

VOLUME 23 NUMBER 2 JUNE 2005

# PERC REPORTS

THE MAGAZINE OF FREE MARKET ENVIRONMENTALISM



## IN THIS ISSUE

THE CATSKILLS  
PARABLE

SUCCESS OVERDUE  
AT THE QUINCY  
LIBRARY

CONSERVATION  
EASEMENTS IN  
CRISIS?

WHAT EVER  
HAPPENED TO  
SMART GROWTH?

R. MCINTOSH

## FROM THE EDITOR

PERC CELEBRATES ITS 25TH ANNIVERSARY

To honor PERC's anniversary, this month we are hosting keyboardist Chuck Leavell to lead "An Evening with PERC" in Bozeman. Of course, we aren't inviting him just because he plays for the Rolling Stones, the Allman Brothers, or Eric Clapton and presents an exciting show. Chuck is also an award-winning tree farmer, ensuring future forests through stewardship today.

For the rest of the year, PERC is celebrating by doing what we do best—research, outreach, and education about property rights and market approaches to environmental issues. This issue of *PERC Reports* examines environmental events in the light of these approaches, especially by applying realism.

In our first story, Kenneth Orski and I scrutinize recent events affecting "smart growth"—those appealing policies that attempt to restore a sense of community, but often at the expense of freedom.

The most provocative article in this issue is undoubtedly Mark Sagoff's analysis of an urban legend—the story that New York City spent \$1 billion to pay for "nature's capital" rather than build a water filtration plant. Even though this story first turned up in the prestigious journal *Nature*, it is far from what is claimed for it. We believe that it's better to know the truth.

From there, we move to a defense of conservation easements by Jon Christensen and Terry Anderson, and then to a history of the Quincy Library Group. This was a discussion group that developed spontaneously in northern California, born out of conflict over logging on three national forests. William Varettoni scrutinizes why the results have been modest, at best.

Thence to Matthew White's description of the little-known federal entities called National Heritage Areas. This is followed by a short recap of Gary Libecap's paper, "Rescuing Water Markets: Lessons from Owens Valley"—a policy paper that is must reading for those trying to advance water trades.

"Greener Pastures" features a tantalizing invention that could make hydro power more benign, along with a clever way to attract donations to fund research. Daniel Benjamin, who has been studying the history of the Royal Navy in the United Kingdom, will be back in our next issue with his "Tangents" column. We have some impressive letters and we conclude with Terry Anderson's new "On Target" column. Enjoy!

*Jane S. Shaw*



From left: Orski, Sagoff, Christensen, Varettoni, and White



Property and Environment Research Center

2048 Analysis Drive, Suite A  
Bozeman, Montana 59718-6829  
Ph: (406) 587-9591 Fax: (406) 586-7555  
perc@perc.org www.perc.org

### PERC REPORTS

VOLUME 23 NO. 2 JUNE 2005

ISSN 1095-3779

Copyright © 2005 by PERC.

#### Editor

Jane S. Shaw

#### Associate Editor

Linda E. Platts

#### Art Director

Mandy-Scott Bachelier

#### Executive Director

Terry L. Anderson

#### Senior Fellows

Daniel K. Benjamin, David D. Haddock,

P. J. Hill, Donald R. Leal,

Gary D. Libecap, Robert E. McCormick,

Roger E. Meiners, Andrew P. Morriss,

Jane S. Shaw, Randy T. Simmons,

Richard L. Stroup, Walter N. Thurman,

Bruce Yandle

#### Director of Programs and Treasurer

Monica Lane Guenther

#### Editorial Associate

Linda E. Platts

#### Senior Research Fellow

Dominic Parker

#### Research Fellows

Alison Berry

Holly L. Fretwell

J. Bishop Grewell

#### Office Manager

Dianna L. Rienhart

#### Executive Assistant

Michelle L. L. Johnson

#### Administrative Assistants

Jean M. Modesette

Sara Kate Volkel

#### Conference Coordinator

Colleen Lane

#### KCI Coordinator

Carol Ferrie

#### Board of Directors

Thomas J. Bray, Chairman, *The Detroit News*

David R. Atkinson, *Atkinson & Co.*

Thomas E. Beach, *Beach Investment Counsel Inc.*

David G. Cameron, *Dana Ranch Co. Inc.*

Tyler Dann, *Wesfair Agency Inc.*

Kimberly O. Dennis, *D & D Foundation*

William A. Dunn, *Dunn Capital Management Inc.*

Joseph N. Ignat, *Blackburn Consultants LLC.*

Paul J. Ingrassia, *Dow Jones Newswires*

Frank-Paul King, *King/Strategic*

Dwight E. Lee, *Upland Associates LLC*

Andrew S. Martzloff, *Bitterroot Capital Advisors LLC*

E. Wayne Nordberg, *Hollow Brook Associates LLC*

George F. Ohrstrom, *The Ohrstrom Foundation Inc.*

Leigh Perkins, *The Orvis Company*

John F. Tomlin, *Conservation Forestry LLC*

#### Honorary Director

Vernon L. Smith, *ICES, George Mason University*

#### Cover image and p. 2:

Robert McIntosh (1970) *Walk to the Village.*

©/CORBIS

## WHAT EVER HAPPENED TO SMART GROWTH?

POLICIES TO REDUCE SPRAWL HIT OBSTACLES

By C. Kenneth Orski and Jane S. Shaw

"A review of key state and local planning records shows no significant shifts in Maryland's development patterns since the passage of Glendening's smart growth package," wrote Washington Post reporter Peter Whoriskey.



"Smart growth" policies, which became popular nationwide during the 1990s, are regulations designed to reduce suburban sprawl and control growth. They encourage people to live close together within walking distance of shops and offices. One goal is to reduce the use of the automobile; another is to create neighborhoods full of interesting "streetscapes"; and a third is to cluster people in high densities in order to preserve large areas of open space. Today, smart growth policies seem to be in retreat. Setbacks have occurred in Maryland, Virginia, and Oregon, and new census information suggests that the public does not really embrace the smart growth way of life.

### MARYLAND: NO DENT IN LAND-USE PATTERNS

One sign of smart growth's weakness comes from Maryland, where former Governor Paris N. Glendening unveiled a statewide policy in 1997 to manage growth. The idea was to restrict the use of public funds for development to areas where public infrastructure was already being supplied. Counties were to submit plans to the state showing where they wanted growth to occur. These "priority funding areas" would be eligible for state infrastructure financial assistance, but projects outside these areas would not.

The policy was hailed as a milestone. But as Peter Whoriskey reported last fall in a series of articles in the *Washington Post*, Glendening's initiative has yet to make a significant dent in Maryland's sprawling land-use patterns. "A review of key state and local planning records shows no significant shifts in Maryland's development patterns since the passage of Glendening's smart growth package," wrote Whoriskey (2004, A01). "Growth still takes place where there was nothing, rather than where it has gone before." Although he did not have recent fig-

ures, Whoriskey noted that in 2001, 75 percent of the land consumed by home building in Maryland was taken from pastures, woods, and other parcels outside the smart-growth areas—almost the same percentage as before the program began, according to Maryland Department of Planning records.

One possible reason for the failure of Glendenning's smart growth policy was that it lacked teeth. The state could refuse to fund the necessary public infrastructure, but could not veto a project. Large developers and retail giants such as Wal-Mart built anyway, financing the necessary roads and sewers themselves. Local officials refused to stand in the way (Orski 2000).

In addition, some local officials viewed Glendenning's efforts as too much state intrusion and so they circumvented the law. Some designated as growth areas far more land than was needed to accommodate growth over the next two decades. For example, Howard County, which was expecting rapid urbanization, took all the land previously slated for development and called the whole thing its smart growth area (Orski 1998).

Perhaps most importantly, plans to increase densities in smart growth areas ran into determined grass roots opposition. Efforts to build townhouses around Metrorail stations in suburban Montgomery County—considered logical places for higher densities because they are close to mass transit—have often been rejected or scaled back due to neighborhood residents' opposition.

### LOUDOUN COUNTY—EXCLUSIONARY ZONING?

In another setback, the Virginia Supreme Court has thrown out Loudoun County's slow-growth zoning regulations, which had blocked home building in the western part of the nation's fastest-growing county (Orski 2005).

Loudoun County, on the periphery of the Washington, D.C., metropolitan area, has been a battlefield between the forces of development and advocates of smart growth for years. Its population almost tripled in 15 years, from 86,000 in 1990 to 248,000 in 2005. This growth spurred the election of a "smart growth" slate of officials in 1999. Traditionally, Loudoun's zoning law had required three acres for each new home built in the semirural western part of the county. The board of supervisors changed the zoning rules in January 2003 to require 10 or 20 (and in some cases 50) acres per house, depending on the property location.

