Water & Wildlife Access Issue

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PERC REPORTS

FOR FREE MARKET ENVIRONMENTALISM

Former senator sees river as a magnet

In the eye of the wildlife storm

Public access muddies waters

STREAM ACCESS ACROSS THE WEST

FROM THE EDITOR | BY LAURA E. HUGGINS

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After a long cold winter, the spring fishing season is finally upon us. Some of us relish the days when we can cast a good-looking Blue-winged Olive before the spring runoff blows out the rivers. Next comes the Mother's Day Caddis hatch followed by the Salmon Fly fest at the tail end of the snow melt.

In fact, it was last spring on the Ruby River in Montana that my family enjoyed one of our best fishing days—even my two-year-old caught a fish. I mention the Ruby because it is one of the epicenters of conflict over stream access between outdoorsmen and women who want access to the river via public bridges and property owners whose land those bridges abut.

We were fortunate enough to get private access to a stretch of the Ruby via a friend's family ranch. This family invested loads of time and money into transforming this section of river from a cattle trough to a trout paradise and have a clear right to prohibit anglers and hunters from tromping across their land and over their banks.

But their neighbor's property includes a bridge, where the public recently discovered a way in. This, according to my responsible fishing friends—many of whom are guides and rely on productive fisheries for a living—should not be a problem as they are careful not to wade above the high-water mark. Plus, "their tax dollars and fishing licenses go to protecting the public's fish."

Unfortunately, many who access the river at the bridge do not have the same ethos nor do they seem to care about crossing private property, damaging fragile banks, and littering. And what about the liability issues for the landowner?

More importantly, in my opinion, is what happens the next time an interested party comes along who wants to buy riverfront property and enhance it? Any smart investor will realize that improving the habitat for fish and wildlife will also attract more humans; and the more humans, the less likely the improvements will last. Therefore, why invest?

The Ruby is just one example of the conflicts that tainted the last fishing season in Montana as well as other western states. As the authors in this special issue allude to, now is the time to recognize the rights of both sides of the spectrum, leave emotions and biases aside, and focus on improving resource management incentives across the West.

What is your opinion on access rights to water and wildlife on private land? Visit www.perc.org and submit your comments. See what others say when we publish some of the comments in the summer issue of *PERC Reports*. In the meantime, happy fishing.

Laura E. Huggins | EDITOR

? What do you think of water and wildlife access laws? Go to www.perc.org and give us your answer.

FEATURES

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TAKING IT TO THE BIOBANK

I thoroughly enjoyed the recent Enviropreneur Issue of *PERC Reports*. I look forward to each issue knowing that within it will be a collection of innovative market based ideas on solving environmental problems both in the U.S. and around the world.

As the manager of the wildlife and environmental program for a FSC certified forestry company owning over 1.5 million acres of forestland, I routinely interact with environmental policy makers and advocates. Although generally well-intentioned, most do not truly understand fundamental economic principles and therefore the incentives that cause individuals and corporations to make decisions. The foregone conclusion is that markets are the problem, not the solution.

Thus, I read Stephanie Gripne's article on the Malua Biobank with particular interest. Although this project is in the early stages, it is both a unique example and opportunity to test whether biodiversity banks can become viable commercial investments. Typically, a landowner with endangered species or "valuable" native forest is faced with a liability due to the conservation limitations placed on his scarce resource. Here is an example of a scarce resource being priced through voluntary markets, with the real possibility of making that resource an asset instead of a burden. Once that occurs, conservation can be viewed as a truly competitive land use, and would not be entirely dependent on the vagaries of public funding or even tax incentives. I am eager to follow the progress of this project and hope it becomes a model for others to emulate.

—Mike Houser
Cloquet, Minnesota

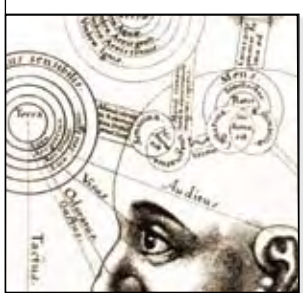
WEAR A POSSUM—SAVE AN ECOSYSTEM

We should encourage Chrys Hutchings' approach to the environmental devastation posed by the Australian brushtail possum (paihamu) to the New Zealand countryside. I had no idea that these introduced animals have had such a catastrophic impact.

The biggest challenge, as suggested in her article, perhaps lies in convincing animal rights groups to broaden their goals and see the benefits in managing this invasive species. Rather than "Money Grows on Trees," maybe the article is better titled "Wear a Possum—Save an Ecosystem."

Building upon her background and experiences of living in New Zealand, Chrys Hutchings is tenaciously pursuing a win-win solution—maybe the paihamu has finally met its match.

—Brian Lantow
Portland, Oregon



Tell me what *you* think!

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TAX CREDITS AND SOCIAL ENGINEERING

Regarding Ariel Steele's article from the Winter 2008 issue, "Experimenting with Tax Credits for Conservation," income tax credits in exchange for land preservation is a terrible idea. First of all, government should NEVER be in the business of social engineering. Second, making deals of this sort with the state government of Colorado condones anti-freedom actions; in this case, a progressive income tax which is arguably unconstitutional in any state.

It surprises me that PERC would support such a program. Besides that, I continue to be a supporter of PERC and enjoy your publications. Thank you for all you do.

—Maria Folsom
East Glacier Park, Montana

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WAR ZONE WILDLIFE & *Water*

When the battles over water in Oregon's Klamath River Basin were at their peak, PERC organized a meeting in Portland to bring competing parties to the table in search of common ground for reducing the conflict. Before the meeting started, people warned that the meeting could blow up. Animosity was so great that some people refused to be seated next to certain other people. When the meeting started, one rancher pulled out a huge pocket knife and proceeded to pick his teeth with it. The gesture clearly had little to do with dental hygiene.

Such posturing is common in environmental battles because property rights are unclear. In the Klamath case, ranchers thought they had water rights pre-dating statehood or contracts with the Bureau of Reclamation that guaranteed water delivery; tribal members thought they had even more senior rights based on their pre-Columbian era use of the river; and environmentalists believed their trump card was the Endangered Species Act they were using to protect endangered salmon and two species of sucker fish.

As Randy Newberg makes clear in his article in this issue, the debate over stream and wildlife access is no different. Private property owners believe that they have the right to control access to their land if that land is under a non-navigable stream, and many sportsmen and women assert that the water and wildlife are theirs and that they should not be denied access. If anyone questions your claim, pull out your knife and pick your teeth.

Unfortunately, the value of the resource in question is lost in the battles, whether at conference tables, in courts, or in legislatures. Like all wars, environmental ones are zero-sum games wherein one party's gain is the other's loss. Making it worse is the adage, "to the victor goes the spoils," which reminds us that the battleground is also destroyed.

Consider the battle—dare I say war—over the Mitchell Slough in Montana's Bitterroot Valley, which James Huffman discusses in this issue. In the 1990s, landowners along the Mitchell spent thousands of dollars to transform what they deemed an irrigation ditch into a trout fishery. Unfortunately for the landowners, the fishery created what lawyers call an "attractive nuisance" with the jumping trout attracting the attention of anglers. When those anglers waded down the stream and were arrested for trespassing, they claimed a right to fish under Montana's stream access law.

Many years and thousands of dollars later, the 2008 Montana Supreme Court ruled in favor of the anglers on the grounds that the Mitchell was a natural waterway. The courts did conclude, however, that the stream was "man improved." The spoils in this case come in many forms. The ink was barely dry from

the court's decision when an angler was spotted wading through spawning nests, destroying any potential for survival of the eggs. The angler's car displayed a license plate supporting Trout Unlimited, an organization which filed a legal brief in favor of access. So much for trout conservation.

Another spoil will result when the duck shot by a hunter wading up the stream falls beyond arm's length of the high water mark, territory not open to public access. Whether the hunter or his faithful dog retrieves the duck, a trespass will occur, and the knives will flash again.

Perhaps the worst spoil of all will be the Mitchell and fisheries like it that will not be "man improved." Would landowners have made the investment had they known they were creating an attractive nuisance to which the public would be given access? Would you build a swimming pool in your backyard if you thought it would be open to the neighborhood? Not likely. Moreover, because landowners have a clear property right to control private water diversion gates, they can (and have) shut off the water diverted into the slough. Without a helping hand from landowners and without the water diverted from the Bitterroot, the trout would not be there. Again, out come the blades.

Asserting claims by pulling out knives and picking teeth may be a way of declaring power, but it is not a productive way of resolving environmental conflicts. Fortunately, the Klamath story includes a positive lesson. Following the posturing at the first meeting, PERC held a second and larger meeting at which the parties put their knives away and began stipulating rights on which they could agree. With those rights in place, ranchers, Indians, anglers, and environmentalists found common ground on which they could bargain rather than fight.

Most landowners have resigned themselves to public stream access under Montana's law, but some sportsmen and women have not satiated their access appetite. Bridges on county roads now constitute access points. In 2008, a Utah court ruled in favor of public access (see Randy Simmons' article in this issue). A proposed but failed initiative in Montana tried to prevent landowners from charging access fees, and some hunters believe that public wildlife "flowing" across private property is no different than public water doing so.

Whether it is the Klamath or the Mitchell, the lesson should be clear: Until the parties recognize and accept the legitimate rights held by each, the zero-sum game will ultimately become a negative-sum game as the resources in question suffer. The U.S. and state constitutions guarantee the rights of property owners, while various common and statutory laws create some public rights to water and wildlife. When those rights are at odds with one another, pulling out knives does not resolve conflicts. Accepting the rights and bargaining at the coffee table or in the marketplace offer a better path to resource stewardship.

