

Community Participation in Ecosystem Management

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INTRODUCTION

Ecosystem management has been debated primarily in terms of ecosystem science and management by public agencies. Ultimately, however, ecosystem management is about people and communities. The ways in which we address the human dimension of ecosystem management will determine its ultimate impact. This Article will focus on the role of community participation in ecosystem management on public lands. It will discuss two case studies, both of which are based in the Sierra Nevada mountains of California. The Article will address both the promise and pitfalls of more expansive community participation, and suggest principles that should guide future efforts to include communities in the decisionmaking processes.¹

In discussing the role of community participation in ecosystem management, I will examine the 'Inimin Forest management plan on Bureau of Land Management land in the Yuba River watershed of western Nevada county, California and the Quincy Library Group forest management plan for Forest Service land in the Feather River watershed. Before discussing these case studies, however, I would like to

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1. My fellow panelists were Deane Swickard of the Bureau of Land Management, Michael Jackson of the Quincy Library Group, and David Edelson of the Natural Resources Defense Council. Professor Daniel Rodriguez from Boalt Hall School of Law also participated and has written a separate comment on this topic, responding in part to the presentations by the panelists. Boalt Hall student Erin Noel organized the panel and provided important insights on both of the case studies.

set them in the broader context of social science theories of community participation.

I

PRINCIPLES OF PARTICIPATION

Ecosystem management reflects a fundamental challenge to the dominant paradigm of land and resource management in this country, which has been built over the past century upon a utilitarian framework of public ownership and delegation of management responsibilities to scientific experts. This model of scientific utilitarianism presumes that management is a technical task and that our goals and objectives can be met through the application of experts' specialized tools. This may have worked well in the Progressive era, but social values have changed over the past three decades. Resource management agencies have nevertheless continued to emphasize commodity production to the detriment of emerging social and ecological values,² which have been excluded from the traditional decisionmaking process. It is the imposition of those emerging values upon resource management that has given rise to the concept of ecosystem management. Ecosystem management should embrace community participation in order both to identify the evolving concerns of communities and to resolve conflicts within and among communities. Otherwise, ecosystem management will also fail.

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 commonalities in how they relate to a particular ecosystem or resource as beneficiaries of that place or contributors to its condition. The cases that this Article will discuss are focused upon communities of place, but we will see that 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

2. For background on this topic, see generally PAUL W. HIRT, *A CONSPIRACY OF OPTIMISM: MANAGEMENT OF THE NATIONAL FORESTS SINCE WORLD WAR TWO* (1994); NANCY LANGSTON, *FOREST DREAMS, FOREST NIGHTMARES: THE PARADOX OF OLD GROWTH IN THE INLAND WEST* (1995); CHARLES F. WILKINSON, *CROSSING THE NEXT MERIDIAN: LAND, WATER, AND THE FUTURE OF THE WEST* (1992); STEVEN LEWIS YAFFEE, *THE WISDOM OF THE SPOTTED OWL: POLICY LESSONS FOR A NEW CENTURY* (1994).

challenge for democracy, not a technical challenge for resource “managers,” and we must address it as such.

Traditional approaches to community participation in ecosystem management usually follow the formalized requirements of administrative law.³ All too often agencies practice mere “tokenism” in these highly formalized processes,⁴ however, while fundamentally following a “decide, announce, defend” strategy of project planning and policy development. Community “participation” is then relegated to post-decision criticism of the agency’s decision. There is very little substantive input and community members have no real decisionmaking power.

Such results are undesirable in a society with democratic values. Yet in postulating alternatives it would be unwise to go to the opposite extreme, which is complete delegation of analysis and decisionmaking authority to the “community” for management of public lands.⁵ There is wide agreement that ecosystem management requires the technical expertise and implementation ability that state and federal land and resource management agencies provide. “Expertise” still has value.

What is needed, then, is a process that incorporates the values of relevant interests while retaining the necessary injection of expertise and implementation authority. Such an alternative, commonly known as “collaborative planning,” has recently emerged in planning practice and the social science literature. The new approach is described by Judith Innes as “planning through consensus building” and it is redefining planning practice.⁶ She summarizes the principles of this new approach:

Consensus building has emerged parallel to the idea of ‘communicative rationality’ A decision is ‘communicatively rational’ to the degree that it is reached consensually through deliberations involving all stakeholders, where all are equally empowered and fully informed,

3. The National Environmental Policy Act, 42 U.S.C.A. § 4321 (1997), the National Forest Management Act, 16 U.S.C.A. § 1600 (1996), the Federal Land Policy and Management Act, 43 U.S.C.A. § 1732 (1996), and the Endangered Species Act, 16 U.S.C.A. § 1533 (1973) primarily set forth these requirements.

4. S.R. Arnstein, *A Ladder of Citizen Participation*, 35 J. AM. INST. PLANNERS 217 (1969); see also LARRY W. CANTER, *ENVIRONMENTAL IMPACT ASSESSMENT* 590-91 (2d ed. 1996).

5. As Daniel Rodriguez noted during our panel discussion, the local community may best be represented by the formal institutions of local government. This has not been true for either of the case studies discussed here, however, for local governmental jurisdictions do not coincide with either the ecological or economic boundaries of the resources of interest. The Inimim Forest case involves a community that is only a small sub-part of the Nevada county population, while the Quincy Library Group case transcends three counties and several cities. See generally, Arnstein *supra* note 4, at 223-24.

6. Judith E. Innes, *Planning Through Consensus Building: A New View of the Comprehensive Planning Ideal*, 62 J. AM. PLAN. ASS’N 460 (1996).

and where the conditions of ideal speech are met (statements are comprehensible, scientifically true, and offered by those who can legitimately speak and who speak sincerely). Communicatively rational decisions, then, are those that come about because there are good reasons for them rather than because of the political or economic power of particular stakeholders. For these processes to be truly communicatively rational, they must also reflect "emancipatory knowledge," or knowledge of the deeper reality hidden behind popular myths, scientific theories, and the arguments and rationalizations in common use. Such knowledge can come through dialectic, self-reflection, praxis—the broad and deep experience of those who know how to do things in the world—and from discourse that challenges prevailing assumptions.⁷

Innes argues that consensus-based approaches offer a method for discerning the public interest without unduly biasing it to reflect asymmetrical power relationships.⁸ It is important, however, to maintain parity in power relationships. Otherwise some parties will have a "best alternative to a negotiated agreement" that encourages defection from the consensus-based process.⁹ This makes the institutional context of ecosystem management decision processes critical. As one participant in the complex San Francisco Bay-Delta CALFED process put it, "consensus works best when fear is equitably distributed."¹⁰ This helps to explain why eighty-one percent of 105 "cooperative ecosystem management" case studies recently reviewed by Stephen Yafee and his students involved a species listed under the federal Endangered Species Act.¹¹ The ESA listing generated considerable uncertainty for powerful stakeholders, giving them a strong incentive to participate in "cooperative ecosystem management." A very different outcome is likely in the absence of that "hammer" hanging over some of the parties' heads.

Assuming the correct institutional context can be established, there is still the issue of actually resolving the conflicts at hand. It is useful to distinguish between four different types (or causes) of social conflict:

1. *Cognitive conflict* occurs when people have different understandings or judgments as to the facts of a case.

7. *Id.* at 461 (footnotes omitted).

8. *See id.*

9. *See* ROGER FISHER ET AL., GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 99-106 (Bruce Patton ed., 2d ed. 1991).

10. Gary Bobker, Water Resources Policy Analyst, Bay Institute, Remarks at the University of California at Davis School of Law Conference on Ecosystem Management: Law, Science and Policy (February 15, 1997).

11. *See* STEVEN L. YAFFEE ET AL., ECOSYSTEM MANAGEMENT IN THE UNITED STATES: AN ASSESSMENT OF CURRENT EXPERIENCE 7 (1996).

