

What Is Rhode Island “Wise Use?”

by Raphael Cunniff

May, 1998

Submitted in partial fulfillment of the degree requirements for receipt of a Bachelor of the Arts in Environmental Studies from Brown University.

Accepted in partial fulfillment of the degree requirements for receipt of a Bachelor of the
Arts in Environmental Studies from Brown University.

What is Rhode Island “Wise Use”

This thesis asks: what organizations constitute the “Wise Use” movement in Rhode Island, who are the members and leaders of these organizations, what are their ideologies and goals, what strategies have they used to achieve these goals, and most importantly, how successful have they been? In addition, I sought to put the “Wise Use” movement in Rhode Island in the context of the wider social and political “Wise Use” movement throughout the nation. To answer these questions, I researched popular and academic literature, consulted printed and web-based literature produced by the “Wise Use” movement, interviewed leaders and supporters of the “Wise Use” movement in Rhode Island, and searched the Rhode Island legislative record for the influence of “Wise Use” ideology. The current “Wise Use” movement is a group of affiliated organizations which support weakening and altering of environmental regulations that apply to federal and private land use. There are two wings of the “Wise Use” movement. The western public lands “Wise Use” movement is concerned with regulations of federal land use, is based primarily in rural areas of western states, and is often funded by corporations. “Private Property Rights Movement” is concerned with private land use regulations, is primarily based in eastern suburban or urban areas, and is less often corporate funded. The “Wise Use” movement in Rhode Island consists of two organizations: “Rhode Island Wise Use” and “Rhode Island Farm Bureau.” The members and leaders of these organizations are primarily Caucasian, middle class property owners residing in the rural-suburban interface who have either had a conflict with environmental regulatory agencies or fear such a conflict in the near future. The ideologies of these two “Wise Use” organizations place them in the “Private Property Rights” wing of the “Wise Use” movement. They favor relaxing rules on private property owners, compensating private property owners for the loss of any “sensible” use of their land due to regulation, as well as simplifying and personalizing regulatory bureaucracies. Each organization has some features that do not entirely fit with the model of the “Private Property Rights” movement that I have presented. To achieve their goals these organizations engage in a wide range of activities - chiefly grassroots organizing and state lobbying. The greatest success of the “Wise Use” movement in Rhode Island, has been the high visibility of its leaders in media. The “Wise Use” movement in Rhode Island has also been moderately successful in the legislative arena, helping to introduce twelve “property rights” bills of varying strength into the Rhode Island Legislature. Recently, the “Wise Use” movement in Rhode Island has been especially visible due to the Kennedy Commission hearings on the Rhode Island Department of Environmental Management. These hearings made evident the greater extent to which “Wise Use” ideologies are held by individuals and organizations outside of “Rhode Island Wise Use” and “Rhode Island Farm Bureau.”

Contents

I. Introduction.....1
 Why I am interested in the “Wise Use” movement.....1

Why everyone should be interested in Rhode Island “Wise Use”.....	3
II. Background: “Wise Use:” ancestors and associates on a national scale.....	5
Roots: The Sagebrush Rebellion.....	5
The “Wise Use” movement: origins and divisions.....	7
The Successes of the National The “Wise Use” Movement.....	12
III. The “Wise Use” Movement in Rhode Island.....	16
What organizations constitute the “Wise Use” Movement in RI.....	16
Background or how to make a “Wise Use” activist.....	18
Organizational Structure and Membership.....	20
Ideology and Goals.....	23
Strategies.....	29
IV. Successes of the “Wise Use” movement in Rhode Island.....	30
Visibility of “Wise Use” Leaders.....	30
Kennedy Commission.....	32
Rhode Island “Property Rights” Bills.....	34
V. Conclusions and Unanswered Questions.....	37

Raphael Cunniff
5/16/1997

What is Rhode Island “Wise Use” ?

I. Introduction

Why I am interested in the “Wise Use” and “Property Rights” movements.

I am both a libertarian and an environmentalist. It occurred to me long ago that these are conflicting ideologies. The United States has chosen a largely command and control regime in which protecting the environment for the general welfare often comes at the price of individual liberty. For a long time I have not known which camp I should align myself with. This thesis is part of an exploration of this ongoing ideological conflict, both within myself and the American culture.

I first became interested in writing this thesis in the summer of 1996 when working for WASHPIRG (the Washington State division of the Public Interest Research Group) walking door to door attempting to raise money for the lobbying effort to reauthorize the Clean Water Act. I had lived outside Seattle until 1984 and was now canvassing my former home of Whidbey Island when I knocked on the door of a man I had known as a young child. He recognized me immediately but said he could not support WASHPIRG. It seems that he had been cited for filling a wetland while building a tool shed and had founded a property rights group to fight for others in similar situations. What could turn this long-haired country hippie into an “anti-environmentalist”? I also encountered many complete strangers who said they were concerned about “property rights” or subscribed to the “Wise Use” view.

It occurred to me that I knew nothing about the “Wise Use” movement. The short section offered in *Introduction to Environmental Studies* (Es11) seemed narrow and one-sided. I had been exposed to environmentalists and environmentalism in abundance, but was there another side? I heard Brian Bishop, founder of “Rhode Island Wise Use” (henceforth RIWU) speak along with some of his comrades and they appeared to be earnest and devoted. Afterwards I read some personal accounts of property owners who believed they were wronged¹ including that of Ann Corcoran, a former lobbyist for the National Audubon Society turned farmer and now the editor of the Land Rights Letter, “a newsletter intended to bring citizens concerned with threats to private property into contact with one another.”² She entered the “private-property-rights movement” when her farm near Antietam Battlefield National Park was threatened by the proposed expansion of the park, making her an inholder, (a person whose private land is surrounded by federal land) and subject to more restrictive federal zoning laws.³ If the “property rights movement”⁴ can convert an environmental lobbyist into their ranks, I thought, there must be something behind their view.

¹ I would later find these personal, anecdotal stories to be the political and ideological trademark of the property rights movement. See Phil Brick. *Determined Opposition: The Wise Use Movement Challenges Environmentalism*. Environment. Vol. 37. #8. pp 21-22. October, 1995. Also See Ed Carson. *Property Frights: Why Property Rights Initiatives Are Losing At The Polls*. Reason. #1. Vol. 28. p27. May, 1996. Or See Gerald Torres. *Taking and Giving: Police Power, Public Value, and Private Right*. Northwestern School of Law of Lewis & Clark College: Environmental Law. #26. p2. Spring, 1996.

² See Ann Corcoran. *This Land is Our Land: And We'll Protect it Better Than Government Will*. Policy Review. # 63 p72. winter, 1993.

³ *Id.*

⁴ “Property rights movement” appears to be interchangeable with “private-property-rights movement.” The word “Private” may serve to differentiate this movement from the western “Wise Use” movement, much of which is concerned with private access to federal land. More on this topic in Background. See Nancie G. Marzulla. *The Property Rights Movement: How It Began and Where It is Headed*. from Land Rights: The 1990's Property Rights Rebellion. Bruce Yandle, ed. Rowan and Littlefield Publishers, Inc. Lanham, Maryland. pp 1-30. 1995.

If I am to receive a degree in Environmental Studies, my education is not complete until I know the opposition to current environmental legislation. If I am an environmentalist I should know my enemy, and if I am a libertarian I should know my ally. Environmental Studies is a subject taught by and to individuals who generally favor strengthening environmental regulations, so I know one side of the argument well. This thesis is about the people and views of the other side.

Why everyone should be interested in “Rhode Island Wise Use”

I have chosen to focus on the Rhode Island “Wise Use” movement largely because of convenience. However, Rhode Island is a particularly novel place to investigate the “Wise Use” movement because most of the literature - popular and academic - focuses on the western states.⁵ Other authors assert that the “Wise Use” movement is based in the west, but a separate yet related “private property rights” movement is strong in the east.⁶ Determining which of these affiliated movements the Rhode Island “Wise Use” movement fits into, if any, will be one objective of my thesis. Furthermore, I will investigate whether the organizations that constitute the “Wise Use” movement in Rhode Island and their members fit the model of the “Wise Use” movement⁷ that members of the environmental media have described as “real-estate

⁵ This is a claim that can be verified with a cursory investigation of the literature. See Samantha Sanchez. *How The West Is Won: Astroturf Lobbying And The “Wise Use” Movement*. The American Prospect. #25. pp. 37-42. March-April, 1996. Or See Patrick Austin Perry. *Law West of The Pecos: The Growth of The Wise-Use Movement And The Challenge To Federal Public Land-Use Policy*. Loyola of Los Angeles Law Review. #30. pp. 275-319. November, 1996.

⁶ See Nancie Marzulla *supra* note 4. Or See Tyler E. Chapman. *Property Rights Movement*. Boston University Law Review. #77. pp. 111-149. February, 1997.

⁷ “Wise Use” movement is often used as a blanket term for describing the “property rights” movement and “County Supremacy” movement as well as other right-wing organizations. For commentary see Background section.

supremacists,”⁸ “corporate-backed” and “anti-environmental.”⁹ Who are they and what do they believe? What do these “Wise Use” organizations do and why? And perhaps most importantly, how close is the “Wise Use” movement in Rhode Island to getting what it wants?

Asking what the world would look like if Rhode Island “Wise Use” made the laws is not merely a rhetorical exercise. From 1992 to 1998, twelve property rights or “takings” bills have been introduced into the Rhode Island State Legislature in part due to the activities of “Wise Use” organizations.¹⁰ The word “takings” refers to the Fifth Amendment of The United States Constitution which reads, “nor shall private property be taken for public use, without just compensation.” The precise definition of a “taking” has been set forth most recently by the United States Supreme Court as the deprivation of “all economically viable use” of private land by the government¹¹ The latest “takings” bill introduced (1998 Rhode Island House bill 8165) reads, “Any person whose property is inordinately burdened, restricted or limited by any statute or ordinance may bring suit against a governmental entity to recover damages.”¹² How accurately does this bill describe or encompass the views of the “Wise Use” movement in Rhode Island? How successful has Rhode Island “Wise Use” been in the legislative arena? Before I can

⁸ See Paul Rauber. *Look Who's Taking: Life, liberty, and the sacred right to pollute*. Sierra. #5. Vol. 78, p43. Sep/Oct 1993.

⁹ See David Lapp. *Wise Use's Labor Ruse: The anti-environmental wise-use movement is attempting both successfully and unsuccessfully to forge ties with workers*. Environmental Action. Vol. 25. #3. p. 23. Fall, 1993.

¹⁰ See Ronald M. Wolanski. *Planning and environmental regulatory regimes and the strength of the "Wise Use" movement in six states: Chapter 4: Examination of the States*. "Master's Research Project" to be submitted as partial fulfillment of the "Master of Community Planning Degree at the University of Rhode Island". p. 5. 1997. And See Rhode Island Legislative Record for bills: 98-h-8165, 92-s-2681, 93-h-6810, 93-s-0740, 94-h-8396, 94-s-2793, 94-s-2744, 95-h-5241, 95-s-360, 95-s-509, 95-h-5241A, 96-h-7868

¹¹ See *Lucas v. South Carolina Coastal Council*, 112 s.Ct. 2886 (1992)

answer these questions it is necessary to put Rhode Island “Wise Use” in context by briefly examining the roots of national “Wise Use” and other associated movements and organizations. I will begin by examining the history, organizations, and successes of the national “Wise Use” movement. My objective in the following section is to establish a framework for better understanding the “Wise Use” movement in Rhode Island and how it is a product of a wider social and political movement. I will then move on to the organizations, members, ideologies, goals, strategies and successes of the “Wise Use” movement in Rhode Island.

