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# Arguing About Consensus: Examining the Case Against Western Watershed Initiatives and Other Collaborative Groups Active in Natural Resources Management

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# **Arguing About Consensus**

*Examining the Case Against Western Watershed Initiatives and  
Other Collaborative Groups Active in Natural Resources  
Management*

by

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## Preface and Acknowledgments

The origins of this project were twofold. First was ongoing work updating *The Watershed Source Book*, a seminal study in the Natural Resources Law Center's research pertaining to the world of watershed initiatives and similar efforts in community-based, collaborative resource management. As part of the ongoing *Source Book* revision, the Center promised to undertake one or more "special studies" of issues that emerged as most significant in shaping the long-term health and viability of the western watersheds movement. At this point in time, no issue is of more obvious concern than the emerging backlash against consensus-oriented, community-based strategies of resources problem-solving and management.

The other motivation for this study came from several dozen parties, mostly environmentalists and academics, that have approached me in the past year with a troubling problem. It seems that individuals raising thorny issues regarding the effectiveness and appropriateness of watershed initiatives and similar collaborative groups have not been welcomed into what should be an active and constructive arena of debate, but have rather been encouraged to remain silent. This "encouragement" has certainly not been anything sinister, but has rather taken the form of systematic exclusion at events and in publications, and in the competition for limited research funds.

I chose to test the pervasiveness of this experience by floating an article in the Chronicle of Community articulating the need for a more rigorous and impartial examination of collaborative groups, and immediately began to hear from dozens of individuals I had never met in my previous research endeavors. Each, to paraphrase the general sentiment, had been labeled a radical or heretic by one or more groups for raising issues that, at the least, seemed worthy of consideration and discussion. In most cases, the issues they raised were disturbing and quite complex—issues that I, as a researcher,

could not (and still cannot) answer. But that is not what prompted me to undertake this report. Rather, I was troubled that in such an important area of public policy, an open debate including researchers, practitioners, and other concerned parties was not adequately being fostered. This seems particularly ironic given that the substantive background of this debate is tenets of consensus, collaboration, community, and trust building.

Fortunately, I think that the need to openly examine the thorny issues is now becoming more widely recognized. Thoughtful research, on all sides of the issues, has begun to emerge, although these are only first steps. The following report is one of those first steps, designed mainly to organize and frame questions, rather than to provide answers. Frankly, I don't feel qualified at the present time to offer strong opinions on most of the issues raised in the following report; I am only certain that those issues are important. Initial feedback from the draft report has convinced me that the time for this research has arrived.

In publishing this report, I wish to thank those funding organizations that have, either directly or indirectly, supported this line of inquiry. Research for the initial *Source Book* was primarily provided by the Ford Foundation, while support for the revision has been provided by the General Service Foundation, U.S. Bureau of Reclamation, Ford Foundation, Hewlett Foundation, and the U.S. Environmental Protection Agency. I am also greatly indebted to those individuals who have brought these issues to my attention, and that have been so willing to share their experiences and thoughts with me—albeit often on the condition of anonymity. I certainly cannot thank all of those parties, but some of the individuals that have helped shaped my thinking include (alphabetically): David Bayles, Reed Benson, Gail Bingham, Louis Blumberg, Steve Born, Ron Brunner, Guy and Heidi Burgess, Sam Burns, Hanna Cortner, Ann Dahl, Maxine Dakins, Don Elder, Michael Fife,

John Folk-Williams, Robert Frodeman, Karen Hamilton, Mike Hart, Dan Helig, DeWitt John, Rick Knight, Peter Lavigne, Ralph Longobardi, Mark Lubell, Dan Luecke, Larry MacDonnell, Sean McAllister, Roz McClellan, Matt McKinney, Sarah Michaels, Ann Moote, Deborah Paulson, Maggie Shannon, Toddi Steelman, Steve Toben, Dan Tarlock, Sarah Van de Wetering, and my colleagues here at the Natural Resources Law Center, University of Colorado School of Law. Of course, this report has also been shaped by those authors cited throughout the report—especially those from

whom I have extensively quoted. While I alone take full responsibility for the content herein, I must acknowledge that many of the opinions expressed reflect a much broader community of voices than simply my own thinking, and in several cases, are not even consistent with my own thinking. The following document is not intended as an essay of my own arguments, but rather as a synthesis and overview of ideas emerging from a community that I respect, but with whom I only partially agree.

Doug Kenney, November 1999

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## Executive Summary

### Problem-Solving in a New Era

Recent years have seen a tremendous increase in watershed initiatives and other collaborative groups in the western United States. Although highly variable from case to case, these efforts often take the form of working groups of both public (i.e., federal, state, and local agencies) and private (e.g., citizens, water users) interests, organized in largely *ad hoc* associations to address natural resources problems of mutual concern. The self-defined mandates of these efforts typically recognize the legitimacy of both environmental and economic aspirations, and support the design and/or implementation of on-the-ground problem-solving strategies at the watershed (or similar) scale.

Given their emphasis on local involvement, deliberative processes, and consensus-based decision-making, these efforts are described as featuring a “community/collaborative model” of governance, part of a larger set of institutional reforms currently endorsed by parties as ideologically diverse as the Clinton Administration and the Western Governors’ Association. These new trends in “governance” are most notable for featuring a strong reliance on positive incentives (i.e., the carrot rather than the stick); partnership arrangements (both intergovernmental and public/private) providing an enhanced decision-making role for local stakeholders; enhanced substantive, geographic, and intergovernmental integration and/or coordination; and a more explicit commitment to *ad hoc* and consensus-based decision-making processes based on field-level experimentation and learning.

Frequently lost in the fervor to endorse and implement these “alternative problem-solving” tools are the concerns of “skeptics” who fear that these approaches may have significant limitations and drawbacks that are not fully appreciated. Of particular interest in this report are those criticisms questioning the merits of watershed

initiatives and similar collaborative groups (e.g., forestry partnerships). Without question, the most common source of such skepticism is from the community of environmental activists, many of whom are understandably concerned about the possible on-the-ground ramifications of significantly modifying arrangements in natural resources governance and problem-solving. On the other hand, few parties—including the skeptics—are completely (or even remotely) content with the functioning of the existing institutional framework. Some of the most common criticisms of existing arrangements focus on the high costs (both time and money) of decision-making, the frequency of gridlock, the failure to embrace integrated and creative solutions, and the subordinated decision-making role of local interests and other sectors of the public.

Widespread dissatisfaction with the existing “system” is a strong rationale for trying new solutions, but does not invalidate the importance or practical necessity of evaluating these new approaches on their own merits. Measuring success, however, is a deceptively difficult challenge, since many efforts are relatively young (and many problems long-term) and operate in a complex institutional and social environment, and given that both the *process* and *outcome* characteristics of collaborative problem-solving approaches raise difficult questions and evoke widely different opinions. Some of these opinions are normative in nature, describing what a party may believe to be appropriate or desirable, while others are presumably more factual in nature—although a closer examination of the underlying working assumptions suggests that many of these assertions may feature more speculation than fact.

## Common Arguments for and Against Collaborative Groups

The argument in favor of collaborative groups often begins with the assertion that *traditional means of management and problem-solving do not work*, and that *traditional means of management and problem-solving will not work in the future*. These arguments are frequently used in a roundabout manner to support the use of collaborative groups based on the reasoning that, *even if they are largely unproven experiments in resources management and problem-solving, collaborative groups are not likely to be any worse than existing processes and have a real potential to be notable improvements in terms of speed, cost, equity, and on-the-ground results*.

Many other supporting arguments are based on collaborative groups' alleged track record of success. Two arguments are of particular importance: first is the argument that *many collaborative groups have already achieved significant organizational objectives* (e.g., establishment, holding meetings, building relationships); and second, that *many collaborative groups have already achieved significant on-the-ground improvements in natural resource conditions*. The reason it is useful to distinguish between these two arguments is that the first of these opinions is typically married to the idea that *organizational achievements will lead to on-the-ground success*, and/or the idea that *organizational gains are of intrinsic value* regardless of any on-the-ground consequences.

Other common arguments include the idea that *local residents should be involved in making decisions with local impacts*, an assertion that is typically linked to the assumption that this local involvement does not occur in existing (traditional) arrangements, and/or the opinion that this desired outcome can be better achieved through the use of collaborative groups. Also pervasive is the argument that *cooperative approaches to decision-making are inherently preferable to conflict oriented approaches* (especially

litigation). Closely tied to this argument is the idea that *cooperative interactions within a specified locale help to build a sense of community and of place, which in turn, improves the quality of life for all residents, and improves the ability of a community to achieve social, economic and environmental goals*.

The arguments of the skeptics often begin with the notion that *existing processes of decision-making and problem-solving, while admittedly far from perfect, are not fundamentally flawed, and can be expected to work now and in the future*. Additionally, *without the regulatory framework provided by the frequently maligned programs (deriving from legislation such as the Clean Water Act and Endangered Species Act), it would likely be impossible to even attempt collaborative approaches*. This line of argument is at least partially reactionary—offered as a defense to those that would dismantle existing systems. The most direct argument made by the skeptics is the assertion that *most collaborative group processes have not been effective in solving on-the-ground problems, and are not likely to be so in the future*. Additionally, in those cases where some success is difficult to deny, it can be argued that *the success was achieved by concentrating on those problems that had obvious solutions that were easy to implement, but long-term effectiveness will not be maintained once those opportunities are quickly exhausted* (the so-called “low hanging fruit” argument). Also in those cases, it is often argued that *these goals were not achieved any faster or cheaper than what would have been possible through traditional means*.

Another major set of arguments against collaborative processes deal with issues of representation and decision-making. Specific criticisms include the assertion that *environmental viewpoints are not adequately represented in collaborative group processes*, or conversely, that commodity interests are over-represented. Additionally, *to the extent that environmental interests are represented, they are likely to be at a strategic disadvantage given the greater financial resources and training of their “anti-environmental” counterparts*. Also



common is the opinion that *the typical decision-rule of consensus (often implemented as unanimity) does not lead to efficient or productive decision-making exercises.*

Responding to the frequent call for greater local control, skeptics counter that *most natural resources are, at least to some degree, public resources, and should managed in accordance with the values held by the nation and society at large—not just a local constituency.* A related argument is that *public policy-making is a function of government, and it is inappropriate to shift these decisions to ad hoc, public/private groups that may not satisfy democratic norms regarding representation, process, professional expertise, and related considerations.* It is also argued that *conflict-oriented processes are a legitimate and essential approach to decision-making, and that venerating consensus can promote an inappropriate social pressure to compromise.*

### Searching For Answers

Given the difficulty in assessing the performance of collaborative groups, both in terms of data collection and interpretation, this report does not provide a definitive assessment of the merits of western watershed initiatives and other collaborative groups, but rather seeks to better illuminate and explore those working assumptions that currently separate the proponents from the skeptics. It is the hope that this effort will encourage both parties to engage in a richer debate of these emerging mechanisms of problem-solving, a real need given that many policy-makers appear anxious to formally adopt these new approaches in law and practice.

The logical starting place for this debate is the recognition that much of the argument in favor of collaborative groups (and related tools) is a negative one, based on highlighting the presumed deficiencies of the existing system of governance. These assessments frequently focus, for example, on the existing system's emphasis on highly formalized (and frequently adversarial) modes of decision-making, the prevalence of

intergovernmental and inter-agency competition, the high cost of resources management, the phenomenon of institutional inertia and the constraints of incremental change, the subordination of public interests to special interests, the failure to use science effectively, and most importantly, the frequently disappointing on-the-ground track record of many programs presumably designed to protect resources.

While there is undoubtedly considerable room for improvements, a closer look at existing systems of natural resources and environmental management suggests that both successes and failures can be found in abundance. Furthermore, it is difficult to conclude that the system is “broken” or “fundamentally flawed” without calling into question many of the elemental concepts of the American system of governance. Some of these concepts include dispersed power with multiple checks and balances, competing forums of decision-making, interest group activity, and federalism. To the extent that these features are viewed as deficiencies to be overcome, then dramatic reforms are in fact called for—not only in natural resource institutions, but in broader arrangements in American governance. If, instead, these qualities are viewed as reasonable constraints to work within, then the challenge is to more selectively and strategically implement substantive reforms within that framework that promise to more efficiently achieve agreed-upon goals, and procedural reforms that promise to better reconcile or balance competing objectives. Collaborative efforts can presumably play a role under either scenario, but very different roles—viewed in the first as a *replacement* for existing processes and, in the second, as a *supplement*.

This line of inquiry takes on added complexity when future natural resource problems are considered. For example, controlling nonpoint source pollution (the primary unmet management challenge in current and future water quality programs) presents a very different challenge than point source pollution. Similarly, resources restoration can feature different obstacles than attempts at resources preservation. In order to understand

which types of problem-solving approaches are most likely to be effective in a given situation, it is necessary to consider these differences carefully. For example, there is reason to believe that collaborative processes (due mostly to their consensus orientation) are likely to be most effective in those situations in which parties have similar interests (i.e., value-based conflicts are not significant) and incentive structures. This, of course, is only a broad generalization. However, generalizations of this nature become very powerful when they are explicitly based on the recognition that different types of problems, just like different types of problem-solving strategies, offer different sets of incentives, opportunities, and constraints. A better understanding of this conceptually simple observation can provide real insights into the debate over collaborative groups, given that the empirical field-level data needed to provide definitive answers about effectiveness may still be several years away.<sup>1</sup>

A better understanding of the incentives, opportunities and constraints provided by different problem-solving approaches is also central to understanding the relationship between the so-called “alternative” means of problem-solving and the “traditional” means. As a practical matter, these different types of approaches often go hand-in-hand, a phenomenon perhaps best illustrated by the use of litigation to encourage negotiation. A working understanding of this relationship strongly encourages viewing watershed initiatives and similar collaborative efforts as supplements, rather than replacements, for traditional processes such as regulation and litigation. In fact, many of the arguments that distinguish proponents from skeptics are largely diminished when the working assumption is that the “alternative” processes are intended, both

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<sup>1</sup> The Natural Resources Law Center is among those research organizations engaged in this empirical research. Currently, the Center is compiling survey data on western watershed initiatives, including those first investigated by the Center in 1995 leading to publication of *The Watershed Source Book* (NRLC, 1996). Research of this kind begins to satisfy the need for long-term data necessary to offer more precise conclusions about effectiveness.

now and in the immediate future, to be supplementary in nature.

Also of note is the idea that locally-oriented, consensus-based processes are often endorsed based on concepts drawn from the “social capital” literature, which asserts that certain types of activities help to build closely-knit communities of skilled individuals better able to jointly solve problems of community interest. Certainly this line of thought is supported by many natural resource problem-solving efforts in the third world. However, those are situations in which technical and financial resources are frequently unavailable and where well-developed legal and administrative systems are lacking—not the conditions in the American West. Additionally, to the extent that certain activities can build these skills, is it accurate to assume that only consensus-based processes have this quality? The educational value of watershed initiatives and similar collaborative efforts is well established and provides considerable reason for enthusiasm; but education and problem-solving are not necessarily equivalent activities, especially to the extent that conflicts are linked to value differences. Furthermore, if community interactions and the joint pursuit of “community interests” are the key to solving modern natural resource problems, why then are market mechanisms the other pillar—along with collaborative processes—in comprehensive reform proposals of the National Performance Review and the Western Governors’ Association (e.g., Enlibra), among others? Clearly, more thought is needed to fully explore the social capital argument when applied to natural resources management and problem-solving in the American West.

One of the research areas most in need of scholarly attention is how a reliance on consensus decision-making—often interpreted in practice as a unanimity requirement—impacts the functioning of collaborative groups. Throughout much of western philosophy is a rich mythology that surrounds consensus processes. Of particular note are the ideas that consensus is a social good, and that consensus decisions are inherently more accurate or valid than other types of decisions. While there is sound theory and

credible evidence to support both ideas, there is also reason to challenge these assumptions. For example, current democratic norms suggest that diversity and value pluralism (rather than homogeneity) are key elements of healthy democracies, and current patterns of interest group governance suggest that group decisions are neither inherently right nor wrong, but are simply viable. On a more practical level, there is reason to question some consensus-based processes on the basis of inadequate representation, the further concentration of power in already powerful interests, and the potentially coercive quality of processes demanding consensus decisions. Of course, these alleged qualities of consensus processes, both pro and con, vary considerably from case to case, discouraging sweeping generalizations and promoting caution—ideas equally applicable to evaluations of traditional processes of decision-making.

### Tentative Conclusions

Perhaps the most significant conclusion emerging from this exploration of collaborative groups is that the merits of consensus-building processes are largely interpreted by both proponents and skeptics based on normative criteria, and those criteria tend to evolve over time as key assumptions about democracy change. For example, modern popular discourse increasingly promotes participatory democracy (i.e., Jeffersonian democracy), an ideal that is arguably more popular today than during the Constitutional Convention when Madison's ideas about representative democracy carried the day. In the context of natural resources management, this familiar debate over participatory versus representative democracy is complicated by two related factors: the role of science and scientists in decision-making, and the merits of an interest group mode of public policy-making. Both of these factors have been the focus of considerable change in the past century. Thus it is not surprising that virtually all parties "arguing about consensus" can, and do, support their opinions by appealing to "democracy," a term

surpassing even "consensus" in its ability to promote confusion, misunderstanding, and hollow dogma.

This and other observations herein reinforce the working premise upon which this study was initiated: i.e., that assessing the merits of western watershed initiatives and similar collaborative groups is not easy, but is a topic of sufficient importance to encourage a more active and rigorous exploration of all opinions, both in favor and against. Given that the opinions of the skeptics still comprise the minority in both the scholarly and "gray" literatures,<sup>2</sup> it is particularly important to note that those opinions generally stand-up well to an initial examination, and certainly therefore deserve more serious attention. This conclusion, however, comes with two caveats. First of all, the relevance of any specific criticism or supporting argument is ultimately something that must be concluded on a case-by-case situation. Generalizations are extremely valuable, but only to the extent that they are not blindly applied to specific cases. Secondly, the normative content of this subject area is quite high, suggesting that the academic community may prove more useful in structuring and informing the debate, than in reaching defensible conclusions.

The Natural Resources Law Center continues to recommend that the experimentation with collaborative groups continue, guided by a policy of "guarded optimism" and explicit scholarly critiques. Learning through experimentation is a legitimate means of crafting improved institutional arrangements only to the extent that the scientific construction of experimentation is honored—namely, that issues and assumptions are well defined, that information is collected and analyzed in a credible manner to test those assumptions, that measurable results are used to shape conclusions,

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<sup>2</sup> "Gray literature" is the term given to publications that are not subject to peer review or extensive critical editing. The gray literature includes newspapers, newsletters, most Internet postings, many in-house publications, and other documents outside the world of academic journals and scholarly books.

and that peer review is used to validate results. That process is underway, but is far from completed. Until that research is mature, it is prudent to listen to all ideas and arguments regarding the merits of watershed initiatives and other collaborative groups.

## Arguing About Consensus

### *Examining the Case Against Western Watershed Initiatives and Other Collaborative Groups Active in Natural Resources Management*

#### Introduction

In recent years, problem-solving approaches in the natural resources realm have increasingly featured a “community/-collaborative” model of governance. One of the best examples of this phenomenon has been the 1990s-era proliferation of “watershed initiatives”<sup>3</sup> in the western United States (NRLC, 1996; Kenney, 1997). Although highly variable from case to case, these efforts typically take the form of working groups of both public (i.e., federal, state, and local agencies) and private (e.g., citizens, water users) interests, organized in largely *ad hoc* associations to address natural resources problems of mutual concern. The self-defined mandates of these efforts typically recognize the legitimacy of both environmental and economic aspirations, and support the design and/or implementation of on-the-ground problem-solving strategies at the watershed (or similar) scale. These efforts have been a primary focus of research conducted by the Natural Resources Law Center, and are consequently the most frequently referenced phenomena in this report. However, many other prominent modern examples of the community/collaborative model permeate through

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<sup>3</sup> Watershed initiatives are also frequently known as watershed partnerships, watershed councils, or watershed groups. Whatever the name, these efforts are one example of a type of organizational structure known herein and elsewhere as a collaborative group. These groups typically feature both public and private (citizen) participants, usually operating in a largely *ad hoc* and self-guided manner to address natural resource problems of common concern at a physically relevant geographic scale, such as a watershed.

the realm of natural resources governance, including the emergence of “community forestry” efforts (Wondolleck and Yaffee, 1994) and the diversity of programs organized under the moniker of ecosystem management (Yaffee et al., 1996). At a somewhat larger scale are collaborative efforts for basin-level ecosystem restoration, such as the CALFED process, the Everglades remediation, and the South Platte restoration.

Proponents typically see these loosely related innovations as satisfying the long unmet need for effective and democratic mechanisms of governance and problem-solving at the local level. In such efforts, citizens, stakeholders, and government officials can join to collaboratively design and implement pragmatic solutions to problems of environmental and community sustainability. To date, most investigations of these phenomena have focused on describing case studies, in part for the purpose of identifying lessons and keys to success, and in part to generate greater enthusiasm and support—political, financial, and popular—for these efforts. Clearly, this is working. For example, a conservative estimate is that the number of watershed initiatives, and similar groups, has grown 10-fold during the 1990s.<sup>4</sup> Watershed initiative participants number in the thousands,

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<sup>4</sup> This estimate is based on several years of research at the Natural Resources Law Center. Note that it is very difficult to provide firm numerical estimates of watershed initiatives and other collaborative groups simply due to the definitional issues involved. Using the criteria utilized in *The Watershed Source Book*, watershed initiatives in the West probably number over 400, however, only a slightly more liberal definition could potentially double this number.

and many agencies are committing time and resources to these efforts at staggering rates.

Many parties, however, are skeptical. These collaborative efforts, they suggest, are largely unproven experiments, bolstered more by desperate enthusiasm and unsubstantiated generalizations than by real and documented results. Were these comments arising from a lunatic fringe, they would not be so disconcerting, but that is typically not the case. These observations are primarily coming from veterans of the environmental protection wars—from organizations committed to protecting resources, minimizing pollution, and providing a strong public voice in natural resources decision-making. Many academics are increasingly joining in this questioning, asking both practical and philosophical questions pertaining to the effectiveness of these arrangements, and to the merits of deviating from proven, although imperfect, mechanisms of decision-making and problem-solving.

These are serious questions, the answers to which are of interest to both proponents and opponents of watershed initiatives and related efforts. To ignore these questions would do the dual disservice of pushing proponents forward in a cloud of ignorance, perhaps never realizing the full potential of these mechanisms, and of turning a honest line of questioning and healthy skepticism into a full-fledged backlash. If it is true we fear what we do not understand, then proponents of collaborative efforts should not try to silence the skeptics, but should embrace this challenge by gathering and distributing more detailed information on the functioning of these efforts. Failure to do so could be a disastrous strategic mistake, potentially fracturing an environmental community that should be unified by common enemies and the goals of ecological restoration and protection.

The purpose of this report is to help identify the lines of inquiry and debate regarding the merits of watershed initiatives and similar collaborative groups. The report begins by describing the modern enthusiasm behind collaborative approaches to problem-solving, part of a still larger trend reshaping natural resource institutions in a variety of ways. This

discussion leads into a review of issues associated with defining and measuring success of watershed initiatives and similar efforts, and a summary of major arguments and assumptions, both pro and con, that speak to the issue of effectiveness. A preliminary review of literature and data follows. This review is broadly-focused and highly strategic (rather than exhaustive), straining for insights both from narrowly-focused empirical studies and broad, philosophical essays. Given the focus of this report, emphasis is on the skeptical/critical sources. While questions significantly out-number answers at this point in time, there is much to be learned from earlier research. Few definitive conclusions are reached, but themes and tentative findings do emerge that are likely to encourage further research, debate, and ultimately, understanding.

## Resource Management and Problem-Solving in a New Era

Several well documented demographic trends have converged in recent decades to dramatically reshape western landscapes. In their recent report to the Western Water Policy Review Advisory Commission, Case and Alward (1997) paint a disconcerting picture of a region struggling to simultaneously accommodate accelerated population growth, demographic change, and socioeconomic transformation. Over the last 25 years, the population of the West has grown by approximately 32 percent, far exceeding predictions and the national growth rate of 19 percent. This should continue: the U.S. Census Bureau estimates that 9 of the 10 fastest growing states from 1995 to 2025 will be in the West. Spurred on largely by opportunities in advanced technology industries (e.g., telecommunications and computing), outdoor recreation opportunities and careers, a robust service economy, and plentiful environmental amenities, a rapidly expanding network of “urban archipelagos” have brought pockets of urbanization to regions previously featuring low population densities and extractive natural resource industries.

