

June 1996

Environment, Economy, and Community in the Pacific Northwest

Michael C. Blumm

Follow this and additional works at: <https://scholarworks.umt.edu/plrlr>

Let us know how access to this document benefits you.

Recommended Citation

17 Pub. Land & Resources L. Rev. 1 (1996)

This Essay is brought to you for free and open access by ScholarWorks at University of Montana. It has been accepted for inclusion in Public Land & Resources Law Review by an authorized editor of ScholarWorks at University of Montana. For more information, please contact scholarworks@mso.umt.edu.

ESSAYS

ENVIRONMENT, ECONOMY, AND COMMUNITY IN THE PACIFIC NORTHWEST*

Michael C. Blumm**

Those who live in the Pacific Northwest know that the ecology and economy of the region are more intrinsically connected than in any other region of the country. This is especially true at the close of the 20th century. But the link between ecology and economy has always been a strong one in this region, where farming, forestry, and fishing have long been the engines that drive the economy.

To an unusual extent these economic engines have been fueled by public resources—public lands and public waters—especially lands owned and water controlled by the federal government. For example, the federal government built numerous dams to supply farmers with irrigation water and cheap slack water transportation to help market their products.¹

For another example, prior to World War II, the federal government conserved public forests from large-scale timber harvest so as not to compete with private timber.² Then, after the war, public timber became an important part of the Northwest economy, as the supply of private timber declined.³ In places, whole towns became dependent on public timber.

For a third example, in order to “mitigate” for devastating dam-caused losses to Northwest salmon runs, the federal government funded a fish hatchery program at an unprecedented scale.⁴ These hatcheries sus-

* This essay is adapted from remarks delivered at the American Bar Association conference on “The Future of the Endangered Species Act—Reauthorization or Extinction?” held at Northwestern School of Law of Lewis & Clark College on June 15, 1995.

** Professor of Law, Northwestern School of Law of Lewis & Clark College; Director, Northwest Water Law and Policy Project. Michael A. Schoessler, third-year student at Northwestern School of Law of Lewis & Clark College, helped with the footnotes.

1. See, e.g., RICHARD WHITE, *THE ORGANIC MACHINE: THE REMAKING OF THE COLUMBIA RIVER* 35-37 (1995).

2. See, e.g., James L. Huffman, *A History of Forest Policy in the United States*, 8 ENVTL. L. 239, 274-75 (1978); HAROLD K. STEEN, *THE U.S. FOREST SERVICE: A HISTORY* 247-77 (1976).

3. See, e.g., CHARLES F. WILKINSON, *CROSSING THE NEXT MERIDIAN: LAND, WATER, AND THE FUTURE OF THE WEST* 135-36 (1992).

4. See, e.g., WILLIAM DIETRICH, *NORTHWEST PASSAGE: THE GREAT COLUMBIA RIVER* 325-33

tained an ocean fishing industry, while allowing the river fishery, including the mainstay of Columbia River Indian tribes, to nearly disappear.⁵

Even when the region's economic leaders sought to diversify the Northwest economy and move from the boom and bust cycles inherent in extraction industries, they looked to the federal government, whose cheap electric power was the lure that landed the aluminum industry for the Northwest.⁶ Because the economy of the Northwest has always been dependent on the use of public resources, the regional economy has also relied, maybe to a greater degree than elsewhere, on the politics of natural resources allocation.

I. FROM PINCHOT TO THE ENDANGERED SPECIES ACT

For most of the 20th century, there was a broad-based consensus in public natural resources policy along the principles outlined by Gifford Pinchot, the first Chief of the U.S. Forest Service, whose utilitarianism was the hallmark of public lands decisionmaking for decades.⁷ Pinchot's philosophy of "greatest good to the greatest number in the long run" remained the unchallenged credo of Pacific Northwest natural resources policy through the 1950s and 1960s.⁸

But "greatest good," "greatest number," and "long run" were, and are, subjective concepts. And prior to 1970, too few people were involved in defining these terms. As a result, little value was placed on old growth forests as ecosystems; in those days, they were thought to be "biological deserts." Similarly, little value was assigned to the genetic importance of wild salmon; the health of salmon was measured in pounds of harvest, not in numbers of wild spawners.

