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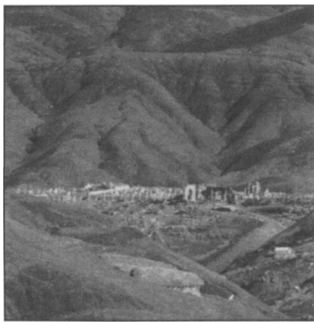
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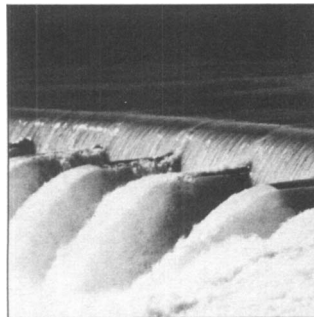
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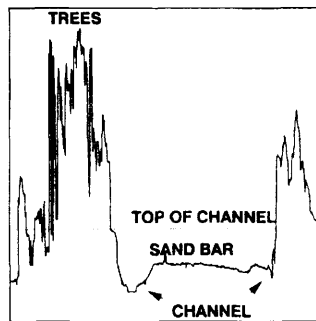
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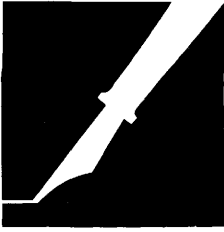
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## PEN POINTS

### Another view of property rights

Senator Steve Symms' observations ["In Defense of Private Property," *JSWC*, July-August 1991, page 244] are related to the debate initiated by Kevin Kosowski in his earlier viewpoint ["Land Use Planning Myths," *JSWC*, March-April 1991, page 85] about the myths of land use planning. Senator Symms seeks to perpetuate, and even institutionalize, some of the land use myths identified by Mr. Kosowski. Although, because of the Holmes doctrine, a regulation can be considered a taking if it goes "too far," regulations that protect the public health, safety, welfare, or morals generally are not considered a taking. A person cannot do whatever he or she wants with their property, if those actions hurt others. For example, an automobile is private property, but its use is regulated for public safety. With rights come responsibilities.

The list of cases offered by Senator Symms contains at least one error. In *Nollan v. California Coastal Commission*, the court did not find that the U.S. government took private property rights. The federal government, except for the courts, was not involved. The California Coastal Commission is a state agency and this case involved state regulatory authority. Not noted by Senator Symms are the numerous state and federal court decisions upholding many laws restricting the use of private property.

Five criteria are commonly used for identifying unconstitutional takings: (1) they involve physical invasion or appropriation, (2) public benefits are not greater than private losses, (3) the value of the regulated property is diminished, (4) all use of property is denied, and (5) a legitimate state interest is not advanced.

If regulation does not violate these criteria, then it is a legitimate application of the police powers granted to the states by the 10th Amendment of the U.S. Constitution. Combined with the 5th and 14th Amendments, the 10th Amendment has yielded a history of case law that balances private property rights with public responsibilities.

The 5th and 14th Amendments to the Constitution protect private property rights and therefore negate the need for Senator Symms' proposed Private Property Rights Act. If passed, Senator Symms' legislation would create another unnecessary layer of federal bureaucracy. Federal agencies already consider private property rights. The proposed private property rights law would require more federal bureaucrats who would duplicate a function already fulfilled by the courts. In addition, the law would be costly because it would require more staff and could result in paying compensation to landowners in situations when it is currently unnecessary.

Concerning Senator Symms' observations about the Soviet Union and eastern Europe, before we become

too self-congratulatory, we should look at our own environmental disasters in the making; beaches polluted with medical wastes, urban backyards with dangerous levels of lead, the loss of prime farmland, water shortages, continued soil erosion, views of the Grand Canyon obstructed by haze, brown clouds over many western cities, water contamination by nonpoint sources, the loss of wetlands and riparian areas, the continued uglification of the American landscape, and so on.

I do not wish to minimize the issues in the Soviet Union and eastern Europe: They are real. I know landscape planners in eastern Europe. For years, their complaints have sounded similar to their counterparts in the United States. They felt victims of a system founded on economic determinism. Environmental and local land use concerns were bulldozed in the name of economic development. American capitalism is the flip side of Marxist central economic planning; both are based on 19th century philosophies about growth and development. Neither will be well-suited for the 21st century.

There are examples of democracies that do regulate private property to protect their environment, notably Germany, the Scandinavian nations, and the Netherlands; and increasingly Australia and New Zealand; and more tentatively, France, Canada, Japan, and yes, even the United States. In the United States, most of the leadership since 1981 has come from state and local governments and citizen groups. It is no accident that the nations with the exemplary environmental regulations also lead the United States in most quality-of-life indices and have stronger economies.

I agree with Senator Symms that private property is an essential right and fundamental to a democratic society. I argue that with those rights come certain responsibilities. We need to recognize our stewardship responsibility to future generations. As noted in the Bible, "The Land shall not be sold in perpetuity; for the Land is Mine, saith the Lord" (from Leviticus). We have a responsibility to leave the earth in better condition than

we receive it. This responsibility may require certain restrictions on what we can do with land, water, and the air.