II. Background: “Wise Use”: Ancestors and Associates on a National Scale.

Roots: The Sagebrush Rebellion

While there are a number of different theories tracing the roots of the “Wise Use” movement, most authors point to the “Sagebrush Rebellion” as the first organized expression of what became “Wise Use.” The “Sagebrush Rebellion” officially began in Nevada in 1979, when the State legislature passed a law claiming title of federal Bureau of Land Management (BLM) lands.¹³ Although the “Sagebrush Rebellion” began with a bang in 1979, it is more properly a continuation of the western states’ disapproval of federal land use policies that had been evident since the late 1800’s.¹⁴ Nancie Marzulla, co-founder of Defenders of Property Rights, “the only national public interest law foundation devoted exclusively to helping private property owners who have been

¹² See RI HB98-8165. This is the bill text in its entirety. More analysis of “takings” or “property rights” bills in Rhode Island later.

¹³ See Mary Lou Gallagher. *Wise Use or Wise Marketing: The movement is on a mission - and not only in the west.* Planning. p5. Jan. 1996.

deprived of their property by government actions,”¹⁵ writes that the “Sagebrush Rebellion” began in 1964 when the Department of the Interior set a moratorium on homesteading federal desert land for farming.¹⁶ Other authors claim that “the seeds of the most recent ‘Sagebrush Rebellion’ were sown in 1976 by new constraints on western resource development, by the Federal Land Policy and Management Act of 1976.”¹⁷ The rebellion was typified by state legislation demanding the federal government turn BLM lands over to the states.¹⁸ Once the “Sagebrush Rebellion” became powerful in Nevada, it quickly spread to other western states with high percentages of federal lands.¹⁹ The typical supporters of the “Sagebrush Rebellion” have been described as everything from “those dependent on federal lands for their livelihoods”²⁰ to “land-grabbing, wealthy, Nevada ranchers.”²¹ (These descriptions are remarkably similar to those given to western “Wise Use” members, as I will show in the following pages.) Despite its dramatic beginning, the “Sagebrush Rebellion” began to lose support and enthusiasm after the “avowed Sagebrush Rebel,” James Watt, took over the Department of the Interior and the Reagan administration attempted, unsuccessfully, to sell 4.4 million acres

¹⁴ See Patrick Austin Perry. *Law West of The Pecos: The Growth of The Wise-Use Movement And The Challenge To Federal Public Land-Use Policy*. Loyola of Los Angeles Law Review. #30. p 285. November, 1996.

¹⁵ See Defenders of Property Rights. “Defenders of Property Rights Web Site: About Us.” <http://www.defendersproprights.org/about.html>. last updated August 26, 1997.

¹⁶ See Nancie Marzulla *Supra* note 4 at p3.

¹⁷ See George Cameron Coggins and Doris K. Nagel. *“Nothing Beside Remains”: The Legal Legacy Of James G. Watt’s Tenure As Secretary Of The Interior On Federal Land Law And Policy*. Boston College Environmental Affairs Law Review. #3. Vol. 17. p473. Spring, 1990. For additional information See, e.g., Kirschten. *There’s More Rhetoric than Reality in the West’s “Sagebrush Rebellion.”* National Journal. Vol. 11. p1928. 1979.

¹⁸ *Id.*

¹⁹ See Gerald Torres. *Taking and Giving: Police Power, Public Value, and Private Right*. Northwestern School of Law of Lewis & Clark College: Environmental Law. #26. p6. Spring, 1996.

²⁰ *Id.*

²¹ See Paul Rauber. *National Yard Sale*. Sierra. #5. Vol. 80. p28. Sep/Oct, 1995.

of BLM lands.²² Internal conflicts within the “Sagebrush Rebellion” between libertarians, who wanted the land to be sold to the highest bidder, and ranchers, who would not profit from such a sale, eventually caused the dissolution of the movement.²³

The “Wise Use” Movement: Origins and Divisions.

The “Sagebrush Rebellion” did not really end but gradually became the “Wise Use” movement. “From Nevada through Utah, Wyoming, and Montana, people were growing frustrated with the federal government’s opposition to resource development in their region.”²⁴ However, during the early 1980’s people with similar unfavorable opinions toward federal environmental policies, especially those having to do with federal lands, had no single moniker or organized structure. While it is widely known that the term “Wise Use” was borrowed, or stolen, from Gifford Pinchot’s quote describing conservation as the “wise use of resources,”²⁵ not everyone agrees on when the “Wise Use” movement transformed from a set of unaffiliated organizations into a network of separate organizations under one moniker. “Wise Use” leader, Nancie Marzulla, contends that the term “Wise Use Movement” was coined in the mid 1970’s when “the establishment of broader organizations like the Center for Defense of Free Enterprise, National Inholders Association (now American Land Rights Association), and People For the West!... created a common network....”²⁶ However, most other

²² See George Cameron Coggins and Doris K. Nagel. *Supra* note 16.

²³ See Ralph Maughan and Douglas Nilson. *What's Old And What's New About The Wise Use Movement*. Idaho State University Dept. of Political Science. <http://nwcitizen.com/publicgood/reports/maughan.htm>. Presented at the Western Social Science Association Convention. April 23, 1993.

²⁴ See Nancie Marzulla *Supra* note 4 at p4.

²⁵ See Thomas A. Lewis. *Cloaked In A Wise Disguise*. National Wildlife. #6. Vol. 30. p5. Oct, 1992. Gifford Pinchot was the first director of the U.S. Forest Service.

²⁶ See Nancie Marzulla *Supra* note 4 at pp 4-5.

authors give credit for unifying and naming the “Wise Use” movement to Alan M. Gottlieb, “a direct-mail fundraiser for conservative politicians and causes,” and Ron Arnold, a former activist for the Sierra Club who “speaks with the zeal of the converted.”²⁷ Gottlieb and Ron Arnold founded the Center for the Defense of Free Enterprise in 1988 and have since been two of the most vocal and active “Wise Users.”²⁸ Some of Arnold’s most repeated quotes include; "Environmentalism is the new paganism, [*Sic*] it worships trees and sacrifices people,"²⁹ and "This is a war, we're trying to destroy the opposition."³⁰

In August 1988, organizers, The Center for the Defense of Free Enterprise, along with approximately two hundred and fifty other organizations attended the first “Wise Use” conference in Reno, Nevada.³¹ Among the other organizations attending were the National Inholders Association, representing property owners whose land borders on three sides or is surrounded by federal land, led by Charles Cushman, the Blue Ribbon Coalition, representing outdoor motor-sports enthusiasts,³² many industry organizations, such as Exxon U.S.A and the National Association of Wheat Growers, and others.³³ Participants in the conference presented over 100 papers, later published as “The Wise Use Agenda.”³⁴ Chief among their stated priorities were opening "all public lands

²⁷ See Thomas A. Lewis. *Supra* note 24. Also See Patrick Austin Perry. *Supra* note 13 at p276.

²⁸ See Thomas A. Lewis. *Supra* note 24.

²⁹ See T.H. Watkins. *Fat Cats And New Voices*. Wilderness. #198. Vol. 56. p8. Fall, 1992.

³⁰ See Thomas A. Lewis. *Supra* note 24.

³¹ *Id.*

³² *Id.*

³³ See Patrick Austin Perry. *Supra* note 13 at p276.

³⁴ *Id.*

including wilderness and national parks to oil drilling, logging and commercial development"³⁵

Starting with at least 224 groups in 1988,³⁶ the movement has grown to more than 1,000 groups in 1994.³⁷ According to Ron Arnold, "Wise Use" mailing lists reached more than three million people in 1995.³⁸ Of those, one million actively participate in meetings and write occasional letters to legislators, and 250,000 are hard core activists who are active in their communities and will respond quickly to fax alerts."³⁹ These numbers are unreliable and difficult to verify.⁴⁰ However, the American Land Rights Association, a "Wise Use" community organizing effort, provides a list of 1,800 organizations on their fax network and claims an additional 26,000 individual members of their network.⁴¹ The Environmental Working Group has compiled a web-based state-by-state list of "Wise Use" groups which contains three groups based in Rhode Island, over fifty in New York, and over a hundred in Washington state.⁴²

Despite their apparently large numbers, the "Wise Use" movement is not monolithic or entirely without internal divisions. There are at least three separate types of organizations in the national "Wise Use" movement and several different types of supporting organizations, such as conservative think tanks and legal defense funds. The

³⁵ See Thomas A. Lewis. *Supra* note 24.

³⁶ See R. Arnold and A. Gottlieb. The Wise Use Agenda. Bellevue, Washington. Free Enterprise Press. pp 157-166. 1988.

³⁷ See W.P. Penalley. It Takes A Hero. Bellevue, Washington. Free Enterprise Press. 1994.

³⁸ See Ron Arnold, Center for the Defense of Free Enterprise, personal communication with the author, 12 June 1995. As cited by Phil Brick. *Determined Opposition: The Wise Use Movement Challenges Environmentalism*. Environment. Vol. 37. #8. p26.

³⁹ *Id.*

⁴⁰ I have gathered some anecdotal evidence to support "Wise Use" mailing list and membership inflation. See section on determining the organizations to include in the "Wise Use" movement in Rhode Island.

⁴¹ See American Land Rights Alliance. American Land Rights Alliance homepage. <http://www.landrights.org/>. 1997.

⁴² See Environmental Working Group. CLEAR webpage. <http://wyl.ewg.org/>. 1997.

“Wise Use” movement proper, based primarily in the western states,⁴³ is comprised of both member-supported grass-roots organizations and industry lobbying organizations.⁴⁴ The members of these organizations are primarily those dependent on federal land use for their income, such as ranchers, loggers and miners.⁴⁵ (For more information on some of the largest national “Wise Use” groups see Table 1.)

Strongly allied with the above “Wise Use” groups is the relatively small “County Supremacy” movement, which follows closely in the ideological footsteps of the “Sagebrush Rebellion.”⁴⁶ The movement’s goal is the same as the “Sagebrush Rebellion,” but it is now more organized and has the backing of many state and local officials.⁴⁷ The “County Supremacy Movement” began in 1994 in Nye County, Nevada and Catron County, New Mexico, when the County governments passed resolutions to take control of Federal land in their jurisdictions. Since then, at least 40 other counties in the west have done the same.⁴⁸ Courts have repeatedly struck down any effort to usurp federal control of federal lands based on the Property Clause of the United States Constitution.⁴⁹ In such cases as *Gardner v. Stager* (Reno, Nevada District Court, 1995) and *U.S. v. Medenbach* (Klamath County, Oregon District Court, 1995) courts have rejected “County Supremacy” claims as uncompliant with federal law.⁵⁰

It is uncertain whether the “property rights movement,” which is concerned with private land rights rather than public land regulations, is merely a wing of the “Wise Use”

⁴³ See Margaret Kriz. *Land Mine*. National Journal. #43. Vol. 25. p2533. Oct 23, 1993.

