

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

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Email watershed@igc.org

<http://www.eli.pdx.edu/Watershed>.¹

The views in this article originate from an experience I had at a national rivers conference in 1993 (since replicated dozens of times in the subsequent 10 years) where conference participants were using the same term: “watershed councils” in ways that that assumed they were talking about the same thing. Few in the audience then (and it still is true today) knew the distinctive regional differences in structure, law and culture in organizations often called watershed councils from coast to coast in the United States. The broad scope of watershed institutional history in the United States, including the analysis of the effects of forests on water supplies by George Perkins Marsh in Vermont in the 1860s², through the efforts to create the Adirondack Park in New York in the 1880s and 1890s³ along with the seminal work of John Wesley Powell and his report on the arid lands of the great American West in 1878⁴ are all antecedents of regional differences in governance and activism which endure to this day. More importantly, the nascent emergence of ecosystem law and policy in the 21st Century⁵ is best served by common terminology and conceptual approaches.

In the spirit of cross-fertilization and further development of ecosystem law and policy, the views in this article are based on a 20 year history of work in watershed ecosystem protection and restoration. Starting with positions in local watershed organizations in New England and moving to regional work for American Rivers in the Northeast U.S. and Canada, For the Sake of the Salmon in the Pacific Northwest, along with work nationally and internationally at River Network, as a private consultant, university professor, and at the Rivers Foundation of the Americas, I cannot address these

¹ In the mid 1980s Peter Lavigne (M.S.E.L. *cum laude* 1983, J.D. 1985 Vermont Law School) worked as a lobbyist for the Vermont Natural Resources Council, as executive director of two river watershed advocacy groups in New England (The Westport River Watershed Alliance and the Merrimack River Watershed Council) and worked as Acting Regional Coordinator for American Rivers in Quebec and the Northeast before becoming the national River Leadership Program Director for River Network from 1992-1996. He is currently Senior Fellow of the Watershed Management Professional Program, Executive Leadership Institute at Portland State University and President/CEO of the Rivers Foundation of the Americas, Portland, Oregon.

² GEORGE PERKINS MARSH, MAN AND NATURE OR PHYSICAL GEOGRAPHY AS MODIFIED BY HUMAN ACTION (1864) EDITED BY DAVID LOWENTHAL (1965).

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

⁴ JOHN WESLEY POWELL, REPORT ON THE LANDS OF THE ARID REGION OF THE UNITED STATES WITH A MORE DETAILED ACCOUNT OF THE LANDS OF UTAH (1878) EDITED BY WALLACE STEGNER (1962).

⁵ See RICHARD O. BROOKS, ROSS JONES AND ROSS A. VIRGINIA, LAW AND ECOLOGY: THE RISE OF THE ECOSYSTEM REGIME (2002)

issues as a disinterested academic. It is however, the knowledge acquired through this diversity of experience and involvement that makes the analysis possible.⁶

Watershed: The Buzz Word of the 1990s

‘Watershed protection and restoration’ was the ‘new’ environmental buzz phrase of the 1990s and watershed ecosystem restoration will continue to be a focus far into the future. The enthusiasm for characterizing the newness of the watershed approach to ecosystem management and restoration is best represented by the important 1993 book from the Pacific Rivers Council entitled **Entering the Watershed: A New Approach to Save America’s River Ecosystems (1993)**. Partly in response to the ideas in **Entering the Watershed**, conservation techniques shifted dramatically over the decade to more comprehensive watershed ecosystem approaches. The emphasis in the West (and in federal agencies nationally and some state agencies in other regions of the United States) moved towards comprehensive restoration and away from single focus efforts on water, air, and land pollution and degradation issues.

Following the lead of the national organization River Network⁷ (whose work changed between 1988 and 1993 from ‘helping local people protect rivers,’ to ‘help people organize to conserve their river watershed’, masses of agencies and NGOs began the same shift during the mid-1990s. That shift had previously occurred within the Pacific Rivers Council as it evolved from the wild and scenic river oriented Oregon Rivers Council at its founding in 1987 to its more comprehensive regional (and occasionally national) watershed approaches to ecosystem restoration and protection in the early 1990s. At that time it seemed, for many people working on environmental issues in the West, that ‘watershed councils’, ‘alliances’, and ‘associations’ in various forms and with various purposes sprang instantaneously, from nowhere, all over the West.

