Watershed Councils East and West: Advocacy, Consensus and Environmental Progress

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I.
INTRODUCTION

The views in this article originate from an experience I had at a national rivers conference in 1993, replicated dozens of times in the subsequent ten years, where conference participants were using the term "watershed councils" in ways that assumed everyone was talking about the same thing. Few in the audience then (and it still is true today) knew the distinctive regional differences in structure, law and culture in organizations often called watershed councils from coast to coast in the United States. The broad scope of watershed institutional history in the United States includes the analysis of the effects of forests on water supplies by George Perkins Marsh in Vermont in the 1860s,[2] the efforts to create the Adirondack Park in New York in the 1880s and 1890s,[3] and the seminal work of John Wesley Powell and his report on the arid lands of the great American West in 1878.[4] These are all

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2. GEORGE PERKINS MARSH, MAN AND NATURE OR PHYSICAL GEOGRAPHY AS MODIFIED BY HUMAN ACTION (David Lowenthal ed., Belknap Press 1965) (1864).

3. FRANK GRAHAM JR; THE ADIRONDACK PARK: A POLITICAL HISTORY 79-132 (1978).

4. JOHN WESLEY POWELL, REPORT ON THE LANDS OF THE ARID REGION OF THE UNITED STATES WITH A MORE DETAILED ACCOUNT OF THE LANDS OF UTAH (Wallace Stegner ed., Belknap Press 1962) (1878).

antecedents of regional differences in governance and activism which endure to this day. More importantly, the nascent emergence of ecosystem law and policy in the twenty-first century[5] is best served by a clear understanding of common terminology and conceptual approaches.

In the spirit of cross-fertilization and further development of ecosystem law and policy, the views in this article are based on a twenty-year history of work in watershed ecosystem protection and restoration. Because of positions in local watershed organizations in New England and moving to regional work for American Rivers in the Northeastern United States and Canada, For the Sake of the Salmon in the Pacific Northwest, along with national and international work at River Network, as a private consultant, university professor, and at the Rivers Foundation of the Americas, I cannot address these issues as a disinterested academic. It is, however, the knowledge acquired through this diversity of experience and involvement that makes the analysis possible.[6]

II.

WATERSHED: THE BUZZ WORD OF THE 1990S

"Watershed protection and restoration" was the "new" environmental buzz phrase of the 1990s, and watershed ecosystem restoration will continue to be a focus far into the future. The enthusiasm for characterizing the newness of the watershed approach to ecosystem management and restoration is best represented by the important 1993 book from the Pacific Rivers Council entitled *Entering the Watershed: A New Approach to Save America's River Ecosystems (1993).*[7] Partly in response to the ideas in *Entering the Watershed*, conservation techniques shifted dramatically over the decade to more comprehensive watershed ecosystem approaches. The emphasis in the West (and in

5. *See* RICHARD O. BROOKS, ET AL., LAW AND ECOLOGY: THE RISE OF THE ECOSYSTEM REGIME (2002).

6. The author gratefully acknowledges the assistance of Professor Michael Black of Harvey-Mudd College; Professor Craig Shinn of Portland State University; Larry MacDonnell of Porzak, Browning and Bushong, L.L.C. in Boulder, Colorado; Doug Kenney of the Natural Resources Law Center at the University of Colorado-Boulder; Lynne Paretchan of Perkins Coie in Portland, Oregon; Erin Ergenbright; Professor Steve Born of the University of Wisconsin – Madison; Professor Richard Brooks of Vermont Law School; and Sarah van de Wetering and the editorial staff of the late, great Chronicle of Community.

7. See Bob Doppelt et al. Entering the Watershed: A New Approach to Save America's River Ecosystems (Island Press 1993).

federal agencies nationally and some state agencies in other regions of the United States) moved towards comprehensive restoration and away from single focus efforts on water, air, and land pollution and degradation issues.

Following the lead of the national organization River Network (whose work changed between 1988 and 1993 from "helping local people protect rivers," to "helping people organize to conserve their river watershed"), masses of agencies and non-governmental organizations (NGOs) began the same shift during the mid-1990s. That shift had previously occurred within the Pacific Rivers Council as it evolved from the wild and scenic river oriented Oregon Rivers Council at its founding in 1987 to its more comprehensive regional (and occasionally national) watershed approaches to ecosystem restoration and protection in the early 1990s. At that time it seemed, for many people working on environmental issues in the West, that "watershed councils," "alliances," and "associations" in various forms and with various purposes sprang instantaneously, from nowhere, all over the West.[8]

Of course, watershed advocacy of one sort existed in the West from the early decades of the United States federal government's dominion over the region. Though oriented more towards encouraging ecological limits to sensible development of the high desert on the eastern slope of the Rockies, Civil War hero and famed scientist and explorer Major John Wesley Powell spent much of his post Civil War life advocating, and in part implementing, a watershed approach to the rivers of the West.[9] Wallace Stegner, in an introduction to a 1962 reprint of Powell's seminal 1878 *Report on the Lands of the Arid Region of the*

8. An organization founded in 1988 by Phil Wallin, River Network is still the only national organization with the good sense to base its headquarters in Oregon and its field offices in Washington DC and other regions. *Available at* http://www.rivernetwork.org; author was Director of National River Leadership at River Network from 1992-96. Oregon was chosen as the national headquarters for River Network largely because of the 1988 work of the Oregon Rivers Council energizing the region's river paddlers and activists with the biggest Wild and Scenic River designation bill ever passed by Congress (Omnibus Oregon Wild and Scenic Rivers Act of 1988, Pub. L. No. 100-557, 102 Stat. 2782 (codified as amended at 16 U.S.C. §§ 1271, 1274, 1276 (2003)) (adding 40 outstanding river segments totaling 1,500 river miles to the National Wild and Scenic River system in Oregon and remains the largest river protection legislation in the nation's history *at* http://www.pacrivers.org/about/index.cfm?ArticleID=1044 (last visited Apr. 27, 2004).)

