

**INSIDE
THIS
ISSUE:**

**Endangered 2
Species Act**

**Clean Water 3
Act**

**U.S. Army 4
Corps of En-
gineers 1135**

Stony Creek Quarterly

VOLUME 2, ISSUE 1

WINTER, 2006

Environmental Laws and Private Property

Environmental laws in the United States have caused controversy, frustration, anxiety, and conflict between private landowners, environmental groups, and government agencies. Many private property rights organizations advocate that environmental laws infringe on the rights of landowners. Environmental organizations advocate that laws must be made and enforced in order to protect the environment, i.e. water, air, and endangered species. This difference in values and priorities has created a situation where there is little to no discussion of how to meet both interests. Why do we have private property and environmental laws?

To understand why environmental laws and private property are important to a sustainable economy and environment, we must understand the idea of a resource commons. The theory of the commons is if a resource is able to be accessed by one person it can be accessed by everyone. The problems governing the commons is based upon the problem of ungoverned access. Imagine a pasture that anyone can use. Imagine if a group of six people have one cow each grazing in the pasture. Now imagine if one person puts one more cow in the pasture. That person gains the benefit of the additional cow but it costs the other five due to the reduction in feed. If that one person does a cost benefit analysis they gain all the benefit and only receive a fraction of the cost. However, if everyone puts an additional cow the quality of the pasture is degraded to the point that the pasture can not be used any longer. How can you avoid this situation?

The first solution is to privatize the common where each person is given a piece of the pasture. Each person is responsible for their land and has an incentive, if not dependent on, maintaining the quality of resources on the land. If the private property owner wants to add additional cows they receive the entire cost. But do they incur the entire cost of using resource on their land? A private landowner will receive the cost of a reduction in feed but may create external costs in the process. These external costs are the degradation of transient resources.

Can one private property owner still degrade the natural resources of another private property owner? Laws of nature do not recognize private property rights. A resource common can also be anything in the environment, i.e. water, air, or other species. However, air, water, other species, and sometimes soil are transient. Water runs off or infiltrates the soil. Air is utilized by plants and animals, but blows across the landscape. Animals, and in a sense plants, travel over property lines. Unlike land or space, these aspects of the environment can not be privatized. You can not stop water or air from flowing or species from migrating. However, everyone is dependant on the quality of the water we drink, the air we breathe, and in an indirect sense, the quality and quantity of species. A relationship between resources begins to appear where the degradation of one resource affects the quality of another. This is what is called an ecological commons. So, what happens if one person decides to practice an activity that degrades water quality? How can we stop one person from harming another person's water? If we can not privatize a common resource what can we do?

The next solution is to create an agreement between resource users stating they will not degrade a resource to the degree it harms another person's ability to use that resource. In order to make sure that resource users abide by the agreement society has created environmental laws such as the Clean Water Act, Clean Air Act, and Endangered Species Act. Government agencies enforce policies and procedures, such as permits, to ensure that one person's actions do not harm another's access to resources.

However, this "solution" is not without problems. Environmental acts are designed to prevent further degradation but do not always provide ways to enhance current conditions in a way that facilitates cooperation. Implementing these acts does not always take into account how these policies meet

Environmental Laws and Property Rights Continued

*The purpose of the
Endangered
Species Act is to
protect species
from becoming
extinct due to
human activity.*



**Bald Eagles are known to
inhabit the Stony Creek
Watershed**

the plow. In general, environmental regulations create disincentives and a catch-22 in meeting the goals of the different environmental acts. There is a fear if a private landowner provides information on environmental conditions of their land government agencies will begin regulating what the landowner does on their land so that it complies with environmental regulations. What then occurs is information will not be adequate enough to determine, for example, how large a population of an endangered species actually is. Assumptions are made where species are, how many individuals there are, and how certain activities affect those species. These assumptions then guide decisions when policies and procedures are enforced, thus justifying landowner concerns about environmental laws and regulations.

There needs to be a new solution that facilitates cooperation and understanding so that disincentives and the catch-22 are eliminated. There is concern, however, that it might weaken the enforcement of environmental laws. However, policy mechanisms need to be developed in order to increase trust and participation from private landowners. What is needed is a discussion of how these policies affect those working on the ground and how they are or can meet environmental goals. There are a few programs in place to help landowners, such as Safe Harbor Agreements to help with endangered species and watershed coalitions to help with water quality monitoring, that help landowners deal with environmental regulations.

The following information is a description of two environmental acts that affect the Stony Creek Watershed.