Frederick Steiner  
Arizona State University  
Tempe, Arizona

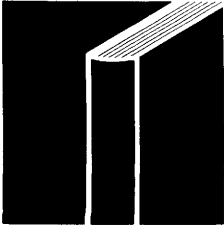
### **On advisory boards, federalism**

The local advisory boards advocated by James Harless ["Local Environmental Advisory Boards Make Sense," *JSWC*, September-October 1991, page 344], are similar to the local voluntary soil conservation associations that were organized to assist the Soil Conservation Service immediately after that agency was established in 1935. Not being official organs of state or local government and thus lacking certain useful and perhaps necessary authorities, these associations were superceded by special purpose units of state government called soil conservation districts. I believe the soil conservation movement could have been more successful if local citizen boards had been continued in an advisory and advocacy role with the districts.

On another note, I would prefer that you not publish partisan political opinions, such as those of Wisconsin state assemblyman Spencer Black ["Don't Wait for Federal Environmental Protection," *JSWC*, September-October 1991, page 355]. But in a way I'm glad you did in this instance; for those of us who know Representative Black may find encouragement in his apparent growth in political maturity. It seems Spencer is beginning to perceive the reality of the mode of political structure under which the United States is constituted, namely, "federalism."

The federal government, which the sovereign states established to serve certain limited functions on behalf of the people, is neither a primary source of wealth nor the repository of all environmental wisdom and rectitude. It is, however, a wielder of immense regulatory power with its control levers not readily accessible to the people regulated, an attractive feature to some people.

Leonard Johnson  
Troy, Idaho



## BOOKS, ETC.

### *The River of the Mother of God and Other Essays by Aldo Leopold.*

Edited by Susan L. Flader and J. Baird Callicott. 384 pp., illus., bibliog., index, 1991. University of Wisconsin Press, Madison, 53715. \$24.95.

A generation has passed since the initial publication of Aldo Leopold's *A Sand County Almanac* in 1948. It is sometimes difficult, in these days of heightened attention to fundamental issues of conservation, to appreciate the might of the cultural tide against which Leopold launched his modest but buoyant book. And it is sometimes hard, as we as individuals have become more attuned to the "delights and dilemmas" of conservation, to remember how our personal vistas opened when we first shared Leopold's insights: "We abuse land because we regard it as a commodity belonging to us. When we see land as a community to which we belong, we may begin to use it with love and respect." *A Sand County Almanac* has proven a durable vessel. It has influenced in incalculable ways the environmental attitudes of its generation, and its many readers now grapple, as did Leopold, with the challenge of defining our privileges and obligations within the land community.

Most of the essays that appear in *Sand County* were written only in the last eight years of Leopold's life, when Leopold had reached the height of his understanding of ecological processes, landscape change, and the historical significance of conservation. This is the only Leopold that most of his readers have been able to know—a wise, elder statesman of conservation, his penetrating senses, scientific attitude, wry wit, and patient integrity on full display. But these were qualities hard won in the day-to-day experiences of the working conservationist in the forest, field, tent, library, laboratory, office, classroom, and conference room. Invariably, Leopold translated his experiences into journal articles, essays, reports, and lectures—some 500 distinct publications by Susan Flader's count, as well as an additional multitude of unpublished documents—providing one of the most fascinating and important paper trails in twentieth century conservation. To read this new

collection of "the best and most representative" of Leopold's unpublished and hard-to-locate writings is to follow that trail as it led to *A Sand County Almanac*, to Leopold's valedictory land ethic, and, in many ways, to conservation's status quo.

Editors Flader and J. Baird Callicott faced a difficult but delightful challenge: how to compile a collection that would span Leopold's lifetime, encompass his varied interests, and illustrate his scientific, aesthetic, and ethical development. They have succeeded brilliantly. The first of the 59 items, written in 1904, is a classroom account of a hike in the New Jersey countryside where Leopold attended prep school ("Then he thought that this was surely the fairest country in all Jersey, and that after all it is a great thing to be alive.") The last is "The Ecological Conscience," the startling precursor to *Sand County's* "The Land Ethic" that Leopold delivered as an address in 1947 ("Everyone ought to be dissatisfied with the slow spread of conservation to the land. Our 'progress' still consists of letterhead pieties and convention oratory"). Inbetween, Leopold's full stylistic and thematic spectrum is on display, from the seminal examination of "The Wilderness and Its Place in Forest Recreational Policy" to the biting social commentary of "A Criticism of the Booster Spirit," from the brooding analysis of "Land Pathology" to the engaging description of "The Farmer as a Conservationist." The editors preface each item with brief contextual remarks and, in an excellent introduction, trace the conceptual lines that bind the collection and Leopold's thoughts and actions, together.

The Leopold that readers will find here is not different from that of *A Sand County Almanac*; the same keen mind, clean prose, balanced personality, and ready sense of humor are evident. These qualities, however, are embedded in a more tactile substrate of contemporary events, personalities, politics, and landscapes. As a result, the timeless quality of the *Almanac* is more muted, but the fresh thoughts often more resonant. From "Engineering and Conservation" (1938): "We end, I think, at what might be

called the standard paradox of the twentieth century: our tools are better than we are, and grow better faster than we do. They suffice to crack the atom and command the tides. But they do not suffice for the oldest task in human history: to live on a piece of land without spoiling it."

