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SCHROEDER*



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Published in cooperation with the Forest, Wildlife and Range Experiment Station
as Contribution No. 87.

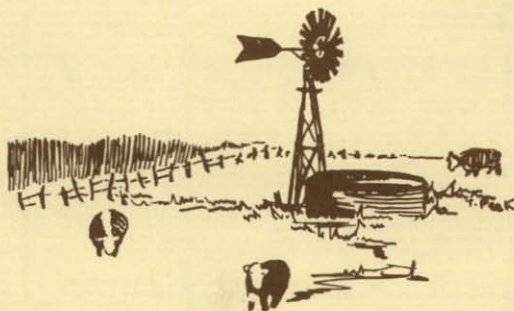
Introduction

Lawyer, philosopher, historian and teacher partially describe the many skills and talents of Mr. William F. Schroeder. Mr. Schroeder is a practicing lawyer with an office and home in Vale, Oregon. He settled in Vale after receiving his law degree from Valparaiso (Indiana) University School of Law in 1949. His present law practice is essentially western-wide and deals to a large extent with conflicts and disputes involving use of the public lands.

"Range Management — An Obituary," published in the September 1965 issue of the *Journal of Range Management*, along with his presentation "Cobwebs on the Public Lands," in the *Western Livestock Journal*, August 1960, demonstrate Mr. Schroeder's philosophical attitudes. His *The Price of Manifest Destiny*, published by the University of Nevada, and "The Common Ground," *Western Livestock Journal*, January 1965, make history come alive and bear down on the thoughtful reader concerned with use and management of the natural resources in the western states.

The following speech specifically illustrates Mr. Schroeder's aptitude for stimulating thought and enhancing the learning experience of all who will listen to or read his message. This speech was presented to a large group of students in the College of Forestry, Wildlife and Range Sciences at the University of Idaho on March 22, 1977. Many students (and staff) expressed gratitude to Mr. Schroeder for broadening their horizons as they enter careers in the natural resources.

Lee Sharp



Dr. Lee A. Sharp is Academic Chairman, Range Resources, College of Forestry, Wildlife and Range Sciences, University of Idaho, Moscow.

MANAGEMENT BY COURT DECREE

William Schroeder

I would like you to ask yourselves what you think you manage. Today everyone is managing something. *The Saturday Review* seems presumptuous in devoting an entire issue to the title, "Managing America."¹ Those of you who study natural resources assume that what you do is manage natural resources, and I press upon you the idea that this is not possible. It is presumptuous of man to suggest that he is able to manage the primordial forces of nature and something called "land," or "water," or "wildlife." You are not going to manage them at all. You may know things about them; you may acquire some special skills and expertise; you may know how to develop production; you may know how to expand opportunities; but you are not managing natural resources. What you are doing is managing the *use* of natural resources. That is all you *can* do.

When you manage the use of natural resources, it is pretty obvious what you manage. You are not managing trees or grass or water; you are not managing fish or animals; you are managing people. *The public administrations*

that concern themselves with natural resources are sensitive to the offense of that statement. If the Bureau of Land Management or the Forest Service or the Fish and Wildlife Service should advertise that what they do is manage people, they would correctly anticipate a suspicion, a barrier which would impair their acceptance. People would resent that. So instead we hear euphemisms like "managing game," "managing grass," "managing timber," when we are not managing these at all. It is important for all of us to know where we are coming from, to know what we are doing; we cannot manage anything but people.

These public administrators are very concerned about the fact that they have had no training in what they most need: traffic control, public sanitation and other such subjects. It is an unfortunate laughing matter that those who are trained in pure sciences are later called upon to perform almost totally different responsibilities. Unfortunate things happen. See the *Newsweek* article called "The Shame of the Parks."² As if there is something wrong with the parks or the parks have something to be ashamed of, or the trees, or the grass, or the wildlife within them are evil. There is nothing the matter with the parks. The problem is the people. *Newsweek* buries the concept in the middle of the article, "... the problem is that the demands for money, maintenance and services exceed the supply, and in the past decade the number of visitors in national parks has doubled to 253 million people a year." What will you see with 253 million people in the national parks? This is what you will see: tires and trash in abundance and articles written called "The Shame of the Parks." What you see is a poor job of people management, but few will talk about the fact that it is people who are our concern.

I overemphasize the point because I would like all of you who believe you study the subject of managing natural resources to know that what you are going to do

is manage use, and fundamental to this management of use is the management of competing concerns. Managing competing concerns is managing conflict.