The rationale was that growth should occur in existing

*The state could refuse to fund the necessary public infrastructure, but could not veto a project. Large developers and retail giants such as Wal-Mart built anyway, financing the necessary roads and sewers themselves. Local officials refused to stand in the way.*

communities in the eastern portion of the county. But critics charged that these policies were nothing more than exclusionary policies masquerading as open space protection. They sheltered wealthy landowners and their pastoral estates from encroaching suburbanization. Other critics pointed out that the new zoning rules would not prevent sprawl; they would simply spread it over a larger area.

A new board elected in 2003 dismantled many of the growth curbs but left the restrictive zoning law, which faced numerous legal challenges filed by aggrieved property owners. On March 3, 2005, Virginia's highest court declared the 2003 zoning law invalid. The court did not rule on the issue of property rights, but on procedural grounds. Loudoun officials, said the court, had not given proper public notice concerning the zoning hearings and had not clearly specified the boundaries of land to be rezoned.

Potentially, the court ruling clears the way for more than 50,000 additional houses on the 300 square miles of western Loudoun County that had been closed to dense development.

### OREGON SHIFTS COURSE

One of the most surprising changes occurred in November 2004. By a majority of 61 percent, Oregon voters approved a ballot initiative, Measure 37. It states that the government should compensate property owners when government-imposed land use restrictions reduce the value of their property. If the government cannot or will not pay, property owners can develop their land as they see fit. In the words of the ballot initiative, "Governments must pay owners, or forgo enforcement, when certain land use restrictions reduce property values." Because the state has set aside virtually no money to pay landowners, Measure 37, it is feared, will lead to a rash of suburban-style subdivisions outside Oregon's urban boundaries (Orski 2005).

Many local planning officials see the new measure as destroying the state's land-use system, which has funneled development into clearly defined urban growth areas and protected open space from rampant suburbanization. The initiative is likely to reverberate beyond the borders of Oregon. Smart growth advocates fear that the new law will strengthen the property rights movement nationwide.

To be sure, antisprawl legislation had already lost some of its political momentum. In the early 1990s, a number of states—Flor-

ida, Texas, Louisiana, and Mississippi—passed property-rights laws to protect landowners from monetary losses caused by restrictive zoning. But none of these measures has had the political and psychological impact of the Oregon initiative. The *Seattle Times* thought Measure 37 "may have mortally wounded Oregon's strong land use planning system" (Nov. 24, 2004). Others considered it as a public repudiation of the principle of growth management, a policy that Oregon pioneered 30 years ago. Smart growth advocates fear that the new law will strengthen the property rights movement. "If it can happen in the progressive state of Oregon, it could happen in any number of other states," one planning official remarked (Orski 2005).

And sure enough, there are signs that the property rights revolt is spreading. Citizen groups in the neighboring state of Washington are working to put an Oregon-like initiative on the state ballot. In Montana, a nearly identical bill was introduced in the state legislature. According to the *Seattle Times* (April 10, 2005), Dave Hunnicut of Oregonians in Action, Measure 37's sponsor, is also working with activists in Florida, Wisconsin, and South Carolina.

### MICROPOLITAN AREAS GROWING

Another sign that smart growth policies face tough times comes from a new census category introduced by the U.S. Office of Management and Budget (2003). "Micropolitan areas" fall between metropolitan and rural areas. Micros lack the large central city of over 50,000 residents that is a criterion for a standard metropolitan area, but they are "too urban to be rural," as one demographer has put it. They are a new form of quasi-urban settlement—free-standing, low-density communities ranging from 10,000 to 50,000 people that are outside the geographic influence of metropolitan areas. Almost 30 million people, or one in ten Americans, live in micropolitan areas.

According to the latest demographic data (Lang, Dhavale, and Haworth 2004), these areas, along with exurban (distant suburban) counties, are among the fastest-growing places in the country. Much of their growth is due to the continuing outward migration of young families in search of affordable housing and an environment in which to raise their children.

Some of the higher growth is also attributable to higher fertility rates among residents of the micropolitan places. As commentator Steve Sailer (2004) points out, lower densities seem not only to attract families of childbearing age, they also seem to encourage

*"Micropolitan areas" lack the large central city of over 50,000 residents that is a criterion for a standard metropolitan area, but they are "too urban to be rural." They are a new form of quasi-urban settlement—free-standing, low-density communities.*

families that are already there to have more children (see Brooks 2004).

Indeed, Portland, Oregon, the city lionized by smart growthers, is remarkable for its lack of children, the *New York Times* reported in March. "Officials say that the very things that attract people who revitalize a city—dense vertical housing, fashionable restaurants and shops and mass transit that makes a car unnecessary—are driving out children by making the neighborhoods too expensive for young families." Other smart growth meccas—San Francisco, Boston, Seattle—share the same problem: not enough children "to keep schools running and parks alive with young voices" (Egan 2005, A1).

No one knows for sure what the urban/suburban landscape of the next few decades will be. But the latest evidence, including recent U.S. Census Bureau data documenting demographic trends

since the 2000 census, suggests that the smart growth movement is having little influence on reshaping America's urban landscape. The demographic and economic forces driving metropolitan expansion seem too powerful to be reined in by the entreaties of smart growth advocates.

### REFERENCES

- Brooks, David. 2004. Red Diaper Babies. *New York Times*, December 7.
- Egan, Timothy. 2005. Vibrant Cities Find One Thing Missing: Children. *New York Times*, March 24, 2005.
- Lang, Robert, Dawn Dhavale, and Kristin Haworth. 2004. *Micro Politics: The 2004 Presidential Vote in Small-Town America*. Alexandria, VA: Metropolitan Institute at Virginia Tech, Census Note 04:03, November.
- Orski, C. Kenneth. 1998. Maryland's Smart Growth Policy. *Innovation Briefs*. Potomac, MD: Urban Mobility Corporation, Nov/Dec.
- . 2000. Maryland's Smart Growth Policy—A Paper Tiger? *Innovation Briefs*. Potomac, MD: Urban Mobility Corporation, July-August.
- . 2005. News from the "Smart Growth Front." *Innovation Briefs*. Potomac, MD: Urban Mobility Corporation, May/June.
- Sailer, Steve. 2004. Baby Gap: How Birthrates Color the Electoral Map. *American Conservative*, December 20.
- U.S. Office of Management and Budget. 2003. Revised Definitions of Metropolitan Statistical Areas. MB Bulletin No. 03-04, June 6.
- Whoriskey, Peter. 2004. Investing in Sprawl: The Limits of Smart Growth. *Washington Post*, August 10, A01.

---

C. Kenneth Orski is editor/publisher of *Innovation Briefs*, a bi-monthly publication reporting on developments in transportation and related fields. For more information see [www.innobriefs.com](http://www.innobriefs.com). Jane S. Shaw is editor of PERC Reports.

# THE CATSKILLS PARABLE

*A BILLION-DOLLAR MISUNDERSTANDING*

*By Mark Sagoff*

The *Economist* magazine recently observed that natural ecosystems have more economic value than many people think. It reported that in 1997 the government of New York City faced a choice: either to install a new water filtration plant at a cost of \$4–6 billion, with \$250 million a year in operating costs, or spend much less money “to preserve the rural nature of the Catskill Mountains from which New York gets most of its water” (*Economist* 2005, 76–78).

In recounting this tale about New York City, the *Economist* repeats an oft-told but groundless urban legend. The magazine has prestigious company. The National Science Board of the National Science Foundation (2005) notes on its Web site that New York City at a cost of about \$1 billion “has opted to buy and restore the watershed, i.e., to let nature work for the people.” By purchasing and restoring natural ecosystems, the city, according to this account, avoided “building and maintaining a water purification and filtration plant” and thus “\$6–\$8 billion in capital costs, plus annual operating expenses of \$300 million.” One can find the same story, with varying but similar figures, in many authoritative places, including a World Bank paper (Pagiola, von Ritter, and Bishop 2004, 51) and a National Research Council (2004) report.

The legend began in a 1998 commentary in *Nature*, a leading scientific journal. Graciela Chichilnisky and Geoffrey Heal, economists at Columbia University, stated, “In 1996, New York City invested between \$1 billion and \$1.5 billion in natural capital in the expectation of producing cost savings of \$6–8 billion over 10 years . . .” The authors explained that the city “floated an ‘environmental bond issue’ and will use the proceeds to restore the functioning of the watershed ecosystems responsible for water purification.” The article said that natural processes in the Catskills—“water purification processes by root systems and soil microorganisms, together with filtration and sedimentation during its flow through the soil,”—previously kept the water quality high, but “sewage, fertilizer and pesticides in the soil reduced the efficiency of this process to the point where New York City’s water no longer met EPA standards” (Chichilnisky and Heal 1998, 629–30).

## PROBLEMS WITH THE STORY

While it is true that New York City draws most of its water supply from 1,600 square miles in the Catskills and Delaware watersheds, the *Nature* article, which includes no relevant sources or citations, appears otherwise incorrect. The watersheds act like huge cisterns to collect rain water, which is then captured in the reservoirs made by dams.

