

The Long View

In This Issue:

1 Corporate Social Responsibility Reporting— Making It Meaningful
- *Jeff Cronn and Marco Materazzi*

3 Program Announcement
Climate Change Plaintiffs Score in Court of Appeals!

4 Is Western Water Law Sustainable?
John DeVoe (p 4) and Martha Pagel (p 6)...Taking Sides

6 Partners in Sustainability—
List of 2014-2015 Partners so far!

8 Lines in the Sand—Climate Change and the Oregon Coast—
Steve Schell

9 Hunting and Wildlife Conservation—
What’s the Connection?—
Marie Burcham

Corporate Social Responsibility— Making it Meaningful

By Jeff Cronn and Marco Materazzi

The Corporate Social Responsibility (“CSR”) movement is a growing trend within the business community to self-monitor and report the impact of business practices on consumers, employees, communities and the environment. Companies throughout the world, from local privately held businesses to global Fortune 500 conglomerates, are continuing to focus more of their attention and resources on CSR and CSR reporting in order to improve social and environmental responsibility, attract business, increase efficiency and enhance long-term strategic planning.

Critics of the CSR movement suggest that the current regime of voluntary CSR reporting may actually be counterproductive, as it enables corporations to appear to be addressing important issues without actually doing so. While there is no doubt some truth to this, we think we are seeing an evolution in CSR and CSR reporting, moving from a primarily reactive response to public relations issues (e.g., supply chain scandals and environmental disasters) to a more proactive process that is part of company culture up to top level management. Perhaps unsurprisingly, we think the primary reason for this is a now more widely acknowledged understanding that a holistic approach to business practice actually improves long-term business performance and profitability.

Potential business benefits of CSR reporting are readily apparent:

Marketing. Consumers are increasingly more likely to choose products from socially responsible companies, providing a strong marketing incentive for businesses to embrace CSR. The same is true for companies which offer their products and services to other businesses. As more scrutiny is placed on large companies, like Apple and Nike, to have responsible supply chain practices, they are more likely to do business with companies that engage in and can demonstrate a concern for CSR and accurate CSR reporting.

Cost Savings. Reducing waste, increasing energy efficiency and using less water are all examples of activities that are not only good for the planet, but also for a business’s financial bottom line.

Risk Management. Companies may be able to avoid costly and damaging public relations crises and litigation by taking a pro-active role in monitoring and reducing the adverse impacts of their operations.

(Continued on page 2)

Enhanced Strategic Thinking. CSR practices can lead to a focus on longer-term issues that may not be a priority from the perspective of short-term financial reporting (e.g., rising energy costs, the possibility of carbon regulation, competition for natural resources, demand for better work place conditions, demand for equal access to economic opportunity and others). These issues may not affect business performance in the immediate term, but addressing them now will likely lead to better long-term business performance.

So what CSR reporting practices are being adopted by leading businesses? Global companies like GE, Intel, Coca-Cola and many others regularly produce detailed reports on their environmental impacts, supply chain practices and other impacts of their operations. These reports often extend to

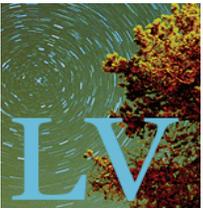
hundreds of pages and follow detailed and comprehensive third-party reporting standards analogous to the SEC's financial reporting requirements. But a company does not need to have a billion dollar balance sheet and a team devoted to CSR and CSR reporting in order to engage in these activities. Companies of all sizes and industries are effectively engaging in CSR and CSR reporting. In Oregon, this reporting follows from the requirement that Oregon benefit companies prepare and deliver a "benefit report" to each equity holder and post it on a publicly available website. The benefit report is like a CSR report but describes the extent to which the benefit company provided the general and any specific public benefit as provided in the statute and met or exceeded the identified third party standard.

