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[*Tapestry of the Commons*](#) - Essays, Resource Materials and Handouts

How the Ruling Elite Blocks Democracy and Commons Protections

Against great odds, sometimes the **People**, in the U.S. (or in another country), are able to use the democratic process (or another process) to pass laws protecting the **Commons** and the **Common Good** (ie; labor, health, civil rights, culture, the environment or the local economy.)

This **Protectionist Legislation** is considered an **illegal trade barrier** and a violation of **Free Trade**. The **Ruling Elite** have systems in place to eliminate such laws that threaten their wealth and power. These systems replace the **will of the many** with the **will of the few**.

There are several mechanisms available for the overturning of laws but **they share some basic traits**:

- * All involve removing the decision making power from the people and placing it with a **Special Forum** where conditions for a re-match are more favorable to the wishes of the elites.
- * All involve a **tiny group of un-elected, unaccountable people** who have been given the power to overturn the law.
- * The reason given for overturning the law often is that it constitutes an **Illegal Trade Barrier**.

For laws passed in the U. S. corporate executives and corporate lawyers sue in court. Laws are challenged in **federal courts** and ultimately in the **Supreme Court** where 5 members of the unelected, unaccountable justices can overturn [declare unconstitutional] any local, state or federal law on the grounds that the law burdens **interstate commerce**, or on one of many other justifications. In this way it has long been common for a corporation to sue a state or the nation. *This can also trigger a **Crisis of Jurisdiction**.*

For laws passed in U.S. and other nations corporate executives and lawyers can sue in **international trade tribunals**. Laws are challenged in distant, unelected, unaccountable, international tribunals where local, state or national laws can be invalidated on the grounds that the laws obstruct **Free Trade**, and harm **Corporate and Investor Rights** (read: **Profits**).

- * Under **WTO** rules, nations sue nations usually on behalf of corporations.
- * Under **NAFTAs** Chapter 11, and **Bilateral Trade Agreements (BITs)** corporations can literally sue nations
- * Under **CAFTAs** Chapter 10, the rules of **NAFTAs** Chapter 11 are expanded.
- * Under the **FTAA**, (still to be negotiated and passed), The **General Agreement on Trade in Services (WTO/GATS)**, and more and more **BITs**, corporations will continue to be given these rights.

This is a private, secret and supranational system of corporate justice.

The losing party has basically three choices: comply, compensate, or stonewall and suffer.

A WTO legal affairs officer

Other ways used by the elites to add laws they want or remove laws they oppose:

- * Lobbying or bribing (campaign contributions) legislators.
- * Writing and pushing bills through legislatures. (like the current rash of seed preemption legislation)
- * Adding riders to bills as they pass through the legislatures.
- * Heavily funding one side of ballot measures and referenda.
- * Rewriting the corporate codes and other codes in state law.
- * Ad campaigns to sway the public opinion.

Internationally:

* Conditions are placed on developing countries before aid or loans are approved. These often require overturning protective legislation. The **World Bank** and **IMF** are prime instruments for this form of elite control. [Jan Edwards 2005]

The Rule of Property

Karen Coulter

Historical Concepts of Property and the Commons

In 1942, British Labourite Member of Parliament Aneurin Bevan, said, Either poverty must use democracy to destroy the power of property, or property in fear of poverty will destroy democracy. This fundamental conflict between individual property rights and an egalitarian or radical democracy remains on center stage today. Its deep roots rest in historical political clashes that brought a redefinition of property, rapidly shifting it from the hands of the many to those of the few. The authority to define equates with the power to govern.

The meaning of the word property has changed dramatically over the course of history. Most cultures of the world held property to be ones personal possessions, such as clothing, household goods and the tools of ones trade. Land, on the other hand, was held in common and often viewed as inseparable from God or Nature, denied to human ownership. Under Iroquois Confederacy law, the buying, selling and monopolizing of land was illegal and immoral. The commons concept underlay many cultures mode of community organization. These included indigenous traditions of Native Americans, West African villages, the Irish kinship-based society before the English conquest, and the more recent Mexican ejido communal land system. These cultural commons varied widely in organization, being based on clan rights, gender rights, or powers conferred on some other social group. They had differing practices regarding member participation, equity and relationship to the natural world.

Knowing the world as a commons generated a very different reality from that held by most of us in todays ownership society. When missionary John Heckewelder scolded a Native American for grazing horses in his meadow, he heard this response: My friend, it seems you lay claim to the grass my horses have eaten because you had enclosed it with a fence. Now tell me, who caused the grass to grow? ...(T)he grass which grows out of the earth is common to all.

The commons shapes a social system and defines human arrangements. It is not just bodies of water, acreage of land and natural resources. Examples of commons that are acknowledged today include government-owned property (e.g. public lands); natural systems such as the oceans and atmosphere; user-managed regimes such as community gardens, land trusts and Linux computer software; social networks based on gift exchange such as public libraries, and inherited information or understandings such as historical knowledge, scientific developments, and cultural traditions. Writers in *The Ecologist* magazine describe the commons as ...the social and political space where things get done and where people derive a sense of belonging and have an element of control over their lives.

The more limited such shared democratic space becomes, the more inequality, ecological devastation, dehumanization and totalitarianism prevail. Anatole Anton describes the antithesis of the commons-based society: ...privatization, commodification, and the increasingly exclusive control of nature, communicative

space, the social order, the political order, and the economic order that is characteristic of our time. Put directly, the seizure of common property has translated into illegitimate governing authority for an owning elite.

Enclosure as Means to Deprive and Define

The commons has largely been removed as a keystone of democracy from the framework of U. S. cultural perception. Therefore, it is important to examine the 17th Century enclosure of the English Commons, a momentous revolution by the privileged few against the many poor. British imperialist policies went on to impose this enclosure model on the common lands of cultures around the globe. The American colonies did not escape this tumult.

The authors of the U. S. Constitution consolidated the heritage of enclosure and ensured the primacy of private property rights over the common good in the United States. For example, the Constitutions slave system turned people into private property. While the Articles of Confederation gave states control over their economies, the Constitutions commerce clause took that control away, even denying people the right of protection against harmful property being transported into their borders. So the landed minority, using property as its tool, designed a system of governance to take charge of the majority with little difficulty. **The United States has gone on to perfect the strategies, law and lore of property its privatization, commodification and appropriation to control peoples, cultures and ecosystems worldwide.**

Pierre-Joseph Proudhon, the French Anarchist (1809-1865), equated property with theft, defining property not as the simple possessions of the peasant or artisan by which to make a living, but as the sum of its abuses: competition, isolation of interests, monopoly, privilege, accumulation of capital, exclusive enjoyment, subordination of functions, individual production, the right of profit or increase, the exploitation of man by man.

Feudal society in England was characterized by strict hierarchy lords and masters over serfs; insistence on a particular religion as a means of maintaining the social order; exclusion of rights and advancement from those without property. There was also a growing resistance to these oppressions. Incorporating efforts to preserve liberty within their daily lives, new religious sects sought to democratize God; cottagers and squatters lived freely within commons, wastes and forests; urban masterless men agitators, criminals, vagabonds and beggars roamed the countryside and spread news of resistance movements. Sylvan liberty in the forests was an escape from the rule of property, as immortalized in the Robin Hood stories. Extensive forests then served as a shield for a free and mobile society while greater governmental and religious control reigned in the agricultural plains. The people of the woods were said to live without laws, government and dependency.

