

# The Naked Fish



We dare to print the naked truth!

## Top Ten of 2001

## MVEC 2002 Elections

2002! To prepare for the new year, let's look back at the old one. The Naked Fish published 8 issues last year. Which one was your favorite? What story had an impact on you? What were the identifying issues and events that shaped May Valley in 2001? Don't forget to save this article as an index to the year 2001.

The editorial staff looked at all the articles and came up with this list of the top ten:

**1** Our number one story has got to be *Basin Plan Passes*. This is where MVEC got started, isn't it? If May Valley residents hadn't seen the flaws in the County's version of the Basin Plan, we probably never would have gotten together. The Basin Plan provided the galvanizing issue for the community.

**2** Our number two story is probably number one on everyone else's list, *May Valley Samaritan Surrenders*. We chose the Basin Plan as number one because it happened first and was probably the impetus that got the Samaritan thinking about what could be. But, quite surely, the Samaritan rocketed May Valley to the front page on every paper in Western Washington.

**3** Number three is *County Buys Creek Property*. Think of how that one act started a whole chain of events! The buying of the property showed how irresponsible the County can be with citizen money; it provided an opportunity to showcase a restored salmon habitat; it got May Valley tons of media coverage; May Valley's first



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The annual election of officers for the May Valley Environmental Council was held January 14, 2002. These are the results of the election:

- President Rick Spence
- Vice President Jim Osborne
- Secretary Rod McFarland
- Treasurer Dave Jones
- Directors At Large:
  - Kathy Jones
  - Mark Torretta
  - Mick Zevart

Rick returns as MVEC president and we welcome his leadership. Jim Osborne is new on the board this year and will be "president-in-training" with Rick. A member from our very competent Technical Committee, Rod McFarland, takes over as Secretary. He's always there anyway, so he might just as well take the minutes! Dave Jones is also new on the board and is our new Treasurer.

Kathy Jones returns as a Director At Large as well as being Newsletter Editor. The other two new DAL's are new the board, but very familiar to all of us. We

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Top Ten of 2001 (con't)

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park (unofficial) appeared and it gives us a central meeting place in the valley.



**4**Number four is *MVEC Wins Skirmish*. This article detailed how MVEC, largely through the efforts of Chuck Pillon, started confronting DDES on code enforcement and land restriction issues...and winning. This was one of the first issues MVEC came together on by forming a legal defense fund for one of our neighbors, a great leap of faith for some of us.

**5**Number five is *MVEC Launches Newsletter*. This was a pivotal event for MVEC and May Valley because how else could you even be reading about these events if the newsletter had never been formed?

**6***MVEC Meets With Exec Office* is our number six pick. This was an important event because it told us that MVEC had gotten through to Ron Sims and he was tired of hearing about it. All parties were involved, including the various warring factions of DDES, and it was more clear than ever after this meeting that DDES was the main obstruction to cleaning the ditch.

**7**We picked *4 Creeks UAC* as our number seven pick. Because of our success with MVEC, several May Valley residents felt they had the spirit and enthusiasm to re-vitalized 4 Creeks and in fact, ended up holding the majority on the board.

**8**Number eight is the *Clean The Ditch* rally. This was another "media event" success story for MVEC. It showed the County that the community was solidly behind the Samaritan, that we would help clean up any "mess" in our community and that the County

**Save The Salmon**



**Clean The Ditch**

could actually save money by using our labor. It was also a test to see if the County would arrest or threaten citizens who went into the creek. Remember, at this point, the County was saying that children could not even play in the creek due to the "sensitive area" issues. The final result was the "park" was stabilized for the winter and it

defused the "it will take \$100,000 to clean up the site" issue; it showed that the County would back down if the community stuck together; and it kept May Valley issues in the headlines just a little longer.

**9**Number nine is our MVEC cartoons and, of course, our featured cartoonist, Lori Osborne. Lori is able to put to paper the idiocy the County is engaged in and brings our issues to a whole range of readers who might not want to wade through some of our more technical articles.

**10**Our final pick is *Where Is The Spirit of 1776?* This got a tenth place rating only because the article is so new and, as of this writing, we don't really know what kind of impact this article might have. The staff believes this kind of thinking (coupled with action) could possibly be the "wave of the future." MVEC started with a local issue, the Basin Plan and cleaning the ditch. It grew to include restoring salmon habitat which lead directly into a head-on confrontation with an ineffective, inefficient and a directly obstreperous government. Act locally, but think globally.



When thinking about the future, what MVEC is finding is that more and more are fed up with their government, in particular King County. Each one of the groups thought they were alone with the problem. Now, we have allies all over the county and we're asking them to join us in our fight for better government. This is the next wave.



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# Critter Report

by Mick Zevart, May Valley Basin Steward

Did you know that the bobcat, *Lynx rufus*, is not much taller than the common house cat? This pesky, long legged, short-tailed varmint is often caught in many barnyards with a prize hen, fryer, or roaster in its mouth. Some of us have had a run-in with this animal, and in some cases have snuffed its running lights out.

My neighbors and I had problems with one a few years back. It seems it started in Barbara Evans' chicken house, where the bobcat ran off with some dozen and a half laying hens. It got a dozen roasting size ducks from Doug Bandelin across the street, and I caught it devouring my second Siberian red breasted goose one Sunday morning. A neighbor got it up in a tree as it was trying to load up on bantam chickens. This animal was close to twenty inches tall and weighed close to thirty pounds.



At one time these nasty chicken coop robbers had a cousin roaming parts of this state. For many years it was thought to be extinct. You guessed it; that's right. I'm talking about the Canadian lynx, *Lynx canadensis*.

#### Classification:

Kingdom: <i>Animalia</i>	Phylum: <i>Chordata</i>
Class: <i>Mammalia</i>	Order: <i>Carnivora</i>
Family: <i>Felidae</i>	Subfamily: <i>Felinae</i>
Genus: <i>Lynx</i>	Species: <i>Lynx canadensis</i>

The Lynx is similar to its cousin the bobcat, but in most cases is taller and heavier, standing some 3 feet tall and weighing 40 pounds or more. Unlike the bobcat, the lynx has black tufted ears.

