

ENVIRONMENTAL POLICY ISSUES: CHAOS AND CONFUSION

*Laird Noh
Idaho State Senate*

This will not be a pleasant speech nor one I ever wanted to give. Most of my years of involvement with natural resource policy have been marked by a climate in which disagreeing parties would and could come together to work out disagreements and reach mutually acceptable goals. In the past decade, Idaho has had remarkable success with this approach to developing progressive and workable environmental policy and legislation.

Last June I gave a presentation at the Grizzly Bear Management School at the Yellowstone Institute, Yellowstone Park. Another participant, a bright, capable young U.S. National Forest Supervisor from a neighboring state, described the public sentiment in his regions as rage—militia literally forming, accumulating weapons and openly threatening to shoot federal officials.

While his experience may be on the extreme end of the scale in the West today, it is, nevertheless, instructive. Because the sad, unfortunate fact is that the normal mechanisms for constructing rational environmental policy and management have broken down. Confusion, frustration and chaos are the order of the day.

Those of you not from the West or the public land states, or not in the middle of the maelstrom may not fully comprehend what is occurring here today. I will try to describe it and give some sense of the frustrations, costs and pressures that are very real to those on the front lines of resource use, management and policymaking.

Most citizens do have a sense of the turmoil that grew out of the Environmental Species Act (ESA) listings for the spotted owl. That is a benchmark with which to begin. For the foreseeable future, the extremely varied interests of the Columbia River Basin—from the Pacific Ocean to the headwaters of the Salmon, Clearwater and Snake Rivers in central and eastern Idaho and on into Montana through other tributaries—are attempting to cope with the listing of three species of Idaho salmon. Water, drained at federal request from upper Snake storage reservoirs near the Wyoming border to try to meet the demands of the salmon, flows 150 miles downstream through the Hagerman Valley habitat of three listed snails and a limpet. National Marine Fisheries (NMF) calls the shots for salmon, U.S. Fish and Wildlife Service (FWS) for snails. Any actions of any

other federal agencies that may affect either salmon or snails in any way must consult with both, and NMF and FWS must consult with each other. And each of the three species of salmon have different demands for flows. There are many lawsuits in progress.

The Fish and Wildlife Service has declared that improved water quality is a key to protecting the snails. Federal solicitors have stated that both the Endangered Species Act (ESA) and the federal Clean Water Act (CWA) justify federal agencies to simply take private water rights, perhaps without compensation. Two Idaho environmental groups, under the leadership of the Sierra Club Legal Defense Fund, have successfully sued the Environmental Protection Agency (EPA) before the same judge who handled the spotted owl case, gaining an initial declaration that EPA must greatly expand the list of pollution-limited stream segments submitted to EPA by our state water quality agency. Compared with most other states, Idaho generally has very clean water. Our state Division of Environmental Quality listed less than one hundred segments as having serious problems. Today, it appears the list, with little or no factual basis, will be expanded to more than eight hundred, a high percentage of the stream mileage in the state. The plaintiffs have served notice they may ask the judge for injunctions against existing point and nonpoint source activities that may be contributing to these assumed pollution loads until adequate studies can be conducted to prove otherwise. At a minimum, they are demanding mandatory best management practices for all of agriculture which can be quickly and fully enforced.

In Oregon, as part of an obviously coordinated effort, another Sierra suit challenges Forest Service authority to issue grazing permits until the state water quality agency certifies that the grazing involved will meet state water quality standards. This summer, the U.S. Supreme Court declared that under the Clean Water Act, state water quality agencies have authority to require that any federally-permitted activity meets state quality standards. The court implied that there may be instances in which this authority is greater than a state's authority to issue water rights.

In yet another Oregon suit, plaintiffs obtained a 9th Circuitry injunction to half ongoing grazing, logging and road building in any endangered salmon habitat until ESA Section 7 consultation takes place on the entire Forest Plan. Complex, lengthy, costly consultations have already occurred on all specific national forest activities that may affect salmon. In a related suit, Idaho environmentalists have asked for the same injunctions.

In the Yellowstone ecosystem, federal and state biologists responsible for grizzly bear recovery have perhaps the strongest documentation in the history of wildlife management that the bears are fully recovered. It is apparent, if you attended Grizzly Bear Management School, that the bears have recovered far beyond the expectations

or plans of federal managers. More than 60 percent of the bears are now outside the park. Burgeoning conflicts with humans and livestock have begun and are predicted to expand. In spite of the data, environmental groups have sued to block all efforts at delisting. At the last grizzly bear meeting I attended in August, the Bridger-Teton Forest Supervisor said he had to return home the next day to oversee copying of 42,000 pages of documents required for the discovery phase of the suits.

Well, what else is going on? In Idaho, the wild steelhead trout is proposed for listing. A petition was submitted last week to list the wolverine. Based upon a crash program to put in place an enormous set of management restrictions (developed behind closed doors with virtually no public input), the listing for the bull trout has, at least temporarily, been forestalled over most of northern and central Idaho. The Kootenai sturgeon was listed three weeks ago. In this state, thirty-six other mammals, insects, fish or mollusks and fifty-two plant species are in the listing pipeline as a result of the voluntary settlement of a suit by the Fund for Animals and other groups against the Fish and Wildlife Service a couple of years ago.

