

**THE CITIZEN'S POLICY GUIDE TO
ENVIRONMENTAL RESOURCE ISSUES**

**THE
WISE USE
AGENDA**

**A Task Force Report Sponsored by
the Wise Use Movement**

Edited by Alan M. Gottlieb

Introduction by Ron Arnold

**THE FREE ENTERPRISE PRESS
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Introduction

THIS AGENDA CAME INTO BEING as the result of a conference. A national conference was held in August of 1988 to bring together many like-minded citizens concerned about the environment and human development. It was sponsored by the Center for the Defense of Free Enterprise and christened the Multiple Use Strategy Conference. The nearly 300 attendees, all leaders in natural resource use fields, came from all over the United States and Canada to the meeting site in Reno, Nevada.

Four distinct constituencies attended: Most conference invitees were executives of public interest membership organizations dealing in some way with environmental or resource issues. The next largest group was unaffiliated but interested individuals who shared the common passion for life on this planet. The third consisted of trade group and government representatives, while the smallest rep-

resentations came from industrial firms focused around natural resource extraction and conversion: mining, fisheries, timber, petroleum, agriculture. They examined and debated the major economic/ecologic issues facing the world today:

Will man inevitably destroy the ecosystem of the Earth he depends upon?

Is human development inherently harmful to the natural environment?

Are there ways to develop natural resources for human use with minimal disruption to nature?

Can humanity live in productive harmony with the earth?

Is today's environmental movement over-reacting to environmental problems and giving too little attention to environmental solutions?

Are we threatening mankind's ecosystem with needless restrictions on human use of the Earth's ecosystem?

What is the proper place of mankind and industrial civilization in the natural world?

The Multiple Use Strategy Conference not only yielded provocative and innovative answers to these questions, it also provided the laboratory for a major social development: That its disparate and dispersed individual members had for the past few years been unwittingly preparing the way for a new movement of societal change. The Farm Bureau Federation had for years been working toward wise use unaware of its natural ally, the National Council for Environmental Balance; Oregonians for Food and Shelter had little awareness of the National Inholders Association (private property owners located within governmental boundaries). The National Rifle Association had studied the impacts

of Wilderness designation on hunting, but had only recently learned of a group with parallel interests, the Wilderness Impact Research Foundation. And so forth. Once the 250 conference participants met in the same room -- most of whom had never even heard of each other before -- they found that their various organizations had one thing in common: advocacy for the wise use of resources. And they discovered that between them their organizations represented a total membership in excess of ten million people.

They were not single-minded preservationists and they were not single-minded apologists for industrial development. They were representatives of a new balance, of a middle way between extreme environmentalism and extreme industrialism. They were looking for genuine solutions to the age-old problem of getting a living from the Earth without terminally fouling our own nest -- or that of our fellow creatures. They felt that industrial development can be directed in ways that enhance the Earth, not destroy it. And that meant that industry was a positive value in man's history, that industry was something that needs to be protected and fostered in the same way and for the same reasons that nature must be protected and fostered: there are those who would thoughtlessly harm the very source of our well-being.

Thus, for the first time, industry had a core of citizen supporters with a clear-eyed critical understanding of the problems of industry. They were a social force that has been growing for more than a decade without even being aware of its own existence. They were the founders of the Wise Use Movement.

By the end of the three-day conference, the participants had decided that they must take decisive action. They formally recognized that they were indeed a movement and accepted the concomi-

tant responsibilities, the first of which was to set an agenda for the wise use of the environment and present it to the incoming Administration. The Conference thus mandated that the Center for the Defense of Free Enterprise gather statements and recommendations from all attendees and edit them into a coherent document.

This book is the result of that labor. The Wise Use Agenda is a new view and a new hope for man and nature alike. It refuses to accept the defeatist notion that man will inevitably destroy his own home. It refuses to accept the blind optimism of the engineer who trusts only in rational thought and neglects humanity's rich emotional archetypes. It recognizes the need for a new outlook, a new holistic way of understanding man and nature that does not promote extremism in either unbridled development or fanatic preservationism. It strives to discover workable methods to achieve sustainable development: enough food, clothing, shelter and jobs for all mankind to live in humane conditions while enhancing the natural environment through thoughtful and knowledgable design.

