

Public Land and Resources Law Review

Volume 21

Towards a Civil Discourse: The Need in Public Land Management

Gloria Flora

Follow this and additional works at: <https://scholarship.law.umt.edu/plrr>

Recommended Citation

21 Pub. Land & Resources L. Rev. 25 (2000)

This Commentary is brought to you for free and open access by The Scholarly Forum @ Montana Law. It has been accepted for inclusion in Public Land and Resources Law Review by an authorized editor of The Scholarly Forum @ Montana Law.

Towards a Civil Discourse: The Need in Public Land Management*

Gloria Flora**

Conflicts over public land management in the American West continue to escalate and pose challenges to even the most innovative land stewards and community members. When values collide, the first touchstone, and frequently one of the only common denominators, is the ability to communicate our views with civility and respect. Failure to be respectful exacerbates the conflicts and shifts the focus away from discussion of the real issues. Name-calling and blaming replace real problem solving. Given that the future of the West and the national treasure chest that we call public lands is at stake, we owe it to ourselves and to future generations to uphold civil discourse as the norm when discussing public land management.

So what is my purpose? Aldo Leopold summed it up in a quotation I put on the back of my business card. "There are two things that interest me, the relationship of people to their landscape and of people to each other."¹ Embodied in that is a passion for those landscapes and a respect for our social structure. How we treat each other is often reflected in how we treat the land.

You may have read or heard that I resigned my position as Supervisor of the Humboldt-Toiyabe National Forest as a protest against the pervasive and escalating intimidation and harassment of Forest Service employees. That is true. However, let me be clear that I did not allege that there were prosecutable threats of direct violence. During my eighteen month tenure as Supervisor there were no prosecutable threats of which I am aware. However, there have been bombings and other serious threats within the last five years.² I resigned to protest the behavior of many public officials at all levels who either turn their backs or openly condone such behavior.

In an atmosphere of hostility, how does one assess when her employees are truly at risk? How does one calculate how many insults, personal attacks in the media, refusal of service in public establishments, etc., are "acceptable" and how many equal a precursor to violence? When actively hostile citizens

*. Versions of this article were presented by the author in speeches delivered at various locations around the West in the winter and spring of 2000.

** B.S. Landscape Architecture, Pennsylvania State University. The author, a twenty-two year employee of the US Forest Service, is the former supervisor of the Lewis & Clark National Forest in Montana and the Humboldt-Toiyabe National Forest in Nevada. Views expressed herein are solely the author's, and do not reflect the views of the U.S. Forest Service or the U.S. government.

1. ALDO LEOPOLD, *A SAND COUNTY ALMANAC* (1949).

2. David Foster & Scott Sonner, *'Shovel Brigade' digs in against feds*, THE DESERET NEWS, Feb. 20, 2000 at A1.

threaten to break the law using “Remember Waco” as a rallying cry, and the local sheriff, the FBI, and the Department of Justice warn a person and her employees to stay a hundred miles away instead of doing their jobs, is that the warning salvo that violence is just around the corner? I remind you that the last time someone “remembered Waco,” 168 people lost their lives in Oklahoma City.³ None of them reported a “prosecutable threat” prior to dying in that bomb blast.

My point is simple. When frustrations grow and dialogue becomes uncivil, nasty, and personally demeaning towards individuals of a certain group, the resultant fray attracts an unsavory element of the human population like blood attracts sharks. These people fling far too many boastful threats about armed insurrection and civil uprising for Americans to be sanguine about it. When a segment of society cultivates an atmosphere of victimization, we can expect to find alleged villains in the cross-hairs of a self-anointed hero. The newspapers report almost weekly on such would-be heroes harming people in public places, in corporate offices, and to our horror, in public schools.⁴

My challenge to you here is to prevent the dialogue about appropriate long term uses of our public lands from degenerating into hostility and violence so that someone can claim a hollow victory. Public land management is not about winning and losing, it is about sharing and caring for the resources, and creating a vision for the land that our children will inherit. What a tragic epitaph for our generation if our grandchildren look at lost species, degraded air quality, and a lack of clean water and ask, “Why was a factional short-term victory more important than working towards a sustainable solution for the problems they so clearly saw coming?”