It is not clear that rain water needs to be purified or filtered by the Catskills ecosystem. Actually, rain water approximates distilled water, so impurities and surely pathogenic microorganisms are more likely to come from, rather than be removed by, the landscape onto which the rain falls. Fecal matter from wildlife, particularly deer and beaver, poses a significant pollution problem. According to a National Research Council (2000, 161, 197) study, “the background contamination from wildlife populations is apparent” in water flows, and it found that increases in fecal coliform bacteria, when observed in the principal reservoir, “coincided both temporally and spatially” with increases in waterfowl populations.

New York City has assured the safety of its water supply by traditional means, primarily by encouraging and helping watershed users to construct appropriate septic and sewage treatment facilities. Since 1910 the city has used chlorine to purify its water supply. The allegation that water quality had decreased—the claim that sewage, fertilizer, and pesticides had overwhelmed ecosystem processes responsible for water purification—is simply incorrect.

Contrary to the article in *Nature*, the quality of New York City water has not declined in recent years. Water at the reservoir source and drinking water in New York City remained in compliance with standards set by the Safe Drinking Water Act, and “[t]he Catskill/Delaware water supply currently meets all necessary criteria” (National Research Council 2000, 200).

If its water had not fallen from compliance with Environmental Protection Agency standards, why did the city face a choice between 1) investing “between \$1 billion and \$1.5 billion in natural capital,” supposedly the cost of purchasing and restoring the watershed, and 2) “building and maintaining a water purification filtration plant” at a capital cost of \$6–\$8 billion, plus running costs on the order of \$300 million annually? The significant change took place not in the city or its watershed but in Washington, D.C.

*Since 1910 New York City has used chlorine to purify its water supply. The allegation that water quality had decreased—the claim that sewage, fertilizer, and pesticides had overwhelmed ecosystem processes—is simply incorrect.*

## A NEW RULE FROM THE EPA

On June 29, 1989, the EPA promulgated the Surface Water Treatment Rule (SWTR). The SWTR required that every surface-water system serving more than 10,000 people, no matter how clean or safe its water, either filter that water or successfully petition to the EPA for a “filtration avoidance determination” (FAD). This requirement had nothing to do with New York City in particular; its water remained excellent. The SWTR applied nationwide and was intended largely to deal with *Cryptosporidium parvum*, a microbe that survives chlorination. Arguably, *C. parvum* could become a problem in the Catskills watershed, where 350 wild vertebrate species flourish, many of which can act as carriers.

To comply with the SWTR, the city faced two alternatives. First, it could build a water filtration plant at a cost of \$6 billion, with maintenance costs of \$300 million annually, as the *Nature* article indicated. Because its water met high standards for safety and quality, the city had little to gain from this course. It had already begun to experiment with ultraviolet irradiation, moreover, a recognized alternative to the filtration of water containing *C. parvum* and other chlorine-resistant pathogens.

Second, the city could—and did—petition for a filtration avoidance determination. To obtain the determination, the city, in a Memorandum of Agreement signed on January 21, 1997, committed itself to partner with landowners and communities to build infrastructure to make sure that future economic development would not impair water quality.

In applauding these aspects of the agreement, the National Research Council committee (2000, 503) thought that “moderate population growth and a wide range of new economic activities can be accommodated in the watershed without deleterious impacts on water quality as long as . . . infrastructure investments now being planned are put in place.” These investments included subsidies for customary sewage, septic, and waste management systems. These investments make long-term precautionary sense, although the National Research Council (2000, 502) found “few signs that rapid increases in economic activity are likely in the region.”

These investments in infrastructure do not constitute the “environmental bond issue” Chichinilsky and Heal mention, the proceeds of which, they say, were to be used “to restore the

functioning of the watershed ecosystems responsible for water purification.” A study of the archives of the New York City Municipal Water Finance Authority indicates no such bond issue, and a telephone interview (February 5, 2002) with the authority’s director of investment relations confirmed that there was none.

New York State did authorize the Clean Water, Clean Air Bond Act in 1997, which committed \$1.75 billion to a variety of environmental projects statewide. The act earmarked no funds for land acquisition in the Catskills, though some of the money could have been or still might be used that way.

Why would the city consider preserving wildlife habitat or natural ecosystems as a method of protecting the quality of its water supply? To obtain the EPA’s approval, the city had to satisfy ecologists inside the EPA who believed, in the words of an Ecological Society of America (2001) report, that “preserving habitat in the watershed and letting the ecosystem do the work of cleansing the water” would be “just as effective as a new filtration plant.” Since there was no scientific consensus about the amount of wild habitat that is needed to disinfect rainwater, the city and the EPA had to make a political judgment about the number of acres the city would have to buy. In the memorandum, the city committed to buy no set amount of land but to solicit the purchase of 355,000 acres. The amount of habitat the city would actually have to preserve was left vague (New York City Dept. of Environmental Protection 1997).

## “NATURE KNOWS BEST”

Since 1997, the city has made significant investments in dam and pipe renovations, waste-treatment, and septic-system improvement, as well as farm-operations enhancements in the Catskills area. The city has also attempted to begin work on a controversial \$680 million water filtration plant it seeks to site in Van Cortlandt Park in the Bronx, and it is constructing a multibillion-dollar water tunnel project. In spite of the expectations of many environmentalists, it has not been as lavish in investments to preserve wildlife habitat and biodiversity as a method of purifying its water supply.

In April 2001, according to a newspaper report, an environmental group complained that the city “only secured a measly 36 acres of land surrounding the strategic reservoir—the Westchester County source for 90 percent of the City’s drinking water” (*Newsday*, April 21). In 2000, the EPA castigated the city for having bought only 17 undeveloped acres of the 1,000 available around a crucial reservoir in the Catskills system (*New York Times*, June 28, 2000). As of October 29, 2001,

New York City had completed the purchase of only 17,250 acres across the entire watershed, most not by acquisition but through conservation easements. (A phone interview with city officials determined that as of the following February, only 19,200 acres had been purchased, at a cost of \$63.8 million.) The city has capped at \$260 million the amount it may eventually spend on acquisition.

Scientific and popular journals will continue to repeat the Catskills parable—the story that New York City decided to spend at least \$1 billion to purchase and protect wild habitat as a means of cleansing its water supply. That this parable is factually false makes little difference since it teaches the “right” lesson. No better example has been found to show that wild or natural ecosystems benefit us more when left alone than when developed economically.

Few of us want to acknowledge that we rely on technology to lift the cup of nature to the lip of consumption. Few of us wish to admit that we benefit from nature not by preserving but by “improving” it—for example, by plowing a field, building a road, constructing a house, drilling a well, damming a river, farming a salmon or oyster, or altering a genome. Most of us would rather believe that Nature knows best. We will therefore repeat—as the *Economist* does—the Catskills parable even though it is factually false.

## REFERENCES

- Chichinilsky, Graciela, and Geoffrey Heal. 1998. Economic Returns from the Biosphere. *Nature*, February 629, 30.
- Economist*. 2005. Are You Being Served? April 23–29, 76–78.
- Ecological Society of America. 2001. *Issues in Ecology* 9 (Spring). Online: [www.esa.org/science/Issues/FileEnglish/issue9.pdf](http://www.esa.org/science/Issues/FileEnglish/issue9.pdf).
- National Research Council. 2000. *Watershed Management for Potable Water Supply: Assessing the New York City Strategy*. Washington, DC: National Academy Press. Online: [www.nap.edu/catalog/9677.html](http://www.nap.edu/catalog/9677.html).
- . 2004. *Valuing Ecosystem Services: Toward Better Environmental Decision-Making*. Online: [www.nap.edu/openbook/030909318X/html/R1.html](http://www.nap.edu/openbook/030909318X/html/R1.html).
- National Science Foundation. 2005. *Environmental Science and Engineering for the 21st Century: The Role of the National Science Foundation, Box 1: Nature’s Services*. Online: [www.nsf.gov/nsb/tfe/nsb99133/box1.htm](http://www.nsf.gov/nsb/tfe/nsb99133/box1.htm).
- New York City Department of Environmental Protection. 1997. *New York City’s Water Supply System: Watershed Agreement Overview*. Online: [www.ci.nyc.ny.us/html/dep/html/agreement.html](http://www.ci.nyc.ny.us/html/dep/html/agreement.html).
- Pagiola, Stefano, Konrad von Ritter, and Joshua Bishop. 2004. *Assessing the Economic Value of Ecosystem Conservation*. Environment Department Paper No. 101. Washington, DC: World Bank, October.

*Mark Sagoff is a senior research scholar at the Institute for Philosophy and Public Policy in the School of Public Policy at the University of Maryland, College Park. His most recent book is Price, Principle, and the Environment (Cambridge University Press, 2004). A longer version of this article appeared in the winter/spring 2002 issue of the Philosophical and Public Policy Quarterly.*

# HOW TO AVOID TAX CHEATING

## CONSERVATION EASEMENTS FACE A CRISIS

By Terry L. Anderson and Jon Christensen

Some of the congressional proposals could destroy a tool that in most cases has worked well. Conservation easements have protected important wildlife habitat, open spaces, and forests, as well as ranch and farm lands on more than 17,000 properties totaling more than 5 million acres.