9. *See* WALLACE STEGNER, BEYOND THE HUNDREDTH MERIDIAN: JOHN WESLEY POWELL AND THE SECOND OPENING OF THE WEST (First Bison Book ed., Univ. of Neb. Press 1982) (1954).

United States with a More Detailed Account of the Lands of Utah, said, "Essentially, Powell's Report . . . was a sober and farsighted warning about the consequences of trying to impose on a dry country the [land use] habits that have been formed in a wet one."[10]

Watershed councils and the watershed approach to ecosystem restoration have a long and effective history in New England, as well as in other parts of the East and Midwest. The eastern version of watershed advocacy, oriented in large part to ecological restoration, began while Major Powell's efforts at the end of the nineteenth century to bring the conquering white pioneer's governance of natural resources and political boundaries in sync with the river watershed basins of the West failed dismally.[11] In the wet East referred to by Powell and Stegner, the first campaign to "restore" a river watershed built an eventually successful effort just as Powell's twenty-two-year campaign sputtered and ended.

III.

ORIGINS OF WATERSHED RESTORATION: THE MERRIMACK RIVER WATERSHED AND THE WEEKS ACT OF 1911[12]

In 1885, 680 timber companies were indiscriminately cutting trees in the headwaters of the Merrimack River, in the White Mountains of New Hampshire. In their wake they left denuded hillsides, streams choked with runoff, and devastating forest fires that fed on the piles of slash and waste. As logging railroads pushed the cutting higher into the mountains, visitors to the

10. Wallace Stegner, *Introduction* to JOHN WESLEY POWELL, REPORT ON THE LANDS OF THE ARID REGION OF THE UNITED STATES: WITH A MORE DETAILED ACCOUNT OF THE LANDS OF UTAH, xiv (Belknap Press, Harvard Univ. Press) (1962) (explaining Powell's watershed oriented efforts).

11. *Id.* at xi-xii.

> Behind Powell's general plan was something absolutely basic: the willingness to look at what was, rather than at what fantasy, hope, or private interest said there should be. . . . On the foundations of the obvious, the report built a program of the logical. But as often happens, the obvious and the logical were not enough to convert and convince.

See also Theodore M. Smith, *Watershed Counties*, RIVER VOICES, Vol. 6 No. 3, Fall/Winter 1995, at 8.

12. *See generally,* Richard Ober, *The Weeks Act of 1911, in* AT WHAT COST? SHAPING THE LAND WE CALL NEW HAMPSHIRE 43 (Richard Ober ed., 1992).

grand resort hotels of the Whites were greeted by burned over hillsides and great clouds of smoke.[13]

Textile mill owners downstream on the Pemigewasset and the Merrimack watched helplessly as erosion-fueled freshets and summer droughts alternately flooded and spun their wheels. In the late 1890s, concerned editorials started to appear in the Boston and New York newspapers while a handful of early conservationists huddled with business and political leaders. In 1899, an Episcopal missionary from northern New Hampshire found the critical human angle that started to turn the tide. The Rev. John E. Johnson wrote an incendiary pamphlet that accused the New Hampshire Land Company–a Hartford, Connecticut-based concern that was buying and consolidating large tracts to sell to the timber companies–of genocide.[14]

In early 1901, former New Hampshire Governor Frank West Rollins convened a meeting of nine friends from a range of backgrounds. They called themselves the Society for the Protection of New Hampshire Forests (the Forest Society). The Forest Society was (and still is) an amalgam of New Hampshire's political power and Boston's social and financial elite, plus a seasoning of conservationists, foresters, outdoors enthusiasts and hardy Yankee townspeople.[15] United with advocates for a southern Appalachian reserve, the Forest Society coalition decided that the only adequate response was federal ownership and restoration of the mountain forest.

Leisure, timber, and scenery were all factors in the fight to establish the White Mountain National Forest but it was water that turned the battle. In a letter to Congress included in a booklet entitled, "Reasons for a National Forest Reservation in the

13. The western United States since 2000 is experiencing a similar period of catastrophic wildfires due to in large art to a century of forest mismanagement and fifty years of fire suppression policy by the U.S. Forest Service symbolized by the Smokey the Bear campaign. *See e.g.* T.R. Reid, *West Braces for Intense Fire Season: Drought and Early Spring Blazes Portend a Long, Hot Summer, Authorities Say*, WASHINGTON POST, April 25, 2004, at A03; Ray Ring, *Losing Battle*, HIGH COUNTRY NEWS, May 23, 2003, *available at* http://www.hcn.org/servlets/hcn.Article?article_id=13984 (last visited Apr. 27, 2004); Ray Ring, *Firespeak Catastrophe*, HIGH COUNTRY NEWS, May 23, 2003, *available at* http://www.hcn.org/servlets/hcn.Article?article_id=13985 (last visited Apr. 27, 2004).