When seeking solutions to complex natural resource problems, I find it worthwhile to step back and look at the larger context. This often helps us to understand why we are where we find ourselves. We must look at social trends, the condition of the land and examine the national and global trends that affect us.

From my experience as a manager of our nation’s public forests, I can assure you that many, many acres of public lands are deteriorated. Non-functioning, denuded riparian areas, dropping water tables, degraded water quality, sediment in streams, excessive fuel build-up, loss of biodiversity, and species heading towards extinction confront us. These are all spread before a backdrop of significant climate change and loss of ozone. Abandoned mines still leak acidic water with a pH of two and still poison ground water, despite billions of dollars spent on clean-up. A recent headline in the Reno *Gazette*

3. Sue Anne Pressley, *Bomb Kills Dozens in Oklahoma Federal Building*, WASHINGTON POST, Apr. 20, 1995 at A1.

4. See, e.g. Susan Green and Bill Briggs, *Carnage Puts Spotlight on Trench Coat Mafia*, DENVER POST, April 21, 1999, at A17.

Journal grimly stated “Ecological Bust during Boom.”⁵ The facts are tough to read: food production for 480 million people is not sustainable due to dwindling water supplies; eleven per cent of all birds, twenty-five per cent of all mammals and thirty-four per cent of all fish are threatened with extinction; average temperatures have risen almost a degree in thirty years; recent storms have been more destructive, such as the recent windstorm in France which destroyed 1.25 million acres of forest. Closer to home, air quality standards were breached 1217 times in California alone last year.⁶

Looking at the social situation in the rural West, things are just as tough. The operative word in the rural West is change. Life as we know it has changed dramatically and the pace continues to accelerate with every new technological development. Despite the broad national economic prosperity, there are plenty of folks still struggling to get by. The “haves” are getting mighty rich and the “have nots” are seeing their buying power and political influence diminish.

A demographic shift is evident because geography for many is no longer essential to their jobs. Many people can work anywhere, and they often choose to live where the air is fresher, the water cleaner, and where the mountains tower majestically over their new homes in the last, best place. Local culture in the rural West is changing, too: I cannot think of a town that does not have at least one place to buy espresso.

The population of the West is shifting and growing. This expansion requires a greater degree of tolerance and sharing; a greater degree of tempering individual demands for the sake of the community; and getting along with others in the community by working out equitable solutions to sharing the public resources of the community. In a larger context, human civilizations throughout history have had to adapt rapidly or be overrun and lose the traditional uses of their lands. After all, it has only been a little more than one hundred years since this society appropriated resources and their traditional uses from the First Americans in the West. Now, a century later, significant change continues upon the western landscape, its people, and what our culture currently considers “traditional use” communities, such as mining, ranching, and logging. These hard-working, decent communities, like the First Americans, still have much to value, but maintaining the status quo is not an option.

Any conservation plan or policy for public lands that does not consider the economic health of both the rural communities of the West and struggling tribal nations is woefully inadequate. It is not too much to ask the wealthiest nation on the face of the planet to have a sound economic transition strategy when we change the way we value and manage the resources on public land.

5. RENO GAZETTE JOURNAL, Jan. 16, 2000, at A2.

6. *Id.*

We cannot throw people out of work with just a shrug and a brief apology. However, citizens cannot expect that their chosen way of life is an inherent right that all others must protect regardless of its economic, environmental, and social consequences.

What are traditional uses? By definition, traditional uses are activities and ways people have used the land that have been around for awhile. In many cases, that means extraction of renewable and non-renewable resources. Traditional uses in our culture tend to be associated with the theme of multiple use, a concept which, despite claims to the contrary, is still alive and well. That concept of multiple use was institutionalized on public land when Congress enacted the Multiple Use-Sustained Yield Act of 1960.⁷ But many people have forgotten about the second part of the title of this Act, and have not harvested timber, grazed, nor used water in a sustainable manner. We, as a nation, departed from sustained yield to increase the temporary flow of wealth. Now, we are paying the price.