In "On Target," PERC's executive director TERRY L. ANDERSON confronts issues surrounding free market environmentalism. Anderson can be reached at perc@perc.org.

Stream Access

BY REED WATSON

Protecting private property rights is critical to protecting environmental resources because private landowners respond to incentives. When landowners can profit from stewarding game animals, fish, wetlands, forests, or streams, one can expect these resources to flourish. Conversely, environmental resources that generate costs to landowners or compromise their privacy will likely suffer from neglect at the landowner's hand.

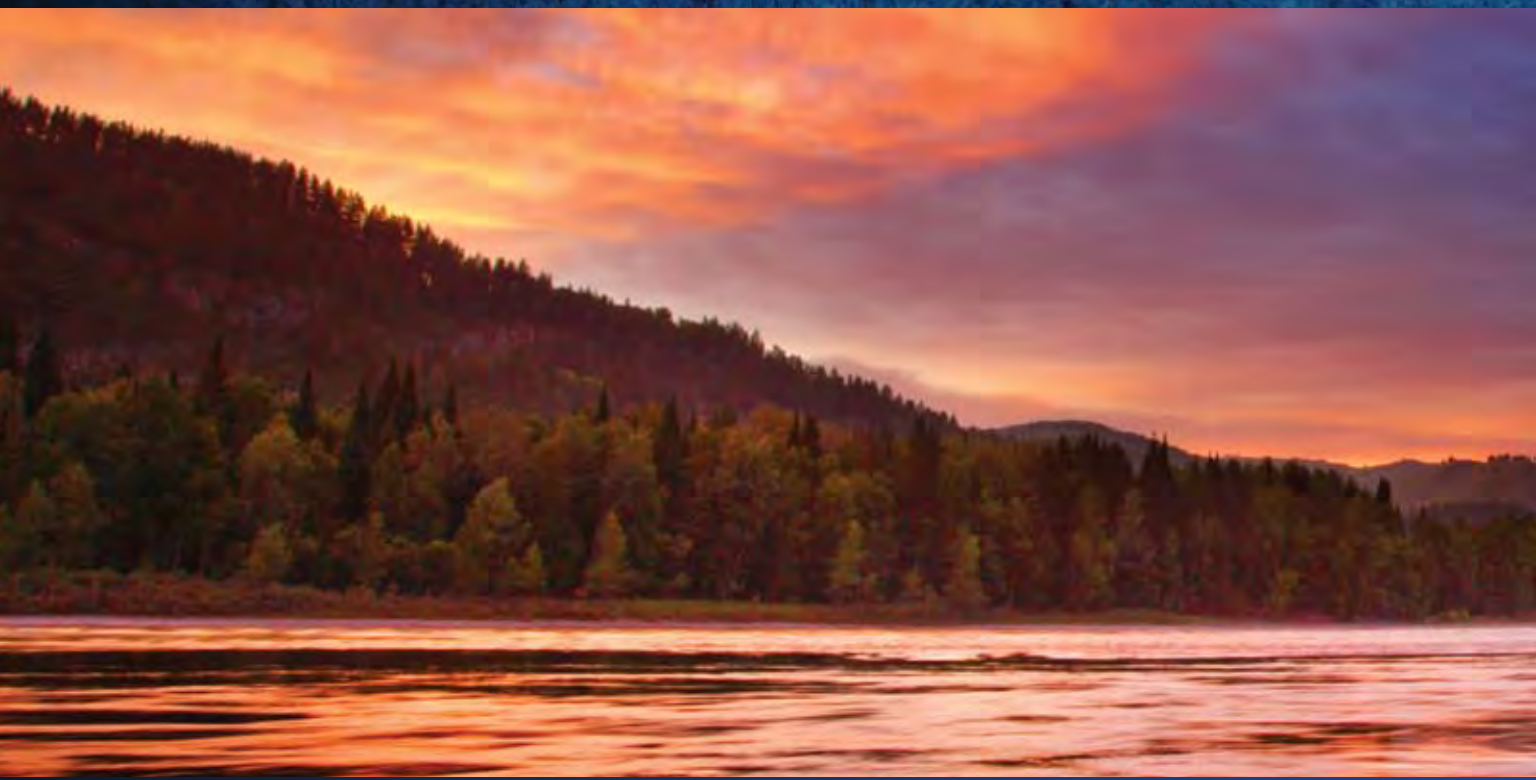
The critical distinction is whether the landowner views the resource as an asset or as a liability, and that depends largely on the landowner's property rights. Nowhere is the relationship between property rights and stewardship better demonstrated than in the context of stream access laws. These laws define the public's right to access non-navigable streams and, in so doing, they impact the rights and stewardship incentives of riparian landowners.

Across the West

Access laws that expand public use rights beyond navigable waterways and onto privately owned streambeds undermine the property rights and privacy expectations of riparian landowners, forcing the label of liability onto streams flowing through private land. As a consequence, such laws remove the incentive for riparian landowners to invest in stream restoration or fish habitat—investments that generate public benefits.

WESTERN STATES WITH UNLIMITED STREAM ACCESS

Landowners are less likely to protect and improve fish habitat or a stream's natural hydrology, which is tied to a variety of important ecological functions such as storage of flood waters, recharge of groundwater, treatment of pollutants, and habitat diversity, if they have no meaningful way of limiting



public access to their investment. Litter, erosion, property damage, invasions of privacy, over-fishing, and in some cases legal liability all increase when there is unlimited public access to streams flowing over private property. These costs lead landowners to view non-navigable streams as liabilities rather than assets. The following states have the most liberal stream access laws.

Montana

Montana has led the way in the erosions of private property rights since the *Curran* opinion in 1984, which used the public trust doctrine to define the limits of public stream access. In that opinion, the Montana Supreme Court held that "under the public trust doctrine and the Montana Constitution, any surface waters capable of use for recreational purposes are available for such purposes by the public, irrespective of streambed ownership."

Two recent court cases in Montana have further expanded the public's recreation rights on private stream beds and discouraged private stewardship of non-navigable waters. In *PLAA v. Comm'rs of Madison County* (2008), district judge Loren Tucker ruled the public could use county road bridges to access non-navigable streams flowing through private property. And in *Bitterroot Protective Association Inc. v. Montana Dept. of Fish, Wildlife and Parks* (2008), the Montana Supreme Court ruled that a reclaimed irrigation ditch supplied exclusively by a headgate and irrigation return flows qualified as a natural, perennial flowing stream open to public recreational use. Landowners along the Mitchell Slough had invested thousands of dollars and countless hours building a vibrant trout fishery out of an agricultural ditch. No matter. With the stroke of a pen (actually, it took 54 pages to explain its reasoning), the court signaled that in Montana good stewardship would not go unpunished.

Utah

Echoing Montana's boundless interpretation of the public trust doctrine, the Utah Supreme Court recently ruled in *Conaster v. Johnson* (2008) that the public's easement over all natural waters in the state implies an easement over privately owned stream beds and banks. While anglers in Utah applauded the opinion, several landowners in the state halted stream restoration plans as soon as they learned of their inability to ward off the fishing masses. Just like the Mitchell Slough in Montana, vibrant fisheries in Utah may be sacrificed in the name of public access.

Oregon

Oregon follows a more complex process for determining the public's recreational rights across privately owned stream beds —the "pub-

lic use navigable" test. According to a 2005 opinion by the Oregon Attorney General, "the Oregon Supreme Court has established a state public use doctrine that gives the public the right to make certain uses of a waterway whose bed is privately owned if the waterway has the capacity, in terms of length, width, and depth, to enable boats to make successful progress through its waters." Though not as far reaching or automatic as the stream access laws in Montana and Utah, few waterways in Oregon are free from public access.

STATES PROTECTING PRIVATE PROPERTY RIGHTS

The following states continue to protect the private property rights of riparian landowners and, in so doing, protect their incentive to create viable fisheries and restore natural stream hydrology.

Colorado

Colorado has protected the private property rights of riparian landowners more so than any other state in the West. Although the Colorado Constitution declares the unappropriated water of every natural stream public property, members of the public are not allowed to touch privately owned streambeds without the owner's permission to do so, regardless of navigability.

Examples of large-scale, privately funded stream restorations in Colorado are too numerous to list, but take for example David Pratt's restoration efforts along the Little Snake River. The project was the largest privately funded river restoration project in the history of the Army Corps of Engineers district and, according to the Three Fork Ranches' website, the only project in recent memory supported by the Sierra Club. After Pratt successfully restored natural stream bank stability and created wetlands and off-channel fisheries, several downstream neighbors restored an additional 16 miles of the Little Snake. If every angler in Colorado held access to this stream, these landowners would have viewed it as a liability rather than an asset and left the river in its channelized, fishless condition.

Arizona

Applying the federal test for commercial navigability, the Arizona Navigable Stream Adjudication Commission has determined the Colorado River to be the only navigable waterway in the state. Consequently, the public has recreation rights to the Colorado River. Title to stream beds under non-navigable waterways remains either with the federal government or private individuals, depending upon ownership at Arizona's statehood. Although the public

may recreate on waters above federally owned streambeds, it has no such right to access waters above privately owned streambeds.

California

California was the first state to apply the public trust doctrine to environmental resources, but unlike Montana, California has not extended the doctrine to include public access to non-navigable waterways. Interestingly, however, each county's board of supervisors has the authority to contract for public access rights along certain non-navigable waterways. If negotiations fail the county boards may exercise the state's eminent domain powers to take the private property, but this statutory authority at least recognizes the private property rights of riparian landowners. In California there is no right to trespass across private property to access navigable waters, and county roads serve as public access points only to navigable waterways.