When the Canadian lynx roamed our state it most likely lived in coniferous forests with tall trees and dense undergrowth. But by now it has adapted to other kinds of terrain like open woodland, delta swamps, rocky outcrops, and forested slopes up to 10,000 feet. Their diet is mainly the snowshoe hare, but lynx also feed on rodents, ducks, ground-dwelling birds, young deer and fish. If cattle can be ambushed from above in winter, when they are at a disadvantage in the snow, or when they have sustained injury they are also lynx prey.

Hunting the lynx is still permitted in parts of Canada and in the U.S., where they are exploited for their furs and for

"sport." Thus, they are disappearing from parts of their range, the northern U.S. and Canada. All lynx are on CITES Appendix II, which means they are considered threatened.

## From the President (con't)

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of government assisting people, the Act has become a tool to stop people from enjoying those amenities. Supreme Court Justice Oliver Wendal Holmes said, "**We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for change. While property may be regulated to a certain extent, if regulation goes too far, it will be recognized as a taking.**" Palazzolo vs. Rhode Island has recently affirmed Justice Holmes' view of regulatory takings.

# Guest Columnist

## One Teenager's Perspective

by Stephanie McFarland

God created man in his own image. Therefore, man should have freedom and liberty in which he can make responsible and moral decisions. If humans have a hunger for liberty and self-responsibility, government will play a minor role in their lives. Government's job would be the protector of property and punisher of those who rob, steal, and cheat others. On the other hand, if man fears self-responsibility, government will play an ever-increasing role. Its job will then be as regulator and redistributor of wealth.

America was founded as a Christian nation. Most people came to America to escape religious persecution and to have religious freedom. Much of the government, including the Constitution, is based on Christian principles such as life, liberty, and property rights. Our forefathers believed that life, liberty, and property were God-given rights to man.

The original idea of Property comes from a Biblical perspective. Man should have trusteeship to God for his property while he is on earth. He should be responsible to God and indirectly responsible to his fellowmen.

[Editor's Note: Stephanie is a high school junior. This article was originally given as an oral presentation for her economics class.]

# Its All About Money

by Rodney McFarland

*Ethnic cleansing: the elimination of an unwanted ethnic group from a society, as by genocide.*

Ethnic populations of *Oncorhynchus tshawytscha*, *Oncorhynchus kisutch* and *Oncorhynchus mykiss* are being systematically eliminated from many rivers in Washington and Oregon. For the taxonomically challenged, the ethnic populations involved are hatchery incubated chinook, coho and steelhead salmon. "Excess" hatchery salmon returning to their stream of birth are clubbed and turned into pet food with their eggs used as bait. The public first learned about this practice in 1998 when Ronald Yechout of



Philomath, Oregon, filmed Oregon Department of Fish and Wildlife personnel clubbing hundreds of returning coho at the hatchery on Fall Creek. Mr. Yechout thought it absurd that they were killing "endangered" fish and spread the word of what was happening.

Robin Waples, the senior scientist for the National Marine Fisheries Service (NMFS) Northwest region contends that the best way to restore "wild" runs is to keep them separate from hatchery populations. He says that wild fish are weakened by hatchery fish, which have lost many of the instincts to survive and spawn in the wild. According to Mr. Waples, "We have to take drastic measures to bring the fish back." Many of the taxpayer or electric-user funded employees charged with increasing salmon stocks believe as Mr. Waples does. Their "drastic measures" kill several hundred thousand salmon each year in Washington and Oregon and in the process destroy the eggs that would lead to millions of salmon three or four years later. All to save the "wild" salmon.

Habitat evangelists in the bureaucracy justify their control of private property by saying that the federal Endangered Species Act mandates action to save the almost extinct "wild" salmon. They would have you believe that "wild" salmon are a different species than "hatchery" salmon, much as the wild ancestor to domestic cattle, the auroch (*Bos taurus primigenus*), is a different species than the common cow (*Bos taurus*). *But the hatchery fish are directly descended from, and genetically identical to, the so-called wild fish.* When told that by real geneticists, the habitat evangelists explain that it is not genetics that makes the hatchery fish inferior, but learned behavior. While at the hatchery, they learn to come to the surface when shadows of their human waiters come to feed them. Their learned reaction causes them to be easy prey for

hawks and eagles when they get out into the real world. That speaks to the lack of intelligence in the hatchery manager's feeding system, not genetic difference of the fish. Because the fish that go to government school (e.g. the hatchery) have been taught the wrong lessons, they are treated as a different species and not counted for purposes of ESA listings. That would be like counting home-schooled people in the census and ignoring everyone who went to public school to find out how many Americans there are. Most studies show that home-schooled students outperform their peers in public school so perhaps we should start clubbing public school educated people when they are ready to start their family.

Contrary to the public school perpetuated myth, all salmon do not return to the river of their birth. 97-99% of them are eaten or otherwise killed before they can make it back. Of the 1-3% that make it back to a river, up to 20% go back to a place other than where they were born. If salmon didn't stray, they would never have repopulated Pacific Northwest rivers after the ice age, the ultimate in habitat destruction. Hatcheries have been in use in the Pacific Northwest since 1900 and salmon have been crossbreeding with hatchery stock since then. Given the short life cycle of salmon, even 10% strays would completely intermingle the stocks in 50 years. The NMFS acknowledges that hatchery and wild crossbreeding happens and thus counts all Atlantic salmon as one but refuses to do the same with any species of Pacific salmon.

Because it is impossible to tell hatchery fish from naturally reared fish by their DNA, most hatchery fish have their adipose fin clipped off. That enables fishermen as well as hatchery personnel to tell the difference when the fish return as adults. So, no fin and you're dead; fin present and you're a treasured "wild" fish. Not all hatchery fish have their fins clipped, a relatively new practice. With the agreement of federal, state, and tribal fisheries managers, 600,000 unclipped hatchery steelhead smolts were released in the spring of 2000 from the Dworshak National Fish Hatchery in Idaho. The Columbia River Indian tribes are trying to boost the runs of "wild" steelhead. Remember — fin is wild, no fin is dead.