© Phil Schmeidler/CORBIS

One of the most useful, cost-effective methods of conserving land in America is in serious crisis.

A series of scandals has revealed major abuses of conservation easements—a legal tool increasingly used to protect private land from development. Landowners who donate easements to nonprofit conservation groups promise that the land will not be used for development; in exchange, they are allowed to write off the value of the development rights as a charitable contribution.

However, some landowners who donate easements to nonprofit land trusts have used inflated appraisals to take huge tax write-offs at the expense of taxpayers. Others have used easements to protect swamps and mountainsides that could never be developed, or golf courses and private lots that have little or no conservation value.

Lawmakers are now rightly considering how to crack down on those abuses. But rather than fixing the problems, some of the proposals could destroy a tool that in most cases has worked well. It has protected important wildlife habitat, open spaces, and forests, as well as ranch and farm lands on more than 17,000 properties totaling more than 5 million acres.

Congress's Joint Committee on Taxation—which examines complicated tax issues for lawmakers—has proposed cutting the tax deduction that a landowner can take for donating a conservation easement from the full value of the development rights to just 33 percent of that value.

But cutting tax incentives is the wrong way to prevent inflated appraisals. In the first place, reducing tax

deductions would discourage some of the most valuable conservation easements, such as those used by ranchers to keep using their land for their animals to graze. Because most ranchers and farmers are not in a position to take large tax deductions over a short time, it would make more sense to extend the period over which they can take tax deductions. A proposal to allow them to do that is pending in Congress, and it should be approved.

### STANDARDS NEEDED

If the goal is to stop inflated easement valuations, however, then the Internal Revenue Service, state tax departments, county tax assessors, and appraisers need to police the appraisal process. Appraisers should be held accountable for their determinations, but the industry now has no specific standards for appraising conservation easements. Standards need to be set. If that is not enough, it may be necessary to require special certification for appraisers working on easements.

If appraisers cannot work together to fix this problem, then stronger governmental policing may be necessary. That is already happening in South Carolina, where the Department of Revenue is working with the Internal Revenue Service to audit conservation easements. The department has reviewed 51 conservation easements, covering 32,000 acres, valued at more than \$255 million.

According to the *State*, a Columbia, S.C., newspaper, those reviews have uncovered troubling cases of overvalued land and sham land trusts set up by developers.

Leaders of legitimate land trusts also can play a role in fixing the problem. They want nothing more than to help drive bad actors out of business before they take good conservation down with them. That explains why conservationists have applauded appraisal audits.

### A ROLE FOR SELF-REGULATION

Congress should recognize and encourage self-regulation among conservationists and land trusts. Recent studies of conservation easements conducted by Dominic Parker, a research fellow at PERC, show that self-interest may be the most cost-effective way to curb abuses and encourage conservation.

Parker (2004) studied conservation easements held by 1,250 land trusts around the country. His results suggest that most land trusts make economically efficient choices about whether to acquire conservation easements on properties or purchase the land outright. Land trusts tend to acquire easements on properties for which the costs of enforcing such easements against violations

are fairly low. For example, easements for land that provide open space and striking scenery are relatively easy for land trusts to protect from developers, especially when ranchers and farmers own the land and want to preserve their heritage.

On the other hand, the property that land trusts tend to buy—or seek to get donated outright—requires more intensive hands-on management to achieve conservation goals. Such property includes land where habitat for rare and endangered species needs to be restored, but it also includes land where people like to hike, ski, and undertake other recreational activities—land that takes special effort to conserve. Because easements for such purposes can be difficult and costly to enforce, it is more efficient to own and manage that type of land.

Parker also discovered that self-regulation appears to be already working (2005). He found that trusts that are part of the Land Trust Alliance, an umbrella organization in Washington that encourages land trusts to adhere to standards and practices, generally are more efficient than those that are not members.

Still, the Land Trust Alliance recognizes that it could help more by moving from voluntary compliance to an accreditation program. Congress could give a real push to that idea if it said landowners could only take deductions for easements given to accredited land trusts and deny write-offs to easements donated to other organizations.

The beauty of conservation easements is that they provide a way for the public to help pay for environmental-protection efforts by landowners on private lands. Although some problems need to be fixed, Congress should be careful not to gut one of the few private efforts that, for the most part, works well for grassroots conservation.

### REFERENCES

- Parker, Dominic. 2004. Land Trusts and the Choice to Conserve Land with Full Ownership or Conservation Easements. *National Resources Journal* 44(2): 483–518.
- . 2005. Transaction Costs, Nonprofit Incentives and the Vertical Integration of Land Trusts. Working Paper. Bozeman, MT: PERC

Terry Anderson is PERC's executive director and a senior fellow at the Hoover Institution. Jon Christensen is a research fellow at the Center for Environmental Science and Policy at Stanford University. This article is reprinted with permission of the Chronicle of Philanthropy ([philanthropy.com](http://philanthropy.com)).

# SUCCESS OVERDUE AT THE QUINCY LIBRARY

## PITFALLS IN PUBLIC PARTICIPATION

By William Varettoni

*There is little evidence that the obstacles that stymied the Quincy Library Group (which met here) have been overcome. The group's history suggests that today's public forest management hinders public participation and prevents practical and timely resolution of problems.*



Larry Williams, Quincy Library

Enthusiasm surged recently in southwestern Washington when a community coalition announced that it had come up with a plan for logging Gifford Pinchot National Forest that was supported by environmentalists and industry officials alike. “We’ve identified the common ground . . . and hope the Forest Service will use this model,” said coalition member John Squires (Henry 2005).

Twelve years ago, similar enthusiasm resonated in Quincy, California, where environmentalists, business interests, and loggers had come together and hammered out a plan to manage two-and-a-half national forests in northern California. The results, however, have been mostly delay and disappointment, and there is little evidence that the institutional obstacles that stymied the Quincy Library Group have been overcome. A look at the group’s history suggests that today’s public forest management hinders public participation and prevents practical and timely resolution of problems.

The Quincy Library Group (QLG) sparked headlines in the 1990s. The success of a local community coalition in putting together a logging plan for the Lassen, Plumas, and parts of Tahoe was welcomed as a sign of hope. The plan, covering an area larger than the state of Delaware (Davis and King 2000; Quincy Library Group 2005), ushered in optimism that the paralysis of public land management would be replaced by local coalition planning.

The Quincy Library Group was preceded by fifteen years of “timber wars” over the management of the three national forests. The tumult involved court battles, alleged sabotage, and even death threats between environmentalists and logging interests (Terhune and Terhune 1998). Timber interests wanted more logging on national

forests at the same time that there was growing public concern about cutting, herbicide use, logging of old-growth forests, and endangering the California spotted owl.

Timber harvests in the area peaked between the 1960s and 1980s. By 1999, harvests had fallen to 10 percent of the 1980s’ level, severely hurting the region economically. The decline was due to a multitude of factors, including falling market demand, increased opposition to logging roads, and the controversy over the California spotted owl (Terhune and Terhune 1998). Spotted owl regulations greatly affected the size of trees that were being logged. The mill near Quincy had to be retooled for smaller timber, and several other local mills closed (Marston 1997).

### ENDING THE STALEMATE

Desperate for a way out of the regulatory and litigious quagmire, an environmental lawyer, county supervisor, and timber industry forester met in secret in 1992 to explore the possibility of a truce. The meetings of these three bitter rivals eventually became public, and by 1993 the Quincy Library Group (named for its meeting place) was born. Using a decision-making approach based on unanimous consensus, the group agreed on a compromise logging plan that same year. The plan allowed more timber to be harvested than the Forest Service was permitting at the time, although less than historical levels (Quincy Library Group 2005).

Several years of unsuccessful effort to persuade the Forest Service to adopt the plan followed. Ultimately, the group went to Congress, which enacted a law in 1998 mandating implementation of the plan as a funded pilot project. However, full implementation has been delayed, even to the present day. Environmental groups have filed lawsuits periodically, and the Forest Service has stretched out the process, partly through general delays and partly through slowing down environmental impact assessments (Little 2004).

The Quincy Library Group has a romantic David-versus-Goliath appeal, the image of disparate local interests challenging national ones. At its core, however, the group was an interest group like any other, albeit one embodying a wide diversity of interests. Nor was the plan costless. Implementation of the law was initially estimated at \$83 million (Ruckelshaus Institute 1998). Even without full implementation, the Forest Service spent \$82 million on activities related to the Quincy Library Group law during fiscal years 1999–2003 (HFQLG Pilot Project Implementation Team 2004). These activities included fighting wildfires, fuels reduction, and watershed restoration projects.

### WHAT WENT WRONG

During the negotiations, the Forest Service apparently felt threatened by the Quincy Library Group and used passive-aggressive tactics to deal with it. Forest Service officials attended the library meetings but did not participate. Their public statements, especially to the QLG members, were very supportive, but behind the scenes they repeatedly delayed implementation (Marston 1997).

