base which has becoming involved in a variety of resource activities such as shellfish enhancement, stream adoption programs, and watershed management.

Recent State and regional efforts at water allocation and instream flow negotiations have also followed the consensus collaborative model. A instream flow accord was endorsed by the legislature which funded two local pilot projects to develop planning models which should make it possible to develop regional consensus on water use and thus avoid extensive litigation. (See Chelan Accord and Dungeness- Methow pilots).

In spite of the successes of these collaborative models the State agencies and legislature changed direction in 1990. The Washington Growth Management Act of 1990 (GMA) was passed to accommodate growth and channel it into "urban growth areas" thus avoiding resources which had been "identified, classified, and designated as critical natural resource areas" with "long term commercial viability".

This is the State's first venture in statewide land use planning. Faced with growth rates which doubled the region's population in the last 35 years and brought 20% growth rates to some rural counties, the State Legislature focused on urban sprawl, affordable housing, siting of major facilities such as prisons and recycling centers, as well as transportation. Prior to the GMA Washington had one of the weakest comprehensive planning schemes in the nation. Comprehensive plans were voluntarily developed and were only required to address transportation and land use. Further, the comprehensive plans were not required to be consistent with development regulations. There were also no requirements for cooperation with regional needs or jurisdictions.

In spite of the successful record of local watershed planning the Washington State Legislature adopted a rather traditional, hierarchical growth management plan. This, and the very tight initial timeframes, may be the key reasons for the increasing levels of conflict and disharmony in local communities, particularly rural counties. The GMA required initial compliance in ninety days, did not require any specific steps for public participation or community consensus building processes, and did not provide for consultation with the state's Indian tribes, many of whom have large land ownership and resource co-management agreements with the State. The result has been loss of popular support for more local planning, some critical habitat management opportunities as wetlands and lands have been converted or lost, and increased polarization. There has been a critical reversal or at least a lost momentum for local community-based resource planning. There is fertile ground for political efforts that seek to redefine the entire debate.

While this period of political foment may help develop increased public participation, and improved paradigms for common future planning, it also presents risks of lost time and energy at a critical time of perhaps limited resource management opportunities. In the interim, the community-based, watershed planning model lays in limbo while the growth management model is pursued.

2. The Wise Use Agenda- The Timing was Ripe for a New Debate

There are national trends which make this an opportune time to revisit the debate of individual versus community-based management. The end of the Cold War provides an unprecedented opportunity to reestablish self government and democracy and to reinvigorate participation in governance. However, some argue that a green scare is replacing the red menace. They argue that protectionist resource management seeks to lock up resource lands and significantly alter the American way of life. Others respond that the environmental crisis requires systemic change. The underlying debate may be whether a pluralistic democracy can deal with issues of resource scarcity. It may be the issue of the next decade. The alternative, regardless if seen from the right or the left, or even as seen from very diverse viewpoints in between, may result in increased polarization of interests, loss of resources and more authoritarian government.

In 1992, there are three key environmental laws up for revision in Congress: the Clean Water Act, the Endangered Species Act, and the 1872 Mining Act. With all of these initiatives pending at the same time, free enterprise and private property strategists sensed an opportunity to forge a broad new coalition. In addition, extraction industries, such as timber, fisheries, and mining are reaching a level of depletion which brings new intensity of fear and economic hardships to resource-based communities. Political strategists saw an opportunity. A very successful lobbying firm, Van Ness, Feldman, and Curtis, had had unparalleled success reversing the tone on national wetlands legislation and was available to work on pending grazing and mining legislation.

In different areas of the Country the agenda may be identified on a variety of regional or local issues e.g. by-catch coalitions in the Gulf states, endangered species groups in the Northwest, public lands use in the Adirondacks, and wetlands issues in the Midwest. In the Northwest the "wise use" coalition saw opportunity to forge new coalitions around growth management and timber dependent communities.

The Wise Use Agenda- Supporting the Environment While Defeating Environmentalism

The Wise Use Movement itself is organized by the Center for Free Enterprise in Bellevue, Washington. It reports affiliation with over 250 other organizations and "aggregate total membership in various groups in excess of 10 million (page ix, Wise Use Agenda)." The organizers target a primarily rural constituency "a subculture of dispossessed, productive citizens. . . angry Americans who have been radicalized by being pushed out of traditional homes and employment through ever expanding, preservationist designations." (Wise Use Agenda, p. 89).