Clubbing mom and dad before they spawn kills their eggs also. Ben Stout, retired Rutgers University botanist and statistician, discovered that the Oregon Department of Fish and Wildlife (ODFW) had gotten rid of 19,398 pounds of salmon eggs (about 48.5 million eggs) in 1997-1998. Doug DeHart, ODFW fisheries chief confirmed those figures in a report to the 1999 Oregon legislature. Stout

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# Musings

by Oscar Bandelin, Ph. D.

In his famous but very poorly understood 1848 pamphlet, *The Communist Manifesto*, Karl Marx wrote about "the idiocy of rural life," charging that the peasant stood in the way of economic, political and moral progress. Americans largely have forgotten Marx. Few of us these days realize that he praised capitalism as a major progressive force in history, which was absolutely necessary to make socialism possible. But when World War I brought with it the most monumental changes in European

history since the French Revolution, the major player was not the industrial proletariat (a nebulous term that had different meanings in different places). It was the peasant (who was more homogeneous throughout Europe than Marxists ever liked to admit, notwithstanding Vladimir I. Lenin's attempt to divide the Russian peasantry into classes). The peasantry was at the forefront of social change in Russia and Central Europe, and played the decisive role in the breakup of both the Ottoman and the Russian empires as they were being defeated militarily. In Russia, for example, the Bolsheviks found themselves in propitious circumstances in the middle of 1917 thanks to the peasantry, who literally paved the way for the October Revolution. The peasants had become disillusioned with the war effort in the face of major defeats and were returning home in large numbers and expropriating their former landlords. The effect was overwhelmingly destabilizing, and the Provisional Government (February-October 1917) was unable to recover. The forces of social change that led to the Russian Revolution, in other words, had little to do with Lenin and his Party. The Bolsheviks were simply well organized and in a position to pick up the power when they saw it lying in the street in October (actually November, if one reckons by "our" calendar, the Gregorian). In the interwar period (1918-1939), the peasant question was, in one way or another, at the heart of political and social transformation throughout the European continent, despite the fact that social change assumed different forms in different places.

Since the American Founding, Americans also have been concerned with issues involving the conflict between rural and urban society, though certainly not to the extent that Europeans have. Even so, the contrast has remained important enough that it defines a major issue in American politics today.

Paul P. Carkeek has published in the *Snoqualmie Valley*



*Record* (June 14, 2001, p. A2) an article that sums up quite pointedly the attitude of present-day American intellectuals with respect to the rural population. The livelihoods of rural residents of Snoqualmie Valley are being undermined in the name of environmental preservation and social progress. Rural activities are decried as unnecessary and harmful, although, to its credit, King County seeks to preserve at least some of the area's rural heritage for future citizens, *i.e.*, urban tourists, to "enjoy." County bureaucrats also envision a certain level of job security for locals, though remuneration levels would clearly not be sufficient to meet their needs. It does not matter to county officials that people in Snoqualmie Valley have lived in a rural environment for generations. Rural workers are calumniated and branded as backward, unnecessary, and "messy." Never mind the provisions of the Washington State Growth Management Act of 1990, which recognize the importance of rural areas in the overall development of the economy and society. Better to round-file that document.

Government bureaucrats are also attacking residents along the Skykomish River, according to the leading local news article in the *Seattle Post Intelligencer* of December 22, 2001. The Skykomish has always flooded periodically, but locals managed to deal with it in the past because they maintained the river through periodic dredging. Today, it is clogged with silt, and flood control measures are less and less effective as the silt accumulates. Even government officials admit that practically every rainstorm brings flooding with it, whereas before the early 1990s the river typically reached flood stage twice annually. People's property is being destroyed and fish are being swept from the normal confines of the Skykomish and killed in large numbers. Recent local news broadcasts have charged that the paragons of wisdom in state and local government insist that the current state of affairs is the result of the course of nature. Nevertheless, in the *Post Intelligencer* article officials admitted that the river environment is deteriorating because detritus from logging operations in the mountains is clogging the waterway. In any case, according to the televised reports the government forbids residents from taking action to mitigate the flooding on pain of arrest and fines under the usual environmentalist pseudo weapons, such as the Endangered Species Act. One should not neglect to mention local regulations and the various Indian treaties by the same token.



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# Children Of The Land

by Douglas Bandelin

When I see the land, it is like looking at my mother. It soothes me in my hour of want. It provides nourishment in my hour of need. I feel it pulsating under my touch. I hear its soft voice lull me to sleep at night.

The land is what granddad came here for. The land is where he made his livelihood. Mining the deep rocks, clearing the dense forest, pulling silver lightning from cascading rivers. Herding flocks of sheep or herds of cattle; moving them to green grass, protecting them from harm. Or plowing the rich soil and yielding up apples and cherries, tomatoes or squash, wheat for bread and corn for the pure joy. It is all in the land and the land whispers "yes." For it is there, it exists, for its children. And like all mothers, the land rejoices that they prosper at her breasts.

There is a great truth about the west that is being forgotten, twisted, maligned. The truth is that in the west we have always been children of the land. When you thought about the west you had to think about the land. The land and the west were one and the same. People came here not for the beauty or the grandeur, those are extras; but they came here for the land.

We westerners prospered as she prospered; we lived at her whim and call. And it was thus for years. And sons came and grandsons and great-grandsons and even then it was so. We sat in our rockers and spun our yarns about Whisky Rock and Maiden Bluff. or Eagle Bend and Stagecoach Pass. Each place with its own story to tell; its own lore

Then came the winds of change. People came, new people, they came not to live but to look and play. They came in search of soul and they thought they found it in

beauty, for our land is beautiful. But we are not. The newcomers looked at us with our rough-cut ways and childish thoughts, our bad manners and shaggy exteriors. We were not beautiful, and the newcomers considered us a blemish on the land. An abomination not connected to it. We were an invasive specie to be removed. A wart on the nose of Eve.