The controlling few considered the commons as the nurseries of those who refused to labor for others. And so deforestation and enclosure were promoted as ways to get rid of beggars, make the land more productive in a capitalist sense, and employ thousands of idle hands. **In the mid-17th Century, the ancient commons were literally fenced by the landed gentry, replacing the age-old planting practices of the many with crops for the profits of a few. The resulting push by the ruling class for universal wage slavery was advanced by both enclosure and the takeover of individual craftsmanship by**

new industrial technology. A person laboring for wages would be more dependent on the capitalist system, both in England itself and in its growing colonies abroad, than one who was self-sufficient and independent. This fundamental shift to dependency on capital and control originating elsewhere culminated in the current, vulturous free trade regime that now creeps into every nook and cranny on the planet.

The English Civil war contributed to the uprooting of people and the breakdown of authority. Destructive campaigns against squatter life filled the years from 1646 to 1660, but the rabble refused to wither under the onslaught. After 1640, commoners increasingly asserted their rights through direct action.

The Diggers Resistance

On Sunday, April 1, 1649, a group of poor men gathered on St. Georges Hill and began to dig planting carrots, parsnips and beans as a way to claim ownership of the common lands and reject conventional piety by ignoring the Sabbath. A contemporary observer witnessed, They invite all to come in and help them and promise them meat, drink and clothes... They will be four or five thousand within ten days... It is feared they have some design in hand. The Digger colony on St. Georges Hill was just one well-documented example of many such undertakings by those in resistant occupations.

The Diggers ordered the lords of the manors to stop cutting down our common woods and trees... for your private use (as the U. S. National Forests are now cut down by corporations for private use). **After Oliver Cromwells reformist victory over the monarchy, the Diggers demanded in 1650 that confiscated church, crown and royalists land be turned over to the poor. Such statements deeply challenged existing property usurpations with the consequence that direct military intervention on behalf of private property was soon taken by the new English republic.** The commoners were forced from St. Georges Hill by the end of the year.

Sounds familiar, doesnt it? Property and rights deemed the domain of a ruling elite have long been protected by the armed military and police forces of a country. Whether we speak of peoples claims to the commons in the seventeenth century, the American colonists claims to fair governance in the eighteenth century, womens claims to voting rights and workers claims to safety on the railroads in the nineteenth century, activist claims against corporate harms to our communities, environments and economic lives in the twentieth and twenty-first centuries, the response is always the same. People acting in unison on behalf of equality, fairness, ecological sanity, worker and public health, or real democracy are brought to heel by the Rule of Law in service to property and backed by government force.

The Diggers were accompanied in their rebellion against the elites redefinition of property by many other common folk including the Anabaptists, Antinomians, Familists and Ranters, the Quakers, New Model Army and the broader Leveler movement. These resisters put forth schemes to limit wealth and land concentration in English society. They demanded that the property of the rich be shared among the poor and redivided yearly. **The Levelers reality was the commons and so they called for changes in their society that are unrecognizable in todays dominant frame of reference. They advocated the abolition of buying and selling, with the resulting absence of property in a possessive, legal sense. This would greatly reduce the need for judges and lawyers and by extension, for the coercive state.** Like their counterparts in every

generation, they established arrangements for everyday life that manifested vastly different values, that put in place commitments to collectivity and fairness.

In contrast, in 1641, Sir Thomas Aston defined true liberty as knowing by a certain law that our wives, our children, our servants, our goods are our own. This patriarchal sentiment illustrates why Levelers equated enclosures and the coercive power of the state with slavery.

In the pivotal Putney debates of 1647 the landed gentry argued these issues with the New Model Army and Levelers. Henry Ireton, a spokesman for the gentry, acknowledged, Liberty cannot be provided for in a general sense if property be preserved. As authors Linebaugh and Rediker put it in *The Many Headed Hydra*, The fork in the road at Putney pointed to either a future with the commons and without slavery, or to one with slavery and without the commons. The commons were a reality, not pie in the sky.

Corporate Enclosure of Modern Forms of the Commons

The corporate form is the primary means to governing power of today's ruling class. Its mission of unlimited production at lowest cost serves nicely to reinforce class divisions and cement the property relationships set forth by the Federalist Constitutional victory. The nation's founding documents asserted the primacy of private property rights over political rights of the community and the common good.

Anatole Anton characterizes the corporation as an engine of enclosure, a device constructed to take over public goods. The process of that construction he attributes to judicial legislation, presented as apolitical. Thus, with the corporation ...a structurally antidemocratic entity was created and the way was paved to legitimate the ever-increasing swallowing up of public space within an already disempowered liberal democracy. The most far-ranging political decisions, from the uses of technology to those concerning employment and the environment, are corporatized and therefore privatized. This new kind of person begins to strut on the legal stage, claiming wider and wider constitutional rights... Rather than being seen as part of the political order, the court has ruled them outside of politics.

Corporate enclosures affect commons as diverse as child care, the environment, family assistance, public education, language (e.g. private ownership of brand names), public health (e.g. HMOs) and federal drug research. Then there is the privatization of public knowledge, the commercialization of culture and public spaces such as privatized shopping malls and sports arenas bearing corporate names. A present focus of corporate acquisition is the water and sewage systems of communities throughout this country and abroad. Indigenous knowledge and genetic heritage do not escape the clutches of the privatizers as they go after patents to the Neem tree, Basmati rice and human gene lines.

Lawrence Lessig, in his book, *Free Culture, How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*, analyzes corporate enclosures of the cultural commons such as radio, film, recorded music, cable TV and the Internet, using the tool of intellectual property rights. He contrasts permission culture... in which creators get to create only with the permission of the powerful, or of creators from the past with free culture which supports innovation by limiting the reach of intellectual property rights.

Extremism in privatizing intellectual property has led to out-of-control technological developments, mad scientists running rampant with novel genetic combinations and nanotechnology schemes for human cyborgs part machine, part human. In *Welcome to the Machine: Science, Surveillance and the Culture of Control*, Derrick Jensen and George Draffan painstakingly describe this technological past and present that inexorably places the vast majority of us under the watchful eye of a minority.

The diminished state of today's commons is neither accident nor inevitable trend. It is the consequence of deliberate and methodical intent. The fact that its roots remain invisible to so many leaves people powerless to change it. As activists our work must begin with revealing invisibilities and unveiling deceits. Only with deeper understanding can people build a sustained, effective movement to claim what belongs to us all.

Another world is possible is a phrase with currency in many languages today. In order to bring that world into being, we need to familiarize ourselves with peoples historical struggles in various cultures, redefine property and property relationships, and renew the concept of the commons with its deep democratic promise.

Endnotes

The background materials for this article, including quotations, were largely drawn from the following sources:

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THE IMPACT OF CORPORATIONS ON THE COMMONS by Mary Zepernick

A California-based group called Friends of the Commons defines the commons as "the vast realms of nature and society that we inherit together and must pass on, undiminished, to our children." And as many Native Americans put it, to the seventh generation.

The "commons" is as old as the Earth itself but the term has come into use again today as a helpful way to think about various aspects of nature and society that are increasingly under assault by giant corporations and compliant public officials. Vast realms of nature and society, "the commons" is everything except what we the people choose not to include. In other words, **the commons properly derives from decisions made by us, collectively -- which presumes democratic self-governance.**

It certainly wasn't a collective decision in the Enclosures of the 15th, 16th & 17th centuries, when the English commons -- lands worked "in common" by peasants for centuries -- were fenced to enable the landed gentry to pursue single crops for profit, like grain or sheep for wool -- my 1956 college textbook, *A History of Civilization*, described them as enterprising and ruthless capitalists!