14. Ober, *supra* note 12, at 43. It is pitiful and ironic that this term was applied to trees but not to the indigenous inhabitants of the region, the vast majority of whom by that time were essentially exterminated.

15. Interests originally represented ranged from the altruistic (the Appalachian Mountain Club) to the commercial (American Pulp and Paper Association). *Id.*

White Mountains," Amoskeag Manufacturing Company President T. Jefferson Coolidge blamed clearcutting upstream for the alternating floods and droughts damaging his mills on the Merrimack in Manchester. Soon, over 100 mill owners in the watershed joined the fray.[16]

Finally, in 1911, with the support of Midwest Progressives and sponsored by Representative John Weeks of Massachusetts (a New Hampshire native), Congress passed an Eastern forest reserve bill that was signed by President Taft. The legislation, called the Weeks Act, enabled the federal government to purchase privately owned land to protect the headwaters of "navigable streams."

No region of the country was specifically named, but within a year of passage, the federal government began land acquisition in the White Mountain National Forest.[17] Eventually the Weeks Act would enable the creation of fifty national forests in the East. In some ways it was perhaps appropriate that Powell died way "down East" in Haven, Maine in 1902, just as the first successful effort to "restore" a major river watershed was building a head of steam in the mountains of New Hampshire.[18]

16. *See* THEODORE STEINBERG, NATURE INCORPORATED: INDUSTRIALIZATION AND THE WATERS OF NEW ENGLAND (1991) (detailing an account of nineteenth-century Merrimack watershed dam fights and dynamite clashes between fishermen and industry that in many ways parallels the current debates about dams and industry on the Columbia and Snake Rivers).

17. For those who think that Yellowstone and Yosemite have problems with overvisitation, the White Mountain National Forest had over seven million visitors in 1999–more than Yosemite and Yellowstone combined—in a fraction of their combined area of land. Estimates are derived from: Interview with Staff, White Mountain National Forest Supervisor's Office, in Laconia, N.H. (Aug. 2000); USDA FOREST SERVICE REGION 9 WHITE MOUNTAIN NATIONAL FOREST, NATIONAL VISITOR USE MONITORING RESULTS (Aug. 2001) (estimating 2.7 million visits with an average of 2.3 people per vehicle in 2000). *Available at* http://www.fs.fed.us/recreation/programs/nvum/reports/year1/R9_White_Mtn_final.htm#_Toc524933387 (last visited April 26, 2004). *See also,* WHITE MOUNTAIN NATIONAL FOREST, ABOUT US, *at* http://www.fs.fed.us/r9/white/about_us. Yellowstone National Park reported 3,120, 830 visitors in 1998. *Available at* http://www.yellowstoneparknet.com/geninfo/info_facts.htm#visitation (last accessed April 27, 2004); Yosemite National Park estimated 1999 visitation at 3,493,607. *Available at* http://www.yosemite.national-park.com/info.htm#siz.

18. DONALD WORSTER, A RIVER RUNNING WEST: THE LIFE OF JOHN WESLEY POWELL 569 (2001).

IV.
STRUCTURAL AND CULTURAL DIFFERENCES IN WATERSHED COUNCILS EAST AND WEST

Along with over a century of history of watershed advocacy pioneered by the Forest Society, watershed councils, associations and alliances have existed for thirty to fifty years in many northeast watersheds. The very existence of the EPA Office of Wetlands, Oceans and Watersheds (OWOW) was inspired by some New England projects in the 1980s.[19] Thus, this "new" watershed approach, facilitating place-based ecosystem conservation, is not so new.

The term "watershed council," however, has important regional differences that often are glossed over in the rush by former Interior Secretary Babbitt and others to praise such organizations.[20] In the West it implies a consensus-based decision process, while in the East watershed councils imply a different animal altogether.

A. *East*

In the East, watershed councils are most often private nonprofit river watershed protection associations, with dues-paying members and professional staff working with volunteers. These councils educate and advocate for broadly based river protection and restoration as independent "501 (c)(3)" environmental groups granted nonprofit charity status by the Internal Revenue Service. Funding for these groups begins with their members and individual donors, grants from private foundations, business contributions, and, occasionally, government grant programs.

Eastern watershed councils often have a twenty to sixty year history as independent advocacy organizations preaching water-

19. The formation of OWOW was inspired by the Buzzards Bay Project and the Merrimack River Watershed Initiative, both run by EPA's Region One office in Boston in the late 1980s, which in turn followed upon the early experience of the Chesapeake Bay Program (author served on citizens' advisory committee of the Buzzards Bay Project from 1986 to 1988). MICHAEL R. DELAND, MERRIMACK RIVER WATERSHED PROTECTION INITIATIVE: PAST, PRESENT AND FUTURE (U.S. Envtl. Prot. Agency, Region One) (1987) (on file with author).