The situation has obviously changed over the last quarter century, and now the preservation of wild fish, spotted owls, and old growth forests has become a driving force of the natural resources policy of the region. Many people attribute this change to the Endangered Species Act (ESA)⁹ and its implementation.¹⁰ I believe this is an erroneous conception.

(1995).

5. See, e.g., COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION, *THE MITCHELL ACT: AN ANALYSIS* (1981).

6. See, e.g., Michael C. Blumm, *The Northwest's Hydroelectric Heritage: Prologue to the Pacific Northwest Electric Power Planning and Conservation Act*, 58 WASH. L. REV. 175, 201-07 (1983).

7. See WILKINSON, *supra* note 3, at 124-31.

8. See WILKINSON, *supra* note 3, at 127-28; Michael C. Blumm, *Pinchot, Property Rights, and Western Water: (A Reply to Gregory Hobbs)*, 24 ENVTL. L. 1203, 1203-05 (1994).

9. 16 U.S.C. §§ 1531-1543 (1994).

10. See, e.g., Brent Walth, *The Endangered Species Act*, THE OREGONIAN, June 13, 1995, at A1 (stating that the ESA has had a dramatic effect on the way natural resources are used in the Northwest and, in a multi-part series, examining the impact of the ESA on other regions of the country); Mark O

After all, the spotted owl injunctions of the early 1990s¹¹ were not the product of the ESA, but instead resulted from federal agencies' failure to comply with the procedures of the National Environmental Policy Act (NEPA)¹² and the National Forest Management Act's directive to preserve viable populations of fish and wildlife.¹³ And it has been NEPA and the Northwest Power Act¹⁴ that have changed Columbia River operations more than the ESA.¹⁵ Many biologists believe that the salmon recovery plan promulgated under the Northwest Power Act is sounder biologically than the ESA recovery plan.¹⁶

The point is that the ESA didn't create the focus on spotted owls or wild salmon. And even if the ESA is substantially amended by Congress, the legal protections supplied by other statutes will not necessarily disappear. The issues certainly will not disappear either.

The ESA has, however, changed the tenor of the debate over the owl and the salmon by focusing attention on the habitat requirements of these species. After all, one of the purposes of the ESA is to preserve the ecosystems on which listed species depend.¹⁷ Thus, preserving the owl's habitat means preserving the last ten percent of the largest remaining temperate rain forest.¹⁸ And restoring the salmon, according to most biologists, means restoring spring and summer flows in the Columbia River and its tributaries.¹⁹

II. THE SCIENCE AND ECONOMICS OF THE STATUS QUO

Opponents of preserving ancient forests and increasing Columbia Basin river flows have based their defense of the status quo on grounds of science and economics. Because the science of managing and restoring ecosystems is still in its infancy, imposing the burden of conclusively

Hatfield, *Can't See the Forests for the Endangered Species*, WASH. POST, June 12, 1992, at A23 (claiming that the ESA has changed resource management in the Northwest too much, resulting in unbalanced resource management).

11. See, e.g., *Seattle Audobon Soc'y v. Robertson*, 914 F.2d 1311, 1317 (9th Cir. 1990).

12. 42 U.S.C. §§ 4321-4370d (1994).

13. 16 U.S.C. § 1604(g)(3)(B) (1994); 36 C.F.R. § 219.19 (1995). See Michael C. Blumm, *Ancient Forests, Spotted Owls, and Modern Public Land Law*, 18 B.C. ENVTL. AFF. L. REV. 605, 614-18 (1991).

14. 16 U.S.C. §§ 839-839h (1994).

15. See Michael C. Blumm, *Saving Idaho's Salmon: A History of Failure and a Dubious Future*, 28 IDAHO L. REV. 667, 682-704 (1992).

16. Telephone Interview with Bob Heinith, Passage Biologist, Columbia River Inter-Tribal Fish Commission (Oct. 6, 1995).

17. 16 U.S.C. § 1531(b).