You may have heard this old English protest doggerel: *"The law locks up the man or woman who steals the goose from the common. But the greater villain the law lets loose, who steals the common from the goose."*

The Enclosures, which someone pointed out is an old-fashioned word for privatization. Today, "privatization" refers to turning over to corporations -- the "private sector" -- aspects of nature and society previously under the jurisdiction of government -- the "public sector," with its authority supposedly rooted in us, the public. **The vast realms of nature and society are being increasingly privatized for the primary benefit of the few.** However, it's not about good or bad people, good or bad corporations. **The issue is who governs.**

There are two historical streams in U.S. history in this regard: one is about the decentralization of power, public decision-making, self-governance -- about democracy; the other is about the concentration of power, private decision-making, governance by the few and the corporation as their governing institution.

The fundamental theft today is our common right of self-governance, a usurpation that enables the myriad harms and assaults on nature and society.

During the colonial period, the royal chartered trading corporations -- like the East India and Hudson Bay Companies -- were extensions of the English monarch, institutions not only of commerce but of governance. It was through these and the crown colonies, like Massachusetts Bay and Virginia, that the colonists most felt English control. Thus it is logical that once independent from England, the founders put corporations on a short leash, through state-issued charters that defined their purpose, length of capitalization and operation, made shareholders liable for harms done, and prohibited corporations from owning other corporations. Imagine!

For example, the Pennsylvania legislature declared in 1834: "The corporation is just what the incorporating act makes it. It is the creature of the law and may be moulded to any shape and for any purpose that the legislature may deem **most conducive for the general good.**" The general good, the general welfare, the commons. This was no golden age of democracy, since rule by the propertied few was well established from the colonial period up to today. However, for the first several generations of US history, property organized in the corporate form was subordinate to the

people's representatives -- with the few and small corporations that existed considered public, not private, institutions. Charters had teeth and were revoked when violated.

So what happened? The word corporation didn't appear in the Constitution, but the framers provided well for the protection of property (including slaves, though this term wasn't mentioned either). The Supreme Court first "found" the corporation in the Constitution in the Dartmouth College case of 1819. The Court, an unelected, unaccountable and elite body, declared the corporation a private contract under the contracts clause of the Constitution -- the beginning of privatizing this public institution meant to be conducive for the general good. The Industrial Revolution and the Civil War brought enormous growth in the number, size and wealth of corporations -- and the Civil War amendments expanded the rights of people:

İ the **13th Amendment**, prohibiting "slavery and involuntary servitude" (workers at the time called this "glorious labor amendment" and some labor organizers are currently seeking to use it to secure workers' rights to organize and speak freely on the job);

İ the **14th Amendment**, making "all persons born or naturalized in the United States ...citizens" and providing that "no state may provide any person of life, liberty, or property, without due process of law; not deny to any person....the equal protection of its laws";

İ the **15th Amendment**, stipulating that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

Corporate managers, lawyers & lobbyists, seeing rights conferred on individuals, began inserting into court cases arguments for inclusion of corporations as persons entitled to 14th Amendment due process and equal protection of the laws. They succeeded in 1886, when the Supreme Court in *Santa Clara v. Southern Pacific Railroad* "found" the corporation in the 14th Amendment -- what is known as corporate legal personhood. Ironically, African-Americans lost their legal personhood ten years later, in the *Plessy v. Ferguson* ruling that ushered in half a century of segregation in the form of Jim Crow laws.

The Court has since "found" the corporation in the Bill of Rights protections of the 1st, 4th and 5th Amendments. Corporate free speech blocks meaningful changes in electoral and legislative processes, since Court decisions in the 1970s equated political spending with speech and voided a Massachusetts law prohibiting corporate interference, including funding, in citizen referenda -- while workers drop their 1st Amendment rights on corporate property.

Also, the Supreme Court has "found" the corporation in the commerce clause of the Constitution, voiding hundreds of local and state protective laws as being in restraint of trade, and repeatedly ruling against labor organizing and strikes. The U.S. domestic free trade zone in place for over 100 years has provided the model for the unelected, unaccountable and elite bodies, like the WTO and NAFTA, that make and enforce global trade policies.

Thus cloaked in the Constitution and global trade regime, the corporation has once again become not only a commercial or economic institution but a governing institution. The few who wield the constitutional rights of the giant corporation, with their many compliant public officials, decide policies on investment, production, technology and work; foreign and military policy; policies on energy, agriculture, pharmaceuticals, and natural resources like water, minerals and forests; policies on welfare, health care, transportation, education and more. Thanks again to the Supreme Court, corporations can now patent anything alive except a full birth human being!

We who have long engaged in single issue defensive struggles look around today and see that in all of these areas, conditions have deteriorated for people and Planet. Significant progress

toward WILPF's longstanding central goals -- disarmament and peace; racial, social and economic justice -- will be limited at best under global corporation+government control.

One of the most alarming developments is the growing global scarcity of water, with the supply steady (though in many places the potable supply is decreasing) while the world's population increases. This and other assaults on and scarcity of resources cannot be adequately addressed simply through the regulatory process.

By and large, the regulatory regime shields property in the corporate form far more than it protects people and the environment. The first regulatory agency was in transportation and is emblematic of these unelected, unaccountable bodies. The Interstate Commerce Commission was created in 1887 to forestall the serious Populist challenge from workers and farmers to the abusive power of railroads. President Cleveland's Attorney General explained to nervous railroad corporation executives that the ICC was to be "a sort of barrier between the railroad corporations and the people." And Charles F. Adams, later president of the Union Pacific Railroad Corporation, wrote about the regulatory solution to the Populist threat: *"What is desired is something having a good sound, but quite harmless, which will impress the popular mind with the idea that a great deal is being done, when, in reality, very little is intended to be done."*

We can take inspiration and lessons from past and present movement struggles. Abolitionists didn't demand a Slave Protection Agency. They drove freedom and rights into the Constitution. Women suffragists didn't ask men to treat them a little better. They drove their rights into the Constitution. Civil rights activists weren't content to make Jim Crow and other laws less harsh. They drove civil rights into the Constitution and into state law, and continue to protect and insist on rights, as gay/lesbian organizers are currently doing as well.

Thomas Linzey, an environmental lawyer who is leading the shift to rights-based organizing in rural conservative Pennsylvania, points out that the Environmental Protection Agency permits poisons and regulates environmentalists. He also contends that we will not have a genuine environmental *movement* until the natural world has rights -- from species and trees and mountains to rivers and oceans and streams.

In contrast to the publicly unelected, unaccountable regulatory system, the public trust doctrine is a potentially useful tool for reclaiming and protecting the commons, as explained by writer Mark Dowie, fellow at the Tomales Institute in California.