⁴⁴ See Mary Lou Gallagher. *Supra* note 12 at p4.

⁴⁵ See Patrick Austin Perry. *Supra* note 13 at p275.

⁴⁶ See Paul Rauber. *Supra* note 20.

⁴⁷ See Anonymous. *Unrest in The West*. Time. #17. Vol. 146. p56. 10/23/1995.

⁴⁸ See Anonymous. *The Catron County Rebellion*. The Economist. #7980. Vol. 340. p22. 8/24/1996.

⁴⁹ See United States Department of Justice. Press Release: *United States asks Court to reaffirm ownership of public lands: open arguments heard in U.S. v. Nye County Nevada*. July 28, 1995.

movement or a separate movement brought together with “Wise Use” because of their similar ideologies and legal arguments. While some authors only mention a property rights strategy of the “Wise Use” movement, others give the “property rights” movement separate treatment.⁵¹ While crediting the “Wise Use” movement for the initial inspiration for the “property rights” movement, Nancie Marzulla offers a separate date and place for the genesis of the “property rights” movement.⁵² According to Marzulla, the first stirrings of the “property rights” movement occurred in 1981 at a conference sponsored by the “Wise Use” affiliated Institute of the American West in Sun Valley, Idaho.⁵³ Despite the fact that “property rights” groups are often closely allied with the “Wise Use” movement, the “property rights” movement has different goals and different kinds of members. Since the “property rights” movement campaigns against regulation of private land rather than public, its membership is not entirely rural.⁵⁴ Indeed most “property rights” organizations are based in eastern cities and suburbs.⁵⁵ In addition, “property rights” groups are less often associated with corporate interests than “Wise Use” groups and are generally member supported.⁵⁶ Despite the differences between the national “property rights” movement and the “Wise Use” movement, they share the

⁵⁰ *Id.*

⁵¹ For articles treating the property rights movement as separate from the “Wise Use” movement See Ann Corcoran. *This Land is Our Land: And We’ll Protect it Better Than Government Will*. Policy Review. #63 p72. winter, 1993. Or See Tyler E. Chapman. *Property Rights Movement*. Boston University Law Review. #77. pp. 111-149. February, 1997. Or See John Tibbets. *Everybody’s Taking the Fifth: Property rights advocates are pushing their ‘takings’ message in every available forum*. Planning. pp4-8. Jan, 1995. Or See Richard Miniter. *You Just Can’t Take It Anymore: America’s Property Rights Revolt*. Policy Review. pp40-46. Fall, 1994. Or See Wallace Kaufman. *The Cost of Saving: You Take It, You Pay For It*. American Forests. #11-12. Vol. 99. pp17-22. Dec, 1993.

⁵² See Nancie Marzulla *Supra* note 4 at p13.

⁵³ *Id.*

⁵⁴ Tyler E. Chapman. *Property Rights Movement*. Boston University Law Review. #77. p112. February, 1997.

⁵⁵ See Margaret Kriz. *Supra* note 40 at p253.

⁵⁶ See Wallace Kaufman. *The Cost of Saving: You Take It, You Pay For It*. American Forests. #11-12. Vol. 99. p18. Dec, 1993.

common goals of opposing current environmental legislation and supporting the compensation of property owners deprived of a protected use of their land through regulation, and have therefore entered into a marriage of political convenience. Organizations that identify with the “Wise Use” movement are often members of the same umbrella organizations and use the same support organizations as those that call themselves “property rights” organizations.⁵⁷ Many organizations do not differentiate between “Wise Use” issues and “property rights” issues.⁵⁸ Thus, for the purpose of this thesis, organizations concerned primarily with public lands and organizations concerned primarily with private lands will be treated as two wings of a single “Wise Use” movement. (For more information on some of the larger national “property rights” groups, see Table 1).

The Successes of the National The “Wise Use” Movement

Through a number of high profile court cases and by successfully lobbying for “takings” and “property rights” laws, the “Wise Use” movement and the “property rights” movement have become a strong political force. Before and since *Lucas v. South Carolina Coastal Council* in 1992, there have been many property rights cases brought before state and federal courts, including United States Supreme Court cases *Nollan v. California Coastal Commission* (1987) and *Dolan v. City of Tigard* (1994).⁵⁹ Of all the United States Supreme Court cases, *Lucas* is the most important because it establishes that regulation depriving a property owner of all economically viable use of his/her land

⁵⁷ See Alliance for America homepage at <http://home.navisoft.com/alliance/afaweb/afahome.htm>

⁵⁸ See Table 1

⁵⁹ See Richard Minitier. *You Just Can't Take It Anymore: America's Property Rights Revolt*. Policy Review. p45. Fall, 1994.

is a compensable taking if the property owner is not causing a common-law nuisance.⁶⁰ Justice Scalia, delivering the opinion of the court, found that regulations whose primary purpose is to promote tourism or “the creation of a habitat for ‘indigenous flora and fauna’” are not preventing a common-law nuisance but providing a public benefit and therefore do not activate government police powers as set forth in the 1887 United States Supreme Court case *Mugler v. Kansas*.⁶¹ Although “Wise Use” groups often claim *Lucas* as a victory, they believe that it did not go far enough toward protecting private property rights. In general “Wise Use” groups support a somewhat broader interpretation of regulatory “takings” that includes “the prohibition of any Constitutionally protected use” and “significant economic impairment due to regulation.”⁶²

Recently there has been “a significant shift in the efforts of property rights proponents from the judicial to the legislative arena.”⁶³ Up to and including 1996, 22 states have passed “takings” legislation and “takings” bills have been introduced in all states but Connecticut.⁶⁴ These statutes can be divided into four general types: “preliminary measures, assessment provisions, entitlement bills, and conflict resolution measures.”⁶⁵ Of these types of statutes, assessment measures, which “generally require that the government review the takings implications of proposed rules and regulations in order to avoid litigation” are the most common nationwide.⁶⁶ “Entitlement measures are

⁶⁰ *Id.*

⁶¹ *See Lucas v. South Carolina Coastal Council*, 112 S.Ct. 2886 (1992)

⁶² *See* Personal Interview with Brian Bishop, March 1998.

⁶³ *See* Mark W. Cordes. *Leapfrogging the Constitution: The Rise of State Takings Legislation*. Ecology Law Quarterly. #2. Vol.24. p241. 1997

⁶⁴ *See* Ronald M. Wolanski. *Supra* note 10

⁶⁵ *See* Ronald M. Wolanski. *Supra* note 10 at p3. Mark W. Cordes *Supra* note 54 at p204 mentions only two types: assessment statutes and compensation statutes

⁶⁶ *Id.*

those designed to strengthen private property rights,” by “limiting public rights, protecting existing public rights, or creating new rights.”⁶⁷

At the federal level no property rights laws have been passed, although several have been introduced.⁶⁸ The most recent and thorough of the federal bills is 1998 Senate bill 781, or the “Omnibus Property Rights Act of 1998,” sponsored by Orrin Hatch.⁶⁹ This bill includes aspects of all the types of property rights bills mentioned in the previous paragraph.⁷⁰ With the exception of House bill 752, which addresses appeals to alleged violations of the Endangered Species Act specifically, the seven other federal “property rights” bills introduced by the 105th Congress are almost completely contained within Senate bill 781.⁷¹ Section 202 of 1998 Senate bill 781 reads:

The purpose of this Act is to encourage, support, and promote the private ownership of property by ensuring the constitutional and legal protection of private property by the United States Government by-- (1) the establishment of a new Federal judicial claim through which to vindicate and protect property rights; (2) the simplification and clarification of court jurisdiction over property right claims; (3) the establishment of an administrative procedure that requires the Federal Government to assess the impact of government action on holders of private property; and (4) the minimization, to the greatest extent possible, of the taking of private property by the Federal Government and to ensure that just compensation is paid by the Government for any taking.⁷²

Senate Bill 781 proposes a new standard for a regulatory taking; stating that only 33 percent of the value of a piece of property or the part of that property affected by regulation need be deprived of value to be compensated.⁷³ The Act defines property as “estates in fee, life estates, estates for years, or otherwise; ...personalty that is affixed to

⁶⁷ *Id.* at p4.

⁶⁸ *See* Mark W. Cordes *Supra* note 54 at p189.

⁶⁹ *See* United States Congress. Senate, ‘Omnibus Property Rights Act of 1998’. 105th Cong., 1st sess., S781. From Thomas website published by The Library of Congress. at <http://thomas.loc.gov/>.

⁷⁰ *Id.*

⁷¹ *See* United States Congress. House bills 752, 95, 992 and Senate Bills 1256, 491, 709, and 953. From Thomas website published by The Library of Congress. at <http://thomas.loc.gov/>.

⁷² *See* United States Congress. Senate, ‘Omnibus Property Rights Act of 1998’. 105th Cong., 1st sess., S781. From Thomas website published by The Library of Congress. at <http://thomas.loc.gov/>.

⁷³ *Id.*

or appurtenant to real property; easements; leaseholds; recorded liens; and contracts or other security interests in, or related to, real property.”⁷⁴ Such a definition would include grazing rights and a possibly all government contracts. This bill is also unusual in that it would compensate property owners out of the regulatory agency’s budget, creating a freezing effect on much land-use regulation.⁷⁵ The influence of “Wise Use” and “property rights” organizations in drafting this bill is evident from the language used. Finding 1 states; “the private ownership of property is essential to a free society and is an integral part of the American tradition of liberty and limited government.”⁷⁶ In a statement in support of the bill, Senator Hatch cited John Locke, a perennial favorite of the “property rights” movement.⁷⁷ The “Alliance for America,” the most active “Wise Use” umbrella group, has supported the bill since its introduction.⁷⁸ As of May 12, 1998, Senate bill 781 remains in the Senate Judiciary Committee.⁷⁹

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ See Orrin Hatch, U.S. Senator. *Statement Of Sen. Orrin G. Hatch Before the United States Senate January 31, 1997.* <http://www.senate.gov/~hatch/state10.html>

⁷⁸ See “Alliance for America” webpage at <http://home.navisoft.com/alliance/afaweb/afahome.htm>

III. The “Wise Use” Movement in Rhode Island

What organizations constitute the “Wise Use” Movement in Rhode Island?

Despite the formation of umbrella organizations, or organizations of organizations, and a cohesive internet and fax network, the national “Wise Use” movement remains somewhat ill-defined. Therefore, determining what organizations to include as a part of the Rhode Island “Wise Use” movement became a more difficult task than I had anticipated. Membership in a “Wise Use” umbrella organization, I found, is not necessary or sufficient to be included in the “Wise Use” movement. The “Alliance for America,” one of the largest and certainly the most visible national “Wise Use” organization, claims two member organizations in Rhode Island: Rhode Island Wise Use (RIWU) in Exeter, and the East Coast Fisheries Federation (ECFF) in Narragansett.⁸⁰ After speaking to the leaders of both these organizations, Brian Bishop and James O’Malley respectively, I found that the ECFF could not be included in the “Wise Use” movement in Rhode Island. O’Malley says that his organization gave the Alliance for America \$100 in 1992 or 1993, but he no longer considers his organization aligned with the Alliance for America or the “Wise Use” movement.⁸¹ He claims to have not openly supported any “property rights” legislation and his organization has consistently fought against creating property rights in fisheries, a goal which the “Wise Use” movement generally supports.⁸² That the Alliance for America counts the ECFF as a member demonstrates that “Wise Use” membership numbers are probably inflated. RIWU,

⁷⁹ *Id.*

⁸⁰ See “Alliance for America” webpage at <http://home.navisoft.com/alliance/afaweb/afahome.htm>. No other “Wise Use” umbrella groups claim member organizations in Rhode Island.