And so these newcomers, these lovers of beauty, set about to make things right. They passed laws, wrote books, appointed committees, and made studies on ways to improve upon the beauty that they saw. And always we were there, a blemish on their thoughts. And so the newcomers forgot about our connection. They forgot or ignored that we were children of the land. That it is our mother and her dirt fills our veins as it did our mothers' and fathers' and their mothers' and fathers' before them. Now all that is wrong we are told. The strangers wanted to set what's wrong right and we were the wrong. We are not children of the land. We are strangers here . we are the rapers and destroyers of our own land. We have no mother, only a brutally savaged wet nurse.

What sadness these words bring to my ears. What sadness. I think of those before me. Those who made the trails and grew the corn, those who cut the trees and built the towns those wonderful, hardworking men and women who nurtured and loved the land. I look at them and I look at the newcomers and I ask who is wrong here. I look and wonder who will sustain these mad people when they finally destroy all the connection to the land. I look and I realize that there is a new faith that has come. A new belief that is here. And it views life as a lark. And the land?, We are to sustain it rather than be sustained by it.

It is a new generation that has lost the link to the land. A generation that lives in built-up urban areas and sees nature as an extended open area park rather than a source of our existence. It is a generation that would view a woman's breast as only an *objet d'art* or a play toy and not a source of life. Ah the sadness in what is being lost. My children know very little of where life comes from and their children will know even less. There is a deep sadness in being the last. The last westerners, the last children of the land. And, given the current policies there will be no more children.



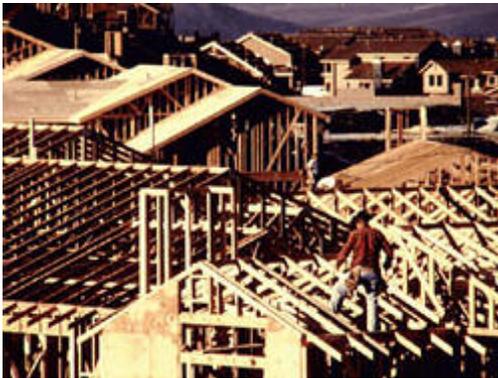
Musings *(con't)*

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The situation in May Valley is similar, as we know. We cleaned the ditch in the past; now we cannot, and we are suffering progressively worse consequences, including the loss of our salmon. And, as they have done to citizens along the Skykomish, those charged with protecting us are threatening us with significant punishment should we dare to take care of our community and our land.

Sadly, this assault is not confined to our state. Anthony Palazzolo of Westerly, Rhode Island recently won a twenty-year battle for his property rights in a landmark case in the U.S. Supreme Court; unfortunately, radical environmentalists have succeeded in diminishing the impact of that ruling. Rural residents of the Kalamath Falls region in Oregon are made to suffer for the sake of policy measures that have nothing to do with the effective long-term preservation of salmon. These are but two examples.

The conflict of the city with the country in America began in earnest after World War II. A well considered account of the development of American thought on the issue from the Founding through the late 1950s is Morton and Lucia White, *The Intellectual Versus the City: From Thomas Jefferson to Frank Lloyd Wright* (Cambridge, MA: Harvard and MIT Presses, 1962). I agree



with the Whites that Wright's ideas about the potential of the countryside to free Americans from the urban trap were not very realistic. I disagree, however, with the conclusion of the book, that we *must* pursue the American ideal in the urban context, because "all the world's a city now." I do not deny that urban sprawl has grown phenomenally in the last century, but rural America is still very real. The American population is still highly concentrated on the coasts and the Great Lakes. One does not have to drive far from Seattle to see vast expanses of uninhabited land. We have so many trees in western Washington, and miles and miles of farmland in eastern Washington. And that is just Washington.

The Soviet example is again useful. As I beg to differ with the Whites' conclusion, I disagree also with the Marxist

notion that urbanization and development equals progress. Lenin believed essentially that, and he made concessions to the Russian peasantry after the Russian Civil War only because he believed that he had no choice. He always held that the peasant was a stumbling block to socialist progress. Joseph V. Stalin agreed, and launched a horrible terror-famine against the Soviet peasantry from 1929 to 1933, after the peasants resisted the Soviet government's efforts to appropriate their crop yields to its own ends. Mao Zedong did something similar in Red China about thirty years later. His effort, called "The Great Leap Forward," resulted in truly massive destruction and loss of life, and has been called "The Great Prafall" by some critics.

The "social scientists" and naturalists of today's America believe they have learned these lessons, but I am not so sure. Whether they know it or not (or do they even care?), our government bureaucrats are spouting rhetoric that is in some ways reminiscent of Marx, Lenin, and their intellectual heirs. I shudder to think of what might happen to us rural idiots should they succeed in their efforts to nullify our Constitutional rights and place us at the mercy of unbridled state power. God bless America. I, for one, will not sign the "social contract" that radical environmentalists are trying to deceive us into accepting. I will not willingly give up my rights in exchange for a false sense of security and "environmental protection." I will continue to fight for the unique freedoms for which we have paid so dearly. The balance between our rights and responsibilities as American citizens, and the principles on which it is based, are what make this country such a great place to live.

MVEC Elections *(con't)*

*(Continued from page 1)*

welcome our former Vice President, Mark Torretta and May Valley's new Basin Steward, Mick Zevart.

At a subsequent meeting, the membership voted to expand the number of Directors At Large from 3 to 7. This change would allow a member who wants to be more involved with the running of MVEC but who might not feel qualified or have the time to serve in an officer position to "get their feet wet" and get a feel for the responsibility and workload required of a board member. Because increasing the number of Board members requires a change in the By Laws (which can only be changed by the whole membership), the council agreed to appoint two interim Directors until the By Law change can occur. The two appointed board members are Dave Dahlin and Oscar Bandelin. Welcome Dave and Oscar!

## It's All About Money *(con't)*

*(Continued from page 5)*

found that if those eggs had been fertilized at ODFW's average 90% fertilization rate and had a return rate of only 1%, they would have produced 436,252 returning fish.