We've found that good CSR reporting practices have the following common elements:

- Identification of goals. A clear expression of what the company is trying to achieve, such as economic goals (e.g., integration of CSR into business strategy, product development, innovation); environmental goals (e.g., reduction of waste, reduction of carbon emissions, reduction of energy use); social goals (e.g. employee health and safety, living wage, diversity, community investments).
- Identification of audience and stakeholders. An understanding of the stakeholders to whom the company is primarily speaking (consumers, investors and funding sources, employees and potential employees, community and social activists), and the reasonable expectations and interests of these stakeholders.
- Establishment of the baseline. A frank and balanced assessment of the company's current performance. Establishing an accurate baseline allows a company to better report its progress (or lack of progress) in achieving its goals.
- Collection and measurement of data. Systematic data collection and analysis is more compelling and meaningful than mere anecdotes.
- Application of a third-party standard. Use of a third-party standard helps make reports accessible and comparable between companies and across industries. The current leading standards are now being used primarily by larger publicly traded companies; however, newer standards more suitable for smaller companies are emerging.
- Regular reporting. High-quality CSR reports are balanced, accurate and released on a timely basis. Some companies are now also moving towards continual, web-based reporting, rather than the production of one annual comprehensive report.

Whatever you think of the efficacy of CSR and CSR reporting, there can be little doubt that it is here to stay. We remain optimistic that the trend towards increased voluntary CSR reporting, coupled with newly emerging reporting standards, a trend towards mandatory reporting in several areas (like conflict minerals and forced labor) and the proliferation of benefit company legislation, will result in a "race-to-the-top" that will lead to more responsible, transparent and sustainable business practices that improve long-term business performance. ■

Jeff Cronn is the Chair of Tonkon Torp's Business Department and Marco Materazzi is a Senior Associate in the Business Department. Both Cronn and Materazzi have practices that emphasize mergers and acquisitions, and a range of corporate and business matters. They also played an active role in crafting Oregon's recently enacted Benefit Company legislation.



PROGRAM ANNOUNCEMENT:

Climate Change Plaintiffs Score in Court of Appeals

A Program Sponsored by the Oregon State Bar Sustainable Future Section and Environmental and Natural Resources Section

August 5, 2014 – Noon to 1:15 pm

RSVP to reserve your place: jan.flynn@tonkon.com

In *Chernaik v. Kitzhaber*, two Oregon youths allege the state has violated its fiduciary duty to protect the State's natural resources, including rivers, estuaries, wildlife, and the atmosphere, from Greenhouse gases under the public trust doctrine. In June, the Oregon Court of Appeals held for plaintiffs and reversed the trial court's dismissal of the action based on lack of subject matter jurisdiction. To brief us on this ground-breaking case, co-counsel for plaintiffs will explain the significance of the decision and their rationale for why the centuries old public trust doctrine can address the growing threat of climate change.

William (Liam) Sherlock is a Shareholder at Hutchison, Cox, Coons, Orr & Sherlock in Eugene, Oregon.

Christopher Winter is Co-Executive Director and Staff Attorney at CRAG Law Center, a public interest law firm in Portland.

Date: Tuesday, August 5, 2014

Time: Noon to 1:15 pm

Location: Tonkon Torp
888 S.W. Fifth, Suite 1600
Portland, Oregon

Lunch: Bring your own if you wish

Cost: No cost for ENR or SFS members
\$10 at door for others (or \$20 to join either section)
Please make checks payable to "OSB"

CLE: 1.0 hour CLE credit (being applied for)

RSVP: Jan Flynn jan.flynn@tonkon.com

Phone: If you must participate by phone, let Jan Flynn know by e-mail, and Jan will send the call number and pass code.

If you would like to request accommodations for a Section meeting or event, please contact the Bar's ADA Coordinator as soon as possible but no later than 48 hours before the scheduled event as described at <http://www.osbar.org/ada/adanotice.html>.

(Continued on page 4)

Western Water Law and Sustainability

By John Devoe

Strip away the bells and whistles, and western water law is, at bottom, a rule of capture. Get there first, stretch a dam or tarp across the stream, build a ditch, or if you came later, drill the deepest well, install the largest pump, and get a preferential electrical tariff if you can. The law is antiquated in many ways – and not just in a horse and buggy sense. Western water law institutionalizes technology and many practices that are no different than those practiced in ancient Sumeria over 5000 years ago. Western water law creates what can be perpetual private entitlements to public water resources at no price for the water itself, a massive direct subsidy and arguably one of the largest giveaways in the Western world.

“... the state has given away permits for more water than actually exists in many of our rivers and streams...”