As a whole, this collection illustrates in the very best way possible—in Leopold's own words—the flowering of one of this century's unique intellects, in many of the diverse fields that still challenge us today: wilderness protection, environmental ethics and aesthetics, wildlife management and conservation biology, environmental history and economics. Moreover, it illustrates Leopold's unwillingness to concede that these are, or ever can be, separate fields.

Readers of the *JSWC* will be especially interested in having available, in several cases for the first time, a sample of Leopold's overlooked writings on soil erosion and conservation, agriculture, and the changing range and farm landscape of the 1920s and 1930s. The editors note that "Leopold's most significant early advances in ecological thinking came...in watershed management, a field quite removed from his previous training and experience" in forestry. That early concern with erosion processes in the Southwest would extend into Leopold's Wisconsin years and provide a solid base for his mature conservation philosophy. Those interested in the background of today's sustainable agricultural movement will find these essays particularly rewarding. The fact that these agricultural essays can now be read, for themselves and in the context of his other essays on wilderness, wildlife, policy, and philosophy, is one of this collection's most important contributions.

But, finally, for Leopold, the "delights" of being a conservationist always seemed to compensate for the "dilemmas." For all of the technical, political, and philosophical achievements that these essays record, it is the delight that Leopold took in his surroundings, and that his readers have for a generation taken in Leopold, that makes this collection most worthwhile. Conservationists, even in Leopold's day,

were liable to despair over the task before them; perhaps it will ever be thus. But listen to Leopold instructing his undergraduates in the lingering gloom of a post-World War II world: "I am trying to teach you that this alphabet of 'natural objects' (soils and rivers, birds and beasts) spells out a story, which he who runs may read—if he knows how. Once you learn to read the land, I have no fear of what you will do to it, or with it. And I know many pleasant things it will do for you." With these essays, "The Professor" provides further light and further joy, for a generation that will likely need them even more than the last.—CURT MEINE, *National Research Council, Washington, D.C.*

#### General

- Henry A. Wallace's Irrigation Frontier: On the Trail of the Corn Belt Farmer, 1909.* Edited by Richard Lowitt and Judith Fabry. 228 pp., illus., index, 1991. The University of Oklahoma Press, Norman, Oklahoma 73019. \$24.95.
- Our Changing Continent.* 24 pp., illus., 1991. U.S. Government Printing Office, Washington, D.C. 20401. \$1.00.
- Geologic Time.* 20 pp., illus., 1991. U.S. Government Printing Office, Washington, D.C. 20401. \$1.25.
- Environmental Quality.* 408 pp., 1991. U.S. Government Printing Office, Washington, D.C. 20401. \$12.00.
- Land Stewardship in the Next Era of Conservation.* By V. Alaric Sample. 45 pp., illus., bibl., 1991. Grey Towers Press, Milford, Pennsylvania 18337.
- Global Patterns: Climate, Vegetation, and Soils.* By Wallace E. Akin. 380 pp., illus., bibl., index, 1991. The University of Oklahoma Press, Norman, Oklahoma 73019. \$45.00.
- Ethics of Environment & Development: Global Challenge, International Response.* Edited by J. Ronald Engel and Joan Gibb Engel. 264 pp., illus., refs., index, 1990. \$29.95 clothbound, \$14.95 paperback.
- Soil and Water Conservation, Second Edition.* By Frederick R. Troeh, J. Arthur Hobbs, and Roy L. Donahue. 530 pp., illus., tpls., refs., apps., index, 1991. Prentice Hall, Inc.,

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#### Agriculture

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- Geraghty & Miller's Groundwater*

*Bibliography*, Fifth Edition. By Frits van der Leeden. 507 pp., 1991. Water Information Center, Inc., Plainview, New York 11803. \$69.95.

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*Sustaining Site Productivity on Forestlands: A User's Guide to Good Soil Management*. Edited by Robert F. Powers. 30 pp., illus., tpls., refs., 1991. Division of Agriculture and Natural Resources, University of California, Oakland, California 94608-1239.

### Law, Legislation and Politics

*The Clean Air Act Amendments: BNA's Comprehensive Analysis of the New Law*. 410 pp., 1991. The Bureau of National Affairs, Inc., Washington, D.C. 20037. \$95.00.

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*Spatial Variabilities of Soils and Landforms*. M. J. Mausback and L. P. Wilding, editors. 270 pp., 1991. SSSA Special Publication Number 28. Soil Science Society of America,

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*Rates of Soil Chemical Processes*. D. L. Sparks and D. L. Suarez, editors. 302 pp., 1991. SSSA Special Publication Number 27. Soil Science Society of America, Madison, Wisconsin 53711. \$36.00.

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*Cleaning Up Our Great Lakes: A Report on Toxic Substances in the Great Lakes Basin Ecosystem*. 46 pp., illus., tpls., apps., 1991. International Joint Commission, Windsor, Ontario N9A 6T3.

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