2. *Values conflict* is a dispute over goals—for example, whether an action or outcome is desirable (or undesirable) or should (or should not) occur.
3. *Interest conflict*—since the costs and benefits resulting from an action are rarely distributed equally, some people will have a greater interest in an action than others. As a result, it is possible to have agreement on facts, and on values, and still have conflict based on interest.
4. *Relationship conflict*—there are several psychologically oriented bases for conflict. Every time people communicate, they communicate both content (information, facts) and relationship (how much someone is valued, accepted, etc.). Decision-making processes can also communicate relationships—decision-making processes may, for example, favor groups which are well enough financed and organized to present scientific supporting data over those which primarily argue from a values base. The result is that there are a number of emotional motivations that may lead to conflict on grounds other than facts, values, or interests.¹²

These conflicts, while not unique to ecosystem management, are often ignored in discussions about ecosystem management. Nonetheless, they are central to implementing ecosystem management in real places with real communities because they explain why reasonable people can disagree about the desirability of implementing specific policy, planning, or management actions.

Resolving these disagreements requires community participation in which “communicative rationality” is possible. This, in turn, seems to depend on the development of social capital. It is not enough to have only intellectual capital, grounded in good science, to resolve conflicts of values, interests, and relationships. People must also trust each other and care about meeting each other’s needs to reach successful agreements in good faith. *Information* does not resolve social conflicts; *people* do.

As Robert D. Putnam and his colleagues note in their 1993 book *Making Democracy Work: Civic Traditions in Modern Italy*,

Success in overcoming dilemmas of collective action and the self-defeating opportunism that they spawn depends on the broader social context within which any particular game is played. Voluntary cooperation is easier in a community that has inherited a substantial stock of social capital, in the form of norms of reciprocity and networks of civic engagement.

12. CANTER, *supra* note 4, at 610 (citation omitted).

Social capital here refers to features of social organization, such as trust, norms, and networks, that can improve the efficiency of society by facilitating coordinated actions.¹³

Moreover “[a]n effective norm of generalized reciprocity is likely to be associated with dense networks of social exchange.”¹⁴ This formulation highlights the importance of “civil society” as the primary vehicle for establishing those networks.

This framework also highlights the “embeddedness” of all relationships within a social and institutional context that goes beyond—yet still influences—a wide range of what may appear on the surface to be only one-on-one transactions. “[T]rust is generated and malfeasance discouraged when agreements are ‘embedded’ within a larger structure of personal relations and social networks.”¹⁵ “The embeddedness approach predicts that the mix of order and disorder, of cooperation and opportunism, in a society will depend on the pre-existing social networks.”¹⁶ The structure of civic engagement is *historically contingent* and develops over long periods of time.

Perhaps the most profound finding of *Making Democracy Work* is that the single variable that best explained variation in the performance of those otherwise common institutional structures was a community’s history and its traditions of civic engagement.¹⁷ The authors note the civic community’s deep historical roots.¹⁸ Unfortunately, “[t]his is a depressing observation for those who view institutional reform as a strategy for political change.”¹⁹ It is not enough to “design” the “right” institutional form; there must also be fertile soil in which to plant those institutional arrangements.

In a sobering conclusion, Putnam goes so far as to suggest that there are “two social equilibria” toward which all of their twenty regional case studies converged.²⁰ One was built on cooperation and generated success, while the other, similar to the “prisoner’s dilemma” condition, avoided cooperation and mired the community in dysfunc-

13. ROBERT D. PUTNAM, *MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY* 167 (1993) (citation omitted).

14. *Id.* at 172 (citation omitted).

15. *Id.*; see also JAMES S. COLEMAN, *FOUNDATIONS OF SOCIAL THEORY* (1990); PETER EVANS, *EMBEDDED AUTONOMY: STATES AND INDUSTRIAL TRANSFORMATION* (1995).

16. PUTNAM, *supra* note 13, at 173.

17. Putnam studied the performance of twenty regional governments established in Italy in the early 1970s. See *id.* at 6. The homogeneity of the governments precluded controlling for variation in institutional structure. See also ELINOR OSTROM, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* 183-84 (1990) (proposing principles of institutional design for the management of common pool resources).

18. See PUTNAM, *supra* note 13, at 183.

19. *Id.*

20. *Id.* at 177-81.

tionality and squalor.²¹ Divergence of all cases toward one of these two outcomes reflects the positive feedback loop implicit in models of social capital generation: trust and cooperation generate further trust and cooperation, while mistrust and defection generate further mistrust and defection. Social capital accounts therefore tend to move in either a positive or negative direction with momentum.

How then can we generate social capital by design, if our ability to do so is constrained or enhanced by our existing stock of social capital? Some approaches have enhanced our ability to generate “norms of reciprocity and networks of civic engagement,” while others have undermined and depleted social capital. Putnam and his colleagues outline the features of networks that are most likely to enhance social capital:

Any society—modern or traditional, authoritarian or democratic, feudal or capitalist—is characterized by networks of interpersonal communication and exchange, both formal and informal. Some of these networks are primarily “horizontal,” bringing together agents of equivalent status and power. Others are primarily “vertical,” linking unequal agents in asymmetric relations of hierarchy and dependence. In the real world, of course, almost all networks are mixes of the horizontal and the vertical Nonetheless, the basic contrast between horizontal and vertical linkages, between “web-like” and “maypole-like” networks, is reasonably clear.²²

Of these two types, however, only the horizontal networks constitute true “networks of civic engagement” and are therefore likely to generate social capital and cooperation:

Networks of civic engagement . . . represent intense horizontal interaction. Networks of civic engagement are an essential form of social capital. The denser such networks in a community, the more likely that its citizens will be able to cooperate for mutual benefit.²³

In contrast, vertical networks do not provide the same benefits of horizontal networks and therefore are not truly “networks of civic engagement”:

Citizens of civic communities find examples of successful horizontal relationships in their history, whereas those in less civic regions find, at best, examples of vertical supplication. A vertical network, no matter how dense and no matter how important its participants, cannot sustain social trust and cooperation. Vertical flows of information are often less reliable than horizontal flows, in part because the subordinate husbands information as a hedge against exploitation In the vertical patron-client relationship, characterized by

21. *See id.* at 177.

22. *Id.* at 173.

23. *Id.*

dependence instead of mutuality, opportunism is more likely on the part of both patron (exploitation) and client (shirking).²⁴

These conclusions have important implications for both the design of social institutions and the likelihood of success in our efforts to solve the "dilemmas of collective action" now facing ecosystem management. They suggest that formal institutions, such as governments, are not enough; we must also engage "civil society" to transcend formal *governments* in our efforts at *governance*.²⁵ The critical challenge is to design and implement institutional structures in which the proper relationship between horizontal and vertical networks can enhance our capacity for collective action.

Examples of the differing degrees of success that result from horizontal and vertical networks are illustrated by Annalee Saxenian in *Regional Advantage: Culture and Competition in Silicon Valley and Route 128*.²⁶ She found that one of the key factors constraining innovation in the high-technology sector in the Route 128 region (outside Boston) was the brittleness of vertical networks and the paucity of horizontal networks across firms and industries.²⁷ Silicon Valley, in contrast, was a regional economy built on horizontal networks.²⁸ Similarly, Robert Ellickson found that the effectiveness of social control by the rural residents of Shasta County depended on the establishment of informal horizontal networks rather than the more vertical networks associated with the law.²⁹ Those Shasta County residents also had embedded relationships built on a long history of social capital formation.³⁰

Unfortunately, most land and resource management agencies are structured around vertical networks of control. The problem is that vertical rigidity does not account for the fact that, as C.S. Holling notes, the problems we face in ecological management "are not purely ecological, economic, or social. They are a combination of all three and require understanding of the interrelations between nature and people in different settings, performing different roles."³¹ There are

24. *Id.* at 174-75.

25. This is occurring at a time of dramatic change and is consistent with other trends toward the title phenomenon of MANUEL CASTELLS, *THE RISE OF THE NETWORK SOCIETY* (1996).

26. ANNALEE SAXENIAN, *REGIONAL ADVANTAGE: CULTURE AND COMPETITION IN SILICON VALLEY AND ROUTE 128* (1994).

27. *See id.* at 102.

28. *See id.* at 78-82.

29. ROBERT C. ELICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* 280-86 (1991). *See also* PUTNAM, *supra* note 14, and OSTROM *supra* note 17, for discussions of a broader set of case studies.

30. *See* ELICKSON, *supra* note 29, at 22-25.