Equally important, but much less obvious to the causal observer, has been a parallel transformation of the institutional landscape pertaining to arrangements for resources policy-making, program administration, and field-level management. These new trends in “governance” are most notable for featuring a strong reliance on positive incentives (i.e., the carrot rather than the stick); partnership arrangements (both intergovernmental and public/private) providing an enhanced decision-making role for local stakeholders; enhanced substantive, geographic, and intergovernmental integration and/or coordination; and a more explicit commitment to *ad hoc* and collaborative decision-making processes based on field-level experimentation and learning. In the context of decision-making and problem-solving activities, these trends are described by Kenney and Lord (1999) as comprising the “era of alternative problem solving.” Prominent tools of this era include ADR (alternative dispute resolution) techniques and negotiated rule-making processes, the use of market mechanisms to establish or implement policy, and the use of “collaborative groups” as vehicles for situation-specific exercises in decision-making and, ultimately, problem-solving. Watershed initiatives are among the most obvious expressions of the community-based environmental protection (CBEP)<sup>5</sup> movement, although other examples—particularly community forestry—are also enjoying a newfound popularity. These efforts are based on a community/collaborative model of action that is fundamentally different than many of the “traditional” modes of decision-making, particularly regulatory and litigation-oriented approaches to policy design and implementation.

In the natural resources and environmental realm, no agency has been more vocal in embracing these new trends in governance than the U.S. Environmental Protection Agency. Relatively few of the reform ideas espoused by the agency’s leadership have been fully or

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<sup>5</sup> Note that many documents utilize the generally analogous term of community-based environmental management (CBEM) as implemented by community-based collaboratives (CBCs).

successfully translated into new modes of on-the-ground behavior; regulation is still the bread and butter of the agency. However, an environment of reform has been established by the current leadership (EPA:1996a:1), spurred on in part by the “reinventing government” ideals of the National Performance Review:

Over the last several years, an important change has been taking place in our national strategy for protecting the environment. Through an array of partnership programs that we collectively refer to as Partners for the Environment,<sup>6</sup> EPA is demonstrating that voluntary goals and commitments achieve real environmental results in a timely and cost-effective way. In addition to traditional approaches to environmental protection, EPA is building cooperative partnerships with a variety of groups, including small and large businesses, citizen groups, state and local governments, universities and trade associations. ... These partners

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<sup>6</sup> Twenty-eight programs were developed between 1991 and 1996. These programs are primarily aimed at one of three related goals: (1) reducing toxic emissions and other pollutants (33/50, Common Sense Initiative, Design for the Environment, Environmental Accounting, Green Chemistry Program, Pesticide Environmental Stewardship Program, Project XL, State and Local Outreach Program, Voluntary Standards Network, and the Waste Minimization National Plan); (2) reducing greenhouse gas emissions (AgSTAR, Climate Wise, Coalbed Methane Outreach Program, Landfill Methane Outreach Program, Natural Gas Star Program, Ruminant Livestock Methane Program, Transportation Partners, U.S. Initiative on Joint Implementation, and the Voluntary Aluminum Industrial Program); and/or (3) promoting energy conservation and resource conservation (Energy Star Buildings, Energy Star Office Equipment, Energy Star Residential Programs, Energy Star Transformer Program, Green Lights, WasteWi\$e Program, and the Water Alliances for Voluntary Efficiency). Other typical goals include improving compliance (Environmental Leadership Program) and public health (Indoor Environments Program).

are achieving measurable environmental results often more quickly and with lower costs than would be the case with regulatory approaches. EPA views these partnership efforts as key to the future success of environmental protection.

Of particular relevance in this study has been the agency's adoption of the "watershed approach framework." The western watershed movement is of high interest to the agency, which is an active participant and supporter of many efforts:

Many public and private organizations are joining forces and creating multi-disciplinary and multi-jurisdictional partnerships to focus on [water quality] problems, community by community and watershed by watershed. These watershed approaches are likely to result in significant restoration, maintenance and protection of water resources in the United States. Supporting them is a high priority for EPA's national water program. (EPA, 1996b:2).

Many other federal agencies are also active participants in supporting watershed initiatives. The Natural Resources Conservation Service (formerly the Soil Conservation Service) merits particular attention, given the agency's well established links to the national network of approximately 3,000 conservation districts established nationwide largely in response to Great Depression dust bowl conditions (NRCS, 1996). Major federal land managers (e.g., the Forest Service and Bureau of Land Management) and the Bureau of Reclamation are also among those federal agencies demonstrating a growing commitment to community-based environmental protection. The final report of the Western Water Policy Review Advisory Commission (1998) is also very supportive of the community/collaborative model of watershed-based management.

One recent articulation of the federal commitment to watershed initiatives is found in the Clean Water Action Plan, the core element in the Clinton Administration's "Clean Water Initiative," developed by ten federal interagency workgroups:

The Vice President called for the Clean Water Action Plan to be developed within 120 days [of October 18, 1997, the 25<sup>th</sup> anniversary of enactment of the Clean Water Act] and that it be based on three principles. First, federal agencies are to develop cooperative approaches that promote coordination and reduce duplication among federal, state, and local agencies and tribal governments wherever possible. Second, agencies are to maximize the participation of community groups and the public, placing particular emphasis on ensuring community and public access to information about water quality issues. Finally, agencies are to emphasize innovative approaches to pollution control, including incentives, market-based mechanisms, and cooperative partnerships with landowners and other private parties. (EPA and USDA, 1998:x-xi).

Support for watershed initiatives at the state level in the West is also considerable and growing, especially in the Pacific Northwest (NRLC, 1998; WSWC, 1998; Craig, 1999). The situation in Oregon is particularly notable. Beginning in 1987 with establishment of a Governor's Watershed Enhancement Board and buoyed by creation of the Watershed Health Program in 1993, state funding has been provided to assist community-based watershed initiatives throughout Oregon (GWEB, 1999). This effort continues, now under the control of an independent commission known as the Oregon Watershed Enhancement Board. Several other western states have closely watched the Oregon experience, and a few—specifically, Washington, California, and Montana—have experimented with several formal mechanisms for providing



state support and coordination to watershed efforts (NRLC, 1998). The watershed approach to water quality management has also been formally embraced in many other western states, including Alaska, Arizona, Utah, Colorado, Idaho, Nevada, Wyoming, and New Mexico.

Providing further state support is an idea with considerable political momentum in the West, a sentiment easily distilled from statements of the Western Governors' Association (WGA) calling for natural resource and environmental decisions to emerge "through balanced, open and inclusive approaches at the ground level, where interested public and private stakeholders work together to formulate critical issue statements and develop locally based solutions to those issues" (WGA, 1998). Along similar lines, earlier WGA publications called for the use of policy frameworks "based upon improving the way we establish environmental priorities, creating better price signals, encouraging voluntary initiatives, working within ecosystems, and resolving disputes without litigation" (WGA, 1993:I, remarks of WGA Chairman Fife Symington). The most recent articulation of this philosophy is the so-called doctrine of *Enlibra*, a term coined by the governors to describe an approach to environmental management emphasizing balance and stewardship:

The doctrine speaks to greater participation and collaboration in decision making, focuses on outcomes rather than just programs, and recognizes the need for a variety of tools beyond regulation that will improve environmental and natural resources management. ... The Governors recognize that to succeed at environmental management people need to be empowered to do the right thing. This requires good information; inclusive processes that respect different values and provide individuals a role in designing and implementing

solutions; and meaningful incentives to complement existing laws.<sup>7</sup>

Perhaps the best example of *Enlibra* in action is the Oregon Plan for Salmon and Watersheds, a state effort to restore imperiled salmon and trout populations "through locally-driven, voluntary cooperative efforts."<sup>8</sup> The Oregon Plan is an alternative to the federal regulatory model embodied by the Endangered Species Act (ESA), which is a prominent institutional feature of watershed governance throughout the Pacific Northwest. At the heart of the Plan initially was a Memorandum of Agreement (April, 1997) between the State and the National Marine Fisheries Service (NMFS) which called for the State to take actions to restore coho salmon along the Oregon Coast, with the understanding that NMFS would consider these actions in deciding if these species merited listing under the ESA. While NMFS initially agreed to this arrangement and did not list the population in question, a subsequent District Court opinion<sup>9</sup> (of June 1, 1998) held that the agency should not have taken into account those parts of the Oregon Plan and MOA that are not "current regulatory measures," a decision that prompted the agency to subsequently list the species (on October 2, 1998).<sup>10</sup> Timber interests that had agreed to financially support the Plan, presumably as a cost-effective means of avoiding federal ESA regulations, while disappointed by the District Court decision and ESA listing by NFMS, have decided to remain partners in the effort, which

<sup>7</sup> <http://www.westgov.org/Enlibra/>. The *Enlibra* principles were primarily crafted by Governors Leavitt (Utah) and Kitzhaber (Oregon). In addition to encouraging collaborative problem-solving and a greater use of incentive-based management tools, *Enlibra* stresses the need to address problems from a regional perspective guided by good science. Additionally, *Enlibra* recognizes a need for continuing regulatory programs as a balance against processes reliant on voluntary action and incentives.

<sup>8</sup> <http://www.oregon-plan.org/>.

<sup>9</sup> *Oregon Natural Resources Council v. Daley*, 6 F.Supp. 2d, 1139 (OR 1998).

<sup>10</sup> Additional listings occurred in March of 1999.

enjoys the strong support of *Enlibra* architect Governor John Kitzhaber.<sup>11</sup>

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<sup>11</sup> See Governor Kitzhaber's Executive Order 99-01, January 8, 1999; <<http://www.oregon-plan.org/Eo99-01.htm>>. While it is much too early to assess the effectiveness of the approach, the Plan does boast of many on-the-ground habitat restoration efforts. For example, in 1996-1997, watershed councils (i.e., watershed initiatives) and conservation districts completed 138 stream fencing projects (involving at least 301 miles of streambank), 196 riparian area planting projects (involving at least 111 miles of streams), and 458 instream habitat improvement projects. Some observers remain skeptical about the long-term effectiveness of the approach, in part due to a perception that the industry "partners" are attempting to sabotage the effort from within.

## The Issue of Defining and Measuring Success

Given the widespread (and growing) popularity of watershed initiatives and related approaches, it is surprising, and more than a little disturbing, that the advocates of alternative problem-solving approaches rarely offer hard evidence to support claims of effectiveness. Countless “success stories” can be found, but upon closer examination, many appear to be exaggerations, and others are of limited universal applicability. For example, the review by Hockenstein et al. (1997) of market-based strategies for pollution control show a level of progress often significantly below what was expected or commonly assumed. Similarly, studies by Coglianese (1997, 1999) on negotiated rule-making and collaborative decision-making approaches raise serious doubts about the claimed efficiency of these alternative efforts regarding the time and cost of decision-making, and the frequency of judicial challenges, and of equal importance, suggest that claims of inefficiency regarding “traditional” processes may also be overstated. Related concerns regarding the effectiveness of environmental dispute resolution techniques are identified by Amy (1990), Daniels (1993) and Sipe (1998). On the other hand, it seems highly unlikely that the wealth of anecdotal evidence in support of alternative problem-solving is without some basis in fact, and the widespread (and growing) popularity of these processes undoubtedly reflects that some real benefits are arising to participants. These are all issues worthy of further examination.

### The Challenge of Performance-Based Management (PBM)

One of the major features of the era of alternative problem-solving is the belief that management approaches should primarily be evaluated with respect to their actual on-the-ground impact in addressing the problems they

were created to solve (NAPA, 1997). This philosophy is known as “performance-based management” (PBM), an outcome-based administrative approach that, in the natural resources realm, has been most aggressively promoted as an alternative to the activity-based approach traditionally employed by EPA and other agencies utilizing regulatory tools:

EPA’s present system for evaluating the successfulness of its enforcement work is based on a set of numerical indicators. EPA officials keep a record of the number of administrative orders, civil referrals, and criminal referrals issued or made by the agency over the course of a fiscal year, as well as the total amounts of administrative and civil penalties it has assessed against environmental violators. These figures, which play a role in EPA internal allocation of resources, are then made available to the Congress and interested members of the public. This system, which has been widely referred to as “bean counting,” has been subject to extensive and sometimes heated criticism, both within the agency and from outside it. (Mintz, 1995:119-120).

Critics have also found much to criticize in the failure in the Endangered Species Act to accomplish the stated goal of restoring threatened and endangered species (Wilcove, 1998). As of September, 1999, the federal endangered species list contained 1,197 threatened or endangered species in the United States, with dozens more being added each year.<sup>12</sup> Despite the existence of 525 approved (and 361 unapproved) recovery

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<sup>12</sup> Updated statistics are available at the Endangered Species Home Page of the U.S. Fish and Wildlife Service (<http://endangered.fws.gov/>).

plans, about the only way off the list has been through extinction, an embarrassing statistic that prompted the Interior Department in recent years to consider delisting several well-known species, including the bald eagle. Furthermore, critics contend that this lack of results has come at the expense of significant public and private costs, including the diminution of private property rights and values (Pendley, 1995; Kirchheim, 1999). Several other programs dealing with environmental protection, resource management, and ecological restoration attract similar criticisms of poor performance and intrusiveness.

These and related criticisms of ineffective government have proven to be highly resonant with a broad cross-section of the American people, as has the obvious logic of PBM. Consequently, many agencies—such as EPA—have recently implemented a variety of PBM strategies (NAPA, 1997), with more efforts forthcoming due to legislation in 1993 calling for PBM in all federal agencies and programs. The Government Performance and Results Act (GPRA)<sup>13</sup> (or “Results Act”) requires all federal agencies by 2000 to submit “performance reports” showing how their programs are performing with respect to stated evaluation criteria. Initial implementation of the Results Act has been conducted using a series of pilot programs, which according to a 1997 General Accounting Office (GAO) report, has not been highly successful (GAO, 1997). Most (93 percent) resource managers/administrators contacted by the GAO identified at least one “great” or “very great” challenge impeding progress. Many of those challenges occur at the beginning of the process, including defining annual performance standards for achieving otherwise long-term goals. Most problems associated with data collection were considered less fundamental or serious, while problems in data analysis primarily concerned separating impacts of the program from exogenous factors.

It is easy to see how challenges of this nature can impede PBM. For example, how can the success of EPA programs be precisely

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<sup>13</sup> P.L. 103-62; 107 Stat. 285 (1993) (codified in various sections of 5 and 31 U.S.C.).

assessed given that many parties, programs, and processes play a role in creating and abating pollution (Mintz, 1995)? As the GAO observed:

[T]he outcomes of many federal programs are the result of the interplay of several factors, and only some of these are within the program’s control. . . . More importantly, many programs consist of efforts to influence highly complex systems or phenomena outside government control. In such cases, one cannot confidently attribute a causal connection between the program and its outcomes. (GAO, 1997:16-17).

In lieu of obvious one-to-one relationships between actions and outcomes, perhaps activity measures such as administrative orders, civil referrals, and criminal referrals are, at least in part, appropriate measures of success. Similarly, the recovery of endangered species is often, for biological reasons, an inherently long-term challenge. Many listed species are now stable or improving, and those listed for the longest time are making the most progress.<sup>14</sup> Perhaps that is proof of incremental success, even if the long-term goal of delisting remains elusive? And even if these methodological challenges can be overcome, PBM analyses say little about the equity or legitimacy of the processes utilized—i.e., the means rather than the ends. These observations suggest that PBM mandates, despite their obvious theoretical appeal, are likely to only be a partial remedy to problems of evaluating the performance of various problem-solving strategies.

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<sup>14</sup> For example, 58 percent of species listed between 1968 and 1973 are stable or improving, compared to just 22 percent of those listed between 1989 and 1993 (FWS, 1994:12).

## The Special Case of Watershed Initiatives

Measuring the “success” (or “performance”) of watershed initiatives is extremely difficult for many reasons.<sup>15</sup> First and foremost is the definition of success. Clearly, two different measuring scales are currently in widespread use. The first states that success is achievement of a specific on-the-ground goal described in terms of improved environmental health. Using this classic PBM definition, a group organized to restore salmon populations is successful only if and when sampling data shows real, quantitative population increases. Given that this is the primary definition utilized by critics to measure the performance of well-established governmental programs and entities, it seems fair and reasonable to apply this standard as well to “alternative” means of problem-solving and management. On the other hand, many environmental problems are the result of decades of abuse or ignorance, and tangible, measurable progress probably cannot realistically be expected in many cases for decades. Consequently, imposing this definition of success on a community-based watershed restoration effort can be unfairly burdensome.

That argument leads to the second definition of success, which is more forgiving. This definition states that success can be measured by “organizational” criteria, such as changes in the level of trust (and/or satisfaction) among stakeholders and resource managers, the degree to which management efforts better recognize systemic and transboundary qualities of natural resources, and the enhanced involvement of local actors in decision-making. Determining if this type of criteria should be used to measure success is dependent, in part, upon whether or not it can be shown that organizational achievements are a prerequisite to achieving the more fundamental, on-the-ground form of success that results in measurable improvements in resource health. From a methodological

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<sup>15</sup> This discussion is largely taken from the article, “Are Community-Based Watershed Groups Really Effective? Confronting the Thorny Issue of Measuring Success,” published in Chronicle of Community (Kenney, 1999a).

standpoint, that can be an extremely difficult determination, due to factors such as the relative youth of many efforts, and to concerns over translating highly case-specific outcomes into generalized conclusions. Additionally, even in the absence of this cause-and-effect data, it can be argued that collaborative, bottom-up processes have an intrinsic value regardless of their outcomes. Values attributed to process rather than outcomes are difficult to capture in a PBM approach, but should not be underestimated.<sup>16</sup>

Issues and arguments of this nature have stymied more than one effort to measure the success of watershed initiatives, including a forum of the Northwest Water Law and Policy Project (Water Project).<sup>17</sup> Commenting on the fall-out of that process, organizer Michael Fife concludes:

I find myself drifting at a steady rate toward the position that community processes are worth supporting whether or not we can judge them as successful according to some objective standard of success. There is something organic about community groups that make them good in themselves; we just know they are a good thing whether or not we are able to articulate why.<sup>18</sup>

While the perspective of Fife is widely held and is compelling on many levels, the fact remains that many modern policy initiatives are moving forward under the assumption that the community/collaborative model offers more than intrinsic, procedural benefits, but also promises to satisfy the nearly universal demand for greater efficiency and pragmatism in resource management and problem-solving. If these on-the-ground benefits are not realized, this does not mean that the “procedural gains” are irrelevant or

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<sup>16</sup> This idea was well articulated by Winston Churchill when he remarked that democracy is the worst form of government, except for all the rest.

<sup>17</sup> “Watershed Council Success Forum,” August 31, 1998.

<sup>18</sup> E-mail communication of January 24, 1999.

not worthy of pursuit, but does call into question the fervor with which many alternative problem-solving strategies are being pursued—often at the expense of other methods. Some effort, however incomplete, is needed to address these thorny issues of success currently attracting more rhetoric than real analysis. One product of this research would be advice to policy-makers considering a greater use of watershed initiatives. Equally important, however, would be additional insights identifying those structural, functional, and “contextual” qualities that most contribute to (or impede) success in a collaborative watershed effort.<sup>19</sup> This information would be useful to both proponents and opponents of watershed initiatives.

### A Working Definition of Success

This report provides a general overview of many of these questions, based on new research and literature reviews. For the purposes of discussion, the following definition of success is offered:

A collaborative group (e.g., watershed initiative) is successful if it contributes (or can be reasonably expected to eventually contribute), in whole or in part, to the achievement of current or future on-the-ground natural resource objectives, defined in accordance with prevailing societal norms and laws, beyond what would have occurred (or will likely occur) in the absence of the collaborative group.

This definition features several compromises, caveats and qualifications that render it a “general working definition” rather

than an absolute defensible standard upon which to structure empirical research. For example, the “on-the-ground orientation” typical of PBM is featured, but there is the acknowledgement that progress of this nature may only be a practical *long-term* success criterion. The definition also implicitly acknowledges that watershed initiatives and similar efforts are established to play different roles, ranging from field-level action (e.g., planting trees) at one extreme to public education at another. For the purposes of defining success, the role played by the watershed initiative is not the primary concern; the primary concern is determining if that role helps to create or contribute to processes leading to on-the-ground problem-solving. Also significant is the idea that the effort must pursue goals consistent with prevailing social norms and laws, otherwise it is not an effort in improving management, but is more akin to an interest group seeking special benefits or, at worst, a criminal effort. This qualifier can also be interpreted as interjecting the idea of fair and balanced representation, which again, is offered to distinguish collaborative groups from interest groups. Finally and most importantly, the definition suggests that performance of watershed initiatives and similar efforts are best measured when compared to the level of problem-solving that would have occurred in their absence, a criterion with obvious logic and practical value but defying easy measurement. Initiatives not meeting the standards contained within the definition are not necessarily “failures,” but simply do not meet the highly pragmatic standard of success necessary to satisfy the skeptics of these efforts.

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<sup>19</sup> Some organizations and publication outlets have begun to fill this void. Of particular note are efforts sponsored by River Network (including the *Innovators Report* and the *4 Corners Initiative*), many recent graduate theses (e.g., Coughlin et al., 1999), several thoughtful essays published through the Chronicle of Community and Ecology Law Quarterly, and ongoing studies by the Natural Resources Law Center.

## Positive, Speculative, and Normative Opinions Regarding Collaborative Groups

Any discussion of success regarding collaborative groups yields many strong opinions from both proponents and skeptics. In order to critically evaluate these opinions, it is necessary to identify the underlying assumptions and assertions upon which they are founded. Some opinions refer to matters of fact, and presumably can—at least in theory—be tested for accuracy against empirical data. In most cases, these opinions are what scholars refer to as “positivist” (or positive), in that they presume to describe an existing situation. A closely related set of opinions are those that are somewhat more “speculative” in nature, in that they refer to situations that may or may not arise in the future. While these speculative opinions cannot be tested in the present with absolute certainty, it is often possible to evaluate the “reasonableness” of these views by comparing them to trends and findings distilled from existing data. This is a common task in scientific inquiries, taking on its most formal incarnation in the world of predictive statistics and probability theory. A fundamentally different class of opinions are “normative,” which do not necessarily refer to a current or the expected future situation, but rather describe an “ideal” or “correct” condition based on personal values more so than objective facts. While normative opinions have a much greater philosophical content than the positive or speculative opinions, they also typically include assumptions about the cause-and-effect relationship between particular types of institutional arrangements and eventual on-the-ground results.

Both the proponents and skeptics of collaborative groups in the natural resources and environmental realm offer opinions of the “positive” (i.e., the way things are), “speculative” (i.e., the way things are expected to become), and “normative” (i.e., the ways things should be) variety. The distinctions between these classes of opinions are not always clear, as disputes over the availability and credibility of supporting data

are a frequent point of contention. For example, what one party sees as a factual, “positive” statement, another may view as “speculative.” While these distinctions may be unimportant in informal conversation, they take on particular importance to the analyst asked to independently assess the credibility of such opinions. Presumably, the analyst can be expected to offer a more solid critique of the positive opinions than the speculative opinions, although both are amenable to formal scientific scrutiny. Conversely, the analyst can be expected to contribute less to the normative debate except to better identify underlying values and assumptions. For this reason, the positive and speculative arguments are grouped together in the following discussions, while the normative opinions are presented separately. These arguments are also summarized at the end of this discussion in Table 1.

### Positive and Speculative Arguments: Pro and Con<sup>20</sup>

**Pro.** Perhaps the most prevalent “positive” opinion articulated by the proponents of collaborative groups is to assert that *traditional means of management and problem-solving do not work*. Existing mechanisms are often said to feature procedural inefficiencies and inequities, while failing to achieve on-the-ground performance measures. The speculative corollary to this argument is that *traditional means of management and problem-solving will not work in the future*. These arguments are frequently used in a roundabout manner to support the use of collaborative groups based on the reasoning that, *even if they are largely unproven experiments in resources management and problem-solving, collaborative groups are not likely to be any worse than existing processes and have a real potential to be notable improvements*.

Another significant argument of the proponents is that many collaborative groups

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<sup>20</sup> This discussion provides only a brief listing of major opinions, arguments, and assumptions. Additional details, including examples and citations, are provided throughout the report.

already meet the pragmatic definition of success presented earlier. In actuality, this argument is best articulated as two distinct opinions: first, that *many collaborative groups have already achieved significant organizational objectives*; and second, that *many collaborative groups have already achieved significant on-the-ground improvements in natural resource conditions*. The reason it is useful to make this distinction is that the first of these opinions is typically married to the speculative idea that *organizational achievements will lead to on-the-ground success*, and/or the normative idea that *organizational gains are of intrinsic value* regardless of any on-the-ground consequences. The speculative opinion is of particular relevance to the definition of success provided earlier, as it introduces the implied cause-and-effect relationship (between organizational and on-the-ground achievements) that is at the heart of most pro-collaborative group arguments. The normative opinion, like the other normative opinions identified in this report, is not readily accommodated by the aforementioned definition of success. This does not mean that the normative opinion is unimportant or invalid, but is simply a question that is not well suited to formal scientific testing.<sup>21</sup>

Con. The positive arguments of the collaborative group skeptics often begin with the notion that *existing processes of decision-making and problem-solving, while admittedly far from perfect, are not fundamentally flawed*. To the contrary, many notable gains have been achieved through existing programs, and to deviate from those proven tools entails an inherent risk. Additionally, *without the regulatory framework provided by the frequently maligned programs deriving from legislation*

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<sup>21</sup> Austrian philosopher Karl Popper is well known for making the distinction between scientific and non-scientific arguments, claiming that only the former category is capable of testing that could potentially find it false. A non-scientific argument—such as a normative argument—cannot be disproven. The distinction between positive and normative arguments has a long history, going back at least to Machiavelli’s writings in the sixteenth century.

