

**Oregon Chapter  
American Fisheries Society**

**Creating a Society to Match Our Scenery**

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*"Angry as one may be at what heedless men have done and still do to a noble habitat, one cannot be pessimistic about the West. This is still the native home of hope. When it fully learns that cooperation, not rugged individualism is the quality that most characterizes and preserves it, then it will have achieved itself and outlived its origins. Then it has a chance to create a society to match its scenery."*

--"The Sound of Mountain Water", Wallace Stegner

Thank you for this opportunity to speak to you again. The last time I appeared before this group was at the Western Regional Division meeting in April of 2002 in Spokane, Washington. The subject I covered in that address was the challenge of recovering the threatened wild salmon and steelhead populations in the Columbia River Basin using our framework of environmental laws and regulations. Let me read you a passage from that speech.

"These environmental laws and treaties constitute both our connection with the past and our contract with the future. And at the heart of this debate lies one question that each of us must answer: are we willing to honor that contract? To me, this is not just about doing what the law requires -- it is about doing what we know to be right.

If we lose the wild salmon of the Pacific Northwest, then we have lost our watersheds and put at risk our future and that of our children and grandchildren. A highly degraded ecosystem -- which is where we are headed today - represents no less than a decision to mortgage the legacy with which we have been blessed and entrusted for our own short-term benefit. I believe that we are better than that."

Now, three years later, we continue to struggle against growing odds. We have won yet another round in the ongoing court battle over the development of a responsible and effective recovery plan for the basin. Yet, in spite of our long string of legal victories, virtually nothing has happened on the ground to actually reverse the relentless degradation of the watershed. We need to be asking ourselves, "why?"

As you know, I have spent most of my adult life in public office here in Oregon, much of that time engaged in issues surrounding the management of our natural resources. My focus was on creating sustainable solutions to the seemingly intractable conflict between

natural resource extraction and long term environmental stewardship. And although not always successful, these efforts were based on a belief that our economic, environmental and community values are interdependent rather than mutually exclusive.

Yet as a result of these experiences – both the successes and the failures – I have become increasingly convinced that our current natural resource policy making and problem solving structure is failing us. It does not satisfy the values of the stakeholders over time but, rather, serves only to maintain the status quo and create conflict and polarization among our citizens.

The evidence of a failed system is all around us: the controversy over the management of the Tillamook state forest; the conflict over salvage logging in the Biscuit fire; meeting the challenges posed by non-point source pollution; restoring the health of our forests and, of course, recovering species under the ESA.

These are complex issues involving tensions between economic pressures, ecological needs, and community values. It is increasingly clear, however, that they cannot be resolved by using the existing paradigm; that underlying problem goes far beyond the people engaged in the debate to the institutions and organizational structures through which they are seeking to resolve their disputes. The problem lies with our “operating system,” if you will.

This year -- as we celebrate the 200th anniversary of Lewis and Clark’s first winter in the Mandan villages on the Missouri – it seems a fitting time to take stock of our land and of each other; to reflect on how we got here, to consider the past and what lessons it might teach us about how best to meet the future.

The ongoing conflict surrounding natural resource management should concern us for a number of reasons. First, because of the values which are at stake: on the one hand, the majestic beauty and spirituality of our natural lands and the powerful landscapes which help define us as westerners – and on the other hand, the jobs and important economic activity which depend on these same natural resources.

We should also be concerned at a deeper and more fundamental level as well, because this conflict and the acrimony which surrounds it are disrupting the important relationships which underlie strong, vital communities. People are labeled in this debate --labeled as environmentalists or ranchers or timber operators – labels which define only our differences and none of our common goals and aspirations. And perhaps nothing illustrates this better than the escalating conflict over the management of our Western forests.

For hundreds of years, the forests of Eastern Oregon and much of the Intermountain West were blessed with huge stands of old growth pine covering millions of acres. For much of the last century, however, forest management policy was characterized by active fire suppression, widespread livestock grazing, the harvesting of valuable old growth pine, and a resistance to active management by conservation groups.

The legacy of these management practices -- especially on public lands -- is forests overstocked with stands of young fir and pine, the loss of older fire-resistant trees, thousands of acres of dead and dying timber infested with insects, and a high risk of catastrophic fire -- a risk which has become a reality on more than one recent occasion.

This situation has led to a significant reduction in watershed health and the destruction of habitat for sensitive species coupled with a catastrophic decline in employment for timber dependent communities. Yet efforts to address this widely recognized problem have been thwarted by the conflict between those who wish to harvest timber and those who wish to preserve it -- and by their distrust of each other and of the state and federal land management agencies themselves.