"The public trust has a long and venerable history. It was codified back in 528 of the Common Era, when the Roman Emperor Justinian decided to gather and condense all the unpublished rules and edicts handed down by his predecessors into a unified, coherent code of imperial law. To the task he appointed a commission of ten legal experts, who delivered the Codex Justinianus in 529 and a year later its attendant textbook, known as the Institutes of Justinian, to which the emperor added a few words of his own. Among them were the following: **'By the law of nature these things are common to all mankind; the air, running water, the sea and consequently the shores of the sea.'**

"During its first millennium and a half, this edict was used almost exclusively to protect the public's interest in one very vital aspect of the commons: water, and sometimes land covered by water. As Justinian had ruled, **navigable water, whether in the sea or flowing to it, was, along with the shorelines, beaches and river bottoms, the common property of a nation's citizens, owned by everyone and no one at once, an unwritten public easement protected by their steward -- the state.**

"It's a critical time for the concept of the public trust, because the commons is being enclosed in ways that were never before possible. These enclosures are crossing new boundaries, invading areas so intangible that they are rarely even recognized as part of the commons -- from the gene pools to the farthest reaches of outer space. The expansion of intellectual property rights into the rainforest, the patenting of life forms, the placement of weapons in space, the giveaway of broadcast spectra, the commodification of news and information, the commercial invasion of childhood, and the temptation to privatize almost anything are just a few of the many new threats to the commons."

If our fundamental commons is self-governance, the most radical (root) question is: Do we really believe we are capable of governing ourselves? Or are we by nature doomed to the hierarchical power relationships of so many millennia? Cornel West said that our minds are so colonized that we can scarcely imagine what a real democracy would look like.

Massachusetts colonists offer an example of valuing self-governance enough to struggle for it. In 1774, the English Parliament retaliated against colonial resistance activities by revoking the colony's charter giving a considerable measure of local decision-making authority. These people **felt entitled to self-governance -- they had experienced something they valued -- and they rebelled when it was withdrawn.**

Ray Raphael, in *The First American Revolution: Before Lexington and Concord* (The New Press, New York, 2002), describes how ordinary citizens gathered in taverns and homes to plan what we today would consider a civil disobedience campaign: blocking courthouse doors and lining streets, demanding the resignations of British representatives. "Thousands upon thousands of farmers and artisans seized power from every Crown-appointed official in Massachusetts outside of Boston." According to Ray Raphael, this successful rebellion made Lexington and Concord, the "shot heard 'round the world" in the following year, a counter-revolution, with the British seeking to regain control and instead sparking a Revolution.

If we consider ourselves capable of and entitled to self-governance, how hard are we willing to struggle to achieve it? How "We the People" answer this question will determine the fate of the commons, including life-giving water.

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Commons Sense

Community Ownership and the Displacement of Corporate Control

by David Bollier

Something curious is happening to the near-religious faith that private property and markets are the only serious tools for improving people's lives. Slowly and unpredictably, like irrepressible plant life pushing its way through crumbling pavement, new models of community-based management are sprouting forth while old models are re-discovered.

Call it the renaissance of the commons, a quiet insurgency with diverse manifestations. It consists of new policy models such as stakeholder trusts, locally managed natural resources, innovations in private contracts, and bold reinterpretations of public trust doctrine in environmental law and the public domain in copyright law.

But this proto-movement is not just about policy, but also about a cultural rediscovery of public collaboration. The Internet, the biggest and most robust commons in history, has a lot to do with this trend. It has provided the crucial infrastructure for thousands of commons such as websites, list serves, open source software development and peer-to-peer file sharing.

This re-conceptualization of what should be public and shared -- as opposed to private and marketable -- is reaching into new territory. More citizens are realizing that public spaces and civic institutions represent a cultural commons, and are mobilizing to fight marketing in schools, the over-commercialization of sports and new forms of intrusive advertising. Others are fighting new corporate attempts to commodify and sell global water supplies, bioengineered life forms and the human genome. Such natural systems, say activists, belong to everyone and must be treated as commons.

The mainstream media has not caught on to this burgeoning movement, so its features remain somewhat obscure to the general public. Yet the breadth and vitality of commons activism are impressive. The real question is whether the champions of the commons will be able to develop fuller critiques of this emerging paradigm; popularize it among public policy makers, the press and the public; and build the rudiments of a multi-pronged movement.

The Tragedy Stigma

For at least a generation, the idea of the commons has been invariably associated with the word "tragedy." This stereotype originated with a famous 1968 essay by ecologist Garrett Hardin, who argued that when a scarce resource is open to all comers -- a grazing meadow, for example -- the inevitable result is the over-exploitation and destruction of the resource.

The "tragedy of the commons" has become one of those unfortunate phrases that stick in the mind but are fundamentally flawed. What Hardin was describing, in fact, was an open-access regime, in which a resource is essentially open to everyone without restriction. An open-access regime has no recognized authority or defined property rights. Aggressive predators can appropriate the output and sell it to others.

A real commons is quite different. It consists of a distinct community managing a resource through specific rules and traditions. Resources are intended for personal use by members of the commons, not for sale in the market. An ethic of openness in a functioning community helps assure that the resource is not over-exploited and that free riders are identified and disciplined.

While the catchphrase about the tragedy of the commons persists, a rich literature within political science, anthropology, sociology and economics shows that a sustainable commons is not only possible, but often more attractive than a market regime.

Market actors relentlessly strive to cut costs in order to maximize profitability. In many instances, this makes them a vital force in development. But this very tendency to minimize costs often results in "externalizing" -- or shifting -- costs from companies to the environment, communities and future generations. Market prices in such cases do not reflect the fuller, long-term costs of producing a good or service. This is an important reason why a commons can be a superior regime. Members of a commons personally have to live with the "externalities" they create, so they have keen structural incentives to minimize anti-social outcomes.

Varieties of Commons

Just as there are many types of markets, from stock markets to auctions to lemonade stands, so there are many ways of conceptualizing the commons.

Broadly speaking, the commons identifies a set of interests that are distinct from the state and the market. A good shorthand might be "we the people." The commons is about the sovereign interests of the general public, even if it is unorganized. While the state may

intervene as a trustee on behalf of the commons -- to protect widely shared interests or resources -- the people have interests apart from those of government and markets. In environmental law, public trust doctrine has formally recognized this fact by prohibiting governments from seizing or selling resources that belong to the people.

But the public trust doctrine is only a modest beachhead in the law, one that has never been fully developed. The unfortunate truth is that as a "market populism" has arisen to claim that markets are more democratic than governments, people in the United States have not had a rich conceptual language for expressing the "people's interests."

The commons is an antidote. It offers a way to talk about how members of a defined community can access and share resources without relying on money or markets. Instead of the impersonal, take-it-or-leave-it procedures of the market, the commons is a social model based on co-production and co-responsibility. Individual voice and enfranchisement are honored, yet this participation is balanced against the larger needs of the community. And these needs are expressed through the places, history and personalities of a specific commons, not through the impersonal abstractions of money and markets.

It matters a great deal whether a commons revolves around finite, depletable resources (fish, timber, water) or social networks that are "infinite" (the Internet, cultural norms). In the case of the former, guardians of a commons must take pains to assure that free riders do not over-exploit it and create a "tragedy." But when a commons is infinite, the more people that are participating, the greater the value created. There is a cornucopia of the commons. Just as a telephone network becomes more valuable as more people get telephones, so an online community tends to become more robust and valuable as more users join it.

This dynamic has made GNU Linux software operating system one of the most technically advanced and stable software systems in the world despite the lack of a conventional corporate apparatus and marketing. (GNU Linux is a non-commercial, nonproprietary competitor to Windows that most computer experts agree is a superior product. It is widely used in computer servers, and increasingly for personal use.) Tens of thousands of computer programmers have contributed expertise to improving the code through a vast global software commons. The Internet has been a key factor in the success of Linux and other open source projects, but another critical factor has been a special contract provision known as the GNU General Public License, which prevents any users of the code from privatizing it for profit. This assures that the volunteers' contributions will stay within the commons, and not be siphoned away by free riders.