BATTLEGROUND STATES

Nevada

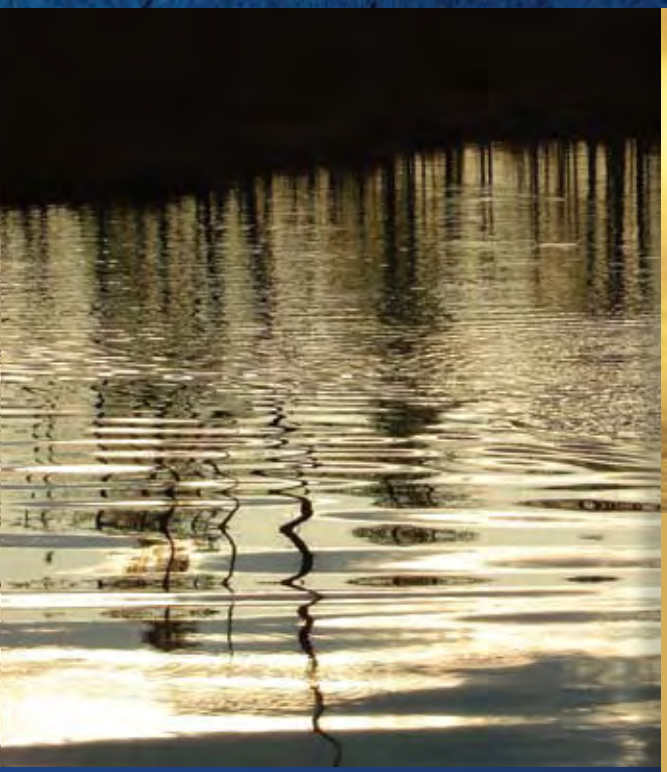
Although the Nevada Supreme Court has retained the federal navigability test—one that is deferential to private landowners—neither the court or the legislature has addressed the issues of whether the public trust doctrine extends to non-navigable streams or whether recreationists may float or wade over privately owned streambeds.

Alaska

Interpreting the state's stream access law, the Alaska Supreme Court stated in *Wernberg v. State of Alaska* (1974) that "it was the intent of the state legislature to permit the broadest possible access to and use of state waters by the general public." The public therefore appears to have flotation rights on non-navigable rivers and streams. Nonetheless, the Alaska Attorney General opined that the public does not possess the right to use privately owned streambeds under non-navigable waterways except in emergency situations.

Wyoming

Although the Wyoming Supreme Court stated in *Day v. Armstrong* (1961) that "actual usability" defines the public's ownership of and right to use water in non-navigable streams, this does not appear to include the right to walk or wade along privately owned stream bottoms. According to the *Armstrong* opinion, however, recreationists might have rights of ingress/egress over private property as necessary to reach usable waterways.



INCENTIVES FOR STREAMS

Whether riparian landowners can legally limit public access to non-navigable streams is a key determinant in whether those landowners view those streams as assets or liabilities. In states that limit public access to non-navigable streams, landowners have an incentive to improve fish habitat and the stream's natural hydrology. Those states that allow near limitless public access do so at the expense of private stewardship efforts that often create valuable public benefits. States that have yet to directly address the issue of non-navigable stream access would be wise to consider the incentives to private riparian landowners and the positive impact they can make on the state's stream resources.

Note: The information contained in this article is for summary purposes. Ask before you recreate.

REED WATSON is a research fellow and Coordinator of Applied Programs at PERC. He can be reached at reed@perc.org.

Stream access laws

State	Public recreation rights on non-navigable waterways	Public easement on privately owned streambeds	Public portage rights over private property	Easement across private property to reach waterways
Alaska	Flotation only	Emergency use only	Yes	No
Arizona	No, unless streambed is federally owned	No	No	No
California	No, but counties have eminent domain power	Under navigable-in-fact waterways	Yes	Yes, at public road crossings
Colorado	Flotation only	No	No	No
Idaho	No, but navigability is broadly defined	No	Yes	No
Montana	Virtually unlimited	Yes	Yes	Yes, at county road crossings
Nevada	No	Untested	Untested	No
New Mexico	Yes	Yes	Yes	No
Oregon	Flotation only, unless "public passageway"	No	Untested	No
Utah	Virtually unlimited	Yes	Yes	Likely
Washington	No	No	No	No
Wyoming	Flotation only	No	Yes	Likely

Utah's stream access decision could backfire on anglers

Anglers are doing back flips over a recent Utah Supreme Court Decision that makes public all waters in the state and permits recreationists to use streams that cross private property. But what is now being cheered as a victory for anglers could backfire, leading to eroded banks, degraded streams, and a scarcity of fish in years to come.

Before the court ruling, Utah anglers could only fish on those streams with the landowner's permission. Ed Kent, chair of the Utah Anglers Coalition, welcomed the court ruling, declaring: "This is going to open corridors of extremely productive waters to anglers." Reports from the first anglers to exercise their new rights are showing up online. One happy sportsman wrote: God bless the Utah Supreme Court, I caught some gigantic brown trout today on a section of river I've never been able to fish until now! Yee haw!" Anglers are enjoying the tremendous fishing opportunities available on streams that have been carefully managed and conserved over the years by private landowners. Unfortunately, those opportunities will disappear as landowners stop investing their time and money in the streams crossing their property. The great conservationist Aldo Leopold explained it this way: "Conservation will u1timately boil down to rewarding the private landowner who conserves the public interest."

I visited the kind of landowner Leopold extolled. He owns 1,800 acres of rural Utah land that includes 1.8 miles of stream. When he purchased the property seven years ago, the banks of the creek had been grazed down to the point where there were no river birches, willows, or cottonwoods. Stream banks were eroded and there was little stream complexity, a necessary ingredient for a fruitful fishery. This landowner spent thousands of dollars and hours restoring the creek to create a productive trout fishery. He fenced the cows away from the stream. He sought expert advice on how to help the stream heal itself. He made stream barbs of rocks that stick out from the banks to create eddies, protect banks from erosion, and change water depth and velocity.

Today river birches, willows, cottonwoods, and tall grasses are growing along the banks, a gravel bed suitable for spawning has emerged, and the fish love it.

The landowner's son planned to buy the adjoining property and over time double the amount of restored creek. Now, all plans are off. If he and his father cannot protect the habitat they create and the fish that thrive there, they are not going to spend anything at all.

Instead of doing back flips over the court decision, anglers should be asking the Legislature to change the state code on which the decision was based so that landowners will once again have an incentive to restore and enhance streams on their properties. Otherwise, who is going to fence cows away from the water? Who is going to pay for stream barbs and planting willows? Governments may help on portions of major waterways like the Provo River, but what about all the little creeks that could be as productive as the one I saw?

Many anglers understand the value and potential of private conservation and want to encourage it. The stream access court decision does the opposite. Productive streams crossing private property will be quickly fished out, as has already happened a few miles below the property I described. Let's hope legislators will work with anglers and property owners to avoid this potential tragedy.

This editorial originally appeared in the Salt Lake Tribune *on September 14, 2008.*

RANDY T. SIMMONS is a senior fellow at PERC and the Charles G. Koch Professor of Economics at Utah State University. Simmons can be reached at randy.simmons@usu.edu.

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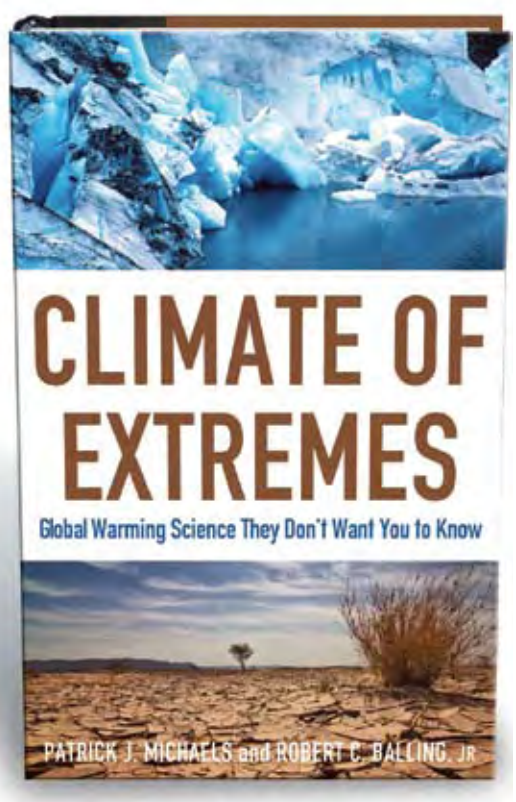

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PUBLIC ACCESS MUDDIES WATERS

BY JAMES HUFFMAN

Public access to rivers, lakes, and streams seems like a good idea in the abstract. Why not allow access to anyone who wants to enjoy the recreational opportunities associated with water? Or to state it differently, why allow private landowners to exclude the public from waters that happen to flow across private lands? A recent decision of the Montana Supreme Court is a perfect example of why environmentalists and conservationists should reconsider their usual support for public access without regard to ownership of the underlying land.

In a Nutshell

Last November in *Bitterroot River Protective Association v. Bitterroot Conservation District* (2008), the Montana Supreme Court settled a long-running dispute over public access to the Mitchell Slough, a body of water near the Bitterroot River in western Montana. The facts and law were complicated, but in a nutshell there were two questions: 1) Is Mitchell Slough a "natural, perennial-flowing stream" under the Natural Streambed and Land Preservation Act of 1975? 2) Is Mitchell Slough a "natural water body" under the Stream Access Law of 1985? If the answer to the first question is yes, the defendant conservation district must approve any physical alteration or modification of the waters in the Mitchell consistent with the requirements of the 1975 Act. If the answer to the second question is yes, then there is a right of public access to the waters of the Mitchell under the 1985 Act.