We now come to the reasons why a lawyer speaks to people interested in natural resources. Historically, the management of conflict has been the lawyers' job and lawyers have done a fair job of it. They understand the idea of managing conflict as a discipline distinct from the special areas about which conflicts exist. Although lawyers acquire some superficial information with which to define the competing concerns and to present in a forum the information with which the conflict can be resolved, they do not suppose that they are professionals in the special area involved.

To survive in the real world, you must know how conflict is managed. You argue this isn't your job; it is somebody else's job. You want to clip grass, to see the impact of climatological forces, to determine what grazing capacity is. It is this you want to do, and to never see another soul. Some survive like that. Most of you, however, are going to endeavor to manage conflicts in the use of natural resources. It is important to acquire some of the skills necessary to do it. We look at an unwelcome tool of resource management — the crucible in which competitors air their concerns and request non-professionals in those concerns to assign them priorities. This crucible is what you must anticipate as you undertake to manage the use of natural resources and make decisions affecting them.

The crucible is the courtroom in which a judge presides. He is either an elected judge or, in the federal courts where most of the resource management conflicts are aired, he is an appointed judge; or more often still, he is an administrative law judge who is associated with the agencies that

administer natural resources. Very rarely will you be talking to a jury. You must justify your decisions before someone who is essentially a nonprofessional in your field and depends upon that fact, because he doesn't want to walk into that crucible with a predetermined point of view. He wants to walk in and be as objective as he can in evaluating materials that are presented. That is his job. If he is too deeply involved in the predilections of your art or science, he tends to be less objective and he tends to make decisions based upon something other than the information presented before him.

Why do we resolve conflicts in this way? There are several reasons.

The first is a constantly growing social demand that some court oversee the resolution of conflict. People will not repose the process in those who work in management and who have a particular bias. People want the crucible to be objective or at least to strive for objectivity. There are valid reasons to be critical of this desire. There is an article in another issue of *Newsweek*, "Too Much Law."³ The article is about the burdens upon the courts, the inability of the courts to undertake the volume of litigation that is occurring in the United States today. Too many people are too often going to this crucible to try to resolve disputes that in earlier days would have been resolved differently. More were resolved on a personal level. The article concludes, "So long as modern life grows ever more complex, demands on the law will increase. That much is inevitable, and if Americans want to prevent their system of government from being changed in a fundamental manner, they will have to find ways in which to prevent every buck from being passed to a judge and every problem from being turned over to a lawyer. The U. S. has created

the most sophisticated and fairest legal process in the world, but the burdens are becoming intolerable." Environmental concerns are now a very substantial source of litigation.

Another reason why this crucible is used in natural resource management is the new style of legislation. Let me illustrate with two acts with which you are acquainted. One is the Taylor Grazing Act, and its first provision is ". . . that in order to promote the highest use of the public land pending its final disposition, the Secretary of the Interior is authorized in his discretion . . ." to do thus and so. Now what does this mean? Aside from the fact that the principle purpose of this legislation was to create a holding pattern pending the ultimate disposition of the public land, it is important to recognize that Congress *authorized* the Secretary of the Interior to do certain things, authorized him to move in his discretion. He could or need not, to suit himself. He was in power, if he chose to exercise the power. One couldn't complain if he chose not to. With legislation of this kind, much of the activity with natural resources focused on funding. If Congress funded, something could happen; the creation or extension of administrative power by the fact of funding gradually has evolved as a political concept. The important thing to remember is that these agencies had the power by legislation to *not* act.

Recent legislation is different. Introductory words of the Federal Land Policy Act are, "The Secretary *shall* prepare and maintain on a continuing basis an inventory of all public lands and their resources The Secretary *shall* with public involvement and consistent with the terms and conditions of this act develop, maintain, and when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands." All through the act you see mandates. "The Secretary *shall* allow an

opportunity for public involvement and by regulations *shall* establish procedures including public hearings when appropriate," and so forth. The Secretary *shall* do thus and so and on a constant, continuing basis. What does this mean? Under this kind of legislation the agency is commanded. The agency must act. The only question left is one of fiscal constraints or, putting it another way, of how much money is available to do the job. However, the courts are getting very impatient with the idea that fiscal constraints are of overbearing significance. Congress chose to pass an act which commands the agency to do something and the courts are encouraging Congress to "put money where its mouth is."