The the Wise Use agenda and its sponsoring organization, the Free Enterprise Institute, promotes "free enterprise eco-management" as it recruits new members. It argues that "there is an intellectual war taking place between pro-market and anti market forces. . . anti-human ecologists believe every consumer product or action is inherently anti-environmental. . . environmentalists, the US Forest Service, and activists have an "unfinished Marxist- Leninist agenda". (Ecology Wars, 1991)

The Washington based Wise Use movement is one of the most vocal and visible pro-free enterprise and anti-regulation organizations involved in the natural resource debate. Environmental regulation and therefore environmentalism is identified as their primary target. Wise Use states that it supports environmental values but argues that environmental regulation is being used to force a new lifestyle and economic downsizing on American people who have gotten lackadaisical in their service jobs and forgotten the hardships of the war and recessions. Bob Arnold and Alan Gottlieb, the movements leaders, argue that the media is anti-industry, the Supreme Court has given environmentalists three out of the last four major environmental rulings and industry "just doesn't understand the environmental challenge to the American way of life". Arnold, in Ecology Wars equates environmentalism to a New Society - "a Communist doctrine which seeks domination first through wilderness designation, then regulations, and finally the ballot box."

The Wise Use agenda calls for a new paradigm of "econosystems that reflects that the urge for infinite expansion is our human essence . . . humans are constantly evolving and bursting forward." Organizers argue that unless society continues to exploit and utilize resources then governments are denying their natural ability to adapt and evolve thus no longer ensuring continued development. "(Ecology Wars, page 120).

Wise Uses' central appeal is to renewable resource owners, farmers, ranchers, timberland owners, whose chief fear is increased government intrusion and regulation. (Ecology Wars, page 114) It is unclear to what extent individual property owners support the end to environmental regulation or whether they become involved in local private property organizations to support all the Wise Use Agenda.

Leaders of Wise Use are recognized generally as charismatic and experienced organizers. Ron Arnold, the Executive Director, reports widely that he studied propaganda and disinformation techniques when he was a Sierra club and Alpine Lakes Board member. He is described by media as a "controlled, artful orator", a "master of the incendiary sound bite" and he is recognized as an extraordinary organizer with the media attributing to him "the ability of working folks into a frenzy". Arnold describes his disenchantment with leading environmental groups, such as the Sierra Club, and argues that he left those efforts about twenty years ago feeling disenchanted with truthfulness and hidden agendas.

By his own statements Arnold uses the same "cheap shots" for which he now criticizes environmentalists. Arnold now spends full time promoting free enterprise, private property, and limited government regulation through the non-profit Center for Free Enterprise and the Wise Use Agenda.

Alan Gottlieb, co-founder of the Center for Free Enterprise, is known as a genius of high technology and direct mail marketing. He is a pro gun activist and founder of the Second Amendment Foundation. Gottlieb is also described in media reports as a convicted felon and he has spent a year in prison in 1984 for filing false income tax returns. Gottlieb is described as a masterful fund raiser for a variety of right wing causes. He manages a data bank of over 5 million and reports he has already raised \$3.5 million for the new right. .

Chuck Cushman, the third major leader in Washington State, reportedly enjoys being described as "rent-a-riot Cushman". Arguing that "Washington State is where most of the property rights war action will be in the 90's" Cushman suggests to followers that "You've got to create controversy". Cushman, a twenty year veteran of the private property rights battles around the country, began political action in the 1960s trying to save a family cabin in Yosemite from destruction by the National Park Service. Cushman moved from California to Battleground, Washington, in 1990 and now heads the National Inholders Association. He represents owners of land within National Parks and recreation areas. With nine FAX machines, Cushman reports that he can send out 2-3,000 messages a night and describes himself as a "high energy political organizer."

Wise Use describes their citizen activist techniques as "vociferous, aggressive, and personal . . . We are commanders, shock troops, if you will, we are willing to lay the body all the way in front of the train. But the most important thing I do, and what my group of experts do, is to work with local people by invitation.. We have amassed mail lists of every federal permit holder." For example, on May 5, 1992, in Jefferson County, Washington, Cushman effectively led six hundred landowners, concerned about private property and growth management, to chant in unison "compensation! compensation! compensation!"