20. *See, e.g.*, Secretary Bruce Babbitt, Remarks at National Press Club, Washington D.C. (Dec. 13, 1995). In defense of Babbitt, and other reporters and researchers, it is often difficult to distinguish the characteristics of the organizations in any region by their self-description in mission statements and brochure blurbs. Accurate characterization requires analysis of their activities and track record over time – knowledge that is not easily obtained by outside analysts.

shed management/ecosystem protection for multi-state watersheds. Examples include the Connecticut River Watershed Council founded in 1952,[21] the Merrimack River Watershed Council founded in 1978,[22] the Nashua River Watershed Association founded in 1969,[23] the Housatonic Valley Association founded in 1941,[24] and even the tiny Massachusetts and Rhode Island watershed of the beautiful ecological treasure of the Westport River. The Westport River Watershed Alliance was founded in 1976 as the Westport River Defense Fund.[25]

Watersheds and watershed advocacy and management vary tremendously in size and organization in the East and Midwest. River basins with watershed councils range from tiny 100 square mile coastal watersheds like the Westport River watershed, to 12,000 square mile watersheds like the Connecticut River valley of Vermont, New Hampshire, Massachusetts and Connecticut. Watershed protection and restoration efforts in the East, South and Midwest often include statewide umbrella groups like the Massachusetts Watershed Coalition, the River Alliance of Connecticut, New York Rivers United, the River Alliance of Wisconsin, the Minnesota Rivers Council, and the Alabama Rivers Coalition, and, sometimes, large regional groups like the twenty-three-state Mississippi River Basin Alliance. These organizations often provide policy communication, organizational and technical support and other services to local groups in their area, in addition to pursuing their own statewide or regional policy, advocacy, and education agendas.

B. *West*

In the West, the term watershed council usually means a quite different kind of organization (though some groups based on the eastern model exist in the West as well and vice versa). Western watershed councils usually have several differentiating characteristics from their eastern counterparts. First, they are usually "multi-stakeholder" organizations. That is, their governing

21. The Connecticut River Watershed Council *at* http://www.ctriver.org/about_us/index.html (last visited April 25, 2004).

22. THE RIVERS REACH (Merrimack River Watershed Council) Spring 1979 at 16.

23. The Nashua River Watershed Association *at* http://www.nashuariverwatershed.org (last visited April 25, 2004).

24. The Housatonic Valley association *at* http://www.hvathewatershedgroup.org.html (last visited April 25, 2004).

25. The Westport River Watershed Alliance *at* http://www.wrwa.com/about.htm (last visited April 25, 2004).

boards (which are often informally organized without incorporation as nonprofits or any other kind of recognized legal entity) include not only self-identified environmental activists, but also, depending on the primary local constituencies of the watersheds, include ranchers, farmers, and other business people; federal, state and local agencies like USDA or the Forest Service; County Commissioners, local agricultural districts and others with direct economic interests in the watershed. In fact, some Western watershed councils specifically exclude some environmental activists or organizations from participating with the councils.[26]

Second, Western watershed councils generally run on some sort of consensus-based decision-making model. Consensus-based decision-making means that the council will not make any decisions or take any positions unless all members agree. Often these groups have an "open membership" policy, meaning that anyone or any interest group can attend or join a watershed council meeting and/or decision-making process at any time. Some, like the Big Hole Watershed Council in Montana, restrict their membership to carefully defined local stakeholders and specifically exclude stakeholders who are perceived to be too disruptive or radical for the local "powers that be." Some variations on the pure consensus model allow for a version of a super-majority vote in situations where consensus is not reached.

Third, Western watershed councils are most often highly dependent on government funding or "certification" for funding and/or staff assistance. The Rocky Mountain and Pacific Coast states now have over 400 watershed councils[27] at various stages of maturity. Some are staffed; most are not. They vary widely in composition, level of technical expertise and experience in collaborative decision-making.

One interesting Western "super council" is For the Sake of the Salmon (FSOS). FSOS reflects each of the three main characteristics of Western watershed councils discussed above, but on a regional basis. FSOS was organized in late 1995 as an unincorporated, voluntary association with no statutory authority, which acts, in a quasi-governmental capacity on a regional basis. It was

26. THE NEW WATERSHED SOURCE BOOK: A DIRECTORY AND REVIEW OF WATERSHED INITIATIVES IN THE WESTERN UNITED STATES (Doug Kennedy et al.) (2000) *available at* http://www.colorado.edu/law/centers/nrlc/publications/watershed.htm.

27. RIVER NETWORK AND NATIONAL PARK SERVICE, RIVER AND WATERSHED CONSERVATION DIRECTORY (1998-99). *See also,* KENNEDY et al., *supra* note 26 (providing an excellent analysis of watershed initiatives in the West).

originally inspired by Nisqually tribe elder Billy Frank, chairman of the Northwest Indian Fisheries Commission, who wanted to bring together traditional salmon adversaries with a mission to work to restore and protect Pacific salmon.[28]

At its start in 1995, the FSOS governing board, a voluntary association with no legal authority for management of the funds or staff of the organization, consisted of representatives of the Governors of California, Oregon, and Washington; the Northwest Indian Fisheries Commission; timber, agricultural, commercial and sport fishing industries; conservation groups; power companies; and various federal resource agencies, among others. FSOS operated with funding from various federal agencies, and the states of Oregon, Washington, and California. In the first few years, the State of Oregon employed the executive director, a former state legislator, while the federally created Pacific States Marine Fisheries Commission employed the rest of the staff.[29]

FSOS represents both the promise and pitfalls of pure consensus efforts.[30] Well into its first year of operations, it became clear that the consensus process followed by the FSOS Board was used by industry representatives solely to protect their turf and stop any effective substantive policy advances which would have protected and/or led to the restoration of endangered salmon stocks. This sadly predictable state of operations was evidenced when the principals of many of the interest groups who served on the board began sending junior employees without decision-making authority to represent them at board meetings after the first six months of meetings.