To be fair, sustainability was never a primary purpose of the early development of this body of law. Much of the law was created before society became concerned with the depletion of resources, though there were early warnings from people like John Wesley Powell and Elwood Mead, who noted that irrigation based on a rule of capture and without careful measurement “leads

farmers to substitute water for cultivation and to injure their lands and exhaust streams by wasteful and careless methods.”¹ Mead successfully introduced the idea to the Wyoming constitution that water is public property.² He also encouraged the development of state agencies to administer water through permitting and adjudication. Though these concepts and practices are typical across the West, despite state bureaucracy and water regulation, western water law has generally contained “laissez-faire policy in the extreme; public resources were thrown open to virtually unfettered private exploitation.”³

Is western water law sustainable? Consider the perspective of fish. “Salmon are now extinct in almost 40% of the rivers in which they historically spawned in Oregon, Washington, Idaho and California. The salmon populations in 44% of the remaining streams are at risk. Research in the 1990s revealed that of the 214 at-risk native, naturally spawning runs of Pacific salmon, steelhead and sea run cutthroat trout in Oregon, Washington, Idaho and California, 101 were at high risk of extinction, 58 were at moderate risk and 54 were of special concern. Research also found that at least 106 major stocks had already become

extinct.”⁴ We are in the midst of a truly massive impoverishment and extinction of Pacific salmon at the southern end of their range. While western water law is certainly not the only cause for the alarming declines, the body of law certainly bears a significant share of responsibility for the plight of these and many other species.

The lack of sustainability in western water law is nothing new. In 1955, when Oregon had issued approximately 25,000 water rights, the House Water Resources Committee reported to the Legislature that “permits have been issued for more water than minimum flows will provide on most of Oregon’s streams.”⁵ Despite official recognition that it might be time to apply the brakes, the state proceeded to step on the gas and quadrupled the number of rights issued. Today, the Oregon Water Resources Department (WRD) has issued almost 100,000 surface and groundwater rights and continues to approve more. (This number does not include the quarter million “exempt wells” across the state.) Many rivers and streams (and aquifers) across Oregon (and the West) are severely “over-appropriated.” This means that the state has given away permits for more water than actually exists in many of our rivers and streams, particularly during the drier parts of the year.

Now, add climate change to the mix. Climate change will intensify many of the streamflow and water management challenges resulting from western water law: low streamflows, poor water management, depletion of groundwater systems, excessive water temperatures, loss of natural water storage and loss of aquatic habitat. The changing hydrological patterns caused by climate change will severely test the adaptability of western water law. But there may be a silver lining. Climate change will magnify the critical need for improved water management, aggressive water conservation, increased efficiencies in the delivery and use of water, and the protection and restoration of instream flows. The resiliency of freshwater aquatic habitat and water systems in the West depend, in large part, on the actions we begin to take now. Whether western water law is up to the task is an open question, though the early returns are not particularly promising.

Possible Solutions

The 1987 Instream Water Rights Act⁶ provides legal protection for healthy streamflows in designated waterways. Although this law now provides some protection for about 1,500 river and stream reaches, older water rights still have a higher priority for water, and many streams and rivers lack even this basic form of flow protection. While the Instream Water Rights Act and other visionary laws such as the Conserved Water Act⁷ create important tools to restore water instream through transfers and water conservation projects, restoration has not kept pace with new water appropriations. Oregon has not invested the financial resources or the political will necessary to pursue these transfers on a large scale.

While instream transfers are no doubt helpful, other common sense steps are needed. We must stop over-appropriating streams and aquifers. We must make decisions based on data and science. We must stop issuing groundwater rights amid uncertainty about the sustainable yield of aquifers and without understanding hydraulic connectivity with nearby surface waters.⁸ We must do a much better job measuring and managing water.⁹ Beyond these basic measures, we need to begin to address water issues as problems of demand rather than as problems of supply. As a corollary, we need to make better use of what we have. This will require better data and greater invest-

(Continued on page 5)





ment in efficiency, management and conservation. We also need a price signal for water. As long as water is free, there will be less incentive to conserve water and use it sustainably. Though these and other solutions exist, the fundamental principles of western water law are notoriously resistant to change. As the old saying goes “progress comes to this ditch one funeral at a time.” However, change will indeed be necessary if we are to meet “the needs of the present without [further] compromising the ability of future generations [and species] to meet their own needs.”¹⁰

End Notes:

¹Elwood Mead, *Irrigation Institutions*, MacMillan Company, New York 1903 at 100-101.