Stout collected data on returning salmon through 1997 at hatcheries, fish ladders and dams all across Oregon, Washington and Idaho. He noticed that returns of hatchery and wild fish were synchronized within rivers and among rivers throughout the region. Stout said, "What I mean by that, is the numbers of returning hatchery fish and wild fish go up and down together. That indicates that hatchery fish populations probably don't have much direct effect on wild populations, and vice versa. It also means that factors affecting all salmon in unconnected stream and river systems throughout the region, such as ocean conditions, ocean predators, and changes in global weather patterns, are more likely responsible for swings in salmon populations than local factors such as dams or upland habitat. I was also quite surprised to find that the combined populations of wild and hatchery salmon counted in 1997 were the highest since the 1940s," Stout also stated. Although he sent his findings to NMFS, Stout never even received a response. Stout's findings are part of the federal court case that resulted in Judge Hogan ruling that hatchery fish must be counted. That decision has been stayed by the Ninth Circuit Court of Appeals pending a final decision by the appeals court.

In the spring of 1999, 26 chinook that started life at the Entiat hatchery missed a left turn and ended up at Wells Dam where Methow hatchery workers scooped them up with their fish. Some fish are tagged with an internal tag that can be read by automatic sensors at the fishladders. Methow manager Bob Jateff wanted to use the Entiat eggs to supplement his run but NMFS said no and the fish were destroyed. They couldn't be taken to Entiat since they had a record run of 724 (ten times more than normal) and didn't have room. Entiat manager Bill Edwards is rather proud of his fish. In an interview with Solveig Torvik that was published in the September 26, 1999, Seattle Post-Intelligencer, he said, "Their ability to adapt is amazing. If you would just homogenize all the runs, can you imagine all the money the government would save? We don't dare argue it. It's politically



incorrect because it is contrary to ecosystem management" — a theory he argues is "based on an unaltered environment" long since vanished from the Columbia. According to Edwards, each fish returning in that record year cost \$300. By inference then, in a normal

year of 1/10<sup>th</sup> the run, each fish would cost \$3000.

Six thousand returning chinook were killed at the Samish River hatchery in northern Washington in 2001. Using the smaller cost of \$300, those destroyed fish cost \$1,800,000.



In Washington and Oregon combined, 300,000 to 400,000 fish are destroyed each year. That is \$90,000,000 to \$120,000,000 of our tax and electric money down the drain. That is 1,600 jobs each paying \$75,000. Is it any wonder the publicly funded habitat evangelists don't want to count hatchery salmon? They would have to go find a real job or manufacture another ruse to keep bleeding us dry. Salmon recovery is not about fish. It is about big money and land control and they will continue as long as we let them get away with it.



**Join MVEC!**

# Regulatory Taking and Inverse Condemnation

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As part of my legal practice, I am fortunate enough to speak with many real estate professionals throughout the northeast. Often, they will ask me what can be done when the government denies a wetlands permit or some other permit that is needed to develop a piece of property. I explain to them that if the denial takes away all practical uses of the property, the denial may be a "regulatory taking," which is also called an "inverse condemnation."

I cannot tell you how many times the person I am speaking with thinks that I am talking in Greek when I use those terms. Actually, everyone in the real estate business really needs to be acquainted with them; so, I will now explain them to you so that you do not have to be shocked the next time you hear them. I promise I will not be boring!

Despite the promise I just made (yeah, I know the joke 'How do you know when a lawyer is lying!!!!'), to begin with we need to read the Fifth Amendment of the United States Constitution. Here it is:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

This was an amazingly important Amendment. You have heard the expression, "I'll take the 5th." This is what these people mean: that they will not be a witness against themselves in a criminal action. There is a lot of

other important material here, but for now we are looking at the last phrase of the Amendment: "nor shall private property be taken for public use, without just compensation."

Note that it promises that property will not be "taken" without just compensation. These kinds of cases are formally called regulatory takings or inverse condemnation cases. But they are nicknamed "takings" cases based on the word "taken" in the amendment.

Any time the government over-regulates a piece of property so that it no longer has any practical use, it may be possible that it has "taken" the property without paying just compensation. For people in the real estate industry, this may apply to denied wetlands permits, denied coastal development permits, denied zoning variances, other denied development applications, and any other government action which eliminates all practical use of the property. The sky is the limit in terms of the kinds of government actions that may result in a valid takings claim.

Condemnation is the power of the government to take title to any property that it needs for a public purpose. You are likely familiar with this concept in terms of highway expansions, new airports, new schools and parks. The federal government and the states have laws that govern the government's behavior when it condemns property. The government must always pay the property owner fair market value, and the property must always be used for a public purpose.

Inverse condemnation means that a property has been so over-regulated that the government may have well condemned it, so the term "inverse" condemnation. Often, an affected property owner will ask a court to force the government to commence condemnation proceedings.

The other term, regulatory taking, means that the government has effectively "taken" the property without paying for it by over-regulating it. In other words, it has taken the property through the enforcement of its own regulations.

In parts of the country that are heavily developed there are now pressures to curtail development. This is being done through a number of mechanisms that often include attempts to re-zone open spaces, limit the ability of developers to install infrastructure, such as sewers, and protective sensitive areas, such as wetlands.

*(Continued on page 14)*

# Salmon Gram #1



First in a series of salmon reports by Sen. Bob Morton R-Orient, WA.

Let's reward epic journey of survival.

Last fall [Editor's note: This was written and first published in 2000], the National Marine Fisheries Service (NMFS) ordered the destruction of more than 50 "Stray" salmon who came to spawn in

the Methow River. As a member of the Senate Natural Resources Committee, a committee charged with helping restore our state's dwindling salmon runs, I was appalled at the callous way in which we handle our precious salmon species. It's no wonder we're having problems! Let's consider what those murdered salmon had to go through before their lives came to this tragic end.

In 1994, some Chinook spring run salmon hatched in the upper reaches of the Columbia River. Some were hatched in natural gravel in the stream and others were hatched and controlled by the hatchery. They made their way down the Columbia, over the dams, and past many predators who would have loved to make a meal of them.