As is often the case with seemingly similar terms in different laws, the Supreme Court stated that a "natural water body" is not necessarily the same thing as a "natural, perennial-flowing stream." The Court concluded that the Mitchell Slough is both, so both laws apply. Therefore the public does have a right of access to the waters of the Mitchell, although not across the private lands through which the entire slough flows. Access must be gained from the Bitterroot River, which both feeds and drains the slough.

It is not my purpose here to question the Court's legal analysis. The most important legal mistakes were made more than two decades ago when the Court contrived from whole cloth an unprecedented interpretation of the public trust doctrine (the principle that certain resources are preserved for public use and that government is

required to maintain such resources) in the case of *Montana Coalition for Stream Access v. Curran* (1984). In that case, the Court held that "under the public trust doctrine and the 1972 Montana Constitution, any surface waters that are capable of recreational use may be so used by the public without regard to streambed ownership or navigability for nonrecreational purposes." The Stream Access Law at issue in the Mitchell case was the legislature's attempt to cope with this expansion of the historic reach of the public trust doctrine.

Although the prospects for correcting the errors of the *Curran* decision grow dimmer with each passing year, the environmental and economic consequences of the decision are no less troubling today than they were a quarter century ago. The Mitchell case illustrates well the consequences of mandating public access to scarce natural resources.

Looking Back

Early maps showed a water channel roughly where the Mitchell Slough exists today. Although there are no records from the time of the original map indicating the volume of flow through the slough, it is evident from the many physical alterations to the channel and surrounding land that water flow was not sufficient to meet the demands of irrigators. A diversion dam and canal were built to bring water from the Bitterroot into the slough, and decades of human engineering have been necessary to maintain the flow of the Bitterroot. In the words of one rancher who testified in the case, the river "wants to go to the west, so we have to keep bringing it back."

The Supreme Court concluded that evidence of this extensive human modification of the river and slough did not make the water bodies non-natural under the 1975 and 1985 laws. To find that it did, said the Court, would mean that scarcely a river in the state would be natural. If human modification of natural waterways means they are no longer natural, the two water statutes would have little effect.

Future Implications

But this outcome has significant implications for future water management. Most of the engineering designed to maintain and augment water in the Mitchell was financed by irrigators who were willing to shoulder these costs because a reliable and larger water supply would yield economic returns sufficient to justify the expense. They invested in water engineering with the same expectations that led them to invest in buildings, fencing, machinery, and the very land on which they grow their

It makes little sense to stand on the principle of public access if the alternative is overfishing and abuse of habitat.

Experience demonstrates time and again that public access regimes pose significant risks for the long-term management and preservation of the resource.

crops. As economists often say, incentives matter, and without the incentives of a reasonable chance to make a living, the owners of the Mitchell Slough lands would have moved on and left the slough to the fish and birds (or to dissipate across old irrigation ditches).

Some would argue that this is exactly what should happen. They assert that the general public has an interest in the fish and birds and should not be excluded by private owners whose economic activities require alteration of the natural landscape. On this theory, the public interest always trumps private rights. It is the theory upon which the *Curran* decision and the Stream Access Law were based.

In many cases, property owners who must allow access to waters on their land are offended by the principle of public access, but the economic impacts are not sufficient to deter continued investment in wise resource management. But in a growing number of circumstances, public access destroys the incentives needed to provide the very benefits the public purports to want. The Mitchell Slough of today is one such circumstance.

For a century, private investment in management of the Mitchell was directed at providing irrigation waters to the investors. No one would have suggested that other members of the public had a right to come onto Mitchell Slough lands and divert those waters to other lands. Everybody understood what it meant to have property rights in land and water. The agricultural economy of the region and state depended on that shared understanding and the state's enforcement of those rights.

Unintended Benefits

In the Mitchell Slough and many other parts of the state, these investments in water management had unintended benefits for fish and wildlife, benefits that would not have existed if the irrigators, as holders of the property rights, didn't have the incentives to invest. But private provision of benefits to fish and wildlife habitat does not occur only by happenstance. In the Mitchell, there was significant private investment for the explicit purpose of improving fish and wildlife habitat. These were investments, not philanthropic gifts. Those property owners who invested in habitat improvement did so with the expectation that they would get the exclusive benefit on their properties. The fact that the Bitterroot fishery, to which the public has access under historic public trust principles, would benefit is a plus, but it is not the reason the investments were made.

There is no mystery why some of the best fish-

ing in Montana is on private spring-fed streams and lakes to which the public has no right of access. Because the owners of these streams and lakes can exclude others, they have an incentive to improve and manage the fishery. Many advocates of public access take offense that property owners keep the fish for themselves or charge others a fee for access. But it makes little sense to stand on the principle of public access if the alternative is overfishing and abuse of habitat.

Increasing Risk

Public access increases the risk that both water and wildlife habitat will suffer from the tragedy of the commons—where everyone has an unlimited right of use, but no one has the incentive or authority to limit overuse. Public access does not always lead to resource damage and destruction. With adequate control by the state, it is possible to impose habitat management regulations and bag limits to sustain fish and wildlife populations. But developing and enforcing such regulations for the waters of a state the size of Montana is a daunting challenge, particularly in a time of rapidly declining state resources.

The idea of public access has popular and populist appeal. But the reality is that the actual use of any resource—whether pursuant to public access, in the name of state ownership, or pursuant to a private property right—is use by individuals. Those individuals, in whatever capacity they are acting, will have varying incentives with respect to use, management, and conservation of the resource. Experience demonstrates time and again that public access regimes pose significant risks for the long-term management and preservation of the resource.

Even with public access, the Mitchell may remain a quality fishery as well as an important supply of irrigation water for many years to come. But incentives for other Montana property owners to invest in environmental protection and restoration in the future will be diminished by an insistence on public access to virtually all waters in the state.

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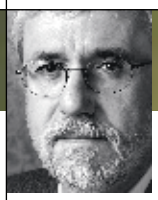
Public access destroys the incentives needed to provide the very benefits the public purports to want.



ECONOMIST, n. a scoundrel whose faulty vision sees things as they really are, not as they ought to be. —*after Ambrose Bierce*

SUPERFUND FOLLIES

Part II

Since 1980, the Environmental Protection Agency (EPA) has had the authority to clean up hazardous waste sites that pose an imminent and substantial danger to public welfare and the environment. Through 2005, this program, known as Superfund, has resulted in the expenditure of more than $35 billion in federal funds and an unknown amount of private funds—even though remediation remains incomplete at roughly half of the 1600 Superfund sites. Recent research reveals what we are getting for our money. Sadly, the answer is "not much."

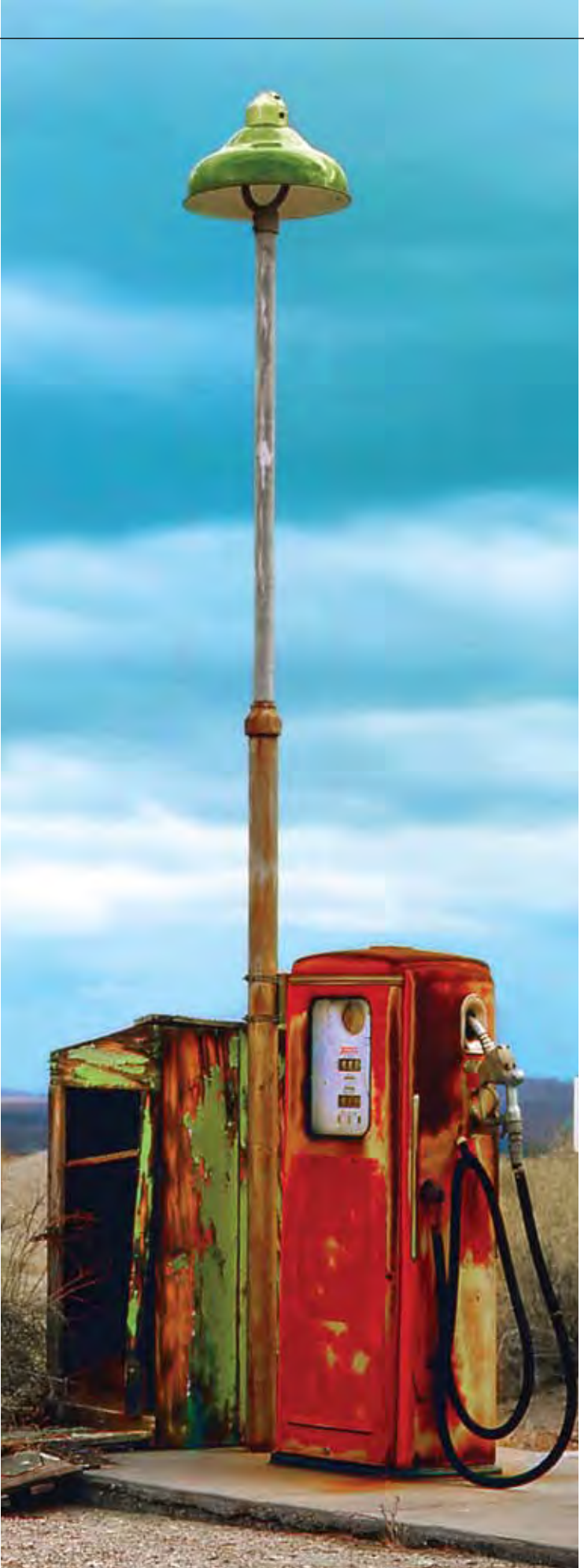
The Superfund program was created by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), under which the EPA could place hazardous waste sites on the National Priorities List (NPL), as a prelude to cleanup. Among sites at which cleanup has since been completed, an average of $43 million in federal funds has been spent. Research by Michael Greenstone and Justin Gallagher (2008) reveals that the average benefit created by these cleanups is likely quite close to *zero*. By this measure, the Superfund program is failing badly.