²This concept is also found in Oregon law see, ORS 537.110 “All water within the state from all sources of water supply belongs to the public.”

³Charles Wilkinson, *Crossing the Next Meridian*, Island Press, 1992 at 240.

⁴Jim Lichatowich, *Salmon Without Rivers*, Island Press, 1999 at 204, discussing the report Pacific Salmon at the Crossroads.

⁵Report of the House Water Resources Committee to the 48th Oregon Legislative Assembly, 1955 at III and 29.

⁶ORS 537.332 et. seq.

⁷ORS 537.455 et. seq. See also ORS 543A.305, allowing for conversion of certain hydroelectric water rights to instream water rights.

⁸The WRD continues to do this despite the Umatilla experience, where excessive permitting of groundwater use resulted in mining of groundwater up to 21,000 years old and drawdowns of aquifers up to 500 feet.

⁹More than half the water diverted in Oregon is not measured and is not subject to a measurement condition. Sources – September 19, 2006 and March 22, 2007 responses of OWRD to questions posed by Rep. Jackie Dingfelder and Sen. Doug Whitsett to the Oregon Water Resources Department. See also, March 8, 2007 updates to Oregon Water Resources Department Strategic Measurement Plan available on line at http://egov.oregon.gov/OWRD/mgmt_measure.shtml

¹⁰World Commission on Environment & Development (Brundtland Commission), *Our Common Future* 43 (1987).

John DeVoe is the Executive Director at WaterWatch Oregon Inc., an organization that has worked to protect and restore water to Oregon's rivers, streams and lakes for fish, wildlife and people for the past 28 years.

Oregon State Bar
Sustainable Future Section

Photo by J. Michael Mattingly

The Long View

**Oregon State Bar
Sustainable Future Section**
16037 SW Upper Boones Ferry Road
Post Office Box 231935
Tigard, Oregon 97281-1935

Phone: 800-452-8260
Fax: 503-598-6988
E-mail: michelleslaterlaw@gmail.com

Check out our Web site!

<http://www.osbsustainablefuture.org>

Editor's Note:

Thank you for reading *The Long View*.
Feedback and suggestions are welcome.
E-mail your comments to:
michelleslaterlaw@gmail.com
-or-
osbsustainablefuture@gmail.com
Michelle Slater,
Michelle Slater Law, LLC, Editor

Partners In Sustainability

(as of August 1, 2014)



Ater Wynne LLP
 Beery Elsner & Hammond
 Bodyfelt Mount
 Henkels Law LLC
 Intelekia Law Group LLC
 Merrill & Ropp, LLP
 Michelle Slater Law, LLC
 Rose Law Firm, P.C.
 Schwabe Williamson & Wyatt, P.C.
 Stoel Rives LLP
 Tonkon Torp LLP

The criteria to qualify as a Partner in Sustainability and application form are located [here](#). Please direct any questions about the Partners Program to osbsustainablefuture@gmail.com.

Certifications are accepted throughout the year.

Is Western Water Law Sustainable?



By Martha Pagel

On the one hand, it is a challenge to argue the sustainability of an arcane legal doctrine that allocates the state's precious water resources based on the concept of first come, first served. I could say "I give" and cut this commentary short. On the other hand, it is fair to say that over the past three decades, Oregon has stepped forward by making customized changes to the 150-year-old system of prior appropriation, setting the stage for an approach to water management that will be practical, efficient and sustainable well into this 21st century. We simply have no alternative but to try to fit the square peg of prior appropriation into the round hole of changing public needs, expectations, and legal demands—and in doing so, we make the case for sustainability.

Oregon, like other Western states, adopted the doctrine of "prior appropriation" as the legal foundation for water allocation. The system emerged as a practical tool to foster European settlement of the arid West by allowing water users to essentially stake a claim to use water from any available surface water source. By completing the fairly simple process of posting notice of the intent to use water, diverting the water from its natural source for use on fields or in towns, and putting the water to "beneficial use" (such as for irrigation, domestic, industrial or municipal use), the water user could secure a property right to continue the water use indefinitely. Early on, courts confirmed that water is an attribute of real property the rights to which run with the land so long as the water is put to beneficial use. Even today, the only way the state can terminate a vested water right is by showing in a contested case hearing that the water user has failed to make beneficial use for a period of five or more consecutive years.