In 2002, FSOS became an independent 501(c)(3) organization governed by a Conservation Council and Executive Committee with a three-person staff. Its programs are now limited to support of non-controversial watershed council efforts with technical, informational, and agency coordination assistance; training

28. Interview with Bill Bradbury, Executive Director, For the Sake of Salmon (Dec. 1995).

29. Authorized by Congress in 1947, the Pacific States Marine Fisheries Commission (PSMFC) is one of three interstate commissions dedicated to resolving fishery issues. Representing California, Oregon, Washington, Idaho, and Alaska, the PSMFC does not have regulatory or management authority; rather, it serves as a forum for discussion, and works for coast wide consensus on marine issues with industry, fishing and conservation organization, and state and federal authorities. PSMFC addresses issues that fall outside state or regional management council jurisdiction. http://www.psmfc.org.

30. Author served as Deputy Director of FSOS starting April 1, 1996, in its first full year of existence before leaving on April 1, 1997.

programs; and grants of federal and state dollars to enhance and restore salmon streams in the three-state region. Efforts to forge board agreement regarding the many institutional governance and structural problems facing salmon were completely dropped by 1999.[31] On March 1, 2004, FSOS announced that it would cease operations and dissolve effective June 1, 2004.[32] Executive Director James Rapp attributed the decision to go out of business to unpaid contracts from the states of Oregon and California.[33]

Most Western councils organize in response to a crisis, often related to endangered species listings under the federal Endangered Species Act or other forest health and water quality issues. Few have regulatory authority. And lack of secure funding tends to inhibit long-term planning. Most observers agree that the probability of success for consensus-based watershed councils is enhanced by skilled facilitation; motivated participants; high-quality, accessible information; and some level of technical support.[34] With encouragement and assistance, these consensus-based watershed councils can play a major role in biodiversity conservation efforts, assuming that is one of their goals.

Experienced observers watch for FSOS-type "death by consensus"—the process that ensues when any one party can block or delay actions by the council, or can force the council to only adopt policies and actions which do not address fundamental issues for the watershed ecosystem. Achieving consensus can be particularly difficult in watersheds with a wide variety of stakeholders and diverse problems and solutions.

C. *Midwest*

In the Midwest, Wisconsin presents an interesting example of the river protection organization trends sweeping the United States in the 1990s. According to the 2001 directory of organiza-

31. Interview with James Rapp, Executive Director, For the Sake of Salmon, Portland, Or. (Mar. 15, 2003).

32. For the Sake of Salmon *at* http://www.4sos.org (last visited April 27, 2004).

33. Interview with James Rapp, Executive Director, For the Sake of Salmon, Portland, Or. (Mar. 4, 2004).

34. *See, e.g.*, SARI SOMMARSTROM, AND CHUCK W. HUNTINGTON, AN EVALUATION OF SELECTED WATERSHED COUNCILS IN THE PACIFIC NORTHWEST AND NORTHERN CALIFORNIA 5-13 (2000) *available at* http://www.pacrivers.org/article_view.cfm?ArticleID=1054&RandSeed=93313. *See also,* DOUGLAS S. KENNEY, ARGUING ABOUT CONSENSUS: EXAMINING THE CASE AGAINST WESTERN WATERSHED INITIATIVES AND OTHER COLLABORATIVE GROUPS ACTIVE IN NATURAL RESOURCES MANAGEMENT (2000).

tions working on river conservation published by the statewide advocacy group River Alliance of Wisconsin,[35] of the approximately thirty-six self-identified river advocacy organizations in the state, twenty-four were founded since 1994. More notable is the higher percentage of multi-stakeholder "watershed councils" founded since 1994 – approximately nineteen of twenty-four. Much of the growth of both the local advocacy organization and the multi-stakeholder or education-based watershed councils can be attributed to the establishment of the statewide River Alliance in 1993.[36]

In 1992, as the organization of the River Alliance was in process, very few local river protection organizations existed, and then-existing statewide conservation organizations had low priority for efforts based on comprehensive watershed protection and restoration approaches. This in a state with tremendous river resources known for its great fishing and canoeing along with significant pollution problems from both agriculture and industry. Although Wisconsin was the home of one of the nation's older watershed conservation efforts—the Plum Valley Watershed Association founded in 1946—the watershed-based comprehensive approach to river conservation took nearly another fifty years to take hold statewide.[37] Wisconsin was also the home of the first soil conservation effort by the U.S. Soil Erosion Service (the predecessor to the Soil Conservation Service, now known as the Natural Resources Conservation Service) in Coon Valley, Wisconsin in October 1933. A state historical marker on Highway 14 in Coon Valley commemorates this effort as the "Nation's First Watershed Project".