Quincy’s success in negotiating a compromise plan contrasted sharply with the agency’s own repeated failure to do so. Former Forest Service Chief Jack Ward Thomas, interviewed after retirement, stated that he disliked almost everything about the Quincy Library Group, especially the fact that Red Emmerson, the owner of Sierra Pacific Industries, a major timber company, was part of it. Thomas called Emmerson’s participation in the group “patently illegal.” He said that the Quincy Library Group was “not properly chartered, and they’re sitting there cutting deals back and forth. . . .” He resented the fact that his political bosses in Washington handed over control of two and a half national forests to an unaccountable group (Marston 1997).

National environmental groups were vociferous in their opposition. “Just because a group of local people can come to an agreement doesn’t mean that it is good public policy,” said Jay Watson of the Wilderness Society (Sagoff 2004, 221). The national groups were wary of setting a precedent for local decision making. They also questioned the management practices espoused by the Quincy plan, such as its firebreak strategy, and thought that the plan didn’t provide enough protection to the owl. Environmental groups shared the Forest Service’s view that the group had been hijacked by industry.

Bonnie Phillips of WaterWatch, an observer of collaborative groups, has another criticism. She feels that the collaborative process was tainted because the Quincy Library Group went to Congress. She also contends that industry manipulated the process and objects to how the debate has been framed. In her view, it is not national environmental groups versus the grass roots, but rather national groups versus yet another special interest group controlled by industry (Marston 1997).

### THE IMPORTANCE OF THE QUINCY PROCESS

The Quincy plan may not be the best plan for the forests in question. But focusing on the merits of the plan itself misses the larger picture. The Quincy experience demonstrates how difficult it is for local community members to influence the policy process, even when the government’s failure is plainly evident. The

Since 2000, when the law embodying the Quincy plan was enacted, some fuels reduction projects have taken place, such as this one in the Eagle Lake Ranger District of Lassen National Forest. But delays continue.



Mike Jablonski

current system is so flawed and convoluted that there is rarely a meaningful way for local communities to influence policy without engaging in special interest politics. This is a clear sign of a broken democratic process.

The group has struggled for two main reasons: Not all major interest groups were represented, and the group had no actual authority. The Forest Service and national environmental groups did not meaningfully engage in the process; both had better options outside the negotiating room and each had an interest in seeing Quincy fail. The Forest Service used its regulatory and bureaucratic tools to delay the project and protect its turf; environmental groups used their time-honored tradition of relentless litigation to keep the forest management process centralized at the federal level. Both groups thought they had enough leverage to frustrate the plans of the library group. And to a large extent they did.

Perhaps these outsiders would have been more cooperative if the government had given a broad interest group a formal mandate and decision-making authority. If the collaborative process had been binding, or even partially binding, the groups that stood aside might have come to the table because the stakes would have been higher for them not to. Without some authority from the federal government, other community coalitions are doomed to suffer the same setbacks as did the Quincy Library Group.

That a community group was able to arrive at a consensus plan when the government could not is a strong endorsement of

greater use of direct negotiations in federal land management. If the government cannot effectively plan then it should empower community coalitions that can.

#### REFERENCES

- Davis, C., and M. D. King. 2000. The Quincy Library Group and Collaborative Planning within U.S. National Forests. Online: [www.qlg.org/pub/Perspectives/daviskingcasestudy.htm](http://www.qlg.org/pub/Perspectives/daviskingcasestudy.htm) (cited March 21, 2005).
- Henry, N. M. 2005. Nearly Scrapped, Controversial Timber Sale Finds Support of Coalition. *Land Letter*, March 31.
- HFQLG Pilot Project Implementation Team. 2004. *Herger-Feinstein Quincy Library Group Forest Recovery Act Pilot Project: Status Report to Congress Fiscal Year 2003*. Quincy, CA: U.S. Forest Service and U.S. Dept. of Agriculture, February 28.
- Little, Jane Braxton. 2004. Court Fight over California Logging Plan. *Sacramento Bee*, December 2. Online: [www.shns.com/shns/g\\_index2.cfm?action=detail&pk=LOGGING-12-02-04](http://www.shns.com/shns/g_index2.cfm?action=detail&pk=LOGGING-12-02-04).
- Marston, Ed. 1997. The Timber Wars Evolve into a Divisive Attempt at Peace. *High Country News*, Sept. 29. Online: [www.hcn.org/servlets/hcn.Article?article\\_id=3656#](http://www.hcn.org/servlets/hcn.Article?article_id=3656#) (cited May, 2005).
- Quincy Library Group. 2005. Quincy Library Group. Online: [www.qlg.org/](http://www.qlg.org/) (cited March 21, 2005).
- Ruckelshaus Institute. 1998. The Quincy Library Group. Online: [www.uwyo.ewyo.edu/enr/iernr/QLG2.htm](http://www.uwyo.ewyo.edu/enr/iernr/QLG2.htm) (cited March 29, 2005).
- Sagoff, Mark. 2004. *Price, Principle, and the Environment*. Cambridge: Cambridge University Press.
- Terhune, Pat, and George Terhune. 1998. Quincy Library Group Case Study. Online: [www.qlg.org/pub/miscdoc/terhunecasestudy.htm](http://www.qlg.org/pub/miscdoc/terhunecasestudy.htm) (cited April 2, 2005).

*William Varettoni is a doctoral student at the University of Maryland School of Public Policy, where he received a master's degree in sustainable development and conservation biology. In 2004, he was a fellow with the Kinship Conservation Institute in Bozeman. (PERC Reports previously covered the Quincy Library Group in its March 1998 issue).*

## NATIONAL HERITAGE AREAS

LOCAL CULTURE OR FEDERAL PRESSURE?

By Matthew White

Adding the words “nationally significant” can result in millions of federal dollars funneled through National Heritage Areas. Regional or local projects can be underwritten by the government and overseen by the National Park Service.



Concerned about the creeping uniformity of modern suburban life, many people are seeking a renewed “sense of place” in their communities. The popularity of historical societies and preservation projects is a sign of this trend. Some people have discovered that adding the words “nationally significant” to their area or region can result in millions of federal dollars funneled through National Heritage Areas (NHAs). What was once a regional or local project with community involvement can be partly underwritten by the government and overseen by the National Park Service.

Thanks to NHAs, money from the federal government has been spent on projects such as water-wheel reconstruction in Philadelphia, folk music collection in North Carolina, building a coal mining archive inside a church in West Virginia, agricultural field trips for schoolchildren in Iowa, celebrating Creole culture in Louisiana, and interpreting water management in Colorado. NHAs range in size from small waterways such as the nine-mile Augusta Canal in Georgia to land corridors such as Rivers of Steel, a heritage area covering seven counties along the Allegheny, Monongahela, and Ohio Rivers in Pennsylvania. Heritage areas include cities—Detroit, Lansing, and Flint are all part of the MotorCities Heritage area—and even an entire state, Tennessee.

Heritage areas are of special interest now because of a controversial bill, the National Heritage Partnership Act, introduced by Senator Craig Thomas (R-Wyo.) and Representative Joel Hefley (R-Colo.). The sponsors hope to create an official program within the National Park Service and to formal-

National Heritage Areas, mostly in the East, include small waterways, large land corridors, such as Rivers of Steel, which covers seven counties in Pennsylvania, and even one state, Tennessee.



www.cr.nps.gov/heritageareas

ize criteria for designating heritage areas. Right now, each heritage area is created by an individual law enacted by Congress.

Opinion about the National Heritage Partnership Act is split in several ways. The National Park Service supports it because the act would solidify its authority as the nation’s preserver of cultural heritage as well as physical landmarks. But the National Trust for Historic Preservation, often an ally of the National Park Service, opposes it, fearing that the law’s explicit requirements will hamper future designations. Some conservatives favor the bill because they worry that without it heritage areas will lead to property abuses and government waste. Others don’t want any bill at all because they object to any federal government involvement in preservation.

### WHY NHAS?

Whether this bill is enacted or not, NHAs raise legitimate questions about the role of the federal government. To begin with, the potential scope of heritage areas is enormous. Forty-five million Americans now live within the 27 existing NHAs. Although the National Park Service does not control what happens in these areas—supposedly, decisions are made by “management entities” composed of local groups—the agency provides money and technical expertise, as well as publicity and prestige, to these community projects.

J. Peyton Knight, executive director of the American Policy Center, a property rights watchdog, told Congress that designation of NHAs corrupts local planning “by adding federal dollars, federal oversight, and federal mandates to the mix.” He stated that if heritage areas “were truly driven by local enthusiasm we wouldn’t even be here today” (Knight 2005). In his view, local funding will support those projects that command strong local interest.