Finally, they reached the mouth of the Columbia River at

Rice Island which is a man-made island created from the dredges of the Columbia. At that point, they faced a great test of their survival as they passed by thousands of protected Caspian Terns and Cormorants who feast off salmon fry by the tens of thousands.



Then the salmon entered the mighty ocean where they faced even more natural predators. Seals and sea lions eat our salmon by the hundreds of pounds a day. They traveled up the Washington coast, the British Columbia coast, and into what I call the "Arch of the Salmon." They went along the Alaskan Coast, down the Aleutian chain, and finally they ended up in Chinese, Japanese, or Korean waters.

By then, these salmon were a fair size. Soon they were beckoned back home to spawn, so they turned around and started to return home along the "Arch of the Salmon," traveling past foreign nets as long as 30 miles.

The US Coast Guard admits these nets still exist despite the fact that we have an international agreement banning the use of them. Our salmon negotiated these nets and all the other predators until they ended up approaching the mouth of the Columbia again.



Finally, they started back up the fresh waters of the Columbia. As they began their journey back to spawn in the upper reaches of the Columbia, they had to navigate past nine hydroelectric dams. They also had to make it past roughly 350 tribal nets, some as long as 400 feet.

Once they got past the remaining dams, they came to rest in a pool behind one of these dams. Let's choose the Rocky Reach Dam. At this point, the salmon were getting anxious to get up to their spawning grounds. Nature just directs them that way. A buck salmon fell in love with a doe and said, "It's beautiful up in the Methow. Come on to my house." He talks the doe into doing that and, while she may have originally come from the Entiat or the Icicle, she followed her partner.

Unfortunately, after all their travels, this couple ran into trouble at the Wells Dam. Because she originated somewhere else, the doe was regarded as a stray, then killed and destroyed. The buck was also destroyed because the hatchery had already met NMFS' quota for the number of hatchery fish allowed to return to that watershed.

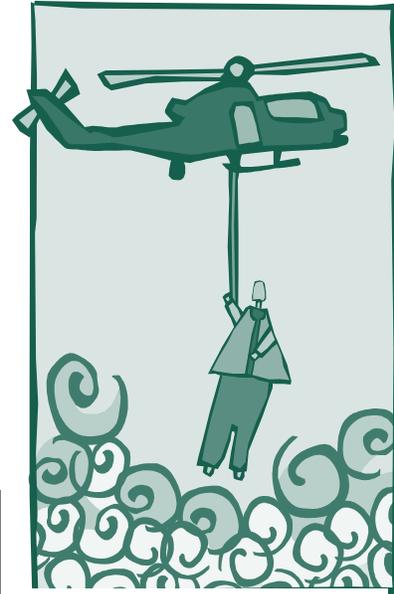
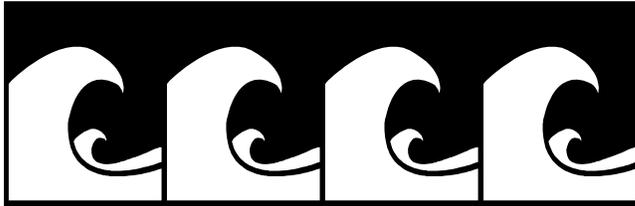


On Sept. 23, 1999, the U.S. Fish and Wildlife Service reported to NMFS the number of spring Chinook declared "surplus" and destroyed: Entiat: 231. Leavenworth: 709, and Methow 34. That's nearly 1,000 salmon murdered by the very agency charged with protecting them.

Washington taxpayers pay millions of dollars thinking our salmon will be allowed to return to the natural waters of the state. We also have utility ratepayers, who receive their power from the Bonneville Power Administration (BPA), and, for those in the Okanogan, from the Okanogan Public Utility District (PUD). These people pay

*(Continued on page 14)*

# May Valley Flood Festival 2002



Commiserate  
with your  
neighbors with  
an evening of  
food and fun.

**POT LUCK DINNER  
DOOR PRIZES**

**“Do You Know May Valley?” contest  
6:00 pm May Valley Alliance Church.  
Enter to the rear of the building.**

# February 11, 2002

Sponsored by: *May Valley  
Environmental Council*



(206) 510-2819

**Bring a dish to share for the  
potluck.**

**Get your “May Valley  
Questions” from any MVEC  
member**

## May Valley Basin Steward Named

Since Brent Lackey left, May Valley has been without a Basin Steward. MVEC is please to announce Mick Zevart as the new May Creek Basin Steward. Mick is eminently qualified to hold this post as a reading of his accomplishments will show.

Mick adds the following information: "I was born and raised in the Renton area. I left only to serve my country among America's proudest in the United States Marine Corps. I have watched this country grow and watched its resources, particularly the salmon, be depleted.

"In October 1962 I purchased a 3.5-acre parcel of land on the upper May Creek Ditch. The words "running to the center of May Creek Ditch" were included in the legal description of the land.

As a conservation-minded hunter of upland and migratory birds, I came here with six Labrador retrievers with the intention of breeding them for retrieving game birds. A dog helps hunters to collect the birds they shoot, which otherwise would be wasted."

Mick usually knows what's happening in the valley and we welcome his expertise in wildlife management. MVEC encourages those who have contact with the County regarding beavers, salmon habitat or conservation issues to call Mick to come to your house when the County is there. Our community has learned the hard way that it never hurts to have a third party present when dealing with bureaucrats.