In addition to its current status as a hotbed of river protection activity, Wisconsin is now a world leader in river restoration by dam removal. In the late 1980s and early 1990s, several state agencies were engaged in a somewhat secret effort to remove old and unsafe small dams across the state. In 1994, the River Alli-

35. RIVER ALLIANCE OF WISCONSIN, WORKING FOR THE RIVERS: A DIRECTORY OF CITIZEN-BASED ORGANIZATIONS WORKING FOR WISCONSIN'S RIVERS (2003) *at* http://www.wisconsinrivers.org/LocalGroups/directory.html.

36. The mission of the River Alliance of Wisconsin is to advocate for the protection, enhancement and restoration of our rivers and watersheds. Interview with Todd Ambs, Executive Director, River Alliance of Wisconsin, Madison, Wis. (Oct. 2000).

37. *See* George Laycock and Dorothy Douglas, *Plum Valley*, FARM QUARTERLY, Winter 1947. *See also*, HISTORY OF PLUM VALLEY (Historical Comm. of the Plum Valley Watershed Ass'n) (1946-48); ANNETTE GROSS, REVIEW OF 20 YEARS WORKING TOGETHER (1946-65) (available at the Wonewoc, Wisconsin, Public Library).

ance began a dam removal advocacy program which called attention to the successes of the state's nascent efforts. The Alliance's efforts have since led to worldwide acclaim for its efforts to support the precedent-setting restoration of free-flowing status to the entire Baraboo river and the removal of dozens of small dams throughout the state.[38]

V.

MISSION DIFFERENCES AND COMMON STRATEGIES

Despite the regional differences in organization and mission, the Eastern-type watershed councils also attempt to incorporate a wide variety of economic and other interest groups in their watershed efforts. The Merrimack River Watershed Council (MRWC), for instance, while always active with regulatory and legislative initiatives to protect the watershed, has also spearheaded the Merrimack Business Environmental Network, and has worked closely with private land trusts; government agencies; and recreation, public health, social justice and other groups on a wide variety of projects throughout the diverse urban, suburban and rural 5010 square mile watershed that is home to 1.7 million people.[39]

The MRWC led hard-fought legislative, regulatory and public relations campaigns (including the spectacularly successful New England Coastal Campaign's "Terrible Ten" campaign to eliminate bad water development projects, prevent wetlands destruction, address inadequate sewage treatment, and stop destructive highway expansions) and participating in litigation sponsored by other environmental organizations. The MRWC also co-sponsored the highly successful Merrimack River Forum, a quarterly public meeting with an open agenda and the purpose of facilitating communication about actions and issues affecting the watershed.[40] The MRWC participated in the EPA-sponsored Merrimack River Watershed Initiative, which eventually invested

38. *See* Press Release, River Alliance of Wisconsin, Dam Removal Down Under: River Alliance Shares Wisconsin Experience with Australia, (Sept. 28, 2000) *at* http://www.wisconsinrivers.org/NR0928.html.

39. EPA MERRIMACK RIVER INITIATIVE, MERRIMACK RIVER WATERSHED POPULATION DENSITY AND PROJECTED CHANGE (Mar. 1996) (projection population to 2010 from the plotted map) (on file with author).

40. The author served as Executive Director of the MRWC and oversaw these activities in 1988-89.

over $20 million in various multi-stakeholder watershed restoration and protection efforts between 1986 and 1996.[41]

VI.

EVOLUTION OF THE COUNCILS AND THE LORDS OF YESTERDAY

In at least a couple of ways, the differences in the Eastern and Western models owe much to two factors: first, in the West, the dominance of what Charles Wilkinson calls the "Lords of Yesterday,"[42] and second, the older age of the earliest councils in the East.

The "Lords of Yesterday" are a collection of laws, policies and ideas that include the Hard Rock Mining Law of 1872; the prior appropriation doctrine for water use which originally arose out of the "forty-niner" gold mining camps in California; the public range lands statutes and the Bureau of Land Management; the Organic Act of 1902 which established National Forest lands and the multiple use concept of forest management, as well as what Marc Reisner calls the "Age of Dams;" the Reclamation Act of 1902; the Bureau of Reclamation; the Army Corps of Engineers and the damming of the West.[43] The attitudes embodied by these "Lords of Yesterday" towards the environment of the West have been characterized as covering the entire gamut of attention—from indifference to disdain to contempt.

Several of these "lords" are in major transition. The era of dam building has been over for ten years and we are now entering the era of dam removals.[44] The first major dams are starting to come out. A settlement has been made to remove the Elwha dams in Washington; the Edwards Dam in Maine, built illegally in 1838, came out in 2001. An enormous debate over dam removal is raging around the Snake River, and dams have been removed, or approved for removal, in Wisconsin, Maine, Florida, Pennsylvania, Massachusetts, New Hampshire, Oregon, Washington, North Carolina, Virginia, and California. The state of Wisconsin has removed over 100 dams in the last decade and

41. Interview with Ralph Goodno, President, Merrimack River Watershed Council, Lawrence, Mass. (June 2, 1999).

42. CHARLES WILKINSON, CROSSING THE NEXT MERIDIAN: LAND, WATER AND THE FUTURE OF THE WEST, ch. 1 passim (1992).

43. Or as I call it, "Dominy's Domination," after former Commissioner of Reclamation Floyd Dominy.

44. Rita Haberman, *Dam Fights of the 1990s: Removals*, RIVER VOICES, Vol. 5 No. 4, Winter 1995.

many more are on tap. To a lesser extent there has been a change in rangeland management with slight rises in federal lease fees and minor changes in range management requirements.[45]

VII.
BEYOND THE REVOLUTION

Some people have said that the revolution is over, that the West has changed fundamentally and will never go back to the way it was. A 2000 issue of High Country News had an article with the headline "Beyond the Revolution."[46] The article maintained that the revolution in the use of public lands in the West had been completed largely because of the Clinton Administration's actions to declare national monuments all over the West, and its imposition of a policy to protect all remaining roadless areas in the nation's national forests.