The miracle of technology has been both a godsend and a curse. When the Forest Service increased annual output of timber from four billion board feet to twelve billion board feet in the 1970s, logic suggests that there should have been a three-fold increase in jobs. Wrong. The number of jobs in the timber industry decreased by forty per cent during that same time frame.⁸ Technological innovations and advancements in the timber industry work wonderfully to keep prices low and profits high by improving utilization and eliminating expensive laborer jobs. Some people need to find a villain to blame for lost jobs, but instead of blaming technology and innovation, they blame the Forest Service. What has the Forest Service done to deserve this blame? It has finally started to follow the National Forest Management Act, the Endangered Species Act, the Clean Water Act, and especially, the Multiple-Use-Sustained Yield Act.⁹ All Acts passed by Congress at the behest of the American people and followed at the insistence of the American people.

The angst comes when a person has lost his job or is in fear of losing his job as a result of legislation and politics. Politicians—regardless of what you think of them—are going to do what their contributors and constituents want. Political contributions from environmentalists and environmental groups pale in comparison to contributions by businesses and corporations. Despite apparent widespread opposition to the Endangered Species Act, the Republican Congress was unable to come up with a revision of the Act that had even enough momentum to carry it to a debate on the House floor. The simple truth

7. 16 U.S.C. §§ 528-531 (1998).

8. Telephone Interview with Jack Ward Thomas, former United States Forest Service Chief, in November, 1999.

9. 16 U.S.C. §§ 1600 *et seq.* (1998); 16 U.S.C §§ 1531 *et. seq.*(1998); 33 U.S.C §§ 1251 *et seq.* (1998); 16 U.S.C. §§ 528 *et seq.* (1998).

is the American public cares very much about the quality of the American environment and is not going to tolerate a lowering of standards. Vitriolic rhetoric and threats from the minority do nothing but strengthen the resolve and prove that stricter measures must be implemented. Uncivil conduct undermines the credibility of any cause.

Life has never been easy for those who choose to make their living off the land. Prior to the Industrial Revolution, most individuals depended directly on natural resources for their livelihoods. Since the Industrial Revolution, labor related to natural resources has been steadily declining, and now basic extractive industries account for only a tiny proportion of our gross national product—including price of the product plus the labor to produce it. Life is getting tougher for those who want to continue to make their living off the land while contesting the changes that society is mandating.

What do I mean by that? Well, pick up a magazine or turn on the tube and follow the harbinger of societal trends, advertising. Basic extractive industries—timber, mining, energy—are advertising heavily. They are using what sells; I do not mean scantily clad babes, I mean they are using an emphasis on clean water, clean air, and environmentally sensitive management techniques.¹⁰ That's great. But it might be a decade too late to save the jobs that technology has left unscathed. Americans have seen too many examples of insensitive management to be so easily convinced, and are not going to trust extractive industries until sensitive, sustainable practices are the norm.

It is not my intention to be harsh or cavalier. I have worked in small communities for over twenty years, and I know how bad this hurts. But I am saying that this shift is just as inevitable as the massive societal transformation of the industrial revolution, the invention of the computer, and introduction of mass communication. We have accelerated the rate of change, change that is inevitable. How we manage this change is critical for both the rural communities in the West and the surrounding landscapes. Civil discourse is step one. There is no bogey man out there. We are in this together, like it or not. We as a nation cannot consume and waste, populate, and communicate at our current rate and expect that the rural West will be just like it was when we were growing up. There is no going back.

Respectful civil dialogue is an essential tool in establishing long-term goals for the nation's natural treasures. In my opinion, this approach is essential in convincing the American people that an investment in the health of their children's inheritance is a wise and sound fiscal strategy. Such an investment in restoration and natural wealth accumulation will also bring a sustainable prosperity to the communities previously dependent solely on extraction.

10. See, e.g. Weyerhaeuser's television ads calling itself "the tree-growing people," Chevron's numerous magazine ads featuring its conservation efforts, and the Intermountain Forest Industry Association's television ads lauding the environmental records of logging companies.

