



CHAUTAUQUA

Governing Western Resources

*Collaboration is just one of the many tools
in the confluence of ideas*

THE BIG HOLE RIVER emerges out of the Bitterroot Mountains on the Montana-Idaho border and meanders through the southwestern corner of Montana. The river nourishes vast meadows of hay, which is fed to cattle during the long winters. It also sustains brown, rainbow, and western cutthroat trout, and a rare species called arctic grayling. The Big Hole River is a fly-fishing mecca; people come from around the country and spend considerable sums of money in local businesses.

Starting ten years ago, a series of dry years reduced flows in the river. Fish suffered, pastures went

dry, and recreationists took their boats and waders—and dollars—elsewhere. People who relied on the river were not happy, and tensions between competing interests mounted. After the drought of 1994, when river levels dropped to a trickle and many fish died, some people started talking about the need for legislation to change water laws, while others renewed calls for federal protection of arctic grayling and western cutthroat trout.

Then in 1995, a group of ranchers, outfitters, fisheries advocates, and local communities along the river created the Big Hole River Watershed Commit-

tee. Their purpose was to provide an ongoing forum for citizens to share ideas, learn together, and develop strategies to preserve and enhance the land, water, and economic viability of farming, ranching, and tourism.

The major accomplishment of the committee is a drought management plan that allows fisheries advocates to lease water from farmers and ranchers while honoring existing water rights. The

water is then left instream to preserve aquatic habitat and the fishery. This arrangement serves all of the affected interests and ultimately provides for a more sustainable management of the river. The committee is also considering other ways to improve the timing of water flows, such as forest management practices and water storage facilities. Given the technical nature of these strategies, the committee relies on officials from federal and state resource management agencies to provide technical information and advice on the consequences of different scenarios.

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proach to resolving disputes over natural resources, as a successful example of the type of place-based, citizen-driven collaborative forums that are emerging all over the West. But a closer look reveals that collaboration is just one of the strategies used by the committee. In fact, the committee relies on a mix of problem-solving strategies that are too often viewed as competing or exclusive of one another, including public involvement, scientific management, and adherence to water laws dating back 150 years.

To better understand this confluence of ideas, this essay presents a brief sketch of the history of natural resource policy and politics in the American West. My intent is not simply to review the history of federal lands policy so ably described by others, but to highlight the major ideas that have shaped the policies, institutions, and strategies that we use to resolve disputes over the use of natural resources.

My goal is to present an overview of the history of ideas for resolving western resource disputes, which in turn will give us a better understanding of the role of collaboration and consensus in western resource policy and politics.

In the Beginning

AFTER LEWIS AND CLARK documented the vast resources of the West, Thomas Jefferson and others believed that the most efficient way to promote rapid development of the West by non-Indians was to allow citizens to claim private rights to the public domain. The foundation of western resource policy emerged out of this belief. It includes a body of nineteenth-century laws, policies, and ideas—referred to by Professor Charles Wilkinson as the “lords of yesterday”—that fostered the settlement, development, and some say the exploitation of the West. The objective of the lords was to transfer public resources into private hands in order to conquer nature.

In his book *Crossing the Next Meridian* (Island Press, 1992), Wilkinson identified five lords of yesterday. The first is the Hardrock Mining Act of 1872, which dedicates more than half of all federal lands to mining as the preferred use. Individuals and corporations may enter federal land and extract gold, silver, copper, uranium, and other hardrock minerals essentially free of charge.

The second and third lords involve federal range and timber lands. In the nineteenth century, the federal government began the practice of allowing free and unregulated grazing of cows and sheep on the public domain. In the forests, logging was assumed to be the highest and best use.

The fourth lord is the Reclamation Act of 1902, which promoted the damming of the West and its impact on the environment, particularly the salmon and steelhead runs in the Pacific Northwest. The fifth and final lord is the prior appropriation doctrine, the defining principle for allocating water use in the West.

These lords of yesterday were fashioned to meet the needs of the frontier West. And, although they arose under social and economic conditions much different from today, the lords endure and remain a significant force in western resource policy due to inertia, powerful lobbying forces, and lack of public awareness. The lords of yesterday are characterized by two dominant themes.

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second



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railroads. Minerals, timber, range, and water were also given away. According to Wilkinson, “settlement was promoted and supported by perhaps the most extensive program of subsidies ever adopted by any government.” Although historian Vernon Parrington called this era “the Great Barbecue,” the point here is not to second-guess federal and state programs during the formative years of the American West. These programs fostered transportation routes, homesteading, family farms and ranches, and needed water supplies. The question is whether, and to what degree, subsidies are appropriate today.