Most commons tend to fall into four broad categories:

Public assets. These are resources that the people own and that government manages as a trustee and steward. Collectively, people in the United States own the electromagnetic spectrum used by broadcasters and wireless companies; millions of acres of public lands containing minerals, timber, oil and grazing areas; and enormous stores of federally sponsored research, reports and databases. Too often, the government gives away these valuable resources to private companies at steep discounts or for free.

Common assets. These are "unowned" resources that have not been formally brought under the control of either markets or government. Examples include genetic structures, the global atmosphere, regional ecosystems and public spaces. Common assets are resources that the people own as a moral right, but which have no formal recognition in law.

Frontier commons. Frontier commons are currently under siege by companies aggressively seeking to convert common assets into property and sell them in the market. Among the more prominent frontier commons are fresh water supplies of northern portions of the globe and genetic structures of life, especially the human genome, agricultural crops and indigenous knowledge.

Social commons. Many commons have less to do with managing a physical resource than with pursuing a shared mission as a social or civic organism. Examples include scientific communities, Internet affinity groups and local communities. Through the exchange of gifts -- time, energy, resources -- members of social commons create special interpersonal bonds among each other, which over time are the basis for creating value in highly efficient, socially satisfying ways. Online genealogical websites and blood donation systems, for instance, are based on people freely "giving" to the commons -- and eventually reaping benefits later by dint of their membership in that specific community.

The Commons and Corporate Power

An embryonic movement of organizations dedicated to managing shared resources in new ways, and avoiding the liabilities of market regimes, is now emerging, sometimes in coordination with different branches of the movement, sometimes not. The strategies and styles of this eclectic movement vary. Yet the groups -- environmentalists, biotech activists, anti-commercialization advocates, open source programmers, defenders of the public domain in copyright law and others -- share a commitment to the commons as a way of fighting pernicious market excesses.

One of the more interesting strategic initiatives for the commons involves stakeholder trusts, whose goal is to give all citizens a personal stake in public assets. The most successful example may be the Alaska Permanent Fund, a citizen-owned investment account that pays equal annual dividends to every Alaskan citizen. Created in 1976 at the instigation of Republican Governor Jay Hammond, the Fund has accumulated some \$27 billion in revenues from oil drilling on the state's North Slope. In 2000, it generated some \$1.15 billion in dividends for the state's residents, or nearly \$2,000 per person.

The Alaska Permanent Fund is a direct inspiration for the Sky Trust proposal (www.skyowners.org), developed by social entrepreneur Peter Barnes to help curb greenhouse gas emissions. Instead of allowing the government to give away emission permits to polluters, the Sky Trust proposal would require auctions in which companies buy a limited number of emission permits. While this would raise prices for gasoline and other carbon-burning products, it would also provide incentives for companies to reduce their carbon emissions. Moreover, consumers would be protected from paying higher prices because they would receive dividends from the Sky Trust, funded by the auctioning of emission permits.

The idea behind the Sky Trust, writes Peter Barnes in *Who Owns the Sky?*, is "from all according to their use of the sky, to all according to their equal ownership of it. Those who burn more carbon will pay more than those who burn less."

Another innovative series of initiatives aim to protect the commons of creative works and information. Increasingly, content industries are using technology and copyright law to "lock up" the digital versions of works and control how they may be used. This can be seen in the copy-protection schemes that record labels are devising to prevent people from making or sharing personal copies of CDs. Film studios want to require anti-copying technology in all electronic appliances in order to prevent the copying and Internet distribution of their movies. And book publishers are trying to devise restrictive licenses for e-books, eliminating the easy copying, excerpting and sharing that we now take for granted with paper books.

Not all fights against "market enclosure" look to public policy. Some creative initiatives are trying to create functioning digital commons for cultural expression. The Budapest Open Access Initiative, instigated by the Open Society Institute, seeks to promote the self-archiving of peer-reviewed journal literature in order to create a new generation of open access alternative journals. The idea is to bypass commercial publishers who continue to raise prices for their journals, making them less accessible -- a dynamic that undermines the very basis of science as an open inquiry based on shared knowledge.

A second initiative is the Creative Commons, an effort by a coalition of law professors led by Stanford's Lawrence Lessig to create a series of customizable licenses for putting works in the public domain. Currently, all new works are automatically "born" copyrighted. There is no formal means by which an author can legally put a work into the public domain or to stipulate permissible public uses of it.

The Creative Commons plans to offer licenses that will allow authors to declare that their works may be used by anyone so long as it is not altered, used without attribution or used for commercial purposes, for example. An innovative aspect of the licenses is the use of "metatags" in electronic documents to help Internet users locate and use public domain material.

Interest in protecting the "information commons" is exploding in other quarters as well. A new public interest advocacy group, Public Knowledge, was recently organized to defend the commons of the Internet, science and culture. And the American Library Association recently formed an Information Commons Project to enhance its efforts to ensure that information is open and accessible to everyone.

"The commons" is also the banner behind a number of new initiatives to protect frontier commons. In Porto Alegre, biotech activists from more than 50 nations in February 2002 launched a treaty initiative seeking to have the earth's gene pool declared a "global commons" that is off-limits to patenting. The "Treaty Initiative to Share the Genetic Commons" will be part of a larger effort to defend the planet's biodiversity.

The treaty initiative builds upon work by Cultural Survival, ETC (formerly RAFI, or Rural Advancement Foundation International) and others to protect the biological integrity of agricultural seedlines and native plants and to preserve indigenous knowledge.

A Commons Paradigm

In a time when the prevailing economic and policy discourse disguises markets and corporations' anti-social effects, a language of the commons helps fill a void in our cultural awareness. Talking about the commons helps shine a spotlight on market ideology and debunk it as a predestined, natural regime. By calling into question the purported benefits of the market, the commons also names the process of enclosure, the process of imposing property boundaries and market rules on shared resources and the stripping away of community control. Talking about enclosure helps link market activity with its harmful consequences.

"The commons" is not just a useful critique, but also a tool for advancing a positive vision and values. It instigates a broader vector of conversation than the sterile, misleading debates about free markets ("good") versus regulation ("bad") that tend to dominate policymaking. Proponents of "the market" have a highly refined literature and analysis for their values. Why shouldn't defenders of "the commons" have an equally coherent and developed field of research and analysis?

At this early stage, it is unclear how the emerging commons movement will evolve and perhaps consolidate. But one thing is clear: the scope and ferocity of market activity is rapidly expanding into every nook and cranny of nature and culture.

As market imperialism intensifies, seeking to transform nature, communities and culture in new ways, the commons is likely to become a more frequently invoked organizing principle for resisting -- and for imagining better, more humane alternatives.

*David Bollier is author of *Silent Theft: The Private Plunder of Our Common Wealth* (Routledge; www.silenttheft.com) and co-founder of Public Knowledge.*

Multinational Monitor 2002

The Media Commons

By Jan Edwards, July 2005

They used to rob trains in the Old West. Now we rob spectrum. *Senator John McCain.*

The Commons are all the creation of nature and culture that we inherit jointly and freely and hold in trust for future generations. The Media and the Airwaves are such commons. They began as natural commons but became financially valuable because of cultural changes.

Media usually refers to an organized means of distribution of fact, opinion, and entertainment such as newspapers, magazines, films, radio, television, and the World Wide Web. It is a form of mass communication or mass media.