⁸¹ See Personal interview with James O’Malley. February, 1998. James O’Malley can be contacted at the headquarters of the “East Coast Fisheries Federation” PO Box 649 Narragansett RI 02882 Ph (401) 782-3440 or fax (401) 782-4840

however, has demonstrated, through consistent support of “property rights” bills and the many high profile statements of Brian Bishop, that it should be included in the Rhode Island “Wise Use” movement.⁸³

The Environmental Working Group's, *Clearinghouse on Environmental Advocacy and Research* (CLEAR), has compiled a comprehensive list of “Wise Use” organizations. CLEAR includes the Rhode Island Farm Bureau (RIFB) as a “Wise Use” organization, even though its parent organization, the American Farm Bureau, is not a member of any “Wise Use” umbrella group.⁸⁴ Although the President of the RIFB, Bill Stamp, does not like his organization to be included in the “Wise Use” movement, the RIFB has been the biggest supporter of “property rights” legislation in Rhode Island.⁸⁵ By introducing many of the earliest “property rights” bills into the Rhode Island legislature, RIFB represents an important part of the “Wise Use” movement in Rhode Island.

For the purposes of this thesis I will consider “Rhode Island Wise Use” and “Rhode Island Farm Bureau” as the only organizations in Rhode Island that may be referred to as “Wise Use” organizations. Only one other organization in Rhode Island, the “Rhode Island Association of Realtors,” has publicly endorsed any “property rights” bills.⁸⁶ Since the “Rhode Island Association of Realtors” has only taken a public

⁸² *Id.*

⁸³ More on the activities and goals of “Rhode Island Wise Use” later.

⁸⁴ See CLEAR webpage at <http://www.ewg.org/pub/home/clear/clear.html> “Rhode Island Farm Bureau” is a subsidiary division of the “American Farm Bureau” which does not identify itself as a “Wise Use” organization.

⁸⁵ See Personal interview with Bill Stamp. January 1998. Bill Stamp can be contacted at the “Rhode Island Farm Bureau” office, 201 Comstock Parkway, Cranston. Ph (401) 946-8589. More on the goals and activities of “Rhode Island Farm Bureau” later.

⁸⁶ See Letter submitted as evidence to the Kennedy Commission. Susan Arnold (RI Association of Realtors’ legal council) to Chairman Brian P. Kennedy. January 31, 1997. Also See Personal Interview with Brian Bishop, March 1998.

position relatively recently and does not share many of the same goals as the national “Wise Use” movement, I would characterize their organization as a minor player in the Rhode Island “Wise Use” movement, if they are to be included at all.⁸⁷

Background or how to make a “Wise Use” activist

The two organizations that are the primary forces behind the “Wise Use” movement in Rhode Island are very different, but their leaders both had similar experiences with environmental regulations and regulators. Brian Bishop, founder and president of “Rhode Island Wise Use” (henceforth RIWU,) and Bill Stamp, president of the “Rhode Island Farm Bureau” (henceforth RIFB,) have both been cited for destroying wetlands on property they own. Since RIWU and RIFB are organizations whose policies are determined in large part by their leaders (the latter to a lesser degree than the former) the stories of these two individuals are crucial to understanding the motivations of the organizations they lead.

Brian Bishop is a self-described “back to the land hippie type,” and he looks the part.⁸⁸ In 1988, Bishop and his wife bought 140 acres across the road from his farm in Exeter to sell in a “land-coop” as 20 acre plots to his friends.⁸⁹ He proceeded to construct a driveway through his property on what he thought might be wetlands.⁹⁰ However, since he was subdividing the land in far larger plots than required by zoning, he believed that environmental regulators would be indebted to him for preserving so

⁸⁷ *Id.*

⁸⁸ See Brian Bishop. Personal interview. February 1997. Brian Bishop may be contacted at the headquarters of “Rhode Island Wise Use” 199 Austin Farm Road, Exeter, RI 02822 Ph (401) 392-0212 fax (401) 397-5507 or e-mail at RIWISEUSE@aol.com

⁸⁹ Lord, Peter. Air, Land , and Water: Focus on our Environment: Activist with an attitude, Brian Bishop loves the environment, but despises DEM and Save the Bay. The Providence Journal-Bulletin. September 10, 1995. p1D.

⁹⁰ *Id.*

much open space.⁹¹ On advice from a friend, Bishop applied for a permit after the fact for constructing the driveway.⁹² His application was refused by the Rhode Island Department of Environmental Management (RIDEM), was fined \$1,675 for destroying protected wetlands, and ordered to remove the driveway.⁹³ Bishop fought the ruling for two years, costing him a large sum of money and forcing him to rent out his house.⁹⁴ Bishop's personal conflict with the RIDEM resulted in him founding "Rhode Island Wise Use," early in 1992 to support the first "property rights" bill introduced into the Rhode Island legislature.⁹⁵

Bill Stamp, a lifelong farmer in Cranston, was elected as president of the "Rhode Island Farm Bureau" in 1975.⁹⁶ In 1978, after the completion of Route 295 placed his farm near a major highway interchange, the City of Cranston changed his zoning to industrial, raising his tax bill from \$4,000 to \$72,000.⁹⁷ Stamp and other affected property owners who wanted to keep on farming sued the town and had their tax bill reduced.⁹⁸ Several years later however, believing the City would attempt to raise his taxes again, Stamp attempted to develop the land into an industrial park.⁹⁹ In 1986, Stamp received permission from Cranston to subdivide the land into more than 50 lots and, in exchange for setting 8.7 acres aside as a conservation easement, RIDEM

⁹¹ See Brian Bishop *Supra* note 86

⁹² *Id.*

⁹³ See Peter Lord *Supra* note 87

⁹⁴ *Id.*

⁹⁵ See Brian Bishop *Supra* note 86

⁹⁶ See Bill Stamp. Personal Interview. February 1998.

⁹⁷ See Peter Lord. *Air, Land and Water: Focus on our Environment: Stamp's stalemate: Decade-long wetlands dispute stops Cranston farmer from building an industrial park.* The Providence Journal-Bulletin. March 24, 1996. Pg 1C.

⁹⁸ *Id.*

⁹⁹ *Id.*

approved the project.¹⁰⁰ The Army Corps of Engineers then rescinded the permit and ordered Stamp not to destroy any wetlands.¹⁰¹ Believing he was not destroying wetlands, Stamp built an access road into the property, but the Army Corps issued a cease and desist order and filed a lawsuit against him.¹⁰² The resulting court battle continues on to the date of this writing, nearly causing Stamp's farm to be foreclosed.¹⁰³ According to Bill Stamp, the president of RIFB, his experience has been the major motivation for the RIFB's work on property rights issues that began actively in 1992.¹⁰⁴

Organizational Structure and Membership

The structure of "Rhode Island Wise Use" is more like a proprietorship of Brian Bishop with a supportive constituency than an integrated organization where decisions and work are done by committee. Not a membership organization but a grassroots organizing effort, RIWU is a loose affiliation of approximately 400 individuals on a mailing list compiled by Brian Bishop.¹⁰⁵ Ten to twenty of the people on Bishop's mailing list, such as Caroline Karp (my distinctly non-"Wise Use"-affiliated faculty advisor,) "are not necessarily married to [Bishop's] goals."¹⁰⁶ Some of the (more dedicated) people on the RIWU mailing list attend monthly meetings at Bishop's farm.¹⁰⁷ All the administrative work and organizing is done by Brian Bishop, with some input from those who attend meetings.¹⁰⁸ Funding is provided by small voluntary donations from some individuals on the mailing list, some other individual persons, and from Brian

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ See Bill Stamp. Phone interview. April 1998.

¹⁰⁴ See Bill Stamp *Supra* note 94

¹⁰⁵ See Brian Bishop *Supra* note 86

¹⁰⁶ *Id.* I was not able to get a full mailing list from Brian Bishop, so I have no way of verifying these numbers myself.

Bishop's pocket.¹⁰⁹ Rhode Island Wise Use's budget was approximately \$2,000 in 1997 and has never been larger than approximately \$4,000 in 1995.¹¹⁰

Since Bishop was reluctant to provide me with contact numbers or addresses of the individuals on his mailing list, my independent assessment of RIWU's constituency are based on observing and interviewing those that attended three meetings in the winter of 1997-1998. Brian Bishop describes his mailing list as "primarily middle-class white people who have had problems with the suburban-rural interface."¹¹¹ According to Brian Bishop, the majority of those on the RIWU mailing list are individuals who have had a conflict with environmental regulation, but some have a "technical interest in property rights, such as lawyers and developers."¹¹² This description appears to be an accurate assessment of the people who attend RIWU meetings. Every person I saw could be described as Caucasian and everyone I spoke to described themselves as middle class.¹¹³ Although I was not able to interview everyone in attendance, every person who spoke at every meeting identified themselves as a property owner who has either had a conflict with environmental regulation or fears having such a conflict in the near future.¹¹⁴ Attendees also appeared to be primarily middle aged, which would fit the general description of a property owner in the suburban-rural interface.¹¹⁵ Occupations of those I spoke to included teachers, lawyers, doctors, farmers, fishermen, housewives, and a

¹⁰⁷ Personal attendance at RIWU meetings. November 1997, January 1998, March 1998

¹⁰⁸ See Brian Bishop *Supra* note 86

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See RIWU meetings *Supra* note 105

¹¹⁴ *Id.*

¹¹⁵ *Id.*

retired assistant director of the Rhode Island Department of Environmental Management.¹¹⁶

The “Rhode Island Farm Bureau,” established in 1963, is a division of the American Farm Bureau - “the largest organization of farmers in the world and the seventeenth largest lobbying organization in the United States.”¹¹⁷ Unlike RIWU, the RIFB is an incorporated membership organization that elects a President and a Board of Directors.¹¹⁸ The Board of Directors consists of four elected officers who are supplemented by eight elected directors.¹¹⁹ All policy decisions and activities are coordinated by the Board of Directors.¹²⁰ The RIFB employs two people full-time and one part time, including a full time lobbyist and financial director, Lee Gardner.¹²¹ The RIFB’s budget was approximately \$120,000 last year, raised from the \$25 dues payments of 2,400 member families and revenue from their farm insurance program.¹²² The RIFB is a nonprofit, non-partisan, lobbying and service organization for farmers in New England.¹²³

The members of RIFB are primarily “small family farmers” as well as some allied tradespeople, such as tractor salesmen and farm service companies.¹²⁴ Bill Stamp characterizes the membership of RIFB as “running the whole gamut” but primarily white and middle-class.¹²⁵ I am unable to verify these assessments for myself because RIFB does not give out the telephone numbers of its members, nor do they hold regular

¹¹⁶ *Id.*

¹¹⁷ *See* Bill Stamp *Supra* note 94

¹¹⁸ *Id.*

¹¹⁹ *See* “Rhode Island Farm Bureau” webpage at <http://www.fb.com/rifb/>

¹²⁰ *See* Bill Stamp *Supra* note 94

¹²¹ *Id.*

¹²² *See* Lee Gardner. Phone interview. March 1998.