The chasm widens between the majority of Americans and the groups fighting for status quo resource extraction through local control. It is incumbent upon all citizens, especially in the intermountain West, to insist on civil discourse in management of public lands before more battle lines are drawn. For example, despite the radical opposition of a small number of people in the West to any further protection for unroaded areas, they are in a small minority. Recently, the front page of the *Wall Street Journal* reported: "Clinton wins broad support for his plan to protect more than 60 million acres of national forest from logging and commercial development."¹¹ In a poll the GOP firm American Viewpoint conducted for the Heritage Forests Campaign, seventy-six per cent of Americans said they favored the plan, including sixty-two per cent of Republicans."¹²

Obviously, those who oppose management change are in a shrinking minority. Granted, many of the people polled may have limited understanding of the effects of such decisions. Rather than wasting energy on fighting the majority who are seeking increased protection of roadless areas, it might be more productive to educate these people about the particular needs and concerns of the rural West. It might be more productive to include transitional measures for displaced activities, rather than leaving rural Westerners stranded by the wayside. It might be more productive to ensure that forest workers can use their skills for the benefit of forest health. It might be more productive to convince the American majority that funding the maintenance of a reasonable network of roads and trails is essential to provide a spectrum jobs as well as recreation opportunities and access. Local control will continue to be a pipe dream if the majority of Americans see groups in the West promising armed insurrection if they do not get their way. To be taken seriously, one needs to act in a manner that commands respect.

The advocates for decreasing environmental regulation are outnumbered in this democracy. However, all Americans are responsible for the fabric of our communities. We cannot disenfranchise part of our population, our neighbors, just because they disagree with the majority of Americans. We must work together to find a way to ensure that we give all citizens the opportunity to develop sustainable prosperity and make a decent living in industries insulated from the typical boom and bust extractive cycles.

I recently read that in a heated protest of the roadless initiative a Montanan proclaimed that "we, the people, will decide" what uses will be permitted.¹³ He promised armed conflict and bloodshed if uses were restricted.¹⁴ He is

11. WALL STREET JOURNAL, Jan. 21, 2000, at A1.

12. *Most support Clinton in protecting national forests*, SEATTLE TIMES, Jan. 22, 2000, at A4.

13. Michael Jamison, *Forest official will share her Nevada nightmare*, MISSOULIAN, Jan. 21, 2000, at A11.

14. *Id.*

right on the first item, the people will decide. “We, the People...” are the first words in the Constitution. It applies to all Americans—all the Americans who have been paying for the care and maintenance of the national forests, and subsidizing every use for over 100 years, will decide what we leave for the future.

We are facing predicaments that can only be resolved through civil discourse. Through a series of events, natural and social, we are trying to make the land do more than it is capable of to support us for the next hundred years. Clearly one of the least effective ways of seeking resolution is to vilify the federal employees who are stewards of this land we all share. It makes no sense to shoot the messengers. In constructive dialogue, maintaining perspective is essential. An elected official in Montana recently likened a Forest Service manager to a Nazi for not openly rebelling against the roadless initiative.¹⁵ Similarly, in Nevada, an Elko County commissioner compared Forest Service employees to Nazis.¹⁶ To evoke the image of fascism and compare it to contemporary public land management in America is at best, delusional, and at worst, a disgrace to the memories of those who suffered unimaginable terror at the hands of the Nazi regime. Try to convince the relatives of millions of people who lost their lives that the situations that we face in the rural West are comparable. It is a ludicrous suggestion. Exaggeration and incendiary language do nothing to elucidate issues.

To my knowledge, all elected federal officials take an oath of office to uphold the Constitution and the laws of the United States. Forest Service employees take this same oath. This oath should not be taken lightly. Federal officials and employees who wish to support laws selectively, that is, only support the laws that please them personally, should recognize that they are violating their oaths of office and doing a disservice to the public.