Reports on the private property- an environmentalism agenda also refer to other critics, not directly affiliated with Wise Use, such as George Reisman, an economics professor at Pepperdine University, who condemns environmentalism as " every bit as menacing to capitalism as Bolshevism and Nazism. "

One effective organizing strategy that Wise Use has used is to characterize Preservationists and "Environmentalism". Arguing that while they support environmental concerns, they emphasize that the WISE USE agenda is to end "environmentalism" by the end of the 1990s. Gottlieb and Arnold refer to their opposition as "preservationists". They emphasize to rural residents that the real goal of "environmentalism" is to lock up local resources, force lifestyle changes, and bring upon society "a new religion of tree and nature worship". Wise Use defends the private sector, the profit motive, private property and free enterprise rights (which) are what built America". (Ecology Wars, page 51)

"Environmentalists are not just plain folks" argues Arnold. "They are nothing of the sort. How many losses in Congress and the Court will it take to prove that environmentalists form a hierarchy of clear eyed, pragmatic hired executives and lobbyists carrying out the will of a religiously inspired primitivist volunteer leadership which in turn guides a mixed bag of zealots, interested supporters, misguided plain folks, and faddish hangers on" . (Ecology wars, page 53). "Preservationism is like a new religion worshipping trees and sacrificing people".

Redefining the resource management debate to emphasize private property management and less environmental regulations are stated goals of the Wise Use organizers. One tactic, in addition to emotional distinctions and redefining of the opposition, is to build upon the already existing resentment that rural resource owners have for environmental activists which they describe as " different from us and primarily urban based." One participant at a Canadian meeting summarized the representative feelings:

" We are real people in the communities. Not some fly by night, long-haired, dope-smoking, whatever they call themselves. We call them preservationists . . . You talk to them and they get that kind of faraway, glossy-eyed look. And they come out with downright lies But when the ordinary person tries to make an impact in this, he can't because he is not news. He works for a living, that's not news . . . You have got to understand that They don't care. I looked at them and they looked at me and I said, My God! City folks wearing salty clothes that they ordered from Abercrombie and Fitch. And funny little hats. I didn't have anything in common with them. I was a logger and a forester. I pleaded with them. . . don't let your love of wilderness blind you to the needs of your fellowman. And I was met with blank and uncomprehending stares. They never heard a word of it, they couldn't relate at all They came from a different planet I didn't like them and I don't think they liked me. What's the point? We didn't have anything to talk about. (from a BC SHARE group speech, 1991)

As early as 1987, Arnold argued in his book, *Ecology Wars*, that "the most sophisticated strategy the industry could employ is to boost these rural loggers into the public arena". (page 61, *Ecology Wars*) He makes presentations at consulting workshops for industry financial supporters such as large timber, mining, and off-road-vehicles manufacturers and argues that "you should stop defending yourselves, let WISE USE do it. Get the hell out of the way because citizen activist groups have credibility and you don't".

Arnold is referring to the variety of groups affiliated with the Wise Use Agenda such as SHARE groups in Canada, CARE groups in the Northwest, and a variety of private property local groups (See List from *Ecology Wars*). Using a strategy he says he learned and borrowed from his former membership in the Sierra Club, Arnold charts a course to defeat environmentalism. First, he advocates education of activists similar to teach-ins like Earth Day, new instructors such as Chuck Cushman, and formation of new non profit educational organizations such as National Inholders, and the Center for Free Enterprise These organizations then provide free radio shows, publish books, and release new stories, all of which get news and media coverage without charge. Second, organize citizen activists. "Nearly all problems have been polarized by increased citizen participation and to be quiet is to acquiesce." . Third, fulfill the potential role of citizen activists to "orchestrate public hearings, sue in Court, lobby in Congress, pressure administrators, and "out sierra club the sierra club".

Arnold emphasizes the need to add drama and emotion to the debate. In Washington, for example, rural communities are seeing an increase in displays of coalition building blue and yellow ribbons, logging truck events, and demonstrations for the media at environmental events. The Wise Use groups use some of the same strategies as any beginning political group to obtain public visibility. Just as the tribes, women's groups, or indeed, environmentalists before them, Arnold and Gottlieb argue that while facts and information are effective in changing beliefs and attitudes when it comes to changing values the real sources of social and political action are religion, emotions, and similar heart touching events. "Unless you provide some dramatic appeal you will not attract social or political support." (*Ecology Wars*, page 81)

Wise Use's calls for the demise of environmentalism includes action oriented rhetoric that calls supporters to arms:

"although the rank and file environmentalist sincerely embraces anti-technology and anti-civilization as personal values, these beliefs are only a veneer hiding the true motivations of their organizational leaders. Environmental group leaders seek unending political clout for their groups and want totalitarian power for their ideas" . (Ecology Wars, page 89)

"Rural families are facing a campaign of genocide".

