

The Naked Fish

A Publication of the May Valley Environmental Council

January - February 2004



May Creek has once again gone over the spillway portion of the 148th Avenue dam. That had not happened since the last time the spillway (some call it a road) was raised eight additional inches in 1998. The low spot in the dam has been raised over three feet in the years since the current bridge was installed in the early 1940s. As the picture on the right shows, the bridge is not large

enough to handle all the water coming down May Creek. The excess water typically backs up onto property in May Valley until it gets high enough to go over the road. Every time King County raises the road they increase the flooding in May Valley. The regional director of the Washington Department of Fish and Wildlife recently proposed installing two culverts at the spot to carry



the excess water. He said it would be an easy project for the state to permit. King County employees have tended to ignore the problem or cite their inability to obtain state or federal permits for such work. King County Division of Water and Land Resources currently has \$400,000 to spend on some kind of project in May Valley and two culverts would certainly be a good use of the money.

In the past, whenever 148th Avenue has flooded, 164th Avenue has also flooded. It did not flood this time in large part due to the dredging done there in 2001 by Chuck Pillon. His current assessment from King County is over \$30,000 and rising daily. Let us hope that if they ever collect from him they don't use the money to once again raise the dam at 148th Avenue!

SAVING ROCK CREEK VALLEY

The January 26, 2004 issue of the *King County Journal* featured a story on the front page headlined "Saving Rock Creek Valley" with the subhead of "Conservation plan seeks cooperation in place of litigation and regulation." The story by Journal reporter Dean A. Radford described at length the horrible fate awaiting this valley just east of Maple Valley and Black Diamond. Suburbia is coming!

Some current residents of the valley have formed a group called Friends of the Rock Creek Valley and have worked for three years to develop a massive plan to "preserve" the valley. They tout a guiding principle of cooperating with property owners to achieve their vision of Rock Creek Valley. They are not proposing any new legislation to achieve their primary goal of an interconnected system of recreational trails running through their neighbors' properties. They also wish to keep new neighbors to a minimum, save the salmon and protect Kent's drinking water while they are at it.

The idea of implementing a massive environmental enhancement plan through persuasion and cooperation instead of regulation and extortion is a breath of fresh air in the dank swamp of King County environmental politics. Unfortunately, it flies in the face of the currently proposed King County Critical Areas Ordinance and the Sensitive Areas Ordinance that has been in place since 1990. The quotes from leaders of Friends of the Rock Creek Valley would lead one to believe they have never read those ordinances. You can bet that numerous of their neighbors that have felt the sting of King

County's whip have read those documents. Maybe some have even sat in on the meetings of King County staff where it was determined that the cure for lack of participation in voluntary programs was to simply make the program mandatory. The grandiose plans to control your neighbors' property always start as voluntary, cooperative efforts. When that doesn't work, it's a short leap to have the plan adopted by government as the King County Council did for the Rock Creek Valley Vision in April 2001.

All the folks who live in Rock Creek Valley might not share the "Vision" because they want to share their property with their kids or spent their working life paying for their land so they could build a few houses on it and retire in security. Perhaps they don't really want hordes of hikers from the city traipsing across their property while strewing litter in their wake. Some may just be contrary enough to think they ought to be the ones to manage the property they own instead of whatever local group of dogooders is politically correct at the moment. It is likely that those who do not share the "Vision" are the majority of Rock Creek Valley but, unless there are some activists among them, they will get cooperatively and persuasively steamrolled by the environmental juggernaut at work there now.

While there is some talk of purchasing the land they covet, which is refreshing, it only seems to apply to large tracts owned by those who would could afford to litigate any disagreements they might have with the "Vision." As usual the little property owners will get left paying for the "Vision".

DEPARTMENT OF ECOLOGY WATER QUALITY ASSESSMENT

The Washington State Department of Ecology has recently released a draft version of their "Water Quality Assessment for Washington." They are required to report such data periodically to the EPA. The only way to access the data is via an interactive map found at www.ecy.wa.gov/programs/wq/303d/2002/2002-index.html. While preparing this report, the map only worked sporadically so you may have to exercise some patience when using the site. The map shows all Washington waterways and denotes by color what category of water quality they fall into.

Buried deeper in the web site is actual data for the waterways. All the data available for May Creek is summarized in the table accompanying this story. It is interesting that the things used to justify increased buffers (high temperatures, excess nutrients like nitrogen) are OK in May Creek. The map shows that the worst problems are in the heavily urbanized areas near the mouth. There are levels of heavy metals that do not meet EPA requirements but no way of knowing if they are from naturally occurring sources or from industry and automobiles. There are also higher than allowed amounts of three pesticides.

Paracelsus (1493-1541) was one of the first to recognize that at some dosage all substances are toxic but that at some reduced dosage many are therapeutic. We certainly need some dosage of water each day but there is a limit even to clean water. There have been deaths recorded from drinking too much water - 18 liters in one case. It might prove to be an interesting exercise to

look at what the acceptable level of one of the pesticides is in relation to its toxic dose.

Dosages are usually given as milligrams per kilogram (mg/kg). EPA acceptable levels in water are given either in parts per million (ppm) which equates to 1 mg/L or in parts per billion (ppb) with equates to 1 µg/L. For this exercise let's look at endosulfan. Endosulfan is an organochlorine (C₉H₆Cl₆O₃S) pesticide of moderate mammalian toxicity, which does not accumulate in the tissues of man or animals to any significant extent. The EPA acceptable concentration in water is 74 ppb. The EPA acceptable concentration on dried tea is 24 ppm. Acceptable concentrations on other agricultural products range from 0.1 - 2 ppm. The oral Lethal Dose (LD₅₀) in rats is 50 mg/kg per day. The level below which there is no effect on any organism is 0.75 mg/kg per day. Tests on rats and dogs find that they can ingest 30 mg/kg per day with no ill effects.