31. C.S. Holling, *What Barriers? What Bridges?*, in *BARRIERS AND BRIDGES TO THE RENEWAL OF ECOSYSTEMS AND INSTITUTIONS* 3, 4 (Lance H. Gunderson et al. eds., 1995).

“extraordinary conflicts when there are extreme mismatches among the scales at which ecosystems, institutions, and societies function. If the scale of all three become more congruent,” Holling argues, “it is likely that the inevitable bursts of human learning can proceed with less conflict and more creativity.”³² This is the challenge of institutional design. “When issues are polarized,” however, “it is a time of deep frustration. Conflicts are extreme, mutual suspicions dominate, and cooperation seems the road to personal defeat.”³³ This describes the current situation for many land and resource management regimes. It sounds a great deal like the stable but unhappy equilibrium noted by Putnam and his colleagues in their study of Italy and collective choice.

A central tenet that emerges from Holling’s work is that “evolving managed ecosystems and the societies with which they are linked involve unknowability and unpredictability . . . [and require] flexibility for adapting to surprises.”³⁴ We must therefore evaluate the case studies to determine if they enhance the probability of successful collective action both in terms of theories of social capital and in terms of theories of ecosystem change—for ecosystem management will otherwise fail. Community participation in those efforts can be an important foundation for enhancing social capital formation and maintaining system resilience. The absence of such participation, on the other hand, may be an indicator of system brittleness and declining resilience in both the ecological and the social systems’ capacity to respond to crises. Hence, community participation is not merely a luxury in ecosystem management—it is necessary for its success.

An effective ecosystem management regime will accurately identify social values, translate them into social goals and management objectives, then implement programs that will achieve those objectives. Such a regime will be able to resolve the highly polarized conflict that now surrounds land and resource management issues. Community participation schemes may or may not be able to accomplish this, depending upon their design and the character of the various types of conflicts that may exist between communities of interest and communities of place. Our two case studies illustrate this well.³⁵

In fact, that vertical rigidity may help to explain the development of crises that ultimately have led to current efforts to practice truly comprehensive “ecosystem” management.

32. *Id.* at 31.

33. *Id.* at 3.

34. *Id.* at 14.

35. These cases are meant to be illustrative and are clearly not a comprehensive sample of these types of efforts.

II

THE 'INIMIM FOREST MANAGEMENT PLAN

The first case study is the 'Inimim³⁶ Forest experiment, which originated in the conflict between traditional land and resource management practices and emerging social values that were not adequately reflected in that paradigm. The BLM proposed a timber harvest and several land trades in the late 1980s. These proposals met strong local opposition from nearby residents who used the forest for recreation and were concerned that it remain useful habitat for wildlife. There were also concerns about water quality degradation from soil erosion and herbicide use if the logging were to go forward. The dirt and gravel roads of the San Juan Ridge of Nevada county are lined with hand-painted signs saying "No Spray, Please," demonstrating local concern about pesticide and herbicide use. Hundreds of residents therefore protested the BLM proposals either in writing or through a public hearing process under the requirements of FLPMA and NEPA.³⁷

"The land use planning process, as we were exercising it," says BLM district manager Deane Swickard, "was bankrupt [T]he products were being rejected in the form of appeals and lawsuits."³⁸ Swickard wisely noted that the public "participation" process occurred much too late in the planning process to generate long-term support for agency actions, placing the agency and citizens at loggerheads. "Most of the public felt they weren't involved," he says. "They thought they were being dictated to [by the agencies] [T]he royalty of the federal agencies would come to present something, the peasants would come in to comment, then they would go out, then they'd come back in [during] the EIS process."³⁹ This "tokenism" in public participation⁴⁰ may meet the letter of the law but is generally not helpful. This approach to "community participation" is also still far too common in land and resource management efforts.

The BLM management system faced a crisis and Swickard played a "visionary" role, working within agency guidelines to seek a more

36. "'Inimim" is the name used by the Nisenan tribe, the local indigenous people, for Ponderosa Pine. See BUREAU OF LAND MANAGEMENT, FOLSOM RESOURCE AREA, BAKERSFIELD DIST., U.S. DEP'T OF INTERIOR, ENVIRONMENTAL ASSESSMENT: 'INIMIN DRAFT MANAGEMENT PLAN, CA-018-95-17 at 3 (1995).

37. See Gary Snyder, *Colors of the Land, Colors of the Skin*, S.F. EXAMINER, Mar. 2, 1992, at A-15; Interviews with Bob Erickson, Gary Snyder, Eric Beckwith, Len Brackett, Bruce Boyd and Don Harkin, members of the Yuba Watershed Institute (1991-1994). I was also living in Nevada City, CA and attended the BLM public hearings on the proposals during 1987-1988.

38. Deane Swickard, Remarks at the *Ecology Law Quarterly* Symposium, The Ecosystem Approach: New Departures for Land and Water (Feb. 22, 1997).

39. *Id.*

40. See generally CANTER, *supra* note 4, at 490-91 (describing tokenism).

meaningful alternative. Tim Clark and Steven Minta have noted the importance of "policy entrepreneurs" in the innovation process, and Swickard exemplifies this type of entrepreneur.⁴¹ "We affect the quality of the community's life," thought Swickard, "so why not involve them in this process?" He noted that FLPMA "says the public would be involved in the planning and decision-making," yet "the truth is, they weren't."⁴² With the support of California State BLM Director Ed Hasty, Swickard approached members of the community and asked them how they would approach the management of ten scattered parcels covering 1,813 acres on the San Juan Ridge.⁴³

Local residents were surprised by Swickard's offer but also delighted that he was willing to show flexibility. The San Juan Ridge community is a small, isolated community that is filled with an eclectic mix of both long-time residents and relative newcomers. The long-time residents often have ties to the land spanning several generations and have made their living from commodity extraction activities like logging and mining. Many of the newcomers migrated to the area as part of the "back-to-the-land" movement of the late 1960s and early 1970s. The latter group includes Pulitzer Prize-winning poet Gary Snyder, internationally known furniture craftsman Bob Erickson, Sierran Biodiversity Institute founders Steve and Eric Beckwitt, and Len Brackett from the Timber Framers' Guild of North America, whose members rely on high-quality old-growth forests to produce larger timbers that are difficult to produce from smaller trees. They share an unusual mix of values that recognize both the utilitarian function of timber and the ecological function of forests. This made the community an unusual and productive place to begin Swickard's experiment, for the community was not already divided into polarized camps on forest management.

The BLM staff then worked with the local residents, who formed a non-profit organization, the Yuba Watershed Institute (YWI), to develop a detailed plan, manage the forest, and implement alternatives. Local residents saw an opportunity to produce timber on the land in a responsible way that would both protect old-growth habitat values and support value-added timber manufacturing that would provide jobs in the local community. The BLM then entered into a shared

41. See generally TIM W. CLARK & STEVEN C. MINTA, *GREATER YELLOWSTONE'S FUTURE: PROSPECTS FOR ECOSYSTEM SCIENCE, MANAGEMENT, AND POLICY* (1994) (describing the systems necessary to support ecosystem management).

42. Swickard, *supra* note 38.

43. See Personal Interview with Deane Swickard, Folsom Area Manager, Bureau of Land Management (1994-1997).

management agreement with YWI and the Guild.⁴⁴ The YWI has also generated community involvement in both the planning process and on-going management decisions through public lectures, field trips, work days, a quarterly newsletter, book publications and monthly board meetings that are open to the community. They often co-sponsor events with the North Columbia Schoolhouse Cultural Center, which is located at the heart of the dispersed rural community. Extensive horizontal "networks of civic engagement" characterize the San Juan Ridge, as do "norms of reciprocity" that reflect in part the rural character of the community.⁴⁵

Together the partners have agreed to manage the 'Inimim to produce a sustainable supply of old-growth timber for specialized wood products.⁴⁶ Maintaining biological diversity is also an explicit goal of the effort.⁴⁷ "One of the concerns I had was that the community might try to maximize short-term yields," says Swickard, "but in this case they didn't."⁴⁸ Instead, he found a continuum of community conceptions of "multiple use" and "sustained yield" conditions where "some will tend toward the preservation end and some will tend toward the commodity end."⁴⁹ The Ridge community is very environmentally oriented, reducing the likelihood that their proposals will be inconsistent with either other state or federal laws or the values and interests of other parties external to the community. Unlike the Quincy Library Group case study, the YWI case has not generated opposition from state and national environmental groups. There has been some limited opposition to the plan by local wise-use groups, but the effort has generated broad support.⁵⁰

The success of the 'Inimim Forest case suggests possible criteria for successful delegation of authority to a consensus-based decision process tied to a community of place: 1) environmentalists are not disproportionately less represented in the community than in the state or nation (i.e., there is a balance of power among the competing interests

44. Shady Creek/Spring Creek Research Natural Area and Forest Cooperative Stewardship Program Agreement between Bureau of Land Management, Yuba Watershed Institute and the Timber Framers Guild of North America (1990).