That judgment was, and is, premature.[47] The ineffective and exclusionary structure of many watershed councils is an indication of the stranglehold the "lords" still have on the West. Salmon runs are in a quagmire in the Northwest because salmon deal with all five of the "lords of yesterday" discussed above. Salmon get slammed by forest clearcuts that increase stream temperatures and stream sedimentation. Salmon get slammed by dams that raise water temperatures to sometimes lethal levels in reservoirs, block spawning migration from the ocean and block or slow outward migration from the spawning grounds. Salmon get slammed by uncontrolled grazing and its destruction of riparian habitat; they get slammed by mining waste and its poisonous residue and sediment runoff. Every single "Lord of Yesterday" hits the salmon issue, so it is no surprise that salmon populations have been in a severe downward spiral in the last thirty years.[48]

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45. *See generally* American Rivers *at* http://www.amrivers.org/index.php?module=HyperContent&func=Displayview&shortname=Riversunplugged (discussing dam removal).

46. Ed Marston, *Beyond The Revolution*, HIGH COUNTRY NEWS, Vol. 32 No. 7, April 10, 2000.

47. *See, e.g.*, ROBERT PARKS AND GREGORY WETSTONE, NATURAL RESOURCES DEFENSE COUNCIL, REWRITING THE RULES: YEAR-END REPORT 2002, THE BUSH ADMINISTRATION'S ASSAULT ON THE ENVIRONMENT (2003) (discussing the many Bush Administration's regulatory rollbacks and repeals of Clinton era regulations).

48. *See* Bruce A. Stein and Stephanie R. Flack, *1997 Species Report Card: The Status of U.S. Plants and Animals* (The Nature Conservancy, 1997), *available at* http://www.conserveonline.org; Willa Nehlsen et al., *Pacific Salmon at the Crossroads: Stocks at Risk from California, Oregon, Idaho, and Washington*, FISHERIES, Mar.-

The legal structures that sustain the "lords" while devastating the salmon and other listed species also heavily influence the structure of the watershed councils and limit their effectiveness. For instance, the government certification of watershed councils that is required by statute in Oregon for state funding eligibility arose out of a political recognition that the "lords" of irrigation and agriculture controlled the politics of many county commissioners and state legislators, particularly from rural areas of eastern Oregon. Hence, the Oregon legislative requirement that county commissioners certify council eligibility for state funding[49] was a buy-in to build support from the "lords'" agricultural and mining interests in the legislature in order to pass appropriations for restoration projects.

On the federal side, much of the restoration funding is funneled through the Natural Resources Conservation Service (NRCS) and its local conservation districts. While this "lord" has broadened its purposes somewhat with a name change from "Soil Conservation" to "Natural Resources Conservation," the ubiquity of the locally-based and federally-funded agricultural assistance infrastructure has kept agricultural interests dominant in the power base of many local watershed councils.

The consensus-based structure of most Western watershed councils removes the potential independence of local restoration

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Apr. 1991, at 4; Phillip R. Mundy, *Status and Expected Time to Extinction for Snake River Spring and Summer Chinook Stocks: The Doomsday Clock and Salmon Recovery Index Models Applied to the Snake River Basin* (Trout Unlimited, July 6, 1999) (concluding that without prompt and significant action, wild Snake River spring and summer chinook salmon will be extinct between 2008-2017); COMMITTEE ON RESTORATION OF AQUATIC ECOSYSTESMS: SCIENCE, TECHNOLOGY AND PUBLIC POLICY ET AL., RESTORATION OF AQUATIC ECOSYSTEMS: SCIENCE TECHNOLOGY AND PUBLIC POLICY BY THE NATIONAL RESEARCH COUNCIL (National Academy Press, 1992); U.S. Environmental Protection Agency, *Liquid Assets 2000: America's Water Resources at a Turning Point* (Office of Water, EPA 840-B-00-001, May 2000); OREGON PROGRESS BOARD, THE OREGON STATE OF THE ENVIRONMENT REPORT 2000 108 (2000); U.S. Environmental Protection Agency, *Water Quality Conditions in the United States: A Profile from the 1998 National Water Quality Inventory Report to Congress* (Office of Water, EPA 841-F-00-006, June 2000).