Of course, watershed advocacy of one sort existed in the West from the early decades of the United States federal government’s dominion over the region. Though oriented more towards encouraging ecological limits to sensible development of the high desert on the East slope of the Rockies, Civil War hero and famed scientist and explorer Major John Wesley Powell spent much of his post Civil War life advocating, and in part implementing, a watershed approach to the rivers of the West.⁸ Wallace Stegner, in an introduction to a 1962 reprint of Powell’s seminal 1878 **Report on The Lands of the Arid Region of The United States With a More Detailed Account of the Lands of**

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

⁷ An organization founded in 1988 by Phil Wallin. River Network is still the only national organization with the good sense to base its headquarters in Oregon and its field offices in Washington DC and other regions. Oregon was chosen as the national headquarters for River Network largely because of the 1988 work of the Oregon Rivers Council energizing the region’s river paddlers and activists with the biggest Wild and Scenic River designation bill ever passed by Congress (Oregon Omnibus National Wild and Scenic River Act (1988). The Act added 40 outstanding river segments totaling 1,500 river miles to the National Wild and Scenic River system in Oregon and remains the largest river protection legislation in the nation’s history). <http://www.pacrivers.org/about/index.cfm?ArticleID=1044> last accessed April 27, 2004.

⁸ See WALLACE STEGNER, *BEYOND THE HUNDREDTH MERIDIAN: JOHN WESLEY POWELL AND THE SECOND OPENING OF THE WEST* (1954).

Utah said “Essentially, Powell’s Report . . . was a sober and farsighted warning about the consequences of trying to impose on a dry country the [land use] habits that have been formed in a wet one.”⁹

Watershed councils and the watershed approach to ecosystem restoration have a long and effective history in New England, as well as and other parts of the East and Midwest. While Major Powell’s end of the 19th century efforts to change the conquering white pioneer’s governance of natural resources by arranging political boundaries in sync with the river watershed basins of the West failed dismally,¹⁰ the eastern version of watershed advocacy oriented in large part to ecological restoration, began. In the wet East referred to by Powell and Stegner, the first campaign to ‘restore’ a river watershed built an eventually successful effort just as Powell’s 22 year campaign sputtered and ended.

Origins of Watershed Restoration: the Merrimack River Watershed and the Weeks Act of 1911¹¹

In 1885, 680 timber companies were indiscriminately cutting trees in the headwaters of the Merrimack River, the White Mountains of New Hampshire. In their wake were denuded hillsides, streams choked with runoff, and devastating forest fires that fed on the piles of slash and waste. As logging railroads pushed the cutting higher into the mountains, visitors to the grand resort hotels of the Whites were greeted by burned over hillsides and great clouds of smoke.¹²

Textile mill owners downstream on the Pemigewasset and the Merrimack watched helplessly as erosion-fueled freshets and summer droughts alternately flooded and spun their wheels. In the late 1890s, concerned editorials started to appear in the Boston and New York newspapers while a handful of early conservationists huddled with business and political leaders. In 1899, an Episcopal missionary for northern New Hampshire found the critical human angle that started to turn the tide. The Rev. John E. Johnson wrote an incendiary pamphlet that accused the New Hampshire Land Company – a Hartford, Connecticut-based concern that was buying and consolidating large tracts to sell to the timber companies – of genocide.¹³

⁹ Stegner’s introduction is the best short explanation of Powell’s watershed oriented efforts. Introduction by Wallace Stegner in **Report on the Lands of the Arid Region of the United States: With a More Detailed Account of the Lands of Utah**, (The Belknap Press of the Harvard University Press 1962) page xiv.

¹⁰ “Behind Powell’s general plan was something absolutely basic: the willingness to look at what was, rather than at what fantasy, hope, or private interest said there should be. . . . On the foundations of the obvious, the report built a program of the logical. But as often happens, the obvious and the logical were not enough to convert and convince. Stegner pages x-xii. See also “Watershed Counties” by Theodore M. Smith, *River Voices*, Vol. 6 No. 3 Fall/Winter 1995, page eight. (River Network, Portland, Oregon).

¹¹ This section modified and shortened from *The Weeks Act of 1911* by Richard Ober in **At What Cost? Shaping the Land We Call New Hampshire**. Richard Ober, editor. SPNHF/NHHS 1992.

¹² The western United States since 2000 is experiencing a similar period of catastrophic wildfires due to in large part to a century of forest mismanagement and 50 years of fire suppression policy by the U.S. Forest Service symbolized by the Smokey the Bear campaign. See e.g. **West Braces for Intense Fire Season: Drought and Early Spring Blazes Portend a Long, Hot Summer, Authorities Say** By T.R. Reid Washington Post Staff Writer Sunday, April 25, 2004; Page A03 and the High Country News “Special Issue on Fire in the West” May 23, 2003 which includes, among others **Losing Battle** by Ray Ring, http://www.hcn.org/servlets/hcn.Article?article_id=13984 last accessed April 27, 2004 and **Firespeak Catastrophe** by Ray Ring http://www.hcn.org/servlets/hcn.Article?article_id=13985 last accessed April 27, 2004.