I find it disingenuous that folks who threaten armed insurrection are also frequent quoters of parts of the Constitution. Quoting the Constitution is excellent, but not selective quoting or quoting out of context. The preamble provides the context, “We, the People of the United States, in Order to form a more perfect Union, establish Justice, insure Domestic tranquillity, provide for the common defence, promote the general Welfare and secure the Blessing of Liberty to ourselves and our posterity....”¹⁷ No fed-basher has yet told me he was fighting for domestic tranquility or to form a more perfect union.

Fed-bashing is a tough word. I define it as destructive actions or words meant to hurt and belittle federal employees personally and/or collectively. It is the dark side of the lack of civility, and it is not much different than racism: Pick a class of people, decide they are the source of your problems, and

15. *Id.*

16. Carlotta Grandstaff, *Feds Under Fire*, BITTERROOT STAR, Feb. 2, 2000, at 1.

17. U.S. CONST. preamble.

proceed systematically to make them unwelcome in the community. I do not begrudge anyone for being upset with certain federal laws or policies, but how we handle that dislike is a measure of our own personal integrity and, ultimately, the yardstick of a community. If I resent a tax, I still do not have the right to vilify the tax collector and his family. Some media and elected officials, however, even federal officials, are condoning just this sort of behavior toward federal employees. In response to my expressed concerns about the treatment of my employees and their families in Nevada, a member of Congress casually quipped, "You're federal employees, what do you expect?"¹⁸

Try this litmus test: the next time a federal employee is personally attacked in public, substitute your name or imagine your child hurling those hurtful words. Do we want to teach our children that fear or anger justifies hatefulness? Or that if you feel like a victim, to strike at the closest target?

Let's be realistic: look at the cattle industry on public land, which represents less than two per cent of America's beef producers.¹⁹ In many areas, the land cannot sustain traditional levels of grazing.²⁰ Plant species disappear and riparian areas shrink from the pressures of grazing.²¹ When landscapes are degraded, people get alarmed and ask land managers to enforce basic stewardship. The Forest Service then re-evaluates and reduces allowable numbers in some places. "Foul!" cry the fed-bashers: The range con and district ranger are villains attacking custom and culture. This is clearly untrue. The real story is economic and social. The market for beef has not kept pace with inflation, production costs have risen, middle men have profited while price on-the-hoof has plummeted.²² Fewer individuals and companies have gained control of a larger market share of the beef production and packing industry.²³ Perverse economic incentives facilitate the continuing flood of cheap, subsidized beef from other countries through U.S. borders.²⁴ People have also become concerned about their health: they do not trust chemicals; they want less fat in their diet; and although they buy significantly less red meat, they will pay more for chemical-free, low-fat beef. Ranchers need to understand that market forces and international trade agreements affect their livelihood far more than Forest Service policies.

Some ranchers get it. They do not attack the Forest Service, they figure out

18. Chris Fotheringham, *Forest Service Stonewalls Congress*, ELKO DAILY FREE PRESS, Nov. 15, 1999, at A1 (reporting comments of Rep. Jim Gibbons).

19. GEORGE CAMERON COGGINS, ET AL., *FEDERAL PUBLIC LAND AND RESOURCES LAW* 688 (1993).

20. *Id.* at 690-91.

21. *Id.*

22. JERRY L. HOLECHEK ET AL., *RANGE MANAGEMENT: PRINCIPLES AND PRACTICES* 58 (3d ed. 1998).

23. *Id.* at 55, 58; JOHN VANDEMEER AND IVETTE PERFECTO, *BREAKFAST OF BIODIVERSITY* 79-80 (1995).

24. JEFFREY A. MCNEELY, *ECONOMICS AND BIOLOGICAL DIVERSITY: DEVELOPING AND USING ECONOMIC INCENTIVES TO CONSERVE BIOLOGICAL RESOURCES* 149 (1988).

how they can use the research capabilities of the government and universities to help determine better techniques to graze cattle, improving weight gain while maintaining habitat diversity. They switch to lower fat breeds, and stop using chemicals. They find a niche market for the product in demand, sell directly to the retailer and get twice the price. These folks work with the agencies and organizations to develop a certification program for beef raised in environmentally sustainable methods, creating a cache for concerned consumers and higher demand. They sell a conservation easement on the ranch and keep it in the family.