¹²³ *Id.*

membership meetings.¹²⁶ Fortunately, several members of RIFB supplied testimonial letters to the Kennedy Commission that I was able to retrieve from the state archive.¹²⁷ Each of these five individuals identified themselves as family farmers, members of RIFB and recounted their personal conflict with the RIDEM.¹²⁸ (In 1992, there were 649 farms in Rhode Island with an average of 76 acres per-farm, while in 1982 there were 728 farms in Rhode Island with an average 86 acres per farm.¹²⁹ 2570 families reported farm self-employment income in Rhode Island in 1990.)¹³⁰

Ideology and Goals

The ideology and goals of RIWU are determined by Brian Bishop with some suggestions from those who attend meetings.¹³¹ Though Bishop often distinguishes between activities he undertakes as an individual and those he pursues in his capacity as the president of RIWU, he often speaks as if his ideology is indistinguishable from the ideology of RIWU. Bishop describes the main goal of RIWU as “insuring what happened to me doesn’t happen to anyone else.”¹³² He thinks that land use laws, as well as environmental laws in general, should be less restrictive on both private owners as

¹²⁴ See Bill Stamp *Supra* note 94

¹²⁵ *Id.*

¹²⁶ *Id.* The Board and Board of directors meets semi-regularly to discuss organizational business.

¹²⁷ The Kennedy Commission was a Rhode Island Legislative inquiry into the procedures and structure of RIDEM. See Sue Albert. Personal letter to Lee Gardner. Testimony submitted by RIFB to Kennedy Commission. December 17, 1996. And See A. O. Constantino. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 30, 1992. And See Lawrence Desuza. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 22, 1992. And See Genaro Constantino. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 28, 1992. And See Robert Esposito. Personal letter to RIDEM. Submitted as evidence to Kennedy Commission. December 29, 1992.

¹²⁸ *Id.*

¹²⁹ Government Information Sharing Project. 1992 Rhode Island Agricultural Census. Webpage at <http://govinfo.library.orst.edu/cgi-bin/ag-list?01-state.ris>

¹³⁰ See United States Census Bureau. Webpage at <http://venus.census.gov/cdrom/lookup/895046412>

¹³¹ See Brian Bishop *Supra* note 85

¹³² See Brian Bishop. Personal interview. March 1998.

well as those that utilize public lands.¹³³ However, Bishop is quick to add that as the president of RIWU he is primarily concerned with private property.¹³⁴ Bishop believes that “we can make good environmental decisions and get good results without doing violence to property rights and the Constitution.”¹³⁵ Indeed, he contends that he is concerned with the state of the environment, though he no longer calls himself an environmentalist.¹³⁶ Bishop’s stated philosophy is well represented by the RIWU insignia which represents “solutions” as being the intersection of two circles labeled “environmental protection” and “economic sensibility.”¹³⁷ Bishop admits a preexisting hostility to authority and bureaucracy now focused toward environmental regulators who he believes are “generally incompetent, and interested in their own agenda to the exclusion of what the public thinks.”¹³⁸ In addition, he believes that the Rhode Island Department of Environmental Management (RIDEM) is too powerful, acting as an impersonal “judge, jury, and executioner” of environmental regulations.¹³⁹ Although Bishop admits his conflict with environmental regulation resulted in a monetary motivation,¹⁴⁰ he adds that his efforts and the efforts of other “Wise Use” organizations have been “carefully gerrymandered in the public opinion mills to... appear as an agenda of greed when in fact they are quite clearly a matter of principle, equity, individual sovereignty...”¹⁴¹

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See RI Wise Use newsletter. Submitted as evidence in Kennedy Commission hearings. February 5, 1997.

¹³⁸ See Brian Bishop. Phone interview. March 1998.

¹³⁹ *Id.*

¹⁴⁰ See Brian Bishop *Supra* note 75

¹⁴¹ See Brian Bishop. *Testimony June 13, 1995 Brian Bishop Founder RI WISEUSE House Resources Private Property Rights*. Federal Document Clearing House Congressional Testimony. June 13, 1995.

Although Bishop's ideology, and by extension the ideology and goals of RIWU, seems very clear in the abstract, it becomes much more complex when he is presented with hypothetical situations. The following hypotheticals were asked:¹⁴²

1. (Hypothetical) "A" purchases a piece of undeveloped property in RI. The property is designated as a "wetlands" under RI law at the time that A buys the land. A subsequently seeks a permit to build a single family home. There are existing single family homes on adjacent parcels. The RIDEM denies A a permit to modify the wetlands. The denial effectively means that A cannot develop the property, i.e., A has lost all economically beneficial use of the property. A files suit against the RIDEM alleging an unconstitutional regulatory taking of his/her property under the 5th Amendment of the US and RI Constitutions. In your opinion, should A be compensated by the SORI for RIDEM's refusal to issue a permit? Why or why not?

2. (Hypothetical) "A" owns 50 acres of land in RI and has used this agriculturally-zoned land for agricultural purposes for the past 20 years. In 1985, the town re-zones this land as 10 acre Residential or Restricted Agricultural. "A" wishes to sell the property to a commercial developer. The Town refuses "A's" request for a zoning variance. A files suit against the Town alleging an unconstitutional regulatory taking of his/her protected economic interest in developing the property. In your opinion, should A be compensated by the SORI for RIDEM's refusal to issue a permit? Why or why not?

3. (Hypothetical) The USEPA issues a final rule pursuant to the Clean Air Act requiring use of Best Available Technology (BAT) to eliminate use of trichloroethylene (TCE) by drycleaners. The rule is effective January 1, 1997. YWASH, a Rhode Island drycleaner, files suit against the Rhode Island Department of Environmental Management, the State of Rhode Island and the USEPA in federal district court claiming that compliance with the rule will cost \$25,000, which represents over 50% of the total value of YWASH, and will effectively put YWASH out of business. In your opinion, should YWash be compensated by the SORI for RIDEM's refusal to issue a permit? Why or why not?

4. (Hypothetical) "A" has been a commercial fisher in the SORI since 1996. In 1997, the SORI issues regulations limiting access to the fishery in order to protect declining fish stocks. People who entered the fishery after 1995 are denied permits to fish. "A" A files suit against the SORI alleging an unconstitutional regulatory taking of his Constitutionally-protected right of entry/use 'free and common access to the fishery". In your opinion, should A be compensated by the SORI for its refusal to issue a fishing license? Why or why not?

When questioned about a situation where a buyer is denied a permit to build on a wetland (Hypothetical 1,) Bishop responded that if it is clear that the buyer could not build before he/she purchased the land, then it is not a taking.¹⁴³ However, Bishop added, it is rarely clear.¹⁴⁴ "Judges have found it convenient to rely on a buyer beware regime, and of

¹⁴² Caroline Karp, author. Raphael Cunniff, ed.

¹⁴³ See Brian Bishop *Supra* note 85

¹⁴⁴ *Id.*

course they don't want to find a taking because the government pays their checks," Bishop stated.¹⁴⁵ In general, Bishop wants land-use restrictions to be clearly defined by regulatory agencies and believes landowners should be compensated when a preexisting acceptable use of their land is denied by regulation.¹⁴⁶ Bishop responded to Hypothetical 2, where residential zoning prevents commercial development, with general hostility toward zoning laws, saying that they are often "concealed tools of racial discrimination and government corruption."¹⁴⁷ Bishop continued, "rather than beating up on the people who didn't sell first, let everyone live by the same law. In a case that extreme, this is a taking."¹⁴⁸ Bishop believes that all uses allowed at the time of purchase are guaranteed and any denial of them is a "taking" under the Fifth Amendment of the United States Constitution.¹⁴⁹ Despite his generally hard line attitude concerning government "takings," when presented with Hypothetical 3, where a drycleaner claims it is being put out of business by being forced to stop using a dangerous chemical, Bishop was unsure. "On this one it depends," said Bishop. "I don't believe the government owes people a certain worth in their property. I define it through use.... Nominal devaluation of a business does not constitute a taking."¹⁵⁰ Though Bishop's response seems incompatible with his general philosophy, it reflects a belief that dangerous emissions are a nuisance under common-law.¹⁵¹ In response to Hypothetical 4, having to do with takings in fisheries due to regulation, Bishop also believed that no taking took place.¹⁵² However,

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

he proceeded to make a case for property rights to be created in fisheries, as he argues, already exist for federal grazing permits.¹⁵³ “If there were a tradable property rights system in fisheries, that would be a taking.”¹⁵⁴

Unlike RIWU, Rhode Island Farm Bureau, makes decisions by committee, reflecting a wider range of views in its ideology. However, since Bill Stamp, whose conflicts with environmental regulators are well known to the members of RIFB, was elected by its members, his ideology is still largely illustrative of the ideology of the Rhode Island Farm Bureau. Before talking about property rights, Stamp emphasizes that RIFB is “first and foremost, a farmers service organization.”¹⁵⁵ The RIFB’s primary goal is to protect farmers and “stop them from being an endangered species”¹⁵⁶ In addition, Stamp repeatedly showed hostility toward regulators, saying that “the Army Corps of Engineers is the biggest job creation scheme in history” and “I’m a legislative guy, but if they want this to come to guns, I’m ready.”¹⁵⁷ With regard to property rights ideology, Stamp’s responses to the hypotheticals are most illustrative. Stamp’s answers to the first two hypotheticals reflected his personal experiences. To Hypothetical 1 Stamp said that if the owner were being taxed for a residential lot, thus guaranteeing residential use, than not allowing him to build would be a taking.¹⁵⁸ In response to the second Hypothetical, which is based on Stamp’s case, he simply said, “you bet your ass they should pay him!”¹⁵⁹ Stamp’s responses to the last two hypotheticals reflected a belief that governments relationship with citizens should be more personal and cooperative,

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *See* Bill Stamp *Supra* note 84

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

however, he did not believe a taking could be claimed in either case for the same reasons as Bishop.¹⁶⁰

The RIFB's mission statement and membership appear to echo Stamp's views. RIFB's website states that one of their central tenets is that "property rights are among the human rights essential to the preservation of individual freedom."¹⁶¹ In addition RIFB holds that, "individual freedom and opportunity must not be sacrificed in a quest for guaranteed "security."¹⁶² Although, as already mentioned, I could not contact RIFB members individually, several supplied testimonial letters to the Kennedy Commission which support the above sentiments.¹⁶³ Robert Esposito, a member of RIFB writes that the RIDEM has become a "bureaucratic maze," and argues that he should be compensated because the government has "taken" his land through regulation.¹⁶⁴ Similar statements were also submitted by Genaro Constantino, A. O. Constantino, Lawrence De Souza and Susan Albert, among others, care of the RIFB.¹⁶⁵ Each of these members of

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *See* "Rhode Island Farm Bureau" webpage at <http://www.fb.com/rifb/>

¹⁶² *Id.*

¹⁶³ *See* Sue Albert. Personal letter to Lee Gardner. Testimony submitted by RIFB to Kennedy Commission. December 17, 1996. And *See* A. O. Constantino. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 30, 1992. And *See* Lawrence Desuza. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 22, 1992. And *See* Genaro Constantino. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 28, 1992. And *See* Robert Esposito. Personal letter to RIDEM. Submitted as evidence to Kennedy Commission. December 29, 1992.