In principle, Superfund cleanups should enhance safety and improve environmental amenities in the areas around the sites. Assuming that consumers value such outcomes, two predictions follow. First, these improvement should lead to an increase in demand for local housing in the areas around the sites. This will yield higher housing prices there (relative to elsewhere), and an increase in the quantity of housing supplied. Second, the environmental improvements should induce an influx of consumers, particularly those who value environmental amenities most highly.

Greenstone and Gallagher test these predictions using housing market data for the period 1980 to 2000. They find that *none* of the predicted effects occur when sites are cleaned up. In particular, housing prices in an area around a site are substantively unaffected by the cleanup of the site, and there is no increase in the local housing stock in response to the cleanup. Moreover, there is no evidence of any movement of people into the area after the cleanup, as would be expected if the cleanups, in fact, reduced hazards in any way that individuals valued. By every measure, the Superfund program is failing to provide anything of value.

This is not the first attempt to measure the benefits of Superfund, but for a variety of reasons the paper represents a dramatic improvement in the state of our knowledge. First, past studies (many of which claim substantial benefits for Superfund) have used data from only one site or a few sites when seeking to estimate benefits. Greenstone and Gallagher have assembled comprehensive data on roughly 300 sites. The vastly larger scale of the present study gives us greater confidence that the results are likely to be valid.

Second, the authors have employed a research strategy that reduces the chances that their findings are



contaminated by confounding factors. Prior studies compare housing market performance around cleanup sites relative to market performance elsewhere in the economy. The problem with this approach is that areas around Superfund sites tend to be much different than areas elsewhere. For example, they are lower income, more rural, and more likely to have large concentrations of mobile homes. This raises the specter that other, unmeasured differences between Superfund sites and locations elsewhere are responsible for any observed changes in relative housing market performance.

Greenstone and Gallagher avoid this problem by comparing areas around cleanup sites with areas around other sites where cleanup (also called treatment) was seriously considered by the EPA, but prevented by budgetary constraints beyond the EPA's control. The authors show that Superfund sites and those sites that were almost Superfund sites are remarkably similar in terms of a host of observable factors. This reduces the chance that housing markets near treated sites are influenced by unobserved factors that differ markedly from unobserved factors around untreated sites.

Finally, while most prior studies have focused solely on housing prices, the present study also examines potential impacts on housing stocks, population, and population composition in treated and untreated areas. This not only gives a more comprehensive view of the effects of Superfund, it also provides a way to cross check the results: If Superfund, in fact, produces valuable outcomes, this should manifest itself in the many ways noted above. The fact that the authors find it does not manifest itself in *any* of these ways enhances our confidence that their conclusions are correct: For almost 30 years we have been spending vast amounts on Superfund sites, to an end that seems to be without value.

The authors do not address why Superfund is failing to produce any measurable benefits. At least two forces might plausibly be at work. It is possible that the true hazards of these sites prior to cleanup were much smaller than asserted by the EPA. Alternatively, the cleanup process itself may be failing to remediate what are very real hazards. Both of these forces are consistent with other research I have written about in this column (1999). Clearly, we would ultimately like to know which combination of factors is at work. But even though we cannot yet determine *why* Superfund is not producing measureable benefits, we can ascertain this: The Superfund program is failing and it is time to stop pretending otherwise.

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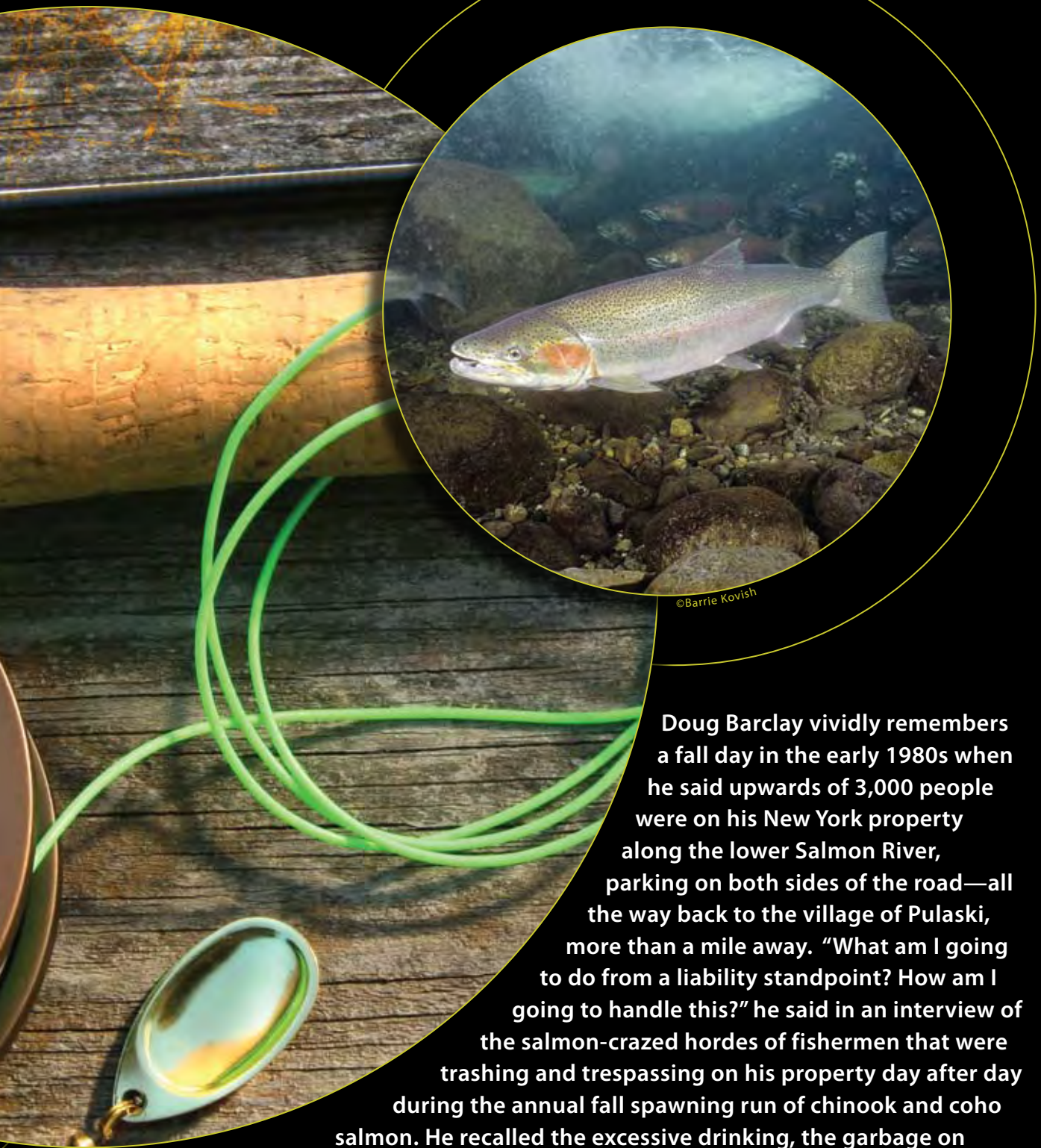
FORMER STATE SENATOR SEES RIVER AS A MAGNET

BY DAVID FIGURA

Jason Edward with a 14-pound hen steelhead, Salmon River, New York.



©Barrie Kovish

Doug Barclay vividly remembers a fall day in the early 1980s when he said upwards of 3,000 people were on his New York property along the lower Salmon River, parking on both sides of the road—all the way back to the village of Pulaski, more than a mile away. "What am I going to do from a liability standpoint? How am I going to handle this?" he said in an interview of the salmon-crazed hordes of fishermen that were trashing and trespassing on his property day after day during the annual fall spawning run of chinook and coho salmon. He recalled the excessive drinking, the garbage on the sides of the river and all over his land, and the louts who defecated along the road near his house.

George O'Brien on the Salmon River, New York.

©Barrie Kovish

Barclay, then a New York state senator nearing the end of two decades in office, said he approached one man who was walking toward the river with his son and reminded him that he was on private property. The response?

"They went in and sort of just said, 'The hell with you,'" he recalled, adding the two were quickly followed by more than two dozen other anglers with the same attitude.

It's been more than two decades since Barclay opened the Douglaston Salmon Run, a pay-to-fish business along what unquestionably is the best place to fish on the river for spawning salmon and trout from Lake Ontario because of its closeness to the lake. Anglers are charged $30 a day to fish, parking in a lot off Lake Road. The lot has a 300-vehicle capacity.

Barclay, 76, keeps trespassers off his property with posted signs and a team of 15–20 employees. Each year, he said, he's expanded his offerings to clients, making the property more and more amenable to anglers. He has put in a fish cleaning station and paths, and offered exclusive lodging for anglers and hunters in five separate lodges on his 5,000 acres of land that has been in his family for seven generations.

Recently he has expanded his private fishing area slightly through lease agreements with two adjacent landowners who, like Barclay, want to control the angling crowds on their land. He's looking into expanding his services for those willing to pay for them. He sees his business as an example, a magnet to help bolster the North Country economy.