"The philosophical underpinnings of the modern environmentalism ethic are fundamentally opposed to free enterprise and strongly biased toward centralized government control. (Ecology Wars, page 90)

Unlike these good rural people, environmentalists tend to be urban elitist, pursuing a Marxist cultural war (*Ecology Wars*, p.83)

In addition, the 1988 Wise Use agenda calls for some very specific government actions. It counteracts the recent environmental victories of Wilderness Systems, Scenic River Systems, and Rails to Trails Systems by calling for "a set of commodity resource systems designated in federal lands e.g. the Timber Harvest System, the Grazing System, the Mining System the Off Road Vehicle System devoted officially to commodity and active recreational use. (Wise Use Agenda, page 87).

In addition, Arnold calls for 1) initiation of a Wise Use public education program by the US Forest Service that the federal deficit could be reduced by prudent mining, logging, and use of federal lands. 2) immediate wise development of petroleum reserves in the Arctic National Wildlife Refuge as a model project 3) an Inholder Protection Act to irrevocably recuse the federal government from all eminent domain actions. 4) a Global Warming Prevention Act to convert all oxygen using old growth forest stands in National Forests to young stands. 5) opening of all public lands, parks, wilderness to use 6) a Beneficial Use Water Rights Act where the federal government shall not retain "reserved" or other federal property rights in water for which can't demonstrate beneficial use. 7) a Rural Community Stability Act to enable US Forest Service to offer a reasonable fraction of each ranger's district in timber sales for sole purpose of promoting rural timber dependent community stability exempt from administrative appeal. 8) laws that regulate environmental groups including making them legally liable for job losses and higher prices resulting from their actions. This new legislation would require those who file lawsuits to post a bond to cover increased costs and money damages.

It is unclear to what extent local affiliated landowner groups understand or agree with the Wise Use agenda in its totality. It should be noted, however, that the Wise Use publication seems to include a number of direct, first line statements from a large variety of local groups, each expressing their own priorities. New members are told that once they join Wise Use they also become affiliated with a variety of other pro-gun, anti-choice, anti-labor organizations that "support them when we need help and we support them." As one legislative observer noted: "We may disagree with the approach, goals, or strategies of Wise Use, but its hard to deny that good people are attracted and getting involved with these movements".

In response to the movement a number of research and investigative groups have started looking into the financial ties Wise Use and its leaders have with other groups. One Canadian Library of Parliament investigation reports that, in addition to major corporate sponsorship from timber, mining, and off-road vehicles corporations, the Wise Use organizations have extensive financial ties with the Unification Church, a Reverend Sun Myung Moon organization. A 1991 study of the SHARE groups in Canada, which hires Arnold as a consultant and uses much of his materials and arguments, reported that "the forest companies in B. C. have provided the "local citizens coalitions" with most of their organizational impetus and financial backing. Their apparent objective has been to pit labour against environmentally oriented people. Their effect has been to divide communities and create animosity in the very places that need honest communications and consensus to be encouraged." (Library of Parliament study, Ottawa, Canada, 1991)

Other opponents of the Wise Use agenda question not only the long term political agenda of Wise Use but also its funding base. They argue that grass roots movements and lobbying efforts are legitimate and desirable in a democratic society but that those involved in the public policy debate need to demonstrate good faith honesty, not only to the public, but also to their own members if they are to participate in public policy making. In the past, a number of laws have required open disclosure of membership, financial records, and candor about political and economic motives. These laws have generally ensured a good faith bargaining process in the public arena. In 1991 the Canadian government report states that "Typically these Wise Use affiliated groups represent themselves to the public as reasonable, objective, conciliatory, neutral, middle-of-the-ground. They characterize themselves as independent, grassroots organizations of loggers and families."

Critics of the Wise Use agenda argue, however, that movement leaders are using the current fear and anxiety of rural people to attract them to a whole right wing agenda of coalitions with anti-women, anti labor, anti gun-control, anti-environment agenda. (OLYMPIAN, 6/7/92 page A2).