Brenda Barrett, the National Park Service’s national coordinator for heritage areas, disagrees. She contends that worry about federal intrusion is a big fuss over nothing. NHAs are simply an overlapping jurisdiction similar to water or sewage districts, voting districts, congressional districts, and so on. Furthermore, people “beg” for NHAs, she says because they want to preserve their “stories,” and NHAs

are important tools for “community revitalization.”<sup>1</sup>

But of the 45 million people who live within NHAs, how many have even heard of them? R. J. Smith, an adjunct scholar at the Competitive Enterprise Institute, says that the managers of NHAs (those who create the “management entity” that makes decisions about heritage areas) are composed of “elitists with a preservationist, environmentalist, conservationist agenda—which can be widely different from the day-to-day concerns of many, if not most, of the people who actually live on the land” (Smith 2004).

NHAs move the federal government into one more aspect of private life. They provide justification for local governments that want to adopt cultural-heritage-related zoning laws and other land-use restrictions. Although “designation as a National Heritage Area does not involve Federal regulation of private property,” according to the National Park Service (2005a), it gives local preservation interests the backing of the federal government. A heritage area “benefits from national recognition due to its association with the National Park Service through the use of the NPS arrowhead symbol as a branding strategy,” says the National Park Service (2005b). If the local management group does not meet the standards of the federally approved management plan, funding will diminish or cease. This creates an incentive to bend to the wishes of the National Park Service.

Despite such worries, NHAs are not a land grab—yet. Some, however, worry because the National Park Service agency has been taken to court numerous times for trying to restrict the freedom of inholders and persuade them to move out of the park boundaries.<sup>2</sup> For example, a family that owns 410 acres within Wrangell-St. Elias National Park in Alaska has been suing the Park Service since 2003, trying to maintain access to its property.

### EXPANDING NATIONAL PARKS?

Indeed, one goal of National Heritage Area proponents may be to add national parks. The management board of the Rivers of Steel NHA in Pennsylvania has announced that it wants to create an urban park, the Homestead Works National Park. The location would be on land currently designated for heritage use (Rivers of Steel 2005). This action would seem to undercut the stated claim that heritage areas “allow the Park Service to fulfill this mission [preservation of historic and natural resources deemed nationally significant] without having to acquire or manage more land” (NPS 2005b).

A redeeming feature of heritage areas is that they form only a minute portion of the federal budget. Currently, each heritage area can receive no more than \$1 million per year, and all such

funding has a sunset date between ten and fifteen years after funding starts. Funding is supposed to be seed money, matched by local private funding. In 2003 congressional testimony, however, de Teel Patterson Tiller, acting associate director for cultural resources for the National Park Service, admitted that “to date, self sufficiency has yet to be achieved with any NHAs, and the first four NHAs established have sought and received Congressional extensions of their funding” (Tiller 2003). The dissipation of taxpayer-funded government resources may be small, but it may still be wasteful.

Creating “heritage areas” is not an inherently bad idea. The preservation of truly significant areas or historic sites opens up possibilities for research, education, and tourism. Around the country, private museums, historical societies, and state and city governments are doing just that. If they are supported by members of the local community, they can achieve the same results as NHAs—without losing local autonomy, wasting federal resources, or risking attacks on private property.

### NOTES

1. Brenda Barrett, national coordinator for National Heritage Areas, National Park Service, Washington, DC, telephone interview, April 11, 2005.
2. James Burling, principal attorney for property rights and natural resources, Pacific Legal Foundation, Sacramento, CA, telephone interview, May 10, 2005.

### REFERENCES

Knight, J. Peyton. 2005. Statement. U.S. Senate Committee on Energy and Natural Resources, Subcommittee on National Parks. Washington, DC: House of Representatives, March 15.

National Park Service, Department of the Interior. 2005a. More about Heritage Areas. Online: [www.cr.nps.gov/heritageareas/FAQ/prgrm.htm](http://www.cr.nps.gov/heritageareas/FAQ/prgrm.htm) (cited May 9, 2005).

———. 2005b. What Is a National Heritage Area? Online: [www.cr.nps.gov/heritageareas/FAQ/index/htm](http://www.cr.nps.gov/heritageareas/FAQ/index/htm) (cited May 9, 2005).

Rivers of Steel National Heritage Area. 2005. Homestead Works National Park Site. Online: [www.riversofsteel.com/ros.aspx?id=23&h=80&sn=95](http://www.riversofsteel.com/ros.aspx?id=23&h=80&sn=95) (cited May 9, 2005).

Smith, Robert J. 2004. Testimony on S.2543, The National Heritage Partnership Act. Subcommittee on Parks, Committee on Energy and Natural Resources. Washington, DC: U. S. Senate, June 24.

Tiller, de Teel Patterson. 2003. Testimony on H.R. 280. Subcommittee on National Parks, Recreation and Public Lands of the House Resources Committee. Washington, DC: U.S. House of Representatives, October 16. Online: [resourcescommittee.house.gov/108cong/parks/2003oct16/tiller.htm](http://resourcescommittee.house.gov/108cong/parks/2003oct16/tiller.htm) (cited May 9, 2005).

Matthew White is a journalist intern with PERC. He has degrees from Hillsdale College and Montana State University.

# THE OWENS VALLEY "WATER GRAB"

SEEING NEGOTIATIONS IN A DIFFERENT LIGHT

By Jane S. Shaw

Buying or selling water faces serious hurdles. An infamous episode in California can help us understand what they are so that entrepreneurs can begin to overcome them.

Gary Libecap, an economic historian at the University of Arizona, studied the Los Angeles Water Board purchases of land and water in Owens Valley, California, between 1905 and 1935. Los Angeles transported the water across the state through the Los Angeles Aqueduct.

Today, these purchases are viewed as theft. In the words of the *Economist* magazine (July 19, 2003, p. 15), they are the "most notorious water grab by any city anywhere" and their legacy has "poisoned subsequent attempts to persuade farmers to trade their water to thirsty cities".

In "Rescuing Water Markets: Lessons from Owens Valley," Libecap reveals that the emotion surrounding the trades has distorted the facts. Yes, property values in Los Angeles grew enormously as a result of the purchases—Los Angeles County land and buildings increased in value by nearly 600 percent between 1900 and 1930. But so did the values in Owens Valley! Although the property values were much smaller in total, they, too, rose by about 600 percent. That increase far exceeded the increase in property values in nearby agricultural counties that kept their water.

Owens Valley farming changed from crops to livestock, but the value of agricultural production did not fall much between 1910 and 1930. The Owens Valley landowners "did better by selling to Los Angeles than remaining in irrigated agriculture," says Libecap.

Initially, both Los Angeles officials and the farmers wanted to make deals. The fast-growing city needed water and the Owens Valley farmers saw financial opportunity in selling their land. But the negotiations proved contentious, bitter, and occasionally violent. Libecap says that the sordid image surrounding the trades began to develop after negotiations stalled and Owens Valley farm-

ers used negative publicity to pressure the city to pay higher prices.

At the same time, there were genuine problems in reaching deals. These were practical hurdles that any water trades must face. In economists' lingo, they are: valuation disputes, bilateral monopoly, and third party effects.

## VALUATION DISPUTES

Looking back on the Los Angeles/Owens Valley trades, we should not be surprised at the difficulty the two parties had in agreeing on the value of the lands and the water they contained. Farmers knew that their water would help make Los Angeles enormously rich, so they wanted to sell their land at prices reflective of that wealth. But Los Angeles officials thought themselves generous because they were offering more than the going price for land in Owens Valley.

Each group held something of a monopoly. Only a single buyer—the Los Angeles board—was going after Owens Valley land. And Owens Valley farmers formed sellers' pools that attempted to hold a united front on prices. Negotiations under these circumstances "are apt to drag on because there are few options for either the buyer or the seller," says Libecap.

## BILATERAL MONOPOLY

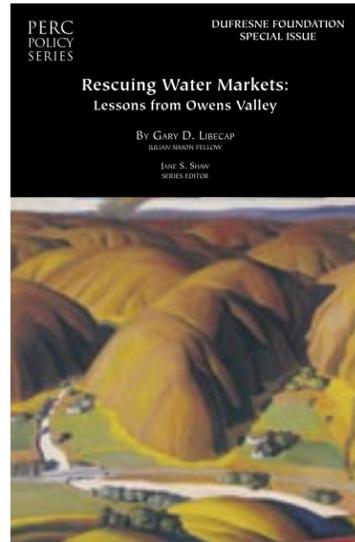
Each group held something of a monopoly. Only a single buyer—the Los Angeles board—was going after Owens Valley land. And Owens Valley farmers formed sellers' pools that attempted to hold a united front on prices. Negotiations under these circumstances "are apt to drag on because there are few options for either the buyer or the seller," says Libecap.

## THIRD-PARTY EFFECTS

When farm prices fell during the agricultural depression of the 1920s, people in the valley blamed the drop on the sale of farmland—even though few of the sales had been concluded by that time.

Similar difficulties are likely to crop up in water trading today. Now that the problems are identified, says Libecap, "the challenge is for entrepreneurs to come up with ways to overcome them."