45. I have been an active member of YWI since 1994 and lived in the community from 1994-1995.

46. See YUBA WATERSHED INSTITUTE, THE 'INIMIM FOREST MANAGEMENT PLAN (1994); BUREAU OF LAND MANAGEMENT, FOLSOM RESOURCE AREA, BAKERSFIELD DIST., U.S. DEPT. OF INTERIOR, RECORD OF DECISION: 'INIMIM FOREST DRAFT MANAGEMENT PLAN, NEPA CA-018-95-17 (1995) [hereinafter RECORD OF DECISION].

47. See RECORD OF DECISION.

48. Swickard, *supra* note 38.

49. *Id.*

50. See David Sneed, *'Inimim Forest Plan Released in Joint Effort: BLM Praises Grass-roots Plan as Innovative Effort*, GRASS VALLEY-NEV. CITY UNION, Mar. 23, 1995 at B1; *The Union's Opinion: Forest Idea Deserves Applause*, GRASS VALLEY-NEV. CITY UNION, Mar. 30, 1995, at A4.

that is consistent across social and institutional scales); 2) the agreements and plans are consistent with existing state and federal environmental laws; and 3) it is an incremental experiment affecting a relatively small area. The 'Inimim Forest represents only 0.6 percent of the 300,000 acres of BLM land managed by Swickard in the Folsom Area of the Sierra Nevada foothills. Because it is an incremental proposal dealing with a small amount of land, there is more room for experimentation and truly adaptive management consistent with Holling's model.⁵¹ Not surprisingly, it has generated little controversy and no formal opposition from non-local environmental groups.⁵²

The principles outlined in the literature on social capital are supported by the 'Inimim Forest case. Community participation has both built on and helped generate new social capital through the establishment of the Yuba Watershed Institute, where a complex web of horizontal networks ensure continued interaction by community members in a wide variety of settings. The relative physical isolation of the San Juan Ridge area from the rest of western Nevada county has also allowed the community to maintain and nurture a culture that emphasizes environmental stewardship and sustainability values. There is a sense of identity with the place that is distinct from another broader identity with western Nevada county, where development pressures and a more conservative social context have polarized and divided the community. For example, the San Juan Ridge community has consistently supported the most liberal county Supervisor,⁵³ and it was generally in agreement about future land-use plans during the county's recent General Plan update process.⁵⁴ Moreover, community members interact through the local volunteer fire department, the San Juan Ridge Taxpayers Association, the North Columbia Schoolhouse Cultural Center, and the Twin Ridges Elementary School District.⁵⁵ The

51. See C.S. HOLLING, *ADAPTIVE ENVIRONMENTAL ASSESSMENT AND MANAGEMENT* 20 (1978); see also CARL WALTERS, *ADAPTIVE MANAGEMENT OF RENEWABLE RESOURCES* 4, 350-53 (1986) (describing adaptive management and tactics for adaptive managers).

52. An exception is that several so-called "wise use" groups based in western Nevada county have challenged both the BLM's partnership with YWI and the 'Inimim Forest Plan's emphasis on non-commodity values. Ironically, these are the same groups that call for greater local control of state and federal land and resource management efforts when "local control" is vested at the level of local government, where they often control decision-making processes.

53. This has been true since Gene Covert was elected in 1976 on an environmental platform that featured the slogan "Give the Land a Vote." The seat is currently held by Sam Dardick, one of two Democrats on the Board of Supervisors.

54. The one exception is that there is a significant schism within the community over future land use in the Ananda Village, which is a spiritual community of about 350 people led by Donald Walters located on the San Juan Ridge.

55. The Oak Tree fire of 1976 destroyed the local elementary school, which brought the community together in an effort to provide education for the area's children. The

rural setting and relative isolation have also generated a community culture that supports informal trail use across private property, which encourages conceptions of private property that emphasize community values. The Yuba Watershed Institute has been able to build on those values in generating community interest in and support for a visionary plan for the 'Inimim Forest.⁵⁶

III

THE QUINCY LIBRARY GROUP PROPOSAL

The second case study, which involves a legislative proposal prepared by the Quincy Library Group (QLG), differs from the 'Inimim Forest case in several respects. In particular, it represents an effort to delegate management of public lands to local interests through national legislation. The QLG proposal was introduced as H.R. 4082 in the 104th Congress;⁵⁷ H.R. 858, which was a similar bill, was introduced in the 105th Congress the week after the ELQ symposium on February 27, 1997.⁵⁸ As described in H.R. 858's Synopsis, the "Quincy Library Group Forest Recovery and Economic Stability Act of 1997," directs the Secretary of Agriculture to "conduct a pilot project on designated lands within Plumas, Lassen, and Tahoe National Forests in the State of California to demonstrate the effectiveness of the resource management activities proposed by the Quincy Library Group and to amend current land and resource management plans for these national forests to consider the incorporation of these resource management activities" specified in the bill.⁵⁹ A significantly modified version of the bill passed the House of Representatives by an astounding vote of 429-1 on July 9, 1997.⁶⁰ Senator Dianne Feinstein introduced a modified version of the House bill as Senate Resolution 1028 on July 17, 1997.⁶¹ Both sets of modifications were intended to address the concerns of local, regional, state, and national environmental groups opposed to the original H.R. 858.⁶²

Ridge now has one of the most innovative and successful school districts in California, including Charter School programs that are a draw for parents throughout the county.

56. See TIMOTHY P. DUANE, *THE RANGE OF LIGHT: NATURE AND CULTURE IN THE SIERRA NEVADA* (forthcoming 1998) (on file with author) (providing a detailed discussion of the relationship between nature and culture in the Sierra Nevada).

57. H.R. 4082, 104th Cong. (1996).

58. H.R. 858, 105th Cong. (1997).

59. *Id.*

60. *House OKs Plan to Increase Logging in Sierra*, S.F. CHRON., July 10, 1997, at A11.

61. S. Res. 1028, 105th Cong. (1997).

62. See 143 Cong. Rec. S7711, S7712 (daily ed. July 17, 1997) (statement of Sen. Feinstein) ("At the suggestion of the environmental community, and with concurrence of the Quincy Library Group . . . I have added language to the House version of the bill to provide additional environmental safeguards.").

The Quincy Library Group gained its name when several prominent residents of the town of Quincy, California, began meeting at the local library to negotiate a settlement to end the "timber wars" over management of the nearby Plumas National Forest.⁶³ The negotiators included Michael Jackson, an attorney who had worked with the local environmental group Friends of the Plumas (FOP); Plumas County Supervisor Bill Coates, who had been aligned with the timber industry in many resource management conflicts; and Tom Nelson, Vice President of Sierra Pacific Industries (SPI).⁶⁴ SPI owned the largest local sawmill (although SPI was headquartered outside the local community) and Nelson was also a member of the state Board of Forestry,⁶⁵ which establishes state forest policy and approves Timber Harvest Plans (THPs) under the state Forest Practices Act.⁶⁶ The fact that two SPI employees sit on the state Board of Forestry immediately makes the QLG proposal a potential source of precedent for forest policy throughout California. SPI is now the largest private landowner in California.⁶⁷

The negotiations began, according to Bill Coates, when legal challenges by Jackson and fellow activist Linda Blum (and the threat of further challenges by the Natural Resources Defense Council) successfully delayed timber sales on national forests throughout the Sierra Nevada.⁶⁸ The legal challenges led to the adoption of strict new interim forest management guidelines to protect the California Spotted Owl,⁶⁹ which substantially reduced the amount of timber that could be harvested in Sierra Nevada national forests.⁷⁰ This had a

63. See QUINCY LIBRARY GROUP, COMMUNITY STABILITY PROPOSAL 1 (1993) [hereinafter QUINCY LIBRARY GROUP PROPOSAL].

64. See *id.* at 12. See also Bill Coates, Plumas County Supervisor, Presentation to the Sierra Nevada Alliance Annual Conference (July 16, 1994); Bill Coates, Plumas County Supervisor, Presentation to the High Sierra Resource Conservation and Development Council Workshop (Dec. 9, 1993).