¹³ It is pitiful and ironic that this term was applied to trees but not to the indigenous inhabitants of the region, the vast majority of whom by that time were essentially exterminated. Ober, *Supra* note 11.

In early 1901, former New Hampshire Governor Frank West Rollins convened a meeting of nine friends from a range of backgrounds. They called themselves the Society for the Protection of New Hampshire Forests (the Forest Society). The Forest Society was (and still is) an amalgam of New Hampshire's political power and Boston's social and financial elite, plus a seasoning of conservationists, foresters, outdoors enthusiasts and hardy Yankee townspeople.¹⁴ United with advocates for a southern Appalachian reserve, the Forest Society coalition decided that the only adequate response was federal ownership and restoration of the mountain forest.

Leisure, timber, and scenery were all factors, but it was water that turned the battle. In a letter to Congress included in a booklet entitled, "Reasons for a National Forest Reservation in the White Mountains," Amoskeag Manufacturing Company President T. Jefferson Coolidge blamed clearcutting upstream for the alternating floods and droughts damaging his mills on the Merrimack in Manchester. Soon, over 100 mill owners in the watershed joined the fray.¹⁵

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

No region of the country was specifically named, but within a year of passage, land acquisition had begun in the White Mountain National Forest.¹⁶ Eventually the Weeks Act would enable the creation of 50 national forests in the East. In some ways it was perhaps appropriate that Powell died way 'down East' in Haven, Maine in 1902, just as the first successful effort to 'restore' a major river watershed was building a head of steam in the mountains of New Hampshire.¹⁷

Structural and Cultural Differences in Watershed Councils East and West

Along with a century plus history of watershed advocacy pioneered by the Forest Society, watershed councils, associations and alliances have existed for 30-50 years in many northeast watersheds. The very existence of the EPA Office of Wetlands, Oceans and Watersheds (OWOW) was

¹⁴ Id. Interests originally represented ranged from the altruistic (the Appalachian Mountain Club) to the commercial (American Pulp and Paper Association).

¹⁵ For a detailed and fascinating account of 19th century Merrimack watershed dam fights and dynamite clashes between fishermen and industry that in many ways parallels the current debates about dams and industry on the Columbia and Snake Rivers *see* **Nature Incorporated: Industrialization and the Waters of New England** by Theodore Steinberg (Cambridge University Press, 1991) [chapter 4 The Struggle over Water](#) and [5 The Law of Water](#).

¹⁶ For those who think that Yellowstone and Yosemite have problems with over-visitation – the White Mountain National Forest had over 7 million visitors in 1999 – more than Yosemite and Yellowstone combined -- in a fraction of their combined area of land.) Estimates are derived from: Personal Interview with White Mountain National Forest Supervisor's Office, 719 Main Street, Laconia, NH August 2000; National Visitor Use Monitoring Results, August 2001 USDA Forest Service Region 9 WHITE MOUNTAIN NATIONAL FOREST which estimated 2.7 million visits with an average of 2.3 people per vehicle in 2000. Available at

http://www.fs.fed.us/recreation/programs/nvum/reports/year1/R9_White_Mtn_final.htm#_Toc524933387

last accessed April 26, 2004; and the White Mountain National Forest "About Us" web page at

http://www.fs.fed.us/r9/white/about_us/index.html. Yellowstone National Park reported 3,120, 830 visitors in 1998

http://www.yellowstoneparknet.com/geninfo/info_facts.htm#visitation (last accessed April 27, 2004) and Yosemite National Park estimated 1999 visitation at 3,493,607. <http://www.yosemite.national-park.com/info.htm#siz>.

¹⁷ Donald Worster, *A River Running West: The Life of John Wesley Powell* (2001) at 569.

inspired by some New England projects in the 1980s.¹⁸ Thus, this ‘new’ watershed approach, facilitating place-based ecosystem conservation, is not so new.

The term ‘watershed council’ however, has important regional differences that often are glossed over in the rush by former Interior Secretary Babbitt and others to praise such organizations.¹⁹ In the West it implies a consensus-based decision process; while in the East watershed councils imply a different animal altogether.