*such as the Clean Water Act and Endangered Species Act, it would likely be impossible to even attempt collaborative approaches*, much as it is difficult to pursue a negotiated settlement without a viable threat of litigation. This line of reasoning highlights what is a fundamental and potentially divisive issue within the community of collaborative group proponents: To what extent should tools such as collaborative groups be viewed as a *substitute* for more traditional processes, rather than as a *supplement*.<sup>22</sup> Presumably, the answer to this question lies in the evaluation of the other opinions and assumptions regarding the efficacy of the collaborative group approach.

The most general (and damning) argument made by the skeptics of collaborative groups is the assertion that *most collaborative group processes have not been effective in solving on-the-ground problems (the positive argument) and are not likely to be so in the future (the speculative argument)*. Additionally, in those cases where some success is difficult to deny, the so-called “low hanging fruit” argument is frequently offered to dampen any enthusiasm. This line of reasoning asserts that *collaborative groups may experience some successes immediately after formation by concentrating on those problems that have obvious solutions amenable to efficient implementation, but long-term effectiveness cannot be maintained once these opportunities are quickly exhausted*.

Issues of representation and decision-making are also frequently raised to support the viewpoint that collaborative groups are not effective problem-solving vehicles, as well as to support normative criticisms. Specific criticisms

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<sup>22</sup> Interestingly, parties most directly involved with watershed initiatives appear to be generally united in their belief that these processes are best viewed as supplements rather than replacements, a conclusion distilled from comments urging that formal authority not be transferred to watershed initiatives (Kenney, 1997). It is policy-makers and analysts, more so than actual participants, that most commonly argue in favor of greater authority and formality (e.g., WWPRAC, 1998). Efforts like the Quincy Library Group best highlight this emerging debate about the proper role for community groups in policy-making.



include the assertion that *environmental viewpoints are not adequately represented in collaborative group processes*, or conversely, that commodity interests are over-represented. Presumably, in some cases this is seen as an inherent function of the incentive structure involved or the demographics of the region, while in other cases, it is attributed to a deliberate policy of exclusion. Additionally, *to the extent that environmental interests are represented, they are likely to be at a strategic disadvantage given the greater financial resources and training of their “anti-environmental” counterparts*. Also common is the opinion that *the typical decision-rule of consensus does not lead to efficient or productive decision-making exercises*. Given that proponents of collaborative processes are often quick to cite the pragmatism and effectiveness of these efforts, these criticisms, if accurate, are devastating to any party utilizing a performance-based measure of success.

#### Normative Arguments: Pro and Con

Pro. Many parties see the movement in favor of community-oriented, collaborative processes as having intrinsic values irrespective of their long-term contribution to problem-solving. Two types of supporting arguments are frequently mentioned. The first is that *local residents should be involved in making decisions with local impacts*. It is frequently argued that collaborative groups are desirable in that they often provide a vehicle for local stakeholders and governments to be more involved in making the decisions that affect their lives than they might otherwise be if the decisions were made by distant governments. This concern is especially prevalent in communities that live within or adjacent to public lands, which are largely managed in accordance with national policy directives and regional planning processes. The second major normative argument is that *cooperative approaches to decision-making are inherently preferable to conflict oriented approaches* (e.g., litigation). Closely tied to this argument is the idea that *cooperative interactions within a specified locale help to build a sense of community and of place, which*

*in turn, improves the quality of life for all residents, and improves the ability of a community to achieve social, economic and environmental goals*.

Both of these normative opinions are founded upon positive and speculative assumptions that may be difficult to substantiate. For example, do collaborative processes really provide local residents with a measurably greater influence on policy outcomes than do other processes of decision-making? Similarly, do collaborative processes really help to build an enhanced level of trust and cooperation among parties, and what are the consequences of that modified relationship? Presumably, these are questions that can be addressed, at least partially, through scholarly research. Whether or not the outcomes of such research are influential in modifying normative opinions, however, is a separate issue, as values rarely are modified by providing factual data.

Con. Both types of normative opinions described above are matched in the public policy arena with strong counter opinions. Some parties, for example, argue that *most natural resources are, at least to some degree, public resources, and should managed in accordance with the values held by the nation and society at large—not just a local constituency*. A related argument is that *public policy-making is a function of government, and it is inappropriate to subordinate these decisions to ad hoc, public/private groups that may not satisfy democratic norms regarding representation, process, professional expertise, and related considerations*. It is also argued that *conflict-oriented processes are a legitimate and important approach to decision-making, and that venerating consensus can promote an inappropriate social pressure to compromise*. Again, each of these normative opinions is largely based on positive/speculative assumptions that may or may not survive critical examination—e.g., the premise that the values of local constituencies will frequently deviate from those held nationally, and the idea that existing governmental processes can produce reasonable outcomes.

**Table 1. Summary of Arguments Raised to Defend and Challenge the Use of Collaborative Groups in Natural Resources Management and Problem-Solving**

ARGUMENTS OF THE PROPONENTS	ARGUMENTS OF THE SKEPTICS
<i>Positive Arguments (i.e., arguments presumably based on facts) and Speculative Arguments (i.e., those based on expected future outcomes).</i>	
Traditional means of management and problem-solving do not work now, and/or will not work in the future. Collaborative approaches offer greater future problem-solving potential.	Existing processes of decision-making and problem-solving, while imperfect, are not fundamentally flawed, and create the context within which collaboration can be attempted.
Even if collaborative groups are not successful, they are (and will be) no worse than existing mechanisms.	Due to problems of inadequate representation, unequal resources, and the limits of consensus, collaborative groups may exacerbate unfair concentrations of power and have a coercive affect on minority viewpoints.
Many collaborative groups have already achieved significant organizational objectives. Some have also already achieved significant on-the-ground results.	Organizational achievements may not lead to on-the-ground results—the only valid measure of effectiveness. Many “success stories” lack empirical proof, and involve implementing obvious solutions to easy problems—not a real test of success.
Consensus processes help to overcome historic animosities, encourage learning and compromise, and facilitate problem-solving in a way that adversarial and highly formalized processes cannot.	A reliance on consensus discredits value differences, ensures that zero-sum problems cannot be addressed, encourages “lowest common denominator” decisions, and provides few due process protections.
Collaborative processes offer advantages in time, money, and “durability” of outcomes.	The costs of participating in collaborative processes are significant, and are usually in addition to—rather than instead of—costs of other traditional processes.
<i>Normative Arguments (i.e., arguments based on personal notions of right and wrong, and based on desired—rather than actual or predicted—conditions).</i>	
Local residents should be more involved in decisions that have local consequences. The role of citizens in decision-making should be enhanced.	The views of distant stakeholders should have equal weight in decisions involving public resources. Public officials should make decisions about public resources.
Collaborative processes are inherently preferable to those based on conflict. Consensus-building activities build cohesive communities more capable of pursuing appropriate social, economic and environmental goals.	Conflict oriented processes—namely litigation—provide a healthy mechanism for expressing, rather than suppressing, divergent opinions. Managed conflict, rather than suppressed conflict, is the real measure of a healthy democracy.

### Salient Research Questions

This set of positive, speculative, and normative opinions, summarized in Table 1, is based on a variety of assumptions, some of which can be substantiated by the appropriate literatures and some which cannot. It is an appropriate task for researchers to identify and critically analyze these assumptions, and to the extent that these efforts are fruitful, to then comment upon the credibility and strength of the expressed opinions. Admittedly, this is an inexact science—especially with respect to the normative opinions—but is an activity that is needed to provide guidance to policy-makers and other activists concerned with issues of natural resources governance and institutional arrangements.

As a practical matter, it is impossible herein to identify and address all relevant research questions deriving from this set of opinions and assumptions. Consequently, this report focuses primarily on the two following research areas of particular salience:

#### (1) Merits of the Existing System

- Are traditional means of management and problem-solving reasonably effective, or is the existing system broken?
- Will traditional means of management and problem-solving work in the future?

#### (2) Collaborative Groups in Context

- What is the relationship between the traditional and alternative mechanisms of problem-solving?
- Is there a cause-and-effect relationship between organizational achievements and subsequent on-the-ground success? Stated more generally, does the community/collaborative model of interaction and decision-making produce benefits that increase the ability of society to achieve social, economic and environmental goals?
- How does the consensus decision-rule typical of collaborative groups influence

the quality of decisions and decision-making exercises?

## A Preliminary Review of Literature and Data

The following pages address many of these difficult questions, drawing upon a tremendous diversity of literatures and disciplines. Given the breath of the subject matter under investigation, an effort is made throughout to distinguish between the positive/speculative and the normative elements of those “salient research questions” listed earlier. To the extent possible, this report is primarily focused on the positive/speculative opinions, and especially those for which we have some hard data and/or experience. This does not mean that the normative opinions are somehow inferior or less important than the other opinions, nor does this mean that normative issues are neglected entirely in the following pages. To the contrary, several normative issues are identified in the discussion of the salient research questions, and it is not difficult to find a strong normative content in many of the arguments and quotes presented. Additionally, a few observations regarding normative arguments associated with the concept of “democracy” are presented in a separate discussion, an acknowledgement that watershed initiatives provide an excellent context for debating prevailing notions about what constitutes good government—an issue several orders of magnitude more complex than the already difficult subject matters addressed herein.

### A Closer Look at the Salient Research Questions

#### Merits of the Existing System

**Question: Are traditional means of management and problem-solving reasonably effective, or is the existing system fundamentally broken?**

As many scholars have observed, the case in favor of many forms of alternative problem-

solving is often a negative one; i.e., it is more of an attack on traditional mechanisms than a reasoned endorsement of the merits of alternative approaches.<sup>23</sup> Certainly there is no shortage of criticisms directed at existing natural resource and environmental management programs. Rosenbaum (1995:253), for example, calls Superfund<sup>24</sup> “a legislative *Titanic* that only the most ardent environmentalists still believe is viable”; Pendley (1995:85) derides the Endangered Species Act as the “bit pull of environmental laws”; and Davies and Mazurek (1997:48) describe the pollution control regulatory system as having “deep and fundamental flaws.” Many similarly harsh criticisms are directed at the implementing agencies, as evidenced by the comments of Senator Ted Stevens (R-Alaska), Chairman of the Senate Appropriations Committee: “No sector of the government is more rife with wasteful duplication, fragmentation and undependable service than the agencies that are involved in environmental and natural resource issues” (Senate Hearing, 1996:1). While some arguments are of dubious merit, many are based on disturbing evidence, such as estimates that less than 3 percent of Bureau of Land Management rangelands are in excellent condition (NWF and NRDC, 1989), or that per

<sup>23</sup> For example, political scientist Douglas Amy (1987:17-18) makes the following observation about environmental mediation: “As one listens to proponents of [environmental mediation], it becomes evident that much of their case is a negative one—one based on criticisms of the legislative, administrative, and judicial institutions that we have traditionally relied upon to resolve these controversies. ... It is this perceived institutional failure that has motivated the interest in alternative forms of dispute resolution.”

<sup>24</sup> Superfund is the nickname given to the Comprehensive Environmental Response, Compensation, and Liability Act (1980); 94 Stat. 2767 (codified as amended at 42 §§ U.S.C. 9601-9675 (1994 & Supp. II 1996)).

capita generation of solid waste has doubled since the 1960s (Davies and Mazurek, 1997). As repeatedly documented by the national community of activists, significant problems exist in the health of environmental resources.<sup>25</sup>

On the other hand, it is unrealistic to expect that an undertaking as massive as managing natural resources and environmental systems can be accomplished without some debate and criticism, especially given the inability of American society to agree on the appropriate balance between resource development and protection, between private rights and public interests, between short-term aspirations and long-term objectives, and between a host of other differing objectives so characteristic of our modern pluralist society.

Additionally, there are many success stories in natural resources and environmental management, something readily acknowledged in the report by Davies and Mazurek (1997) entitled *Regulating Pollution: Does the U.S. System Work?* Given the quantitative nature of pollution prevention outcomes and the obvious objective function (i.e., less pollution is better), programs for pollution control are well suited to empirical studies. While concluding that “fundamental flaws” exist in U.S. systems for pollution control, Davies and Mazurek (1997) nonetheless acknowledge several notable accomplishments. For example, in the realm of air quality

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<sup>25</sup> Recent years have seen the emergence of a so-called “brownlash” of works questioning the conclusion that serious environmental problems exist in the United States, a conclusion strongly refuted by Anne Ehrlich (1996) in *Betrayal of Science and Reason*. Some examples of brownlash literature include Gregg Easterbrook’s 1995 work, *A Moment on the Earth*, in which he generally concludes that environmental protection programs have worked and the problems are solved; Mann and Plummer’s 1995 critique of the Endangered Species Act (*Noah’s Choice: The Future of Endangered Species*) which concludes that the program is overly biased in favor of preservation at the expense of reasonable development and use; and Ray and Guzzo’s (1990) *Thrashing the Planet* and its conclusions that human impacts on the environment are relatively minor and easily amenable to technology-based solutions.

management, four of the six “criteria air pollutants” (sulfur dioxide, carbon monoxide, lead, and particulates) have shown significant improvements in recent decades, with the 78 percent reduction in lead being the most dramatic accomplishment. The other two criteria, ozone and nitrogen dioxide, have also improved, although only at modest levels. Similarly, many water quality trends of the past quarter century are positive, especially as related to the treatment of sewage. Improvements in drinking water quality are also generally acknowledged.<sup>26</sup> Thus, the news from the field is not all bad.

An on-the-ground, performance-based assessment of natural resource (as distinct from environmental) management is considerably more difficult to apply, given that objectives are often not so easily defined. Additionally, many agencies, such as the Forest Service and National Park Service, have mandates that require agencies to pursue multiple objectives that are, to various degrees, competitive rather than complementary, ensuring that some parties will be unhappy with the trade-offs selected. Reductions in federal timber harvests of old-growth in the Northwest in the name of environmental protection, for example, are difficult to classify as a success or failure without relying on normative criteria specifying the proper balance between timber harvesting and resource preservation (Carroll, 1995). Congress, for obvious political reasons, rarely provides agencies with detailed criteria for making these trade-offs, ensuring that “success” is a fiercely debated and highly qualitative concept.

This is not to say that there is a dearth of relevant facts or statistics about the status of natural resources management efforts. Much is known. For example, on the federal public lands, consumptive uses such as timber harvesting,

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<sup>26</sup> Even the General Accounting Office has found reason to praise the U.S. system of pollution control as administered by the EPA: “EPA has accomplished much to protect human health and the environment since its inception in 1970. It has put in place a comprehensive regulatory structure and has made notable progress in identifying and combating many of the major causes of pollution” (GAO, 1988:216).

grazing, and mining are generally declining, while recreational uses and urbanization accelerate rapidly (Kenney, 1998). Water withdrawals in the West have grown to 179 million acre-feet as of 1990 (Solley, 1997), offering at least a partial explanation for reports suggesting that, in the past quarter century, over 20 native fish species have become extinct, while approximately 100 more species, or 70 percent of all species in the region, are endangered, threatened, or otherwise of special concern (WWPRAC, 1998).<sup>27</sup> Clearly, some of these trends—such as the fish declines—are widely acknowledged as negative, however, the solution to such problems is often highly debatable, and many additional trends cannot easily be classified as positive or negative in the court of public opinion due to different normative assumptions.

Given the mixed track record of most environmental and natural resource programs, why are so many authors, like Davies and Mazurek, so strongly convinced that the existing system is in need of fundamental reforms rather than more modest adjustments? In many cases, the answer has as much to do with failures to meet preferred procedural norms and administrative criteria pertaining to program design, administrative and compliance costs, and decision-making mechanisms, than with dissatisfaction with program objectives or even outcomes.<sup>28</sup> Perhaps the most pervasive criticisms are those of program inefficiency. One

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<sup>27</sup> An excellent assessment of the nation's biological resources has recently been published by the United States Geological Survey (1999).

<sup>28</sup> For example, Davies and Mazurek (1997) criticize the U.S. systems for pollution control for being overly fragmented, poorly integrated (ignoring the linkages between air, land and water), based on poor data, and frequently inefficient (e.g., spending priorities typically do not match risk factors). Along somewhat similar lines, a 1994 conference of the American Society of Civil Engineers criticized water quality programs as featuring too many inflexible mandates, an inadequate policy-making role for state and local governments, questionable science, poor coordination among programs, inadequate use of benefit-cost analyses, high permitting costs, and excessive litigation (Holme, 1994).

line of criticism contends that fiscal and temporal inefficiencies plague decision-making mechanisms, including planning processes under National Forest Management Act (NFMA), Federal Lands Policy and Management Act (FLPMA), and the National Environmental Policy Act (NEPA), the issuance of administrative rules for pollution control, and a host of other procedures falling largely within the domain of federal and, presumably to a lesser extent, state agencies.<sup>29</sup> Presumably, as Kagan (1999:720) observes, these problems are more pervasive in the United States than in other developed countries:

Notwithstanding much-publicized EPA initiatives to make environmental regulation less legalistic, the case studies found that for regulated companies with cross-national experience American environmental regulatory processes are more detailed, prescriptive, complex, unpredictable, and costly to comply with than are comparable regulatory regimes in other economically advanced democracies. American regulatory regimes are experienced as quicker to impose legal penalties for violations, and their legal sanctions tend to be much more severe. These "procedural" differences, moreover, generally are far more salient to the regulated companies than differences in substantive regulatory norms, which usually differed, if at all, only slightly.<sup>30</sup>

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<sup>29</sup> Complaints of inefficiency have many other dimensions. One of the more substantive arguments is that most natural resource activities and sectors are highly subsidized, a situation challenged by an awkward alliance of fiscal conservatives and environmental critics of extractive industries (Anderson, 1994).

<sup>30</sup> Higher costs in the U.S. system are primarily attributed to three causes: (1) legal services; (2) "accountability" measures, such as reporting requirements; and (3) high opportunity costs, largely associated with permitting delays. On the other hand, these qualities are judged by Kagan (1999:721) as providing "stronger rights of public

Similar observations can be found in the book *Jurismania* by law professor Paul Campos (1998), who argues that America has evolved into a culture of legal excesses. This “vice of legal gluttony” (page x) is manifest in many ways, but is perhaps most evident by the rapid distillation of all controversies into legal terms, and by our insistence on solving all disputes with legal remedies—including those situations in which we have considerable evidence suggesting that those remedies do not work. Our faith in law, according to Campos, is an unreasonable enthusiasm—by definition, a mania. Arguably, this mania is in few instances stronger than in the natural resources and environmental realm.

Many other complaints about decision-making processes focus on the fragmented focus presumably attributable to litigation, specialized legislation, narrow agency mandates, and more generally, the historic failure of policy and law to recognize the systemic quality of resources. Equally controversial is the belief that the “decide-announce-defend” model of public participation is inadequate, especially in regards to providing for meaningful local input and the sharing of expertise.<sup>31</sup> The inadequacy (or inadequate use) of scientific information, and the reactionary nature of many policies, are additional criticisms focused more on the *means* of natural resource and environmental decision-making than the *ends*.

Addressed independently, strong evidence can be found to support each of these criticisms. However, when viewed as a single line of criticism, several significant conclusions emerge. First, several of the problems identified, and the implied solutions, are not mutually consistent. Most important in the context of this paper is the notion that decision-making processes are too

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participation, broader access to information concerning regulatory compliance, and easier access to the courts.”

<sup>31</sup> For example, research by Lyden, Twight, and Tuchmann (1990) on Forest Service planning processes showed that most participants, whether pro-industry or environmentalists, judged such efforts to be dismal failures.

long, costly, and arduous; yet, reformers argue for the scope of decision-making to be broadened, with more parties playing an active role in policy deliberations. For example, while Davies and Mazurek (1997) lament the inefficiency of pollution control programs that involve “thousands of interested groups,” they join with many others in calling for decision-making mechanisms which are more participatory. Neither historians of democracy nor students of comparative politics have much to offer in support of this idea that broadening participation is a precursor to greater efficiency; if anything, the contrary opinion is usually regarded as fact.<sup>32</sup> Very similar are calls for decision-making mechanisms that are more flexible and informal—and presumably more efficient—than traditional mechanisms, married to concerns that explicit standards and requirements must exist in decision-making processes to ensure broad representation of interests and due process.<sup>33</sup>

Also significant is the widely held notion that the source of the perceived inadequacies lies with the natural resource agencies in charge of planning processes, rule-making, and program implementation. That perspective, however, ignores the fact that agencies frequently have little real discretion in the design or implementation of programs, and that many of the problems encountered in implementation derive from legislative mandates that are incomplete or inconsistent, a reflection not only of the reluctance of most congressional leaders to tackle divisive issues, but also a result of scientific uncertainties and the existence of fundamental value conflicts among the spectrum of parties involved in drafting and enacting legislation. Agencies are also tightly constrained by the courts. As Goodsell (1985:175) has

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<sup>32</sup> Traditionally, full participation is argued for on equity, not efficiency, grounds.

<sup>33</sup> As Dan Luecke (1999:6), Director of the Rocky Mountain office of the Environmental Defense Fund, has observed, “Collaborative forums for ecosystem restoration are tailor-made for each process, thus there are rarely, if ever, standard operating rules, a situation which always puts minority interests (where environmentalists find themselves) at disadvantage.”

observed, the power of bureaucrats in the United States is “probably more inhibited than in any other country on earth” due to chronic judicial intervention in agency decision-making. And on an even more pragmatic level, some shortcomings—such as the frequent lack of adequate scientific data for decision-making—are simply the result of budgetary shortfalls, a problem not easily rectified by resource managers.

Perhaps most significant to this study examining the merits of collaborative processes are the arguments directed at decision-making processes dominated by litigation. These attacks on litigation are frequently more than simply a critique of a single type of process, but are a challenge to the philosophy that disputes should be handled through formal and adversarial mechanisms featuring specialized actors, ideas that run counter to most notions of collaboration and, more generally, alternative problem-solving. Common arguments against litigation are that it is time-consuming, costly, zero-sum (often featuring the win/lose outcomes typical of adversarial conflicts), substantively narrow (often focusing on procedural issues rather than substance), and subordinating to many concerned parties (including the general public and local interests) at the expense of promoting technical elites (Amy, 1990). Each of those arguments has a strong basis in fact, and understandably fuel a formidable desire among reformers to find something better. Also true is that people are, in fact, increasingly looking to other mechanisms of dispute resolution. After a sharp rise in the early 1970s, the amount of environmental litigation leveled off in the mid 1970s and then began to decline (Amy, 1990). This decline has been offset by a sharp rise in “collaborative” decision-making approaches, namely environmental dispute resolution (EDR), negotiated rulemaking, and more recently, the use of *ad hoc* collaborative groups such as watershed initiatives (Bingham, 1997; NRLC, 1996).

There is reason to believe, however, that collaborative approaches often do not address many of the complaints lodged against litigation, and can create new concerns. For example, Bingham’s (1986) empirical research on EDR

finds there is little evidence to support the claim that EDR is faster than litigation, a finding echoed by empirical studies by Coglianese (1997) on negotiated rule-making.<sup>34</sup> Similarly, there is little to suggest that these processes are cheaper. In fact, Amy (1990:222) is among those concluding that “there is reason to believe that it could often prove more expensive,” in part since many collaborative decision-making efforts are typically conducted against a backdrop of ongoing litigation,<sup>35</sup> and in part due to the tremendous time demands of multi-party, multi-issue negotiations. Alleged cost savings to the resource agencies using collaborative processes are difficult to substantiate. For example, research by Manring (1998) focusing on the use of alternative dispute resolution tools in the Forest Service found that such approaches do reduce the administrative appeals workload at the national headquarters, but that these “gains” are offset by dramatic (and largely unbudgeted and unrecognized) workload increases at the local level.

Also of questionable merit is the assumption that collaborative processes can overcome the win-lose quality so typical of litigation. This assumption is perhaps most ingrained in proponents of the so-called “hot tub” school of mediation, which assumes that most conflicts are correctable mis-communications or negotiable interest conflicts, an assumption that is undoubtedly true in many circumstances, but is of dubious merit when the subject matter features elements of value conflict—a frequent component of environmental disputes. As Amy (1990:227)

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<sup>34</sup> Research by Kerwin and Furlong (1992) suggests that negotiated rule-making takes only about three-fourths as long as rules reached through traditional processes (778 days versus 1,108 days). This research is frequently utilized as evidence in reports, such as those of the National Performance Review, supporting the idea that negotiation-based processes are more efficient. However, Coglianese (1997) shows that if a larger sample set is included, pending negotiated rule-making exercises are considered, and different strategies of time measurement are utilized, then no time savings can be shown.

<sup>35</sup> The overwhelming majority of lawsuits, after all, are settled out of court.



has observed, the practical implications of this working assumption are of concern to many environmentalists:

This vision of environmental issues as revolving around matters of principle, moral or otherwise, causes environmentalists to question another assumption of EDR [environmental dispute resolution]: that compromise is always a desirable approach to resolving these disputes. ... As one environmental lawyer has argued, there are simply some issues where if one agrees to negotiate and compromise over them at the very beginning, one has already lost much of the battle.<sup>36</sup>

Much stronger arguments can be made challenging the other alleged weaknesses of litigation and related processes of decision-making featuring formal and largely adversarial interactions. Of particular strength is the argument that natural resources and environmental litigation is normally substantively narrow, even though many conflicts involve issues featuring complex ecological and socioeconomic systems. This appears to be one of the most significant contributions of tools such as watershed initiatives, which frequently provide a vehicle for addressing issues that are broadly framed.<sup>37</sup> The self-defined mandate of the Coquille Watershed Association (Oregon) is typical and illustrative:

[The purpose of the Association is] to provide an organizational framework to coordinate the assessment of the

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<sup>36</sup> Arguably, the rise of militant and aggressive environmental organizations such as Earth First! in the 1980s is evidence that many environmentalists are unhappy with the acceptance of principles such as EDR by many mainstream environmental organizations.