The potential connection with the The Unification Church of Reverend Sun Myung Moon may be particularly troublesome to many. Moon was investigated by a U. S. Congressional Committee in 1979 and convicted of tax evasion in 1984. Reverend Moon has established several organizations, bought newspapers, and media sources, and has begun to provide a new image of the Church through the American Freedom Coalition. This Coalition shares office space with Ron Arnold's Center for the Defense of Free Enterprise in Bellevue. At this time much of the evidence linking Wise Use to the Unification Church appears to be speculative. However, "in some newspaper interviews Arnold has not only admitted that the American Freedom Coalition is a part of the Wise Use Movement but that he is a registered agent of the Coalition. In other interviews Arnold has denied ties to the Unification Church but has confirmed that the Center for the Defense of Free Enterprise is allied with the movement ". (Library of Parliament, Canada, 1991).

In addition, Alan Gottlieb, President of the Center for Defense of Free Enterprise, is also a director and fundraiser for the American Freedom Coalition. The October 1990 newsletter for the American Freedom Coalition reported sponsoring four Wise Use conferences in 1990 and planning for fifteen in 1991. The Canadian Parliament Library report discloses that the American Freedom Coalition reportedly is funded by \$15 million in loans from the Unification Church. Ron Arnold is also on the speakers bureau for the Unification Church and the two groups share interlocking directorships on their Boards.

This affiliation may, in part, explain the religious overtones of the Wise Use criticism of "environmentalism". For example, Ron Arnold claims " We want you to be able to exploit the environment for private gain, absolutely. And we want people to understand that is a noble goal. Our goal is to destroy, to eradicate the environmental movement in a decade. . . environmentalists are "a type of cult, engaged in genuine psychological warfare aimed at gathering recruits and manipulating the masses" (Parliament report, page 19)

Chuck Cushman, National Inholders Association, asserts, " The preservationists are worshipping trees and animals and sacrificing people. . . its a holy war between fundamentally different religions." Arnold uses language which defies his cause and satanizes his opponents e.g. "the arch-Druid David Brower" former director of the Sierra Club.

Fertile Ground for Wise Use with Growing Rural Dissatisfaction

How does this political argument find support in rural, resource based communities? Easily. Wise Use organizers may find fertile ground in some of the growing and expanding general alienation festering in some of these communities during the past few years. Turmoil and frustration has been building on some of the following:

1) the loss of rural agri-economy. Increasingly the family farm is being replaced by development or centralized agribusiness in with none of the traditional ties to the land or the community. This brings intense pressures on the remaining families who which to maintain a rural life style and economic base for their families.

2) the growing urban base of the environmental movement has been interpreted as elitist by some in the rural communities. The traditional environmental model has favored a high degree of centralization in decision making and top down control over information, power, and resources. This is consistent with economic development and environmental protection throughout the world which has often been the reverse of local community development. Existing traditional communities have consistently and systematically been destroyed especially in rural areas in Third World countries by social change movements, including environmentalism.

3) Resource allocation within the city and the village often reflect urban priorities rather than rural community concepts of equity or efficiency. Too often urban bias, based on indifference to existing community cultures, have made changes in resource management slow and painful.

4) Environmental education and citizen involvement processes which could be assisting to build awareness of issues, and help citizens get involved in deciding their own future course, thus minimizing polarization, has been too often mismanaged by agencies and local governments as public information and propaganda techniques or by environmentalists as persuasive. Not enough true education has occurred where the choices and tradeoffs are effectively presented and those affected are empowered to make the decisions and monitor and adapt implementation.

5) hard economic times tend to increase fear and competitive pressures on scarce resources. Wise Use's "taking" arguments may be particularly attractive during hard economic times since people are experiencing real fear for loss of retirement funds, investments, and limited options. The arguments may also be attractive to corporate interests who would be able to change the debate from whether or not they support environmental protection to how local government, now increasingly strapped for funds, could afford to compensate them for these new "takings".

6) Finally, what has been a fairly shrill and negative approach of the environmental movement itself may be beginning to see the results in frustration and disempowerment from the communities, and citizens at large who increasingly see themselves as helpless in achieving economic and environmental balance. " In the 1990s environmentalists are beginning to see who is reaping the political benefits of a landscape of the "disasters and crisis of the month". An anti-environment backlash may be underway stripping away the movement's most important asset: the claim to public virtue. Until now the business community has been forced to handle the environmental movement with care. Rather than confront it directly, industry resorted to green marketing. "I'm green, too, you see and our products as eco-friendly. But now a new coalition is building on the resentment toward shrill environmentalism and politics may be reversing its interests."