Endangered Species Act

One of the most controversial environmental laws in the United States is the Endangered Species Act. Enacted in 1973, and signed by Richard Nixon, the law stated that no action or project by a public agency may be taken that leads to the decrease in populations of another species. Congress declared that- (1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation; (2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction; (3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people; (4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction; and (5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants. The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in this act. The policies of this act are to; (1) to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act; (2) be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

There is a movement to change the act in order to reduce disincentives, create assurances, and ensure that species on the brink of extinction are recovered to sustainable population levels. What will need to be created within the new policies is a way for government agencies to gain the trust and buy-in from private landowners so that landowners are not hit with new regulations when they participate in any environmental programs.

*** *Description of the ESA declarations and policies were taken from legislation.* ***

The Clean Water Act

The objective of this act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. Congress declared that: (1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985; (2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983; (3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited; (4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works; (5) it is the national policy that area-wide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; (6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans; and (7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this chapter to be met through the control of both point and nonpoint sources of pollution.

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to

prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

There has been great difficulty enforcing the Clean Water Act. One problem being that everyone lives in a watershed and water runs off private property. Determining if and where water pollution is becomes a daunting task not only because of the scope of work, but the funding to pay for monitoring and enforcement of the Act. Regulators first tackled point source pollution, i.e. factories, waste treatment plants, storm runoff, power plants, etc.. However, State and Federal agencies are addressing nonpoint source pollution such as agricultural and urban runoff. This has caused conflict in the Central Valley due to the starting up and funding of watershed coalitions to monitor runoff from agricultural lands.

In 2003, the California State Water Resources Control Board made the decision to not continue the agricultural exemption from water quality regulations. The SWRCB gave landowners of irrigated lands to pro-

vide information that they are complying with water quality standards. The SWRCB allowed landowners to create coalitions based upon watersheds to monitor water quality. In order to do this landowners who irrigate their land are paying a fee to the coalitions to pay for monitoring and reporting to the SWRCB (please note: If you received a letter and bill from the Colusa Basin Subwatershed Program and do not irrigate your land, please return the bill with a note saying that you do not irrigate your land).

Keeping water free from pollutants is a difficult and expensive program to implement. In order to implement a program that meets the goals of the Clean Water Act, rural and urban landowners must work together, through coalitions, in order to determine if and where there are problems with water quality in a watershed. Through cooperative coalitions landowners can comply with the Clean Water Act in a cost effective and efficient manner.

**** Description of the CWA declarations and policies were taken from legislation.****



The objective of this act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.

Please contact the Glenn County Resource Conservation District if you have natural resource concerns or issues you wish the RCD to address or natural resource projects that you want to implement on your property. This newsletter was funded by the CALFED Bay-Delta Authority's Watershed Program

Phone: (530) 934-4601 x3
Fax: (530) 934-8667
E-mail: Ajay.Singh@ca.nacdn.net
132 North Enright Ave., Suite B
Willows, CA 95988

**Glenn County Resource
Conservation District**



U.S. Postage
PAID
Permit #132
Willows, CA

U.S. Army Corps of Engineers 1135 Program

During the November 29th, 2005 Landowner Advisory Committee and Technical Advisory Committee meeting it was brought to attention a program provided by the Corps of Engineers. Below is a description of the project. If there is substantial interest by landowners along lower Stony Creek the RCD is prepared to submit letters to the Corps of Engineers and find local matches needed to conduct the project.

Under the authority provided by Section 1135 of the Water Resources Development Act of 1986, the Corps may plan, design and build modifications to existing Corps projects, or areas degraded by Corps projects, to restore aquatic habitats for fish and wildlife. Projects conducted under this program have included freshwater wet-

land restoration, anadromous fish passage, and river restoration. Projects must be in the public interest and cost effective and are limited to \$5 million in Federal cost.

The process for Section 1135 projects begins after a non-federal sponsor requests the Corps assistance under the program. When funding is available, the Corps of Engineers prepares a Prelimi-



Upstream of Road P Bridge

nary Restoration Plan (PRP) paid for by the federal government. The Final PRP contains a letter from the non-federal sponsor indicating that they understand their obligations for cost sharing and obtaining any necessary real estate. If the federal cost is under \$1 million, the Corps conducts a Preliminary Design Analysis (PDA), which is an abbreviated procedure involving the preparation of plans and specifications and an environmental assessment, without a feasibility study. The Corps then manages construction of the project.

If you are interested in participating in this program please contact :

Ajay Singh at (530) 934-4601 x 126.