Jane S. Shaw is editor of PERC Reports. Gary Libecap's paper can be found online: [www.perc.org/publications/policyseries/owens\\_valley.php](http://www.perc.org/publications/policyseries/owens_valley.php). This article was originally published in the April 2005 issue of U.S. Water News.



# GREENER PASTURES

Compiled by Linda E. Platts

## NAME THAT SPECIES

Looking for a chance at immortality? It could be as close as the dusty file cabinet at a nearby museum. Thousands of new animal and plant species are discovered every year, only to languish in storage—unnamed, undescribed, and thus without entry into the larger scientific world.

So here is your chance. Ante up a bit of cash and BIOPAT (Patrons for Biodiversity) will help you attach your name, or someone else's, to a species still waiting in the wings for recognition. The idea belongs to Gerhard Haszprunar, a systematic zoology professor at the University of Munich, who believed that individuals or groups would pay for the privilege of naming a species and in turn help fund taxonomy research and conservation.

Perhaps your sister just had a baby, and you wish to christen a new species in her honor. The BIOPAT Web site uses the example of someone named Margret. You choose an orchid, genus *Maxillaria*. It will be officially known as *Maxillaria margretae*, or the "Margret Orchid."

The entire process begins when a species is selected, often from the catalogue found on BIOPAT's Web site ([www.biopat.de](http://www.biopat.de)). It is pulled from storage and undergoes a rigorous description process, complete with at least two submissions to a scientific periodical.

Upon completion of these requirements, which often takes several months, the selected name is certified and enters into scientific usage. A donation is also required with the minimum being about \$3,300. Lizards and butterflies are the most expensive, insects and arthropods are relative bargains, but frogs and orchids remain the most popular species. Despite claims that this process could sacrifice scientific integrity, no such problems have arisen.

BIOPAT has raised nearly half a million dollars in four years, even though the organization has occasionally turned down requests that it felt were unsuitable. Donations go to the institute or researcher that has identified the species and also to research projects in the country of the species' origin.

BIOPAT is a nonprofit organization, so all donations are tax deductible. More than 100 species have been sponsored and named. Even corporations have donated, finding it noteworthy to have their name attached to a species. Of course, the hope is that donors will now have a vested interest in regional conservation—if only to guarantee the continuation of a species bearing their name.

—*Science magazine*

## HATCHING AT HOME

Private landowners who also happen to love native fish have developed dozens of backyard incubators that are capable of hatching hundreds of thousands of eggs. According to Jerry Johnson at Montana State University, these units cost only a few hundred dollars, consisting of a 55-gallon plastic barrel, fake plastic gravel, and PVC pipes. They

Linda E. Platts is PERC's editorial associate and Web site manager ([www.perc.org](http://www.perc.org)). "Greener Pastures" showcases market approaches to environmental protection and natural resource use. Send your suggestions and comments to her at [linda@perc.org](mailto:linda@perc.org).



use a flow of just 3 to 4 gallons per minute. Even a quarter-acre lot is sufficient to start your own hatchery. The project was the brainstorm of Al Adam, who with Jerry Manuel eventually founded the Hood Canal Salmon Enhancement Group, a volunteer group that has released more than 4 million salmon. The group also helps rehabilitate streams, redesign culverts, remove stream barriers, and improve spawning grounds.

Because of the diverse sources of the salmon, the survival rates of the young fish are higher, and in cases of mishap or disease, losses are confined to a single incubator rather than an entire hatchery. While the approach is primarily used with salmon in the Northwest, Johnson says that the same approach can be applied to other freshwater fish. This low-cost, low-tech approach could help increase populations of cutthroat, grayling, and bull trout.

The addition of these hatchlings could create more vibrant fisheries, which in turn could attract millions of tourist dollars. The landowners' involvement in the restoration effort is another added benefit, helping to develop a sense of stewardship that could protect the fisheries for years into the future.

—Bozeman Daily Chronicle

## RIDING THE WAVES

In the basement of an engineering building at Northeastern University in Boston, a strange eggbeater-type machine is strapped to a gurney in the corner. It is this machine, actually a turbine, that 73-year-old Professor Alexander Gorlov believes will “someday help turn hydroelectric power into one of the most important and environmentally benign renewable energy sources on the planet.”

This turbine, which was awarded the Thomas A. Edison Patent Award by the American Society of Mechanical Engineers, is designed to harness the energy of moving water. No dams are necessary. It can generate electricity wherever water flows, from streams and canals to the open oceans where tidal currents contain huge amounts of energy. Gorlov estimates that the currents passing under the Golden Gate Bridge everyday could generate more than twice the city's electricity needs, even at times of peak demand.

Norway has already installed a free-flow power grid in deep water off its coast where the currents are strong and constant. Companies in both the United Kingdom and the United States are working on their own versions of the turbine.

Gorlov's design is unique in that the blades will rotate no matter what direction the current is flowing from. A slight

helical twist to the blades also causes them to turn faster than the actual flow of the water hitting them. Despite widespread enthusiasm for the turbine, only a few small-scale pilot projects have been built in the United States.

However, South Korea presents another story. With extremely limited natural resources, but a fast-growing economy, the country is under heavy pressure to meet increasing energy demands. Fortunately, the Korean peninsula has a lot of fast-flowing water. The first project in the Uldolmok Strait—off Korea's western coast—was a huge success and a second phase is now under development. If the turbines continue to perform, the government plans to install enough turbines to equal the output of four nuclear power plants.

Concerns about the effect the turbines might have on fish have been alleviated as it appears that the turbines create a pressure that causes fish to swim away from the blades. Yet other concerns linger about the longevity of the turbines in harsh and possibly corrosive environments.

While new technology always comes with its share of uncertainties, entrepreneur Gorlov remains optimistic. He happily declares, “The Gulf Stream contains enough energy for all of North America.”

—On Earth Magazine

## ALL THAT GLITTERS IS GLASS

If your landscape is in need of a little razzle-dazzle, EnviroGLAS Products Inc. of Plano, Texas, may have just what you need. Its colorful recycled glass aggregate, which comes with no sharp edges, is available in cobalt blue, green, mirror, plate, flint, or a mixture of any of the above.

The glass, which would normally end up in a landfill, is crushed into pieces 1/8 inch by 5/8 inch and then used in gardens and outdoor walkways. The company claims that when mixed with soil the glass provides twice the water retention of traditional mulching. It also moderates soil temperatures and reduces erosion and weeds.

A 50-pound bag of a single color of EnviroGLAS is \$16.60, while mixed colors run as high as \$23 a bag. But if sparkle is what you want, with a hint of the beach in the backyard, EnviroGLAS could be a good fit for your home.

The Texas Commission on Environmental Quality awarded EnviroGLAS Products its 2005 Texas Environmental Excellence Award for Small Business.

—Environmental News Network

## LETTERS TO THE EDITOR

### GLOBAL WARMING AND ETHICAL ISSUES

There is much to celebrate and a mite to mourn in PERC's dialogue on whether the victims of global warming are, by free market principles, entitled to compensation (March 2005). That the dialogue took place is the big celebration—a sign that the right is emerging from its long vegetative state on the ethical and policy issues involved in global warming. Congratulations to Jonathan Adler for forcing his colleagues to confront the reality that consumers of fossil fuels do not own the global climate system and have no established right to impose the costs of climatic change on others without compensation or permission. (On other issues, the Competitive Enterprise Institute has distinguished itself for its rigor in separating issues of net total welfare from individual rights and questions of compensation, but applying this to global warming is a big step forward.)

A second bracing and positive feature is that everyone in the dialogue admitted that there are substantial practical difficulties with using common law mechanisms to achieve compensation, even if compensation is normatively called for. No one hid behind Nobel laureate Ronald Coase by pretending that we live in a world without such transaction costs.

What was sad was that Adler's question was too often confined to a debate about damage to property. The even more compelling reality is that in many cases life is lost. While there are many countries where property rights are indeed poorly recognized, it is hard to construct an ethical basis for saying that consumers of fossil fuels are therefore licensed to kill these people.

Surely all theories of free markets rest on self-ownership. Assault on one's person is an even more egregious violation of freedom than assault on one's property. So the churlishness of some of the comments, implying that the poor are somehow “free riders,” was grating. Nevertheless, it's a good thing for everyone that this dialogue has begun.

Carl Pope  
Executive Director, Sierra Club  
San Francisco, California

### JONATHAN ADLER REPLIES:

Carl Pope and I agree that there are fundamental normative questions at issue, but we certainly differ on the stakes and the proper policy solution.

Even climate change that is largely benign in temperate regions could have—indeed would be likely to have—negative impacts on developing nations. But I think it is an exaggeration to say that the real issue is loss of life. Most of the effects in tropical regions will not kill people, at least not directly. The various energy suppression policies favored in some parts of the environmental community pose a greater threat to the health and well-being of people in the

Jane S. Shaw, a senior fellow of PERC and editor of *PERC REPORTS*, welcomes vigorous debate about controversial environmental topics. Send your letters to her at: *PERC REPORTS*, 2048 Analysis Drive, Suite A, Bozeman, MT 59718 or [shaw@perc.org](mailto:shaw@perc.org).



developing world than does climate change.