Their neighbor tries a different approach. He makes sure everyone in the community knows what those Forest Service bastards have done to him. He violates the commitments he agreed to in his grazing permit, overgrazes the land and his cattle do not thrive. He mortgages the ranch and sues the Forest Service based on what he believes is a constitutional right to run as many cattle as he wants wherever he wants on public land because his grandfather did. He refuses to change. He loses the suit and the ranch is subdivided. If there is fault here, where does it lie?

Well, my grandfather made a living selling ice from a horse-drawn wagon. If he was alive today, he would be selling stainless steel-clad Frigidaires with ice-makers on-line. Same business, updated product and delivery. Survival requires change.

I do not mean to oversimplify, there are fundamental problems that even the hardest-working folks cannot easily overcome. One is lack of market incentives to help the transition to sustainable methods in industries. Shifting from dependence on non-renewable energy sources is one area that shows promise: fuel cell technology and solar advancements are emerging methods of providing energy, reducing demand for a non-renewable resources, reducing air pollution and ozone depletion, as well as providing jobs that can be located in rural areas. Organic agricultural products reduce ground and water pollution, bring higher prices, and can be an economical small business in rural areas. Many landscapes are deteriorated and many forests are in poor health. Restoration of these areas using the current equipment and skills of forest workers is a very viable idea.

The paradigm shift required is that natural capital, *i.e.*, the real dollar value or replacement value for the goods and services that we get from the land, needs to be taken into account. The cost of restoring degraded landscapes frequently far exceeds the value of what has been extracted. Although it may sound shocking to some, I suggest it would be a better value for the public to subsidize extractive industries not to operate on some public lands, especially during these tough times of transition. We cannot lose sight of our responsibility to leave a quality environment for the future. The superfund sites and abandoned mines on which we spend billions to stabilize and prevent further damage are perfect examples of waiting until the damage is done to face the

issue, and shift the higher cost to the taxpayer.

In our area of the country, the rural West, a plan for managing public land as a long-term trust, ensuring we are living off the interest and not depleting the capital, is possible only with the willing, civil participation of all interested parties. We need to be willing to collaborate on solutions rather than wanting to overpower and win. Freedom to share and hear all viewpoints was clearly seen by the framers of the Constitution as imperative. We need to accept the fact that we do not know everything. We have a golden opportunity to learn from our neighbors and to share with them our experience and knowledge. The bottom line is the Golden Rule: showing respect and civility towards others despite what you think about their opinion or in how they express their relationship with their landscape.

I suggest that our personal relationship with the land is an excellent barometer of how we relate to other people. I believe there are different levels of maturity in land relationships. A child-like attitude that the land exists to fulfill one's needs may lead one to take the land and its resources for granted, as if it will always be there and it will meet all of one's needs. A mature attitude recognizes that humans are much more transient than the land. With maturity comes the understanding that one must give and sacrifice for the sake of the relationship. What one takes must be returned, and one must never take more than she absolutely needs for the sake of the those who come after her.

Landscapes shape our life choices, our careers, our lifestyles and our politics. But the land and its resources are borrowed from the future. We as a society are developing a dysfunctional relationship with the land. The common problems that I see in individuals are an apathy to complexity, as in the example of grazing on public lands; focus on short term gain; the belief that you can keep taking more from the land than is sustainable; real time orientation, that is, failure to consider the future; and finally, resistance to change.

Solutions are tough. We need to recognize that no one is going to win. But I remind you that this is not about winning, but rather about finding balance through sustainable practices. We are in this for the long run. Demeaning each other will not bring about solutions, nor will it suggest to the rest of the nation that people in the West are thoughtful, reflective, inclusive individuals; people who can be trusted to make good choices and therefore deserve greater local control. If we can demonstrate to the rest of the nation that we collectively are far-sighted, cooperative stewards, we will gain the support of the rest of the nation in our efforts to reach sustainable solutions to our considerable natural resource challenges—civily.