The new movement's Neo-Environmental philosophy adds depth and character to both the "business-as-usual" outlook of industry and the "only nature is pure" outlook of contemporary environmentalism. The New Environmentalism is a bridge, a connecting point, between categories that have remained sadly apart in American thought. It

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bodes well for a future population that respects the Earth while using it efficiently.

The members of the Wise Use Movement have no glowing illusions about how difficult their ideal may be to achieve. But they have the strongest belief that their ideal is the right one for the future, that they represent the shape of environmentalism in the 21st Century.

In reviewing the many submissions to this Agenda, the most striking feature of Wise Use Movement thought is the care devoted to explaining the movement's basic outlook to those who may not be familiar with today's complex and highly technical resource issues. While helping editor Alan M. Gottlieb sort the voluminous materials, I culled a selection of pithy phrases that communicate in a few words what many pages could not. I call such an epigram a "Wise Use Motto." Here are a few I found memorable:

Man and Nature Together: A World That's Whole

Use It Wisely So Your Grandkids Can

Wise Use Is Being A Good Citizen Of The Universe

Wise Use: Nature For People - People For Nature

Just Because It's Human, Don't Knock It -
You May Be Human Yourself Some Day

Our Goal Is Productive Harmony

The Wise Use Agenda

Pollution Is Not, As We Are So Often Told, A
Product Of Moral Turpitude. It Is An Inevitable
Consequence
Of Life At Work. We Should Put Our Waste
To Good Use, Not Ban It.

Diamonds, Ha! *Sustainable Development* Is Forever

The Earth Is Tougher Than You Think
So Don't Tempt It To Beat Your Brains Out

The Basic Law of Toxicology Is: The Dose Is The
Poison; e.g. Everything Is Toxic
In A Large Enough Dose.
So If You Want Zero Risk, You'll Just Have To
Ban The Entire Cosmos.

Love All Of Nature,
Not Nature Apart
From The Oh-So-Human Soul That Loves It

On The Greenhouse Effect:
Better To Plant An Oxygen-Giving Tree
Than Curse The Carbon Dioxide

Wise Use Isn't Like
Having Your Cake And Eating It Too:
It's Like Finding Novel Ways To Get More Cake
By Taking Advantage Of Used Cake

You Can't Take Pictures Of The Forest
Without Cutting Some Of The Trees Down:
What Do You Think They Make Film Out Of?

You Have A Right To Be Here,
No Less Than The Trees And The Stars

Don't Be Stingy - Share The Earth

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Admittedly, some of these mottos, such as the old chestnut from *Desiderata*, are little more than clichés or bumper sticker philosophizing. Yet they can't be dismissed so lightly. I was impressed by the urge of Wise Use advocates to get their message across in terms the average person can understand *as well as in the technical language of their formal recommendations*. The Wise Use Movement is not an exclusive club, it is a broad-based movement seeking to gain a broader base. It has been gestating for more than a decade. In this agenda it has been born.

Ron Arnold
Editor In Chief
Free Enterprise Press

a system whereby two park officials experienced in fire-fighting establish contact with pre-arranged local forest service and state firefighting officers immediately upon receiving word of fires within their park and use every means available to put it out.

David Kaupanger
President

Southern Oregon Resources Alliance
Grants Pass, Oregon

Dear President Bush,

Southern Oregon Resources Alliance is a community-based citizen group which held its first meeting in January 1977. Prompted by Congressional wilderness bills relating to the Siskiyou National Forest, the group's original thrust - community education, and informed local participation in land use decisions - remains its primary purpose as a non-profit corporation. It is SORA's basic premise that *Man* as part of the environment depends on natural resources for economic independence and recreation. SORA believes that protection of the environment is essential and can be effectively combined with utilization and development of our resources to provide both jobs and recreational opportunities.