If the goal is to save lives in developing countries, direct investments addressing causes of mortality in these countries—disease, unsafe drinking water, lack of sanitation, lack of infrastructure, etc.—would do far more than a dozen Kyotos. Yet the likes of Bjørn Lomborg get pilloried when they suggest as much. What I am suggesting is that there may be a normative case for such investments—that industrialized nations may actually have an obligation to fund such projects as a form of compensation for violating property rights—even if there is no practical way to make sure that such compensation is paid (or that it accomplishes its goal). Perhaps the Clean Development Mechanism (a Kyoto Protocol provision that encourages efficient investment in return for credits against carbon emissions) is a step in this direction, but I am skeptical that any international institution—existing or proposed—is capable of fulfilling this role. As I see it now, I do not believe that such concerns justify Kyoto-type treaties.

*Editor's note:* For additional comments on Pope's letter see The Commons Blog ([www.commonsblog.org](http://www.commonsblog.org)), with postings by Indur Goklany, Thomas Tanton, and Richard Fulmer.

## AN SUV IS NOT A MINI-VAN

Professor Benjamin relies on Michelle White's analysis to support arguments regarding light trucks' safety. This raises two issues.

First, Benjamin (and White) fail to note the difference between SUVs and other light trucks. White first presented her analysis in the National Bureau of Economic Research (NBER) working paper "The 'Arms Race' on American Roads: The Effect of Heavy Vehicles on Traffic Safety and the Failure of Liability Rules." As Cato's Jerry Taylor (2003) noted regarding White's NBER paper,

The analysis found SUVs were saving a net of between 1,023 and 1,225 lives every single year. Moreover, the study found no statistically significant evidence that you are more likely to die if your passenger car got into a collision with an SUV than if your passenger car got into a collision with another passenger car.

Interestingly enough, Professor White found that light trucks as a class were responsible for an unnecessary 2,260 deaths on the road every single year. Apparently, it's the pickups and minivans—not the SUVs—that are the problem.

Second, Benjamin notes that because "light truck operators drive more aggressively . . . light trucks are actually more deadly for their occupants than are cars." The problem is the driver, not the vehicle. Rather than deny safe drivers the enhanced safety of a light truck, we should hold each driver responsible for his or her actions. Benjamin's proposal to eliminate the CAFE standard (which I applaud) would increase the likelihood that many passenger cars would be heavier and safer, but might also increase the speed at which people are comfortable driving those cars. Drivers should have the right to choose a heavier vehicle and should be punished if they abuse the right.

*Grant W. Schaumburg Jr.*  
*Boston, Massachusetts*

### REFERENCE

Taylor, Jerry. 2003. Unsafe Driving Blind Spot. *Washington Times*, February 19. Online: [www.cato.org/research/articles/taylor-030219.htm](http://www.cato.org/research/articles/taylor-030219.htm) (cited April 25, 2005).

## DANIEL BENJAMIN REPLIES:

All of my "Tangents" columns are based on published papers, which have been through the complete peer review process, something not true of working papers. In her published paper, White does not distinguish between SUVs and other light trucks.

Still, your note made me curious, so I have taken a quick look at White's NBER working paper. She does note differences between SUVs and other light trucks. SUVs are not as lethal as other light trucks—but SUVs are still more lethal than cars.

As to your second point, people who intend to drive aggressively surely select vehicles that reduce the costs to them of such behavior. One way is to buy a light truck or large car, relying on the mass of the vehicle to protect one in case of an accident. Another is to buy a vehicle (such as a high performance sports car) that is unlikely to get into a crash when driven aggressively.

So while it is sometimes (perhaps most of the time) true that "the problem is the driver, not the vehicle" (as you put it), the vehicle must surely play a role. White's results make it abundantly clear that the hazard to other people is greater when the aggressive driver is pushing 6,000 pounds down the road than when he is pushing 2,400 pounds down the road.

Still, we would both agree that whatever they are driving, drivers should bear the full consequences of their actions and—should they do so—presumably be free to drive any vehicle they want.

## ON TARGET

### REASONS TO CELEBRATE

*By Terry L. Anderson*



As we celebrate PERC's 25th anniversary this year, we cannot help but notice that free market environmentalism, birthed and nurtured at PERC, is crowding out "command-and-control" policies. An April 23, 2005, cover story in the *Economist* asserts that "market forces could prove the environment's best friend—if only greens could learn to love them." This has been the message of free market environmentalists since PERC's founding.

Yet even the *Economist* misses the essence of free market environmentalism. It touts such approaches as emission permit trading and calls for "proper pricing" of environmental goods, better environmental information from governments, and more cost-benefit analysis. All are laudable goals, but they are not the essence of free market environmentalism.

In a nutshell, free market environmentalism is about one thing—property rights. It is about how property rights evolve, how they are defined and enforced, how they are traded, and how they affect incentives for environmental stewardship.

As early as the nineteenth century on America's frontier, property rights encouraged resource stewardship (as P. J. Hill and I discuss in our book *The Not So Wild, Wild West: Property Rights on the Frontier*). Far from the movie image of the frontier, the West was an institutional crucible where new property rights were created: Customary range rights prevented overgrazing; prior appropriation water rights encouraged efficient water use; and mining claims resolved disputes. Even pollution issues were addressed through property rights. PERC research fellow Bishop Grewell has found that the Anaconda Copper Mining Company purchased land or "pollution easements" from nearby landowners to compensate them for the cost of any effluent that might cross their boundaries. This finding is in direct contrast to Jared Diamond's claim in his latest book, *Collapse*, that Montana is a wasteland because of turn-of-the-century rapacious mining activity.

There are always new property rights frontiers, and protecting the environment is one of the most exciting. Consider a lively discussion in the March 2005 issue of *PERC Reports*. Jonathan Adler asked whether, assuming that global warming causes genuine harm, "do those nations most 'responsible' for the warming have any obligation to compensate the losers?" Unlike the *Economist's* "market approach," which calls for a cap-and-trade regulatory system and carbon sequestration, Adler asks the only true free market environmentalism question in the global warming debate: What are the property rights, and can market transactions account for the costs and benefits?

Property rights pervade free market environmentalism. In the same issue of *PERC Reports*, PERC senior fellow Randy Simmons attributes the failures of the Endangered Species Act to the fact that it ignores property rights. He calls for replacing its "regulatory hammer" with production contracts for property owners who increase species numbers or with bounties for having species reproduce. PERC's former board chairman and enviro-capitalist, John Tomlin, is working with the Nature Conservancy to establish a for-profit conservation fund. The fund will purchase timber land, place conservation easements on the sensitive parts, and apply profitable forest practices to the remainder.

The policy winds are slowly shifting because such examples are so compelling. As "the magazine of free market environmentalism," *PERC Reports* continues to reveal how secure and tradeable property rights improve environmental stewardship.

*In addition to being PERC's executive director, Terry L. Anderson is a bow-hunter. In this "On Target" column he will be a straight shooter in confronting issues surrounding free market environmentalism.*

Contact him at

[perc@perc.org](mailto:perc@perc.org).



# PERC REPORTS

*This poison dart frog got its name (Dendrobates claudiae) through a financial donation. See "Greener Pastures" (p. 19).*



BIOPAT ([www.biopat.de](http://www.biopat.de))

Non-Profit Organization  
U.S. POSTAGE  
PAID  
Permit No. 433  
Bozeman MT  
59718

## INSIDE THIS ISSUE

- 3**    **WHAT EVER HAPPENED TO SMART GROWTH?**  
Policies to reduce sprawl hit obstacles.  
*By C. Kenneth Orski and Jane S. Shaw*
- 6**    **THE CATSKILLS PARABLE**  
A billion-dollar misunderstanding.  
*By Mark Sagoff*
- 10**   **HOW TO AVOID TAX CHEATING**  
Conservation easements face a crisis.  
*By Terry L. Anderson and Jon Christensen*
- 12**   **SUCCESS OVERDUE AT THE QUINCY LIBRARY**  
Exciting history, weak results.  
*By William Varettoni*
- 15**   **NATIONAL HERITAGE AREAS**  
Cultural preservation or government intrusion?  
*By Matthew White*
- 18**   **THE OWENS VALLEY "WATER GRAB"**  
Arizona professor sheds light on history.  
*By Jane S. Shaw*
- 19**   **GREENER PASTURES**  
Name that species; hatching at home; riding the waves;  
and all that glitters is glass.  
*Compiled by Linda E. Platts*
- 21**   **LETTERS TO THE EDITOR**  
Carl Pope praises us; Grant Schaumburg defends SUVs.
- 23**   **ON TARGET**  
The truth about free market environmentalism.  
*By Terry L. Anderson*



2048 Analysis Drive, Suite A  
Bozeman, Montana 59718-6829