18. See Catherine Caufield, *The Ancient Forest*, THE NEW YORKER, May 14, 1990, at 46.

19. See Michael C. Blumm & Andy Simrin, *The Unraveling of the Parity Promise: Hydropower, Salmon, and Endangered Species in the Columbia Basin*, 21 ENVTL. L. 657, 707-08 (1991).

proving that higher flows will produce more salmon, or that preserving ancient forests will protect owls, isn't possible, at least in the short run. Thus, opponents of change are encouraged to suggest their own, alternative versions of the science of restoration.²⁰ This has been particularly true in the case of the salmon, where utility and industrial interests have advanced elaborate ways to "engineer" a solution to salmon restoration, the most prominent of which is trucking and barging salmon around the dams. The result is that we now have a solution to salmon migration truly worthy of Rube Goldberg. As my colleague, Dan Rohlf, likes to say, only the Army Corps of Engineers could concoct a scheme in which the grain is shipped on the river and the salmon are in trucks on Interstate 84.²¹

At times, the science of the status quo seems particularly result-oriented. Take, for example, the "science" of salvage logging. The bill Congress passed in July of 1995 authorizes clearcutting of vast acreages of diseased forests, mostly on the east side of the basin, on the basis of abbreviated review and exemptions from environmental laws.²² This, despite the fact that scientists representing the Indian tribes have shown that the adverse effects of salvage logging on watersheds can be several times the magnitude of the effects of fire.²³

Even more than science, economics has been enlisted as an agent of the status quo. But the alleged high costs of preserving ancient forests have recently been undermined by the latest unemployment statistics. According to an *Oregonian* report published recently, owl protection has resulted in only about 16,000 lost jobs in Oregon, Washington, and Idaho; this is less than the 65,000 forecast by the industry and far fewer than industry automation has cost over the last dozen years.²⁴ Nevertheless, while the Northwest economy has hardly noticed the owl injunctions, some local timber-dependent communities have suffered greatly—both economically and psychologically.²⁵

The costs of salmon restoration have also recently been headline

20. See, e.g., James L. Buchal, *Some Fallacies About Salmon Restoration*, 25 ENVTL. L. 375 (1995).

21. Daniel Rohlf, *Legal Issues Shaping Salmon's Future*, 25 ENVTL. L. 413, 414 (1995).

22. Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-Terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred in Oklahoma City, and Rescissions Act, Pub. L. No. 104-19, § 2001, 109 Stat. 194, 240-47 (1995).

23. For example, the sediment loadings due to salvage logging and associated road construction are five times the loadings due to an intensive fire after one year, six times the loadings after five years, and seven times after ten years. Letter from Jim Weber, Columbia River Inter-Tribal Fish Commission to author (Sept. 28, 1995) (on file with author).

24. Peter D. Sleeth, *N.W. Loses Fewer Timber Jobs than Forecast*, THE OREGONIAN, May 21, 1995, at A1.

25. See, e.g., Sharon Begley, *The Birds and the Trees*, NEWSWEEK, Apr. 5, 1993, at 53; Jeff Mapes, *Who is Affected? Timber Towns Tell of Suffering*, THE OREGONIAN, Apr. 3, 1993, at A12; Brian T. Meehan, *Pleas for a Path Out of Chaos*, THE OREGONIAN, Apr. 3, 1993, at A13.

news. The Bonneville Power Administration (BPA), an agency with a good deal of experience in cost overruns, now claims to be spending close to \$400 million annually on salmon.²⁶ Apart from the fact that this figure includes foregone hydropower revenues—which erroneously assumes that the purpose of the river is to produce hydropower²⁷—these alleged costs are actually less than the annual carrying costs of BPA's failed nuclear power plant program.²⁸ Also overlooked are the ongoing costs of continuing to operate the river primarily to generate hydropower. According to a largely forgotten study by economist Phil Meyer, the annual costs imposed on the salmon resource by the hydropower resource are roughly \$370 million in 1982 dollars.²⁹ Needless to say, BPA does not emphasize what its operations cost fish and wildlife in its efforts to convince Congress to impose a "cap" on salmon expenditures. Nor, strangely, does the agency support exit and transmission fees that would help ensure that the intended beneficiaries of BPA's stranded investments pay their fair share of those costs.³⁰ The imposition of exit and transmission fees would also save BPA its financial solvency without a "salmon cost cap" by discouraging its customers from deserting the federal power system for cheaper power sources.

