

The Year of the Good Samaritan?

By Brent Fewell



Envisioning
bureaucracy-free
environmental
decision making

Abelated Happy New Year to all. By now, odds are that half of you have broken your New Year's resolution and the other half are hanging on for dear life. Admittedly, I've never done very well at such resolutions, so this year's resolution was to make no resolution I couldn't keep. My resolution may sound a bit Pollyanna-ish, but it is to do my part to help reduce the politics of division that so often color our public discourse and prevent us as a nation from making important decisions and progress on issues that affect us all, including environmental protection.

We all desire life, liberty and the pursuit of happiness—it's the American dream and promise—yet we find ourselves a divided country, at loggerheads on many things, including the environment. We need look no further than the controversy over anthropogenic global warming, the clean power plan and "waters of the U.S.," to name a few. Increasingly, society seems ill equipped and, in some cases, unwilling, to make the hard decisions, which leads to greater division, rancor, incivility, and downright bad decision making (or no decision making, for that matter). We see this especially in a divided Congress. Thus, my hope for 2016 is to help change the tone of our environmental debates, even where agreement may not be universally embraced.

American Revolutionary Thomas Paine once noted that "society in every state is a blessing, but government, even in its best stage, is but a necessary evil; in its worst state, an intolerable one." When society's individual actors are unable to solve local problems or, alternatively, create problems that extend beyond local boundaries, government often is asked to intervene. And in many cases, such intervention is desired and indispensable, yet in others it's not. Even when desirable, government action, such as certain subsidies, can result in unintended consequences that can impede the goal of environmental protection. It boils down to getting the incentives right.

The Bureaucratization of Environmentalism

I've blogged before about this phenomenon, which I call the "bureaucratization of environmentalism." That is, when society increasingly looks to the government as the primary environmental problem solver, absent thoughtful policies and divining the right incentives, society's environmental problem solving skills become lethargic, hindering innovation, progress and driving up the costs of environmental protection. This is not to say that regulations can't help stimulate innovation, but only when done correctly. Government must play a critical role equipping society with the knowledge, tools and wherewithal to do the right things.

This leads me to a quick story about the "Good Samaritan." In 2005, Chris Wood, the CEO of Trout Unlimited (TU), a trout and salmon conservation organization, approached Ben Grumbles, then head of the U.S. Environmental Protection Agency's (EPA) Office of Water, and me about a watershed project to clean up a century-old abandoned hardrock mine located on federal and private lands in American Fork Canyon, Utah. Those who caused the pollution were long gone, but the legacy continued to devastate the unique habitat of a rare cutthroat trout species in the headwaters of the American Fork. TU approached EPA with a proposal to restore the stream using TU's own money and resources. It was one of those rare win-win situations, but TU needed assurances that it would not be held legally liable under the Clean Water Act or Superfund for cleaning up the entire mess. Under President George W. Bush's Cooperative Conservation Initiative, EPA ultimately issued TU a friendly enforcement order that provided the legal protection and comfort TU needed to move forward with the project, but the administrative fix was a difficult and cumbersome process for what was a fairly simple and straightforward cleanup.

EPA's administrative solution gave rise to a legislative proposal by the Bush administration that had strong state and grassroots support, only to be killed at the eleventh hour. Some speculated that certain political forces simply did not want President Bush to have a positive environmental story to tell. There were certainly other factors at stake as well, including establishing a dedicated source of funding to clean up the abandoned mines, but compromise was difficult to achieve. The missed opportunity was gravely disappointing to me personally, not to mention all the communities, stakeholders, watershed groups and critics that would have benefitted from a common-sense fix to federal law.

Although some may call me naive, I firmly believe that we can make progress on tough issues and hard choices that will benefit the environment and public health, irrespective of our political differences. It simply will require greater courage and resolve for that to happen. So, as the 114th Congress continues to deliberate on the merits of Good Samaritan legislation (HR 963, sponsored by Rep. Raul Grijalva of Arizona and HR 3843, sponsored by Rep. Doug Lamborn of Colorado), as it has done so many times before, perhaps this will be the year of the Good Samaritan. **w&wd**

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