In states such as Oregon, which is over 50% publicly owned -- some counties are as high as 90% in public ownership -- it is essential that local people be heard by decision makers as more and more pressure is applied for single uses -- wilderness, wildlife or botanical preserves, etc. -- at the expense of the eminently sensible and productive multiple use concept for public lands. Multiple use allows everyone a piece of the pie -- miners, hikers, timber

fallers, hunters, cattle grazers, picnic parties -- all of us are able to get what we need from the land yet leave it for other users as well.

In addition to the newsletter and regular monthly meetings, major activities will continue to include:

1. Widespread participation in both USFS and BLM planning processes, as well as state and local activity;

2. Washington watch: numerous trips to Washington D.C. and Salem, local appearances by Congressmen, White House Staff, Administration Appointees (EPA, CEQ, etc.), state agencies;

3. Workshops and conferences for interested citizens: detailed presentations about specific issues. For example in 1978 we did a 2 day session called "Man & The Environment: Is there Room for Us?" A follow-up session in 1987 was called: "Man and the Environment: The Owls are Ahead!" Other meetings have addressed spotted owls, wild & scenic river legislation, forest fire salvage, etc.;

4. Downtown business community involvement. Our board members are bankers, retailers, local government officials, superintendent of schools, miners, timber operators and retirees. Our offices are shared with the Chamber of Commerce and Rogue Community College so we have a strong *Community Base*;

5. Demonstrations when all else fails to reach our legislators! Most exciting example: The Silver Fire Round-Up - August 27, 1988. Over 1,300 log trucks from 6 states converged on Grants Pass for a show of solid support for salvaging the burned timber in the Siskiyou National Forest. *It is being salvaged!*

Ann Basker
Executive Director

Northwest Legal Foundation
A Public Interest Law Firm
Seattle, Washington

Dear President Bush,

The NORTHWEST LEGAL FOUNDATION is a nonprofit public interest law firm which handles only matters involving unlawful government action, excessive regulation and other abuses of power. We would like to use this opportunity to address three issues of concern to us: 1) government out of control; 2) unconstitutional "takings" of property without just compensation; and 3) the appointment of judges.

1. Government is Out of Control

When the Founding Fathers gave us a Constitution with a Bill of Rights, the underlying principle was *limited government*, to provide security against unnecessary and unreasonable government intervention in people's lives. There is no question that government today is out of control at all levels. This fact has a least three significant consequences.

First, there is virtually no accountability. The purpose of elections in a democracy is so that people have meaningful choices regarding who will represent them and how they will be governed. However, for various reasons, this accountability exists today only in theory, not in fact.

Incumbency has become a life-time job guarantee: with few exceptions, once you're in, it's for as long as you want the job. As one official has put it, what we really have is an "elected dictatorship."

Our organization was formed to help restore accountability in government. When government entities and officials act outside of their authority, we seek to hold them accountable for their unlawful infringements on constitutional and statutory rights.

Another significant fact is that *many people are simply too intimidated by their own government*. They fear reprisals, particularly those who by virtue of their job must continue to deal with government.

Second, there is far too much legislation. Legislators at all levels of government are churning out so many new laws and regulations so fast that not even the most diligent citizen could ever hope to keep up. This is due in large part to growing legislative staffs and the need perceived by legislators to do something "visible" to convince their constituents that they are worthy of being re-elected.

Legislation cannot make everything fair. It can't make everything just. It can't make everything safe. It can't make everything right.

Excessive legislation breeds contempt for the law.

Excessive regulation takes away from the people the power to make many decisions for themselves about their standard of living and priorities for spending their money. In the building and development industry, for example, local governments in particular seek to impose endless and increasingly expensive requirements for amenities that most people probably would choose not to buy if they had a choice.

Third, big government out of control is outrageously expensive. To try to cure every problem and every injustice is simply unrealistic. Excessive regulation is too expensive for government to enforce and too expensive for people to comply with.