¹⁶⁴ *See* Robert Esposito. Personal letter to RIDEM. Submitted as evidence to Kennedy Commission. December 29, 1992.

¹⁶⁵ *See* Sue Albert. Personal letter to Lee Gardner. Testimony submitted by RIFB to Kennedy Commission. December 17, 1996. And *See* A. O. Constantino. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 30, 1992. And *See* Lawrence Desuza. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 22, 1992. And *See* Genaro Constantino. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 28, 1992.

RIFB identified themselves as family farmers who had been in a conflict with the RIDEM.¹⁶⁶

Strategies

RIWU is primarily a grassroots organizing effort designed to support the goals articulated by Brian Bishop. As an organization, RIWU holds meetings, usually with guest speakers, “about six times a year” on the first Sunday of the month.¹⁶⁷ The meetings I observed were attended by as few as twenty to as many as fifty people.¹⁶⁸ In addition, members often petition state and federal government and participate in protests organized by Brian Bishop.¹⁶⁹ As an individual but in his capacity as president of RIWU, Bishop prints newsletters as invitations to RIWU meetings, has testified before both the United States and the Rhode Island legislatures, advises those in conflict with environmental regulations, and engages in public relations efforts such as publishing editorial opinions in the Providence Journal-Bulletin.¹⁷⁰ Although the distinction is not always made, Bishop says he engages in a number of “Wise Use” activities not in his capacity as president of RIWU. These include acting as the Northeast Director of the Alliance for America, organizing their 1997 “Fly-in for Freedom” conference in Washington D.C., and meeting with “Wise Use” leaders from other states.¹⁷¹ Bishop says that he does not concentrate on any one strategy, “just whatever will get the most attention at the time.”¹⁷²

¹⁶⁶ *Id.*

¹⁶⁷ *See* Brian Bishop *Supra* note 85

¹⁶⁸ *See* RIWU meetings *Supra* note 105

¹⁶⁹ *See* Brian Bishop *Supra* note 85

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

Unlike RIWU's grassroots generalist approach, RIFB concentrates almost completely on lobbying. Bill Stamp describes their organization as "constantly trying to introduce legislation or kill it."¹⁷³ Because of their large budget, RIFB can afford to have a full time lobbyist, Lee Gardner, pushing their views at the Providence State House.¹⁷⁴ All of the "property rights" bills submitted into the Rhode Island Legislature, except the 1992 and 1998 bills, were drafted by, or with significant input from, the RIFB, based on bills that had been successful in other states.¹⁷⁵ In addition to their legislative activities, RIFB publishes a bi-monthly newsletter and encourages members to petition state and federal government on issues of importance to farmers.¹⁷⁶

IV. Successes of the "Wise Use" movement in Rhode Island

Visibility of "Wise Use" Leaders

The most notable success of the "Wise Use" movement in Rhode Island has been the high level of visibility achieved by Brian Bishop and Bill Stamp. Since Bishop is the Northeast Director of the Alliance for America, the most active and powerful national "Wise Use" umbrella group, Exeter, Rhode Island has become the headquarters for national "Wise Use" activity in the northeast. In addition, Bishop has a fairly consistent presence in local media such as the Providence Journal-Bulletin.¹⁷⁷ Bishop has testified

¹⁷³ See Bill Stamp *Supra* note 94

¹⁷⁴ See Lee Gardner. Phone interview. March 1998.

¹⁷⁵ See Bill Stamp *Supra* note 94. More on RI property rights bills later.

¹⁷⁶ *Id.*

¹⁷⁷ For examples See Peter Lord. *Air, Land, and Water: Focus on our Environment: Activist with an attitude, Brian Bishop loves the environment, but despises DEM and Save the Bay.* The Providence Journal-Bulletin. September 10, 1995. p1D. or See Brian Bishop. *Don't Trust Land Trusts.* Providence Journal-Bulletin. February 15, 1998. p9B. or See Anonymous. *Environmental Journal: Exeter resident to chair conference.* Providence Journal-Bulletin. May 27, 1997. p8B. or See Peter Lord. *Air, Land, and Water: Focus on our Environment: West meets east to discuss our Environment.* Providence Journal-Bulletin. April 28, 1996. p8B. or See Robert C. Frederiksen. *Advocacy group chief criticizes proposed new wetlands rules; Brian Bishop, head of RI Wiseuse, says the changes in the law would merely*

before the Rhode Island State Legislature numerous times on issues including wetlands regulations, property rights, the restructuring of the Rhode Island Department of Environmental Management and served on a citizen's council on the Providence combined sewer overflow problem.¹⁷⁸ Bishop has also testified before the United States House of Representatives Committee on Resources Task Force on Property Rights.¹⁷⁹ His own assessment of his greatest accomplishment is “allowing legislatures to say property and rights in the same sentence.”¹⁸⁰

Though perhaps not as well known locally as Brian Bishop, Bill Stamp has become a “poster child for the growing property-rights movement.”¹⁸¹ Though he is not comfortable being associated with the “Wise Use” movement, Bill Stamp is proud of telling his story to the Wall Street Journal and Rush Limbaugh and acknowledges that his story is often retold by “Wise Use” groups.¹⁸² The visibility of these two individuals has brought attention to property rights issues and encouraged those in conflict with environmental regulations in Rhode Island, such as Dave Emond, to bring suit against RIDEM.¹⁸³

Kennedy Commission

The “Wise Use” movement in Rhode Island has made itself especially visible recently through the Kennedy Commission. Sponsored in 1997 by Rhode Island State

perpetuate government controls on private property. Providence Journal-Bulletin. December 29, 1995. p5B. And others too numerous to list...

¹⁷⁸ See Brian Bishop. Phone Interview. April 1998.

¹⁷⁹ See Brian Bishop. *Testimony June 13, 1995 Brian Bishop Founder RI WISEUSE House Resources Private Property Rights.* Federal Document Clearing House Congressional Testimony. June 13, 1995.

¹⁸⁰ See Brian Bishop *Supra* note 85

¹⁸¹ See Richard Salit. *'I'll kiss the ground' Bill Stamp slowly gaining in 30-year fight to develop his former farm in Cranston.* Providence Journal-Bulletin, West Bay Edition. February 7, 1997.

¹⁸² See Bill Stamp *Supra* note 94.

¹⁸³ See Dave Emond. Personal letter to Brian Bishop. Postmarked November 6, 1995.

Representative Brian Patrick Kennedy¹⁸⁴ (D.) the Commission invited any and all public comment about the current structure and policies of the RIDEM.¹⁸⁵ Brian Bishop, Lee Gardner and Bill Stamp, none of whom were involved in organizing the hearings, submitted testimony along with several members of RIFB.¹⁸⁶ Their testimony stressed the need to reform the RIDEM and attacked policies concerning wetlands, citizen hearings, cost-benefit analysis and numerous other topics.¹⁸⁷ Brian Bishop, whose testimony was longer than any other submitted, stressed such topics as “regulatory streamlining” and “administrative adjudication.”¹⁸⁸

Although the testimony of RIWU and RIFB made clear the voices and views of those two organizations, the testimony of individuals not associated with these two groups demonstrates that “Wise Use”-like opinions are not only expressed by “Wise Use” groups. Susan Arnold of the Rhode Island Association of Realtors wrote, referring to RIDEM, “the average citizens of Rhode Island need protection from the power of a bureaucracy... which has ceased to recognize the need to appropriately balance the police powers of the state with the private property rights of individuals.”¹⁸⁹ Micheal P. Merner, Board Member of the RI Natural Organic Farmers Association who had been

¹⁸⁴ Brian Kennedy’s brother has recently been cited for violation of dumping laws, giving him a personal interest in seeing the RIDEM reformed.

¹⁸⁵ See Rep. Brian Kennedy. Item 1 of evidence submitted to the Kennedy Commission.

¹⁸⁶ See Sue Albert. Personal letter to Lee Gardner. Testimony submitted by RIFB to Kennedy Commission. December 17, 1996. And See A. O. Constantino. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 30, 1992. And See Lawrence Desuza. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 22, 1992. And See Genaro Constantino. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 28, 1992. And See Brian Bishop. Testimony of RIWU. Testimony submitted to Kennedy Commission. various dates. And See Lee Gardner. Personal letter to Brian Kennedy. Testimony submitted by RIFB to Kennedy Commission. December 20, 1996.

¹⁸⁷ *Id.*

¹⁸⁸ See Brian Bishop. Summary of Comments of RIWU. Testimony submitted to Kennedy Commission. undated. P3.

¹⁸⁹ See Susan Arnold. Personal letter to Brian Kennedy. Testimony submitted to Kennedy Commission. January 31, 1997.

cited for excessive odors coming from his compost, repeated Bill Stamp's slogan that "farmers are an endangered species," and advocated giving responsibility for some environmental regulations to departments other than RIDEM.¹⁹⁰ David Gold, who had been cited for creating a horse trail on his property, and many other individual citizens now in conflict with environmental regulations expressed that the RIDEM lacked "hand-in-hand spirit."¹⁹¹ All of these individuals emphasized that the RIDEM was too large, too powerful and overly bureaucratic.¹⁹²

The bill that came out of the Kennedy Commission, 1998 House Bill 7861, is extremely long and complex, drawing on much of the testimony outlined above. The bill, titled "An Act Relating to State Affairs and Government - Department of the Environment," creates a new hearing process outside RIDEM for those accused of violating environmental regulations, reassigns some of the responsibilities of the RIDEM to other agencies including the Department of Health and a new Rhode Island Resource Recovery Corporation and "makes other changes in the structure of the department."¹⁹³

The RIFB and RIWU organized a press conference in support of 1998 House Bill 7861

¹⁹⁰ See Michael P. Merner. Personal letter to Susan Rossi of RIDEM. Testimony submitted to Kennedy Commission. January 1, 1993.

¹⁹¹ See David Gold. Personal letter to Dr. Frank Golet. Testimony submitted to Kennedy Commission. October 22, 1996. And See note 190

¹⁹² See Sue Albert. Personal letter to Lee Gardner. Testimony submitted by RIFB to Kennedy Commission. December 17, 1996. And See A. O. Constantino. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 30, 1992. And See Lawrence Desuza. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 22, 1992. And See Genaro Constantino. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 28, 1992. And See Brian Bishop. Testimony of RIWU. Testimony submitted to Kennedy Commission. various dates. And See Lee Gardner. Personal letter to Brian Kennedy. Testimony submitted by RIFB to Kennedy Commission. December 20, 1996. And See Brian Bishop. Summary of Comments of RIWU. Testimony submitted to Kennedy Commission. undated. P3. And See Michael P. Merner. Personal letter to Susan Rossi of RIDEM. Testimony submitted to Kennedy Commission. January 1, 1993. And See David Gold. Personal letter to Dr. Frank Golet. Testimony submitted to Kennedy Commission. October 22, 1996.