The second dominant theme in the lords of yesterday, and more relevant to this article, is the way in which conflicts were resolved among competing resource users. In 1848, John Sutter and James Marshall discovered gold along the American River in California while building a sawmill. Within a period of two or three years, the population of California increased from two or three thousand people to two or three hundred thousand people. These entrepreneurs faced two problems. First, there were not enough mines for everyone who wanted to be a miner. Second, many of the mines were placer mines located a considerable distance from the nearest stream or river. This required the miners to divert water and build a system for delivering the water to the mine.

Just as there were not enough mines for all the people, there was not enough water for all the mines. To maintain their economic interests and sustain a somewhat civil society, the miners developed a common-sense approach to resolve disputes over both issues—first in time, first in right. In short, the first person to lay claim to a mining site and to use water has an exclusive right to that resource. The oldest rights are absolutely superior to more junior rights, and senior users are not required to share the resource.

The idea of first in time, first in right—or prior appropriation—spread throughout the West and continues to be a defining rule in mining and water policy, and significantly shaped grazing and timber policy on western lands during the nineteenth and early twentieth century. The advantage of this idea is that it can efficiently resolve conflicts and competing claims. Although water users and others rely on attorneys and technical experts to clarify the time, place, and use of their appropriations, the standard for resolving dis-

putes is clear and simple—whoever appropriated the resource first has the right to continue using it.

Although it has faithfully served the West for over one hundred years, the idea of first in time, first in right is proving less and less useful in resolving natural resource disputes as we enter the twenty-first century. Perhaps the most glaring limitation of the idea is that it assumes the first use is still the best use. However, as the values and interests of society evolve, the historic uses of water and land may not effectively serve the needs of today. Recreational, environmental, and other instream uses of water, for example, are increasingly valued and provide an essential ingredient in the booming tourism and recreation industries. The idea of prior appropriation also runs counter to the growing appreciation of the need for more cooperative approaches to resource management. Prior appropriation reinforces the rights of an individual, whereas the typical resource dispute today involves multiple competing jurisdictions, and scientific

Scientific Management

AS THE NINETEENTH CENTURY it was readily apparent that “free and open access” to resources was contributing to wastefulness and lawlessness in the West. Settlers used homestead laws to acquire public lands for cultural purposes. With minimal oversight from the federal government, individuals used land for speculation, not development.

In 1901, President Teddy Roosevelt, with the assistance of Gifford Pinchot, ushered in a new era for governing the use of natural resources. The “efficiency” spread with a religious fervor in all areas of American life. In the arena of natural resources, this meant that the matter, and other resources should be managed by professional forestry, range, and water experts. The goal was rational resource management guided by scientific principles.

The idea of scientific management led to a model of “who” should make decisions, and “how” they

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AS THE NINETEENTH CENTURY came to a close, it was readily apparent that the policy of "free and open access" to western resources was contributing to wasteful development and lawlessness in the West. Settlers were using the homestead laws to acquire public lands for nonagricultural purposes. With minimal oversight from the federal government, individuals often acquired land for speculation, not development.

In 1901, President Teddy Roosevelt, with the assistance of Gifford Pinchot, ushered in a new idea for governing the use of natural resources. During the turn of the century, the progressive "gospel of efficiency" spread with a religious zeal throughout all areas of American life. In the natural resources arena, this meant that the management of land, water, and other resources should be turned over to professional forestry, rangeland, wildlife, and other experts. The goal was rational and efficient management guided by scientific knowledge.

The idea of scientific management provided a model of "who" should make resource management decisions, and "how" those decisions should be

made. Scientifically trained professionals would gather information and then, through a process of rational decision making, seek "the greatest good for the greatest number of people."

According to Julia Wondolleck in *Public Lands Conflict and Resolution* (Plenum Press, 1988), this idea of progressive conservation or scientific management took root for three reasons: "First, a problem existed. There was widespread fraud and abuse of resources contained in the public domain, and . . . no means . . . [to] control this abuse. Second, an organized and influential profession provided a rational solution to the problem. Conservationists had a United States President enthusiastically supporting their efforts, and they had scientific documentation for their claims. Third, the political and social climate at the time promoted efficiency and management in government."