2. There Is Too Much "Taking" of Property Without Compensation, in Violation of the Constitution.

Property rights are fundamental rights. Property consists not only in its ownership, but
 "in the unrestricted right of use, en-

joyment and disposal. Anything which destroys these elements of property, to that extent destroys the property itself. The substantial value of property lies in its use. If the right of use be denied, the value of property is annihilated and ownership is rendered a barren right."

Ackerman v Port of Seattle, 55 Wn.2d 400, 409, 348 P.2d 664 (1960).

The 5th Amendment to the U. S. Constitution guarantees that no person's property can be taken for public use without just compensation. Yet one of the increasingly recurring issues we see in our work is unlawful takings of property under the guise of the police power, without any compensation, through regulations which totally deprive owners of the right to develop their property at all. In their efforts to churn out legislation, officials seek to justify any and every kind of restriction and condition by unsubstantiated assertions of government interest, with little or no regard for property rights of affected owners.

Federal Executive Order 12630 entitled "Government Actions and Interference With Constitutionally Protected Property Rights" signed by President Reagan on March 15, 1988, in response to a trio of U. S. Supreme Court cases affirming the rights of property, is a significant step in helping to ensure that at least the federal government does not unlawfully infringe upon property rights. However, this order is meaningless unless it is property and diligently enforced.

The "takings" problem is particularly acute with regard to the "wetlands" issue, which is emerging as both a significant environmental issue and a property rights issue. "Wetlands" are an absolute nightmare for people who bought property for a dear price with the intent to develop it.

The population is increasing, yet land use regulations such as those concerning wetlands significantly diminish the potential housing supply, which drives up prices -- all in the midst of a housing demand crisis!

Supporters of wetlands regulations justify them on the ground that wetlands are part of the ecological chain and that unrestrained development could have disastrous consequences that are yet unknown. Current and proposed wetlands regulations go much too far in protecting against dangers that don't exist with respect to far more property than is necessary to accomplish whatever the real goal is -- all without compensation to the affected property owners who are forced to bear the entire direct burden that should more appropriately be the responsibility of the community as a whole. As one of our state supreme courts has stated:

"...public officials...have no right or legitimate reason to attempt to spare the public the cost of improving the public condition by thrusting that expense upon an individual. [Citations omitted.] The greater the cost of accomplishing something which is considered to be in the public interest, the greater the reason why a single individual should not be required to bear that burden."

Burrows v. Keene. 432 A.2d 15, 20 (N.H. 1981).

With regard to wetlands, government needs to define what resources are really the object of protection and whether there is truly a need for it.

3. We Need Judges Who Affirm the Concept of Limited Governmental Authority to Interfere With Constitutionally Protected Rights.

The last issue which we would like to address

is the need for judges who truly affirm the concept of *limited governmental authority* to interfere with constitutionally protected rights. Too often, too many judges seem to have forgotten that constitutional rights are paramount and that government's power to interfere with those rights is limited and must be sufficiently justified. The combination of certain legal presumptions, burdens of proof, and undue deference to unsubstantiated legislative assertions, to name a few things, have resulted in erosion of constitutional rights by one of the very bodies whose purpose is to protect such rights.

In order to justify regulations under the police power, legislators are supposed to establish a legitimate governmental interest in regulating a certain matter. There must be a real harm or problem serious enough to warrant regulation and the regulation must actually serve the asserted governmental interest. Assertions as to the existence of sufficient justification are easy to make but not so easy to prove. However, numerous judicial decisions reflect a tendency on the part of many judges to accept unhesitatingly the mere unsubstantiated assertions of legislators regarding the justification for particular regulations. As our Washington State Supreme Court has stated: "[T]here is sometimes a natural tendency on the part of the courts to stretch [the police] power in order to bridge over otherwise difficult situations, and for like reasons it is a power most likely to be abused."

Conger v. Pierce County, 116 Wash. 27, 198 Pac. 377 (1921).