East

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

Eastern watershed councils often have a 20-50 year history as independent advocacy organizations preaching watershed management/ecosystem protection for multi-state watersheds. Examples include the Connecticut River (the Connecticut River Watershed Council founded in 1952)²⁰ the Merrimack River Watershed Council founded in 1978²¹, the Nashua River Watershed Association (founded in 1969)²², the Housatonic Valley Association (founded in 1941)²³, or even the tiny Massachusetts and Rhode Island watershed of the beautiful ecological treasure of the Westport River. The Westport River Watershed Alliance was founded in 1976 as the Westport River Defense Fund.²⁴

Watersheds and watershed advocacy and management vary tremendously in size and organization in the East and Midwest. River basins with watershed councils range from tiny 100 square mile coastal watersheds like the Westport River watershed, to 12,000 square mile watersheds like the Connecticut River valley of Vermont, New Hampshire, Massachusetts and Connecticut. Watershed protection and restoration efforts in the East, South and Midwest often include statewide umbrella groups like the Massachusetts Watershed Coalition, the River Alliance of Connecticut, New York Rivers United, the River Alliance of Wisconsin, the Minnesota Rivers Council, and the Alabama Rivers Coalition, and, sometimes, large regional groups like the 23-state Mississippi River Basin Alliance. These organizations often provide policy communication, organizational and technical support and other services to local groups in their area, in addition to pursuing their own statewide or regional policy, advocacy, and education agendas.

¹⁸ The formation of OWOW was inspired by the Buzzards Bay Project and the Merrimack River Watershed Initiative, both run by EPA’s Region One office in Boston in the late 1980s – which in turn followed upon the early experience of the Chesapeake Bay Program.

¹⁹ See for instance *Remarks of Interior Secretary Bruce Babbitt*, National Press Club, Washington D.C., December 13, 1995. In defense of Babbitt, and other reporters and researchers, it is often difficult to distinguish the characteristics of the organizations in any region by their self-description in mission statements and brochure blurbs. Accurate characterization requires analysis of their activities and track record over time – knowledge that is not easily obtained by outside analysts.

²⁰ The Connecticut River Watershed Council at http://www.ctriver.org/about_us/index.html (last visited April 25, 2004).

²¹ The Rivers Reach (newsletter of the Merrimack River Watershed Council) volume One Number one spring 1979 page 16.

²² The Nashua River Watershed Association at <http://www.nashuariverwatershed.org/> (last visited April 25, 2004).

²³ The Housatonic Valley Association at <http://www.hvathewatershedgroup.org/> (last visited April 25, 2004).

²⁴ The Westport River Watershed Alliance at <http://www.wrwa.com/about.htm> (last visited April 25, 2004).

West

In the West, the term watershed council usually means a quite different kind of organization (though some groups based on the eastern model exist in the West as well and vice versa). Western watershed councils usually have several differentiating characteristics from their eastern namesakes. First, they are usually “multi-stakeholder” organizations. That is, their governing boards (which are often informally organized without incorporation as nonprofits or any other kind of recognized legal entity) include not only self-identified environmental activists, but, also, depending on the primary local constituencies of the watersheds, ranchers, farmers, other business people, federal, state and local agencies like USDA or the Forest Service, County Commissioners, local agricultural districts and others with direct economic interests in the watershed. In fact, some Western watershed councils specifically exclude some environmental activists or organizations from participating with the councils.

Second, Western watershed councils generally run on some sort of consensus based decision-making model. Consensus-based decision-making means that no decisions are made or positions taken by the council unless all members agree. Often these groups have an ‘open membership’ policy, meaning that anyone or any interest group can attend/join a watershed council meeting and/or decision-making process at any time. Some, like the Big Hole Watershed Council in Montana, restrict their membership to carefully defined local stakeholders and specifically exclude stakeholders who are perceived to be too disruptive or radical for the local ‘powers that be.’ Some variations on the pure consensus model allow for a version of a super-majority vote in situations where consensus is not reached.

Third, Western watershed councils are most often highly dependent on government funding or “certification” for funding and/or staff assistance. The Rocky Mountain and Pacific Coast states now have over four hundred watershed councils²⁵ at various stages of maturity. Some are staffed; most are not. They vary widely in composition, level of technical expertise and experience in collaborative decision-making.

One interesting Western ‘super council’ is For the Sake of the Salmon (FSOS). FSOS reflected each of the three main characteristics of Western watershed councils discussed above, but on a regional basis. FSOS was organized in late 1995 as an unincorporated, voluntary association with no statutory authority, which acts, in a quasi-governmental capacity on a regional basis. Originally inspired by Nisqually tribe elder Billy Frank, chairman of the Northwest Indian Fisheries Commission, who wanted to bring together traditional salmon adversaries with a mission to work to restore and protect Pacific salmon.