65. See QUINCY LIBRARY GROUP PROPOSAL, *supra* note 63, at 12.

66. Z'Berg-Nejedly Forest Practice Act of 1973, CAL. PUB. RES. § 4511 (West 1997).

67. See Personal Interview with Bill Stewart, Director, Fire & Resources Assessment Program, California Dept. of Forestry and Fire Protection (Apr. 7, 1997).

68. Bill Coates, Plumas County Supervisor, presentation to the Sierra Nevada Alliance Annual Conference (July 16, 1994); Bill Coates, Plumas County Supervisor, presentation to the High Sierra Resource Conservation and Development Council Workshop (Dec. 9, 1993).

69. See, FOREST SERV., PACIFIC SOUTHWEST REGION, U.S. DEP'T OF AGRIC., REVISED DRAFT ENVIRONMENTAL IMPACT STATEMENT [hereinafter PROPOSED RDEIS] (on file with author). The Secretary of Agriculture appointed a panel to review the matter under the Federal Advisory Committee Act on May 23, 1997. I am a member of the California Spotted Owl Federal Advisory Committee.

70. Total harvest in the Sierra Nevada forests dropped from approximately 1.1 billion board feet in 1988 to 300 million billion in 1994. William C. Stewart, *Economic Assessment of the Ecosystem*, in 3 SIERRA NEVADA ECOSYSTEM PROJECT, FINAL REPORT TO CONGRESS: [ASSESSMENTS, COMMISSION REPORTS, AND BACKGROUND INFORMATION 1020, 1028 Fig. 4.6 (Wildland Resources Ctr., Univ. of Cal., Davis, Report No. 38, 1996); see also

particularly hard impact in the Quincy area, where the local economy was much more dependent on timber harvests than most of the Sierra Nevada.⁷¹ The Forest Service had also been overcutting the national forests in the area in the late 1980s at a rate in excess of the Allowable Sale Quantities (ASQs) adopted in their Land and Resource Management Plans (LMPs),⁷² creating false expectations about the long-term sustainability of harvest levels.⁷³ Dramatic drops in harvest levels on national forests in the Pacific Northwest—coupled with rising national demand for timber as the nation came out of a recession—also placed new pressure on local mills to modernize or lose timber sales to non-local bidders.⁷⁴ The result was high unemployment levels, declining real incomes and intense social conflict in Quincy.⁷⁵ Local environmentalists were blamed for the situation.

At this point, Coates approached Jackson for a deal. “You won,” he said. “Now, how are we going to keep our community together?”⁷⁶ Informal discussions began with the FOP’s original proposal for the Plumas National Forest LMP as the basis of negotiations. The industry and the Forest Service had both rejected the FOP proposal as the LMP was developed during the 1980s, but that was when they held the cards. Now Jackson and the local environmentalists were in the driver’s seat. In many ways, then, the members of the Quincy Library Group—who “met in the only place in Quincy where they were guaranteed not to scream at each other—the public library”⁷⁷—had very little social capital to work with when they began negotiations. The community’s social structure was also burdened by a legacy of vertical

California Resources Agency, *California Environmental Resources Evaluation System* (visited Sept. 25, 1997) <<http://ceres.ca.gov/snep>>.

71. Plumas and Sierra counties are the only two counties in California where more than 10% of the local workforce was employed in the timber industry in 1989-1990.

72. See Personal Communication with William Stewart, Director, Fire & Resource Assessment Program, California Dep’t of Forestry and Fire Protection (1995); Timothy P. Duane, Data Analysis of National Forest Timber Sales (working data, on file with author).

73. See Stewart, *supra* note 70 at 973. The total value of public timber harvests in the Sierra Nevada dropped from a high of \$186 million in 1991 to \$96 million in 1994, while private timber harvests more than made up the difference by growing from \$177 million to \$310 million. Sierra Nevada Ecosystem Economic Database (working database, on file with author). Quincy did not share the benefits of increase in private harvests. *Id.*

74. See William Calder Stewart, Predicting Employment Impacts of Changing Forest Management in California (unpublished Ph.D. dissertation, University of California (Berkeley)) (on file with the Forestry Library, University of California, Berkeley).

75. See Sam C. Doak & Jonathan Kusel, *Well-Being in Forest-Dependent Communities, Part II: A Social Assessment Focus*, in 2 SIERRA NEVADA ECOSYSTEM PROJECT FINAL REPORT TO CONGRESS: ASSESSMENTS AND SCIENTIFIC BASIS FOR MANAGEMENT OPTIONS 375, 393 (Wildlands Resources Ctr., Univ. of Cal., Davis, Report No. 37, 1996) [hereinafter 2 SIERRA NEVADA ECOSYSTEM PROJECT].

76. Coates (1994), *supra* note 64; Coates (1993), *supra* note 64.

77. Editorial, *Who Should Determine the Fate of a Forest?* S.F. CHRON., June 15, 1997, at 8 [hereinafter Editorial, S.F. CHRON].

rather than horizontal social networks: mill workers and their families were dependent upon mill owners in an economy with few other options, and the mill owners in turn were dependent upon the Forest Service for raw logs. The new logging restrictions altered the balance of power, however, forcing the timber industry and its allies to give local environmentalists a seat at the table. This made “communicative rationality” possible.

Coates, Jackson, and Nelson hammered out the outline of a new forest management plan, which emphasized areas of agreement rather than disagreement. Large roadless areas would remain off-limits for at least five years, while logging would be allowed in other areas as long as “group selection” and individual tree selection techniques were used instead of clear-cutting.⁷⁸ “Group selection” is a technique of harvesting mini-clearcuts of one to three acres, which contrast sharply with the twenty to forty acre clearcuts that scarred the Sierra Nevada in the 1980s. Group selection clearly has the potential to reduce many of the aesthetic and ecological impacts of timber harvesting, but some scientists and professional foresters have expressed concerns about the impacts of ten times as many “sites” on the road network and associated erosion. Roads and related logging access infrastructure (e.g., skid trails and landings) are considered one of the primary sources of timber harvest impacts. Getting the same amount of timber out of group selection harvests would therefore impact a larger total land area than clear-cutting would. If the QLG proposal were expanded and applied throughout the Sierra Nevada, the Forest Service estimates that it would require more than 2,600 miles of new roads in the first decade alone—enough to cross the United States.⁷⁹

Concern about forest fire risk was also an area of agreement in discussions of the Quincy Library Group, although it emerged as an issue after the basic framework was in place.⁸⁰ Forests in the Sierra Nevada are fire-adapted systems, and fire suppression—together with timber harvests and fuels management efforts that have failed to reduce slash and other fuels—have resulted in a significant build-up of

78. See QUINCY LIBRARY GROUP PROPOSAL, *supra* note 63. The Forest Service assumes that these areas will then be logged after five years. See Alternative F assumptions and analysis in the PROPOSED RDEIS (*supra* note 69, on file with author).

79. See PROPOSED RDEIS, *supra* note 69, at 2-47. It is debatable, of course, whether one should try to harvest the same amount of timber, given those impacts. The Forest Service estimates that the Quincy Library Group’s approach would require 2,670 miles of new roads if it were extended across all national forests in the Sierra Nevada. *Id.* at 2-47. This is 2,070 miles more than alternative B, 2,000 more miles than alternative E, and 1,620 miles more than alternative D. See *id.*

80. Personal Communication with David Edelson, Senior Attorney, Natural Resources Defense Council (July 11, 1997).

"understory" fuels in Sierra Nevada forests.⁸¹ The region has also experienced extended and intensive droughts over the past two decades, which have often been accompanied by significant beetle infestations.⁸² These conditions created a very hazardous situation about which all involved in the QLG process could agree.⁸³ What good would it do either environmentalists or the timber industry, QLG participants asked, if they set something aside on a map only to see it burn up the following summer in a forest fire?