For too long negativism and obstructionism have been the signs of environmental ideology" (Ecology Wars, p47). Over the past two decades environmentalists have done a good job of scaring and shaming the people. They have been so effective that the movement now may be in danger of disempowering and crippling the public's very ability to take necessary action. The doomsday approach has also risked balkanizing the view of nature into a landscape of disaster areas without the parallel education and empowerment to let local residents feel that they can make a difference in protecting their community and way of life. Generally the American culture does not respond well to that type of helplessness on a long term basis.

Through the Alliance for America and the Wise Use agenda, lumber and mining companies are beginning to portray environmentalists as the "bullying sports spoilers" and key contributors to this malaise in rural resource management.

Corporations increasingly are funding citizen activist groups, many affiliated and supported by Wise Use organizers, which purport to speak for hikers, bikers, dirt bikes "who merely want to enjoy the simple God given pleasures of nature." Now, corporations, rather than environmental activists, are making people feel good about nature again. Experienced political observers know that shame and shrillness have always been the worst and most unpredictable motivators in politics: they too easily flip over to resentment. Debates over some of today's environmental issues have called an entire people's way of life into question, and when that happens we are able often to witness the resulting defensive anger and rigidity.

3. The Public Trust Doctrine as a Defense to Taking

Increasingly state resource agencies, tribes, and environmental activists are returning to concepts of the public trust doctrine to respond to these new battles.

Who owns the Land? The concept of property ownership and resulting rights have changed with society's evolution. In tribal communities in the Northwest, resource planning and leadership was to provide for the welfare of the "seventh generation". This reflected the small, strong communities, stable geographic bases, close knit kinship groups, and intergenerational values operative in every day tribal communities. However, it was different for a growing pioneer society, particularly a western arch-type, which left everything behind to move west. Family, friends, and the land itself, were left behind or sacrificed for progress and future opportunities for development. And it's easy to recognize that the more far reaching and attenuated the benefit is to the descendent the less willing an individual is to forego current maximization of wealth for future intergenerational distribution. Today, it is unclear whether the recent political observation of Jesse Jackson that "they are all our children" really reflects a perception of the American people that while we are not all brothers and sisters in the literal sense, we accept a more tribal- interdependent property theory which would recognize that society is all quite literally co-progenitors of each other's future generations.

That sense of interdependent reliance has been present, to one degree or another, in the long history of property law development.

There are two major underpinnings of western property law. First, that whenever property rights were granted there was a quid pro quo contract of expected gain and benefit to society as a whole. Second, that rights came from the sovereign and as such the sovereign or government would never give away the underlying value or basis of the corpus. e.g. government always retains a public trust or reversionary interest so that the the sovereign may ensure that which is necessary to provide public benefit in the transaction.

So, for example, in Roman law property was recognized to the extent that centurions or explorers increased the common wealth of the Caesar or kingdom. In the Middle Ages property was granted by the king to the extent that lords and knights fought the kings' battles in the Crusades or brought home bounty and new wealth. During the sea exploration decades of England, Spain and Portugal the civilized countries developed a sophisticated law of Admiralty and exploration which allowed any "wasted" property to be salvaged and owned by those who undertook to restore or enhance value to the flotsam and jetsam. Insurance law protected crews from lawsuit when it was necessary to jettison the property of the individual to save the ship for the whole. These concepts of social benefit and individual rights being over ridden by common community benefit are common in western and eastern history. For example, in China the rice field owners also possessed the upland forest lands, not by purchase, but by an implied stewardship easement which recognized that rice land, and therefore the communities food supply, was at risk if forest land was improperly managed.

In United States natural resource law, there has been a long, but not often discussed, history of community management of the commons. As early as 1626 conservation laws appeared in the Plymouth colony which forbade sale of timber off the colony without approval of the Governor and Council. In 1674, the Massachusetts Bay Colony forbade pollution in Boston Harbor. In 1681, William Penn insisted that for every five acres of clear cut, one acre had to be kept in trees. In 1711, the Massachusetts Bay Colony forbade the creation of "any disturbance or encumbrance on or across any river that would operate to stop or obstruct the national passage of fish" .