Moreover, the costs of salmon restoration can be spread broadly throughout the region's electric rate base and beyond the region to California and the Southwest. Despite recent increases, electric rates in the Pacific Northwest remain at least twenty-five percent lower than the national average.³¹ Unfortunately, cost spreading is more difficult in the case of

26. BONNEVILLE POWER ADMINISTRATION, U.S. DEP'T OF ENERGY, BUSINESS PLAN 1995 12 (1995) (claiming that the BPA will spend about \$400 million in 1995 on fish and wildlife, increasing to \$675 million by 2001).

27. See Michael C. Blumm, *Hydropower vs. Salmon: The Struggle of the Pacific Northwest's Anadromous Fish Runs for a Peaceful Coexistence With the Federal Columbia River Power System*, 11 ENVTL. L. 211, 248 (1981) (concluding that the legislation authorizing Columbia Basin dams envisioned hydropower only as an incidental benefit to be obtained only where consistent with navigation, flood control, and irrigation).

28. See, e.g., Letter from Brett Wilcox, President of Northwest Aluminum Company to Randy Hardy, Bonneville Power Administration Administrator (July 19, 1995) (illustrating in 1994-1995 the cost component of BPA's industrial firm power rate was 9.3 mills per kilowatt hour due to nuclear costs, and only 3.8 mills for fish costs) (on file with author); Memorandum from the Salem Electric Cooperative on BPA's Competitiveness (1995) (on file with *Public Land & Resources Law Review*).

29. See ANADROMOUS FISH LAW MEMO (Natural Resources Law Institute, Portland, Oregon), May, 1982, at 9 (citing Phillip Meyer, *Fish, Energy and the Columbia River: An Economic Perspective on Fisheries Values Lost and at Risk* 14 (March, 1982) (paper produced for the Northwest Resource Information Center)).

30. See Salem Electric Cooperative Memo, *supra* note 28, at 1 n.4, 3 n.12.

31. See, e.g., Hugh Dellios, *Northwest's Salmon Face New Kind of Uphill Battle: A Magnificent Native Near Extinction Due to Dams, Development*, CHI. TRIB., Sept. 6, 1994, § 1 (Northwest rates are about half the national average); Charles McCoy, *Pacific Northwest Regulators Approve Plan to Cut Dam Power to Save Salmon*, WALL ST. J., Dec. 15, 1994, at B7 (Northwest rates are the lowest

the owl, where costs are concentrated on the timber industry and dependent communities.

III. THE DIVIDES OF HISTORY, PLACE, AND COMMUNITY

Differences in science and economics are not the only reasons for the great divide between those who wish to restore salmon and preserve owls and those who see restoration and preservation efforts as threatening their way of life. Deep differences also exist in the perception of history, of place, and of community. I want to close by briefly elaborating on some of these differences.

First, the farming and forestry community and the preservation community differ on their respective versions of history. For the farming and forestry community, history begins with the white settlement of the region in the 19th century. This history is full of pioneers who settled the West—rugged individualists who cleared the forests and tamed the rivers and were bilked, undoubtedly, by the railroads and banks in the process.

The preservationists' history is an older one, beginning prior to the signing of the mid-19th century Indian treaties that contained promises to the tribes allowing them to continue to fish as they had been fishing for thousands of years. As Ted Strong, the Chairman of the Columbia River Inter-Tribal Fish Commission, recently asked a group of water lawyers, why doesn't this history make the Indians "first in time," giving the tribes priority under Western water law?³² The preservationists' history also sees the development of the Northwest as overwhelmingly the product of federal subsidies to irrigators, power interests, and ports.³³ In this view, free water, cheap navigation, and underpriced timber and electricity belied the myth of the rugged individualist.