Scientific management is illustrated by a number of policies and institutions created at the turn of the century—the Reclamation Act of 1902, the Federal Power Act of 1920, and the Mineral Leasing Act of 1920. More recently, the Endangered Species Act of 1973, the Forest and Rangeland Renewable Resources Planning Act of 1974, the National Forest Management Act of 1976, the Federal Land Policy and Management Act of 1976, and several other federal land policies that embrace the ideals of scientific management. From an institutional perspective, the idea of scientific management is perhaps best illustrated in the policies and practices of the US Forest Service. These policies and institutions, and the ideology of scientific management, continue to play a dominant role of resource policy and politics in the West.

Gifford Pinchot, Aldo Leopold, and other champions of scientific management argued that expert decision making is needed to prevent exploitation and to assure the wise development of resources for future generations. However, a number of economists and others have raised serious doubts about the efficacy of the scientific management paradigm. Robert Nelson, for example, in *Public Lands and Private Rights: The Failure of Scientific Management* (Rowman and Littlefield, 1995), argues that, from the beginning, scientific management has fallen far short of its goal. It assumes that society can set clear goals in the political process, and then allow expert managers to efficiently accomplish the goals in the

administrative process. But what if society could not agree on the values or goals of resource management? What if decisions about means and ends could not be so neatly separated?

Public Involvement

BY THE LATE 1950S and on through the early 1970s, it became increasingly clear that resource management agencies needed additional direction on how to resolve the growing disputes among public resource users. How should we determine the best use among all those competing uses? How should we resolve the inevitable disputes among competing natural resources uses and values? During this period, there appeared to be a recognition and acceptance that natural resource decisions involve not just technical facts, but also values. Thus, we not only need scientific experts, but citizens to be actively involved in the decision-making process.

In response to these compelling questions, Congress passed a series of laws that defined procedures rather than goals or objectives per se—for example, the National Environmental Policy Act of 1969, the National Forest Management Act of 1976, and the Federal Land Policy and Management Act of 1976. These laws require land management agencies to weigh social, economic, and environmental factors, but do not set priorities among competing policy objectives. In lieu of telling the agencies what to do, Congress told them to "consult the public" at every stage of the decision-making process.

These new laws, and the requirements for public participation, emerged for three apparent reasons. First, many more people became "recreational" users of western lands, and thus had a stake in how the land was managed. Until the 1960s, the primary stakeholders of federal land were farmers, ranchers, loggers, miners, and other commodity interests. Second, the ideology of environmental quality and preservation, which had been around since at least the turn of the century, became a significant influence in the 1960s and 1970s. So much so that the "public" in public participation was almost synonymous with conservation and environmental interests. And finally, the "public" was better educated and more sophisticated politically than it was during the first five decades of

the twentieth century. Consequently, it was less inhibited about speaking out and challenging the analysis and conclusions of public officials.

With the slate of new laws, officials hoped to create a process where scientific and technical expertise could be integrated with social and political values, thereby producing fair, effective, and efficient decisions. Although government officials provide numerous opportunities under these laws for public involvement, there is often a sense of dissatisfaction with the process and its outcomes.

David Mathews, in *Politics for People* (Univ. Illinois Press, 1994), helps explain this dissatisfaction by suggesting that something is missing in politics as usual: "a diversity of perspectives, listening, and the careful weighing of trade-offs. . . the ability to keep an open mind, to stand in another person's shoes, to change, and to make decisions with others." In short, we lack opportunities for public deliberation. Most, if not all, of our public institutions seem to foster a self-centered, adversarial approach to public dialogue. We have very few places where citizens and leaders with diverse viewpoints can engage in public deliberation.

Daniel Kemmis, in the widely acclaimed *Community and the Politics of Place* (Univ. Oklahoma Press, 1991), goes further and argues that our dissatisfaction with existing institutional arrangements for public decision making can be traced back to the debate between Madison and Jefferson. The debate over the location of power in public life has always been, in Kemmis' terms, between "face-to-face" democracy (Jefferson's preference) and the "procedural republic" (Madison's preference and one of the defining characteristics of our current system).

Collaboration and Consensus Building

IN THE 1970s, the context for resolving natural resource disputes in the American West began to change. In 1973, two mediators initiated and then facilitated a negotiation over a proposed flood control dam on the Snoqualmie River in Washington. This effort is widely acknowledged as the first instance of environmental mediation in the United States, pioneering a new way to approach land, water, and other resource management disputes. After a year of ne-

gotiation, an agreement was forged around plans to construct the dam, manage floods, control land uses, and create a watershed coordinating council.