<sup>37</sup> Many authors, such as Born and Genskow (1999), argue that the primary future challenge in resource management is the coordination of land and water management, an activity that is well-suited to the watershed approach.

watershed's conditions, implement and monitor proven management practices and test new management practices that are designed to support environmental integrity and economic stability for the communities of the Coquille Watershed.<sup>38</sup>

The lack of such broadly-focused mechanisms or forums for public policy discourse has been a glaring omission in natural resource institutions for several decades, a void filled partially through processes such as environmental impact statement preparation and national forest planning efforts. However, as discussed later, experience with watershed initiatives and similar mechanisms highly reliant on consensus decision-making suggest that many important issues are still frequently off-the-table in these processes, especially issues dealing with externalities and other "asymmetrical" situations (Kenney and Lord, 1999; Nickelsburg, 1998).<sup>39</sup>

The remaining argument against litigation is that it can subordinate the potential contributions of many concerned parties, including the general public and local interests, to technical elites such as lawyers, expert witnesses, and national interest groups. Similar arguments are leveled at traditional processes of agency rule-making. Despite modern reforms requiring public participation processes and imposing broadened rules of standing, this complaint also appears to have considerable merit. To conclude that this situation is inappropriate, however, goes beyond a factual statement to a more normative assertion that local interests should have a greater role in natural resources policy-making than well-organized national interests—an assumption many parties are unwilling to accept (McCloskey, 1999). These negative critiques of litigation also can be challenged on the grounds that they overlook the extent to which legal remedies have been a source of empowerment for many parties, including those representing public and local concerns (Sax, 1970; Holland, 1996).

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<sup>38</sup> Cited in NRLC (1996:2-62), and attributed to the Coquille Association's Articles of Incorporation.

<sup>39</sup> The concept of symmetry is defined later.

Additionally, the idea that formal processes such as litigation are biased in favor of a specialized network of legal experts is hard to reconcile with the argument that the judiciary provides a valuable balance to inappropriate technocratic autonomy. As Wenner (1990:189) observes, commenting on the controversial nature of litigation in natural resources and environmental management:

[S]ome analysts argue that judges are singularly unsuited to make broad policy decisions because of their lack of expertise and the necessity for them to answer individual questions about particular cases. Others caution against the dominance of technical experts and urge the continued use of lay judges to counterbalance the inequities that are certain to arise when there is an unrestrained technocracy controlling policy. There exists constant tension between Americans' desire for substantively "correct" decisions reached by technical experts and for democratic decisions made through public participation and facilitated by the courts' insistence on due process.

These comments again reinforce the observation that many of the presumably positive assertions are really normative in nature, and are based on cause-and-effect assumptions that are often not clearly specified or easily defended—a conclusion that is equally applicable to both the proponents and opponents of collaborative processes. This observation is not intended to suggest that the criticisms of existing mechanisms of management and problem-solving are inaccurate, unfounded, or otherwise inappropriate, but they do suggest that many critics misunderstand (or misrepresent) the root cause of the problems identified, and subsequently, prescribe solutions of questionable utility. Poor assumptions about the *means* of natural resources and environmental decision-making portend future disappointments in the *ends*. Ultimately, it is difficult to assert that our

decision-making systems for natural resources and environmental management are "broken" or "fundamentally flawed" without calling in question many of the elemental concepts of the American system of governance, including dispersed power with multiple checks and balances, competing forums of decision-making, interest group activity, federalism, and several related qualities. To the extent that these features are viewed as deficiencies to be overcome, then dramatic reforms are in fact called for—not only in natural resource institutions, but in broader arrangements in American governance. If, instead, these qualities are viewed as reasonable constraints to work within, then the challenge is to more selectively and strategically implement substantive reforms within that framework that promise to more efficiently achieve agreed-upon goals, and procedural reforms that promise to better reconcile or balance competing objectives. Collaborative efforts can play a role under either scenario—viewed in the first as a *replacement* for existing processes and, in the second, as a *supplement*. Resolving this larger issue will likely be a key to addressing other concerns about collaborative efforts.

**Question: Will traditional means of management and problem-solving work in the future?**

The answer to this question is largely dependent upon one's perspective on the previous question, and neither question can be answered with any certainty, as both contain a strong normative element. It is fair to say, however, that natural resource and environmental issues tend to change over time, and that different types of problems lend themselves to different types of solution strategies. If some assumptions are made about the likely future shape of natural resource and environmental problems, then, presumably, it is possible to make some inferences about the solution strategies that will be most useful in future decades. With few exceptions, most authors suggest that natural resource problems will only increase in scale and complexity, placing a premium on regional—even global—problem-solving tools, and a new type of science capable of dealing with complex systems and cumulative impacts.

Several researchers have observed that emerging natural resource problems demand action that is more integrated, experimental, and collaborative than ever before. For example, in an editorial written to shape the agenda of the journal *Conservation Ecology*, C.S. Holling (1998) observes that the ecological sciences are in transition, moving from an “analytical” tradition to an “integrative” approach. The analytical approach is essentially experimental, reductionist, and disciplinary, while the integrative approach is largely interdisciplinary, recognizing that most phenomenon are the result of many different interacting factors often at multiple scales. By asking the big questions with an immediate on-the-ground relevance, the integrative approach seeks to bridge the gap between science and resources management and problem-solving, an approach best implemented through adaptive management strategies.

A similar line of reasoning is offered by Knight and Meffe (1997:678), using the terminology of ecosystem management<sup>40</sup>:

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<sup>40</sup> No effort is made here to define “adaptive management” or “ecosystem management,” as both

The traditional approach to natural resource management, captured in the phrase “command-and-control,” may have worked well during a simpler, less confrontational era. With the emergence of new and involved, and more, stakeholders on our public lands, and the realization that public and private lands are contiguous and function as holistic ecosystems, agencies can no longer hope to accomplish their missions following the traditional approach. Ecosystem management calls for more open, participatory practices that emphasize partnerships, shared visions of the land, and decentralized agencies; in this model agencies promote risk-taking, shared initiatives, and adaptive management. Because societal, institutional, and ecological approaches have become more complex with an ever-increasing human population, there is no going back to traditional methods.<sup>41</sup>

While many authors talking of a new era focus on issues of resources planning and management, especially as they involve public lands, others extend their reasoning to include the

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terms are used in a variety of ways in the relevant literature. The former emphasizes the iterative nature of new problem-solving strategies, with experimental on-the-ground actions being closely monitored and adjusted over time as research and problem-solving evolve together. The latter term emphasizes the regional and systemic nature of environmental resources, promoting an integrated management philosophy often best implemented using adaptive management tools.

<sup>41</sup> Weber (1998:xvii) also sees the adoption of new administrative approaches as inevitable: “When it is considered that the pressures on government agencies to cope with adaptability, decentralization, and interdependence are only likely to increase over the next several decades, the expectation is that successful governance will more and more become associated with a robust assortment of alternative administrative arrangements.”

arena of environmental management and pollution control. For example, the Western Governors' Association (1998) is among the entities concluding that the "nature of environmental and natural resource problems is changing" and that strategies must adapt accordingly. Specifically, the Governors argue for future strategies replacing command-and-control regulatory tools with incentive-based systems and featuring a heavy reliance on collaborative processes of decision-making. Using terminology developed by Hawkins and Thomas (1984), the Governors appear to be advocating, at a minimum, for an evolution in regulatory strategies from a deterrence to a compliance system. In a compliance system, the main goal of the agency is to achieve the broad goals of the regulatory statute by preventing violations and remedying underlying problems through the use of close and cooperative relationships with the regulated community, and through the joint promotion of creative, site-specific solutions. In contrast, deterrence systems maintain a more distant, adversarial, and inflexible relationship between the regulator and regulatee, with litigation and punishment taking precedence over collaboration and incentives. Most EPA programs can be classified as deterrence systems, but is that best? Is the community/collaborative model of decision-making the vehicle to more efficient and effective environmental protection, or is it simply a Trojan Horse being used by some unscrupulous parties to promote lax enforcement and lowered standards?<sup>42</sup> Perhaps neither or both are true. Research by Kagan and Scholz (1984) support the seemingly obvious conclusion that a deterrence system is best if the regulated community cannot be trusted to obey the law; a compliance system is best when parties are cooperative.

Should we assume that the regulated community will become more cooperative and

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<sup>42</sup> For example, Roush (1995) suggests that the rhetoric of community involvement has been appropriated by the Wise Use movement as a means of promoting the goals of the corporate, extractive industries.

supportive of environmental protection programs in the future? While likely an interesting debate, some scholars suggest that this is a moot question. The more salient issue is whether or not future environmental problems will, by their unique nature, preclude the coercive policies of deterrence systems, thus encouraging by default the cooperative stance of compliance systems. To some extent, this assumption has surfaced in the emerging battle against nonpoint-source pollution, the widely acknowledged future of water pollution control activities (EPA and USDA, 1998). Given that controlling nonpoint-source pollution could require modifying the behavior of thousands of individuals, rather than dozens of discrete point source emitters, perhaps the more cooperative and flexible approach of a compliance system is warranted. Clearly, this philosophy permeates the Clean Water Action Plan (EPA and USDA, 1998), and is routinely a component of discussions about ecosystem-scale environmental protection and global environmental issues. As Paehlke (1990:363) observes:

It would appear that several of the newer environmental issues will require solutions that are less "regulatory" in character. The new forms of change will require both organizational and behavioral changes, rather than the regulatory coercion of a few economic actors. .... Behavioral changes involving whole communities are less effectively monitored and enforced than promoted and encouraged. ... Democracy itself must be enhanced to effectively deal with environmental problems as they exist today and as they may exist in the future.

These arguments support the cautious recommendations of Mintz (1995:106) encouraging EPA to "expand its outreach to the regulated community as a *supplement* to its enforcement activities."

A reliance on regulatory approaches for resource protection is also of questionable merit in areas completely or largely in private

ownership. As Breckenridge (1999:698-699) has observed:

The federal government faces important legal and practical limitations on its ability to achieve environmental goals unilaterally. Even though federal inquiry and concern may focus on problems of nonpoint source pollution, loss of biodiversity, and reductions in instream flows, federal agencies lack the coercive powers and funding necessary to revamp local uses of lands and waters through unilateral regulation or purchase. State agencies also face legal and political obstacles to the effective management of environmental problems that arise on private lands or within the traditional gambit of local zoning controls. In short, the ability of government agencies to identify and understand ecological problems has far exceeded governmental capacity to formulate and impose solutions through the exercise of coercive authority.

Evolving into a “kinder-and-gentler” form of regulation, featuring an expanded use of collaborative decision-making, is only a partial solution or intermediate step in the minds of some observers, who instead call for a more fundamental move to true incentive-based systems reliant upon market mechanisms. Organizations such as the Political Economy Research Center (PERC) see a tremendous potential for market mechanisms in a wide variety of natural resource and environmental settings, based largely on the correct observation that most natural resource sectors and uses feature subsidies of questionable merit and bureaucratic inefficiencies. However, market mechanisms, like collaborative processes, are not without limitations. For example, Hockenstein et al. (1997) report that experimentation with market-based mechanisms for pollution control and resource conservation have often not achieved the successes promised.

In some cases, market-based approaches are resisted on philosophical grounds by those who claim that they “legitimize” pollution, unduly discount non-market values, make some disadvantaged third parties vulnerable to inequitable situations, and inappropriately transfer public responsibilities to private hands (Hockenstein et al., 1997). Other criticisms are more pragmatic, based on a fear of returning to the market failure conditions that were the original genesis of many environmental problems, or the observation that many market-based systems require a level of administrative oversight and control that may be prohibitive, much in the same way that deterrence systems are argued by some (such as Paehlke above) to be impractical. For example, Hoffman (1996:10) offers a cautionary critique of those advocating the use of watershed-based permit trading programs in future water quality management programs—largely driven by TMDL (total maximum daily load) concerns—as a means of overcoming inefficiencies associated with program fragmentation and command-and-control regulation:

Because the watershed concept looks at the ecosystem as a whole, including all of its pollutant inputs, assimilative capacities, and biological and geophysical features, it has the potential to be more equitable in that, in theory, the most critical or most easily (or cost-effectively) controlled sources of a pollutant would be targeted for reduction. However, in practice, the scientific and enforcement tools needed to make watershed permitting function as envisioned are absent. For example, there are few effective means of enforcing nonpoint source controls of rural discharges; and urban and suburban stormwater flows are hard to define and quantify. The pitfalls, then, may include resorting to imposing more controls on readily identified and quantified point sources, while the real culprits continue to discharge unabated.

Many related concerns pertaining to the administrative and political demands of market-based strategies are described in the economics and public administration literatures (e.g., Baumol and Oates, 1988; Hockenstein et al., 1997; NAPA, 1997). Some of these additional administrative considerations pertain to the different mix of skills needed as part of this transition to incentive systems (i.e., economists and administrators replacing lawyers and technicians), and the difficulty in overcoming the inertia of existing programs that, although imperfect, are a known entity for both environmental groups and the regulated community. Perhaps most importantly, high transaction costs (primarily administrative costs) have ensured that market-based strategies rarely approach the cost savings expected in theory, an outcome that can undermine enthusiasm for these strategies while simultaneously increasing agency workloads and the internal strife of fundamental personnel transformations. These observations suggest that regulatory agencies are increasingly placed in a paradoxical situation, facing calls for more market-oriented, site-specific, and performance-based management strategies on the one hand, but limited by administrative constraints and concerns over market failures on the other. This situation has been aptly described by the National Academy of Public Administration (NAPA, 1997:xii):

EPA's paradox is that it must maintain national programs and seek national consistency while simultaneously attempting to make its programs and standards fit an incredibly diverse and dynamic nation. Environmental conditions, problems, and trends vary from place to place and no "one-size-fits-all" approach to regulation can accommodate such variety. No *laissez-faire* approach will work, either. The need for environmental protection arises from a failure of the marketplace. Adam Smith, an eighteen-century economist, showed how "the invisible hand" of free

markets would foster innovation, competitive pricing, and economic growth. Two hundred years later, Garrett Hardin showed how the invisible hand could also produce the "tragedy of the commons," the depletion of shared resources absent a collective decision to manage them for the public good.

This discussion about the pros and cons of different types of future regulatory strategies can quickly lead to more than a "simple" paradox, but can become a quagmire. For example, if traditional regulatory tools are shown to be impractical given the inefficiency of uniform standards, if free market approaches cannot be trusted given the history of market failures and the prevalence of self-interest behavior, and if "regulated markets" (such as permit-trading programs) are too administratively demanding to be practical, then what is the appropriate strategy? Again, collaborative problem-solving approaches may appear to rise to the top, not so much due to their documented ability to resolve problems, but to acknowledged deficiencies in other strategies.

Lessons gleaned from our experience with market mechanisms not only suggest that modifying regulatory regimes should be done with some caution, but suggest that a similar examination of the limits of collaboration should guide reform efforts aimed at institutionalizing consensus-based modes of decision-making and problem-solving. After all, the two types of management and problem-solving approaches share much more than current popularity as the twin cornerstones of proposals such as *Enlibra*, but are based on similar structural tenets. Those tenets include decentralization, local flexibility, and incentive-based management, stressing cooperation over conflict, and public and frequently *ad hoc* forums of decision-making over formal, bureaucratic mechanisms (Kenney and Lord, 1999). Some of the lessons learned from the experience with market systems are clearly transferable, such as the finding that the community/collaborative model of decision-making raises many normative issues while

addressing others. As discussed in detail later, the equity features of these seemingly “democratic” processes are not always well understood by all proponents. Similarly, collaborative processes raise many administrative demands that are often poorly understood—such as the finding described earlier by Manning (1998) that these efforts often reduce workloads of some agency personnel only at the expense of placing increased demands on others. This conclusion is consistent with much of the anecdotal evidence.

Also of concern is the observation that the community/collaborative model is better suited to certain types of settings and problems than others, an issue attracting only modest scholarly attention spread across a variety of loosely related, but relevant, contexts. For example, research by Bingham (1997:45) regarding the use of alternative dispute resolution (ADR) in water conflicts concludes that these approaches work best under specific circumstances:

ADR, particularly, mediation, has demonstrated positive results for resolving water resources disputes—when objectives are clear and mutually agreed upon, when the process is voluntary and inclusive, when there are incentives to settle, when there are adequate resources for participation and for information collection, when parties keep their constituencies informed, and when reasonable deadlines exist.

Kenney and Lord (1999) suggest that collaborative means of problem-solving are best suited to situations in which significant value conflicts have been resolved and when all involved parties have strong incentives for problem-solving, factors that are often tied to the physical qualities of the on-the-ground problem. Additional insights are provided by Ostrom’s (1990) well-known work on common pool resources, which suggest that collaborative problem-solving approaches are best suited to situations when the group is relatively small and homogeneous, the existing framework of rules

and behavioral patterns is harmful to all parties, costs and benefits (of both existing and proposed rules) are distributed in a fairly equal manner, enforcement and compliance costs of new rules are relatively low, and when group members trust each other.

Nickelsburg (1998) is among those who have made the observation that some of these prerequisites are not entirely consistent; namely, the idea that meaningful collaborative processes need to be inclusive (e.g., Bingham’s remarks), yet decision-making is best accomplished through forums featuring small, homogeneous groups (e.g., Ostrom’s remarks). Nickelsburg sees this dichotomy as posing a real impediment to EPA’s construction of community-based environmental protection (CBEP), which is based on the assumption that sound ecosystem management requires action at scales sufficient to encompass all contributing factors, activities and individuals associated with a given problem, an approach certain to violate any notions of small, homogeneous working groups.<sup>43</sup> Thus, while he concludes that the trust-building and educational functions of collaborative efforts will likely produce some benefits and can potentially help to remove some of the long-term obstacles to improved local decision-making, he cautions against the EPA’s seemingly excessive faith in CBEP methods, arguing that if the agency’s “mission is to address diffuse, cross-jurisdictional, arguably national problems such as mobile source emissions and nonpoint-source runoff, it will need to employ not haphazard local encouragement, but more powerful statutory tools” (page 1409). Clearly, many parties within EPA agree, as the support for CBEP methods appears far weaker at the agency’s lower levels, where traditional tools still dominate on-the-ground action.<sup>44</sup>

To some extent, Nickelsburg’s recommendation is similar to the philosophy articulated in the landmark works of Hardin

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<sup>43</sup> This observation can be useful in helping to highlight differences between “communities of interest” and “communities of place.”

<sup>44</sup> This observation is largely based on several off-the-record conversations with EPA personnel.

(1968), Ophuls (1977), and Heilbroner (1980), who argued that future environmental problems will require more centralized governmental control. This “centralist” school of thought spawned a counter, “decentralist,” school—anchored by authors such as Passmore (1974), Sale (1991), Orr (1992), and Taylor (1992)—suggesting that future problems instead call for transferring power to local, democratic communities practicing a “think globally, act locally” philosophy (Press, 1994). Often, the key distinction in thinking between these two perspectives is that the centralists conclude that individual self-interest, rather than community well-being (as argued by the decentralists), predominate during environmental crises in the absence of strong centralized control. Which viewpoint is correct? Unfortunately, empirical studies do not exist to conclusively support either perspective, and even if they did, the centralist/decentralist debate is likely too narrow and dogmatic to support useful scholarly inquiry (Press, 1994). What is clear is that in the modern era, authors advocating decentralist models—similar to the “unitary democracy” advocated by Mansbridge (1980) or the “democratic wish” described by Morone (1991)—predominate (Press, 1994). As described later, this is largely a normative phenomenon, based on assumptions and ideas that are only partially amenable to formal testing.

## Collaborative Groups in Context

### **Question: What is the relationship between the traditional and alternative mechanisms of problem-solving?**

When debating the merits of collaborative efforts and other forms of alternative problem-solving, a key normative issue is often whether these new approaches should be viewed as *alternatives* to traditional mechanisms, or as *supplements*. Most reformers are quick to specify that alternative approaches should be supplementary, at least initially. For example, the *Enlibra* principles articulated by the Western Governors Association contain language that explicitly describe desired reforms as supplemental to existing mechanisms.<sup>45</sup> Similarly, watershed initiative participants interviewed by the Natural Resources Law Center consistently articulate a desire to retain existing regulatory structures within which collaborative efforts occur (Kenney, 1997). This apparent agreement, however, can obscure a lively debate, as there is considerable room for disagreement among reformers promoting only a few isolated experiments to those urging a much more ambitious agenda of reform presumably leading to the eventual replacement of traditional mechanisms.<sup>46</sup> Additionally, many reform proposals contain qualifiers on this subject that are often vague or are not reflected in other statements and elements of reform proposals.

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<sup>45</sup> A brochure developed to answer questions about *Enlibra* list three things that *Enlibra* is not: “1. *Enlibra* does not represent a rejection of the goals and objectives of Federal environmental laws such as the Endangered Species Act or Clean Water Act; 2. It is not a rejection of the need for national environmental standards; 3. This shared doctrine does not represent a rejection of the legitimate role of the federal government in regulation and enforcement.” (*Enlibra: A New Shared Doctrine for Environmental Management, Questions and Answers*. Western Governors’ Association.)

<sup>46</sup> Few parties categorically reject collaboration proposals. The debate is at the margins; i.e., over issues about when and how collaborative approaches should be used, and what “fall-back” arrangements should exist.



For example, the *Enlibra* authors endorse processes such as the Quincy Library Group and the Oregon Plan (for salmon recovery) as successful models, even though these approaches were largely designed to bypass existing planning mechanisms (National Forest Management Act) and regulatory programs (Endangered Species Act), respectively (WGA, 1998).

Less common, but perhaps most alarming to the skeptics, are those proposals that image a balance between traditional and alternative approaches that is heavily biased in favor of the alternative strategies. Perhaps the best example is found in the final report of the Western Water Policy Review Advisory Commission (1998), which calls for watershed groups to be empowered to make and implement water management policies unless such actions are specifically (and promptly) deemed invalid by a relevant federal agency presumably acting in consort with some kind of river basin organization and plan. Benson (1998:284) suggests that this approach would create a strong political impediment to the resource protection mandates of federal agencies:

... the proposed governance approach would find watershed council actions consistent with all relevant laws unless a responsible agency declared them inconsistent within 60 days. .... By allowing such projects to proceed unless vetoed within 60 days, the proposal would effectively support locally-favored development proposals at the expense of resource protection. And the proposed approach would ratchet up the already fierce political pressure faced by federal agencies. Once a proposed action has been blessed by a watershed council, any agency that would dare to block it risks a seriously damaging political bashing.

Ambiguities and uncertainties of this nature generate mistrust and skepticism from many parties, especially environmentalists, about the

motives of the reformers.<sup>47</sup> Underlying many of the specific arguments of the skeptics identified earlier is a concern that is more visceral than empirical: i.e., the belief that pro-business (and presumably anti-environmental forces) are behind the push for more collaborative mechanisms of decision-making and problem-solving, exploiting the powerful symbolism associated with democracy and community involvement to maintain or expand industry control.

This concern is not new. As Amy (1987:98) observed in 1987 when writing about environmental mediation, "Part of what makes environmentalists nervous about mediation is the enthusiasm with which industry has embraced it."<sup>48</sup> Similar distrust of business and commodity interests—seemingly a timeless prerequisite to environmental activism—surrounds current resource management experiments using the community/collaborative model. For example, noted natural resources attorney George Cameron Coggins (1998:31) suspects some collaborative efforts to be an "insincere rear-guard holding action" orchestrated by declining commodity industries.<sup>49</sup> Similar sentiments have been recorded by Burgess and Burgess (1997:1):

... many traditionally disempowered groups believe that conflict resolution professionals have been coopted by powerful interests, and thus use this

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<sup>47</sup> It also suggests that many of the strongest proponents for expanding application of the community/collaborative model are not listening to many of the practitioners, who typically suggest a more modest expansion and application of this approach (Kenney, 1997).

<sup>48</sup> Environmental organizations receptive to this set of tools, namely the National Wildlife Federation and the Conservation Foundation, were shown to be unusually conservative among environmental organizations, and in the case of the Conservation Foundation, maintained unusually close contact with the business community (Amy, 1987).

<sup>49</sup> Coggins (1998:31) goes on to observe that "The industry and agency passion to find consensus evidently coincides with the degree to which the noneconomic interests have been successful in asserting newer and broader management priorities."

process as a mechanism for “sugar-coating” the continued domination of the disempowered groups. Thus, many of these groups tend to distrust mediation and other conflict resolution processes, preferring to wage their battles in the courts or through direct action.

Still others have questioned the lack of environmental group involvement in drafting the *Enlibra* principles of the Western Governors’ Association—a group rarely categorized as environmentally sensitive. As long as the motives of the reformers remain in question, it is unlikely that an honest debate will evolve to examine the substantive merits of the emerging new tools.