"I've entertained a lot of people. They haven't seen anything like it before. Just being on the river. Even if you don't catch a fish, it's absolutely beautiful. I'd like to pursue it from a conservation, ecological standpoint and make it a magnet for economic development."

Barclay knows, however, that many still revile him for privatizing his stretch and charging anglers to fish. Talking to anglers and some business owners upstream is like picking a big scab. There's still bad blood. Despite controversial court decisions in Barclay's favor, many still feel they should have the right to fish the river on Barclay's property or in the water from drift boats.

Barclay talked this week about the Douglaston Run's present and future, and his opinions on managing the Salmon River in general.

You're now charging $30 a day. What was the original cost?

About $3 to $4. Each year I've tried to upgrade a little. We put in a fish cleaning station (early on) . . . instead of fishermen taking their fish back to their motel and cleaning them in their bathtub. This was done. Now (thanks to a DEC ban) you can't clean fish on the river. I've put signs in, paths, added people. We open at 5 a.m. and close at 7 p.m. We've done a relatively good job.

Do you make a profit? Are you making a bundle off it?

I'm not making a bundle off it. We break even . . . a little better than breaking even. You can never tell. Some years we haven't. And those who come probably want to have dinner and stay in a motel and do whatever they have to do. That attracts dollars (to the community), as opposed to the meat fishermen before who drank a case of beer that they probably didn't buy in Pulaski.

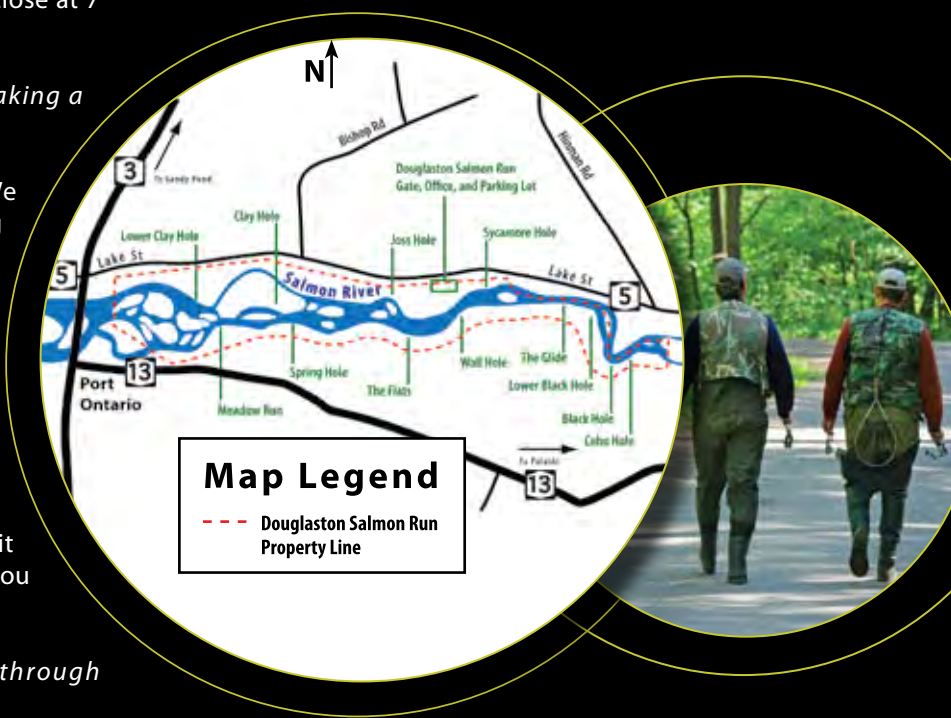
What we have here is as good as Alaska. By the time you go to Alaska, it would cost you an arm and a leg. Here, you can do it for $30.

How many people a year come through here? Any celebrities?

We've had former President George Bush up here twice. He thought it was absolutely great. I went to North Korea in December. I work on relationships between North and South Korea. Goh Kun, one of the former (South Korean) prime ministers, he was acting president, came up. He had never fished for salmon, so I outfitted him. I told Jason (Edwards, the river keeper of the Douglaston Run), "You'd better make sure he catches a steelhead." Well, thank God he did and you should have seen him smile, it was great.

I've entertained a lot of people. They haven't seen anything like it before. Just being on the river, even if you don't catch a fish, it's absolutely beautiful. I'd like to pursue it from a conservation, ecological standpoint and make it a magnet for economic development.

How could the Douglaston Run be an economic magnet for the area?



"I think those who own the land should profit. The state owns much of the land along the river. It charges for going into state parks, golf courses. They charge for trout fishing on Long Island. It's not unprecedented at all."

I've been in economic development all my life. I've done it locally, I've done it statewide, I've done it nationally, I've done it internationally. The idea is to get a place where people want to be. That's reasonable. Where they can feel safe, clean. It's coming. You have some new restaurants here. Two brand new antique shops. There needs to be more things for women, the wives that come, who don't want to fish. We need to get it all together to let people know what we have here. Historically, our country never looked north. It's always looking south. I'm looking north. There's so much there. This (river) is a jewel. From an economic standpoint, this thing is really valuable.

I know you have enough going managing your place, what's your opinion about what should be happening upstream?

I'm not advocating anything, but I think the whole river ought to be managed better. The problem is, fishing has become so important to so many people. But there isn't enough resource for those people to fish in and some way you have to limit the numbers on the resource . . . at least on the congested areas of river. Hydrologically, you could do things so that you could have more spots. It's tricky and expensive, but it could be done. You could get more people on the river by putting them in the right places.

How would that be done?

Have fishermen buy a ticket, or however you're going to manage the thing. Buy a ticket for a spot wherever it is, for hole such and such, and when that hole is filled . . . you just sell so many tickets.

Who would profit?

I think those who own the land should profit. The state owns much of the land along the river. It charges for going into state parks, golf courses. They charge for trout fishing on Long Island. It's not unprecedented at all.

What kind of fishing would you like to see?

I think it ought to be a sports fishing river. Preferably, but not exclusively, fly fishing could be a good part of it. We're not strictly fly, but I'd say 60-65 percent are strictly fly fishermen. It's just evolved. We encourage catch and release. You have five small lodges where you put up customers.

I know you're trying something out new where you have tents on the side of the stream for gourmet dinners for anglers willing to pay the price. Talk about that.

I've been to Africa on safari. I've seen what you can do with tents. How people think they're roughing it, but they're not roughing it. Then they get up and have a good night's sleep in the lodge or house. I think

Jason Edwards and son Jacob with his first king salmon, Salmon River, New York.

George O'Brien with 12-pound male steelhead, Salmon River, New York.

Salmon River, New York.

there's something with the fire burning, a couple of drinks, great food, wine. I think people like that. It brings people together. Corporations entertain all the time.

[The idea is] you get off a plane in Syracuse, arrive here in 35–40 minutes, take your clothes off in the changing tent, then walk [out] and fish. Come back to shore and have [a several-course, gourmet] dinner under a tent. Stay at one of the cottages. Go back in the morning to fish. Leave at noon.

It's not unique. Somebody out west in Wyoming is doing it, all in tents. Some people have done it in yurts (domed, tent-like structures).

Do you have a long-term plan for the development of the Douglaston Run?

I have, but it's not well articulated. I hired a planner a couple of years ago to plan the whole thing . . . if you want to move in that direction. Sort of a mini-resort, horseback riding, trap shooting.

Seeing that you own this great stretch of river, do you ever fish it?

Once in a while. Sure, fly fish. I've taken the Orvis course twice.

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IN THE EYE OF THE WILDLIFE STORM

BY RANDY NEWBERG

Most conflicts solved with market-based solutions involve opposing sides exercising their property interest, whether factual or imagined. Wildlife resource battles in the Rocky Mountain West are no different. Mired in this struggle are landowners holding the property rights attached to their land, and public citizens and wildlife managers holding fast to their vested interest in wildlife.

I find myself in the eye of this storm. My personal and professional biases are based on my passion for hunting and fishing, and a 22-year career as a CPA helping clients maximize returns on their property rights.

The unique position afforded me by this strange professional and personal mix gives me a perspective shared by few others. So much of the conflict around wildlife has moved beyond property rights arguments to personal agendas and egos that one must wonder if we can come back to the efficient and common sense approach of utilizing our property interests for purposes of benefit, rather than grinding axes.

In its simplest terms, this struggle is based on private landowners' private property rights vested to them under the Constitution. No person of sane mind argues the validity of these rights.

Being placed in opposition is the public trust

Matthew Newberg, BLM land, central Nevada.

Randy Newberg packs out an elk, Gila National Forest, New Mexico.

doctrine—the principle that certain resources are held in trust for public use, and that the government has fiduciary requirements to maintain it for the public's benefit. To try and determine the relevance this doctrine has to wildlife, I hired one of the most respected attorneys in wildlife law. The charge was to explain the history of the public trust doctrine and its application to the struggles currently playing out in the West.

To summarize his findings, the public trust doctrine is a powerful judicial concept and does validate the public's claim to an interest in wildlife. His opinion provided explanation of how we got to this point of the wildlife argument, but made it clear that such doctrine is merely one consideration in the argument surrounding wildlife resources.

The long history and depth of conflict found in the private land/public wildlife struggle in the West makes it obvious that the solution will not be easy. So many attempts have been made—most with mixed success.

ACCESS V. OPPORTUNITY

There is no doubt the property right of access held by landowners is the trump card in the discussion. Without access, the public's interest in wildlife has little value as it relates to wildlife on private land. How the landowner exercises this access right is partially determined by the state laws that govern the allocation of hunting opportunity.