From this modest beginning, the use of negotiation, mediation, consensus building, and other collaborative problem-solving methods—often referred to as the field of public dispute resolution—has grown dramatically in the past two decades. Today, these approaches are used by citizens and officials to shape legislation, administrative rules, and inter-governmental agreements. They are also employed by a number of place-based collaborative initiatives, including watershed councils, study groups, and ongoing community forums. Collaboration has been used to address a variety of western resource issues, such as growth and land use, watershed management, federal land policy, endangered species protection, water quality, and hazardous waste policy.

The motivation to discover ways to supplement the traditional processes for public involvement and dispute resolution came largely from the discontent of stakeholders—people with a stake in an issue or decision—with the conventional, adversarial processes. Many traditional forms of public involvement foster a one-way flow of information, from decision makers to stakeholders. There is limited opportunity for mutual learning, and citizens are often frustrated when the final decision does not reflect their input and advice. More formal dispute resolution processes, such as litigation, may provide clarity, legal precedent, and a sense of closure, but such processes typically result in winners and losers and impaired relationships. The underlying problems may also go unresolved.

The idea of cooperative decision making has a rich and diverse history. Beginning with the book of Romans, Paul summarizes the biblical tradition of peacemaking by declaring: "If it is possible, as far as it depends on you, live at peace with everyone." This tradition of peacemaking was transplanted to the new world and, far from being the "alternative" it is often presented as today, was the norm. Religious congregations, ethnic groups, and some business circles embraced the values of individual responsibility, mutual trust, and the absence of adversarial courts and lawyers.

In addition to this rich history of informal approaches to dispute resolution, the field of public

dispute resolution has also drawn inspiration from labor relations, small group dynamics, social activism, and the tradition of barn raising. The final source of inspiration for public dispute resolution is the larger field of conflict resolution, including interpersonal, family, organization, community, commercial, and international areas of practice. The theory and practice of public dispute resolution has both benefited and contributed to these other arenas.

After twenty-five years of experimentation, the theory of public dispute resolution now seems relatively well established. Scholars and practitioners have more or less agreed on when to use collaborative methods and how to design and manage effective processes, and how to successfully participate in such processes. The field is now starting to take a hard look at the "success" of such processes, which should produce some interesting observations when collaborative processes are compared to other approaches to resolve disagreements over western resources.

The many citizen-initiated forums emerging in the West and described in the *Chronicle of Community* may be the logical conclusion of decentralizing decision making, from the federal government to state government to local government to citizens. These efforts reflect a renewal of citizenship, and complement the efforts of government officials to convene collaborative forums on resource decisions. While we should encourage both citizens and officials to initiate collaborative forums, citizens need to keep in mind that if their intent is to influence public policy, they need to link their efforts to formal decision-making processes.

A Confluence of Ideas

THE HISTORY OF POLICIES and institutions we use to resolve natural resource disputes in the West represents a confluence of ideas as we enter the twenty-first century. Each one of the major ideas or paradigms presented above—the lords of yesterday, scientific management, public involvement, and collaboration—emerged to meet the changing needs of people and communities in the West. This confluence of ideas also reflects the

unique characteristics of the western landscape—open space, aridity, and the dominance of federal lands.

While it is important to debate the merits of these different ideas, it is also important to realize that they are not mutually exclusive and all have a role to play in shaping fair, effective, and efficient policies. The challenge for citizens, officials, scholars, and anyone who cares about the West is not as simple as arguing that resource decisions should be dominated by the lords, scientific management, or public opinion. On the contrary. As illustrated by the Big Hole River Watershed Committee, the challenge is to match the idea or the process to the situation; to know when to apply what tool.

A large part of this challenge is to put the use of collaboration and consensus building into perspective. We need to learn when to use it, when not to use it, and how to use it effectively. Collaboration is not a panacea. It has been used to successfully resolve some very contentious issues, and does offer some hope for improving the shape and function of governance in general. Integrating collaborative processes into the regular business of public decision making, however, is a long-term experiment in shaping a more effective political culture, revitalizing the role of citizenship, and improving existing institutional arrangements for making public policy.

Within the confluence of ideas for governing western resources, perhaps it is most useful to view collaboration as one vehicle to help society define the goals of resource management. Once we have a common understanding and perhaps agreement on goals, then we can debate the efficacy of using the lords, scientific management, and other "means"—such as free market environmentalism—to achieve the goals. **G**

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