I doubt very much if Thomas Jefferson envisioned this kind of natural resource conflict when he sent the "Core of Discovery" up the Missouri River in May of 1804 en route to the Pacific Ocean.

Thomas Jefferson, after all, was the chief proponent of what has been called The "politics of engagement," -- a model in which people work together in a spirit of cooperation to find common ground and solve problems for their mutual benefit. In this model, people relied on one another rather than on a centralized bureaucracy.

Jefferson's view -- which he argued in the debate over the drafting of the U.S. constitution -- was opposed by the federalists, led by Alexander Hamilton, James Madison and John Jay. The federalists espoused a "politics of disengagement," wherein problems were solved not by cooperation among individuals, but rather were managed by a strong central government, which carefully balanced private interests, one against the other.

Throughout most of the century following this crucial debate, Jefferson's politics of engagement prevailed as our young nation expanded into the lands which had been explored and charted by Lewis and Clark -- an expansion actively promoted by the federal government.

By the end of the 1800's, however, as the Industrial Revolution overtook America, the Federalist viewpoint eclipsed that of Jefferson. What emerged was a strong central government, which, in many respects, reflected what was happening in the workplace. Like American industry, this new governance structure was also hierarchical and was designed to manage conflicts among individuals -- not through cooperation but by serving as a referee among competing interests. Along with it came the politics of disengagement and a growing dependence on third party decision-makers to solve problems: the legislature, the bureaucracy and, more recently, the courts.

This change in governance structure, however, did not change the policies which encouraged the development of the West. In the 19<sup>th</sup> century, the focus was on moving settlers westward, using, as the lure, the seemingly inexhaustible supply of land and

natural resources. In the 20<sup>th</sup> century, the focus shifted to water, starting with the 1902 Reclamation Act, the Boulder Canyon Project and the construction of the twenty nine dams in the Columbia River basin between 1938 and 1976.

At the time these policies were put into place, they made sense; they were defensible; they helped to advance a larger national purpose. It was a time of perceived abundance. It seemed unimaginable that the resources of this vast nation could possibly be exhausted or that there could be a dark side to the significant economic benefits that these activities brought to the region and to its people.

By the 1970's, however, it was becoming increasingly apparent that the benefits of economic development and natural resource extraction came at a price: these activities were having a detrimental impact on the environment. There was a growing public concern and this collision of legitimate values led to an escalating conflict. The primary battlegrounds for this conflict were the U.S. Congress, state legislatures and the courts.

Our governance structure responded in exactly the way it had been designed to respond – by trying to manage this conflict through a framework of federal statutes and regulations. Among them were the Clean Air Act passed in 1970, the Clean Water Act passed in 1972 and the Endangered Species Act passed in 1973.

Now, over three decades later, it is worth noting that the objective of these laws was not to resolve the underlying conflict, but rather to manage it by attempting to balance the competing interests. The politics of disengagement. And precisely because the objective was to manage rather than to resolve the conflict, conflict has, not surprisingly, continued.

Environmental interests sue the natural resource industries and governmental agencies for failing to meet federal standards and regulations. They strive to strengthen environmental laws through legislative action. In return, economic interests that are subject to federal regulation, challenge these regulations in the courts and seek to repeal or weaken them through legislative action.

Each side tends to look for opportunities to advance their agenda when the Administration in Washington, D.C. is in their favor, while the other side relies on the courts to form a defensive front against changes that might imperil their interests. What is increasingly clear is that this approach only perpetuates the problem but does nothing to move us toward long-term resolution.

First, our dependence on third party decision makers has taken individuals and communities out of the problem solving loop – giving us license as stakeholders – regardless of which side of the debate we are on -- to pursue our own narrow interests at the expense of lasting solutions. It fosters an “us versus them” mentality which inevitably creates winners and losers.

Second, the primary tools of this third party governance structure -- law, regulation and enforcement -- are simply incapable of solving many of the problems they are being asked to solve. They were designed to address a different set of challenges in an era of perceived abundance. They were designed to manage problems by compelling behavior.

What they were not designed to do is to bring people together to actually solve problems; they were not designed to operate in an era of limits which creates a tension between environmental, economic and community values; they were not designed to respond to complex problems which cannot be resolved without the participation of many people.

Consider, for example, the challenge of maintaining water quality. At the time our current governance tools were developed and for many decades thereafter, the major threat to water quality was caused primarily by point source pollution coming from easily identifiable sources – a problem lends itself well to management through regulation and enforcement.