As much as landowners hold the big club of access, and in many instances are not reluctant to use it, the public holds the ability to determine allocation of wildlife opportunity—how hunting licenses and tags are awarded to residents and non-residents, landowners and non-landowners. So far, states have not used their powers of wildlife allocation to deny opportunity to any class of citizens, and in many instances have allocated exclusive opportunity to landowners and their agents to accomplish some habitat or access objectives.

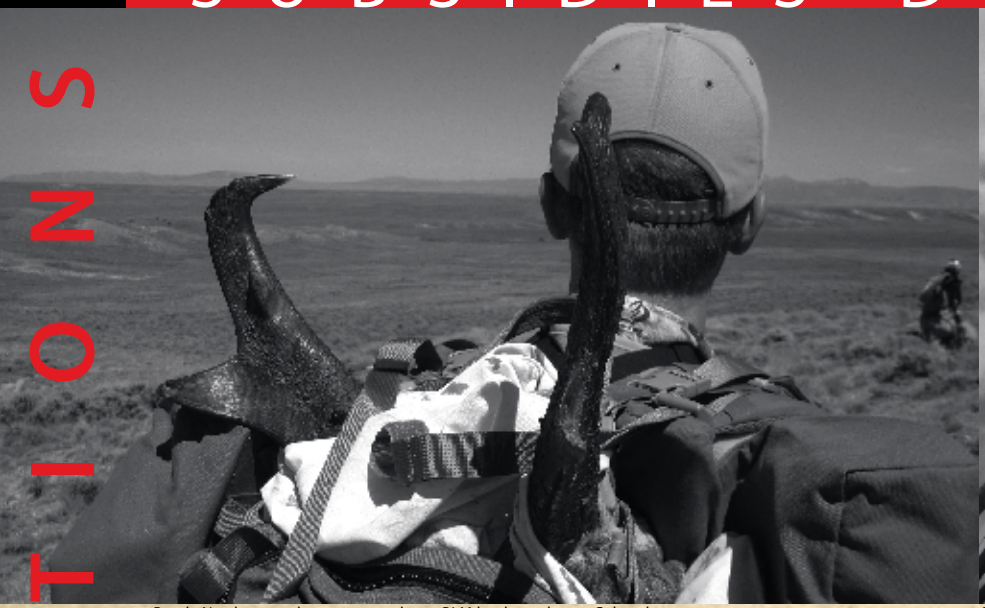
Why are we at this point? From my perspective, it is because both sides view their property interest to have priority, and at times, almost to the complete denial of the rights held by the other. And both obviously have different incentives and desired outcomes.

What end result provides the landowner the greatest return on her or his access rights? It is easy to say profits, but maximizing profits via fee hunting may come with problems such as overpopulation and habitat damage. Enrollment in a state access program, which generates less revenue, is an option that keeps animal numbers in line with available habitat but also comes with public hunter hassles.

What is the best outcome for the public trustees and their beneficiaries and wildlife resources? It depends on which trust beneficiary you talk to. More access? More opportunity? Greater trophies? All of the above? None of the above?

I suspect that if the public interest in wildlife was held by an individual or entity, this problem would have already been solved. The free market is that efficient. But such is not the case, so further effort and creativity is required.

It has come to the point where the landowner is realizing that his access trump card is only as valuable as the manner and way in which he chooses to play it. The state agencies are slower to come to the realization that their greatest leverage—license allocation—is a difficult tool to use. They rely upon public process and political change as mechanisms for action. Hardly the quick and efficient process afforded private property holders.



Randy Newberg packs out a pronghorn, BLM land, northwest Colorado.

Randy Newberg, glassing for pronghorn, western New Mexico.

SOLUTIONS AND SUBSIDIES DON'T MIX

This discussion is not happening in a vacuum. Many other parties are exerting political influence to their benefit and, in most instances, to the detriment of the two parties with a real property interest in this argument.

A third party intervener who owns little or no property rights yet wants to have the majority of the economic activity funneled through them, is the outfitting industry. If ever exists a classic case of government interference distorting the outcomes of negotiations between two interest holders, it would be the manner in which western state governments directly and indirectly subsidize outfitting industries.

These businesses exist in many instances by taking the public asset of allocated hunting permits and leveraging it to create opportunity to purchase access, at far below the going rate. These intermediaries own none of the interests involved, but by state law require non-residents to use outfitters.

Additionally, the outfitting industry has been effective in eliminating competition by capping numbers, giving landowners fewer lease options. By not allowing landowners to sponsor/guide non-resident hunters, they have severely restricted and in some cases eliminated the ability of the landowner to transact directly with the customer. Instead, landowners are forced to use outfitters to complete business with these hunters.

Until we honestly assess the problems government is creating with these subsidy programs for businesses with no real ownership interest in the wildlife or the land on which it lives, we will probably never see the value of market-based solutions. Creative answers using market principles are best served when market interference created by state subsidies is at a minimum. Regardless of who holds which property right, the rights are less valuable when a non-vested interest is allowed to extract the majority of economic benefit from this transaction.

As a free market advocate, I struggle trying to find a solution to a problem where the hunting transaction consists of two different property interests, held by two different parties, with two different incentives, being affected and almost manipulated by a third party holding none of the property rights in question.

If the history of this conflict had evolved differently, the result and options today would be equally different. Public trust beneficiaries are skeptical of landowner compensation programs, such as those in Colorado, New Mexico, and elsewhere. Landowners attribute this to public hunters wanting "something for nothing."

A quick study of the legislative history related to landowner compensation programs shows that agreements are reached in good faith, only to morph into programs hardly resembling the original pact, and usually an increased benefit to landowners and detriment to public hunters. Such skepticism of public hunters is not without basis.

When the heat is turned up, states often find public support for ideas that put a stick in the eye of landowners, the holders of habitat. Since these state officials are elected or appointed, they have no bottom line accountability. Furthermore, there is no measurement criteria, so he or she relies upon feedback from public hunters to determine job performance. This feedback is usually biased in assessing the performance of the state trustee. Lack of accountability and subjective performance measurement does not lend itself to bold ideas and management by trustees.

In private industry, the simple measurement criteria are profits or increase in value. Like most market mechanics, profit-based measurements are effective and efficient. The same does not apply to

THE AMERICAN WAY

publicly held property and the institutions vested with the fiduciary management of such property. Hunter/angler days, clean water, open spaces, equal allocation, indirect subsidy to those not able to pay, and many other factors make up the list by which agencies measure performance.

THE AMERICAN WAY

Given these vast differences in perspective, incentives, and management, it is only expected that public wildlife and private property would be this strange mix we struggle with today. On the bright side, it is this uniquely American mix of private property and public wildlife that has created abundant wildlife to argue about. Both sides have evidence to show the importance of their contribution to this abundance. Countries with complete private ownership or full public control have no comparable result to show for conservation of native wildlife and their citizens to enjoy such.

That said, the reality of this situation is that two different parties with different incentives have a property interest that is entwined. As efficient as markets are in allocating scarce resources, such theory is harder to implement when there is a public interest in wildlife. Given the inherent inefficiency of a property interest being controlled by a government agency, it will be messy. Is there any beauty to this jumble? Yes, this arrangement has produced an abundance of wildlife but much improvement can be made.

STEPS

Step one. Most attempts to simplify the system are a one-sided approach to diminish the ability of the other side of the debate to exercise its rights, or to create property rights where none exist. The public cannot force access upon landowners, and slowly are realizing the carrot may work better than the whip used in the past. Landowners are seeing mounting resistance from efforts to make wildlife a private property interest, managed without interference by states and their strange methods for allocating opportunity.

Step two. Cooperation and recognition of the rights held by each side of the debate produces the greatest return to both parties. Access can be used to improve the value of the public's interest in allocation; the same allocation of opportunity can improve the value of access.

Step three. Emotions and personal agendas must be discarded.

Step four. Sooner or later, we must address the interference governments have created by vesting economic power in parties holding none of the property interests in question.

Once some of these steps are taken, I hope to escape the eye of the storm and get back to spending more time hunting and fishing with my family.

Though a CPA by trade, RANDY NEWBERG spends four months a year hunting the wild lands of the West. When not hunting or working, Randy spends his spare time volunteering for conservation groups both locally and nationally. Randy has produced a television series, *On Your Own Adventures*, which will air in the fall.

Whiskey market all boom, no gloom

While the economy sputters and stalls, whiskey makers are on cruise control. At first, it might appear that the usual crowd is drowning its sorrows in more drink, but in fact whiskey is in high demand in new markets, especially China and other Asian nations. Consumption has increased 15 percent in the past 10 years. In response, old distilleries are being brought back to life, new ones are being built, and some unexpected consequences are in store for Scotch drinkers. In the future, they can sip their favorite malt while contemplating the environmental benefits of whiskey drinking. Their favorite distilleries will be generating clean, renewable energy and a new source of heat.

In Speyside, Scotland, the heart of the whiskey industry, a consortium of distillers has announced plans to build a biomass-fueled heat and power plant. The plant will use distillery by-products and wood chips to generate 7.2 megawatts of electricity, enough to power about 9,000 homes. The heat and power will be used by the local community, fed to the national grid, or used at the site by the distillers.

Specifically, the plant will burn draff, a solid grain product that is removed from the mash before fermentation. Pot ale, another by-product, also will be put to good use. By adding another processing plant to the project, the distillers can turn this high-protein liquid residue into a concentrated organic fertilizer for local farmers.

Scotch whiskey—that warm, bracing amber refreshment seems destined to take on a greenish tinge.