Let's figure out how much May Creek water a 150-pound human could drink with no ill effects from endosulfan. Changing our 150-pound human into a metric clone and doing some math finds that the human should be able to ingest 2,045 mg of endosulfan without harm. Unfortunately we don't know the level of endosulfan in May Creek water. We only know that the level is above the acceptable level of 74 ppb. If we assume that the actual level is double the acceptable level, which is highly unlikely, then to get 2,045 mg of endosulfan we would need to drink 13,917 liters of May Creek water each day. If

Continued on page 4

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RAINFALL IN MAY VALLEY — 2003

| | J | F | M | A | M | J | J | A | S | O | N | D |
|------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| 1 | 0.02 | 0.13 | 0.15 | 0.03 | 0.01 | | 0.04 | | | | | 0.03 |
| 2 | 1.13 | 0.04 | | 0.10 | | | | | | | 0.13 | 0.13 |
| 3 | 0.84 | 0.27 | 0.46 | 0.46 | 0.02 | | | | | | | 0.57 |
| 4 | 0.26 | 0.11 | | 0.13 | 0.04 | | | | | | | 0.02 |
| 5 | 0.40 | | 0.02 | | 0.48 | | | | | | | 0.58 |
| 6 | | | | 0.42 | 0.10 | | | | | | | 0.43 |
| 7 | | | 0.15 | 0.04 | | | | | 0.04 | 0.30 | 0.03 | 0.07 |
| 8 | | | 0.55 | 0.40 | | | | | .044 | 0.06 | | 0.20 |
| 9 | | | .047 | 0.41 | | | | 0.04 | | 0.40 | | |
| 10 | | 0.07 | 0.50 | 0.06 | 0.15 | | | 0.07 | | 0.17 | | 0.06 |
| 11 | | | 0.28 | 0.14 | | 0.02 | | 0.12 | 0.28 | 0.03 | 0.08 | 0.30 |
| 12 | 0.71 | | 0.66 | 0.03 | | | | | 0.29 | 0.47 | | 0.38 |
| 13 | 0.06 | | 1.34 | 0.62 | | 0.13 | 0.08 | | | 0.10 | | 0.26 |
| 14 | 0.29 | 0.03 | 0.09 | 0.46 | | 0.07 | | | | | | 0.25 |
| 15 | | 0.01 | 0.10 | 0.03 | | | | | | | 0.05 | 0.04 |
| 16 | | 0.33 | 0.14 | 0.04 | 0.04 | | | 0.01 | 0.13 | 0.90 | 0.34 | |
| 17 | | 0.55 | 0.19 | 0.23 | 0.03 | | | | 0.85 | 4.78 | 0.39 | 0.10 |
| 18 | | 0.15 | | 0.02 | | | | | 0.01 | | 1.18 | |
| 19 | | 0.05 | 0.13 | 0.01 | 0.01 | 0.06 | | | 0.29 | 0.10 | 2.45 | |
| 20 | | 0.20 | 0.34 | 0.10 | 0.12 | 0.26 | | | 0.03 | 0.79 | 0.48 | 0.50 |
| 21 | 0.26 | 0.09 | 0.17 | 0.10 | | 0.27 | | | | 0.06 | 0.13 | 0.18 |
| 22 | 0.95 | 0.21 | 1.18 | 0.06 | | 0.16 | | | | 0.48 | 0.05 | 0.06 |
| 23 | 0.56 | 0.02 | 0.13 | 0.54 | | 0.50 | | | | 0.48 | 0.03 | |
| 24 | 0.24 | | 0.16 | 0.05 | | | | | | | 0.47 | 0.12 |
| 25 | 0.19 | | 0.11 | 0.03 | 0.12 | | | | | | 0.11 | 0.24 |
| 26 | 1.38 | | .016 | 0.02 | 0.04 | | | | | | 0.02 | 0.05 |
| 27 | 0.25 | | 0.15 | | 0.05 | | | | | | 0.02 | 0.17 |
| 28 | 0.91 | 0.07 | 0.02 | 0.01 | | | | | | | 0.28 | 0.05 |
| 29 | 0.23 | | | | | | | | | 0.05 | 0.90 | |
| 30 | 0.75 | | | 0.02 | | | | | | 0.15 | 0.03 | |
| 31 | 0.84 | | 0.45 | | | | | | | | | 0.09 |
| Tot | 10.27 | 2.33 | 8.10 | 4.56 | 1.26 | 1.47 | 0.12 | 0.34 | 2.36 | 9.32 | 7.17 | 4.88 |

ALL UNITS IN INCHES

TOTAL FOR YEAR = 52.18 INCHES

Four Creeks Unincorporated Area Council

meets the third Wednesday of each month at

**May Valley Alliance Church
16431 SE Renton-Issaquah Rd**

7:00 p.m.

See their web site at www.fourcreeksuac.org for more information



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WE HOPE YOU ENJOYED THIS ISSUE AND WILL JOIN US IN OUR ATTEMPT TO BRING SOME SENSE AND SANITY TO ENVIRONMENTAL ISSUES IN KING COUNTY.

BACK ISSUES OF *THE NAKED FISH* ARE AVAILABLE AT:
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Thinking cannot be carried on without the materials of thought; and the materials of thought are facts, or else assertions that are presented as facts. A mass of details stored up in the mind does not in itself make a thinker; but on the other hand thinking is absolutely impossible without that mass of details. And it is just this latter impossible operation of thinking without the materials of thought which is being advocated by modern pedagogy and is being put into practice only too well by modern students. In the presence of this tendency, we believe that facts and hard work ought again to be allowed to come to their rights: it is impossible to think with an empty mind.

J. Gresham Machen

The Naked Fish is published by May Valley Environmental Council (MVEC) a non-profit community group dedicated to sensible environmental management of private property. Articles in *The Naked Fish* cover subjects of concern both to local and national readers. We try to provide environmental information not commonly found in the major media. Articles with by-lines reflect the research, views and opinions of the author which may not reflect positions on the issues adopted by MVEC.

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SHADES OF TRUTH



ISSAQUAH CREEK HATCHERY



ISSAQUAH CREEK HATCHERY



SOOS CREEK HATCHERY



VOIGHT CREEK HATCHERY

What is the one best thing you can do for a salmon? Ask any King County Department of Natural Resources employee that question and the standard answer is “Plant a tree on the bank of a stream.” From pre-school to graduate school students are indoctrinated with the myth that shade in the riparian area along streams is what keeps the water cool enough for salmon. This publication has covered the shade myth in detail in previous issues. [Riparian Shade and Stream Temperatures, Larson and Larson, October 2002, *The Naked Fish*. Available on our web site at www.maycreek.com.]

Look closely at the pictures printed above. These three salmon hatcheries are designed to produce salmon by the gazillions. They

do their job very well. Note the absence of trees in the riparian area. Actually, note that the two most common items in the riparian areas of the hatcheries are concrete and asphalt. Amazing, isn't it that these concrete and steel habitats can sustain salmon without the help of shade trees, 165-foot buffers or any of the other salmon friendly accoutrements that private landowners are being forced to provide.

The temperature limits for streams containing salmonids stem from work published in 1952 by J.R. Brett. He studied both upper and lower limits of temperature tolerance in five species of salmon common to the Pacific Northwest. He studied newly emergent 24 month old fish held under constant temperature in lab conditions. The experiment was established to address condi-

tions for hatcheries rather than natural events in a watershed.