Recently a court did something which I think you may find a little extreme, but it nevertheless illustrates the point. You know what a snail darter is? It is an endangered species. It wasn't discovered until 1973, six years after the work began on the controversial Teleco Dam. When the fish was found in a tributary of the Little Tennessee River, Tennessee Valley Authority (TVA) divers tried unsuccessfully to locate other habitats and transplant the fish into nearby streams. This dam had been funded, plans were approved, the dam was in construction, and then a snail darter was discovered. A federal district judge decided it would not be reasonable to halt a project on which so much money and effort had been spent. Maybe even those of us who are extreme in our desire to protect natural resources would adopt that point of view. The case went on appeal and the appeals court was unimpressed with that point of view. It said, "The welfare of an endangered species may weigh more heavily upon the public conscience than the write-off of those millions of dollars."⁴ The TVA is now lobbying Congress to grant an exception for this dam. A multimillion dollar project has been stopped because of a species which hadn't been discovered until after the project commenced and was well under way, because the court said that the

Endangered Species Act protects habitat. The act says, "You will." If you are following the situation regarding alligators and timber wolves, the Department of the Interior is taking a little different view!

The point that I am making is that current legislative measures, including the Wilderness Act, the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act and certainly the Federal Land Management Policy Act, are all absolute directives. These absolute directives provide the basis with which a concern can go into the crucible and demand conformance. The legislative pressure for positive action is an important reason why demands upon this crucible have enlarged.

There is a popular resentment to administrative fiat. When a "bureaucrat" says something, it is immediately suspect. Whether it is a valid resentment or an invalid resentment is beside the point. The point is that there is this resentment. Those of you who are involved with natural resources must have this in your reservoir of knowledge. If you don't know this, you are going to be reacting inappropriately to the management of conflict. When you as a range conservationist, district manager or even Secretary of the Interior say "Thus it will be" to anyone who has an interest in the use of the resource you are attempting to manage, you are in trouble. You shouldn't put it out that way. You don't handle yourself that way. There are other ways. If you want to manage conflict adequately, you have to manage it with more sophistication than expressing absolutes and immutables.

Are there values in this crucible? I think there are a number. The crucible forces an exposure to what are or should be the best expressions of competing points of view. That is another way of saying that too often those who

propose to manage the use of natural resources talk only among themselves. They have a bias with respect to a particular kind of use, a particular value system that they haven't analyzed for a long time. They address a problem with certain priorities already in mind. One must be careful of these priorities. One must know his priorities and *why* he has them, so that he can look critically at them when he examines a decision that is proposed. The crucible forces this, and this is valuable. Competing points of view are best expressed in the crucible where people have that opportunity to hear them discussed, if not for the first time, then more eloquently. When a resource manager looks forward to the fact that one day he may be in the courtroom and there examined, he will realize that he must know and expose himself early to the best of the competing points of view. He must be familiar with them before he walks in so that he knows what to expect and knows the basis upon which his own decision must survive — if it's going to survive.

The crucible forces each competitor to critically evaluate his own judgment and the basis for whatever resource decision he is making. He must do this right from the start. He must critically examine every decision — not formal decisions alone, but day-to-day judgments. He can't rely on conventional wisdoms, the old stories, the mythology of natural resources, the old priorities. He must function at the cutting edge of the science. If he does not, he will die from a cut in his intellectual throat.

Thinking in this way fixes a course of action. When one relates to the other disciplines that are involved and functions at the cutting edge, he is better able to fix a course of action that is responsible and that will survive.

This crucible has another value. It motivates progress. Years ago there was a range rehabilitation program born in

the crucible. After the event, a resource administrator involved wrote "The Contribution of Controversy to Progress."⁵ The substance of this article was the point I am now making. This is the exciting place for science; it is the exciting place for any kind of intellectual discipline. Progress occurs when three or four competing points of view — now seven under the new management act — react and interact with one another. Controversy is not always in the courtroom, but anticipating the courtroom focuses the issues. A wise administrator will be ticking off these disciplines, uses, competitions, legislated priorities and mandates, to resolve in his mind the best way of exercising judgment in appropriately managing the conflict. This is how progress occurs.

How Does One Cope

—Years ago there was what I call "paper morality." To some degree it still exists. Paper morality is the idea that once you put something down on paper, it acquires respect and acceptance. It speaks for itself. It is what Will Rogers was laughing at when he said, "It must be true because I read it in the paper." People might have accepted this at one time, but they don't now. Neither the people within nor those outside the science accept this. No one is content because someone writes something or reports something or puts statistics together. One is going to be tested — tested by someone else's intellect — and one can no longer repose upon the idea of paper morality. Action must be based on substance, and if it is not based on substance, there is no point in putting the reasons down on paper at all. The point is that paper is more and more despised.