At its start in 1995, the FSOS governing board, a voluntary association with no legal authority for management of the funds or staff of the organization, consisted of representatives of the Governors of California, Oregon, and Washington, the Northwest Indian Fisheries Commission, timber, agricultural, commercial and sport fishing industries, conservation groups, power companies, and various federal resource agencies, among others. FSOS operated with funding from various federal agencies, and the states of Oregon, Washington and California. In the first few years, the State of

²⁵ 1998-99 River and Watershed Conservation Directory published by River Network and the National Park Service. See also the excellent analysis of watershed initiatives in the West in **The New Watershed Source Book** by Doug Kenney et al. of the Natural Resources Law Center of the University of Colorado School of Law (2000).

Oregon employed the executive director, a former state legislator, while the federally created Pacific States Marine Fisheries Commission employed the rest of the staff.²⁶

FSOS represented both the promise and pitfalls of pure consensus efforts.²⁷ Well into its first year of operations, it became clear that the consensus process followed by the FSOS Board was used by industry representatives solely to protect their turf and stop any effective substantive policy advances which would have protected and or led to the restoration of endangered salmon stocks. This sadly predictable state of operations was evidenced when the principals of many of the interest groups who served on the board began sending junior employees without decision-making authority to represent them at board meetings after the first six months of meetings.

In 2002, FSOS became an independent 501 c (3) organization governed by a Conservation Council and Executive Committee with a 3 person staff. It's programs were limited then to support of non-controversial watershed council efforts with technical, information, and agency coordination assistance, training programs, and grants of federal and state dollars to enhance and restore salmon streams in the three-state region. Efforts to forge agreement on the board on the many institutional governance and structural problems facing salmon were completely dropped by 1999.²⁸

On March 1, 2004 FSOS announced that it would cease operations and dissolve effective June 1, 2004.²⁹ Executive Director James Rapp attributed the decision to go out of business to unpaid contracts from the states of Oregon and California.³⁰

Most Western councils organize in response to a crisis, often related to endangered species listings under the federal Endangered Species Act and/or other forest health and water quality issues. Few have regulatory authority. And lack of secure funding tends to inhibit long-term planning. Most observers agree that the probability of success for consensus-based watershed councils is enhanced by skilled facilitation, motivated participants, high-quality, accessible information and some level of technical support.³¹ With encouragement and assistance, these consensus-based watershed councils can play a major role in biodiversity conservation efforts, assuming that is one of their goals.

Experienced observers watch for FSOS type “death by consensus” -- the process that ensues when any one party can block or delay actions by the council, or can force the council to only adopt policies and actions which do not address fundamental issues for the watershed ecosystem. Achieving

²⁶ Authorized by Congress in 1947, the Pacific States Marine Fisheries Commission (PSMFC) is one of three interstate commissions dedicated to resolving fishery issues. Representing California, Oregon, Washington, Idaho, and Alaska, the PSMFC does not have regulatory or management authority; rather it serves as a forum for discussion, works for coast wide consensus to state and federal authorities. PSMFC addresses issues that fall outside state or regional management council jurisdiction. PACIFIC STATES MARINE FISHERIES COMMISSION 45 SE 82nd Avenue, Suite 100 Gladstone, Oregon 97027-2522. www.psmfc.org

²⁷ In the interest of full disclosure, this writer served as Deputy Director of FSOS starting April 1, 1996, in its first full year of existence before leaving on April Fools Day, 1997.

²⁸ Interview with James Rapp, Executive Director, FSOS, March 15, 2003.

²⁹ <http://www.4sos.org/4sos-oob.pdf> last accessed April 27, 2004.

³⁰ Interview with James Rapp, FSOS Executive Director, March 4, 2004.

³¹ See e.g. Sommarstrom, Sari Ph.D. and Huntington, Chuck W. *An Evaluation of Selected Watershed Councils in the Pacific Northwest and Northern California*. Prepared for the Pacific Rivers Council and Trout Unlimited. January 2000 (see Part III pp 5-13). Available on the Pacific Rivers Council Website: www.pacrivers.org and Kenney, Doug. *Arguing About Consensus: Examining the Case Against Western Watershed Initiatives and Other Collaborative Groups Active in Natural Resources Management*. Natural Resources Law Center, University of Colorado School of Law, 2000.

consensus can be particularly difficult in watersheds with a wide variety of stakeholders and diverse problems and solutions.