Today, however, the major threat to water quality is “non-point” source pollution – in other words, runoff – not just from forests and fields, but from lawns, rooftops streets and highways in urban and suburban Oregon.

Reducing non-point-source pollution requires a long-term commitment to change behavior -- by everyone living in the watershed -- many of them living in the city. That cannot be achieved through legislation, regulation, enforcement or litigation. It can only be achieved through a place-based consensus process in which people share a common stake in the problem and gain some ownership in the solution.

My point is simply this. If we truly want to create sustainable solutions to the management of our natural resources, we must find the wisdom and the courage to move beyond the governance structures and problem-solving tools we inherited from the past and create new ones for the future. And although these tools do not yet exist, it is our challenge to develop them.

Where do we begin? One way to begin is with what I call a “retro-design” exercise. That is, asking yourselves what kind of legislation would we have to pass if we wanted to create the natural resource management system we have today. Let me use a medical analogy.

Perhaps the most central flaw in the U.S. health care system is that it is based on the concept of categorical eligibility rather than on the concept of universal coverage. That is, to be eligible for publicly financed health care you must fit into a category – and these categories were established by Congress in the mid 1960’s when Medicare and Medicaid were enacted.

Remember that in 1965 poverty among the elderly was twice that of the general population and Medicare was enacted to ensure that older Americans had financial access to health care. It is an entitlement program that begins at retirement, regardless of the

financial means of the retiree and is financed largely through taxes imposed on those who are working. It provides coverage for acute care but, interestingly enough, not for long-term care.

While this made sense in 1965 the policies, which underlie this program are difficult to justify given the realities of today. Whereas forty years ago the elderly represented one of the poorest segments of our society, today they represent one of the richest segments. Because Medicare is not means tested, however, retirees are entitled to publicly financed health care paid for, in part, by workers, many of whom cannot afford health care for themselves and their families.

Medicaid, also enacted 40 years ago, was created to improve financial access to health care for certain categories of poor citizens. These categories, established by Congress, include poor families with dependent children who are on welfare; the blind and disabled; the frail elderly in need of long-term care; and certain categories of pregnant women.

Unlike Medicare, Medicaid is not an entitlement program. Eligibility for Medicaid is based on “category,” not on financial need and thus many poor citizens are ineligible even though they may be deeply impoverished. In other words, our system makes a distinction between the “deserving poor” – those who fit into a category; and the “undeserving poor” – those who don’t.

That is our health care system – and all efforts to reform it take place around these two programs with no serious evaluation of the premises and assumptions on which they were built ... which is one of the reasons we can’t seem to get the job done even though millions of Americans are unable to afford health care when they need it.

Now suppose we do a “retro-design” exercise for our health care system. IN other words, let’s make the policies which underlie the system explicit by drafting a bill that reflects the legislation Congress would have to pass if it wanted to enact our current health care system. We will call our bill The Health Care Equity and Empowerment Act of 2005 – because, as you know, in the U.S. Congress the title of a piece of legislation is not required to have anything to do with its content.

It would read something like this.

**Preamble**

1. There shall be no explicit policy objective adopted to guide the allocation of public health care resources.
2. No clear responsibility shall be assigned for financing the care for those who cannot pay for it themselves.

### **Section I**

Categories shall be established to differentiate between the "deserving poor and the "undeserving poor."

1. The "deserving poor" shall include women who are pregnant, families with dependent children, and those who are blind or disabled. Citizens in these categories shall be provided with publicly financed health care.
2. The "undeserving poor" shall include poor women without children who are not pregnant and poor men. These citizens shall be denied publicly financed health care.

### **Section II**

1. All those who are over 65 years old shall be entitled to publicly financed health care, regardless of their income.
2. Employed citizens under the age of 65, regardless of whether they can afford health care for themselves and their families, shall be required to pay a portion of their taxes to purchase health care for wealthy citizens over the age of 65.

### **Section III**

1. The public program for the elderly (Medicare) shall not provide coverage for long term care services.
2. The public program for the poor (Medicaid) shall provide coverage for long term care services.
3. The elderly in need of long term care shall be required to spend themselves into poverty in order to become eligible for Medicaid at which point their needs will compete directly with those of poor women and children (in some cases their own children and grandchildren).

I could go on, but I have made my point. No one could openly support the policies embraced by the Health Care Equity and Empowerment Act of 2005. Yet these are exactly the policies which underlie the current U.S. health care system and these are exactly the policies which must be challenged if we are serious about achieving basic care for all Americans.