¹⁹³ See Rhode Island Legislative Record for 1998 House bill 7861

on March 5, 1998.¹⁹⁴ Brian Bishop, Bill Stamp, Dave Gold, and Sue Arnold, spoke of their own personal conflicts with the RIDEM and praised the new hearing process in particular.¹⁹⁵ As of May 12, 1998 House bill 7861 is in the House Committee on Finance¹⁹⁶

Rhode Island “Property Rights” Bills

RIWU and RIFB have been moderately successful on the legislative front, pushing twelve “property rights” or “takings” bills to be introduced into the Rhode Island Legislature.¹⁹⁷ The first “property rights” bill introduced into the Rhode Island Legislature, Senate Bill 2681 (1992) drafted by John Kupa, who is now representing Dave Emond as attorney in his ongoing battle with RIDEM, inspired Brian Bishop to found RIWU.¹⁹⁸ Senate Bill 2681 (1992) and the nearly identical 1993 Senate Bill 740 were both self-descriptively titled “Joint Resolution: Creating a Special Legislative Commission to Study The Feasibility of Compensation to be Paid to Owners of Wetland Property with Respect to the Rules and Regulations Governing the Hearings on Wetlands.”¹⁹⁹ In the literature concerning “property rights” bills, this type of bill is generally called a Study or Preliminary Measure bill.²⁰⁰ Neither of these bills made it out of the Senate Judiciary Committee.²⁰¹

¹⁹⁴ See Emily Fink (Associated Press correspondent). Personal Interview and provided notes. April 1998.

¹⁹⁵ *Id.*

¹⁹⁶ See Bill Tracker website. <http://www.state.ri.us/bills/98%2D7861.htm> updated 5/30/98

¹⁹⁷ See Rhode Island Legislative Record for bills: 98-h-8165, 92-s-2681, 93-h-6810, 93-s-0740, 94-h-8396, 94-s-2793, 94-s-2744, 95-h-5241, 95-s-360, 95-s-509, 95-h-5241A, 96-h-7868. Although I believe my search for property rights bills in Rhode Island to be exhaustive, Brian Bishop contends that two bills were introduced in 1992, while I could only find record of one. In addition, I have heard of a 1996 bill not mentioned above, but no record of it exists in the RI State computers.

¹⁹⁸ See Brian Bishop *Supra* note 85

¹⁹⁹ See Rhode Island Senate bills 93-s-0740 and 92-s-2681

²⁰⁰ See Ronald M. Wolanski. *Supra* note 10

²⁰¹ See Rhode Island State Legislative Record at the State House in Providence. I believed that the Kennedy Commission was created by a similar bill but there is no record of this bill.

After 1992, RIFB began actively working on “property rights” bills.²⁰² The Farm Bureau Board of Directors, with assistance from Lee Gardner, drafted the first (1993 House bill 6810) in a series of nine very similar bills introduced into the Rhode Island Legislature between 1993 and 1996, House bill 6810 (1993.)²⁰³ After the first bill was drafted, following the example of several “property rights” bills that had been successful in other states, it was revised repeatedly and resubmitted in subsequent years.²⁰⁴ Each of these nine bills, all titled “An Act Relating To Property Rights,” would create a process similar to an environmental impact assessment, except involving regulatory “takings.”²⁰⁵ Though there are a few minor variations between bills, generally they would create a process where any state agency writing regulations concerning private property use would be required to assess how much state liability would result from “takings” lawsuits due to the regulation.²⁰⁶ That is, regulators would have to estimate how much property would be conscripted into public service, and thus require compensation.²⁰⁷ These types of bills, generally called “takings assessment” bills, are the most often passed “property rights” bills in all states.²⁰⁸ Brian Bishop contends that though he fought to pass each of these bills, they “would not have mattered much because the [RI] DEM doesn’t believe it’s taking any property now.”²⁰⁹ (The current standard for establishing a regulatory

²⁰² See Bill Stamp *Supra* note 94.

²⁰³ See Rep. Wayne L. Salisbury. Phone Interview. April 1998. And *See Id.*

²⁰⁴ *Id.*

²⁰⁵ See Rhode Island Legislative Record for 93-h-6810, 94-h-8396, 94-s-2793, 94-s-2744, 95-h-5241, 95-s-360, 95-s-509, 95-h-5241A, 96-h-7868.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ See Hertha L. Lund. *The Property Rights Movement and State Legislation.* from Land Rights: The 1990’s Property Rights Rebellion. Bruce Yandle, ed. Rowan and Littlefield Publishers, Inc. Lanham, Maryland. pp216-226. 1995. And *See* Mark W. Cordes. *Leapfrogging the Constitution: The Rise of State Takings Legislation.* Ecology Law Quarterly. #2. Vol.24. p204. 1997

²⁰⁹ See Brian Bishop *Supra* note 167

“taking,” as set forth in the United State’s Supreme Court decision in the *Lucas* case, requires the property owner be “deprived all economically viable use of the property.”²¹⁰

Each of these bills died in the judiciary committees of the house where they were introduced, except House Bill 5241 (1995.)²¹¹ I do not know why this particular bill, virtually identical to eight others that died without a vote, passed the House by such a wide margin (See Table 2.) Both RIWU and RIFB claim credit for pushing this particular bill especially hard.²¹² However, it might better be explained by political maneuverings in the House.²¹³ Precisely why 1995 House Bill 5241 passed the house and died without any action in the Senate Judiciary Committee, is one of the remaining unanswered questions of my thesis.

The “property rights” bill currently in the House Judiciary Committee, “Private Property Protection Act,” House bill 8165 (1998,) is a major departure from the history of “property rights” bills in Rhode Island. Its entire text reads, “Any person whose property is inordinately burdened, restricted or limited by any statute or ordinance may bring suit against a governmental entity to recover damages.”²¹⁴ By vaguely redefining “taking,” this would be the first “property rights” bill introduced in Rhode Island that fits the common description of a “compensation” or “entitlement” bill.²¹⁵ (The precise function of this bill is mysterious since citizens can already bring suit against a governmental entity to recover damages. If this bill is not meant to be interpreted as a compensation bill it would have essentially no purpose.) This bill is also unlike any

²¹⁰ See *Lucas v. South Carolina Coastal Council*, 112 s.Ct. 2886 (1992)

²¹¹ See Rhode Island State Legislative Record at the State House in Providence.

²¹² See Brian Bishop *Supra* note 157 And See Lee Gardner. Phone interview. March 1998.

²¹³ See Rep. Wayne L. Salisbury. Phone Interview. April 1998.

²¹⁴ See RI bill 98-H-8165

previous Rhode Island “property rights” bill in that it was introduced by a Democrat from an urban district, Rep. Charlene Lima, while all the others were sponsored exclusively by Republicans from primarily rural or suburban districts.²¹⁶ Neither RIWU or RIFB claim any responsibility for drafting this bill and Brian Bishop was not aware of its existence.²¹⁷ I have been unable to contact Representative Lima and have not been able to attribute authorship. As of May 12, 1998, House Bill 8165 remains in the House Judiciary Committee.²¹⁸

V. Conclusions and Unanswered Questions

The “Wise Use” movement in Rhode Island consists of two organizations: “Rhode Island Wise Use” and “Rhode Island Farm Bureau.” Both of these organizations fit the profile of the “Private Property Rights” wing of the “Wise Use” movement. They favor relaxing rules on private property owners, compensating private property owners for the loss of any “sensible” use of their land due to regulation, as well as simplifying and personalizing regulatory bureaucracies. However, RIWU expresses some ideologies that are more consistent with western public-lands “Wise Use,” just as RIFB is atypical of “Private Property Rights” groups in having such a large budget. The members and leaders of RIFB and RIWU are primarily if not exclusively Caucasian, middle class property owners residing in the rural-suburban interface who have either had a conflict with environmental regulations and regulators or fear such a conflict in the near future. The members and supporters of “Wise Use” in Rhode Island feel personally affronted by

²¹⁵ See Mark W. Cordes. *Leapfrogging the Constitution: The Rise of State Takings Legislation*. Ecology Law Quarterly. #2. Vol.24. p212. 1997

²¹⁶ See Rhode Island Legislative Record for bills: 98-h-8165, 92-s-2681, 93-h-6810, 93-s-0740, 94-h-8396, 94-s-2793, 94-s-2744, 95-h-5241, 95-s-360, 95-s-509, 95-h-5241A, 96-h-7868. And See Lists of RI State Representatives and Senators, available at RI State House in Providence.

²¹⁷ See Lee Gardner. Phone interview. March 1998. And See Brian Bishop *Supra* note 157

environmental regulations and regulators. In general, they have personal economic motives but defend their beliefs on ideological grounds. It appears that having an economic hardship imposed on an individual is a prerequisite to them holding strong “Wise Use” beliefs. After all, a person confronted with the prospect of losing their home will find an ideology to defend themselves. To achieve their goals RIWU and RIFB engage in a wide range of activities, chiefly grassroots organizing and state lobbying, respectively. The greatest success of the “Wise Use” movement in Rhode Island, has been the high visibility of its leaders in media. The “Wise Use” movement in Rhode Island has also been moderately successful in the legislative arena, helping to introduce twelve “property rights” bills of varying strength into the Rhode Island Legislature. Recently, the “Wise Use” movement in Rhode Island has been especially visible due to the Kennedy Commission hearings on the Rhode Island Department of Environmental Management. These hearings made evident the greater extent to which “Wise Use” ideologies are held outside of “Rhode Island Wise Use” and “Rhode Island Farm Bureau” through the testimony offered by David Gold, Michael P. Merner, Susan Arnold, and others. The “Wise Use” movement has achieved a high-point in its power and influence recently, as indicated by the Kennedy Commission and the introduction of the first compensation bill into the Rhode Island State Legislature.

Many unanswered questions remain ripe for research. To what extent do average citizens of Rhode Island share the beliefs of RIWU and RIFB? What percentage of individuals accused of violating environmental laws share these beliefs? What is RIWU’s and RIFB’s level of name recognition among Rhode Island citizens? Why the

²¹⁸ See Bill Tracker website. <http://www.state.ri.us/bills/98%2D8165.htm> updated 5/30/98

anomalous 1995 House bill and what inspired the 1998 compensation bill? And still, and most importantly, with whom should a libertarian environmentalist align himself?

Bibliography: Published Materials

- Alliance for America. Alliance for America homepage at <http://home.navisoft.com/alliance/afaweb/afahome.htm> 1998.
- American Land Rights Alliance. American Land Rights Alliance homepage. <http://www.landrights.org/>. 1997.
- American Loggers Solidarity. American Loggers Solidarity webpage at <http://www.olyopen.com/solidarity/frames7.htm>. 1998.
- Anonymous. Unrest in The West. Time. #17. Vol. 146. p56. 10/23/1995.
- Anonymous. The Catron County Rebellion. The Economist. #7980. Vol. 340. p22. 8/24/1996.
- Anonymous. Environmental Journal: Exeter resident to chair conference. Providence Journal-Bulletin. May 27, 1997. p8B.
- Arnold, Ron and A. Gottlieb. The Wise Use Agenda. Bellevue, Washington. Free Enterprise Press. pp 157-166. 1988.
- Arnold, Ron. Center for the Defense of Free Enterprise, personal communication with the author, 12 June 1995. As cited by Phil Brick. Determined Opposition: The Wise Use Movement Challenges Environmentalism. Environment. Vol. 37. #8. p26.
- Bishop, Brian. Testimony June 13, 1995 Brian Bishop Founder RI WISEUSE House Resources Private Property Rights. Federal Document Clearing House Congressional Testimony. June 13, 1995.