A network of fuel breaks (now called "Defensible Fuel Profile Zones," or DFPZs) was therefore incorporated into the QLG proposal.⁸⁴ These DFPZs could also provide timber harvests, which could help to keep the local mills operating. A "working circle" concept was also included that would have specifically required that the timber harvested from the local national forests would be milled in the Quincy area. This provision was later dropped at the request of SPI,⁸⁵ whose mills are distributed throughout the state. Such a restriction is also inconsistent with the free-trade rhetoric of current political discourse, and it may have been challenged under the Commerce Clause.

The QLG agreement is appealing on its surface, for it represents at least a local effort to reach agreement by both sides in the forest management debate. As the *San Francisco Chronicle* put it, the Quincy Library Group "is fast gaining legendary status on Capitol Hill as a rare symbol of civility and collaboration."⁸⁶ That civility and collaboration also represents a successful effort to generate social capital among the QLG participants, which in turn could shift the community from a downward cycle of dysfunctionality to a positive process of building community through collaboration on issues that affect both the economic and ecological health of the region.⁸⁷

81. See Kevin S. McKelvey et al., *An Overview of Fire in the Sierra Nevada*, 2 ECOSYSTEM PROJECT, in 2 SIERRA NEVADA ECOSYSTEM PROJECT 1033, 1144.

82. See George T. Ferrell, *The Influence of Insect Pests and Pathogens on Sierra Forests*, in 2 SIERRA NEVADA ECOSYSTEM PROJECT 1177.

83. However, the ECOSYSTEM PROJECT has since determined that fire frequency and severity are not necessarily higher now than they have historically been throughout the Sierra Nevada in the twentieth century, raising serious questions about whether or not the fire risk is as high as it was believed to be at the time of the QLG agreement. Don C. Erman and Russell Jones, *Fire Frequency Analysis of Sierra Forests*, in 2 SIERRA NEVADA ECOSYSTEM PROJECT 1139.

84. These are described in detail by Phillip Weatherspoon and Carl N. Skinner, *Landscape-Level Strategies for Forest Fuel Management*, in 2 SIERRA NEVADA ECOSYSTEM PROJECT 1471-92; see also 1 SIERRA NEVADA ECOSYSTEM PROJECT FINAL REPORT TO CONGRESS: STATUS OF THE SIERRA NEVADA 68, 68-71 (Wildlands Resources Ctr., Univ. of Cal., Davis, Rep. No. 36, 1996) [hereinafter 1 SIERRA NEVADA ECOSYSTEM PROJECT].

85. See Editorial, S.F. CHRON., *supra* note 77.

86. *Id.*

87. Several other collaborative efforts, already underway before the QLG effort in 1993, laid the foundation for social capital generation: the non-profit Plumas Corporation had brokered several watershed restoration efforts with funding from non-local sources,

But there is good reason to be less than enthusiastic about the QLG proposal. Much of the community's shared sense of identity in those efforts derived from a belief that imperialist patterns of capital investment and exploitation had made the region a mere colony of urban interests.⁸⁸ That concern arises mostly from historical patterns of water resources development,⁸⁹ but it has also affected forestry and environmental issues. This historically dominant perspective, which highlights Putnam's emphasis on the historically contingent nature of social organization, was an important factor affecting the composition and process used by the Quincy Library Group to reach agreement. This perspective meant that two key "communities of interest" were explicitly excluded from the negotiations: the Forest Service itself and non-local environmental groups. Not surprisingly, both have concerns about the QLG agreement and H.R. 858 in the form it was introduced. The Forest Service has not actively opposed the bill, but its adoption would be one more nail in the coffin of an agency whose future is in doubt.⁹⁰

In fact, much of the success of the QLG process hinged on the shared demonization of the Forest Service as the source of local problems. A *High Country News* article went so far as to use the

and a Coordinated Resource Management (CRM) process had been initiated for one of those watersheds. These efforts had already brought some of the key protagonists together before the QLG began to meet. See ELEANOR SMITH ET AL., *PLANNING IN A TRANSITIONAL RURAL ECONOMY: THE CASE OF PLUMAS COUNTY, CALIFORNIA* (1992). The CRM group dropped the word "Planning" from the more familiar "CRMP" process. The CRMP process is undertaken in California under the auspices of the Natural Resources Conservation Service (formerly the Soil Conservation Service) (NRCS/SCS), and as part of an agreement among the NRCS/SCS, local governments and state and federal agencies in California from the early 1970s. See CALIFORNIA ASSOCIATION OF RESOURCE CONSERVATION DISTRICTS, *CALIFORNIA COORDINATED RESOURCE MANAGEMENT AND PLANNING HANDBOOK* (1990).

88. See Personal Communication with Leah Wills, Watershed Restoration Coordinator of Plumas Corporation, in Quincy, Cal. (Nov. 1992).

89. The Feather River watershed is the site of Oroville Dam and Oroville Reservoir, which provide about 60% of the California State Water Project's annual yield in an average water year. Most of that water is used by agriculture in the Central Valley or for urban and industrial uses in southern California. California Dep't of Water Resources, *California Water Plan Update* 160-93 (Oct. 1994); see Tim Duane *Water, Wealth, and Watershed Health*, 10 *TREE RINGS* 3, 3-4 (Yuba Watershed Inst., 1997). The region is also a lucrative source of hydroelectric power generation for both the state and Pacific Gas and Electric company, based in San Francisco. See *id.* at 3. These dams and water conveyance systems export both water and economic value from the region that totals between \$677 million and \$1.9 billion per year in average annual retail sales of water and electricity. See *id.* at 4. Jackson has been centrally involved in recent efforts to compel some reinvestment by water users in watershed management upstream from these facilities, and I provided expert testimony on this issue for him in a proceeding before the California State Water Resources Control Board in 1995 (on behalf of the California Sportfishing Alliance).

90. See Randal O'Toole, The Thoreau Institute, *The Forest Service Chief and the End of the U.S.D.A. Forest Service*, 17 *SUBSIDIES ANONYMOUS* (Jan. 13, 1997) (distributed via electronic mail, on file with author).

headline "Everyone Helps a California Forest—Except the Forest Service."⁹¹ The headline grossly oversimplifies the issue, of course, but it offers a powerful prescription for "solving" the "problem" through its implied definition of the Forest Service as the "problem." This invariably leads one to conclude that the solution must not involve the agency. The discrediting of the Forest Service coincided with increasing demand for "local control" by the so-called "wise use" and "county supremacy" movements, which challenged the authority of the Federal Government to manage its lands without the approval of local governments.⁹² The GOP-led Congress has been largely sympathetic to this viewpoint since the 1994 elections.⁹³

The Forest Service was under attack from all quarters by the early 1990s for its handling of old-growth forests and the Northern Spotted Owl,⁹⁴ and its credibility has deteriorated even further following the passage of the so-called "salvage rider" in 1995 that authorized the agency to conduct timber sales "notwithstanding any other provision of law."⁹⁵ The QLG was left to work with an agency facing budget cuts, lawsuits, and a demoralized staff as its traditional authority to make on-the-ground decisions had been challenged at every level by nearly every interest in sight. Moreover, a complex array of laws constrained the ability of the agency to respond quickly to many of the QLG's proposals.

Though the Forest Service often sends "observers" to the QLG meetings, it has not been part of the negotiations as an equal partner. Michael Jackson says the Forest Service was left out because "they represent you [the general American public] as much as they represent us [the local community]."⁹⁶ Agencies cannot be involved in the "deal-making," he says, because "we are not to be involved in the legal process of deciding what is acceptable or legal."⁹⁷ The presumption, then, is that non-local communities of interest will be able to rely

91. Jon Christensen, *Everyone Helps a California Forest—Except the Forest Service*, 28 HIGH COUNTRY NEWS at 16 (May 13, 1996).