Second, there are differences in terms of a sense of place. The preservationists define the Pacific Northwest "as anywhere a salmon can get to,"³⁴ which means that the region is rapidly shrinking. They emphasize the salmon's enormous attachment to place—returning almost poetically to their natal streams. The places sacred to preservationists have names like Celilo Falls, Opal Creek, Redfish Lake, the Kalmiopsis Wilderness, the Elwha River.³⁵ Places where few people live.

in the country, averaging about 40% below the national average); *Save Northwest Salmon*, USA TODAY, Sept. 13, 1995, at A10 (Northwest rates are one-third to one-half the national average).

32. Ted Strong, Address at the Northwest Water Law & Policy Project's 1995 Water Policy Conference (May 1995) (transcript available from Northwest Water Law & Policy Project).

33. See WHITE, *supra* note 1, at 92-108; William Bean & Philip Lansing, *Irrigation Subsidies and Sustainability: The New Deal's Frankenstein Is Alive and On Welfare in the Columbia Basin*, THE COLUMBIA BASIN (1995).

34. Pat Ford, *And Now—The Last Salmon Ceremony?*, HIGH COUNTRY NEWS, Apr. 22, 1991, at 8 (quoting Timothy Egan).

35. For a moving depiction of Elwha River salmon, see BRUCE BROWN, MOUNTAIN IN THE

The farmer/forester sense of place is an attachment to timber towns, the family farm, and to rural livelihoods. Farmers and foresters are essentially preservationists at heart; they fight fiercely to preserve their livelihoods and rural lifestyles. They do not want to abandon places like Mill City, Forks, Oakridge, Sweet Home. This attachment to small town, rural America may seem anachronistic in the late 20th century West, the most urbanized region in America, but it is real, tenacious, and deserving of respect. As Angus Duncan, the Chairman of the Northwest Power Planning Council, recently said, we need to find ways to ask people to change their behavior without insulting their lifestyles, their livelihoods, their heritage.³⁶

Finally, the perceptions of community differ. The community of the farmer and forester is the community of the American dream: of working class families and small town America, of unlocked doors, safe schools, and Sunday school. It is a community of homogeneity, not diversity, and it increasingly defines itself by what it is not: not urban, not racially or economically diverse, and not supportive of the federal government.

The community of the preservationists, on the other hand, is enlarged to embrace what Aldo Leopold called for nearly a half century ago—a land ethic that includes species and their habitats, that discounts short-term economics, that calls for ecological sustainability.³⁷ This definition of community has not, as you know, been widely embraced in farming and timber towns.

Thus, we have apparently fundamentally different concepts of history, place, and community that divide the region. But it seems to me that we need to spend much more time understanding the nature of these differences than we have. By “understand,” I mean begin to appreciate, in the same way that many of us celebrate cultural, racial, and ethnic diversity. I believe that there is more hope here than in trying to reach consensus on our scientific and economic differences—which, after all, often amount to technical reflections of our values. We need to talk more about those underlying values. To each other. In non-threatening, non-advocacy situations.

My hope is that if we begin to study each other’s values, we will find that we have at least as much in common as we do not. That preservationists will admire the attachment that farmers and foresters have to the rural, small town way of life; that farmers and foresters will admit

CLOUDS: A SEARCH FOR THE WILD SALMON (1982).

36. Angus Duncan, Address at the Northwest Water Law & Policy Project’s 1995 Water Policy Conference (May 1995) (transcript available from Northwest Water Law & Policy Project).

37. ALDO LEOPOLD, A SAND COUNTY ALMANAC AND SKETCHES HERE AND THERE 201-26 (1949).

that they do not wish to extirpate species and their habitats; that both groups will agree they are concerned mightily with preserving both species and rural livelihoods for future generations.

I don't pretend that such a conversation, such an understanding, will eliminate the deep divide that currently exists in the region. But I do think that we should begin to talk to each other instead of having our economists, our biologists, and our lawyers talk for us. If we can hear each other's stories and can understand each other's values, I believe we would find more that binds us together as Northwesterners than divides us.