Over the past thirty years the law has changed dramatically. As a result, Oregon's process of reviewing applications for new water uses now includes strong protections for in-stream flow and fish habitat.

Under this system, the vested right allowed the most senior water right holder for a given source to make full use of the authorized amount of water before any more junior users could take water from the same source. This basic concept of first in time, first in right holds strong today with no obligation imposed on senior users to share during times of drought or shortages and, in many cases, with no protections for in-stream flow needs.

The system was designed to encourage settlement and development and it worked well. Many key streams and rivers in Eastern Oregon can quite literally run dry in summer months as a result of irrigation and other diversions that were established 100 years ago or longer. Although Oregon's first comprehensive water code was enacted in 1909, it was not until a major legislative overhaul in 1955 that the statutes first protected public in-stream flow uses such as recreation and fish habitat. A series of other major changes in the 1980s provided the tool of establishing an "in-stream water right" to afford them similar priority-based protections.

(continued on page 7)



Is Western Water Law Sustainable? *(continued)*

(Continued from page 6)

Increasing reliance on groundwater over the past fifty years has created further complications and pressures as we learn more about the complexities of hydraulic connectivity between groundwater and surface water. Additional legal and practical water management questions are arising as Oregon begins to quantify and recognize federally reserved water rights claimed by Indian tribes—water rights determined by the courts to have a priority date of “time immemorial” to reflect aboriginal uses in place long before European settlement. As evidenced by recent action in the Klamath Basin, once quantified through a state adjudicatory process, tribal rights will trump all other existing water rights in any given area.

The water law system is further stressed by the overlay of federal regulatory requirements under the Endangered Species Act and the Clean Water Act. With increasing understanding of the connection between flow and temperature, there is a potential for regulation of water rights to avoid “take” of federally listed species or to ensure compliance with water quality standards.

In response to these challenges, Oregon’s version of prior appropriation continues to evolve. Over the past thirty years the law has changed dramatically. As a result, Oregon’s process of reviewing applications for new water uses now includes strong protections for in-stream flow and fish habitat. Consideration of fish screening and passage is required when existing diversions are changed, and the law includes tools and incentives for restoring in-stream flow through in-stream leases, transfers and conservation.

In addition, voluntary reallocation of existing water rights will provide a key source of supply for future growth and help to meet the legal obligations of federally reserved rights and federal regulations. In some cases, such transactions will be driven by market forces, with willing sellers and buyers. In other cases, the “voluntary” reallocation will be spurred by legal obligations and achieved through settlement agreements.

Transactional tools include “transfers”, both temporary and permanent and for in-stream and out-of-stream uses, conservation incentives, and municipal preferences that give local water providers the flexibility to pool resources to meet regional needs. New approaches to storing water in winter months when supply is most plentiful will also help meet future needs and provide a source of water to help restore and rehabilitate stream flow that has been appropriated to out-of-stream uses without reserving and protecting minimum in-stream flows for public needs. These options for voluntary action provide a way around the potentially significant legal battles that would arise out of any attempts by state regulators to unilaterally alter the private property rights created under the prior appropriation system.

Western water law and the prior appropriation doctrine were most certainly not designed with resource sustainability in mind. To the contrary, the historic legal framework authorizes and to a large extent encourages virtually full consumptive use and privatization of the public water resource. However, Oregon law has not remained static and continuing legislative and policy changes have created incentives for conservation, in-stream flow protection, and voluntary market-based transactions to both address public needs and meet current regulatory requirements. The result is an ever-evolving legal framework that allows for pragmatic, sustainable water management.

Martha Pagel is a shareholder with Schwabe, Williamson & Wyatt, where her practice focuses on water issues. Before entering private practice in 2000, Ms. Pagel spent nearly 20 years in Oregon state government, including eight years as Director of the Oregon Water Resources Department.