The Airwaves (the broadcast spectrum) are part of the commons and are owned by the public. Therefore the public should have control over this resource and any revenues that it raises. The 1934 Communications Act said: in exchange for free licences, private companies would broadcast programs serving the public interest, convenience and necessity. The airwaves themselves would remain public property, with the Federal Communications Commission acting as trustee. Broadcasters grew large and profitable under this arrangement, but their public interest obligations declined. In the 1980's the FCC dropped the Fairness Doctrine which required broadcasters to air both sides of controversial issues. In 1995 Congress gave broadcasting corporations still more free spectrum, supposedly for digital TV. Now broadcasters have a new plan to propertize the airwaves with ownership assigned to them. Under this plan, the free temporary licences broadcasters received in 1995 would become permanent entitlements: property they could now sell [probably to cell phone companies] and pocket the windfall. If the FCC treated the airwaves as a common asset, it would lease most of them at market rates for limited terms to the highest bidders. The billions of dollars raised could buy free air time for political candidates, fund non-commercial radio and TV and help education and the arts. This is not a new idea. In the 1990's, Congress auctioned off cell phone frequencies, raising billions of dollars for the federal treasury.

But if parts of the commons are sold or leased at a price, they are changed from a common into a commodity. The newest battleground on this is the web. Activists are struggling to keep the internet free and creating open source software in the public domain. Using technologies like WiFi [wireless fidelity], high speed internet access could be available to everyone for almost nothing. And with new digital technology, soon signal interference (which is the rationale behind exclusive leases of the broadcast spectrum) could be a thing of the past. Then the airwaves, too, could be an open access commons.

An independent media serves to educate the public about government and corporate issues. Some consider concentration of media ownership to be the biggest single threat to democracy.

Though most of us would agree that returning the media to the commons is the right idea, corporate managers will not give up their grasp on the airwaves willingly. The Telecommunications Act of 1996 allowed for massive and unprecedented corporate media consolidation and deregulation that caused significant harm to our democracy and culture. Congress has said it will revisit the Telecommunications Act in 2006. The Act of 1996 promised more competition and diversity, but the opposite happened.. Citizens, excluded from the process when the Act was negotiated in Congress, must have a seat at the table as Congress proposes to revisit this law. We must demand the media be returned to commons.

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Thanks to Friends of the Commons, Center for Digital Democracy and Wikipedia for many facts in this article. The opinions, however, are my own.

The Right to Water: The Campaign for a United Nations Treaty

by Maude Barlow

Ever since the powerful players of the World Water Council - the World Bank, the big water corporations, and the aid agencies and water ministries of First World countries - declared that water is not a human right, but rather a human need best served by private investors, the issue of the human right to water has become central to the international struggle for the control of water. The human right to water was rejected at both the 2nd World

Water Forum in The Hague in 2000 and at the 3rd World Water Forum in Kyoto in 2003, even though the majority of civil society groups attending these events were strongly in favour.

The omission of water from both the original United Nations Charter and the Universal Declaration of Human Rights, while understandable (how could one imagine a lack of clean air or water back then?) is a problem that has hampered the efforts of those working for the right to water for all. At successive UN conferences, it has become clear that the international community is more than ready for a binding legal instrument of some kind to codify this right. In fact, the right to water has been adopted in several key non-legally binding UN resolutions and declarations, most notably Agenda 21, the UN blueprint for sustainable development.

In the absence of a legally binding treaty or convention, however, the decision-making power over water has slowly moved away from the United Nations to the World Water Council, the World Bank and other regional banks, trade institutions like the World Trade Organization, and the big water transnationals. This has allowed the rapid privatization of the worlds water services, driving up prices and cutting off millions from their water supplies.

The process within the UN to a more binding legal framework has already begun. In 2002, ECOSOC - the UN Committee on Economic, Social and Cultural Rights - adopted General Comment No. 15. This document emphasized the right to water as the cornerstone for realizing all other human rights and called for water to be treated as a social and cultural good, not primarily an economic good. With General Comment No. 15, the Committee speaks out against the commercialization and commodification of water and clarifies that an international human rights law would take precedence over international trade law in this regard. The adoption of General Comment No. 15 provides a seminal overarching methodology for determining peoples rights and the obligations of governments. It is a key step in the march toward a binding legal framework.

It is clear that the right to water is an idea whose time has come. Those of us involved in this campaign have no illusions that this will be an easy fight, nor do we want to get bogged down in interminable UN committees and panels. For us, this campaign must become both a common goal for the many groups fighting for their water rights around the world and a tool for them to use on the ground in their struggles, or it is not worth the work. Nor are we prepared to sacrifice a good treaty for a compromise that would open the door to the private sector. We have a very clear goal in mind, the people power around the world to make it real, and history on our side. Please join us.

Maude Barlow is the National Chairperson of The Council of Canadians and co-founder of The Blue Planet project. www.blueplanetproject.net

Drinking problem

Are we heading for corporate control of the worlds fresh water? At nearby Mount Shasta, a small-town conflict over a proposed water-bottling plant is as global as it is local.

By Josh Indar

There's something magical about an ice-cold half-liter bottle of pure spring water. Its not just the liquid inside--its something else, something that hints at the awesome organizational power of the human race. Harnessing the administrative and mechanical power it takes to fill a bottle of water from a snowcapped peak and deliver it thousands of miles to a consumers thirsty lips is truly a mind-boggling enterprise.

Even the package is beautiful to behold. While tiny beads of condensation drip slowly down the icy mountain depicted on the label, words of encouragement entertain the water drinker. Live like a rock star, the bottle reads. Feel like a movie star. And its true--celebrities do seem to love bottled water. You always see them sipping it in those promotional documentaries they make to push their latest offerings.

But then, who doesnt drink bottled water nowadays? Gyms and parks still have water fountains, but does anyone use them anymore? In corporate boardrooms, they used to keep a pitcher and glasses on the table for thirsty capitalists--now everyone sits there with his or her own hygienic, factory-sealed bottle.

In fact, the individual-sized water bottle may be the ultimate symbol of our modern consumerist society. It is convenient, portable, disposable and even a bit fetishistic--a perfect triumph of the power of marketing. Somehow, the

companies that sell this stuff have been able to convince us to buy something that falls from the sky for free. Whats more, were willing to pay more for it than what we pay to put gasoline in our cars.

Bottled water is now so popular it has become a \$35 billion business. Industry experts predict that with sales growth approaching 15 percent, bottled water soon may be the worlds most preferred packaged beverage. But how often do we think about where that water is coming from?

Increasingly, it is coming from places like McCloud, a quaint village of about 1,300 people on the eastern slope of Mount Shasta.

The 14,000-foot-tall volcano is an icon for Sacramento and the rest of the state. Parts of an ancient glacier still can be found there, and Shastas steep slopes are an important headwater in Californias river system. Even if we dont live in its shadow, even if we never visit, it seems somehow to belong to all Californians.

But a fight over a bottled-water plant proposed in McCloud is raising questions about who should be allowed to control--and make money off of--the water under Mount Shasta. More than that, critics of the project say the McCloud story is about a global struggle over the commons and how much profit corporations should be allowed to make from basic resources--like water--once believed to belong to all of us.

Nestlé Waters North America, a subsidiary of the Swiss multinational food giant Nestlé--the largest food company in the world--wants to build an enormous water-bottling plant at the site of an abandoned lumber mill just a few blocks from McClouds cute-as-a-button downtown.

The new plant would pump and bottle millions of gallons of spring water for the companys popular Arrowhead label.