Instead of speculating herein about the motives of reform proponents, it is perhaps more useful to acknowledge that many experiments in alternative problem-solving are already occurring on the ground, and that these efforts provide an opportunity for drawing some substantiated conclusions about the usefulness of various decision-making and problem-solving tools. Whether viewed as supplements or eventual replacements, alternative mechanisms of decision-making and problem-solving currently coexist in many forms with traditional mechanisms. This is perhaps best illustrated by the relationship between litigation and less adversarial decision-making techniques emphasizing negotiation and bargaining. Using the term BATNA (best alternative to a negotiated agreement), Fisher and Ury (1981) make the observation that parties can be expected to vacillate between different decision-making forms and forums based on strategic criteria. This clearly happens to a degree that is often unappreciated by the critics of traditional mechanisms. For example, some estimates suggest that as few as 4 percent of criminal cases and 5 to 10 percent of civil cases are ultimately resolved through judicial determination (Kleiner, 1999). The others are dropped or settled out of court, largely through ADR strategies such as

negotiation, mediation, and arbitration.<sup>50</sup> Negotiated settlements are also seen in natural resources and environmental conflicts, however, judicial decision-making still appears to hold a prominent place in resolving these types of issues.

Many parties suggest that additional efforts should be made to aggressively promote the use of collaboration and consensus-based tools in natural resources and environmental issues. This effort has been underway since the mid-1980s, resulting in legislation such as the Negotiated Rule-Making Act (NMRA) of 1990 and the Administrative Dispute Resolution Act (ADRA) of 1990 and 1996.<sup>51</sup> NRMA provides a framework and procedural requirements within which agencies are encouraged to assemble diverse stakeholder groups for purposes of administrative rule-making; ADRA calls upon agencies to investigate opportunities of ADR in a variety of decision-making settings, including rule-making, issuing/revoking licenses and permits, contract administration, and litigation. Similarly, Executive Order 12,866 of September 30, 1993, calls on federal agencies “to explore,

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<sup>50</sup> Note that when discussing ADR techniques, it is important to acknowledge the distinction between arbitration and techniques such as mediation and facilitation. Arbitration effectively blurs the lines between traditional, adversarial decision-making processes and the alternative, cooperative strategies (such as mediation and facilitation), in that arbitrators are often empowered to make binding decisions. Mediation and facilitation are good representatives of the voluntary and consensus-based tenets of “alternative problem-solving,” while arbitration retains many elements of adversarial competition. It is also worthwhile to note that attorneys are increasingly involved in using both litigation and ADR techniques in their practices, moving strategically between traditional and alternative decision-making modes. As of 1997, 714 law schools offer courses in ADR, compared to just 47 in 1984—a more than 15 fold increase (Kleiner, 1999).

<sup>51</sup> Negotiated Rule-Making Act of 1990, P.L. 101-648, 104 Stat. 4969; Administrative Dispute Resolution Act of 1990, P.L. 101-552, 104 Stat. 2736; Administrative Dispute Resolution Act of 1996, P.L. 104-320, 110 Stat. 3870.

and where appropriate, use consensual mechanisms for developing regulations.”<sup>52</sup> Mechanisms for stakeholder-based collaborative resource planning mechanisms are also advocated in many circles, as evidenced by EPA support of watershed initiatives (as discussed earlier), the use of resource advisory councils by the Bureau of Land Management (Olinger, 1998), the rise of community forest groups nationally (Wondolleck and Yaffee, 1994), by efforts to promote collaboration as a tool for implementing the National Environmental Policy Act (NEPA),<sup>53</sup> and by suggestions to create more opportunities for ADR through amendments to the Clean Water Act, Endangered Species Act, and NEPA (Bingham, 1997).

One of the more intriguing experiments has involved EPA’s usage of negotiated rule-making, a subject studied in depth by Harvard Professor Cary Coglianese (1997). According to statute (NMRA), processes of negotiated rule-making are to be utilized “for the purpose of reaching a consensus in the development of a proposed rule,” with consensus meaning the “unanimous concurrence” or any lesser concurrence if agreed to unanimously by the committee.<sup>54</sup> Negotiated rule-making has its origins in the New Deal, but did not receive its first large-scale application until the mid-1970s when Secretary of Labor John Dunlap chaired the National Coal Policy Project, which utilized negotiated rule-making to make decisions regarding hundreds of proposals (Coglianese, 1997). Most proposals were never implemented, but the process was viewed by many as successful. By the early 1980s, the Federal Aviation Administration and then the EPA began use of the tool. Coglianese’s assessment of the EPA’s recent experience with

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<sup>52</sup> Executive Order No. 12,866, § 6(a), 3 C.F.R. 638, 645 (1994), reprinted in 5 U.S.C. § 601 (1994).

<sup>53</sup> This was the premise behind a recent workshop organized jointly by the Institute for Environment and Natural Resources (University of Wyoming) and the Center for the Rocky Mountain West (University of Montana) entitled *Communication and Consensus: Strategies for Fulfilling the Nation’s Environmental Policy*, held in Florissant, Colorado on March 20-23, 1999.

<sup>54</sup> 5 U.S.C. § 562, 1994 & Supp I. 1995.

negotiated rule-making shows that, much like earlier attempts, the rate of success has been overstated, with no compelling evidence to suggest this consensus-based process is quicker, cheaper, or otherwise preferable than the litigation it was designed to replace.<sup>55</sup>

It can be argued that negotiated rule-making provides an excellent example of myth over substance. In addition to questionable claims of greater efficiency in rule-making, proponents of negotiated rule-making—such as the leaders of the National Performance Review—often cite an 80 percent litigation rate for EPA rules made through traditional mechanisms compared to 20 percent for negotiated rule-making.<sup>56</sup> Empirical research on the EPA, the agency that uses negotiated rule-making most frequently, however, shows the appeal rate for traditional rule-making to actually be about 26 percent compared to an appeal rate for negotiated rule-making decisions of 50 percent.<sup>57</sup>

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<sup>55</sup> Coglianese (1997:1308) provides the following summary: “For years, proponents of negotiated rulemaking have touted it as the solution to a perceived problem of excessive litigation challenging federal regulations. Yet the prevailing perception of this problem has been overdrawn. The actual level of litigation over EPA rules is dramatically lower than has been widely believed, and litigation itself often provides a forum for continued negotiation in the rulemaking process. Just as the extent of the supposed problem of litigation has been overstated, so too has the effectiveness of negotiated rulemaking as a means of reducing litigation over federal regulations. The experience so far has been that legal challenges persist, and at a noticeably higher rate at the EPA, even after the agency has employed the negotiated rulemaking procedure. As a means of reducing litigation, negotiated rulemaking has yet to show any demonstrable success.”

<sup>56</sup> For example, see *Improving Regulatory Systems*, Accompanying Report of the National Performance Review. Office of the Vice President, 1993.

<sup>57</sup> This statistic is based on Coglianese’s (1997) review of the EPA litigation docket from 1987 to 1991 using Federal Register data. If data from OMB is used instead, the litigation rate is approximately 19 percent. The litigation rate for two of the agency’s most controversial statutes—the Resource Conservation and Recovery Act and the Clean Water

Additionally, a closer look at some of the “success stories” can dampen enthusiasm. For example, probably the most celebrated success story of negotiated rule-making (although not technically conducted under the NRMA framework) produced new visibility rules for Grand Canyon National Park. The effort featured an innovative and productive dialogue among many competing interests, and established a mechanism of problem-solving that is credited as the genesis of the *Enlibra* principles.<sup>58</sup> What is frequently not reported is that the process was long and arduous, and the rules were later challenged in court—not by participants to the negotiations, but by interests that were outside the negotiation.<sup>59</sup> Another of the well-known success stories, the rules for reformulated gasoline, also generated a flurry of litigation, and earned a degree of infamy for becoming the first U.S. regulation ever struck down by the World Trade Organization.<sup>60</sup> While it is unlikely that traditional rule-making processes would have fared any better in these difficult disputes and the existence of a legal challenge does not

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Act—is considerably higher, about 35 percent, but still does not remotely approach the 80 percent estimate that is widely circulated. Data on appeal rates for negotiated rules should be used cautiously, given the small sample size. As of 1997, only 12 rules had been completed at EPA through negotiated rule-making, with 6 being appealed.

<sup>58</sup> Remarks of Jim Souby, Executive Director of the Western Governors’ Association, at the workshop entitled *Communication and Consensus: Strategies for Fulfilling the Nation’s Environmental Policy*, organized jointly by the Institute for Environment and Natural Resources (University of Wyoming) and the Center for the Rocky Mountain West (University of Montana). Florissant, Colorado; March 21, 1999.

<sup>59</sup> *Central Arizona Water Conservancy District v. United States*, 990 F.2d 1531 (9th Cir. 1993). The rules were eventually upheld on appeal.

<sup>60</sup> Challenges came from a wide array of petroleum, fuel, and transportation interests. International challenges were offered by Brazil and Venezuela, claiming discriminatory trade practices. For additional information and citations, see *Reformulated and Conventional Gasoline Standards*, 59 Fed. Reg. 7716 (1994) (codified at 40 C.F.R. pt. 80) (EPA).

necessarily indicate that the rules are poor or the decision-making process inappropriate, it is fair to conclude that the consensus-based tenet of negotiated rule-making is not a panacea for resolving divisive conflict or replacing litigation.

To understand the implications of the negotiated rule-making experience for more *ad hoc* processes such as watershed initiatives requires a little digging, but at least two relevant conclusions emerge. First, negotiated rule-making does not introduce negotiation and bargaining into the rule-making process, but simply codifies and formalizes the process. In traditional rule-making exercises, agencies are typically in contact with many concerned parties, engaging in a certain degree of bargaining and deal-making as part of “independent” agency rule-making. However, in processes conducted under NRMA, these interactions occur in a much more formalized process. Thus, one of the real conclusions of Coglianese’s research, as the author readily acknowledges, appears to be that the informal give-and-take between agencies and interest groups in support of agency decision-making is perhaps more productive in most cases than producing decisions through formally sanctioned stakeholder negotiations. This is a strong argument in favor of keeping watershed initiatives largely *ad hoc* and informal, and not an argument for formally codifying the multi-stakeholder and consensus-based elements of watershed initiatives into new forms of governance. Secondly, the experience with negotiated rule-making again raises the persistent issue of adequate representation in decision-making, a concern that is magnified considerably when these multi-stakeholder negotiating groups are empowered, either formally through legislation or informally through custom or pressure, to serve as decision-making bodies.

Another line of research to explore in assessing the relationship between traditional and alternative modes of decision-making and problem-solving center around the idea that different types of problems, just like different types of decision-making mechanisms, feature different sets of incentives. As articulated in research by the National Academy of Public Administration (NAPA, 1997:37), effective

programs of resource governance and management are those that correctly match problem types to appropriate solution strategies:

The simple phrase “environmental problems” may mask the diversity and complexity of the many different problems to which it refers, and hence falsely suggest there is a single best tool to address all problems. The opposite is the case, making the task of selecting and implementing the most appropriate management tool a significant technical and political challenge.

As mentioned briefly earlier, Kenney and Lord (1999) and Nickelsburg (1998), in unrelated studies, both focus on the concept of *symmetry* as a key determinant of problem-solving incentives. It is easiest to think of symmetrical problems as those that present similar incentives to all parties involved in creating and/or solving problems. For example, all ranchers using the shared rangeland in Hardin’s “tragedy of the commons” share the burden, as well as the responsibility, for the degraded resource. Consequently, each can be expected to have an incentive for problem resolution, a fact mentioned earlier in the review of Ostrom’s (1990) research identifying situations in which “common pool resource” (CPR) regimes are stable. So-called “public good” situations can also share somewhat similar incentive structures in that all involved parties have the potential to benefit from a proposed action.<sup>61</sup> These incentives are sometimes

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<sup>61</sup> A public good is usually defined by two key characteristics: first, it is a benefit that, once provided to one party, is automatically made available to all parties; and second, the use of the benefit by one party does not diminish the availability of the benefit for other parties. The classic example is national defense, but in the natural resources realm, examples can include clean air, biodiversity protection (and preservation of the associated existence values), and protection from hazards. In contrast to the symmetrical incentives often provided by CPR and public good situations,

adequate to voluntarily bring parties together in problem-solving groups (Ostrom, 1990; Bromley, 1992). However, in many other cases, CPR and public good problems are not resolved through spontaneous group action, as group solutions cannot be implemented absent some means of ensuring compliance among all relevant parties.<sup>62</sup> Consequently, a variety of allocation mechanisms (including property rights systems) and regulatory regimes exist to limit access to (and use of) resources, and taxation and other “coercive” systems exist to encourage uniform (at least in principle) public contributions to provide and protect public goods.

What many local watershed initiatives and similar collaborative efforts are demonstrating is that the coercive power of the state is not always needed to ensure that individual behavior conforms to community interests. Instead, social and cultural tools—implemented through approaches such as trust-building, peer pressure, and appeals to good citizenship—can sometimes be effectively used in many situations to affect positive change. As discussed later and in the following remarks by Nickelsburg (1998:1393), watershed initiatives can utilize social mechanisms to achieve productive interactions:

Parties who anticipate interacting in the future, rather than in a one-shot deal, no longer need assume that their

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asymmetrical situations occur when parties have fundamentally different incentives. The best example is externality situations. For example, the challenge of pollution control is that the generators have incentives to pollute while those parties suffering from the pollution have an incentive to end the pollution (Kenney and Lord, 1999).

<sup>62</sup> For example, in Hardin’s overgrazed commons example, if only some farmers agreed to reduce consumption while others continued unabated, the conservation program would likely fail due to the overuse by the renegade users and by the disillusionment and likely defection of original cooperators. Similarly, in a public goods situation, often some parties will not contribute to the group effort knowing that most others will, and that benefits will accrue equally to both the participants and the “free riders.”

bargaining partners will defect. Continuing interaction allows parties to build credibility, trust, and respect, or “social capital,” by dealing fairly, by performing their obligations, and by punishing defections.

Case study data suggests that this social/cultural strategy is normally much more viable when dealing with symmetrical situations than asymmetrical situations (such as externalities), given that in the former, parties are not being asked to act in an altruistic manner, but instead are being asked to take actions that promise benefits to both the community and themselves.<sup>63</sup>

The prevalence of western watershed groups dealing with broad “public” concerns such as ecological restoration and species protection, compared to the dearth of groups actively dealing with issues such as water supply, provide anecdotal support of this idea with a rich theoretical basis (Kenney and Lord, 1999). Issues such as water supply are probably not so readily amenable to resolution through western watershed initiatives in most situations since any group action that increases supply is likely to produce benefits accruing exclusively to the next appropriator in line.<sup>64</sup> In contrast, group efforts to improve ecosystem health promise benefits for all, given the greater symmetry of the situation, and are presumably well suited to collaborative problem-solving strategies.

Of course, the qualities of the problem itself are not the only source of behavioral incentives,

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<sup>63</sup> This observation is similar to other conclusions noting the necessity in collaborative efforts of finding positive-sum (or more accurately, Pareto optimal) solutions. A Pareto optimal solution—also known as a win-win solution—is one that makes all involved parties better off, or at the least, none worse off. Pareto optimal solutions are always positive-sum, meaning that the benefits to all parties exceed the costs to all parties. Conversely, many, but not all, positive-sum solutions are Pareto optimal, as benefits to many parties may hide a cost to another party.

<sup>64</sup> Note that this is a function of western water law. Consequently, this observation is not applicable to the East.

and those qualities are not entirely inherent, but are shaped by the interaction of physical phenomena and institutional rules. By manipulating rules, problem-solving incentives can change, thereby opening (or closing) the door to different problem solving strategies (Kenney and Lord, 1999). For example, a common stimulus behind the formation of many western watershed initiatives is the specter of regulatory intervention under the Endangered Species Act and/or Clean Water Act.<sup>65</sup> This phenomenon illustrates a clear symbiosis between the traditional and alternative problem-solving approaches that has significant implications for policy reformers. For example, the opinion expressed by Schecter (1998:10) is illustrative of the larger debate surrounding alternative problem-solving:

... contrary to Al Capone’s famous saying, “You can get more with a kind word and a gun than with a kind word alone,” evolving conditions indicate that maybe we can begin relaxing (but not giving up altogether!) our mandatory regulations that provide a credible threat of penalties, and rely more on voluntary self-regulation, guided by “self-interest” economic motives.

The degree to which alternative problem-solving strategies should supplement or replace traditional mechanisms is largely shaped by whether or not you find the opinion of Capone or Schecter more compelling. Certainly, the advice of Al Capone seems more apt when describing asymmetrical than symmetrical situations, and the “social pressure” asserted through watershed initiatives is undoubtedly augmented by the threat of federal regulatory hammers; but on both points, there remains plenty of room for learning and debate.

A second conclusion emerging from the research of Kenney and Lord (1999), Amy

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<sup>65</sup> For example, 81 of the 105 studies of cooperative ecosystem management featured in the Yaffee et al. (1996) book involved an ESA listed species.

(1987), Burgess and Burgess (1995), and countless other scholars involves the importance of resolving “value conflicts” prior to making progress on complex issues through collaborative modes of decision-making. Lord (1979) identifies three major classes of conflict: *value conflicts*, which tend to focus on questions of principle, philosophy or morals at the heart of a proposed action; *interest conflicts*, which normally focus on distributional features of specific policies (e.g., allocation of costs and benefits), rather than questioning the overall scope or objective of a proposed action; and *cognitive conflicts*, which occur in situations where data or knowledge is considered inadequate. Interest and cognitive conflicts are often readily amenable to ADR-type processes, but value conflicts normally cannot (and presumably should not) be negotiated away.<sup>66</sup> While this is an important limitation of consensus-based processes, what makes these efforts so intriguing is that in the hands of a skilled facilitator, an apparently intractable value conflict may be revealed as simply a miscommunication or a problem for which a compromise is available that satisfies competing needs without resolving the underlying value conflict. If these approaches are not fruitful, however, then few effective decision-making options may exist outside of traditional forums, and specifically, the judicial arena where consensus is not a prerequisite to decision-making. The salience of the consensus requirement is explored further in later discussions.

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<sup>66</sup> For example, the Southern Utah Wilderness Alliance (1994) observes that “Consensus works only when there is some basis of agreement to begin with; it does not work if participants are coming from diametrically opposing viewpoints. A consensus can be reached, for instance, if participants agree a road should be built, but need to decide the best route. A consensus cannot be reached when some participants want to clearcut, and others want to protect, a tract of forest.”

**Question: Is there a cause-and-effect relationship between organizational achievements and subsequent on-the-ground success? Stated more generally, does the community/collaborative model of interaction and decision-making produce benefits that increase the ability of society to achieve social, economic and environmental goals?**

In order to answer this question, several years of monitoring and study of collaborative groups will be necessary. This work is partially underway at many locations, including at the Natural Resources Law Center where western watershed initiatives are currently being studied as part of efforts to update *The Watershed Source Book* (NRLC, 1996). Even upon completion of that work, however, it will likely be difficult in the short-term to reach strong conclusions about the strength, of any, of the cause-and-effect relationship between organizational achievements and on-the-ground impacts. Certainly, many of the case studies presented in the *Source Book* and subsequent research provide examples of watershed initiatives moving beyond “organizational achievements” (such as group formation, mission statement development, plan preparation, and related accomplishments) to have an on-the-ground impact (NRLC, 1996; Kenney, 1997). Generating credible statistics about the expected frequency of such achievements by watershed initiatives throughout the West, however, will require additional effort, as watershed initiatives need time to experiment, and researchers need time to observe and analyze. What may be more productive at this time is to think more broadly about questions of process and outcome, and in particular, how the “social environment” characteristic of the community/collaborative model of interaction can be expected to result in on-the-ground benefits.

The belief that cooperative and collaborative interactions are likely to lead to stronger communities, better societies, and various types of on-the-ground benefits is perhaps best captured by the concept of “social capital.” Social capital is defined in many different ways

(Newton, 1997). In its most general usage, the theory of social capital rests on the assumption that trust and reciprocity are essential elements for social stability and political cooperation (Simmel, 1950). Viewed from this perspective, “social capital is important because it constitutes a force that helps to bind society together by transforming individuals from self-seeking and egocentric calculators, with little social conscience or sense of mutual obligation, into members of a community with shared interests, shared assumptions about social relations, and a sense of the common good” (Newton, 1997:576). Slightly different perspectives on social capital focus on the *networks* through which various parties can interact, building trust and encouraging cooperation (Tocqueville, 1968; Mill, 1910), or upon the more practical *outputs* (or *consequences*) that individuals can expect through such cooperative arrangements (Putnam, 1993; Ostrom, 1990).

While each perspective on social capital shares the assumption that benefits can be associated with actions and mechanisms that promote greater social collaboration, questions arise about cause-and-effect relationships, about the benefits of formal versus informal associations, about the importance and frequency of intangible and tangible benefits, and about the relationship between local associations (such as watershed initiatives) and national institutional structures within which local entities reside (Newton, 1997). Much of the literature addressing such topics is not supported by (or is not readily amenable to) detailed empirical studies nor features precise definitions and/or explicitly identified assumptions, but rather is based on a wealth of anecdotal and hermeneutic evidence and nested within normative assumptions espousing the benefits of participatory processes.<sup>67</sup> In the world of natural

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<sup>67</sup> Interestingly, social capital is an idea expressed much more frequently in international (especially third world) contexts. Some parties, such as Brick (1998:36), find this troubling: “In international conservation efforts, the need to work with local communities and indigenous peoples is axiomatic. But in this country the environmental movement

resources and the environment, this information is most commonly found in the literature of community-based ecosystem management, which as Cortner et al. (in press:2) observe, is “premised on the belief that healthy democracies and sustainable ecosystems are both intertwined and interdependent.”<sup>68</sup> At the core of this line of reasoning are two important assumptions: first is the belief that human well-being is largely dependent upon maintaining environmental health; and second is the assumption that certain types of processes—usually defined as those based on the community/collaborative model—are most conducive to recognizing, respecting, and achieving this relationship. While it is the second assumption that is most relevant to this discussion, both points deserve some attention given their close relationship.

The first of these ideas—i.e., that human well-being is tied to ecological health—has long been obvious to conservationists and environmentalists and, undoubtedly, to many other individuals maintaining a close connection with the environment. However, many of the behavioral patterns typical of the modern industrialized world seem oblivious to this relationship. For example, Thomas Malthus (1798) generated a degree of lasting fame in environmental circles for his simple observation that many species embark on population booms that overwhelm those natural systems on which the species depend, leading often to precipitous population declines in the species. Beginning largely in the 1960s, this “limits to growth” idea was widely applied to human society, becoming one of the cornerstones of the modern environmental movement. Similar concerns over human “nest-fouling” also became more widely acknowledged in this era thanks largely to phenomenon such as the Cuyahoga River (draining in Lake Erie) fires and Rachael Carson’s (1962) frightening study showing how

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often ignores this wisdom, preferring instead the hammer of national environmental legislation to accomplish its goals.”

<sup>68</sup> The philosophy of community-based environmental protection, as interpreted by the EPA, can be found at <http://www.epa.gov/region5/cbep>.



bioaccumulation can concentrate toxics in species near the top of food chains—including humans. These concerns over resource consumption and ecological degradation are also joined by more metaphysical considerations, such as the preservationist argument of Henry David Thoreau who once remarked, “In wilderness is the preservation of the world.”

Collectively, research and writings of this nature have helped to create an environment in the United States where the relationship between human well-being and ecological health is better appreciated than ever before.<sup>69</sup> Yet, the policy response to issues such as growth (and consumption), climate change, biodiversity declines, and other pressing problems is generally considered by environmentalists to be disappointing (Ehrlich, 1996). Making further progress will likely require better communicating this message about the connection between human and environmental health, and perhaps more significantly, in devising mechanisms that can achieve this desired balance on-the-ground. This again brings us back to the tenets of social capital and the merits of the community/collaborative model of decision-making, which presumably provide a mechanism for achieving these objectives.

One of the functions for which watershed initiatives (and similar tools) are best suited is public education.<sup>70</sup> In fact, many organizations, such as the Verde Watershed Association, consider this educational function to be their primary role.<sup>71</sup> The collaborative environment of a watershed initiative can be ideal for fostering communication among interests and disciplines, between experts and laymen, between resource managers and stakeholders, and more generally,

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<sup>69</sup> Internationally, one of the better known discussions of this relationship is provided in the so-called Brundtland Commission report (WCED, 1987), which is often credited with pioneering the term “sustainable development.”

<sup>70</sup> The educational value of collaborative processes has been identified by a tremendous diversity of authors, including Sabatier (1988), Pateman (1970), and Blackburn and Bruce (1995).

<sup>71</sup> For more information on the Association, see <http://www.verde.org/>.

between the community of resource users and managers and the public.<sup>72</sup> Many groups pursue these goals through their broad memberships, through events such as conferences and planning exercises, and through the use of newsletters and web sites (NRLC, 1996). This approach has the potential to not only increase the quantity of information flow, but to also improve the quality of the discussion, by framing issues in a broad and integrated manner, and with a degree of foresight often not afforded to management agencies burdened by immediate crises or by the demands of day-to-day program administration.