Idaho faces reintroduction of wolves in November (unless threatened lawsuits get in the way) and grizzly bears in the Selway-Bitterroots within another year. The Aquatic Species Recovery Plan for the Middle Snake River Ecosystem is on the desk of the Regional Fish and Wildlife Service in Portland. And the deadline for commenting on EPA's new Contaminated Sediment Management Strategy is October 31.

Yesterday I attended a meeting in Baker, Oregon, of appellants to a Washington, DC-directed decision to remove all domestic sheep grazing next month from the Hells Canyon National Recreation Area. The proposal is ostensibly intended to protect big horn sheep from pasteurilla infections spread by domestic sheep. Yet, the Foundation for North American Wild Sheep; the Idaho Fish and Game and Agriculture departments; veterinarians representing both agencies; and the Idaho Woolgrowers all advised against the move.

Now, if that is not quite enough for the Potato State, last year a couple of leading Idaho environmentalists quietly participated in a major effort, started in Oregon and Washington, to destroy the entire potato industry from the farm clear through to McDonald's and the school lunch room.

This, of course, in addition to the Clinton administration proposals which, at least as initially outlined, would have virtually eliminated family-based livestock grazing from public lands. The Interior Department has filed legal claims in Idaho for reserved water rights that would take away most water rights issued to our citizens in the Snake River system since 1937. New U.S. Bureau of Reclamation leadership is actively pursuing, through a variety of initiatives, its

professed goal to reallocate Western water away from agriculture to the benefit of environmental interests.

While this is, unfortunately, not a complete list, the picture should now be forming. Everyone directly involved in resource management, public and private, is literally overwhelmed. On federal lands (60 percent of our state), resource management has ground to a halt, tied into a complete Gordian Knot of paper, studies, consultations, reports, meetings and legal briefs. Rational discussions seeking rational solutions to legitimate problems have broken down almost entirely. No one trusts anybody else any more.

How did we get into this state of affairs? Is this the proverbial American policy pendulum making its inevitable swing? My analysis goes back to the Carter presidency when environmental interests were allowed to take control of most hiring for the new administration. That was a mistake, for the Reagan administration soon wanted to get even and appointed Jim Watt secretary of the interior. George Bush moderated that somewhat, but environmentalists were still frustrated. Meanwhile, fewer and fewer people had actual or even academic experience with living things or living systems. People became tied to environmental policy by the organizations they joined. Their knowledge base came mostly from the organizations that got their dues. Simultaneously, environmental law flourished. The maximum authorities Congress might have buried within the ESA and the CWA were probed in detail. If state and federal political interests would not exploit those authorities to the fullest, perhaps the courts offered another route. From deep pockets such as those of Seattle's Bullit sisters, funds flowed freely. The financial playing field was more than leveled. With the election of President Clinton, and especially Vice President Gore, the lid was blown off of environmentalist expectations. Key members of the environmental movement were placed in key positions in the new administration. Strategies worked out well before the elections were soon moving down the track.

The political realities, of course, were quite different, as Democratic Western governors and congressmen soon pointed out. In December, 1993, national environmental leadership expected Congress, with full administrative support, to quickly reauthorize even stronger versions of the ESA and CWA. By June, 1994, both renewals were on hold and the sponsor of the proposed new CWA, a western senator, I am told on good source, had to take an armed guard when he toured his home district during a congressional recess. To the leadership of agriculture and the resource-based sectors in the West, as well as many politically astute citizens with a genuine interest in environmental protection, the unvarnished goals of the environmental leadership structure, heretofore apparently kept under wraps, but now suddenly revealed, were unbelievable and frightening. Federal resource managers, often with the finest aca-

demic and scientific training and experience the world had ever provided, bailed out en masse.

So, where do we go from here? Idaho and some other states are confronting unprecedented population and economic growth with all the related pressures on the environment and the quality of life. Progress is needed in the areas of water quality, grazing management, and protection of threatened species, but, most certainly, in planning and zoning and in managing enormous recreational pressures on some lakes, rivers and lands. Major economic, political and environmental issues have become international in scope. There is so much to be done. But it must be done in a way that works.

In my opinion, a necessary first step must come from Congress. The ESA and the CWA have come to bear separately and sometimes together through the courts in such an unworkable way that only Congress can untangle the hopeless snarl. The acts must be modified so that reasonable goals can be met without bringing resource management to a frustrating halt and the body politic to a complete revolt.

In Idaho, mistrust is now so great that new leadership may be needed for environmental organizations that, in earlier years, served the state effectively and well. A newly elected governor must exercise great skill to bring us back together. Avoiding the same backlash that occurred with the end of the Carter administration will not be easy. Yet, out of such circumstances often comes opportunity. Some on both sides of the fence now recognize events have gotten beyond control. The ante is high enough on both sides that smart gamblers should see the merit of compromise.

Here is where you come in. I believe the attributes that you bring to the table—professional training and a strong, objective scientific base combined with communications skills—will be in even greater demand in the months ahead. Quality information and analysis, packaged for modern mass communication to the body politic and to targeted segments of the population, is crucial to restoring workable environmental policy and management. You can play a key role in bringing us back together and moving us in the essential direction.