

Atkinson Center for a Sustainable Future Topical Lunch
Public trust policy: Implications for state wildlife professionals
Monday 4 November 2013
Summary report

This topical lunch was part of an ongoing effort to understand and re-envision public trust policy, led by Cornell scholars and practitioners in natural resource agencies across the US. The organizers sought to seek input from people in the wider Cornell community whose expertise can inform the ongoing effort.

Chris Smith, Western Field Representative of the Wildlife Management Institute, introduced the topic of trust-based governance with specific reference to wildlife management under the public trust doctrine (PTD), a legal and policy framework that applies at the state and, to a lesser extent, the federal level in the United States. It also finds expression in law and policies in numerous countries on five continents. Smith briefly explained the history of PTD from Roman law through the British Empire to its current expressions in jurisdictions globally.

Stated simply, PTD requires that government holds natural resources (water, air, land, fish and wildlife) in trust for all citizens. It legally imposes fiduciary obligations on trustees – usually elected representatives – to manage resources in the interests of all beneficiaries, including future generations. In this respect, it expresses an aspiration for sustainability, protecting resources against politicization and short-term overexploitation. PTD includes a legal right of recourse for beneficiaries to hold trustees to account if they are deemed to be in dereliction of their fiduciary obligations. However, PTD is currently not delivering the outcomes that it promises. Smith explained that this failure is largely due to the various parties to the trust being unaware of their specific entitlements and obligations with regard to the public trust. He provided a nuanced account of ‘government’, explaining the discrete roles for the judiciary, trustees (elected representatives or their appointees) and trust managers (career civil servants who are involved in the delivery of natural resource policy). This account unpacked the category of ‘government’ – an important dimension of the public trust relationship that is currently understudied in the academic literature and poorly understood among natural resource practitioners. Smith called for the broad education of all parties – trustees, trust managers and beneficiaries – to better understand the public trust relationship and achieve more effective implementation.

The discussion that followed Smith’s brief presentation ranged widely on topics of interest to participants from various disciplinary and professional backgrounds. Suggestions that public trust policy was anachronistic and unworkable were countered by examples of more effective applications outside of the US. In India, PTD had been used to reverse natural resource decisions that contravened public trust responsibilities and to bring legal action against elected trustees. PTD in India was derived not only from the common law tradition it inherited from British colonial rule but also from the Indian constitution. The right to life guaranteed by the constitution had been interpreted as a right to livelihood and a right to a healthy environment, both of which imposed public trust obligations upon political leaders.

Transboundary resources present particular problems for public trust policy as it is often unclear whose interests are at stake and how they can be represented. Instances of successful collaborative public trust policy with regard to transboundary resources were offered, including the US Migratory Bird Treaty Act and the proposals emerging from the United States Fish and Wildlife Service to establish Landscape Conservation Cooperatives. It was common for responsibility for migratory species and other transboundary resources to be delegated upwards from state to federal agencies in order to facilitate coordination.

Universities were accorded a central role in educating all parties to the trust relationship of their entitlements and responsibilities. Universities are responsible for training trustees and trust managers through undergraduate, graduate and professional degree programs as well as educating beneficiaries of their entitlements through extension and other public engagement activities. Incorporating explicit public trust components into degree programs and extension activities was identified as a desirable objective for Cornell departments.

Discussions will continue in a reading group that will meet six times and in a workshop next spring. The reading group will meet on November 5 (9-11am), December 10 (9-11am) and December 16 (1-3pm). Spring dates for the reading group and the workshop will be confirmed soon. Anyone who is interested in learning more about public trust policy or becoming involved in these ongoing initiatives is encouraged to contact Darragh Hare in the Department of Natural Resources (cdh232@cornell.edu). We are grateful to the Atkinson Center for a Sustainable Future and the Polson Institute for Global Development for supporting our efforts.

Organizers:

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