92. See Tony Davis, *Catron County's Politics Heat Up as its Land Goes Bankrupt*, 28 HIGH COUNTRY NEWS at 1 (June 24, 1996). Nye County Commissioner Dick Carver even bulldozed open a Forest Service road to make the point. See *United States v. Nye County*, CV-S-95-232-CDJ (March 14, 1996).

93. This is particularly true for House Resources Committee Chairman Don Young and Senate Energy and Natural Resources Committee Chair Frank Murkowski, both from Alaska, where anti-government sentiment runs strong.

94. See YAFFEE, *supra* note 2, at 115.

95. Emergency Salvage Timber Sale Program, 109 Stat. 194, 240 (1995).

96. Michael Jackson, Quincy Library Group, Remarks at the *Ecology Law Quarterly* Symposium, *The Ecosystem Approach: New Departures for Land and Water* (Feb. 22, 1997).

97. *Id.*

upon the Forest Service to ensure that their interests are protected.⁹⁸ This approach is predicated on the recognition that non-local interests may conflict with the negotiated settlements that the QLG has reached or may reach while defining itself as a community of place.

Hence, federal agencies were effectively alienated from the ecosystem management process in the QLG example. But agreement by the local political interests has never been an adequate basis for management of the public lands. In fact, ecosystem management remains largely in national hands precisely because the public lands are believed to provide values that would best be realized through non-local control. Both the modern administrative state and agency management procedures⁹⁹ have been designed to minimize the likelihood that back-room deals would determine how the nation's land and resources would be managed. State and national environmental groups have strongly supported this centralized approach, because much of their political power lies with urban constituencies who have no influence in local negotiations.

National environmental groups such as the Natural Resources Defense Council and the Wilderness Society were also absent from the QLG negotiations, even though some of those groups had actively assisted FOP in its challenges under NFMA and NEPA. Once again, the old charge of colonialism has surfaced whenever those non-local groups have called for greater involvement in the negotiations. Those strains became apparent in a heated exchange between Jackson and Edelson at the symposium, where Jackson attacked "elite urban environmentalists" for interfering with the QLG effort.¹⁰⁰ The historical relationship between the community of place known as Quincy and the communities of interest in the rest of California and the nation has colored the debate.

Edelson raises three specific problems with the QLG proposal: "(1) failing to comply with existing environmental laws and procedures; (2) failing to tailor the proposal in an appropriately narrow fashion; and (3) failing to include all affected interests in developing the proposal."¹⁰¹ He recognizes that the QLG process has "produced

98. Not surprisingly, given the history of conflict between the agency and environmental groups, the latter are not reassured by the regulatory role the agency may play to "police" implementation. The national environmental groups now find themselves in the ironic position of defending the Forest Service against the QLG proposal.

99. An example is a long-standing policy of frequent transfers in order to maintain staff independence from local economic interests.

100. A similar conflict emerged in a July 1994 panel discussion on the QLG proposal at the annual meeting of the Sierra Nevada Alliance in Mammoth Lakes, California. The panel included Michael Jackson, Bill Coates, and Sami Yassa.

101. David Edelson, Senior Attorney, Natural Resources Defense Council, Remarks at the *Ecology Law Quarterly* Symposium, *The Ecosystem Approach: New Departures for Land and Water* (Feb. 22, 1997).

substantive ideas for national forest management that are worth considering," but believes that the flaws in the current proposal can only be remedied "by vastly reducing the scope of the proposal and by broadening the public process used to develop it."¹⁰² In particular, he recommends that the "interim" management guidelines adopted in 1993 to protect the California Spotted Owl (CASPO policy) be continued and that the experiment in group selection and DFPZs be applied to a much smaller area on a pilot basis. The QLG proposal calls for DFPZs to be developed on 40,000-60,000 acres per year and for group selection to be applied to an average annual acreage of up to 14,000 acres. The total acreage treated under the QLG plan would not exceed 70,000 acres per year.¹⁰³ For comparison, the preferred Alternative (C) of the 1995 Draft EIS for the California Spotted Owl called for fuels treatment on 54,000 acres per year across all ten national forests in the Sierra Nevada province.¹⁰⁴

Edelson also has serious concerns about procedural aspects of the QLG proposal. In his words, "[t]he failure to comply with existing environmental laws and procedures is the most problematic aspect of the QLG proposal."¹⁰⁵ He specifically cites the CASPO guidelines and their emphasis on "thinning from below," but Edelson claims that the QLG approach "would also override other protections for wildlife and other amenity values in existing forest plans."¹⁰⁶ As Daniel Rodriguez noted during our panel discussion, however, existing laws are not sacrosanct and deserve reconsideration through new legislation.¹⁰⁷ The critical question is whether or not any law allows for or precludes the achievement of social, economic, and ecological objectives.

This debate is not only a disagreement about ecology and the relative merits of the QLG approach for achieving biodiversity protection objectives on the national forests. It is also a debate about who gets a "say" in ecosystem management. Edelson worries that the exclusion of national interest groups in the QLG process could set a precedent that could undermine NFMA and NEPA. "The QLG proposal also circumvents the public process ordinarily used to determine

102. *Id.*

103. See H.R. 858, (105th Cong. 1997). Group selection is designated for 0.57% of total acreage per year on a base of 2.5 million acres. See *id.*

104. See PACIFIC SOUTHWEST REGION, FOREST SERV., U.S. DEP'T OF AGRIC., MANAGING CALIFORNIA SPOTTED OWL HABITAT IN THE SIERRA NEVADA NATIONAL FORESTS OF CALIFORNIA: AN ECOSYSTEM APPROACH 2-24 (1995) (draft environmental impact statement).

105. Edelson, *supra* note 101.

106. *Id.*

107. Daniel Rodriguez, Professor of Law, University of California at Berkeley, Boalt Hall School of Law, Comments at the *Ecology Law Quarterly* Symposium, The Ecosystem Approach: New Departures for Land and Water (Feb. 22 1997).

management of national forests and public lands," says Edelson,¹⁰⁸ and Senator Dale Bumpers of Arkansas (one of the original authors of the National Forest Management Act of 1976) raised similar concerns about the QLG approach in Senate Committee hearings on July 24, 1997.¹⁰⁹ The original H.R. 858 required the Forest Service to conduct an environmental assessment in compliance with NEPA and a revision of the LMPs in accordance with NFMA, but it also required the agency to implement the QLG proposal for a minimum of five years.¹¹⁰ Edelson notes that the pilot project would therefore continue to be implemented "even if the NEPA process reveals that the plan will have serious, unanticipated adverse consequences."¹¹¹

Jackson disagrees, arguing that individual projects (e.g., timber sales) will need to comply with both NFMA and NEPA.¹¹² The QLG proposal specifically excluded the so-called salvage rider's notorious "notwithstanding any other environmental law" language,¹¹³ but it is unclear if or how NEPA and NFMA would apply if H.R. 858 is adopted into law. The original bill itself indicated that the Forest Service "shall conduct the pilot project during the period beginning on the date of the enactment of this Act and ending on the later of the following:" the amendment of the existing LMPs or five years after enactment.¹¹⁴ This clause was amended in the version of H.R. 858 that passed the House and S.1028 as introduced by Feinstein, and the Feinstein bill calls for a monitoring program to evaluate the impacts of the approach.¹¹⁵ A very large landscape may be affected by the time

108. Edelson Symposium Comments, *supra* note 101.

109. Telephone Interview with Kathleen Reich, Legislative Assistant to Senator Dianne Feinstein (July 1997).

110. See H.R. 858 *supra* note 58, at 6.

111. See Edleson, *supra* note 101.

112. See Interview with Michael Jackson, Quincy Library Group (June 13, 1997).

113. See *id.*

114. H.R. 858, 105th Cong. (1997).

115. See Personal Communication with Michael Jackson, Quincy Library Group (June 1997). Michael Jackson indicated that both USDA Under Secretary Jim Lyons and the USDA Office of General Counsel have agreed that both NEPA and NFMA must be followed for pilot project implementation under H.R. 858, but no party has issued a written legal opinion on the matter. See *id.* Katie McGinty, Chair of the President's Council on Environmental Quality, met with Jackson later that month and stated that she would strongly support H.R. 858 only if it includes explicit language to clarify that NEPA and NFMA will be complied with before implementation. Personal Communication with Kathleen A. McGinty, chair of the Council on Environmental Quality, Executive Office of the President (June 20, 1997). She also noted in a written letter to Jackson that the current bill did not do that. See *id.* The Administration subsequently issued a written position on the bill that led to a series of amendments on the floor of the House that were agreed to by House Resources Chairman Don Yong, Congressman Herger, and ranking minority member George Miller. These amendments incorporated many of the provisions that Edelson was calling for during the symposium but NRDC, TWS, The Sierra Club, and other environmental groups remain opposed to the legislation. 140 environmental groups have signed a letter opposing the QLG legislation. See Ed Marston, *The Timber Wars Evolve*

the QLG "pilot" has been completed, however, creating a real risk that a large part of the northern Sierra Nevada could be permanently affected.¹¹⁶