The ultimate upper lethal temperatures for each species were: spring chinook 77.2 °F, coho 77 °F, sockeye 75.9 °F, pink 75 °F, chum 74.8 °F. He also established that temperatures slightly above 68 °F caused rapid death in part of the sample followed by a long delay and then death of the remainder. Our current upper limit target of 64 °F seems to be based on that fact.

Subsequent studies by Bobby D. Combs determined that the stage of development when subjected to temperatures outside the normal range is more important than temperature alone. He also established that the eggs are especially intolerant of low temperatures below 42.5 - 45 °F. They fry are most effected

by high temperatures as they begin their active feeding stage which in a stream would occur between January and April. Once feeding the mortality rate decreases and remains low. Juveniles are 6 months and older during the peak temperature months of July and August. Water temperature in a stream also fluctuates between a nighttime low and a daytime high unlike the constant temperature of the studies.

Since these early studies there has been no further work that either contradicts their findings or that links the temperatures found to cause mortality in eggs and young juveniles to older juveniles during July and August. By July and August the salmon are past the age where these temperatures are critical.

ALL SALMON REALLY ARE KISSIN' COUSINS

On February 24, 2004, the 9th U.S. Circuit Court of Appeals in San Francisco upheld a 2001 district court ruling by Judge Michael Hogan that hatchery stock must be included with wild stock when determining if salmon populations warrant protection under the Endangered Species Act. The decision was hailed by Russ Brooks, a lawyer for the Pacific Legal Foundation, and lead counsel for the plaintiffs, as “a victory for common sense. The decision stands as a victory for people everywhere.”

The decision should help pave the way for several lawsuits that Pacific Legal Foundation has filed challenging endangered

salmon listings. Those listings include the Klamath coho, Puget Sound chinook, California Central Valley steelhead, and the Columbia River and Willamette River steelhead. “I’m going after the next domino,” Brooks said. “So many of these listings suffer from the same flaw.”

The ruling may free up water for irrigators in the Klamath Basin. It was the National Marine Fisheries Service listing of coho salmon and the resulting biological opinion that became part of the 2001 cutoff of irrigation water to 1,100 Klamath Basin farms. The ruling could have widespread repercussions. A lawsuit brought by Washington Toxics Coalition against the Environ-

mental Protection Agency recently established no-spray buffers for 38 pesticides in Oregon, Washington, and California. Since the Washington Toxics case was based on the endangered listings of the fish, delisting of the fish should remove the buffers.

Judge Hogan wrote in his earlier decision the listing “creates the unusual circumstance of two genetically identical coho salmon swimming side by side in the same stream, but only one receives ESA protection. The distinction is arbitrary.” Hogan’s ruling sent NMFS into a status review to determine population levels based on the new criteria. That review is scheduled to be completed for all 27 listed salmonids by March 31.

Brooks expects the new numbers to be dramatically higher than past counts and more accurately reflect fish populations. “There’s no way the decision wouldn’t affect these listings,” he said.

The circuit court also lifted a stay put in place by Hogan on the delisting of the coastal coho pending the outcome of the appeal. It is unclear if by listing the stay the coastal coho was delisted. Janet Sears, a spokeswoman for the NMFS, says NMFS lawyers are looking into it. She said, “It appears to say the listing is still in effect, but we are not to enforce it.”

DEPARTMENT OF ECOLOGY

WATER QUALITY ASSESSMENT

Continued from page 1

we should be so foolish as to attempt that feat, the cool, clean water portion of the cocktail will kill us long before the nasty pesticide endosulfan.

Unfortunately, endosulfan is toxic in much lower doses to aquatic organisms and fish. The exact dosage is hard to determine because much of the scientific literature disagrees by orders of magnitude. Some say doses as low as 200 parts per trillion are toxic but if that were the case there wouldn't be any aquatic life at all in May Creek. The real number might be as low as 500-650 ppb which is 700-800 percent above the EPA required level.

This country, state and county spend enormous amounts of tax dollars and require even more dollars to be spent by individuals and businesses while chasing perfectly clean water. While it may be an admirable goal, is it really the best use of the dollars? The Water Quality map of Washington clearly shows that the worst pollution is in the urban areas. They have the most industry, cars and lawns. Why is it then, that the rural areas are where all the new land-use regulations are being imposed in the name of water quality?

| Listing ID# | Parameter | OK | Chronic | Acute | Other Info |
|-------------|-------------------|----|---------|-------|------------|
| 4818 | Temperature | X | | | |
| 10734 | pH | X | | | |
| 13546 | Ammonia-N | X | | | |
| 7341 | Copper | X | | | |
| 11882 | Copper | X | X | | See Note 2 |
| 7337 | Lead | X | | | See Note 1 |
| 8181 | Lead | X | | | See Note 1 |
| 7343 | Lead | X | | | See Note 1 |
| 7338 | Lead | X | X | | See Note 2 |
| 7339 | Zinc | X | X | | See Note 2 |
| 13558 | Selenium | | X | | |
| 13547 | Arsenic | | X | | |
| 13549 | Cadmium | | X | | |
| 13556 | Nickel | | X | | |
| 11885 | Chromium | | | X | |
| 11884 | Silver | | | X | |
| 13557 | Pentachlorophenol | | X | | |
| 13550 | Chlorpyrifos | | X | | |
| 13553 | Endosulfan | | X | | |