I think the same is true for natural resources. What I want you to think about is applying the same kind of a "retro-design" exercise that I just illustrated with our health care to the system through which we manage our natural resources.

Consider, for example, that the structure through which we seek to manage our public forests was not designed to manage ecosystems. On the contrary, it is based on political

and bureaucratic boundaries rather than on natural boundaries like watersheds or forest ecosystems.

Consider the fact that public forest lands in Oregon alone are managed by three different agencies under three different management plans. Federal forest lands come under the jurisdictions of two different departments: The Department of Agriculture (USFS) and the Department of the Interior (BLM). These departments – and indeed the agencies within them – have different legislative mandates, different constituencies and answer to two separate Cabinet Secretaries. Furthermore, they compete with one another for resources in the federal budget process. State forest lands come under the jurisdiction of the Oregon Department of Forestry which has yet another legislative mandate and answers to the State Board of Forestry.

Does that make sense to you? If you set out to design a system to manage public forest lands, would you design the one we have in place today? Or would we design it differently?

Consider the structure of western water law – the doctrine of “first in time, first in right.” This was originally developed for the hard rock mining industry in the 1800’s. Now, over 150 years later, it allows us, through litigation, to manage the water rights, but not the water resource. Lawsuits do not create resolution – they create winners and losers, and they do not create more water. Yet we continue to cling to this antiquated management tool, even as the last drop of water disappears into the parched earth.

How long would Microsoft last if Bill Gates clung to an operating system that was ten years old, or five, or even two years old? Yet we cling to operating systems that are over a century old and wonder why we cannot resolve the natural resource challenges of the 21<sup>st</sup> century. We sue each other, we label each other, we battle it out in the halls of Congress while our rural mills close, our forests burn, and ever more species edge toward the brink of extinction.

My point is that we will never resolve these conflicts by using a set of tools which – while they may have made sense when they were created – make no sense today. Most of them could not even be enacted today. What I am asking you to do is to engage in an exercise that matches our tools to the challenges before us.

A big idea? Absolutely. But, to paraphrase Albert Einstein, “We cannot solve today’s problems by using the same level of thinking we used when we created them.” We cannot let our thinking be constrained by a status quo which produces conflict and political gridlock, rather than sustainable management of our natural resources.

A few years ago I took a friend on a raft trip down the Rogue River in Southern Oregon. It was August and the Chinook salmon were spawning with many dead fish on the banks while others still struggled upstream. We drifted by a huge male salmon, a spectacular fish weighing over thirty pounds. He was still pointed upstream, valiantly fighting the current and his failing strength, but having difficulty staying upright. His body was

scarred, his fins were broken and worn, patches of fungus covered his back and sides, his great hooked jaw slowly opening and closing. “What is wrong with that salmon” my friend asked me. “There is nothing wrong with him, I said. He is just dying.”

Because even in death the life cycle of the salmon is dedicated to the future -- to nurturing, sustaining and giving to that which will follow. The Chinook we watched on the Rogue never made it to the spawning beds, but he gave his body to the river and, in so doing, helped provide the nutrients essential to the survival of the next generation.

And that is our challenge as well – our commitment to the future -- to ensure that our children inherit healthy and sustainable ecosystems. And I suggest to you that realizing that future will require new tools and new approaches; it will require the courage to stop clinging to the familiar and, instead, to start reaching for the possible. Indeed, finding the courage and the wisdom to rethink the way in which we advance our objectives is the central challenge facing the environmental movement today.

But it is something we can do. In fact, it is something we must – if we are to leave our children a legacy not of debt and degrading but a legacy of abundance. A gift for the future.

Let me close today with the words of Oregon poet Kim Stafford who eloquently defines the challenge and the opportunity that lies before in what he calls “Lloyd’s Story.”

Lloyd Reynolds, the international citizen of Portland, spent his last days in pain, silent, unable to speak or to write, lying in his hospital bed. On his last day at home, as his wife scurried to pack his suitcase for the hospital, Lloyd made his way outside to the garden and there she found him on his knees, with a spoon, awkwardly planting flower bulbs. “Lloyd,” she said, “you will never see these flowers bloom.”

He smiled at her. “They are not for me,” he said, “they are for you. The salmon coming home? They are for you. The calls of the wild geese? They are for you. The last old trees? They are for you and your children, to the seventh generation and beyond. They are all blooming into being for you.”

That is our challenge today. To plant the seeds of tomorrow. To change the world. By acting. By leading. By reengaging in this struggle -- not as apologists for the status quo, but as architects of a new future.