Lines in the Sand— Climate Change and the Oregon Coast

By Steven R. Schell

The 2013 Northwest Climate Assessment Report (“NW Climate Report”) summarizes the work that many scientists at Oregon State University, Portland State University, and University of Washington have been doing for several years. This Report, clarifies some of the projected impacts of climate change on the Oregon coast. They will be significant. For example, for portions of Oregon’s ocean shore, scientists predict waves up to 85 feet high and loss of above-low-tide beach widths of 600 feet due to sea-level rise. Further, inundation and storm damage will cause loss of homes, streets, electricity, water and other infrastructure in several coastal cities, including Seaside, Cannon Beach, Rockaway, Neskowin, Lakeside, and Bandon.

Over many years, people, courts, and legislatures have drawn lines in the sands of Oregon and established uses behind those lines. The findings in the NW Climate Report raise questions about where those lines should be drawn for various uses in response to predicted impacts and other coastal changes and about how to best adapt future use and protections.

Law and Regulation

Historically the code of Justinian provided that navigable waters and their beds and banks belong to the sovereign. Later, English common law developed concepts of accretion, reliction, and avulsion, which address changes in the beds and banks. Responding to a 1913 proposal by Governor Oswald West, the Oregon legislature established our beaches as highways from the low water mark to the mean higher high water mark (i.e. the “wet sands”). Later, recreation was added as a use in this area.

In 1967, Oregon’s famous Beach Bill (along with an Oregon Supreme Court decision) declared the dry sands to be subject to a public use easement from the beginning of time. The line in the sand for this legislation was set at the beach vegetation line, that is, 16 feet above mean sea level. The line was later surveyed and is imbedded in statute. A permit opportunity was given to upland owners to protect their developed property (as it existed at the end of 1976) by intruding into the dry sands area using hard protection such as riprap or sea walls.

Later, Oregon’s Land Use system resulted in an LCDC Beaches and Dunes Goal and implementation measures that prevented upland owners (who built structures after December 31, 1976) from using such hard protection in the dry sands. The Goal also prohibited construction on movable foredunes and deflation plains between the foredunes and more permanent dunes. Flood Insurance has also had an impact on lines in the sand. The Federal Emergency Management Administration (FEMA) recently established VE zones,

the landward line of which is now in places like Newport at 35 feet above sea level. While the LCDC adopted a hazards goal it has proved ineffective in addressing natural hazards. Finally, under LCDC’s Shorelands Goal, unstable geological formations along the Oregon coast must be identified by local governments, and building on them is prohibited.

Geology

Lines in the sand are complicated by Oregon’s geology. Off Oregon’s coast, two massive tectonic plates collide. As the Pacific Plate presses against the smaller Juan de Fuca Plate it forces part of the coast to rise, part to stay the same, and part to fall. Every few hundred years when the tension gets too great the smaller plate dives under the larger plate. The result is a drop in elevation of certain areas along the coast, and the creation of a giant Tsunami wave. In a similar situation off Sumatra the wave was 100 feet high. Oregon is not unprepared for this event. Specifically, inundation zones have been established by statute as additional “lines in the sand”, and essential service buildings used such as fire stations, hospitals, and large assembly gathering places cannot be built in these zones.

Planning for Adaptation

The NW Climate Report predicts sea levels will rise by 2070 by 4 to 54 inches, with the lower number based on the unlikely scenario of immediately stabilizing the level of CO2 equivalents in the atmosphere. To prepare for a sea-level rise of one to three feet will present a set of complicated issues. Adaptation planning should include, but not be limited to, three initiatives:

- ⇒ Adoption by the LCDC of a comprehensive Climate Change Goal.
- ⇒ Revisions to the Beach Bill to protect beach widths.
- ⇒ Post-disaster planning that includes abandonment of infrastructure for inundated areas.

Steve Schell is Of Counsel to Black Helterline, LLP. His practice focuses on environmental, land use and energy issues, as well as real estate and construction. He has nearly 40 years of experience with the firm in his areas of expertise.

NOTE:

For a longer article on this topic, by Steve Schell and Courtney Johnson, see:

<http://law.uoregon.edu/wp-content/uploads/2014/04/JohnsonProof1Final.pdf>.

The Hunting and Wildlife Conservation Connection

By Marie Burcham

Hunters and other sportsmen have historically been a strong voice in land and wildlife conservation because their sports require wilderness suitable for game animals to thrive. In the United States today, a significant portion of wildlife and land conservation funding comes from, or is directly related to, the hunting industry.