Midwest

In the Midwest, Wisconsin presents an interesting example of the trends sweeping the United States in the 1990s. According to the 2001 directory of organizations working on river conservation published by the statewide advocacy group River Alliance of Wisconsin,³² of the approximately 36 self-identified river advocacy organizations in the state, 24 were founded since 1994. More notable is the higher percentage of multi-stakeholder ‘watershed councils’ founded since 1994 – approximately 19 of 24. Much of the growth of both the local advocacy organization and the multi-stakeholder or education based watershed councils can be attributed to the establishment of the statewide River Alliance in 1993.³³

In 1992, as organizing of the River Alliance was in process, very few local river protection organizations existed and then existing statewide conservation organizations had low priority for efforts based on comprehensive watershed protection and restoration approaches. This in a state with tremendous river resources known for its great fishing and canoeing along with significant pollution problems from both agriculture and industry. Although Wisconsin was the home of one of the nation’s older watershed conservation efforts -- the Plum Valley Watershed Association founded in 1946, the watershed-based comprehensive approach to river conservation took nearly another 50 years to take hold statewide.³⁴

In addition to its current status as a hotbed of river protection activity, Wisconsin is now a world leader in river restoration by dam removal. In the late 1980s and early 1990s, several state agencies were engaged in a nearly secret effort to remove old and unsafe small dams across the state. In 1994, the River Alliance began a dam removal advocacy program which called attention to the successes of the state’s nascent efforts. The Alliance’s efforts have since led to worldwide acclaim for its efforts to support the precedent setting restoration of free-flowing status to the entire Baraboo river and the removal of dozens of small dams throughout the state.³⁵

Mission Differences and Common Strategies

Despite the regional organizational and mission differences, the Eastern type watershed councils also attempt to incorporate a wide variety of economic and other interest groups in their watershed efforts. The Merrimack River Watershed Council (MRWC), for instance, while always active with regulatory and legislative initiatives to protect the watershed, has also spearheaded the Merrimack Business Environmental Network, worked closely with private land trusts and government agencies,

³² Available online at <http://www.wisconsinrivers.org/LocalGroups/directory.html>

³³ The mission of the River Alliance of Wisconsin is dedicated to advocating for the protection, enhancement and restoration of our rivers and watersheds. According to executive director Todd Ambs

³⁴ See “Plum Valley” by George Laycock and Dorothy Douglas, *Farm Quarterly*, Winter 1947. *See also History of Plum Valley* (Historical Committee, Plum Valley Watershed Ass’n, Wonewoc, Wis., 1948) and “Review of 20 Years Working Together” handwritten summary from 1946 to 1965 by Annette Gross. (available at the Wonewoc, Wisconsin, Public Library).

³⁵ See **DAM REMOVAL DOWN UNDER: RIVER ALLIANCE SHARES WISCONSIN EXPERIENCE WITH AUSTRALIA** (2000) available online at <http://www.wisconsinrivers.org/NR0928.html>.

recreation, public health, social justice and other groups on a wide variety of projects throughout the diverse urban, suburban and rural 5,010 square mile watershed that is home to 1.7 million people.³⁶ The MRWC, while leading hard fought legislative, regulatory and PR campaigns (including the spectacularly successful New England Coastal Campaign's "Terrible Ten" campaign to eliminate bad water development projects, prevent wetlands destruction, address inadequate sewage treatment, and stop destructive highway expansions) and participating in litigation sponsored by other environmental organizations, the MRWC also co-sponsored the highly successful Merrimack River Forum -- a quarterly open-to-anyone meeting with an open agenda and the purpose of facilitating communication about actions and issues affecting the watershed.³⁷ The MRWC participated in the EPA-sponsored Merrimack River Watershed Initiative which eventually invested over 20 million dollars in various multi-stakeholder watershed restoration and protection efforts between 1986 and 1996.³⁸

Evolution of the Councils and the Lords of Yesterday

In at least a couple of ways, the differences in the East and West models owe much to two factors: first, in the West, the dominance of what Charles Wilkinson calls the "Lords of Yesterday,"³⁹ and second, the older age of the earliest councils in the East.

The "Lords of Yesterday" are a collection of laws, policies and ideas that include: the Hard Rock Mining Law of 1872; the prior appropriation doctrine for water use which originally arose out of the 'forty-niner' gold mining camps in California; the public range lands statutes and the Bureau of Land Management; the Organic Act of 1902 which established National Forest lands and the multiple use concept of forest management, as well as what Marc Reisner calls the "Age of Dams"; the Reclamation Act of 1902; the Bureau of Reclamation; the Army Corps of Engineers and the damming of the West.⁴⁰ The attitude of these 'lords of yesterday' towards the environment of the West have been characterized as covering the entire gamut of attention--from indifference to disdain to contempt.