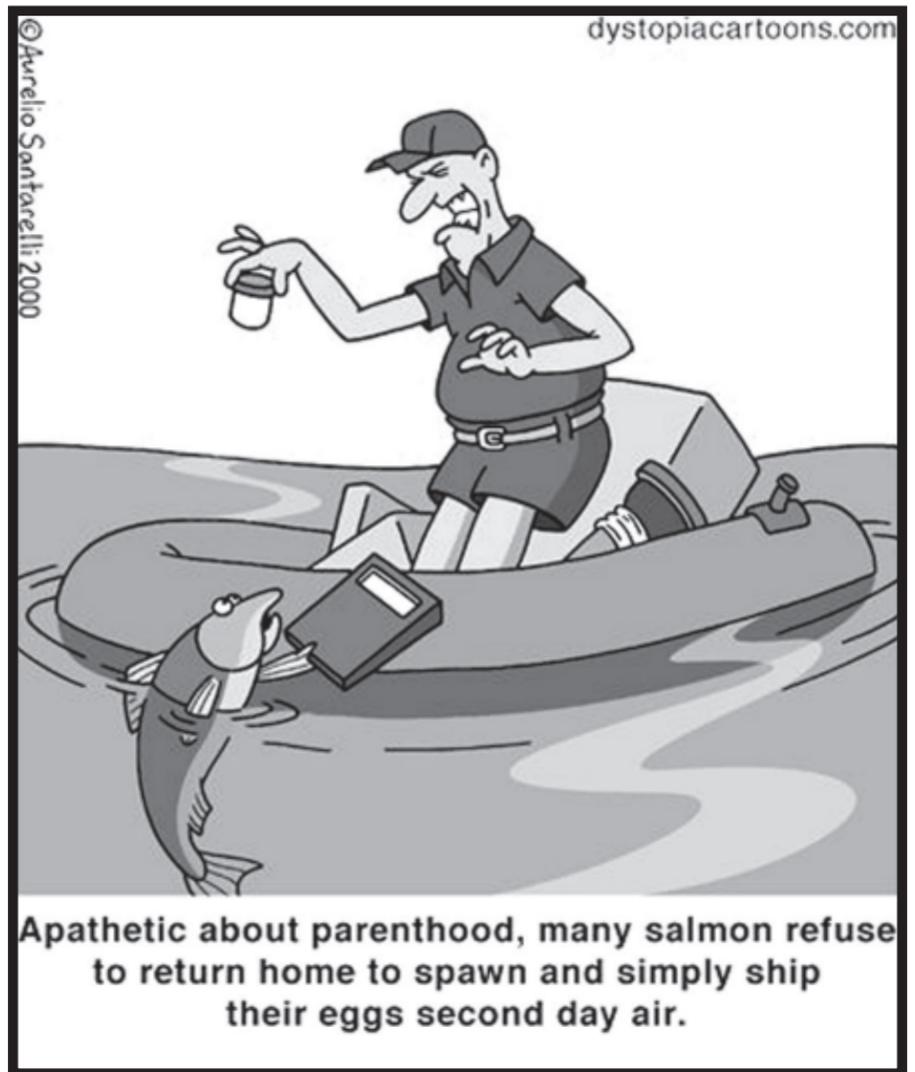
Note 1: King County had reported high levels in 1994 but had derived the levels mathematically. Actual testing by Art Johnson with the Department of Ecology did not find elevated levels.

Note 1: King County had reported high levels in 1994 but had derived the levels mathematically. Actual testing by Art Johnson with the Department of Ecology did not find elevated levels. Subsequent testing in 2002 by Johnson and Golding found levels high enough to meet the chronic criterion.



ROBO CARP

KING COUNTY HAS HATCHED A NEW WARRIOR TO USE IN THE FIGHT TO CLEAR A PATH FOR THE SALMON THROUGH THE BEAVER DAMS, WILLOWS AND CANARY-REED GRASS!



WHAT DO YOU CALL A HATCHERY WITHOUT FISH?

Perhaps we could call it an interpretive sculpture; or maybe a complete waste of taxpayer money. Shortly after undergoing a \$7,000,000 renovation the Issaquah fish hatchery may well be out of the fish hatchery business because of a \$100,000 cut in its operating budget. The Washington Department of Fish and Wildlife which has provided the operating funds for the hatchery in the past is making budget cuts across the board which will reduce the Issaquah hatchery's 2005 budget by nearly half. There is some debate about the impact of that cut.

The Department of Fish and Wildlife thinks that the cut can be achieved by cutting fish production in half from the 2,000,000 chinook smolts and 500,000 coho yearlings now being produced. Gestin Suttle, program director for Friends of the Issaquah Salmon

Hatchery (FISH), said that cutting fish production in half would save at most \$24,000. She said "At some point you say 'What are we left with?' You don't have a working hatchery anymore."

Fish and Wildlife spokesman, Craig Bartlett, points out that, due to the constraints of the Endangered Species Act listing on Puget Sound chinook, no fishing is allowed for those fish. "Does it really make sense to produce 2 million fall chinook if we can't allow people to fish for them?" That is a good question in light of the 9th Circuit Court of Appeals decision in the Alsea Valley Alliance appeal. [See "All Salmon Really Are Kissin' Cousins on page 3] It will really be a shame to have that wonderful resource go away just as the door is opened to once again utilize it!

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MAY VALLEY ENVIRONMENTAL COUNCIL

**MEETS EVERY MONDAY AT 7:00 P.M.
IN THE BASEMENT OF LEONARD'S
AT THE CORNER OF SR 900 & 164 AVENUE NE**

WHITE WATER RIVER GUIDE BECOMES LIFE GUARD FOR KING COUNTY

Several MVEC members recently paid a visit to Andre Lavaguerre at his home and business on the banks of the Snoqualmie River in North Bend. Mr. Lavaguerre is a long time professional white-water river guide. He also designs and manufactures river boats for use on fast-water rivers.

He currently puts his experience and boats to good use by rescuing people ensnared by the King County-placed large woody debris in the river adjacent to his property. So far he has rescued four people caught in the root balls and sweepers placed in the river by King County.

Mr. Lavaguerre has fought vigorously against the large woody debris since its installation. He has repeatedly warned County personnel of the dangers inherent in their installation. The County bureaucrats did listen to him a little at first and modified the project

by placing large stones just upstream of the logs. The stones are intended to deflect people in the water around the logs. Unfortunately, that didn't work on the Cedar River where young Summer Stone was trapped under the rock placed to keep people from being sucked under the logs.

King County continues its love affair with logging trash in our rivers despite the efforts of concerned and knowledgeable citizens such as Mr. Lavaguerre. They told Mr. Lavaguerre that they placed the large woody debris in the Snoqualmie River to improve the habitat for migratory fish. Since Mr. Lavaguerre's property is above Snoqualmie Falls, it is hard to imagine any migratory fish navigating the falls to reach the new habitat. How can such installations be worth the increased danger to recreational users of the river and the massive amounts of tax dollars used to place them?



JUNKING JUNK SCIENCE

By Iain Murray

The label "junk science" has been one of the most powerful tools in ensuring that political and legal decisions are taken based on only the soundest of footings. Alarmism, hype and scaremongering have all been avoided by scrutinizing scientific data and evidence to check that it conforms to good scientific practice. If it doesn't, it is junk science. Over the past decade, we have seen more and more safeguards put in place to stop junk science influencing political or judicial decisions. Now, however, the very concept is under attack. And the tactic the interest groups are using in their onslaught is to cry "censorship."