While it is difficult to precisely measure the value of public education and involvement in improving resource management and health, it seems apparent that it is unrealistic to expect people to care about those things they do not understand, to combat problems they do not recognize, or to implement solutions they have not considered. Education, defined broadly to include almost any exchange of ideas, is an essential piece of the problem-solving puzzle, and is a cornerstone in the development of social capital. It is erroneous, however, to suggest that this educational function can only occur through watershed initiatives using the community/collaborative model, or through ADR processes (Coglianese, 1997). Tremendous amounts of data and insights are garnered through formal planning processes, through the discovery phase of litigation, through reporting and documentation requirements of permitting processes, and a host of related, “traditional” means of resource management and problem-solving. Where “alternative” approaches likely excel is in promoting a more extensive and honest disclosure of information (in part since the consensus requirement and non-adversarial nature create a safe environment for open discussion), and in pursuing a more holistic or integrated approach to defining problems and

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<sup>72</sup> Duane (1999:778) argues that “horizontal” interactions (i.e., those in which all parties are viewed as equal participants) are key to building social capital, unfortunate given that “most land and resource agencies are structured around vertical networks of control.”

solutions. Obviously, this ideal is not accomplished in all settings, but it occurs with sufficient frequency within watershed initiatives to be a source of considerable excitement.

Returning to the underlying assumptions of community-based ecosystem management and Newton's (1997) definition of social capital provided earlier, the next issue to address is whether or not interaction through the community/collaborative model is likely to change human behavioral motives from short-term, individual self-interest, to longer-term, community interest. Clearly, increased interaction among parties in a given "community" is likely to create forces that modify individual thinking and behavior. Utilizing terms such as socialization, bounded rationality, and embeddedness, many researchers have observed that individuals with decision-making responsibilities are likely to modify their decision heuristics (or means of reasoning) to produce decisions that have broad acceptance to the group (Simon, 1982; Gregg et al., 1991). As discussed earlier, Ostrom (1990) is among those authors who have found that social pressure can be a powerful force in encouraging people to act in a manner respectful of community interests. Nickelsburg (1998) and Kenney (1997), and countless other authors, have made similar observations, noting that frequent interactions within collaborative groups can generate a degree of social responsibility and obligation that is of practical value in addressing environmental issues.

On the other hand, "community interests" are defined differently by different communities, many of whom believe that problems with resource management are problems of over-regulation (and/or the subordination of private rights) and excessive restrictions on resource use, consumption, and/or degradation. These groups do not show up in the *Source Book* (and many similar publications) simply because they were selected out; the *Source Book* is a reference for watershed initiatives pursuing environmentally friendly goals, a normative criterion adopted by the authors. Thus, while many of the cases featured as representative of the western watershed movement can be cited as evidence

that these groups promote social capital and the pursuit of community objectives, it is naïve to assume that the goals of all such associations are environmentally beneficial or benign, or that the interests of local communities always correspond to those of larger communities of interests (Berman, 1997).

In fact, the counter argument is well-established in the environmental community, and largely explains why activists have historically fought to move the locus of decision-making from local communities presumably tied to commodity industries to more national "communities of interest."<sup>73</sup> Similarly, the fear of co-optation in collaborative processes is strong, and is not without historical precedent—the control of federal rangelands by 1950s era grazing boards being the classic example (Foss, 1960; Culhane, 1981). "Socialization" of resource managers in consensus-based and collaborative processes can be viewed as highly unprofessional by fellow managers; there is much anecdotal evidence to suggest that managers participating in these processes often do so at the risk of losing status within the agency. Manring's (1998:288) research on consensus building in the Forest Service is illustrative:

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<sup>73</sup> As described by Coggins (1999:604) in the context of federal devolution: "The notion of devolving decisionmaking authority over federal resources down to local citizens' groups is anything but novel. From the birth of the Nation, local citizens have banded together, usually at the expense of the general public and often with the connivance of federal and local officials. 'Claims clubs' were formed locally to dissuade outsiders, usually by illegal means, from bidding on lands the members wanted for themselves. Similarly, local citizens assisted one another in stealing federal timber and lead mines in the Midwest. Local collaboration has been a favored technique in this century as well. Irrigators have organized to cheat the government out of reclamation subsidies. Logging companies, loggers' unions, and timber dependent communities long have agreed on how the Forest Service should subsidize them. The most egregious example are the grazing advisory councils composed of ranchers who dictated the winners and losers in federal forage allocation. They won; small ranchers, nomadic sheepherders, and rangeland health lost."

A survey by Cheng, White, Hacker, and Ellefson (1993) found that “National Forest managers rank conflict and how to deal with it at the top of all forest management issues” (p. ii). Yet, according to a survey by Kennedy et al. (1992), only 31% of the respondents believed that consensus building is a value that should be rewarded by the agency.

A related issue involves the expanded use of market mechanisms in natural resources and environmental management. As described earlier, the community/collaborative model of governance and the expanded use of market mechanisms are the twin pillars of many modern reform proposals, including those of the National Performance Review and the Western Governors’ Association (NPR, 1996; WGA, 1998). Both of these tenets of the “era of alternative problem-solving” are tied to normative ideas advocating voluntary incentives (rather than penalties), and promoting flexibility and creativity in decision-making and problem-solving (Kenney and Lord, 1999). While these are powerful unifying principles, these two types of problem-solving strategies are quite different in their underlying assumptions about social capital—and quite possibly, according to Foley and Edwards (1996), work at cross-purposes.

Proponents of the community/collaborative model argue that through increasing contact and communication among concerned individuals, social capital is created, resulting in joint decision-making efforts in which parties increasingly subordinate individual desires to community objectives. Market proponents, in contrast, do not assume that any type of coordinated action or interaction among decision-makers is necessary or even desirable, but rather conclude that individual self-interest can, through the “invisible hand” of markets, fulfill community objectives. Both perspectives can be correct, but only to the extent that each problem-solving strategy is correctly matched to particular types of problem situations, a prerequisite requiring an analysis of the strengths, limitations,

and operational attributes of the various approaches. Unfortunately, this type of analysis is rarely seen—buried too deep below unquestioned normative assumptions and dogmatic prose.

Finally, it is important to remember that educational and social capital building activities may be valued even if they cannot be shown to translate to achieving on-the-ground objectives. Nickelsburg (1998) is among those distinguishing between “extrarational” and “rational” benefits, the former entailing benefits such as trust, respect, friendship, and similar benefits possible through collective interaction; and the latter focusing more on achievement of on-the-ground objectives.<sup>74</sup> Note that these two perspectives correspond to the earlier discussion about definitions of success. Interview data by Press (1994:96) suggests that many environmentalists are less concerned with the “building community” (extrarational) definition of success than with the more pragmatic “on-the-ground results” characterization:

[Environmentalists] wanted nothing less than substantial changes in the physical environment, even if they had to rely on “power brokers” or the courts to get their way. Instead of “more democracy,” these respondents were looking for very specific physical outcomes ...

Interestingly, similar sentiments about the overriding importance of on-the-ground success were also expressed in interviews with the “anti-environmental” activists, suggesting that those most passionate about resources may be least likely to engage in social capital building activities without some compelling argument that this will, in fact, lead to achievement of on-the-ground objectives.

None of these observations, as expected, provide a precise answer to the question of whether or not organizational achievements lead to on-the-ground success. Obviously, stake-

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<sup>74</sup> The classic text on this subject is provided by Mancur Olson (1965).

holders would not volunteer their time, and agency's would not allocate scarce resources to collaborative processes, if they did not assume that this cause-and-effect relationship existed.<sup>75</sup> The proliferation of these groups, many with broad memberships, suggests a strong and growing demand that is either based on real benefits or a strong expectation of future benefits. The *Source Book* contains many cases where on-the-ground achievements have occurred. Thus, the "social capital" concept underlying the community/collaborative model of problem-solving undoubtedly probably has at least some validity—do we really need empirical data to confirm this for us?—and it is a reasonable working assumption to conclude that this cause-and-effect relationship may be achievable in many situations. The much more relevant question, then, is to determine which factors are likely to encourage or discourage this cause-and-effect relationship in a given case, an issue now discussed in several contexts and most likely linked to the types of incentive structures resulting from various problem types and solution strategies. Of course, this task is greatly complicated by challenges in defining and measuring success, and must always be pursued with respect to lingering "governance issues" such as inadequate representation, co-optation, power imbalances, and so on. If "healthy democracies" are indeed a prerequisite to environmental sustainability, then these issues of governance cannot be understated; to the contrary, they must be at the heart of our thinking. The inherent limits of the "consensus" decision-rule are also an important consideration. Many of these issues are addressed further in the remaining pages.

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<sup>75</sup> Note that the vast literature pertaining to social capital building in third world environmental problem-solving is not reviewed here since the transferability of those findings is limited given the lack in those countries of strong governmental systems of resources management, property rights, markets, and other institutional features that can structure human relations and manage the human/nature interface.

**Question: How does the consensus decision-rule typical of collaborative groups influence the quality of decisions and decision-making exercises?**

The majority of mechanisms reliant upon the community/collaboration model of governance can be categorized as "consensus-based" processes. Consensus is one of several poorly defined terms used to describe modern governance arrangements.<sup>76</sup> In the context of this report, the term is recognized as having two related meanings. The first is to describe an approach to decision-making that emphasizes cooperation, learning, and accommodation of diverse interests. The second meaning is to describe a decision rule—i.e., a mechanism by which individual preferences are combined into a joint decision.<sup>77</sup> As a practical matter, *consensus* as a decision-rule is usually synonymous with *unanimity*, meaning that all involved parties must agree—or agree not to disagree—on all decisions, although the former term can suggest that this level of agreement is, at least in part, a reflection of individuals giving in to group interests, while *unanimity* typically has no altruistic implications.<sup>78</sup>

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<sup>76</sup> Other terms defying easy definition are ecosystem management, sustainability, and as discussed later, democracy.

<sup>77</sup> The meaning of "consensus" in the context of collaborative groups is discussed in some detail by Cestero (1999:14).

<sup>78</sup> Misunderstandings about the decision-rule dictated by the "consensus" requirement have been a complicating factor in several collective processes for natural resources management. For example, the interstate river basin commissions established pursuant to Title II of the Water Resources Planning Act of 1965 devised several different decision rules, although each was governed by the same statutory mandate to use consensus (ACIR, 1972). The practical similarity between consensus and unanimity—and the lingering confusion between the two terms—is perhaps best illustrated by the definition of consensus provided in the Negotiated Rulemaking Act of 1990, which states "consensus means unanimous concurrence among the interests represented" unless the committee "agrees to define [consensus] to mean a general but not unanimous

A similar point of confusion is associated with the term *decision-making*. While groups that adopt formal policy positions are universally recognized as engaging in decision-making activities, some parties are hesitant to acknowledge that activities such as education, planning, and on-the-ground remediation also involve collective decision-making—even if a structured voting process does not occur or Robert’s Rules of Order are not invoked. For example, the simple crafting of a group mission statement can involve making decisions about the definition of problems (often the most important stage in a problem-solving exercise), the selection of general preferences in solution strategies, and the adoption of procedural tenets to be used in guiding future actions. To the extent that these issues may not be controversial in a particular group, the act of decision-making may be largely invisible—but decisions are nonetheless being made, and if the process is consensus-based, then those decisions are probably being made through unanimity. This characteristic of many collaborative groups, including most watershed initiatives, can be highly salient in determining what these efforts can and cannot be expected to accomplish.

A strong mythology surrounds the phenomenon of consensus-based decision-making. A few of these assumptions have already been discussed; namely, the belief that consensus-based processes can produce decisions quicker, at lower cost, and of higher stability (measured by reduced legal challenges) than other processes. Undoubtedly, this is true in many occasions, but it is often false in others—a conclusion evident in many scholarly works, including Coglianese’s (1997) review of negotiated rulemaking and Amy’s (1987) review of environmental dispute resolution. The value of these findings is not to invalidate the claims of one side or the other, but to highlight the practical importance of understanding those situations and qualities that are likely to favor one decision-making approach over another.

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concurrency” or “agrees upon another specified definition” (5 U.S.C. § 562, 1994 & Supp I. 1995.)

The mythology of consensus transcends these “practical” considerations of speed, cost, and durability to include more normative notions of truth and social value. This component of the consensus mythology has a long history, as shown by Rescher (1993:1):

For much of the history of Western philosophy, consensus—uniformity of belief and evaluation—has been viewed as a desideratum whose ultimate realization can be taken as assured. Aquinas, in the Middle Ages, regarded consensus on fundamentals as a condition assured by *God*; Kant, in the eighteenth century, considered it as something rooted in the very nature of *Reason*; Hegel, in the nineteenth century, saw it as guaranteed by the spirit of cultivation working through the march of history ever enlarging its hold on human *Society*; Habermas in the twentieth century sees it as inherent in the very nature of *Communication* as an indispensable social praxis. Throughout much of the tradition consensus was viewed not just as something to be desired, but as something whose eventual actualization is effectively assured by some principle deep-rooted in the nature of things as we humans confront them in this world.

Consensus, we are told, is not merely a logical and inevitable product of the search for truth, but is something with a strong social value. This idea, especially strong in the tradition of German social thought extending from Hegel to Marx and to the Frankfurt School and beyond, assumes that maintaining social order requires a strong commitment to consensus in all public matters (Rescher, 1993). Accepting this assumption could have tremendous ramifications for American society, in that it can provide a formidable bias against diversity and individualism, and can promote an intolerance of disagreement and those processes used in democratic societies to manage, rather than

suppress, social conflict.<sup>79</sup> Equally troubling is the assumption that consensus is always possible given sufficient communication, education, and learning.<sup>80</sup> While many success stories in ADR demonstrate that consensus is frequently achievable<sup>81</sup>, the assumption that this is always the case can only be considered as naïve. In the context of watershed initiatives, one component of this naïveté is identified by Coggins (1998:29), who questions the assumption that all parties to natural resource and environmental disputes are reasonable and, ultimately, share similar values:

The first assumption underlying most proposals to devolve authority to local collaboratives is that, at bottom, we are all reasonable people who will see both sides of the issue and reach appropriate compromises. This assumption is demonstrably untrue.<sup>82</sup>

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<sup>79</sup> Reschner (1993:158) rejects the tradition of German social thought stressing social order through consensus, and instead calls for “a benevolent (or at any rate resigned) acceptance of the disagreement of others with respect to beliefs and values. Such an approach envisions a posture of diversity conjoined with ‘live-and-let-live’, taking the line that a healthy democratic social order can not only tolerate, but even—within limits—welcome dissensus (disagreement, discord), provided that the conflicts involved are kept within ‘reasonable bounds’.”

<sup>80</sup> Forest activist Jim Britell suggests that this idea is a cornerstone of the Neo-Liberalism movement gaining ground internationally. This philosophy asserts that value conflicts are not at the heart of disputes, and that through better management and consensus-building processes, win-win solutions can always be found. This idea is articulated at [www.britell.com/text/tuse11c.html](http://www.britell.com/text/tuse11c.html).

<sup>81</sup> For examples from the world of environmental dispute resolution, see Bingham (1985), Blackburn and Bruce (1995), and Bacow and Wheeler (1984).

<sup>82</sup> Other assumptions challenged by Coggins include: “negotiated plans and agreements will leave all participants and the public interest better off” (page 30); “the issues on which collaboration is needed are local problems better solved by local people with knowledge of local conditions” (page 30); and “the federal government is the bad guy” (page 30). Coggins concludes that “some of the assumptions on which the case for collaboration are premised are

The other dominant idea at the root of the consensus mythology is that consensus-based processes are more likely to lead to the “correct” answer than are other processes of decision-making. Many accepted tools from the decision sciences—particularly, the Delphi Method—are based on the idea that decision processes which are iterative and learning-oriented can lead to more technically accurate group decisions, a conclusion based on considerable research (Helmer, 1983). The strength of consensus-based processes in managing and synthesizing data-intensive issues is also well established in practice (Bingham, 1986). Thus, there is likely merit to this assumption in many situations; however, as Rescher (1993:29) observes, one should not confuse opinion and fact, even if that opinion is the product of group deliberation:

The problem, of course, is that consensus does not bridge over the truth-opinion divide that has been on the agenda of philosophy ever since the days of Parmenides. A consensus as such is still no more than a consensual *opinion* that reflects the beliefs of the group. There may be safety in numbers, but they afford no guarantees.

Bridging the gap between issues of the “social value” of consensus and its likelihood to lead to correct decisions is the work of some social psychologists who have examined the types of decisions that emerge from consensus processes dealing with issues heavily steeped in opinion. Many researchers have observed that when groups comprised of individuals with diverse opinions are organized to make collective decisions, the resulting decisions tend not to be the “average” of various positions, but rather an

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contrary to human nature and human experience. Our legal system and our history recognize the inevitability of disputes and controversies not amenable to resolution by consensus building, and we have established an intentionally inefficient tripartite representative machine to resolve those disputes without bloodshed through law” (page 30).

extreme position. This finding reflects common experience that suggests that individuals are bolder when acting within groups than in acting alone. This phenomenon, termed “group polarization” by Moscovici and Zavalloni (1969), has been shown empirically under laboratory conditions. Similar results are found in the work of Davis and Hinz (1982), who observe that “moderating sessions” designed to calm protests often result in more extreme positions. Presumably, these outcomes are most likely to occur when the level of participation is high, the opinions expressed are widely divergent, and when the stakes are perceived as high (Moscovici and Zavalloni, 1969; Moscovici and Doise, 1994). This finding presents a further challenge to the mythology of consensus, and especially the idea that consensus-based processes promote social order by moderating extreme viewpoints. As Moscovici and Doise (1994:14) observe:

The importance of such results resides partly in the fact that one might expect group discussion to cause individuals to round off the rough edges, smooth out their attitudes, moderate their choices, and so on. Now it appears, on the contrary, that the outcome is to make them more extreme.

Of course, much of this debate is rendered moot if you challenge that assumption that pursuing agreement is an inherently worthwhile endeavor. Many parties take exception to the Neo-Liberal idea that conflict is inherently bad or socially destructive. McCloskey (1996), for example, fears that in embracing collaboration, conflict is being “de-legitimized.” Such ideas are not accepted by those embracing the tradition of social activism so central to many movements, including environmentalism, often with good reason. The observations of Britell<sup>83</sup> are typical of this line of thought:

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<sup>83</sup> Taken from the article, “The Myth of ‘Win-Win’,” accessed June 3, 1999 at [www.britell.com/text/tuse11c.html](http://www.britell.com/text/tuse11c.html).

Our history from the revolution forward provides abundant examples that justice and liberty are sometimes best achieved by absolutely refusing to sit down and find “common ground” and “win-win” solutions. In fact, it is arguable that of most turning points in history where great issues of human freedom were at stake, in-your-face confrontation saved the day. On the other hand, when key turning points were resolved with “win-win” solutions like Chamberlain used at Munich on the eve of World War II, the greatest human calamities have ensued.

Thus, while scholars such as Rescher (1993) worry that an over-reliance on consensus processes may unduly squelch or discredit diverse opinions, some of the findings of the social psychologists warn that consensus processes may exaggerate extreme positions—likely reflecting the norms of the dominant personality, rather than a balanced spectrum of participant viewpoints. Still others argue that the best processes are often those that deliberately avoid any attempt at reaching a mutually acceptable agreement, and instead celebrate conflict as legitimate and useful. These findings are somewhat difficult to integrate, both on practical and normative grounds, but do suggest that it may be inappropriate to assume that a “consensus opinion” will approximate the “common good,” although generalizations on this subject are difficult to substantiate (Berman, 1997). Determining which behavioral phenomena might prevail in a given consensus-based process is obviously extremely difficult, but it is worth observing that none of the outcomes described above by Rescher, the social psychologists, or the environmental activist (Britell), probably satisfy the idealistic image of consensus as promoting truth, harmony, and social stability. Interviews with watershed initiative participants indicate that these ideals have been achieved in many cases, but not in many others. To blindly assume that positive outcomes are an inherent component of consensus-based processes is to ignore a vast

body of literature, thought, and experimentation suggesting that these processes are highly complex on many levels, and that significant deviations can occur from case to case due to factors that are not easily understood.

Of course, many of the concerns raised to challenge the merits of consensus-based processes have relatively little to do with broad theoretical issues or ongoing academic debates, or even the practical efficiency issues of time, cost, and stability identified earlier. Strategic considerations are also of note. One of the most salient issues of this nature involves the social pressure to compromise. This phenomenon is discussed by Blackburn (1988:569) in the context of environmental mediation versus litigation, but is presumably applicable to a wide range of consensus-based processes:

The internal dynamics of environmental mediation are completely different [from] the courtroom context. Participants in mediation often develop bonds of trust, understanding and even affection, toward their opponents. The climate of understanding and progress in working toward mutually satisfactory solutions creates subtle pressures to be reasonable and conciliatory. These dynamics may undermine the determination of unsophisticated parties to stand their ground on issues. . . . The parties with less experience and sophistication may walk away with an agreement which favors their perspective much less than would have been possible in a more public, adversarial context.<sup>84</sup>

As Blackburn suggests, the susceptibility of a person to the social pressure to compromise is,

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<sup>84</sup> Similar sentiments are expressed by McCloskey (1996): "It is also troubling that [collaborative] processes tend to de-legitimize conflict as a way of dealing with issues and of mobilizing support. It is psychologically difficult to simultaneously negotiate and publicly attack bad proposals from the other side. This tends to be seen as acting in bad faith."

at least in part, a function of experience and training. Although many natural resources and environmental conflicts are much more complex than the classic characterization of the developer versus the environmentalist, it is certainly not uncommon for disputes to pit those with a clear economic interest against parties seeking non-economic and/or broadly dispersed benefits. In such cases, it is typical that the disputants will have very different skills in regards to dispute resolution, with the representatives of the economic interests normally possessing greater training and experience in the craft of negotiation (Amy, 1987, 1990). Perhaps more importantly, environmental representatives in these efforts are frequently volunteers, resulting in a situation in which paid, professional negotiators are sitting across the table from volunteers. As mentioned earlier, many parties believe this fact is behind the generally higher level of support in the business community than the environmental community for negotiated problem-solving.<sup>85</sup>

The frustration expressed by environmentalist Michal Black is typical:

It is extremely difficult for citizens to take the time and money to participate. . . . Personally I become frustrated when I take the time and effort to attend these meetings, and look around the room and realize I am the only person present not getting paid to

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<sup>85</sup> The observations of Nickelsburg (1998:1391-1392) are illuminating: "Bargaining is expensive. Although each step in the bargaining process may be less costly than the action required for a single, all-encompassing solution, the complete effort may involve hours of meetings and information-gathering and may last for years. Voluntary participation in a bargaining regime is itself a collective action problem subject to its own structural barriers. Community members may lack the time to devote to an exhausting, collaborative effort. Moreover, professional and scientific assistance may not be available or may be prohibitively expensive. The probability that citizens will undertake such long-term collective action varies widely from community to community, most likely in correlation with the economic prosperity of the inhabitants."



attend. Volunteer resources can only go so far.<sup>86</sup>

Another strategic concern is one of inadequate representation. This is a chronic issue to the environmental activist, as many modes of public policy-making are biased in favor of economic interests (e.g., the pluralism model described by Lowi, 1979). In the context of collaborative groups such as watershed initiatives, concerns over environmental group under-representation are inexorably tied to the larger issue of local versus national decision-making.<sup>87</sup> As Michael McCloskey (1996:7), chairman of the Sierra Club, has observed:

Few of the proposals for stakeholder collaboration provide any way for distant stakeholders to be effectively represented. While we may have activists in some nearby communities, we don't have them in all of the small towns involved. It is curious that these ideas would have the effect of transferring influence to the very communities where we are least organized and potent. They would maximize the influence of those who are least attracted to the environmental cause and most alienated from it.

Similar concerns over inadequate representation have also been articulated in congressional testimony by The Wilderness Society's Louis Blumberg (1997:6):

The fundamental problem of adequate representation remains a significant obstacle to successful collaborative

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<sup>86</sup> This comment was one of many similar opinions expressed in a Sierra Club listserv discussion of collaborative groups (RMC-CONS-WATER) occurring primarily in late October, 1998.

<sup>87</sup> Reflecting on his experiences mostly in the Pacific Northwest, Oregon WaterWatch's Reed Benson (1998:284) asserts that "Today's watershed councils tend to be heavily weighted in favor of local economic interests, to the disadvantage of resource protection."

efforts. Questions remain as to how national and regional interests can be fairly represented in an exclusively local process? Who speaks for the environment? One particular local environmentalist does not necessarily speak for other local or national environmental interests. Who speaks for the land and future generations? Achieving a full range of stakeholders is quite difficult, especially when the land under debate is all public lands.

If greater involvement of "local" interests is achieved only at the expense of a reduced presence of national environmental interests, then the assumed problem of inadequate representation in natural resources management has not been resolved, but only modified.