Designation of resources for long term community stability also has a history. Boat builders on the Olympic Peninsula who are now arguing for a cultural set aside for wooden planks, or small cedar mills hoping for community based stability, could well look to the historic precedent of the 1691 policy in the White Pine Act.

That early environmental regulation put a "king's brand arrow" on the best trees in the colonies, thus reserving them for the Royal Navy's masts and spars.

The 1800s were the high point of using private property as an economic engine to pull the country into progress. During less than two decades nearly 10% of the nation's land, at that time, was given to the railroads on condition that they develop commerce for society's benefit. Land grants were used to build railroads, to provide water rights to irrigate the arid West, to encourage steel building for war time boats, and to preserve wild landscapes for recreation through the national park system. All of these reflected society's value that through private property incentives there could be a maximum net social benefit.

Today, however, in at least some political arenas, values of continued development and progress are being questioned as to whether they continue to provide net social benefit. Just as mining or drilling extraction reaches the richest lodes first, eventually the time and effort outweighs the production. So for some communities the sense of progress has diminished and at least some sectors of the community are beginning to face diminished returns, increased costs, and lack of benefits.

You can't sell what you never owned. The public trust doctrine is based on the proposition that polluters do not acquire vested property rights by their past water history of water use and that state laws prohibiting or regulating pollution seldom gives rise to constitutional takings challenges. The law has never recognized a vested property right to pollute. No one can argue they have acquired a constitutionally protected right to deposit wastes into or otherwise pollute public waters. Police power regulation or prohibition of pollution does not raise takings issues. There is no legal right to waste. It is unclear whether there is a legal right to destroy something e.g. a wetland, which then results in waste.

The classic list of interests protected by the public trust doctrine includes commerce, navigation, and fisheries. As early as 1892 in Illinois Central Railroad v. Illinois, 146 U.S. 387, the United State Supreme Court ruled that title to beds of navigable water is "held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties. 146 U.S 387, at 452. (1892). This applies not only to the underlying river bed but also the waters and fisheries are protected. This is significant because the protection of fisheries necessarily includes protection of water quality.

Some water law authorities assert "because water rights are usufructuary rights in a resource that belongs to the public, it can be argued that no fifth amendment taking is involved when the State decides to reassert its interest or to redefine the nature of private interests in the use of the resource.

The balancing of individual private property rights and community commons continues to evolve as society changes. The balance of private versus public economic costs may be even more unbalanced as tax resistance and reluctance to fund public resource programs exacerbates the demand for protection on private lands. For example, issues of aesthetics which were once considered irrelevant are now of sufficient public concern to overrule a private property right to lease land for billboards. As public access to shorelines is diminished the public has expressed increasing interest in ensuring ongoing public access through use of the public trust doctrine. Increasing interest in open space zoning is now being argued to advance public interest in control of land even though the economic burden to provide it may be placed disproportionately on the individual landowner. (Agins v. City of Tiburon, 447 U. S. Supreme Court 255 (1980).

Legal theory and case law is evidencing an increasing movement away from the traditional need to demonstrate nuisance justification before limiting private property rights and land use authority to a more concern for community good, neighborhood character. The public trust doctrine is being revived to argue a defense from individual rights and privatization to nonexclusive benefits to community and shared values and benefits.

The concern about relying on the public trust doctrine to address today's environmental resource issues is that legal precedent and development is a long term process, taking years to litigate a single case, and resource choices may not have that time. In addition, there is an element of uncertainty for both sides while valuable time is lost. Law also may tell us where justice lies but too often leaves the management and economics of the issue for litigants to determine after the decision. It is not proactive, timely, empowering of the parties, and therefore is generally seen as not reflecting the current social compact.

4. Developing A New Paradigm for the Common Good and Community Economy

As early as Aristotle there has been a very important distinction of chrematistics and oikonomia. Chrematistics referred to the political economic relating to manipulation of property and wealth so as to maximize short term monetary exchange value. Oikonomia, the root of current economics, took the long term view and considered costs and benefits to the whole community not just individuals, and focused on concrete use values rather than abstract exchanges. Historically, optimal value has been defined as short term efficiency and economics has externalized ecological sustainability. The market sees only efficiency and has no system to feel, hear, or sense either justice or sustainability. This is unfortunate if we define sustainability as justice extended to the future. If we accept that we can extend our analysis to long term impacts, ecological values, and issues of community sustainability can all be brought into our public policy debate and even into EIS analysis.