As a result, social activist legislation in recent years has led courts to water down certain fundamental rights by upholding a variety of regulations which not only significantly infringe upon constitutionally protected rights, but also ultimately work to the detriment of the very people the regula-

tions were intended to help. Particularly with regard to the protection of property rights, concerning which our U. S. Supreme Court justices have said: "Our social system rests largely upon its sanctity, 'and that State or community which seeks to invade it will soon discover the error in the disaster which follows.'" *Block v. Hirsh*, 256 U.S. 135 at 165 (dissenting opinion of McKenna, J.: White, Ch.J. and others).

Although many of these issues arise in state courts, the federal courts can lead the way. This requires judges who believe that the "ends do not justify the means", and who will make the government carry its burden of adequately justifying the need for its laws within the limitations of their authority.

For instance, trying to help low-income tenants by imposing onerous fees, conditions and other exactions solely on owners of low-income property is not objectionable because of the ultimate objective, i.e., to help low-income people, but rather, it's objectionable because of the means chosen to achieve it. If the "ends" are allowed to "justify the means", then the law becomes meaningless. And the prospect of living in a society where law is uncertain or disregarded at will is totally contrary to our system of government and is a serious threat to its very foundation.

SUMMARY

We urge you to consider the following:

1. Help to bring government under control by:

a. seeking to restore accountability, such as measures that will enable more qualified people to run for elected office against incumbents and help to break the "incumbency for life" pattern;

b. discouraging the proliferation of legislation that is not absolutely necessary, and the need for large staffs that promote the vicious cycle

of bigger government and more law-making; encouraging people to assume more responsibility for themselves while admonishing them that laws can't make everything fair, right or safe -- the laws are only as good as the people who are supposed to comply with them;

c. eliminating excessive regulations and programs which are outrageously expensive, turning over more responsibility to the private sector and to state and local governments where the people have more control over their elected officials and tax dollars can be more efficiently spent; making it safe and worthwhile for "whistle-blowers" to report excessive and wasteful government spending; and reducing programs and/or requirements which are not absolutely necessary -- compliance with which we can no longer afford.

2. Prevent unlawful infringements on property rights by:

a. vigorously enforcing Federal Executive Order 12630; and admonishing state governments to follow suit;

b. promoting a "wetlands" policy that:

i) defines the real resource to be protected; clearly establishes, by *objective criteria*, that regulation is truly necessary to protect against known, existing dangers, and that the object of the regulation is a legitimate interest of government;

ii) significantly restricts the definition and criteria of property that will be regulated (compared with existing definitions and criteria) in such a way as to minimize the total amount of property rendered undevelopable or otherwise useless, specifically excluding smaller parcels and avoiding criteria which would render undevelopable large areas of property based on a determination that only a very small area fits the criteria;

iii) recognizes the occurrence of a "taking" of property requiring just compensation to the

extent property is rendered undevelopable as a result of being classified as wetlands;

iv) *recognizes that wetlands can be filled and developed without substantial adverse effects.*

v) *spends 99% of the efforts on 90% of the problem rather than 90% or more of the efforts on 10% of the problem.*

vi) *eliminates conflicting criteria and requirements of multiple jurisdictions exercising authority which presently infect the permit process with impossible bureaucratic tie-ups.*

3. *Appoint judges who:*

- a. don't legislate from the bench;
- b. believe in the supremacy of the Constitution and the
- concept of limited government; and
- c. do not allow the "ends" to justify the "means".

Sally Saxon
Attorney At Law
Of Counsel

Montana PLUS Public Lands Used Sensibly Bozeman, Montana

Dear President Bush,

Montana PLUS is a non-partisan, non-profit Montana corporation organized to inform and educate the public about the importance of multiple-use management of our public lands. Bruce Vincent (Libby, MT) is president, Gary Langley (Helena, MT) is vice-president, and Barbara Kapinos (Bozeman, MR) is secretary/treasurer.

Through Montana PLUS, people representing hunters, snowmobilers, trail bike and ATV rid-