Ultimately, issues of skills and representation in consensus-based processes are components of the larger issue of power, an issue closely tied to the qualities of the decision-rule of unanimity. Forums utilizing unanimity are widely assumed to be a low risk arena for discussing problems and solutions, given that no group actions can take place in the absence of agreement by all parties—including minority interests (i.e., those advocating positions that are not widely held). While that is true, the practical ramifications of unanimity are not always so obvious. Falk (1982) is among those researchers who have studied the relationship between decision-rules and power. In a comparison of three situations—one where no decision rule existed, one where unanimity was utilized, and one where majority-rule was featured—Falk found that it was the majority-rule framework that most increased the power of minority (i.e., underrepresented) interests, such as environmentalists, to achieve desired outcomes.<sup>88</sup>

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<sup>88</sup> Falk's (1982) empirical research shows that in the no-rule situation, powerful parties dominate by virtue of their greater resources and expertise; minority interests have no mechanism to be heard or to exercise influence. In a unanimity situation, two outcomes are possible, neither of which help minority interests. First, minority interests may veto

This result should not come as a surprise to environmental activists, who have found their greatest victories in Congress and the courts, arenas where the consent of their “anti-environmental” counterparts is not a prerequisite to successful decision-making.

From the standpoint of parties advocating minority positions, the real benefit of consensus-based processes is often best described as the ability to prevent further defeats (or action of any kind), rather than the ability to formulate victory (Press, 1994). Of course, this “benefit” is not useful to environmental interests participating in ecological restoration programs, where the impetus is on taking action rather than preventing action. As Luecke (1999:8) observes:

In a multi-party process, the efficacy and weight of one interest (even more so for a minority party) is often imperceptible. Its influence is thin and diffuse. At best, one party can usually do little more than form a coalition (or voting block) to stop an action it does not support. It cannot move the process in a direction it thinks it should go. It may be able to create a stalemate, but not progress.

This is somewhat ironic, given that collaborative efforts are often described as a solution to gridlock. Of the three apparent strategies for dealing with gridlock in consensus-based processes, two are of dubious merit. The first is to ensure decision-making by limiting representation to only a sub-set of all relevant

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a given action, resulting in a situation of gridlock that harms all interests with an interest in problem-solving. Second, the veto may have the practical result of stymieing the collective decision-making process, encouraging the powerful party to result back to the no-rule situation where winners and losers are largely dependent on other power sources, such as economic might. However, in the majority-rule situation, an opportunity exists for minority interests to impact the final decision through bargaining, or to perhaps dominate the final outcome through coalition-building with other low-power entities.

interests, with extreme interests being systematically excluded. As Nickelsburg (1998), McCloskey (1996), and many others have observed, this strategy can be devastating to any minority interest—the typical situation for environmental and public interest activists.<sup>89</sup> A much more positive strategy is to foster an exchange of information and ideas, synthesize this data in a creative way, and craft a solution that satisfies the needs of all parties. It is this potential that is at the heart of the profession of alternative dispute resolution, and as discussed earlier, is often a realistic option in situations featuring symmetrical incentives, positive-sum solutions, and/or relatively low (or avoidable) value conflicts.

The third strategy is simply to avoid issues where strong dissenting opinions exist. This may not be a significant impediment, at least initially, in many collaborative groups if a sufficient supply of easily resolved problems and readily available solutions exist to facilitate problem-solving (i.e., the “low hanging fruit” argument). However, difficult issues eventually must either be faced, leading to the prospect of gridlock, or they must be sidestepped. According to Coglianesi (1999), this phenomenon was aptly demonstrated by the Enterprise for the Environment experience. Enterprise for the Environment (a.k.a., E4E) was a multi-stakeholder consensus-based effort led by former EPA Administrator William Ruckelhaus—in cooperation with the National Academy of Public Administration, the Center for Strategic and International Studies, and the Keystone Center—to reform environmental policy. The goal of the effort was to use a consensus-based process to develop new environmental policies/programs, which would presumably also likely feature consensus processes. In drafting the E4E report, however, the group was unable to reach

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<sup>89</sup> Research on interest group politics suggests that environmental and public interest advocates will likely always remain as minority interests in public policy debates, given that the system of rewards in public policy systems is strongly biased in favor of narrow, economic interests. This is a fundamental quality of pluralism (Olson, 1965; Lowi, 1979).

agreement on most significant issues. Thus, when the group issued their report (*The Environmental Protection System in Transition*<sup>90</sup>) in 1998, it went nowhere—in part because many important parties (e.g., the Natural Resources Defense Council) refused to sign.

Coglianesse (1999:4) suggests this reflects an inherent weakness of consensus-based efforts to reach conclusions on divisive issues, thereby encouraging vague and weak statements that overestimate the progress reached:

The report recommends that the U.S. “adapt and adjust policies, strategies, and systems based on experience and new information,” that it “generate, disseminate, and rely on the best-available scientific and economic information,” and that it “place authority, responsibility, and accountability at the appropriate level of government.” Yet no one seriously argues government to place authority at inappropriate levels, generate shaky data, or ignore the lessons of experience. The E4E report does not tell us what specifically are the appropriate levels of government, or even what “appropriate” means. It does not discuss the accuracy of certain kinds of information or how to resolve the tradeoff between the desire to gather additional information and the desire to take action. Finally, the report does not explain how to interpret experience in order to make policy changes. The E4E members themselves, recall, could not agree on the lessons to be drawn from the past thirty years of environmental regulation. The devil, as well as much

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<sup>90</sup> Note that the E4E report contains an excellent review (and endorsement) of many key features of modern reform proposals: e.g., performance-based management, market incentives, place-based strategies, consensus. Yet, these ideas are expressed in a highly abstract and general way, since reaching consensus on the details proved impossible.

of the needed direction, lies in the details.

Presumably, what is needed are decision-making mechanisms that allow problems to be addressed in the absence of consensus, and in a manner that is broadly-focused and creative. It is this first criterion that can limit the use of collaborative groups, while the second criterion is most troublesome for approaches reliant on judicial action, some market mechanisms<sup>91</sup>, and legislative tools (which at least partially fail both criteria due to the political requirements of pluralism). Again, this limitation on watershed initiatives and similar efforts should not be interpreted as a reason to abandon or discredit the use of this tool, but rather to use it more realistically and strategically. As Born and Genskow (1999:58) observe:

[I]t is critical to note that *some* of the major issues that must be dealt with in watershed protection and restoration not only have huge distributional consequences (i.e., there are winners and losers), but for any number of reasons may be intractable and impossible to resolve via “win-win” consensual solutions. Experienced mediators can help diagnose those issues and circumstances where consensus approaches have little likelihood of success, and help avoid protracted watershed processes that are either doomed to fail or can at best produce inefficacious “lowest-common-denominator” results. We say this not to diminish the potential of collaborative watershed approaches, but to straightforwardly note that much of watershed planning, decision-making

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<sup>91</sup> The ability of market regimes to promote creative and innovative solutions is not questioned. The limitations of markets in this context pertains to the fact that, unless cleverly nested within an innovative institutional structure, markets cannot be expected to promote integrated goals serving public, rather than private (consumer), interests.

and management involves conflict resolution among competing interests. General agreement among stakeholders about such lofty aspirations such as “clean water,” “healthy sustainable ecosystems,” and a “healthy economy” does not reconcile divisive issues.

## Democratic Decision-Making: An Evolution of Normative Ideas

The preceding discussion summarizes much of what is currently known or presumed regarding the efficacy of western watershed initiatives and similar strategies in community-based environmental protection. Clearly, much more empirical research is needed to test many of the positive and speculative opinions identified in this report. Yet, it would be foolish to travel further in that direction without acknowledging that research alone will not guide activism and policy-making in this subject area, as it is an area dominated by strong normative opinions only partially amenable to formal testing. The pragmatic definition of success offered earlier captures only part of the stimulus behind the western watershed movement. The other dimension involves issues of what is, and is not, an *appropriate* form of governance. Ultimately, this is a philosophical debate that must be played out on a political stage only indirectly influenced by the academic community. As Cortner et al. (in press:3) observe:

Issues surrounding the who, what, where and how of governing are, by their very nature, highly political. They reach to the very core of the nation’s democratic and federal system of government and to the balances struck among levels and branches of government and between citizens and their government.

While an extensive review of all the potentially relevant normative ideas guiding

trends in governance is well beyond the scope of this report, the following pages do provide some discussion about changing norms regarding democratic institutions and competing modes of decision-making. The current popularity of the community/collaborative model of decision-making, after all, is a product of centuries of experimentation and learning, and is undoubtedly a step to a yet unknown preferred future form of governance and problem-solving. As always, normative ideas about democracy will have a strong influence in guiding this ongoing process of institutional evolution.

Democracy, it turns out, is a term that means many things to many people (Graham, 1986). Virtually all meanings of the term are faithful to the original Greek term *demos* in that democracy is seen as a system of governance that allows for participation of the populace—i.e., government of the people, by the people, and for the people. But who are the people, and how are they to govern? Two centuries ago, the *demos* in the United States was not presumed to include those of African descent; similarly, less than a century ago, women were also systematically excluded from a public policy role. When Gifford Pinchot was building a national forest bureaucracy based on the premise of “the greatest good for the greatest number,” half of that number, the women, were still awaiting the right to vote, something not secured until passage of the 19<sup>th</sup> Amendment in 1920, long after the creation of the Forest Service—and, incidentally, the National Park Service, the Corps of Engineers, the Bureau of Reclamation, and many other still-influential natural resource agencies and the programs they implement. Even slower has been the recognition in law and custom of Native American rights and, more generally, the rights of those parties who do not own land or possess water rights, or who do not enjoy special access to resources due to leases, contracts, or other historic arrangements derivative of extractive natural resource industries.<sup>92</sup> The

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<sup>92</sup> Thus, when noted western author Charles Wilkinson (1992) speaks of the “lords of yesterday,” he typically is not talking about an aristocracy of

rights of communities is also an issue of great complexity and concern.

In addition to issues of “who” is involved, any working definition of democracy must also address issues of “how”—i.e., the processes of decision-making and governance. Clearly, some processes of public decision-making are viewed as being more democratic than others, although again, this is not an area with great consistency or stability. This is perhaps best seen by examining decision-rules, a particularly relevant topic given the focus in this paper on consensus processes. Most systems of democracy prominently utilize majority-rule; e.g., presidents are elected and bills become law primarily through majority-rule processes. But not all majority-rule is created equal. In parliamentary systems, for example, garnering 40 percent of the vote typically entitles a party to select 40 percent of the representatives; in the United States, 40 percent of the popular vote is no better than zero (assuming the other candidate gets the remaining 60 percent). Which system is democratic? Similarly, are processes reliant upon unanimity—the typical decision-rule of consensus-based processes—democratic? Graham (1986:17) is among those that answer no:

The unanimity requirement ... effectively places a veto in the hands of a single dissenter and therefore falls foul of any principle of equality of influence which may be embedded in the notion of democracy.

If, as Graham suggests, “equality of influence” is the key distinction of democratic processes, then we must evaluate the democracy of processes by the opportunities they present to all recognized parties to participate and to affect an outcome—but how much participation is required, how should participants be selected, through what means must this occur, and how much impact on the final decision is required? Ultimately, the answers to such questions are normative, in that they speak to what we feel is

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heterogeneous values or ethnicity, nor is he talking about ancient history.

“appropriate.”<sup>93</sup> These questions are always being debated in various forums and contexts, following a sometimes peculiar path, and frequently circling back to ideas abandoned in earlier debates.<sup>94</sup> In many respects, it is this longer-term process, rather than the set of rules or norms prevailing at any given time, that best defines democracy.

### Democracy and the American West

Underlying the debate surrounding watershed initiatives and related mechanisms of decision-making heavily reliant on direct stakeholder involvement are centuries of scholarly debate regarding the merits of democratic institutions.<sup>95</sup> Among proponents of democratic governance, a key area of debate is often described as pitting the proponents of “direct democracy”—also known as “participatory” or “pure” democracy—advocating direct citizen involvement and deliberation in public policy decision-making, against supporters of “representative democracy” arguing for decision-making by elected public officials in competitive forums only partially subject to popular control (Cortner et al., in press; Kemmis, 1990). While undoubtedly important, in the context of western collaborative groups, this dichotomy can be overly simplistic, obscuring the salient influence of two tangential issues that have dramatically influenced democratic institutions for natural resources management: namely, the merits of utilizing an elite and largely independent decision-making

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<sup>93</sup> To the extent that a process satisfies our norms, it is labeled democratic. As Graham (1986:9) has observed: “The concept of democracy has a strong normative aspect: to call a system democratic is not merely to describe it, in however imprecise a way; it is generally to express a favourable attitude toward it...”

<sup>94</sup> The current debate over reforming Affirmative Action programs is a good example.

<sup>95</sup> Cortner and Moote (1999) provide a thoughtful review of the relationship between democracy and resource management in *The Politics of Ecosystem Management*. Also useful is McKinney’s (1999) analysis which focuses squarely on the management of western natural resources.

class—technocratic in this case rather than aristocratic—and the forces supporting the evolution of an interest-group mode of decision-making. These issues all have a long history.

While the merits of democratic decision-making have been debated in many nations over several centuries, the United States has long been viewed as the preeminent laboratory of experimentation in democracy ever since the colonies revolted against a tyrannical British monarchy. Upon completion of the revolutionary war, the Constitutional Convention of the United States capped a lengthy and spirited period of debate between the proponents of participatory democracy, such as Thomas Jefferson, and those of representative democracy, such as James Madison, both united in a common adherence of aristocratic monarchies, but harboring different opinions regarding the merits of popular, majority-rule governance. While Madison's perspective generally prevailed in the structuring of the U.S. Constitution, it is Jefferson's notions of direct citizen involvement in policy-making that secured a special place in American culture, and in subsequent nineteenth century descriptions of the United States by outside commentators such as Alexis de Tocqueville (1968).

Western watershed initiatives reflect the spirit of direct democracy described so passionately by Jefferson, and put in context a century later in the writings of John Wesley Powell (1890:113) calling for "local self-government by hydrographic basins" in the arid and semi-arid regions of the American West:

... in the name of the men who labor I demand that the laborers shall employ themselves; that the enterprise shall be controlled by the men who have the genius to organize, and whose homes are in the lands developed, and that the money shall be furnished by the people; and I say to the Government: Hands off! Furnish the people with institutions of justice, and let them do the work themselves.

It is a historical reality—many would say mistake—that this vision of Powell was not adopted, as a federal reclamation program emerged in the West concentrating federal technical and financial resources on the development and management of shared resources (Kenney, 1999b). With astounding effectiveness, this new model of resource development not only transformed the physical landscapes of the West, but introduced the region's institutional landscape to decision-making processes featuring outside technical elites and organized interest groups. Rather than Jeffersonian self-determination or even elected representation on the Madisonian model, the "iron triangles"<sup>96</sup> of federal water development frequently cast local interests in an advocacy role, supporting narrowly-focused interest groups seeking to gain a share of federal investments in resource development. The subsequent allocation of developed water resources to private parties further divorced resources from coordinated public control.

It is more than a little ironic that the fundamental argument aired during the Constitutional Convention in favor of representative, rather than direct, democracy, was that a "tyranny of the majority" might occur in a pure democracy, with majority-rule systems providing no protection to minority opinions.<sup>97</sup> This fear was widely held, although parties disagreed over the significance of the issue and the best mechanisms for dealing with the concern. What was not envisioned was the "tyranny of the minority" that has occurred in the natural resources realm in at least two forms and eras. The first expression occurred largely in the late 1800s, when western expansionism combined with largely unregulated capitalism and a weak

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<sup>96</sup> The term "iron triangles" is used by many authors (e.g., McCool, 1987) to describe the political subsystem through which much of western water policy was fashioned by the joint action of three groups with similar objectives: pro-development interest groups (project beneficiaries), key congressional committee members, and the federal bureaucracy (i.e., the Bureau of Reclamation).

<sup>97</sup> The classic source for this debate is *The Federalist Papers* (see Fairfield, 1961).

federal government to result in strong private monopolies and tremendous economic disparities. Concerns over the social and environmental consequences of unregulated capitalism were a primary concern of the Progressives, the dominant political party at the turn of the century (Hays, 1959). The so-called Progressive Conservation movement (circa 1890-1920) featured an emphasis on federal land retention and preservation, and the corresponding evolution of a cadre of federal technocratic resource managers, perhaps best illustrated by Pinchot's Forest Service (Kaufman, 1967; Pinchot, 1947). Thus, bureaucratic control through regulation, rather than private entrepreneurialism (often buttressed by governmental subsidies and inattention), became a dominant expression of natural resources democracy during the early twentieth century.

The expansion of the federal natural resources bureaucracy was given further stimulus in the Great Depression era, when centralized planning was in vogue, and federally orchestrated natural resource development projects were initiated to address problems of unemployment and economic stagnation—the classic example being the Hoover Dam project.<sup>98</sup> As the nation emerged from Depression and a second World War, however, the fundamental quality of American democratic institutions changed, giving rise to a second variation on the tyranny of the minority. In this era, the role of interest groups in establishing public policy was sharply elevated, leading to a form of democracy described by Theodore Lowi (1979) as the “Second Republic.”<sup>99</sup> This is the era of pluralism (also known as interest-group liberalism), which is based on the normative idea that it is appropriate and “democratic” for organized interests, acting through a system of bargaining

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<sup>98</sup> By the mid 1930s, the four largest concrete dams ever built were under construction: Hoover, Shasta, Bonneville, and Grand Coulee, prompting Reisner (1986) to refer to this era as the “Go-Go Years.”

<sup>99</sup> The “First Republic” is the government described in the Constitution, which calls for a weak federal government and strong state (and presumably local) governments (Lowi, 1979).

and compromise, to determine public policy.<sup>100</sup> Unfortunately, much like unfettered capitalism, the incentive structure of pluralism typically favors narrow economic interests over broad social goals and disadvantaged parties, issues of particular concern in the realm of natural resources and the environment. As Amy (1987:131-132) has observed:

Environmentalists' concerns about basic imbalances in political and economic power have found support in the work of a number of prominent political scientists and political theorists. Political thinkers as diverse as E.E. Schattschneider, Grant McConnell, and Charles Lindblom have taken issue with the pluralist vision of power in American politics. They have argued that there exists a persistent inequality between interest groups in American politics, with a decided bias in favor of large business and financial institutions. Other scholars, like Mancur Olson, have also noted that environmentalists and other public interest groups always face a number of unique and substantial obstacles in their efforts to balance out the political power of concentrated economic interests.

Pluralism, described in this way, certainly does not satisfy the “equality of influence” measure of democracy presented earlier by British philosopher Keith Graham (1986:17). On the other hand, authors such as Nicholas Rescher (1993:158)—in arguing against consensus-based processes—make the case that “a benign social order can be unabashedly pluralistic,” in that this form of governance accommodates the expression of a wide diversity of opinions. In fact, pluralism makes no assumptions about the

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<sup>100</sup> Substantively, pluralism is without real normative content, as policies are not judged to be good or bad, but simply are either politically viable or not viable (Lowi, 1979).

possibility of, or value of, reaching consensus.<sup>101</sup> How, then, do we accommodate a desire for full access of people and ideas into the public policy arena, while ensuring that once engaged, all parties will have an equality of influence? How can equality of influence be achieved or even measured in systems that do not provide a practical means for reaching decision? Further, how do we achieve an equality of influence without suffering the inequalities inherent to systems that link influence to economic power (either through owning resources privately or through a competitive advantage in public policy-making systems), without abandoning the efficiencies provided by market systems and the equality of opportunity potentially achievable through capitalism, or without disrespecting investments and traditions highly reliant upon maintaining private property systems? If democracy means that everyone participates and every viewpoint prevails in the decision-making process, then the very survival of democracy depends upon our ability to reach consensus—a wonderful vision when achievable, but clearly not a realistic option in many situations. And even if consensus can be reached, should we assume that the consensus decision is technically sound?

This set of issues can become overwhelming when applied to our natural resource agencies, who are expected to blend “impartial” science, public input, and considerations of the larger public good, all nested within legislative and administrative mandates, to produce sound policy outcomes on issues presumably too complex and specialized to handle through less formal means

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<sup>101</sup> Rescher (1993:4) argues that consensus is often an unrealistic goal of questionable merit: “The fact is we live in an imperfect world. The resources at our disposal are limited—our own intellectual resources included. We have to be prepared for the fact that a consensus among people, be it global or local in scope, international or familial, is in general unattainable. In a world of pervasive disagreement we must take recourse to damage control. We must learn to live with dissensus—with pluralism in matters of opinion. And we must and can bring to realization frameworks of social inclination that make collaboration possible despite diversity and that facilitate co-operation in the face of dissensus.”

of self-government, and too vulnerable to abuse to be left to market approaches. The practical logic of utilizing a technical elite has always been difficult to reconcile with the philosophical attraction of democracy, especially in subject matters such as natural resources which feature difficult issues with both technical and value dimensions. John Stuart Mill, for example, while a strong proponent of direct democracy, identified representative democracy as a more practical means of concentrating knowledge and expertise in public policy-making, even arguing for graduated voting systems that gave the most enlightened parties the greatest voting strength (Mill, 1861).<sup>102</sup> This form of representative democracy, a compromise between direct democracy and reliance upon a technical elite, would not likely have been persuasive with Jefferson, who made the timeless argument in favor of an educated populace:

I know of no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome direction, the remedy is not to take it from them, but to inform their discretion by education.<sup>103</sup>

While the word “wholesome” probably indicates that Jefferson’s words were more about the potential for *unjust* rather than *technically*

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<sup>102</sup> *Representative Government* (1861). Note that Mill does not advocate representative government over direct democracy due to the tyranny of the majority concern, but due to more practical considerations: “But since all cannot, in a community exceeding a single small town, participate personally in any but some very minor portions of the public business, it follows that the ideal type of a perfect government must be representative.” Furthermore, his review of governance arrangements suggested that bureaucratic governments are best at concentrating technical skills on public problem-solving.

<sup>103</sup> Quote attributed to Thomas Jefferson, in a letter to William Charles Jarvis, 1821. Cited in Cortner et al. (in press:34).



*deficient* citizen decision-making, this second issue deserves some attention, as it influences our notions about what forms of governance are democratic and which are not. The belated recognition of the “social component” of scientific decision-making is particularly important, as the “reliance upon technical expertise has helped obscure responsibility for major social decisions, weakening the system of checks and balances” (Nelkin, 1977:12). For example, commenting upon the impact of historical decisions on modern water institutions, Feldman (1991:54) writes:

The failure of water law places extraordinary responsibility for implementing water policy in the hands of engineers. Unfortunately, engineers are inadequately trained to address ethical issues in environmental management. As a consequence, issues of equity, feasibility, transactions costs, noneconomic values, and public participation have been insufficiently incorporated in water policy. The conferring of water rights upon a few groups and the placement of authority for policy in the hands of an engineering elite have produced a water policy both *undemocratic* and unresponsive to environmental concerns. (Emphasis added.)

Deciding who should decide has never been an easy determination in the design of natural resource institutions. True, while it is clearly inappropriate to concentrate value decisions in the hands of technical experts, or conversely, technical decisions in the hands of untrained citizens, the distinction between the two types of content is not always obvious. As Lord (1984:653) observes, confusion between values and facts—i.e., between normative and positive opinions—is a serious and frequently common problem plaguing modern water resource institutions:

Science and technology are concerned with facts and means, not with values

and ends. Ethics and politics are concerned with values and ends. Bad water management often occurs when facts are confused with values, when means are confused with ends, and when technical judgments are made by citizens and politicians while value judgments are made by scientists and professionals.

Further complicating the distinction between technical decisions and broader policy issues has been a growing distrust of science and technology itself:

Decisions once defined as technical are increasingly forced into the political arena by people who are skeptical about the value of technological progress, who perceive a gap between technological and human needs, or who mistrust the concentration of authority in bureaucracies responsible for technological change. Policies concerning science and technology once based on the assumption that technology equals progress now involve difficult social choices. (Nelkin, 1977:10).

It is against this complex background—this swirling maelstrom of issues regarding democratic institutions of governance—that the environmental movement of the 1960’s and 1970’s was nested, one element in a loose amalgam of social movements challenging fundamental issues of private rights, public powers, and societal responsibilities (Paehlke, 1989).<sup>104</sup> In the realm of natural resources and the environment, emerging programs for pollution control, species protection, project review, and public land management all reflected

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<sup>104</sup> Several ongoing social movements, generally thought of as discrete phenomenon, shared many similar tenets. Of particular note are the social equity components of environmentalism, civil rights, feminism, and pacifism (e.g., anti-Vietnam War protests) (Paehlke, 1989).

prevailing normative ideas of the era. Of particular note was the expressed preference in favor of regulatory, rather than market-based processes; the desire to nest scientific expertise within democratic decision-making processes stressing citizen participation; the gradual expansion of state and local governmental roles in implementing programs with federal origins; and the empowerment of disenfranchised interests through litigation opportunities, arising in part from relaxed rules of standing and the proliferation of class action lawsuits. The result has been heavily formalized procedures of decision-making and conflict resolution, exhibiting qualities of both participatory and representative democracy, as well as decision-making by interest groups and technical elites. The result has also been gridlock, a situation where the distribution of power is sufficiently diverse and conflict sufficiently prevalent to impede most decision-making.