We can also begin to reevaluate our treatment and calculation of economic externalities. Externalities represent a recognition that there are neglected aspects of the pure economic model, but in such a way to minimize minor, mid course adjustments of the basic model. However, when vital issues such as community stability, sustainability, capacity of the earth to support life, or the public covenant to govern begins to be classified as externalities its arguably time to reexamine or restructure some basic analysis .

Increasingly economists are being asked to assist communities develop some alternative, more truthful, accurate indexes of national and community well being other than the Gross National Product. Projects such as Sustainable Seattle, Sustainable Olympia, and Washington 2010, are looking at indicators of community success such as literacy, infant mortality, life expectancy as well as ecological indicators such as water conservation, presence of riparian areas, revegetation of forestry units. These social and ecological wealth indicators can even be adversely effected by growth in the total natural product. For example, an oil spill such as the EXXON VALDEZ , consumption of tobacco, alcohol, and fatty foods are all counted as positive economic factors in the GNP calculation. But time volunteering with youth, sharing farm equipment, buying water conservation equipment, or replanting a salmon stream are not reflected in the calculation.

As we develop new economic paradigms we are in reality probably only returning to the Jeffersonian agrarian basis of our Constitution. For example, in rural agrarian economies, then and now, we are probably much more willing to look at issues of community stability and impact. In the past, unlimited quest for personal gain was mitigated by the social connections of community e.g. concern for justice, fairness, and well being of an ongoing community. Now with increased absentee ownership, corporate investments and transnationals there is evidence that this system of community accountability and covenant is no longer viable.

For a return to sustainable natural resource ethics it is necessary to rebuild these community ties. And water management may be the most expedient avenue since, by its very essence, it underscores a community's mutual interdependence: " We all live downstream".

In a capitalist society, some argue that "instead of economy being embedded in social relations, social relations are embedded in the economic system . It is this reversal that an economics for the community and the environment can arguably no longer tolerate. Protection of the environment goes hand in hand with a shift back from the individual as a priority to one in which the person is in relation to the community.

Part of the problem, historically, has been that economic arguments were science and physics based rather than biologically based. Factoids and observations gave an impression of "misplaced concreteness" which described human activity through a set of dehumanized abstractions. In the early 19th century the great Swiss economist, Sismondi, observed " humanity should be on guard against all generalization of ideas that cause us to lose sight of the facts and above all the social error of identifying the public good with wealth, abstracted from the sufferings of the human beings who create it. . . what is too often neglected in the effect of one person's welfare on that of others through bonds of sympathy and human community. "

Strong American tradition, as old as Jefferson and deToqueville, argued for the strong agrarian community base didn't overrule individual property interests but subjugated it to the larger community welfare. Unfortunately, most political leaders and writers today have forgotten the communitarian concerns of Jefferson, deToqueville, and early agrarian democrats. The irony is that a wide range of evidence is now confirming empirically what these traditional theorists could assert only instinctively:

that a strong, local community is essential to well being, personal growth, social order, political efficiency. And now we can argue to add to that list wholistic natural resource management.! These conclusions are now emerging at the center of every social science including community natural resource planning.

If this theory were to be fully developed we may see changes in our tax structure to reward resource stewardship, block grant programs back to local governments to the extent that they reforested areas, or managed for groundwater protection. Rather than having local governments see their incentive to increase property value through development and extraction it may be possible to develop models which encourage stewardship and community values.

Conclusion:

As we end the 19th century and move into the twientieth, we will increasingly be reminded by scarce resources that we are ending a millenium of vast resource development and extraction. We, as did our ancestors, will need to pursue with equal vigor the new models, legal theories, and paradigms which reenforce the potential of the individual in relation to the net community benefit. To the extent that local governments are distracted from this, or that they allow parties to become polarized or unfocused, society and the resources will loose incredibly valuable time and creativity. Perhaps the greatest challenge of those interested in protecting rural lifestyles, local community economies, and sustainable resources will be to build new coalition, develop new governance sturctures which, like watershed planning, challenge residents to come together to rebuild their communities, share the economies and incentives of stewardship, and develop new, creative models for shared economy and ecology. It will be a task that challenges all our common creativity, energy, and dedication to a world of balanced ecology and economy.

* footnotes and bibiliography are available from the author upon request.