- ◆ Elected May Creek Basin Steward, January 2002.
- ◆ Worked thirty years for City of Renton, fifteen of them in storm water management, where we worked with oil pollution problems involving Cedar River, May Creek, Honey Creek, Black River, Springbrook Creek, and all fish-bearing streams.
- ◆ Breeder of Labrador Retrievers for fifty years. Have also bred and raised Black Angus cattle and American quarter horses. Bred and raced racing pigeons for twenty years. Commercially raised approximately 2,000 Chinese Pheasants each summer from 1970 to 1979.
- ◆ Board of Directors, International Wild Waterfowl Association. Aviculturist with the distinction of being among the first in the U.S. to raise the following in captivity: the first twenty trumpeter swans; the first ten whistling swans; and the first ten Pacific black brant.
- ◆ Recognized as the most prolific producer of Ross's geese in the U.S. from early 1980 to 1995, and the fifth to raise the rare Tule goose, *Anser albifrons elgasii*, in both the U.S. and the world. Also third in U.S. to raise Atlantic brant in captivity.
- ◆ Petitioned state legislators of Alaska to set aside Redoubt Bay area as a recreational and nesting area for the rare Tule goose, *Anser albifrons elgasii*, with help from International Wild Waterfowl Association (IWWA) members and Alaska Department of Fish and Game biologists Bruce Campbell and Jim Farro.
- ◆ Imprinted Program, U.S. Fish and Wildlife Service, Craig Ely. Imprinted lesser Canada geese, *Branta canadensis parvipes*, on cackling geese, *Branta canadensis minima*, here on my property with cackling geese that I collected in Alaska in 1981 as eggs. This was to fit lesser Canadian geese with harnesses used by the Canadian Wildlife Service to carry transmitters. These lesser Canada geese were sent by air on the day of their hatching in Alaska and set by cackling geese here on my property. These birds were to be released the following year in Alaska with nesting cackling geese. This was to do a migration study of dwindling stocks of cacklers.
- ◆ Fed spartina seed to black brant to see how long it stayed in their system and how far they might get to scatter undigested seeds. I did this with the U.S. Biological Survey and a sea grass study done by the University of Washington. As part of the same study, I fed eel grass seed to pintail ducks.
- ◆ Banded and neck-collared Tule (white fronted) geese *Anser albifrons elgasii*, and dusky Canada geese, *Branta canadensis occidentalis*, with Alaska Department of Fish and Game, 1982-1983.
- ◆ Read neck collars in fly way Tule geese, 1982-1990, Alaska Department of Fish and Game, U.S. Fish and Wildlife Service.
- ◆ Nest studies of dusky Canada geese, Copper River Delta, 1989. Alaska Department of Fish and Game.
- ◆ U.S. Fish and Wildlife Service, 1991. Nest studies, cackling goose, *Branta candensis minima*, Y-K (Yukon-Kuskokwim) delta, Alaska.
- ◆ U.S. Geological Survey, 1994. Clutch survival study, cackling goose, *Branta candensis minima* Y-K delta, Alaska.
- ◆ DNA blood work on captive bred Tule geese on my property, 1990-1991. This started the DNA of the greater white fronted goose family of *Anser albifrons frontalis*, *Anser albifrons gambelli*, and *Anser albifrons elgasii*.

## Regulatory Taking and Inverse Condemnation

# Liberty

*(Continued from page 10)*

As the urge to preserve open space builds, expect more assertions that the government has taken property without just compensation. History has shown that takings claims are a natural by-product of government efforts to slow development.

Does the government have a right to block all use of person's property through regulation? If the reason is for a public purpose, often the answer is yes. But, and this is a big but, the government must pay full fair market value and related costs. If it fails to do so, and it often appears to ignore this requirement, then the owner must go to court, or wherever the law says he or she must go, to seek just compensation and related costs. That often means ultimately filing a "takings" lawsuit.

Before one can go to court, often administrative remedies must be explored to their conclusion. This is called the "exhaustion of remedies" requirement. Though it seems simple, often there are disputes about how far a property owner must go to exhaust remedies.

The law and procedures in takings case differ from state to state and at the national level. But in general one must exhaust remedies and then can file a "takings" lawsuit. In addition to the Fifth Amendment Constitutional challenge, other federal and state claims may also be appropriate. Sometimes, federal civil rights claims, which can allow for punitive damages, are also asserted.

Should you attempt to do this without a lawyer? No, not if you are interested in winning. These are very difficult matters and should only be handled by those attorneys that have handled many of them in the past. In addition, there may be time limits that can affect a property owner's right to seek just compensation. Statute of limitations issues should be reviewed as promptly as possible to ensure that rights are not forever lost.

Our fathers fought for Liberty,  
They struggled long and well,  
History of their deeds can tell –  
But did they leave us free?

Are we free from vanity,  
Free from pride, and free from self,  
Free from love of power and pelf,  
From everything that's beggarly?

Are we free from stubborn will,  
From low hate and malice small,  
From opinion's tyrant thrall?  
Are none of us our own slaves still?

Are we free to speak our thought,  
To be happy, and be poor,  
Free to enter Heaven's door,  
To live and labor as we ought?

Are we then made free at last  
From the fear of what men say,  
Free to reverence Today,  
Free from slavery of the Past?

Our fathers fought for Liberty,  
They struggled long and well,  
History of their deeds can tell –  
But ourselves must set us free.



James Russell Lowell (1819-1891)

## Salmon Gram #1 *(con't)*

*(Continued from page 11)*

roughly \$ 13.80 for every \$ 100 of their electricity bill for salmonid restoration. Then, at the PUD facility at Wells Dam, they see these salmon killed and not allowed to continue into their native waters.

This is wrong — and it's going on throughout the Northwest. That's why I've sponsored Senate Bill 6320 to return some accountability to our state's salmon restoration efforts and to attempt to increase accountability from the federal government.

When you consider what our mighty salmon have survived through their long and hard migration routes over five years, when you consider all the obstacles and predators they must overcome, by the time they come back to their native home, I regard them as one tough fish. Their offspring ought to be allowed to hatch and survive. To allow the continued massacre of these returning salmon is a tragedy.

From the President (con't)

(Continued from page 16)

force just compensation is prohibitive for most individual citizens.