A theme common to many of these normative ideas is the idea that agencies cannot be trusted to exercise discretion, a criticism emerging in part from growing public unwillingness in the Second Republic to tolerate the frequent inability of technocratic decision-makers to resist the influence of special interests and the prostitution of scientific expertise. One expression of this changing perception, fundamentally different than that of the Progressive Conservation era, has been to expect more and more from our technical bureaucracies, all while curtailing their independence through judicial mechanisms. As Holland (1996:180) observes:

To a greater extent than in any other country, environmental policies in the United States are shaped by the judiciary. Beset by crowded calendars and adverse to controversy, Congress has delegated more and more legislative power over the environment to regulatory agencies. Administrators, in turn, have found their discretion hemmed in at every turn by the federal courts. Members of public interest advocacy groups, disillusioned with

what they regard as a legislature overly sensitive to special interest lobbying and administrative agencies captured by the interests they were intended to regulate, have turned to the federal judiciary, the institution least responsive to special interests and public participation.

In addition to reflecting a growing distrust of technical decision-makers and science itself (especially when nested within pluralist systems), the rise of judicial involvement also reflects a refocus on the value of public participation and direct democracy. Many scholars over time have tackled the difficult question of determining which factors result in successful and vibrant democracies (Berman, 1997). A generation ago, much of the research focused on economic, political, or institutional factors. In recent years, however, societal and cultural variables are often cited as most salient. These arguments are often associated with the Neo-Tocquevillians, who assert that civic activity (e.g., direct citizen participation in the public arena) is the key to strong democracies (Putnam, 1993).<sup>105</sup> Many scholars have argued in favor of greater citizen involvement in the policy-making process using a variety of rationales. Whether writing under the auspices of modern political theory (Pateman, 1970; Thompson, 1970), critical theory (Habermas, 1984), postpositivism (deLeon, 1997), or some other perspective, most arguments in favor of greater citizen involvement either rest on a normative belief that citizen involvement is an inherently worthy component of democratic process, and/or a belief that such involvement is needed to achieve substantively accurate or socially legitimate policies.

A fundamentally different, and troubling, perspective is provided by Sheri Berman (1997), who concludes that to understand whether or not civic activity will have a positive or negative

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<sup>105</sup> In many respects, the Neo-Tocquevillians are retracing arguments used several decades ago by the so-called "mass society" theorists concerned with barbarism in Europe during the interwar years (Berman, 1997).

impact on strengthening democratic institutions depends upon the political context in which the civic activity occurs. If that activity occurs out of frustration with existing institutional arrangements for governance and problem-solving, then the impacts of “associationism” may not be to strengthen or improve democratic society, but to undermine it:

If a country’s political institutions are capable of channeling and redressing grievances, then associationism will probably buttress political stability and democracy by placing its resources and beneficial effects in the service of the status quo. This is the pattern Tocqueville ([1968]) described.

If, on the other hand, political institutions are weak and/or the existing political regime is perceived to be ineffectual and illegitimate, then civil society activity may become an alternative to politics for dissatisfied citizens, increasingly absorbing their energies and satisfying their basic needs. In such situations, associationism will probably undermine political stability and have negative consequences for democracy by deepening cleavages, furthering dissatisfaction, and providing rich soil for oppositional movements. A flourishing civil society under these circumstances signals governmental and institutional failure and bodes ill for political stability and democracy. (Berman, 1997:569-570).

Certainly, these ideas are not universally held, and to extrapolate these conclusions to the special situation of collaborative groups, or more specifically, western watershed initiatives, is clearly a reach. However, it is also clearly a reach to assume that the recent popularity of the community/collaborative model of resource management and problem-solving is not without potential limitations or even risks. If the proliferation of collaborative groups is more a sign of sickness than health in our democratic

institutions,<sup>106</sup> then civic environmentalism may be better characterized as a symptom than a cure—an embarrassing point of confusion with potentially significant ramifications.

Ultimately, when faced with a competing mix of ideas and philosophies about our democratic institutions, it may be worth returning to some of the general ideas of performance-based management (PBM) introduced earlier, and the idea that good arrangements are simply those which help us to achieve those outcomes we deem as valuable. To ascribe a special social value to consensus-based processes—to call them democratic—is certainly merited when those processes can provide both procedural and substantive outcomes consistent with societal norms. But what if achieving one of these goals is only made possible by sacrificing the other? Kraft (1990:105) sees this situation as a real dilemma:

For environmental as well as other issues, the policy dilemma associated with gridlock derives from the tension between two competing expectations for the policy process. One emphasizes prompt and rational problem solving; the other stresses representation of pertinent interests and policy legitimization.

For others, like Coglianese (1999:11-12), the choice is clear, as evident in his warnings to public resource managers about consensus-based processes:

An additional risk with growing calls for consensus-building is that public managers will begin to pursue consensus for its own sake. They may commit themselves to time-consuming processes on tractable issues when the same resources would be better used for outreach or analysis on less tractable, but more important, issues.

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<sup>106</sup> Public confidence in American political institutions has been steadily declining since the 1960s (Lipset, 1995).

They may come to rely on stakeholder processes as their sole measure of good public policy, even though these processes can almost never be fully representative and can face constraints from group dynamics. They may also find themselves caught up in the inertia of negotiations even when they doubt, or should doubt, that the resulting agreement will meet the proper legal standards and serve the public interest. Rather than conflict as the problem and consensus as the solution, public managers should instead focus squarely on the substantive problems facing the environment and regulated firms. They should decide when and how to engage in public dialogue based foremost on what will serve the overall public interest, not on what will lead to a consensus among those inside the policy loop.<sup>107</sup>

### The Current Agenda for Democratic Reform

It is against this backdrop that our institutions for governance evolve, with each era of reform featuring a redefinition of democracy prompted by the perceived deficiencies of the preceding era. Currently, we appear to be embarking on a refinement of norms adopted during the modern environmental movement. While many of the reforms of the environmental movement addressed troubling equity issues, others have emerged, and perhaps of more political salience, concerns over decision-making inefficiency have become increasingly common. Many parties, as Cortner et al. (in press:35) observe, see the modern form of natural resources federalism as yielding only a “federal behemoth, interest-group polarization, and gridlock.” In a more general context, Howard (1994) has lamented *The Death of Common Sense* in American governance, while Osborne and Gaebler’s (1992) seminal work on

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<sup>107</sup> Many authors argue that agencies embrace collaborative processes primarily as a means of “passing the buck” on difficult issues (e.g., Coggins, 1999).

*Reinventing Government* paved the way for comprehensive governmental reform programs such as the National Performance Review. Thus, it is not surprising that most of the dominant features of the emerging “era of alternative problem-solving” feature procedural reforms presumably designed to increase decision-making efficiency and pragmatism. Preferred strategies in this era tend to be those that are *ad hoc* rather than formal, collaborative rather than confrontational, decentralized rather than centralized, and that take advantage of market efficiencies and private-sector involvement. The value of “local knowledge” has been elevated; similarly, the credibility of technocratic managers and outside interest groups are both viewed with skepticism. Jeffersonian democracy is again in vogue—arguably more popular today than in Jefferson’s time—a trend described by John (1994) in the aptly named book *Civic Environmentalism*.<sup>108</sup>

What is perhaps most interesting in this review of changing democratic norms is how the same issues keep resurfacing in different forms. Of particular salience is the issue of “who decides,” a question currently being played out in the context of the word *community*. Drawing on notions of fairness and respect, a convincing argument has been made that communities should be more involved in natural resources decision-making.<sup>109</sup> But which communities are we talking about? This is a deceptively complex

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<sup>108</sup> John (1994) is among those authors that have documented this emerging transformation away from a mode of “interest group governance” to one of “civic governance,” the former featuring a substantively narrow and geographically uniform focus compared to the substantively broad and geographically situational focus of civic governance.

<sup>109</sup> For example, reflecting on her tenure in the Interior Department, Betsy Rieke (1997:39) remarked: “I believe that it’s important to try to get the consent of the governed to natural resource decisions. That doesn’t mean that if you can’t do so you don’t go forward. But it is very important to strive to get the consent of the governed to important decisions that have major impacts on their lifestyle, on their occupation, on their ability to continue to graze, or to farm, or to mine, or whatever.”

question, as Duane (1999:772-773) has observed:

But what do we mean when we use the term "community"? There are at least three types of communities that must be considered in ecosystem management, and they sometimes overlap and/or conflict: 1) communities of place, which are tied to a physical space through geography; 2) communities of identity, which are tied to each other through social characteristics but may transcend place; and, 3) communities of interest, which may have commonalties in how they relate to a particular ecosystem or resource as beneficiaries of that place or contributors to its condition. ... [A] privileged position for communities of place may conflict with existing arrangements that may favor particular communities of interest. There is consequently a need to reconcile communities of interest with communities of place in ecosystem management in order to address the full range of human concerns. This is fundamentally a political challenge for democracy, not a technical challenge for resource "managers," and we must address it as such.

Typically, the reformers—as Duane acknowledges—are talking about empowering communities of place. But is this needed, and does this help fulfill the promise of democracy? Blumberg (1999:91) is among those who are unconvinced:

Rather than the "timber wars," the current state of public lands policy might be better characterized as "the jargon wars." Sure, everybody loves the notion of more public involvement, more responsive public agencies, and adversaries putting aside their differences. How can anyone not praise processes that reduce tension

and promote social harmony, especially in small, rural communities? Dialogue is good, but that does not justify replacing the existing public participation process with local control of federal resources.

Also speaking about forest management, McCloskey (1999:625) approaches the issue from a somewhat different perspective, suggesting that local empowerment is a poor solution to a non-existent problem:

[L]ocal communities already have a larger voice [than larger communities of interest] in debates over national forests. Lawmakers customarily defer to the views of the Congressperson from the district involved; and business interests in such communities long ago captured predominant influence over the management of federal grazing lands and state lands.

If this is true, why then is it nearly impossible to take a breath of western air or a drink of western water without hearing laments of federal paternalism, and without being aware of the stirrings of new "Sagebrush Rebellions" (e.g., the Wise Use, County Supremacy, and privatization movements) all purporting to return decision-making to local interests? Additionally, how can we even claim to know what a further empowerment of local interests would mean for natural resources.<sup>110</sup> Unlike previous eras, the latest population boom in the West is not being

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<sup>110</sup> Additionally, there is some evidence to suggest that efforts to empower local collaborative groups may do so at the expense of disempowering local governments. For example, Paulson and Chamberlein's (1998:9) survey of collaborative groups yielded the following observation: "Collaborative groups were perceived by some local officials to be given more credence than local government by important non-local policy-makers. There was a perception among several local officials that many of the issues dealt with in the collaborative context were redundant of their responsibility of the local governing board."

driven by ranchers, miners, loggers, or other members of the extractive industries; to the contrary, environmental amenities such as outdoor recreation opportunities, unspoiled viewsheds, and low pollution are largely driving the demographic transformation of the region (Power, 1996).

These and related observations lead to only one readily defensible conclusion: Whether or not the currently evolving form of decision-making and problem-solving proves to be good or bad for natural resources is still an open and important research question. Also important is whether or not it constitutes an “appropriate” approach to federalism and governance.<sup>111</sup> Regrettably, these are questions that society is not pausing to consider. As Weber (1998:xvii) observes:

[W]e may not like, or we may rightfully fear, the burgeoning use of alternative institutional arrangements that potentially threaten cherished ideals of liberal democracy, increase the risk of agency capture and special-interest government, or place citizen input on a seeming par with policy mandates from elected officials. But, whether we like it or not, policy makers and administrators *are not* waiting on scholars to decide whether such arrangements are appropriate or not.

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<sup>111</sup> If history is our teacher, than we must expect that dominant normative ideas regarding appropriate processes for natural resources management and problem-solving will continue to change as the evaluation standard, democracy, is perpetually redefined.

## Concluding Thoughts

It is difficult to travel far into the literature of the western watershed movement without hearing that it is a marriage of Jeffersonian democracy and John Wesley Powell's vision of watershed-scale governance institutions (Kenney, 1999b). Given this historically-grounded ideological background, it can be argued that the arrangements under development are not entirely novel or unproven. To a point that is true. Local-level collaboration on natural resource matters is certainly not new to the region, as evidenced by community-based irrigation systems, agricultural coops, conservation districts (and associated planning processes; e.g., CRMPs), and by the tangential involvement in natural resources of many other types of business, civic, religious, and cultural associations. However, Jeffersonian democracy did not prevail in the Constitutional Convention—Madison's ideas of representative democracy proved more persuasive; and Powell's ideas of local "hydrographic democracies" fared even worse, giving way to the private rights tenets of prior appropriation and federal involvement in water development and management via the reclamation program. Thus, while many of the ideas currently in favor have a long history, it is often not a history of on-the-ground experimentation. As Press (1994:137) has observed, "This country has never truly tested participatory democracy in environmental dilemmas." Additionally, to the extent that past experimentation has occurred, it is difficult to assess the relevance of those efforts, given that the modern western watersheds movement is taking place in an era of startling change in terms of demographics, ideologies, and norms about good government and democracy (WWPRAC, 1998).

We should be careful, therefore, to not blindly lament the demise of all public institutions and to nostalgically reflect back to an unblemished and utopian past. The reality is that in natural resources—as in all policy areas—we

continue to muddle along, and in recent decades, our muddling has produced both successes and failures, just as it always has. Using an on-the-ground measure of success, it is difficult to conclude with any certainty that the existing system is hopelessly broken; nor is the system—actually a complex maze of many systems—an unqualified success. Clearly, many policies have very real shortcomings; yet, several of the accomplishments of recent decades are nothing short of astounding. The failure to effectively address nonpoint source water pollution, for example, can be countered with success stories of point source regulation. Failures to limit carbon dioxide emissions do not invalidate the considerable national success in reducing lead emissions and the international success in reducing CFC discharges. And the generally disappointing track record of the Endangered Species Act should not invalidate recent efforts in habitat protection and restoration, such as state instream flow programs, experimental flood releases from Glen Canyon Dam, and ongoing ecosystem recovery programs in the Everglades, Chesapeake Bay, California Bay-Delta, and the South Platte Basin. More generally, modern problems of decision-making inefficiency and "gridlock" are largely offset by, and are somewhat a product of, previous reforms that have partially remedied the tremendous equity deficiencies associated with historically closed systems of resources governance and problem-solving.

In an era and culture where "sound bites" and bumper stickers have replaced essays and debates as the dominant means of policy discourse, and where the lines between dogma and science have become painfully obscure, we have been conditioned to define both problems and solutions simply. In the context of governance arrangements for ecological restoration and management, this approach might be appropriate if western communities were homogeneous and stable in terms of values,

economies, populations, and political ideologies; if demands on resources were fixed; if intergovernmental relationships were not a source of friction and debate; if questions of private rights and public responsibilities were non-existent; and if the roles of scientific and public decision-makers were clearly defined. However, this is clearly not the case. Nor is it the case that all parties active in these issues share similar skills, resources, or interests.

Consequently, it is naïve to think that collaborative processes will emerge as a simple and effective solution to the full range of resource management and governance deficiencies. Similarly, it is equally naïve to think that these processes are without merit and pragmatic application. As Brick (1998:34) argues:

[J]ust because local collaborative conservation efforts can't solve all our problems does not mean that they can't begin to address some of them. Similarly, just because reliance on national activism and law is no panacea does not imply that it is not indispensable.

Similar wisdom is offered by Bingham (1997:4):

In the legitimate search for alternatives to improve our capacity to resolve complex issues, we should not make the mistake of assuming that existing tools should be disregarded. If something must be "alternative" to be worthwhile, we will miss the value in what we are already doing right.

## The Next Step Forward

This study admittedly does not provide a definitive assessment of the merits of western watershed initiatives and similar collaborative efforts, nor does it provide the final word on any of the "salient research questions" discussed in some detail in the text. As a practical matter, answering those questions must be viewed as a

long-term goal, even though a short-term need for this information already exists. Additionally, the text pays more attention to the arguments of the skeptics than the proponents, a deliberate (and readily acknowledged) approach utilized to address a strong under-representation of dissenting viewpoints in much of the available literature on natural resources governance and problem-solving. Despite these limitations, there is sufficient wisdom in the preceding pages to reinforce two longstanding conclusions articulated in earlier publications of the Natural Resources Law Center:<sup>112</sup>

- ◆ (1) Guarded Optimism. Most western watershed initiatives and similar collaborative efforts are promising and exciting, but still largely incomplete, experiments, and should therefore be treated by policy-makers with "guarded optimism." This conclusion primarily reflects the youth of most efforts, the lack of scholarly review, and the on-the-surface legitimacy of concerns raised by an apparently growing cadre of skeptics.<sup>113</sup> Reforms that modify the "who" and "how" of decision-making can have extremely broad and lasting implications, and should not be pursued without considerable deliberation and reflection, and without assuring adequate fallback measures.

Existing research suggests that many of the qualities ascribed to alternative problem-solving approaches, including processes reliant on collaborative decision-making, are not likely in practice to consistently achieve the lofty goals assumed by some proponents. Under certain circumstances, we should expect collaborative approaches to lead to successful outcomes; in other situations we should expect the opposite. Unfortunately,

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<sup>112</sup> In particular, *see* Kenney (1997) and NRLC (1998).

<sup>113</sup> While difficult, if not impossible, to document empirically, it has been the experience of the author that skeptics of collaborative efforts have rapidly proliferated in the past 3 years, and/or these skeptics have become more aggressive in asserting their concerns.



many parties involved in the policy debate do not appear to be fully cognizant of this fact, and the research community has generally not been highly successful in providing useful guidelines for distinguishing among these two types of situations. Until this deficiency is rectified, caution should be a guiding principle.

- ◆ (2) Scholarly Critiques. Reform efforts should be designed and implemented strategically, aimed at addressing agreed-upon problems and subject to critical review and periodic assessment.<sup>114</sup> Learning through experimentation is a legitimate means of identifying improved institutional arrangements only to the extent that these “experiments” are faithful to the scientific construction of experimentation—namely, that issues and assumptions are well defined, that information is collected and analyzed in a credible manner to test those assumptions, that measurable results are explicitly used to shape conclusions, and that peer review is used to validate results.

It is important to remember, however, that normative issues are at the core of many debates. Often, these issues are not readily amenable to resolution through experimentation, but can be assessed only in part through focused inquiries.

## Epilogue: Skeptics are People Too

It is unfortunate and more than a little ironic that the skeptics of collaborative processes are frequently isolated from the proponents, both in terms of on-the-ground experiments and in policy discussions. For example, consider the involvement of environmentalists (the most common source of skepticism) in many notable

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<sup>114</sup> Arguably, assessments of this nature may not be justified, unless welcomed by participants, for activities undertaken without public funding and focused solely on resources in private ownership. These conditions are rarely satisfied, however, in the types of efforts discussed in this research.

collaborative processes. Ongoing survey research by the Natural Resources Law Center suggests that about half of the watershed initiatives in the Interior West do not include environmental representatives; furthermore, in about two-fifths of those groups, membership is not completely open.<sup>115</sup> At a policy level, many environmentalists have also complained about being excluded from the drafting of the *Enlibra* principles.<sup>116</sup> Exclusion of dissenting parties has also been a frequent criticism of the Quincy Library Group<sup>117</sup>, the best-known of the community forestry groups in the West, as have questions about the “collaborative” nature of internal decision-making in the effort.<sup>118</sup> This is not to suggest that the absence of dissenting voices is often a deliberate practice; to the contrary, the absence of many skeptics is often not due to a lack of an invitation, but may reflect other factors: e.g., a lack of resources (to cover travel and time expenses), a lack of faith in the process, or the belief that other processes offer more bang-for-the-buck.<sup>119</sup> It is worthwhile to explore the reasons behind missing parties, particularly if you accept the common tenet of

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<sup>115</sup> This is highly preliminary survey results of approximately 50 groups. Final results will be published as part of the revised *Watershed Source Book*.

<sup>116</sup> Various personal communications with environmental activists.

<sup>117</sup> In congressional testimony regarding proposed legislation to enact the Quincy Library Group’s forest plan, Blumberg (1997:3-4) observes that the alleged consensus product is “opposed by every environmental group that works on forest protection issues in the state of California.”

<sup>118</sup> Speaking about the Quincy Library Group, founding member Michael Jackson observes: “We started out as a collaborative process but [we’re not anymore]—now we’re a consensus-acquiescence process . . . we intimidate the hell out of each other.” (Cited in Duane, 1997 at page 795.)

<sup>119</sup> In an attempt to secure participation of all interests, the Applegate Partnership has offered to cover travel expenses of any willing environmental representative. Thus far, they have had no takers. (Personal communication with Jack Shipley, October 8, 1999.)

consensus-building that suggests all concerned parties need to be at the decision-making table.

The frequent subordination of dissenting opinions regarding collaborative processes is easily understood, as it can be hard to imagine a reasonable party objecting to the goals of consensus-based processes—a point articulated by Rescher (1993:157-158):

To be sure, the widely favoured allocation of a pride of place to consensus sounds benevolent, irenic, and socially delectable. Indeed, it may sound so plausible at first hearing that it is difficult to see how a person of reasonableness and goodwill could fail to go along.

Yet, many reasonable people are concerned, as discussed in the previous pages. Many of those skeptics are far from irrational or uncompromising, but are simply seeking more sidebars and protections—i.e., more caution—in the use of processes which are frequently *ad hoc* and unstructured.

It is useful to conclude by revisiting the statements of some of the more outspoken skeptics: namely, Louis Blumberg of The Wilderness Society; Jim Britell, environmental activist and consultant; George Cameron Coggins, noted legal scholar; Reed Benson of Oregon WaterWatch; and the Dean of the skeptics, Michael McCloskey of the Sierra Club. The positions they articulate regarding collaborative processes should not be an affront to the proponents, but should serve as a jumping-off point in a thoughtful debate. For example, few proponents should take exception to the tempered remarks of Blumberg (1997:2) and his simple plea for adequate representation of all interests:

Collaborative efforts can play a constructive role if all stakeholders and interests are represented. They can be helpful by generating dialogue and fostering greater education about environmental issues and the state of the local environment. People who

understand the importance of a healthy ecosystem to a healthy economy are more likely to work to protect both. These processes can also decrease polarization and promote social harmony in local communities, and may achieve agreements about what should happen on the ground.

Equally reflective are the words of Jim Britell<sup>120</sup>, commenting on the Quincy Library Group model:

I am not opposed to local consensus processes per se; for certain kinds of problems where public assets are not on the table and the parties do not have large financial interests, they can be extremely productive. But I am concerned that we are moving headlong into adopting unproven new processes that will make long term decisions about the future of our public assets without thinking them through and before thoroughly testing them; and I am especially concerned that forest activists are not well prepared to take on this new role of protecting the public interest by serving as the public's representative and advocate on such groups.

Even George Cameron Coggins (1999:603), the self-professed curmudgeon, sees a potential role for these processes, while raising strong concerns about the devolution of public responsibilities:

Collaboration, consensus, civility, cooperation, and community of course are not bad attributes or characteristics in themselves. They are entirely appropriate for resolving local issues over use of private property. Confrontation, controversy, and

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<sup>120</sup> Taken from the article "Partnerships, Roundtables and Quincy-Type Groups Are Bad Ideas That Cannot Resolve Environmental Conflicts," accessed June 3, 1999 at [www.britell.com/text/tuse10.html](http://www.britell.com/text/tuse10.html).

litigation usually are best avoided. Consensual transactions, such as Nature Conservancy land purchases, serve many public and private values. But national lands are not private lands, and allocation of national resources is not a local issue. Ownership does matter. When the subject is every American's natural heritage, devolved local collaborationism is entirely inappropriate.

Commenting on western watershed initiatives, Reed Benson (1998:267), speaking on behalf of many in the environmental community<sup>121</sup>, identifies a still broader range of concerns, but returns back to a stance that is clearly reasonable:

Within the environmental community, a wide range of opinions exists on these voluntary local efforts. We can agree, however, on a few general points. First, as noted above, many of the most promising "cooperative" efforts began in response to regulatory action under federal law. In many cases, continued application of federal laws seems necessary to focus and motivate these local efforts. Second, while many of these efforts have shown progress in bringing people together, they have not yet demonstrated much success in actually restoring and protecting watershed health. The federal government should be cautious in devoting its scarce resources to these efforts, at least until they show that they can effectively protect national (not just local) interests. Third, the

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<sup>121</sup> Identified contributing authors include American Rivers, Colorado Environmental Coalition, Idaho Rivers United, Land and Water Fund of the Rockies, Natural Resources Defense Council, Pacific Rivers Council, Trout Unlimited, WaterWatch, National Audubon Society, Columbia/Pacific Institute, and the Environmental Defense Fund.

federal government must ensure that national interests are protected even if voluntary local efforts do not succeed. There must be a clear course of action if these efforts fail to reach consensus or to meet resource protection goals. ...

With those caveats, we do urge federal agencies to work with voluntary local groups as resources and laws permit. The agencies can help by identifying both the requirements and points of flexibility in applicable federal law, improving coordination, supplying data and technical expertise, and providing other assistance.

Finally, Michael McCloskey (in Harmon, 1998:1-2) offers a healthy challenge to proponents and researchers alike, based on the performance-based management (PBM) concept identified earlier:

At this point the burden is on the promoters of [collaboration] to demonstrate that it can work; that it can be fair and involve all stakeholders, especially where broad issues are at stake; that it can respect agency legitimacy; that it can get beyond good feeling to produce management solutions; and that it can be worth the time it requires.

On this point there should be no debate.

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