- Bishop, Brian. Don't Trust Land Trusts. Providence Journal-Bulletin . February 15, 1998. p9B.
The Blue Ribbon Coalition. The Blue Ribbon Coalition webpage at <http://www.off-road.com/4x4web/land/bluerib.html> 1998.
- Brick, Phil. Determined Opposition: The Wise Use Movement Challenges Environmentalism. Environment. Vol. 37. #8. pp 21-22. October, 1995.
- Carson, Ed. Property Frights: Why Property Rights Initiatives Are Losing At The Polls. Reason. #1. Vol. 28. p27. May, 1996.
- Chapman, Tyler E. Property Rights Movement. Boston University Law Review. #77. pp. 111-149. February, 1997.
- Coggins, George Cameron and Doris K. Nagel. "Nothing Beside Remains": The Legal Legacy Of James G. Watt's Tenure As Secretary Of The Interior On Federal Land Law And Policy. Boston College Environmental Affairs Law Review. #3. Vol. 17. p473. Spring, 1990.
- Cordes, Mark W.. Leapfrogging the Constitution: The Rise of State Takings Legislation. Ecology Law Quarterly. #2. Vol.24. p241. 1997
- Corcoran, Ann. This Land is Our Land: And We'll Protect it Better Than Government Will. Policy Review. # 63 p72. winter, 1993.
- Defenders of Property Rights. "Defenders of Property Rights Web Site: About Us." <http://www.defendersproprights.org/about.html>. last updated August 26, 1997.
- Environmental Working Group. CLEAR webpage. <http://wyl.ewg.org/>. 1997.
- Frederiksen, Robert C. Advocacy group chief criticizes proposed new wetlands rules; Brian Bishop, head of RI Wiseuse, says the changes in the law would merely perpetuate government controls on private property. Providence Journal-Bulletin. December 29, 1995. p5B.
- Gallagher, Mary Lou. Wise Use or Wise Marketing: The movement is on a mission - and not only in the west. Planning. p5. Jan. 1996.
- Kaufman, Wallace. The Cost of Saving: You Take It, You Pay For It. American Forests. #11-12. Vol. 99. pp17-22. Dec, 1993.
- Kirschten, E. G.. There's More Rhetoric than Reality in the West's "Sagebrush Rebellion." National Journal. Vol. 11. p1928. 1979.
- Kriz, Margaret. Land Mine. National Journal. #43. Vol. 25. p2533. Oct 23, 1993.
Liberty Matters. Liberty Matters webpage at <http://www.libertymatters.org/Press%20release%20Final.html> 1998.
- Lapp, David. Wise Use's Labor Ruse: The anti-environmental wise-use movement is attempting both successfully and unsuccessfully to forge ties with workers. Environmental Action. Vol. 25. #3. p. 23. Fall, 1993.
- Lewis, Thomas A. Cloaked In A Wise Disguise. National Wildlife. #6. Vol. 30. p5. Oct, 1992.
- Lord, Peter. Air, Land , and Water: Focus on our Environment: Activist with an attitude, Brian Bishop loves the environment, but despises DEM and Save the Bay. The Providence Journal-Bulletin. September 10, 1995. p1D.
- Lord, Peter. Air, Land and Water: Focus on our Environment: Stamp's stalemate: Decade-long wetlands dispute stops Cranston farmer from building an industrial park. The Providence Journal-Bulletin. March 24, 1996. Pg 1C.
- Lord, Peter. Air, Land , and Water: Focus on our Environment: West meets east to discuss our Environment. Providence Journal-Bulletin. April 28, 1996. p8B.
- Lund, Hertha L. The Property Rights Movement and State Legislation. from Land Rights: The 1990's Property Rights Rebellion. Bruce Yandle, ed. Rowan and Littlefield Publishers, Inc. Lanham, Maryland. pp216-226. 1995.
- Marzulla, Nancie G. The Property Rights Movement: How It Began and Where It is Headed. from Land Rights: The 1990's Property Rights Rebellion. Bruce Yandle, ed. Rowan and Littlefield Publishers, Inc. Lanham, Maryland. pp 1-30. 1995.
- The National Association of Reversionary Property Owners (NARPO). The National Association of Reversionary Property Owners (NARPO) webpage at <http://www.halcyon.com/dick/> 1998.
- The National Endangered Species Act Reform Coalition (NESARC). The National Endangered Species Act Reform Coalition (NESARC) webpage at <http://www.nesarc.org/info.html> 1998.
- The National Mining Association. The National Mining Association. webpage at <http://www.nma.org/allabout.html> 1998.

- Maughan, Ralph and Douglas Nilson. What's Old And What's New About The Wise Use Movement. Idaho State University Dept. of Political Science. <http://nwcitizen.com/publicgood/reports/maughan.htm>. Presented at the Western Social Science Association Convention. April 23, 1993.
- Minter, Richard. You Just Can't Take It Anymore: America's Property Rights Revolt. Policy Review. pp40-46. Fall, 1994.
- Orrin Hatch, U.S. Senator. *Statement Of Sen. Orrin G. Hatch Before the United States Senate January 31, 1997*. <http://www.senate.gov/~hatch/state10.html>
- Penalley, W.P. It Takes A Hero. Bellevue, Washington. Free Enterprise Press. 1994.
- The People for the West! or The National Coalition for Public Lands and Natural Resources (NCPLNR). The People for the West! or The National Coalition for Public Lands and Natural Resources (NCPLNR) webpage at <http://www.pfw.org/whowhat.html> 1998.
- Perry, Patrick Austin Law West of The Pecos: The Growth of The Wise-Use Movement And The Challenge To Federal Public Land-Use Policy. Loyola of Los Angeles Law Review. #30. pp. 275-319. November, 1996.
- Rauber, Paul. Look Who's Taking: Life, liberty, and the sacred right to pollute. Sierra. #5. Vol. 78, p43. Sep/Oct 1993.
- Rauber, Paul. National Yard Sale. Sierra. #5. Vol. 80. p28. Sep/Oct, 1995.
- Rhode Island Farm Bureau. "Rhode Island Farm Bureau" webpage at <http://www.fb.com/rifb/> 1998.
- Rhode Island, State of, Legislative Record for bills: 98-h-8165, 92-s-2681, 93-h-6810, 93-s-0740, 94-h-8396, 94-s-2793, 94-s-2744, 95-h-5241, 95-s-360, 95-s-509, 95-h-5241A, 96-h-7868, 98-h-7861.
- Rhode Island, State of. Bill Tracker website. <http://www.state.ri.us/bills/98%2D7861.htm> updated 5/30/98
- Salit, Richard. 'I'll kiss the ground' Bill Stamp slowly gaining in 30-year fight to develop his former farm in Cranston. Providence Journal-Bulletin, West Bay Edition. February 7, 1997.
- Sanchez, Samantha. How The West Is Won: Astroturf Lobbying And The "Wise Use" Movement. The American Prospect. #25. pp. 37-42. March-April, 1996.
- Stewards of Family Farms, Ranches & Forests or Stewards of The Land. Stewards of Family Farms, Ranches & Forests or Stewards of The Land webpage at http://www.stewards.org/about_stewards.htm 1998.
- Tibbets, John. Everybody's Taking the Fifth: Property rights advocates are pushing their 'takings' message in every available forum. Planning. pp4-8. Jan, 1995.
- Torres, Gerald. Taking and Giving: Police Power, Public Value, and Private Right. Northwestern School of Law of Lewis & Clark College: Environmental Law. #26. p2. Spring, 1996.
- United States Congress. Senate, 'Omnibus Property Rights Act of 1998'. 105th Cong., 1st sess., S781. From Thomas website published by The Library of Congress. at <http://thomas.loc.gov/>.
- United States Department of Justice. Press Release: *United States asks Court to reaffirm ownership of Public Lands: Open arguments heard in U.S. v. Nye County Nevada*. July 28, 1995.
- United States Supreme Court. Lucas v. South Carolina Coastal Council, 112 s.Ct. 2886 (1992)
- Watkins, T.H. Fat Cats And New Voices. Wilderness. #198. Vol. 56. p8. Fall, 1992.
- Wolanski, Ronald M. Planning and environmental regulatory regimes and the strength of the "Wise Use" movement in six states: Chapter 4: Examination of the States. "Master's Research Project" to be submitted as partial fulfillment of the "Master of Community Planning Degree at the University of Rhode Island". p. 5. 1997.

Unpublished Materials

- Albert, Sue. Personal letter to Lee Gardner. Testimony submitted by RIFB to Kennedy Commission. December 17, 1996.
- Arnold, Susan. Personal letter to Chairman Brian P. Kennedy. submitted as evidence to the Kennedy Commission. January 31, 1997.
- Bishop, Brian. Personal interview. February 1997.
- Bishop, Brian. Personal Interview. March 1998.
- Bishop, Brian. Phone interview. March 1998.
- Bishop, Brian. Phone Interview. April 1998.

Bishop, Brian. Summary of Comments of RIWU. Testimony submitted to Kennedy Commission.
Undated
P3.

Bishop, Brian. RI Wise Use newsletter. Submitted as evidence in Kennedy Commission hearings.
February 5, 1997.

Bishop, Brian. Testimony of RIWU. Testimony submitted to Kennedy Commission. various dates.

Constantino, A.O. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 30, 1992.

Constantino, Genaro. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 28, 1992.

Desuza, Lawrence. Personal letter to Susan Rossi of RIDEM. Testimony submitted by RIFB to Kennedy Commission. December 22, 1992.

Cunniff, Raphael. Personal attendance at RIWU meetings. November 1997, January 1998, March 1998.

Emond, Dave. Personal letter to Brian Bishop. Postmarked November 6, 1995.

O'Malley, James. Personal interview. February, 1998.

Esposito, Robert. Personal letter to RIDEM. Submitted as evidence to Kennedy Commission. December 29, 1992.

Fink, Emily (Associated Press correspondent). Personal Interview and provided notes. April 1998.

Gardner, Lee. Phone interview. March 1998.

Gardner, Lee. Personal letter to Brian Kennedy. Testimony submitted by RIFB to Kennedy Commission. December 20, 1996.

Gold, David. Personal letter to Dr. Frank Golet. Testimony submitted to Kennedy Commission. October 22, 1996.

Kennedy, Brian Rep. Item 1 of evidence submitted to the Kennedy Commission.

Merner, Michael P. Personal letter to Susan Rossi of RIDEM. Testimony submitted to Kennedy Commission. January 1, 1993.

Rhode Island, State of. Lists of RI State Representatives and Senators, available at RI State House in Providence.

Salisbury, Wayne L. Rep. Phone Interview. April 1998.

Stamp, Bill. Personal interview. January 1998.

Stamp, Bill. Personal Interview. February 1998.

Stamp, Bill. Phone interview. April 1998.