The tactic is quite recent. It began a month or so ago when questions were raised in certain publications such as *Harper's* and *In These Times* over the effects of the Federal Data Quality Act (FDQA). Enacted in December 2000, it requires that data used to support laws and regulations should conform to strict scientific standards. One of the first targets under this piece of legislation was the thoroughly discredited U.S. National Assessment on Climate Change, which relied for much of its alarmism on two climate models which were proven to have no more predictive power than tables of random numbers. As Pat Michaels of the University of Virginia put it, the assessment "breaks the cardinal rule of science: If a hypothesis doesn't work, throw it out. The Assessment can't pass the simplest of scientific tests."

Yet for reasons that are hard to fathom, the administration continues to disseminate the

discredited document. The questions in the publications alluded to above focused on continued attempts to get the executive branch to conform to the FDQA. Both *Harper's* and *In These Times* suggested that the attempt to expunge junk science from the record was aimed at censoring science.

This is essentially arguing that black is white. If science does not conform to basic scientific standards, it isn't science. Censorship just isn't the issue. What is at issue is the assurance to taxpayers that policies they pay for are based on the soundest scientific basis.

Yet the argument is not only used in relation to the FDQA. We saw it again on June 20, when the *New York Times* ran an editorial about the controversy over the White House's changes to the recent EPA report on the State of the Environment. Once again, the National Assessment was at issue. The White House, perfectly reasonably, asked for references to this junk science to be removed. The entire basis of the EPA's case on climate change therefore collapsing, the agency removed all reference to climate change, leading the *Times* to deploy once again the accusation of censorship, arguing that the administration "wants to bury any research findings that global warming may be a threat to human health or the environment."

Editorials all over the country took up the cry. The Hartford Courant said "government policy on this issue ought to be based on the best scientific evidence, not politics." The Atlanta Journal Constitution charged "the White House slaps down science in

favor of its corporate oil friends." The Idaho Statesman, home paper of Gov. Dirk Kempthorne, the favorite to succeed Christie Todd Whitman as the head of EPA, said, this "is an administration that seems determined to shape science around policy, not the other way around."

Now even the judicial safeguards against junk science are under attack for the same reasons. Ten years ago, on June 28 1993, the Supreme Court handed down its ruling in Daubert v. Merrell Dow Pharmaceuticals, Inc. In that ruling it established that expert scientific testimony should be subject to a set of rules for admissibility. The testimony should be based on a testable theory or method that had passed peer review; it should possess a known error rate and/or standards; and it should reflect "generally acceptable" science. The new standards stopped large numbers of charlatans and crackpots who had previously posed as experts from testifying in court, where they might have been able to convince a jury that they knew what they were talking about. Instead, it was judges who now had the responsibility of deciding whether scientists possessed enough credentials to lay their evidence before a jury.

Yet now the junk scientists are fighting back. After years of seeing their claims of environmental health risks being ruled inadmissible owing to lack of statistical significance or other sound reasoning, they have taken to calling the Daubert ruling scientific censorship, with the added twist that they claim it aids "polluters." The *Wall Street Journal's* Science Journal column took their claims at face value on June 27, under the head-

line, "Junk Science' Ban Also Keeps Jurors from Sound Evidence."

The allegations against Daubert are summarized in a report available at the ironically titled Defendingscience.org. The scientists concerned make three basic charges against Daubert. First, that exclusions of "expert" testimony from the courtroom rose significantly after Daubert. This is, of course, exactly what Daubert was designed to do. Secondly, that defending against challenges to scientific reliability is "chilling" and puts scientists off testifying. But if their science meets basic standards, they will meet the required tests. Thirdly, there appears to be a disparity in Daubert's application between civil and criminal cases (in criminal cases, neither side can afford to challenge admissibility). This may be true, but it is a red herring, failing to establish any reason why Daubert itself is a bad thing.

The charges of 'scientific censorship' are disingenuous. What they are really aimed at is abolishing the concept of junk science. Without rules protecting us from junk science, the scaremongers, alarmists and trial lawyers will have a field day. Junk science rules, far from censoring science, champion it.

Iain is a Senior Fellow at the Competitive Enterprise Institute in Washington DC where he specializes in climate change, sound science and international regulatory issues. He was formerly Director of Research at a small DC organization that examined the use and abuse of scientific data in the media and public policy.

PRIVATIZING THE COMMONS: THE NECESSARY TRANSITION TO AQUEOUS PROPERTY RIGHTS

By Michael Smith

Amidst the collapse of planned economies around the world, even the most sanguine of socialists recognized that government planning is necessarily inferior to the spontaneous order of the competitive marketplace. It was Robert Heilbroner, not Friedrich von Hayek, who opined that “the contest between capitalism and socialism is over: capitalism has won,” and that the cause of the deterioration of the Soviet system “was the central planning system itself. . . . to whatever extent socialism depends on such a system it will not work.” In spite of this, Heilbroner went on to suggest that the same socialistic system of government rules and regulation could be resurrected as a means to “ward off ecological disaster.”[1] The texture of massive environmental degradation in the commons of the Soviet Union and Eastern Europe demonstrates, however, that such a system is no less inimical to environmental protection than it is to rational economic calculation. Instead of experimenting with bankrupt command and control policies we must now expand the market and its unparalleled institutional capacity to solve ecological problems.

The tendency of private property rights (coupled with contract and tort law) to avert what Garrett Hardin famously termed the “tragedy of the commons”[2] is one of the most salient properties of an institution which has benefited virtually every aspect of human society it has touched.[3] Where private property rights exist, private owners have incentives to improve their property and maximize its long run value, whereas where property rights do not exist or are not enforced, there is (tragically) no incentive to protect the “commons,” as Hardin’s hypothetical open pasture demonstrates, and resources will inevitably be overused without regard for future consequences. Indeed, numerous studies have indicated that planned economies use much more energy and produce much greater amounts of pollution both per capita and per unit of GDP than firms in market economies, which have incentives to innovate, to economize on inputs, and to avoid wasting raw materials via pollution.[4] Innovations such as the computer, for example, which use fewer factor inputs to produce a greater amount of output, have led to enormous gains in both economic growth and environmental quality.[5][6]

Property rights are the basis of competitive markets, and they encourage both conservation and the technological innovation that are vital for environmental protection.