There are many sources of conservation funding that are related to hunting activities. First, a federal excise tax on ammunition and firearms is authorized by the Federal Aid in Wildlife Restoration Act, which is also known as the Pittman-Robertson Act. This Act gives wildlife management agencies a predictable source of revenue, allowing them to commit to long-term conservation projects. Another funding avenue for wildlife conservation lies in the sale of state hunting licenses, tags, and associated fees, the cost of which vary from state to state. These “use” fees are then spent, in large part, to manage wildlife and wilderness areas for recreational and conservation purposes. The “Duck Stamp Act” is another major contributor to wildlife conservation because it requires hunters to contribute money and buy “stamps” before hunting waterfowl. Duck Stamp monies are then used, in large part, for wetland reservation and migratory bird protection. In some states these revenue sources are the primary – and sometimes the only – means by which the state funds its wildlife conservation efforts and wildlife management agencies. In addition, hunting clubs and organizations are strong proponents of land reservation and wildlife protection because the availability of healthy game animal populations fuels their sports.

While funds from the sale of permits and tags support the purchase and rehabilitation of land, money from these sources also pays the salaries of wildlife managers, creating a potential for bias toward hunting activities. Impacts on wildlife and biodiversity can be significant and complex when hunters are added to any equation – and not just because hunters remove some animals from an ecosystem. With such bias, game species such as deer, waterfowl, and wild turkeys get more management attention than species that have no immediate value to hunters.

Habitat management for one or a few species can make the ecosystem as a whole unhealthy. Keystone species are plants or animals whose presence determines the vitality and even the existence of the ecosystem in which that species thrives. Unfortunately, only rarely are game species also keystone species, so supporting primarily game animals in an ecosystem may not help the sustainability and biodiversity of the system as a whole. In some cases a keystone species may directly compete with hunters for the same game. Wolves remain a relevant example of a keystone species that has historically been eradicated to the detriment of every ecosystem in which they thrive. Though hunting is only one factor behind the eradication of wolves, it is a significant factor. When wolves are removed from an ecosystem, elk and other large prey animals can overgraze, destroy riparian zones, and degrade sensitive areas that provide habitat for other species. While hunting is a proposed solution to prey animal overpopulation, it is not one that fills the void left by wolves and similar predators because hunters do not take the same animals – namely the old, sick, and weak – that the wolves do when present.

How land is managed for wildlife may also be influenced by the hunting source of wildlife conservation funding. For example, heavily wooded areas may be cleared to create more meadow spaces for deer to forage without necessarily considering impacts on the other species in the area. However, many management strategies do lead to positive results when the health of a game species is also indicative of the health of an ecosystem, or when that ecosystem is supported holistically regardless of the presence of game animals. Controlled burns are a good example of a holistic management strategy that has positive impacts on game and non-game wildlife. These burns, which mimic historic fires in the tall grass and sagebrush of the West and South, stimulate the growth of native grasses and other plants which provide seeds and shelter for game species like sage grouse, wild turkeys, and quail. The burns also have positive impacts for other plant and animal species in these arid ecosystems because they revitalize soil fertility and support native plants over invasive species that have little to no value to wildlife. So, even though bias can affect how land is managed in favor of hunters’ preferred targets, sustaining healthy game animal populations can be consistent with sustaining ecosystem health and biodiversity as a whole.

Despite the potential issues of bias in wildlife and land management due to the source of funding, without hunters a significant source of monies for these environmental interests would dry up. Given uncertain economics, climate change, and a limited amount of federal and state funding being used for environmental purposes, hunters provide some of the most reliable income for wildlife management agencies. It is no surprise these agencies want to keep hunters happy, because without revenue from excise taxes, Duck Stamp dollars, and sales associated with hunting licenses and tags there would be next to no money available for supporting wildlife. Right now funding from hunting activities gives agencies an ability to manage wildlife conservation when they would not otherwise be able to do so. Concerns about bias can be addressed through a universal wildlife management strategy that supports overall ecosystem health and biodiversity.

Marie Burcham is an attorney practicing in the areas of small business, agriculture, environmental, and animal law. She is interested in finding and forging connections between science and the law.