49. Or. Rev. Stat. S 541.388 (2003). In fact, For the Sake of the Salmon's 2003 Technical Assistance Program Announcement of Funding Availability is specifically limited to state certified watershed councils or Soil and Water Conservation Districts. For the Sake of the Salmon, Announcement of Funding Availability: Technical Assistance Small Grants for Watershed Councils/Soil and Water Conservation Districts, *at* http://www.4sos.org/tad/smallgrant/SmallGrantAnnouncement.pdf. Further restrictions on the grant program include a criterion that projects show a high likelihood of completion in one year after project development and design technical assistance.

efforts and ensures continued dominance of the Lords of Yesterday. This dominance is asserted through deliberate exclusion of environmental group representatives perceived as too "green,"[50] through self-censorship of environmental advocates who fear loss of funding for projects, and through provision of payroll and other fund tracking services for councils who hire staff coordinators with state and federal funds. These payroll services limit the ability of the councils to disagree both with the agricultural interests which dominate the conservation districts in the West, and with the agencies that fund project work, because the coordinators are often federal or state employees due to the administrative services offered by the agencies to the unincorporated councils. As Stegner noted in 1962, "The West relies on a degree of federal paternalism that it is not always happy to accept and the benefits of which it is not always happy to acknowledge."[51]

In the East, while groups like the MRWC and WRWA work closely with various governmental entities including NRCS, those government entities do not control the formation of the councils and they do not certify the councils for funding, as happens in Oregon and Washington and increasingly among federal agency funding programs. Instead of basing funding decisions first on the structure of the councils, most, if not all, of the Eastern state governments' restoration and education funding is distributed according to assessments of the efficacy of the proposed restoration projects.[52] Public support for the proposals is often considered in the East (and measured by the breadth of interests among the project participants); hence there is an informal incentive for Eastern groups to be effective in building community support.

Another critical funding difference exists between East and West. Because many Eastern watersheds are smaller and more densely populated than those in the West, it is often easier for Eastern councils to raise money as membership-based advocacy organizations. The denser population in the East means less domination of one extractive industry or another, even in rural areas, and provides a much larger pool of potential individual donors with a wider variety of personal interests and commit-

50. JULIA M. WONDOLLECK & STEVEN L. YAFFEE, MAKING COLLABORATION WORK: LESSONS FROM INNOVATION IN NATURAL RESROUCE MANAGEMENT, at 107 (2000).

51. POWELL, *supra* note 4, at xv.

52. *See, e.g.*, Massachusetts Riverways Small Grants Program in RIVERWAYS PROGRAMS 2002 ANNUAL REPORT, FY 2002- FY 2003 11-12, *at* http://www.state.ma.us/dfwele/River/pdf/riverwaysannualreport02.pdf (last visited June 20, 2003).

ment to environmental issues. More environmental foundations exist in the East as well, though areas like Seattle and Montana are fast catching up with and exceeding the capacity of Eastern environmental funders.

VIII.

AGE AND CHRONOLOGY IN THE EAST

Though these days it is open to debate, the Eastern model, because it is now so explicitly organized from an ecosystem protection goal, is often more effective over the long term. The Western model, because it begins with an implicit assumption of multiple use goals, often leads to a "lowest common denominator" result for ecosystem protection.[53] The past is not necessarily prologue, however. Many of the older Eastern groups—and again, the MRWC is typical—were initially single-issue groups with narrow geographic and issue foci. Over time, the battles that inspired the formation of the groups were won and membership, and therefore fiscal capability grew. Success resulted in the hiring of more staff members with substantive professional expertise, and the capability and interest to deal with tougher and broader geographic issues grew as well.

As Western watershed groups age and hopefully mature, their capability and willingness to face the "Lords of Yesterday" directly will increase. In parallel, many Eastern groups are adding, or have long been using, cooperative, multi-stakeholder efforts in their quivers. It is also important to note an underdeveloped, little-noticed and critically important point that runs through the vast and growing literature on cooperative environmental decision-making, including the recent book *Making Collaboration Work*[54] and reports from various scholarly institutes and other organizations.[55]

Fundamentally, few of the collaborative or consensus-based processes would happen at all or would make much sense in the absence of a bottom line. This bottom line is the performance

53. *See, e.g.*, SOMMARSTROM AND HUNTINGTON, *supra* note 34.

54. WONDOLLECK AND YAFFEE, *supra* note 50.

55. *See, e.g.*, NATURAL RESOURCES LAW CENTER, THE WATERSHED SOURCE BOOK: WATERSHED-BASED SOLUTIONS TO NATURAL RESOURCE PROBLEMS (1996); PAUL E. DE JONGH AND SEAN CAPTAIN, OUR COMMON JOURNEY: A PIONEERING APPROACH TO COOPERATIVE ENVIRONMENTAL MANAGEMENT (1999); KENNEY, *supra* note 34 (2000); EPA's FRAMEWORK FOR COMMUNITY-BASED ENVIRONMENTAL PROTECTION, (EPA Document 237-K-99-001) (1999); SOMMARSTROM AND HUNTINGTON, *supra* note 34.

standards and other requirements of our system of environmental law that have been enacted over the past thirty years. Without that system, who seriously believes that any of the "lords" governing the environment of the West would have ever come to the table?

Where they are well-organized with clear missions, effective staff and technical support, watershed councils in both the East and the West can provide powerful tools to stop further environmental degradation and, perhaps, make real gains in restoration by coordinating information on funding programs, educating the public, sharing technical information, advocating enforcement of environmental protections, and exerting subtle or not-so-subtle peer pressure to protect and restore watershed biodiversity. Conversely, where the issues are not ripe, the organizations are unclear about their vision, or the power balance among the parties at the table is unequal, the chances of success (particularly with the consensus-based model) diminish considerably. Whether either model actually accomplishes the goals of watershed biodiversity protection or restoration is still a case-by-case measurement and judgment.