Despite this, there are vast areas in the world where private property rights, and therefore the market, play absolutely no role: namely, oceans, seas, rivers and other water resources. Hardin argued that while private property may avert the tragedy of the commons “as a food basket” in which land resources are overused, it actually “favors [water] pollution,” because factory owners will inevitably “muddy the waters . . .”[7] What he failed to recognize was that if private property rights were extended to all useful water resources to allow private aquaculture in such areas as fishing, off-shore oil drilling, and the deep sea mining of manganese nodules (which is currently on hold due to unclear titles), factory owners could certainly no longer “muddy the waters” at will, at least without being sued by the owner of the muddied waters. The large islands of alkaline sewage in Lake Baikal and the concentration of oil and other pollutants in the Volga River after the fall of the Iron Cur-

tain certainly do not inspire confidence in Hardin’s suggestion that “coercive laws or taxing devices”[8] are required to eliminate water pollution. Instead, private aqueous property rights would avert the tragedy of the commons “as a cesspool” as easily as private land ownership averts the tragedy of the commons as a food basket.

Coercive laws in the West have also failed to avert what we might call the tragedy of the commons as a seafood basket. After decades of government regulation in Canada, the Atlantic cod fishery is closed and the Pacific salmon industry is in steep decline. Various restrictions on when fish can be caught, the equipment that can be used, and the number of fish that can be caught may increase the cost of fishing, but they cannot solve the problem of “perverse incentives” caused by the lack of property rights to the fish stock that leads to overfishing, because they do not change the fact that while the fish are valuable, they are owned by no one. Therefore, despite the regulation, fish stocks are still being depleted because of the lack of private ownership. Once again, there is no reason to believe that aqueous property rights would not be as effective in eliminating this problem as their land-based counterparts.

If the privatization of water resources is to succeed, it would almost certainly have to first withstand the environmentalist movement’s usual barrage of alarmism and hysteria.

Hardin suggested that the waters “cannot readily be fenced,”[9] which may seem superficially plausible, but it is important to note that this is not because aqueous fencing is impossible, but rather because engineers have not yet developed the required technology. This is understandable, since, in the absence of the prospect of aqueous property rights, there is simply no incentive to invest in the required research and development. But it is entirely plausible that aqueous fences could be developed not only to separate the properties of various water owners, but to corral aqueous livestock in the same manner as farm animals on land. Otherwise, genetic fingerprinting or external marks could be used to identify fish and to allow individuals to assert ownership of the fish even while they are at sea.[10] Satellites could be used to monitor fishing vessel locations, and to alert authorities if a vessel trespasses on private fishing areas. The transition to aqueous property rights may be difficult to fathom today, but if it succeeds, the depletion of water resources such as cod or salmon, which is now commonplace, would be difficult to fathom in the system that results.

Unfortunately, the greatest obstacle to the establishment of aqueous property rights and the expansion of property rights in general is likely to be political rather than technological. It is likely that many mainstream environmentalists would dismiss aqueous property rights as unadulterated lunacy for the simple reason that, as archetypal Schumpeterian anti-capitalist intellectuals, they have migrated, as Heilbroner suggested they might, from socialism to environmentalism while maintaining their hostility to capitalism and private property in general. If the biases of histrionic scientist-activists who openly admit that they “offer up scary scenarios, make simplified, dramatic state-

ments, and make little mention of any doubts we may have”[11] are to be overcome, the vigilance of institutions like the Fraser Institute will be instrumental in that success. Fortunately, the “scary scenarios” of the environmentalist movement – from Alar and DDT to ozone depletion and global warming (or cooling) – have been refuted over the last decade by organizations like the Competitive Enterprise Institute, but the media and academe are often too captivated by the religion of “deep ecology” to interrupt their misinformation campaigns.[12] If the privatization of water resources is to succeed, it would almost certainly have to first withstand the environmentalist movement’s usual barrage of alarmism and hysteria in both the news media and schools.

Milton Friedman’s advice to Eastern Europe after the collapse of communism was succinct: “privatize, privatize, privatize.”[13] This must be our policy now with respect to the development of aquaculture. In the words of Jonathan H. Adler, “It was the fatal conceit of socialism, in Hayek’s famous phrase, that wise government bureaucrats could guide society to a better future. Substituting red aspirations with green ones does not change the undertaking’s essential nature – or its likelihood of success. Even were it possible to insulate regulatory bureaucracies from the vagaries of interest-group pressures, the information required to guide ecological development from a central place is beyond any one regulator’s – or regulatory agency’s – grasp.”[14] Massively complex problems, both economic and ecological, can be solved only by the self-organizing interactions of independent self-interested actors in a free marketplace. Extending private property and free markets to water resources would enhance our capacity to solve these problems.

NOTES

- [1] Robert Heilbroner, “Reflections on the triumph of capitalism” *The New Yorker* (January 23, 1989) 98, and Robert Heilbroner, “Reflections after communism” *The New Yorker* (September 10, 1990) 92, 100.
- [2] Garrett Hardin, “The Tragedy of the Commons,” *Science* (December 13, 1968) 1244-1245.
- [3] See Tom Bethell, *The Noblest Triumph: Property and Prosperity Through the Ages* (New York: St. Martin’s Press, 1998).
- [4] See Julian L. Simon, *The Ultimate Resource 2* (Princeton, NJ: Princeton University Press, 1996) 306-307, 494-498. For estimates of the ratios involved, see Mikhail S. Bernstam, *The Wealth of Nations and*

the Environment (London: Institute of Economic Affairs, 1991) 22-24.

- [5] As relative scarcities of various resources develop, the market tends to develop new uses for things that were once viewed as nuisances. There are numerous examples of the marketplace transforming pollutants into valuable resources, petroleum and animal manure being two obvious examples. Recently, increases in the price of silver caused the photographic industry to invest in equipment to recover silver from waste water from film processing. See Ben Bolch and Harold Lyons, *Apocalypse Not: Science, Economics, and Environmentalism* (Washington, DC: Cato Institute, 1993) 121.
- [6] According to the Environmental Protection Agency, for example, between 1976 and 1997, levels of all major air pollutants fell significantly: sulphur dioxide by 58 per cent, nitrogen dioxides by 27 per cent, ozone by 30 per cent, carbon monoxide by 61 per cent, and lead by 97 per cent. See Stephen Moore and Julian L. Simon, *It’s Getting Better All the Time: 100 Greatest Trends of the Last 100 Years* (Washington, DC: Cato Institute, 2000) 184.
- [7] Hardin, 1244-1246.
- [8] *Ibid.*
- [9] *Ibid.*
- [10] Elizabeth Brubaker, “Beyond Quotas: Private Property Solutions to Overfishing,” in Laura Jones and Michael Walker, ed. *Fish or Cut Bait! The Case for Individual Transferable Quotas in the Salmon Fishery of British Columbia* (Vancouver, BC: Fraser Institute, 1997) 173.
- [11] Stephen Schneider, a prominent proponent of global warming theory, was quoted (with approval) as follows: “...we need to get some broad-based support, to capture the public’s imagination. That, of course, entails getting loads of media coverage. So we have to offer up scary scenarios, make simplified, dramatic statements, and make little mention of any doubts we may have. . . . Each of us has to decide what the right balance is between being effective and being honest.” Quoted in Jonathan Schell, “Our Fragile Earth,” *Discover* (October 1989) 47.
- [12] See in particular John Stossel, “Tampering with Nature” ABC, June 29, 2001.
- [13] Milton Friedman, “Economic Freedom, Human Freedom, Political Freedom,” California State University, Hayward, November 1, 1991.
- [14] Jonathan H. Adler, “Faux Market Environmentalism” *Regulation* 23.1 (Winter 2000) 66.