Several of these 'lords' are in major transition. The era of dam building has been over for ten years and we are now entering the era of dam removals.⁴¹ The first major dams are starting to come out⁴²: A settlement has been made on the Elwha dams in Washington--they will come out; the Edwards Dam in Maine, built illegally in 1838, came out in 2001. An enormous debate over dam removal is raging around the Snake River, and dams have been removed, or approved for removal, in Wisconsin, Maine, Florida, Pennsylvania, Massachusetts, New Hampshire, Oregon, Washington, and California. The state of Wisconsin has removed over 100 dams in the last decade and many more are on tap. To a lesser extent there has been a change in rangeland management with slight rises in federal lease fees and minor changes in range management requirements.

³⁶ Population Projections to 2010 from the plotted map "Merrimack River Watershed Population Density and Projected Change" March 1996 EPA Merrimack River Initiative.

³⁷ The author served as executive director of the MRWC and oversaw these activities in 1988-89.

³⁸ Interview with Ralph Goodno, President, Merrimack River Watershed Council (June 2, 1999).

³⁹ **Crossing the Next Meridian: Land, Water and the Future of the West** by Charles Wilkinson (Island Press, 1992) Chapter 1 and passim.

⁴⁰ Or as I call it, "Dominy's Domination", after former Commissioner of Reclamation Floyd Dominy.

⁴¹ **"Dam Fights of the 1990s: Removals"** by Rita Haberman. **River Voices** Vol. 5 No. 4, Winter 1995.

⁴² See generally the American Rivers website on dam removals, easily the most comprehensive single source on the subject at <http://www.amrivers.org/index.php?module=HyperContent&func=displayview&shortname=riversunplugged>

Beyond the Revolution

Some people have said that the revolution is over, that the West has changed fundamentally and will never go back to the way it was. A 2000 issue of *High Country News* headlined an article titled “Beyond the Revolution”⁴³. The article maintained that the revolution of change in the use of public lands in the West had been completed -- largely because of the Clinton administration’s actions to declare national monuments all over the West, and their imposition of a policy to protect all remaining roadless areas in the nation’s national forests.

That judgment was, and is premature.⁴⁴ The ineffective and exclusionary structure of many watershed councils is an indication of the stranglehold the ‘lords’ still have on the West. Salmon runs are in a quagmire in the Northwest because salmon deal with all five of the ‘lords of yesterday’. Salmon get slammed by forest clearcuts that increase stream temperatures and stream sedimentation. Salmon get slammed by dams that raise water temperatures to sometimes lethal levels in reservoirs, block spawning migration from the ocean and block or slow outward migration from the spawning grounds. Salmon get slammed by uncontrolled grazing and its destruction of riparian habitat; and they get slammed by mining waste and its poisonous residue and sediment runoff. Every single ‘lord of yesterday’ hits the salmon issue and it is no surprise that salmon populations have been in a severe downward spiral in the last 30 years.⁴⁵

The legal structures that sustain the ‘lords’ while devastating the salmon and other listed species also heavily influence the structure of the watershed councils and limit their effectiveness. For instance, the government certification of watershed councils that is required by statute in Oregon for state funding eligibility arose out of a political recognition that the ‘lords’ of irrigation and agriculture controlled the politics of many county commissioners and state legislators, particularly from rural areas of eastern Oregon. Hence, the Oregon legislative requirement that county commissioners certify council eligibility for state funding⁴⁶ was a buy-in to build support from the ‘lords’ agricultural and mining interests in the legislature in order to pass appropriations for restoration projects.

⁴³ “*Beyond The Revolution*” by Ed Marston. **High Country News**, April 10, 2000, Vol. 32 No. 7.

⁴⁴ See e.g. the many Bush Administration’s regulatory rollbacks and repeals of Clinton era regulations in the NATURAL RESOURCES DEFENSE COUNCIL’S **REWRITING THE RULES, THE BUSH ADMINISTRATION’S ASSAULT ON THE ENVIRONMENT YEAR-END REPORT 2002** (2003).

⁴⁵ See Bruce A. Stein and Stephanie R. Flack, *1997 Species Report Card: The Status of U.S. Plants and Animals* (The Nature Conservancy, 1997), available at <http://consci.tnc.org/library/pubs/rptcard/title.html>.

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

⁴⁶ ORS 541.388. In fact, For the Sake of the Salmon’s 2003 Technical Assistance Program Announcement of Funding Availability is specifically limited to state certified watershed councils or Soil and Water Conservation Districts. Further restrictions on the grant program including a criterion that projects show a high likelihood of completion in one year after project development and design technical assistance.