The debate between Edelson and Jackson demonstrates that the fundamental tension is as much about process as substance. The QLG proposal would establish a new protocol for public lands management that would make Gifford Pinchot roll in his grave: 1) management by legislation rather than administration (which has already been the basis for National Park designations since 1872 and for Wilderness designations since 1964); and 2) delegation of management to local interest groups that include neither non-local environmental groups nor agency staff. The QLG proposal could set a new precedent that is strikingly different than that which has dominated American public land and resource management over the past century.¹¹⁷

Such a precedent would also disenfranchise much of the modern environmental movement, which is one of the primary reasons national environmental groups have opposed the delegatory impulse. Sierra Club Chairman Michael McCloskey states the environmentalists' concerns bluntly:

Industry thinks its odds are better in local forums, and it is ready to train experts to master the collaborative process. Industry believes that, over time, it can dominate local representatives and relieve itself of the burden of tough national rules. In communities where industry is strong, it can generate pressure in a way it cannot at the national level.¹¹⁸

This is clearly not in the best interest of either the environmental movement or the public trust, even if locally-based collaborative processes may make sense in some specific cases. The conditions necessary for communicative rationality—which include limitations on the exercise of power as the determinant of outcomes—must exist for any collaborative process to be acceptable.

Those conditions for communicative rationality are ultimately determined by the legal context within which collaborative efforts occur. "We're very committed to this process," says Dennis Glick of the Greater Yellowstone Coalition in reference to his own organization's involvement in collaborative efforts, "but we also have a stable of law-

Into a Divisive Attempt at Peace, HIGH COUNTRY NEWS, Sept. 29, 1997, at 1; Jon Margolis, *How a Foe Saved the Quincy Library Group's Bacon*, HIGH COUNTRY NEWS, Sept. 29, 1997, at 13.

116. Editorial, S.F. CHRON, *supra* note 77.

117. See WILKINSON, *supra* note 2, at 302.

118. Michael McCloskey, *The Limits of Collaboration*, HARPER'S MAGAZINE, Nov. 1996, at 34, 35. McCloskey's memo (to the Sierra Club's Board of Directors) originally appeared as *The Skeptic: Collaboration Has Its limits*, 28 HIGH COUNTRY NEWS, May 13, 1996.

yers we pull out.”¹¹⁹ Steven Yaffee notes that “cooperation contains a dimension of power and motivations,” and that cooperation is a balance between centrifugal and centripetal forces.¹²⁰ The challenge before us is to design institutional arrangements that pull people together to collaborate under the conditions that promote equal power, equal knowledge, and a shared interest in cooperation in order to realize mutually beneficial gains. Those conditions are clearly impossible if key participants are left out of the collaborative process.

The QLG meetings are now open to anybody and have included up to 350 attendees at once, but the atmosphere is hostile to anyone who challenges the proposal. “We started out as a consensus process,” says Jackson, “but . . . [we’re not anymore]—now we’re a consensus-acquiescence process . . . we intimidate the hell out of each other.”¹²¹ It is precisely that climate that leads David Edelson to question the viability of the QLG proposal. The rural isolation of Quincy has ensured that non-local environmentalists are outsiders in any QLG “community” meetings, and the physical distance to Quincy makes it difficult for them to participate. “They talk about this as a collaborative process,” says Louis Blumberg of the Wilderness Society, “but they don’t want to collaborate with anyone else.”¹²² Jackson counters that “we live here; we’ve walked most of the old-growth areas. We can see the trees.” And unlike the Wilderness Society—which has produced maps of old-growth in both the Sierra Nevada and the Pacific Northwest relying in part on aerial photography and remotely-sensed satellite imagery—“we’re not looking from outer space.”¹²³

Non-local environmentalists and agency staff face a difficult task in challenging delegation to a “community” proposal in an era of delegation and devolution. “We have become a pet, a poster child,” says Jackson, “in Washington, D.C.”¹²⁴ Everybody is in favor of community participation, and conventional (currently popular) wisdom has it that the local people know their land and resource management con-

119. Dennis Glick, Greater Yellowstone Coalition, *The Greater Yellowstone Ecosystem Case Study: Overcoming Boundaries in a Managed Landscape*, Remarks at the Annual Meeting of the Society for Conservation Biology (June 9, 1997) (abstract on file with Author).

120. Steven Yaffee, *Cooperation: A Strategy for Achieving Stewardship Across Boundaries*, Remarks at the Annual Meeting of the Society for Conservation Biology (June 9, 1997) (abstract on file with author).

121. Jackson, *supra* note 96.

122. Editorial S.F. CHRON. *supra* note 77.

123. *Id.* Ironically, the Wilderness Society’s maps for the Sierra Nevada were produced with the assistance of Steve and Eric Beckwitt of the *Sierran Biodiversity Institute*, which is located on the San Juan Ridge just a stone’s throw from the ‘Inimim Forest. Eric is also on the board of YWI.

124. Jackson Symposium Comments, *supra* note 96.

ditions better than distant bureaucrats. Since community participation is essential for successful ecosystem management, shouldn't everyone support the Quincy Library Group in its quest to alter the terms of the debate? Isn't H.R. 858 a step toward bringing community participation to ecosystem management?

It is not, if the new terms violate important principles outlined in my earlier discussion. Recall the conditions that support communicative rationality, the development of social capital, and a capacity for resilience in the face of crisis: symmetrical power relationships, norms of reciprocity, and horizontal networks of civic engagement stand out. These conditions exist for the QLG proposal only within the community of *place* known as Quincy; they are violated when non-local communities of *interest* are considered. It is clear that the QLG proposal would affect many parties outside of Quincy, many of whom have not been equal participants in the negotiations: anybody with an interest in the fate of the Chinook Salmon, the California Spotted Owl, the quality and quantity of California's water supply, or the state and federal taxpayers' obligations for fire suppression and forest management has an interest in the future of Sierra Nevada national forests. Communicative rationality can therefore not be achieved unless their interests are considered. As the *San Francisco Chronicle* has editorialized, "Congress should be respectful of all the hard work and expertise provided by the Quincy Library Group, people who value and know that beautiful stretch of the Sierra. They deserve a voice in the process—but not the only one that counts, as HR 858 proposes."¹²⁵ Many other communities of interest must also have a voice.

CONCLUSION

The 'Inimim Forest case stands in sharp contrast with the Quincy Library Group proposal. In the 'Inimim Forest case, broader interests were represented, there was and continues to be compliance with existing laws (FLPMA and NEPA), and the experiment is incremental and therefore truly local. The 'Inimim Forest experiment has the potential to transform community participation in ecosystem management, but only where doing so will not result in spill-over effects that conflict with the interests of parties who have not participated in the planning process. The same can not be said of the Quincy Library Group proposal. The QLG proposal would affect thirty times as much forest in a single year as the 'Inimim Plan will affect in its entire lifetime. H.R. 858 therefore runs the risk of being a Trojan Horse for dismantling existing environmental laws and disempowering environ-

125. Editorial S.F. CHRON., *supra* note 77.

mental interests.¹²⁶ That is not the same thing as “community participation,” and we should not be fooled into thinking it is. “Community participation” is something that needs careful design and considerate implementation, where *all* communities can contribute to “communicative rationality.” This includes communities of interest as well as place.

126. I do not mean to suggest here that the QLG proposal is a deliberate attempt to do so, but instead that we may inadvertently adopt new policies that have the effect of doing so under the guise of expanding community input.