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IF I WERE A COW, I'D BE MAD TOO!

By Steven Milloy

The "mad cow" disease diagnosed in a U.S. cow has set off a new round of predictable, but groundless, panic.

There's no question that bovine spongiform encephalopathy, or BSE - commonly called mad cow disease - is a neurological disease in cattle. But the notion that people can contract a human form of mad cow by eating beef from infected cattle is more bun than burger.

The first epidemic of mad cow broke out among cattle in Britain in 1986. Eight years later, human cases of a supposedly novel brain ailment, called new-variant Creutzfeldt-Jakob disease, began appearing in Britain.

Although lab testing seemed to indicate that BSE and variant CJD were similar, no one could determine with certainty whether and how the BSE epidemic was related to the "human mad cow" cases.

There were no geographic areas in Britain with a significantly higher incidence of variant CJD cases, and there were no cases of variant CJD among apparently high-risk groups such as farmers, slaughterhouse workers and butchers.

When researchers considered the possibility that variant Creutzfeldt-Jakob disease was caused by consumption of beef from BSE-infected cattle, no correlations could be established between variant CJD and any specific meat or dairy product. No one could even establish whether any of the victims ever consumed beef from diseased cattle.

Some researchers nevertheless became fixated on the idea that consumption of infected beef was the culprit behind variant Creutzfeldt-Jakob, especially after it was discovered that 1980s slaughterhouse and meat preparation practices inadvertently might have allowed tissue from diseased cattle to be mixed into packaged meat products such as hot dogs,

sausages, beef patties, luncheon meat and the like.

That mere hypothetical possibility spawned mad cow mania. But the infected-beef hypothesis doesn't explain why variant CJD tends to occur in young people; most cases

have occurred among 15- to 25-year-olds. And it doesn't offer the slightest clue as to why only about 130 cases have occurred in a British population of 60 million people who are exposed to millions of pounds of potentially contaminated beef products.

Some people have suggested that a kind of "epidemiological Russian roulette" is at work, where consumption of infected beef results in rare and randomly distributed cases of variant Creutzfeldt-Jakob disease. But the Russian roulette explanation is not a scientific one and should not be the basis of public alarm or public policy.

One public health expert in Britain, George A. Venters, did publish an article in the British Medical Journal in October 2001 titled "New variant Creutzfeldt-Jakob disease: The epidemic that never was." Venters maintains that the infected beef theory is simply wrong. He challenges the biological plausibility of

nored." No doubt much of this rush to judgment was spurred by the 1997 Nobel Prize awarded to the developer of the theory that prions are infectious, Dr. Stanley Prusiner of the University of California, San Francisco. Although his work associates prions with mad cow and Creutzfeldt-Jakob among other diseases, the actual mechanism of infection remains unknown.

Bovine spongiform encephalopathy-infected cattle should be isolated and destroyed to ensure there is no further spread of mad cow disease among the animals. There is no dispute about this common-sense animal health measure. But variant Creutzfeldt-Jakob is a rare, isolated and apparently random disease of unknown origin. Those conditions don't justify the current panic about the safety of the beef supply.

Steven Milloy is an adjunct scholar at the Cato Institute and the author of "Junk Science Judo: Self-Defense Against Health Scares and Scams." This is from the Los Angeles Times. Copyright (c) 2004, Newsday, Inc.



ONLY IN AMERICA

Does anyone else find it amazing that our government can track a cow born in Canada almost three years ago, right to the stall where she sleeps in the state of Washington? They can also track her calves to their stalls.

But they are unable to locate 11 million illegal aliens, some of whom wish to kill us, wandering around our country.

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SIMS SHIPS NEW REGULATIONS TO COUNCIL

King County Executive Ron Sims has given the King County Council his recommended changes to the Sensitive Areas Ordinance (Title 21A - renamed the Critical Areas Ordinance), the Clearing and Grading Ordinance (Title 16), the Stormwater Ordinance (Title 9), and the King County Comprehensive Plan. His bureaucracy loves Soviet style central planning and has come through with flying colors in creating hundreds of pages of new regulations under the pretense of meeting a new state administrative rule to use "best available science". Whether the King County Council can find the reins for Mr. Sims' runaway regulators remains to be seen, but the hot potato generally referred to as the CAO is now in their hands. We will get yet another round of public hearings as the new rules wend their way through committee on the way to the full Council.

If the CAO is enacted without substantial changes property owners in rural unincorporated King County can look forward to:

In order to make any new use of your property that would require a permit (what doesn't require a permit these days?) you automatically give up any use of 65% of your property. The only allowable use of that 65% is growing native plants.

If you have any "critical areas" such as wetlands or streams or steep slopes or nest trees you would give up additional buffers that range up to 300 feet wide. In order to make the claim that they are being flexible, the bureaucrats amended their first draft to allow some reduction in buffer sizes in exchange for extensive "farm plans" or "stewardship plans" that would delineate what other steps you will perform to make up for the reduced buffers. I guess that is the same concept as giving capital felons the choice of hanging or lethal injection.

In order to make any new use of your property that would require a permit you automatically give up any use of 65% of your property.

The CAO elevates environmental protection via "best available science" to the primary goal of the Growth Management Act (GMA). The Washington Court of Appeals in *HEAL v. Seattle* clearly ruled that "the GMA requires balancing more than a dozen goals and several specific directives in implementing those goals." Protecting private property rights is one of the GMA stated goals as is encouraging affordable housing and encouraging economic development. The original intent of the GMA has been bastardized beyond recognition. The CAO changes were developed with no economic analysis of potential impacts. Economic impacts will bear disproportionately on rural landowners who have been the best stewards of their land. Urban property owners, who have destroyed their ecosystems, will get a pass because the damage has already been done!