It is a prospect that thrills some in the town--many of whom who are still reeling from the loss of the mill and the employment it provided. But it frightens other residents, who fear that Nestlé will draw down the local water table; wreak havoc on the peace and quiet the town now enjoys; and drive away potential tourists, who are currently the towns main source of revenue.

The issue breaks along jagged and unreliable lines of class, ideology and age. Some old-timers say its the well-off, part-time vacationers and new arrivals that dont want the plant, but just as many longtime (and full-time) residents seem to have misgivings. Both sides accuse the other of spreading misinformation about the project.

People need to wake up and see that the contract [with Nestlé] doesnt give them anything, said Sid Johnson, a ranch caretaker, nine-year McCloud resident and project opponent. Weve got ... a foreign corporation coming in to buy our water supply for peanuts.

The towns complicated deal with Nestlé is contained in a 43-page contract between Nestlé and the McCloud Community Services District (MCSD), which happens to be the only local form of elected government operating in McCloud.

The contract, however, has been a hugely divisive issue, so much so that it is currently the subject of a lawsuit brought by a group called Concerned McCloud Citizens. They point out that the contract allows the town to sell an almost unfathomable amount of spring water--some 1,600 acre feet per year--for a somewhat unimpressive sum of around \$350,000 a year. Not a bad price for some 521 million gallons of water. Nestlé also will be able to pump an unlimited amount of groundwater to use as it sees fit, a proposition that many project opponents fear will suck the water right out of their own wells.

You know, theres no inflationary clause, and theyre taking a huge amount of water for that [\$350,000], Johnson said. They pollute with their plastic containers. I just hate to see it come about with people not knowing the facts.

Concerned McCloud Citizens sued the district in Siskiyou County Superior Court, alleging that the contract was foisted onto the community without public participation and that the services district overreached its authority in approving the plant.

For help with their case, the McCloud citizens turned to Davis environmental attorney Don Mooney.

One thing that was clear was that the decision was already made, Mooney said. They just went in and signed this very detailed contract with Nestlé, without fully considering the potential environmental impacts of such heavy pumping.

A Siskiyou Superior Court judge agreed, issuing a final ruling in July saying that the district could not legally seal the deal until an environmental review was completed, throwing the contract into legal limbo.

These people come in and dangle some money in front of these little towns and get a deal done before theres any kind of public process, Mooney complained. Now at least there will be a process where the public gets to hear it and comment on it. But Nestlé has already vowed to appeal the ruling, most likely in Sacramentos 5th District Court of Appeal.

A pint of bottled water currently sells (as an individual unit) for about a dollar--that works out to about \$8 a gallon, retail. Nestlés deal allows it to buy that water for less than \$.0008 per gallon. Whats more, it locks the deal in for 50 years, with an automatic 50-year extension. If fresh spring water, already a scarce resource in most parts of the world, can fetch \$8 a gallon already, imagine what it will be worth in 2105.

Nestlé and its proponents in town say those numbers dont tell the whole story, pointing out that the plants real economic impact on the town will come in the form of as many as 300 direct and secondary jobs.

Nestlé commissioned UC Davis business professor Robert Smiley to prepare a study on the economic benefits that the new plant would bring to McCloud.

Smileys report showed that once the plant is in full production mode, it will throw \$25.5 million into the local economy, pay \$1 million in property taxes and generate \$367 million in total economic output in the county. In a county where unemployment hovers around 10 percent and the per-capita income is \$24,063, a stimulus of that size is hard to say no to.

Dawn Snure, who has lived in McCloud for five years and in Siskiyou County most of her life, said the plant is much needed.

This could revitalize the town, make it a healthy community, Snure said. Those of us who live here and work here need jobs to stay here. The water industry is a lot more environmental than the timber industry. I feel its a good compromise.

Snure, however, may already have tasted the benefits of Nestlé's presence in McCloud. She was interviewed at an office on the towns one-horse main drag, at a place called the McCloud Community Resource Center. It looks like the kind of place a tourist might stumble into to ask where a nights lodging or a good sandwich could be found. But the center is actually a nonprofit community space that offers Internet, after-school tutoring and other services to town residents. It also happens to be the headquarters of Nestlé's community-outreach project in McCloud. Last year, Nestlé donated \$6,500 to the center so it could publish a community newsletter. It also rents office space to Dave Palais, a Nestlé public-relations man who serves as the public face of the corporation in its dealings with McCloud.

Palais office in the center is small and unassuming, equipped with little more than a sagging couch for guests and a small desk and chair for Palais. The walls are wood-paneled and covered with childrens drawings. Palais himself, when I met him by accident at the center, was dressed in a gray T-shirt, long gym shorts and a pair of beige loafers that had seen better days. Either Palais is a master of disguise--deliberately avoiding the pitfall of being labeled a city slicker by any potentially suspicious townsfolk--or hes a bit of a slob.

His first gesture in our interview was to offer an ice-cold bottle of Arrowhead. Naturally, Palais is in favor of the plant.

Were just trying to become a customer of the district, he said. Were not buying [the towns] water rights. Im not going to deny our overall goal is business, but Im proud of this company, and I believe were here to do the right thing. Palais has been accused by some residents of hoodwinking the service districts board into signing the contract. Many project opponents say the board (which one critic derided as two loggers and two housewives) had little experience in big-business negotiations and sprung the Nestlé deal on the town in 2003 without any warning at all.

But, as Palais points out, the board had been actively pursuing a water-bottling plant since 1998. The district met with four other companies during that time, including Dannon, which wanted a controlling interest in the towns water rights. Failing to get it, Dannon set up shop a few miles over the hill from McCloud in the nearby town of Mount Shasta.

[MCSO] had contacted us back then, and at that time we had no plans to come this far north, Palais said. After deals with other companies fell through, he said, Nestlé and McCloud decided to give each other another chance.

Were still here, and were still working on it. Were not going anywhere, he said, lamenting that the company had already put around \$1.5 million into the deal and was still years away from bottling any water.

Palais also was quick to point out that, if it wanted to, Nestlé probably could just as well have built its plant without going through the trouble of negotiating a contract with McCloud.

The contract is just a water-supply contract, he said. It has nothing to do with the facility. Were buying a piece of private property. As long as we go through [the environmental-review process], we can drill a well and try to pump water from it. Or we can find another source. Thats the irony. ... If theres no contract, the guarantees [for the town] disappear.

The area around Mount Shasta is fast becoming the bottled-water capital of Northern California, if not the entire state.

There are currently four water-bottling plants operating there, including the huge Crystal Geyser plant in Weed and the aforementioned Dannon plant in the town of Mount Shasta. Another new project is said to be in the works by an unknown company that recently bought land in Dunsmuir. Together with two existing, smaller plants near Dunsmuir, these facilities will suck billions of gallons of fresh water from the regions aquifer over the next few decades and wont have to pay for any of it. Theyll pay taxes on their property and provide a few hundred jobs and likely will give generously to local clubs and community groups, but because the county has no ordinance protecting its groundwater, any landowner, large or small, has the right to drill a well and take however much water he, she or it wants. Because the aquifer is mainly spring-fed, a company also can bottle the stuff under the coveted spring water label.

Nestle has been focusing on spring water as their marketing niche, said Nancy Price.

Price lives in Davis, far from the slopes of Mount Shasta. But she has been monitoring Nestlé's efforts in McCloud and around the United States. She is co-chair of a group called Alliance for Democracy, which opposes the increasing

privatization of water and water supplies.

She worries that the bottled water has replaced the thermos and that Americans will so willingly shell out two bucks to buy water when they used to just go to the tap.