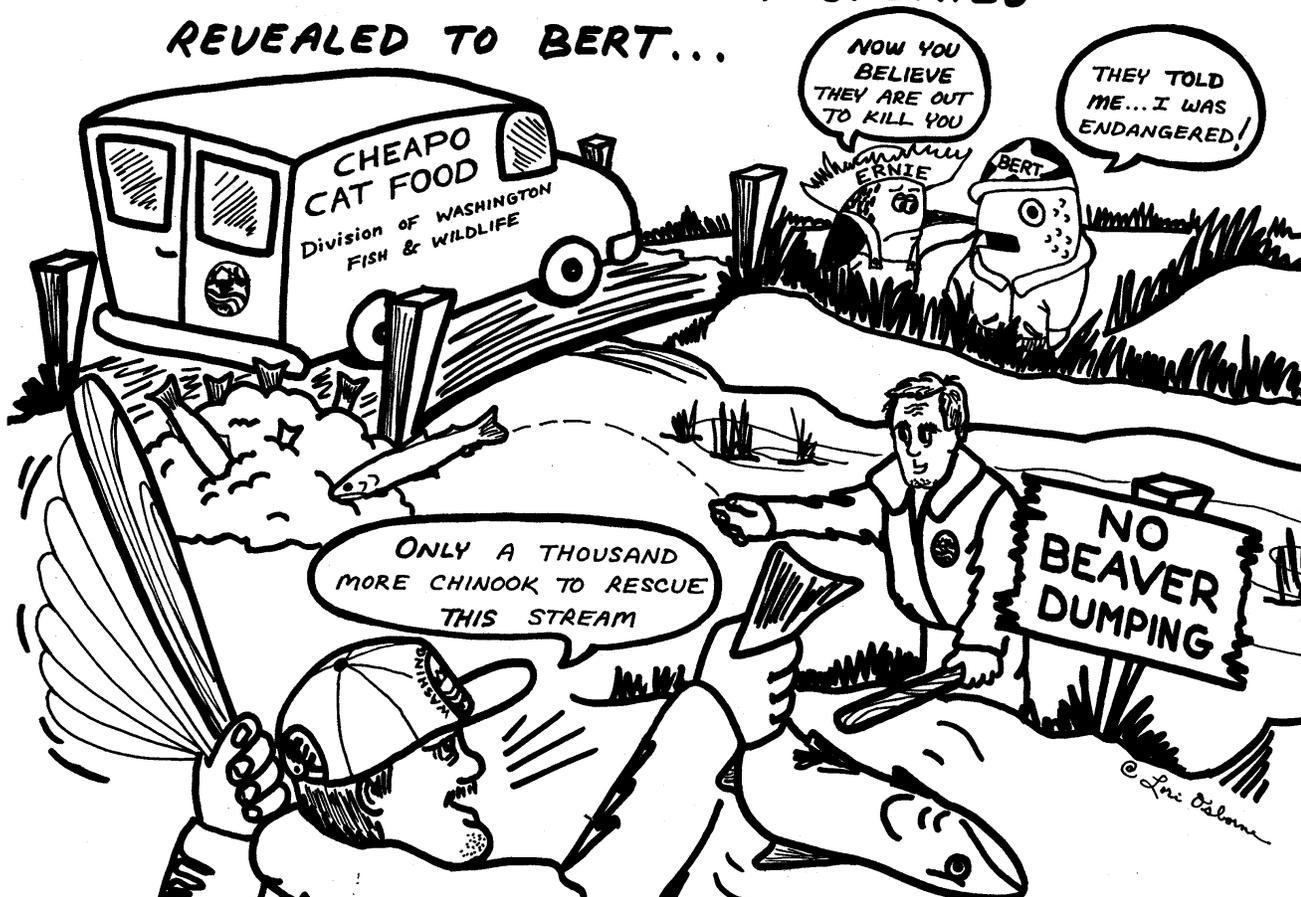
Elected officials deciding to take our property without compensation is bad enough, but the King County Council has passed that perceived "right of government" on to the executive staff who are not elected. Rules and regulations that take or damage our property are routinely put in place via administrative public rules. Any agency of King County can have a new rule restricting your use of your property in place in 30 days simply by drafting it and meeting token requirements for public input. Since the executive tends to support his agencies, repealing the rule requires a veto-proof majority of the Council. That seldom, if ever, happens. The same thing happens at the state level. Senator Patricia Hale and Representative Cathy McMorris have introduced four bills in the state legislature to cure the same abuses by state staff.

I implore our elected representatives and public employees to become familiar with our state constitution. Pay special attention to Article I, Sections 1,3 and 16. Section 32 is useful when you are tempted to pass laws and rules that go against the fundamental principles of the document. Section 32 states, "A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government." Keep in mind that you do not have the right to violate the will of the constitution. Start by getting rid of administrative public rules so that all rules and regulations must be approved by both the Legislative and Executive branches of government.

The Washington State Environmental Policy Act states, "Achieve a balance between population and resource use which will permit high standards of living and wide sharing of life's amenities" Though intended to be a proactive way

(Continued on page 4)

THE AWFUL TRUTH ABOUT WASHINGTON STATE FISHERIES REVEALED TO BERT...





## A Message from the President

While sitting by the fire watching it snow, I have been rereading a wonderful document, the Washington State Constitution. As I read the document that is the supreme law of this state, I am reminded of the wisdom of the founders of this great state. I also wonder, as a resident of King County, if any of the elected officials of recent years in King County have ever read this constitution that formalized county governments.

The founders of this state envisioned the primary role of government to be the defense of individual rights. Thus Article I, Section 1, states, "All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and main-

tain individual rights." Section 3 of the same article is "No person shall be deprived of life, liberty, or property, without due process of law." The language is pretty clear; government must protect our individual rights, including property rights. Yet much of recent legislation and executive proclamations in King County actually subsume our individual rights to some nebulous "public good."

The apologists who say that the "public good" is more important than individual rights argue that representative government gives our elected officials the right to make the decision to sacrifice our property for watershed management or anything else they deem appropriate. They would cite the following sentences from Article I, Section 16, "Whenever an attempt is made to take private property for a use alleged to be public, the question

whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public: Provided, That the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use. [AMENDMENT 9, 1919 p 385 Section 1. Approved November, 1920.]" They wish you to ignore the following contained in the same section: "**No private property shall be taken or damaged for public or private use without just compensation having been first made**, or paid into court for the owner..." Section 16 is in the constitution specifically to prevent government from ignoring the need for just compensation and provide for judicial, not legislative, determination of that compensation. Unfortunately, the cost of going to court to

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**Protect  
Historic  
May Valley!**



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