The "best available science" being used ignores equally credible science that does not support the proposed regulations. Much of the science appears to fail to consider the altered and built environment the CAO addresses and is therefore "out of context." It demonstrates a very real agenda by those proposing the CAO. Skagit County has the same science available to them and enacted a critical areas ordinance without buffers in

many areas. Their ordinance was challenged and the Western Washington Growth Management Hearings Board found in favor of the County.

The rigid regulations being proposed almost preclude any "best available science" being used as the relevant science would need to be applied on a case-by-case basis. The reason that class action suits cannot be used in land use cases is because every parcel is different and must be looked at individually. In order to apply science to land use, a system must be developed to let private, professional scientists working for the landowner be the guide of what can best be accomplished on each parcel.

The proposed CAO locks landowners into narrowly defined land use configurations. Farmers, in particular, must be able to remain flexible to cope with changing markets and the vagaries of Nature. Ag outside the APDs is as important as that inside the APDs. Just as farmland is protected from being used to offset commercial development, it should be protected from expansion of wetlands on to it. Farmland is located in flood plains for good reason and should be protected from artificially extended flooding which creates new wetlands that destroy farmland as surely as sprawl. Farmers should be provided incentives to clean and maintain watercourses, not be restricted from doing so.

The King County Comprehensive Plan is the primary instrument for implementing the Growth Management Act's "Smart Growth" agenda. The theory was to draw a line in the sand (the urban growth boundary) and encourage all new development to take place inside that line, thus reducing sprawl outside the line. New development would be via infill of vacant lots and new multi-family housing in place of existing single-family units. A recent survey by the Housing Partnership was sent to 280 property owners with land listed as vacant or underdeveloped. It was hoped that these owners would sell so that new denser housing could be built and the goals of the GMA achieved. Only one of the 280 property owners indicated a willingness to sell. King County's Buildable Lands Report shows high levels of capacity on paper but that does not translate into land availability in the real world. Scarce available land does translate to higher prices.

The average price of a single-family home in King County in 2000 was \$289,000. In 2001 the price rose to \$294,000. In 2002 it went all the way up to \$338,000. US Census Bureau data indicates that for every \$1000 price increase, approximately 2000 families at the low end of the economic scale are priced out of the market. If you wonder why your grown kids are still living with you instead of their own place, give Mr. Sims a call.

The GMA was supposed to produce density by forcing construction into areas where infrastructure was already in place. Instead, we have seen a dramatic drop in multi-family housing according to most recent growth reports. 9,685 multi-family units were authorized in King County in 2000. In 2001, that number was 7,345 and in 2002 only 5,508 units were produced.

Professors Edward L. Glaeser of Harvard University and Joseph Gyourko of University of Pennsylvania recently published a study titled "The Impact of Zoning on Housing Affordability" in which they outlined multiple methods for determining the portion of house costs attributable to regulations. They call it "zoning cost" but it includes all required studies, permits, mitiga-

FROM THE PRESIDENT

JIM OSBORNE



As you read this, the proposed Critical Areas Ordinance has gone to the King County Council for their review and adoption. Over the last couple of weeks I have read several articles in which the Executive staff tells you how good this is going to be for fish and how Ag' friendly it is written. They tell you the reason for the tougher laws is that they are mandated by the state as part of the Growth Management Act and the Endangered Species Act. They tell you that it is all in the name of fish and is based on the best available science. Most articles will also tell you that we need big setbacks from streams and wetlands and need to leave 65 percent of our land natural to save these fish. Well there are a lot of problems with what is listed above and I'll go through a few of them.

First off is the Growth Management Act. The managers of DDES and Water and Land Resources have told me personally that the CAO they are proposing is mandated by state law. If this is true, then why was Skagit County able to pass their CAO with no setbacks? Their CAO was reviewed and approved by the Growth Management Hearing Board. In fact, most counties in the state of Washington took their SAO, renamed it CAO and passed it.

Second is the ESA. Salmon are a threatened species, not endangered. A lot of the experts will tell you that habitat is just a small piece of the pie. If you intend to fix a problem, you need to look at the whole problem. Oceanic conditions and over-fishing play a lot bigger role than habitat. But habitat is the best paying of them all since King County can't do anything about ocean conditions. Going against fishing puts you up against the Indians and commercial fisherman who would turn around and sue tying up the courts for years. That would cost, not make, money. With habitat you can get into the state and federal coffers to get money to study and come up with plans.

Third is best available science. I have asked every fish expert, and self-proclaimed fish expert that I have met the following list of questions:

- 1) Can you show me the proof that throwing Large Woody Debris in streams and rivers has improved fish population?
- 2) Can you show me the proof that riparian planting and a tree canopy has improved fish populations?
- 3) Can you show me the proof that 165' and greater setbacks have improved fish populations? [For that matter any length setback.]
- 4) Can you show me the proof that turning 65 percent of my land back to natural will improve fish habitat?

To date I have not seen any proof that the above have improved fish populations. I always get an answer based on theory. Most answers to question 1 start off with a story about how in nature trees fall in the water and rot which attracts bugs and the fish eat the bugs. In studies I have read, the only time fish populations increased was when they were artificially fed. The answer to question 2 is usually that fish need cool water. I agree, but why trees? It's true that when you stand in the sun you feel hotter than when you stand in the shade, but the best available science studies show that direct sun has little impact compared to ambient temperature. In my experience walking by our creek on a summer eve is that when you are in the open it is cool, but when you get under the tree canopy it is hot and muggy. In questions 3 and 4 I have watched our valley go from a farm community to a wetland which is what the county wants. The problem is the salmon are also gone so can someone explain to me again how this works?

There is one last thing I want you to consider if you support this ordinance. If you look at the lay of the land in King County you will see that most streams and rivers start in the rural area and run through the urban areas and cities before getting to the Sound. I have lived in this area all my life and have seen little to no change in the rural areas; meanwhile there have been big changes in the urban areas and cities. Yet this ordinance points to the rural area as being the major reason for the decline in salmon populations and does not even consider the urban. So let me see if I got this right: give up most of my land without compensation and the fish will come back and everything will be OK. I now know how it feels to be in the minority.

tion fees, etc. as well. The Seattle area's number is just over \$200,000. Professors Glaeser and Gyourko made no attempt to determine if the "zoning cost" was well spent. They simply identified the amount so that it could be compared with other areas of the country. Sixty-three percent of America has no zoning cost at all and in some depressed areas houses sell for less than the cost to build

them. We will leave it to you readers to decide if you are getting \$200,000 of regulatory good with your \$338,000 average home. We can only assure you that, if the newly proposed regulations go into effect, the "zoning costs" in rural King County will be headed ever upward. You might want to have a chat with your favorite King County Councilperson.