—You must avoid vacillating. There was a time when a cowman could go to a District Manager and ask for an extra two weeks grazing time in the fall and if the administrator felt good that morning, the cowman got the time. The next cowman could come in and want the same thing and not get it. Or there would be a *yes-or-no* decision that was of considerable importance to an area and the administrator would make it *yes* today and *no* tomorrow. Why? Because he always wanted to smile and always wanted people smiling at him. For the most part his science was weak, so he found it unreliable to retreat to his science and was willing to rely upon only his smile, his ability to get along. This is less true today because he has been to the crucible, and he knows that the worst thing he can do is to vacillate. You don't make a judgment prematurely. After all the data are accumulated, after the decision is reasonably developed and the judgment is made, you stand by that judgment.

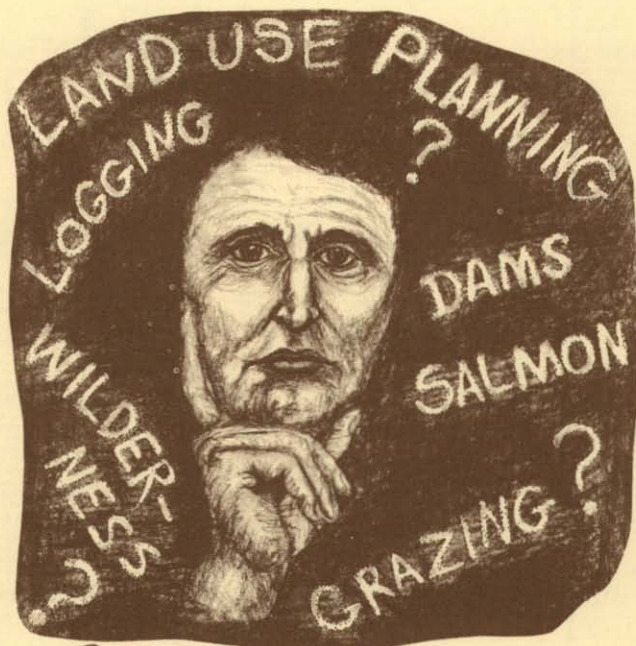
—Stimulate interdisciplinary approaches to the problems at hand.

—Know the regulations and require that they be written specifically enough to guide action which can be defended under the regulations. They should not be so general as to permit anything and defend nothing. The old form was to write a broad regulation that would permit the administrator to do anything he wanted to do, but this defended nothing. He had no place to hide when he made the decision. Regulations are now more specific, so that various actions taken under them can be defended. When you undertake to manage the use of natural resources, look at the relevant regulations and remember them.

How many of you have read the proposed grazing regulations of the Bureau of Land Management, published last December in the *Federal Register*?⁶ Have any of you read the proposed mining regulations that were published in December and January?⁷ You are going to get a job and you

are going to start administering. Do you think you are going to administer grass? Do you think you are going to administer minerals? You are going to administer regulations, and you must know what they are.

—Finally, you cope, in the expectation of the crucible, by being sensitive to your power. There is in the United States a fourth branch of government. It is the agencies. Agency people are independent and secure, and this produces power. The administrators have more power with respect to the day-to-day activity of American life than people in other branches of government. You must be sensitive to the fact that you have that power. If you are not sensitive to it, you are going to overrun it. If you are sensitive to it, then you will tend to make decisions more circumspectly and if you make them more circumspectly, you will survive.



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Notes

- ¹ Bleckman, Barry, et al. "Managing America," *Saturday Review*, 11 December 1976, pp. 9-46.
- ² Anonymous. "The Shame of the Parks," *Newsweek*, 21 February 1977.
- ³ Footlick, Jerrold. "Too Much Law?" *Newsweek*, 10 January 1977, pp. 42-47.
- ⁴ Gwynne, Peter. "Wolves and Louseworts," *Newsweek*, 21 February 1977, p. 95.
- ⁵ Lieurance, Max. "Controversy's Contribution to Progress," *Proceedings, IXth International Grassland Congress*, Sao Paulo, Brazil, 1965, pp. 1319-1321.
- ⁶ Department of the Interior, Bureau of Land Management. "Grazing Administration and Trespass Regulations," *Federal Register* 41, December 1976, pp. 31504-31515.
- ⁷ Department of the Interior, Bureau of Land Management. *Title 30: Code of Federal Regulations: Mineral Resources*, National Archives and Records Service, Washington, D.C., 1976. 710 pp.



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