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

The consensus based structure of most Western watershed councils removes the potential independence of local restoration efforts and ensures continued dominance of the Lords of Yesterday. This dominance is asserted through deliberate exclusion of environmental group representatives perceived as too ‘green’,⁴⁷ through self-censorship of environmental advocates who fear loss of funding for projects, and through provision of payroll and other fund tracking services for councils who hire staff coordinators with state and federal funds. These payroll services limit the ability of the councils to disagree both with the ag interests which dominate the conservation districts in the West, and with the agencies that fund project work, because the coordinators are often legally federal or state employees due to the administrative services offered by the agencies to the unincorporated councils. As Stegner noted in 1962, “The West relies on a degree of federal paternalism that it is not always happy to accept and the benefits of which it is not always happy to acknowledge.”⁴⁸

In the East, while groups like the MRWC and WRWA work closely with various governmental entities including NRCS, those government entities don’t control the formation of the councils and they don’t certify the councils for funding as happens in Oregon and Washington and increasingly among federal agency funding programs. Instead of basing funding decisions first on the structure of the councils, most, if not all, of the Eastern state governments’ restoration and education funding is distributed according to assessments of the efficacy of the proposed restoration projects.⁴⁹ Public support for the proposals are often considered in the East (and measured by the breadth of interests among the project participants) – hence there is an informal incentive for Eastern groups to be effective in building community support.

Another critical funding difference exists between East and West. Because many Eastern watersheds are smaller and more densely populated than those in the West, it is often easier for Eastern councils to raise money as membership-based advocacy organizations. The denser population means less domination of one extractive industry or another, even in rural areas, and provides a much larger pool of potential individual donors with a wider variety of personal interests and commitment to environmental issues. More environmental foundations exist in the East as well, though areas like Seattle and Montana are fast catching up with and exceeding the capacity of Eastern environmental funders.

⁴⁷ JULIA M. WONDOLLECK & STEVEN L. YAFFEE, MAKING COLLABORATION WORK: LESSONS FROM INNOVATION IN NATURAL RESOURCE MANAGEMENT, at 107 (2000).

⁴⁸ Stegner, note 4, page xv.

⁴⁹ See e.g. the Massachusetts Riverways Small Grants program in the RIVERWAYS PROGRAMS 2002 ANNUAL REPORT FY 2002-2003 p 11-12. Available online at <http://www.state.ma.us/dfwele/River/pdf/riverwaysannualreport02.pdf>. Accessed June 20, 2003.

Age and Chronology in the East

Though these days it is open to factual debate, the Eastern model, because it is now so explicitly organized from an ecosystem protection goal, is often more effective over the long term. The Western model, because it begins with an implicit assumption of multiple use goals, often leads to a 'lowest common denominator' result for ecosystem protection.⁵⁰ The past is not necessarily prologue, however. Many of the older Eastern groups, and again, the MRWC is typical, were initially single-issue groups with narrow geographic and issue foci. Over time, the issues that inspired the formation of the groups were won and membership, and therefore fiscal capability, grew. Success resulted in the hiring of more staff members with substantive professional expertise and the capability and interest to deal with tougher and broader geographic issues grew as well.

As Western watershed groups age and hopefully mature, their capability and willingness to face the 'lords of yesterday' directly will increase. In parallel, many Eastern groups are adding, or have long been using, cooperative, multi-stakeholder efforts in their quivers. It is also important to note an underdeveloped, little-noticed and critically important point that runs through the vast and growing literature on cooperative environmental decision-making, including the recent book **Making Collaboration Work**⁵¹ and reports from various scholarly institutes and other organizations.⁵²

Fundamentally, few of the collaborative or consensus based processes would happen at all or would make much sense in the absence of a bottom line. This bottom line is the performance standards and other requirements of our system of environmental law that has been enacted over the past thirty years. Without that system, who seriously believes that any of the lords governing the environment of the West would have ever come to the table?

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

⁵⁰ See e.g. Chuck Huntington and Sari Sommarstrom **An Evaluation of Selected Watershed Councils in the Pacific Northwest and Northern California (2000)**.

⁵¹ Wondolleck and Yaffee supra note 47.

⁵² See e.g. **The Watershed Source Book**, Natural Resources Law Center, 1996; De Jongh, Paul E. with Captain, Sean. **Our Common Journey: A Pioneering Approach to Cooperative Environmental Management**. Zed Books, London and New York, 1999; Kenney, Doug. *Arguing About Consensus: Examining the Case Against Western Watershed Initiatives and Other Collaborative Groups Active in Natural Resources Management*. Natural Resources Law Center, University of Colorado School of Law, 2000; *EPA's Framework for Community-Based Environmental Protection*. EPA Document 237-K-99-001, February 1999; Sommarstrom, Sari Ph.D. and Huntington, Chuck W. *An Evaluation of Selected Watershed Councils in the Pacific Northwest and Northern California*. Prepared for the Pacific Rivers Council and Trout Unlimited. January 2000.