For more information visit www.scotlandwhiskey.com

Saving sashimi

The oily red flesh of southern bluefin tuna makes the finest sashimi on the planet. Long prized in Japan for its taste and texture, the growing worldwide palate for this fish may have helped speed its decline. It is estimated that wild stocks of bluefin are just 10 percent of what they were in the 1960s.

All is not lost, however. A former French Legionnaire, seafood magnate, and bold entrepreneur has come to the rescue. Hagen Stehr of South Australia plans to farm southern bluefin tuna, which has never been done successfully, to relieve pressure on wild stocks and increase his profits by avoiding the quotas imposed on wild tuna.

Hagen has fished for many years along the tuna's traditional migration route from Indonesia to the waters of southern Australia. As stocks dwindled, the catch was limited, and a quota system was introduced to distribute the fish among the operators. With an eye on the bottom line, fishers began to net their quota of tuna and tow it into the harbor, where the fish resided in outdoor pens and feasted on a diet of anchovies for several months. By the time they went to market, their weight had doubled and profits surged.

Taking a new approach, Stehr is attempting to raise farm-bred tuna that do not have quota restrictions. He has meticulously replicated the tuna's natural environment indoors. At his research and development firm, Clean Seas, select breeding stock weighing more than 350 pounds each endlessly circle a huge tank where the light, temperature, and currents simulate the changes they would normally encounter as they swim north to their spawning grounds. So far, the fish have spawned three times, believing they have made the journey to the warm waters off Indonesia.

As the world population inches toward 7 billion, the United Nations Food and Agriculture Organization says an additional 40 million tons of seafood will be needed in the next 20 years, and most of it will come from aquaculture. Assuming Stehr can successfully raise his small fish to adulthood, this risky enterprise could reap rich rewards going forward.

For more information visit www.stehrgroup.net

Mentioning the unmentionable

Admittedly, most people don't leap at the chance to read about human waste. But sometimes we must. In many developed countries, despite the growing crisis of scarce clean water, enormous quantities of clean water are used to dispose of human feces. The result is polluted water that requires local governments to maintain extremely costly sewage treatment facilities—a flawed system by any reckoning.

Consider the alternatives. The C.K. Choi building at the University of British Columbia (above) is a model of innovative design that enhances both energy efficiency and human health and productivity. The 30,000-square-foot office building, which provides work space for 300 people, has no connection to a sewer system. It uses composting toilets and waterless urinals installed and maintained by Clivus Multrum, Inc., of Massachusetts.

The toilets connect directly with the composting container in the basement by way of a stainless steel chute. A ventilation system continuously pulls air down through the fixtures, eliminating any odor. The waste material is treated with a small amount of water and bulking material such as pine shavings, while bacteria and fungi do most of the composting work. The material is reduced in volume by 90 percent and resembles topsoil when the process is completed. The result is a nutrient-rich fertilizer that would be a costly additive if purchased from a retailer.

Water from sinks and other systems is directed to a greywater system where it is filtered and used to irrigate plants around the building. More water for landscape irrigation is provided by a 7,000-gallon tank that collects rainwater.

The Choi building uses just 132 gallons of water a day compared to a conventional building of the same size that uses an average of 1,850 gallons a day. Maintenance on the composting system costs no more than a building with flushing toilets.

Clivus Multrum, Inc., has been manufacturing composting and greywater systems for 30 years. They are currently used in commercial buildings and homes, as well as at rest stops and golf courses. The C.K. Choi building shows that modern buildings can save valuable fresh water and function quite well without a connection to a municipal sewage system.

For more information visit www.clivus.com

Beyond Its Authority:

Eminent domain abuse by St. Paul Port Authority

The St. Paul Port Authority is pursuing a scheme that could gut Minnesota's popular 2006 comprehensive eminent domain reforms that protect homes, small businesses, and farms from government takings for private gain. In mid-September 2008, the Port Authority announced its intention to take the property of Advance Shoring Company, a successful business that has operated for generations in St. Paul, to make way for a private development project that amounts to questionable real estate speculation with $10 million in public subsidies.

Advance CEO Karen Haug and her supporters are demanding that the St. Paul City Council stop the Port Authority's reckless and illegal condemnation of her property. For nearly 20 years, the Port Authority has coveted the Haug family's property in St. Paul and sought to hand it over to someone else for private economic development.

Since its founding in 1960 by Haug's father, Advance has played an instrumental role in leasing cranes, scaffolding, and concrete forming equipment used in the construction and restoration of landmarks in the Twin Cities, including the Xcel Energy Center, the Cathedral of St. Paul and, currently, Regions Hospital. As Haug has said, "You cannot look at St. Paul's skyline without seeing the contribution that our family business has made."

The Port Authority claims that it is taking Haug's land to remediate contaminants. The key thing to keep in mind, however, when it comes to the Port Authority's trumped-up environmental claims is that Karen Haug's property complies with all Minnesota Pollution Control Agency directives. If her property is left alone, any minor environmental concern that may exist can be easily and cost-effectively solved with private funds, which Karen is ready to invest, rather than with millions of dollars of taxpayer money, which is what the Port Authority proposes. The Port Authority's environmental red herring is merely an excuse to use eminent domain to take Karen's land for its real goal, namely, creating yet another generic 'business center' redevelopment project.

Minnesotans overwhelmingly support eminent domain reform; they oppose eminent domain for private gain.

Elected officials across the nation are taking property rights more seriously since the infamous *Kelo* ruling in 2005. The St. Paul City Council should do likewise to protect the rightful property of their residents. The council should not rubberstamp this eminent domain taking and give the Port Authority private property for someone else's private development, robbing from Peter so it can give to St. Paul.

WILLIAM H. (CHIP) MELLOR serves as President and General Counsel of the Institute for Justice, which he co-founded, and is a board member of PERC. Chip can be reached at WMellor@ij.org.

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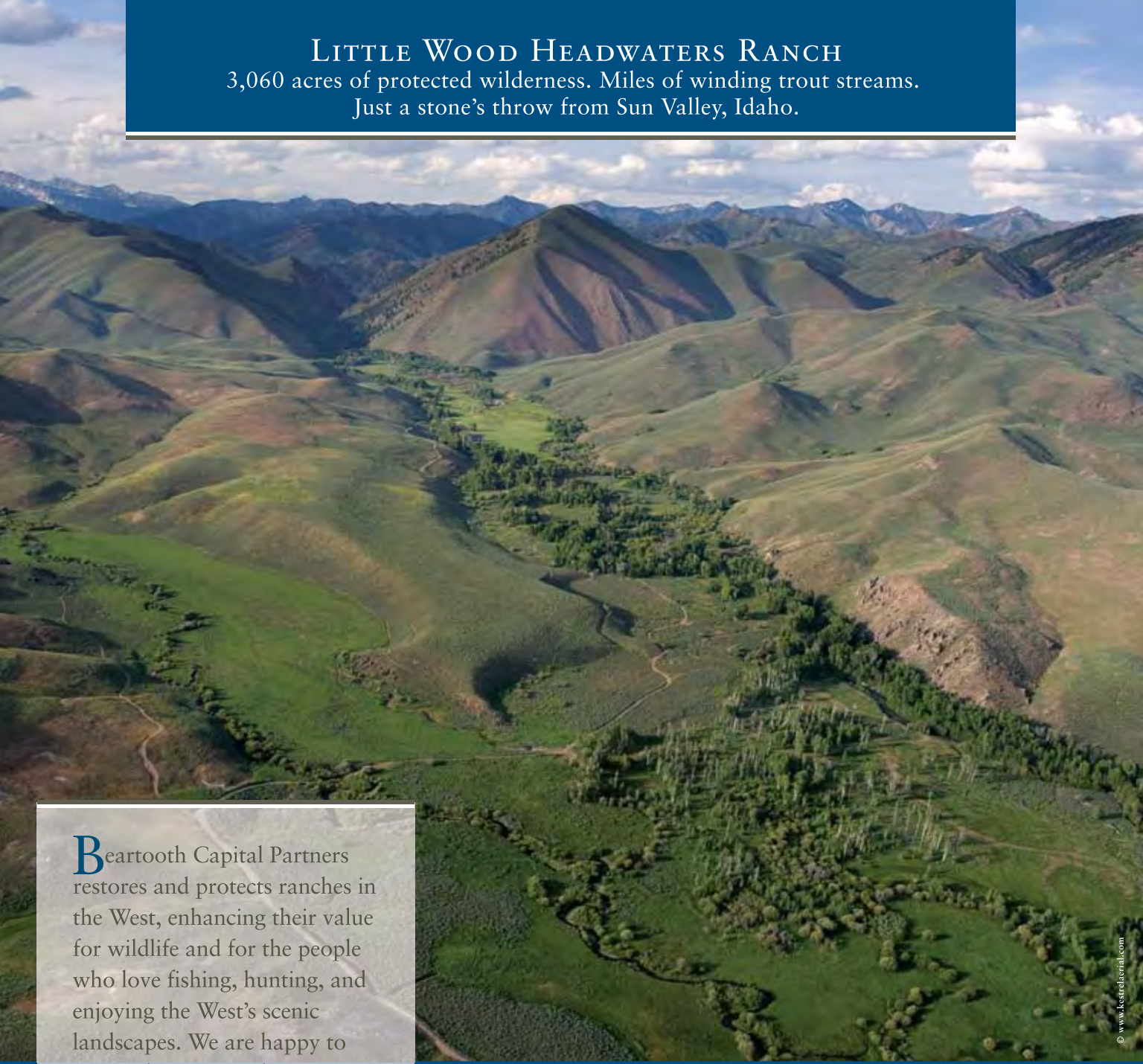

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