Its an absolute stroke of advertising genius. We have perfectly good municipal water systems. But the entire nation has succumbed to the idea that if you want drinking water, you have to buy it, Price lamented.

Over the past 10 years, Price said, Nestlé has been very successful at buying up small, regional spring-water companies and then getting local agencies to let them pump and bottle ever-increasing amounts of water.

Poland Spring in Maine, Ice Mountain in Michigan, Zephyrhills in Florida and, of course, Arrowhead all are Nestlé brands. And, naturally, the best spring water comes from remote, rural places that many people have never heard of, places like McCloud. Nestlé's modus operandi is to go into these small communities and strike a deal before anybody can get themselves organized, Price said.

Whats happening in McCloud may become more common, thanks to our thirst for bottled water--and thanks to the bottled-water industrys phenomenal success in marketing what used to be free.

You know, when I went to college, you didnt have to carry your own water around. Now all of the students I see around campus have to carry water in their backpacks. Im not quite sure how I survived, said UC Davis business professor Robert Smiley.

In fact, as Smiley notes in his report, people ages 18 to 34 are much more likely than their parents to see bottled water as a common, natural consumer good. This demographic shift also bodes well for the bottled-water industry, the report concludes.

Smiley told SN&R that the bottled-water industry will continue to be an attractive option for towns like McCloud whose main industry has left town.

I think if the demand is there, and the geology is right, this is an option that can soften the blow from a departing industry, Smiley explained.

McCloud was born a company town--planned, managed and completely controlled by the McCloud River Lumber Co., which became known to residents as Mother McCloud. Although the company transferred many of its assets and, most importantly, its water rights to the townspeople in 1963, the specter of Mother McCloud still haunts the town--its streets are laid out in a grid that seems just a little too orderly, and many of its houses, if one can look past the extra rooms and added porches, all are strangely similar to each other.

The mill, once a bustle of activity, with buzz saws screaming from dawn to dusk and a steady stream of trucks rumbling in and out, now sits silently on the edge of town. Huge wooden warehouses await deconstruction. Rusting cargo containers bearing the logos of long-extinct logging firms sit on disconnected train tracks amid fields of weeds and wildflowers. For many residents, watching the town wither has been like keeping a deathwatch on a bedridden friend.

This town has had a tough life, but even with the closing of the mill, it has survived, said local business owner and plant supporter Penny Heil. A lot of people have had to move away, and so many of those who didnt are working two or three jobs just to live here because they love it so much.

Mike Stacher, who recently became the general manager of the MCSD, has inherited the controversy left to him by the previous board of directors. He is a self-described optimist, a lifelong resident of the area and a man who seems unaccustomed to sitting in the hot seat. His support of the project, he said, comes out of the realization that McCloud doesnt have many other options.

As far as Im concerned, any money we get is more than we were getting yesterday. ... Ive heard people talk, and Ive heard them say 'environmental. And in the end of their dissertations, they say, 'Has Nestlé given up enough money? The greed is not a factor to me. Is Nestlé going to make billions, and were only going to make hundreds of thousands? You know, its not a factor to me. We made the best deal that we thought we could at the time, and I still think its a good deal.

Stacher said he has heard the environmental arguments--that there is not enough water to go around or that drilling a borehole into the spring will rupture the lava tube it may be flowing through and cause the water to be lost. He doesnt buy either. For one thing, he said, McCloud captures four times as much water as it actually uses. And scientists hes talked to tell him that the real danger of putting in boreholes lies in liberating more water than can be controlled, he said.

To Stacher, the Nestlé deal is a chance for McCloud to get back on its feet.

I would have been happy for just the jobs, he said. We are deficit spending all the time--we budget in the deficit for necessary services. In a place that has no business, about the only way to make new revenue is to get into the customers pockets, and the customers are tired of us getting into their pockets.

For many in McCloud, the issue is strictly economic. But around the state, people are beginning to wonder about the whole nature of the bottled-water business. Water is, after all, the most important ingredient for life on Earth. Is it right, they ask, to turn it into a commodity?

Water in general is part of the commons and should not be privatized, said Nancy Price.

And Price sees McClouds experience as being important far beyond the town limits. To me, its part of this whole effort to make enormous profits from everything in the natural realm, she said, likening the efforts of the big water companies to the biotech industrys rush to patent the genes of living creatures.

John Gibler, a policy analyst for Public Citizens Water for All campaign, agrees. Gibler said the current mania in government over privatizing social services dovetails neatly with the never-ending corporate quest for control over basic resources.

Getting bottled water culturally so accepted is a really dangerous precedent for moving water privatization generally forward, he said. Because you can point to it and say, 'Of course its a commodity. What are you drinking right there?

In some parts of California, bottled water is already the only option. In the San Joaquin Valley, Gibler said, farmworkers already are surviving strictly on store-bought water.

The farm-labor camps that have been around for a while have really old pipes, and its very poor-quality water, he said. Many people in rural communities ... have kind of already de facto had their water supplies privatized, because they need to go to the water vending machines or the store to buy bottled water to get by. Its ironic that some of the hardest-working and lowest-paid people in the state are having to buy the most expensive water in the state.

With worldwide water consumption roughly doubling every 20 years, control over fresh water is likely to emerge as the defining issue of the 21st century. From Stockton, where water privatization has become an expensive headache for ratepayers and politicians alike, to Michigan, where another huge Nestlé water plant has stirred up residents, or Bolivia, where a Bechtel subsidiariys takeover of the local water supply planted the seeds for this summers civil unrest, corporations quietly have begun treating water as if it were just another commodity.

Water should be for the people, and it shouldnt be for making a profit, said Sid Johnson. If you think about the kind of attitude were creating, were selling our private water supplies off all across the country. Ive gone out and bought bottled water and never thought a thing about it. Now Im thinking about it, and its just the most ridiculous thing I can think of.

Cosmo Garvin contributed to this report.

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*They hang the man and flog the woman
That steal the goose from off the Common,
But let the greater villain loose
That steals the Common from the goose.*

*The law demands that we atone
When we take things we do not own,
But leaves the Lords and Ladies fine
Who take things that are yours and mine.*

*The law locks up the man or woman
Who steals the goose from off the Common,
And geese will still a Common lack,
Til they go and steal it back,*

-- English folk poem, circa 1764

Commons Quotes

I never heard that the Creator opened an estate office to issue title deeds to land... Every proprietor of land owes to the community a ground rent for the land which he holds.

-- Thomas Paine (1737 - 1809)

If you Steal \$10 from a mans wallet, youre likely to get into a fight. But if you steal billions from the commons, co-owned by him and his descendants, he may not even notice.

Warren Hickel, former Secretary of the Interior

By the law of nature these things are common to mankind the air, running water, the sea, ans consequently the shore of the sea. Institutes of Justinian (535 A.D.)

Pennsylvanias public natural resources are the common property of all the people, including generations to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people. Pennsylvania Constitution

If nature made any thing less susceptible than all others of exclusive property, it is the thinking power of an idea. Thomas Jefferson

Edward R. Murrow: Who owns the patent on this vaccine?

Jonas Salk: Well, the people, I would say. Could you patent the sun?

A great change in the stewardship of the Earth is required if vast human misery is to be avoided and our home on this planet is not to be irretrievably mutilated.

Statement of scientists from 70 countries including 102 Nobel laureates (1992)

Thanks to **Friends of the Commons** and **By What Authority** for these quotes.