CrossMark

Constitutionality in Montana: A Decade of Institution Building in the Blackfoot Community Conservation Area

Jill M. Belsky[1] · Alexander Barton[1]

Abstract

Constitutionality is an approach that addresses how people shape their own institutions and rules for local natural resource use even amidst politically challenging conditions at multiple scales. In this paper we examine thelocal public-private partnership known as the Blackfoot Community Project in western Montana (U.S.A.) and its efforts to forstall increasing social and ecological fragmentation by purchasing and conveying thousands of acres of divested corporate timberlands into various conservation ownerships including a locally-owned community conservation area. Based on a decade of participatory research, we examine the creation and operation of the Blackfoot Community Conservation Area (BCCA)'s key governance institution, the BCCA Council, and its efforts to develop locally supported and effective procedures for two of its most contentious issues: motorized recreation and grazing. The analysis highlights strategies of deliberate and incremental processes of participation, cooperation across property boundaries, experimentation, adaptation, and rule modification to find compromises for combined local social and ecological benefits. The paper concludes with a discussion on the tensions raised between these accomplishments occurring in a boldly neoliberal nation-state and among increasingly heterogenous communities, and ongoing challenges entailed in using the market and private ownership (albeit governed by and for a collective of local constituents) as a strategy to foster resource ownership and stewardship.

Keywords Constitutionality · Community-based conservation · Governance · Local institutions · Montana · Western United States

Introduction

Constitutionality is a new approach to investigate the processes by which people and organizations shape their own institutions and rules for managing local natural resources, especially common pool resources (CPR) (Haller *et al.* 2016). The perspective highlights the meanings local actors assign and the strategies they employ in negotiating these activities, and how they develop vested interest or ownership in the resulting institutions. Advocates of constitutionality argue that it provides an alternative to the approach of "environmentality" (Agrawal 2005) and critiques that it may only partially explain how subjectivity is produced and that more attention needs be paid to developing theories about how and why local agency occurs, including distinctions between power to control and exploit and power to empower or capacity to act (Singh 2013). Constitutionality seeks to explain the conditions under which local agency and creativity are able to form novel and effective institutions among heterogeneous stakeholders to manage CPRs, even where conflicts and inequalities exist and in the face of powerful regional, national, and global influences. Proponents of this approach suggest that attention to such cases can "illuminate(s) how conflicts over resource management can lead to institutional solutions formalized as compromises with collective benefit for most or even all actors (Haller *et al.* 2016:2)." However, they face challenges to address how, across multiple temporal and spatial scales, *difference* as well as *inequality* shape but not overwhelm possibilities for locally-evolved and effective institutions to manage local resource access and use.

Addressing power dynamics in resource institutional governance suggests an alignment of constitutionality with critical scholarship. It reflects commonality with political ecology and its three- fold commitment to *theoretical* critical social-

✉ Jill M. Belsky
jill.belsky@umontana.edu

[1] Society & Conservation, University of Montana, 32 Campus Dr, Missoula, MT 59812, USA

Springer

environmental approaches, *methodological* commitment to in-depth, place-based and historically situated analyses, and *political* commitment to fostering social justice (Perreault *et al.* 2015). More fully addressing the political context and complexity of social behavior in local institutional governance also builds on "critical institutionalism," a modification of "mainstream institutionalism" (cf. Ostrom 1990, 2005), which has tended to focus on formal institutional processes and outcomes, especially best design principles (Cleaver 2012; Cleaver and de Koning 2015). Critical institutionalism approaches property and resource institution building as dynamic socio-political processes that are developed and modified through practices, norms, and relationships of everyday life, shaped but not determined by formal structures (Fortmann 1995; Mwangi *et al.* 2012), and highlights complexity, uncertainty, and multiplicity of overlapping identities of actors in shaping ecosystems over time that are often invisible, hidden, and highly political (Hecht *et al.* 2014).

A particularly challenging task facing constitutionality scholars is the assertion that local institutions produce positive ecological outcomes. Connections between social and ecological processes and outcomes must be empirically documented rather than assumed or asserted. Numerous cases document positive links between historic, endogenous local governance regimes and well-functioning, biodiverse ecosystems, highlighting the value of experiential-based local knowledge and adaptation in producing good ecological conditions (Beymer-Farris 2013; Siebert and Belsky 2014; Zimmerer 2015). Their use of critical socio-ecological system scholarship and methods have been integral to uncovering these positive links and making them visible and comprehendible, approaches that claims of constitutionality would benefit from utilizing as well.

Community-based forestry and conservation are obvious subjects for examining constitutionality given their focus on local collective action with the expectation that this improves natural resource management processes and outcomes. However, Gilmour's (2016) recent study of 40 years of community-based forestry reveals a spectrum of community-based regimes ranging from passive participation in government programs to active community control (see also Agrawal and Gibson 2001; Belsky 1999, 2015; Brosius *et al.* 1998; Campbell *et al.* 2007; Li 2007). To date, much of this scholarship has been conducted in Asia, Latin America, and Africa, but there is also increasing research into experiences creating community forests/forestry in Northern America (Belsky 2008; Bullock *et al.* 2017; Donoghue and Sturtevant 2008; Kusel and Adler 2003; Lyman *et al.* 2013; see also Bullock *et al.* 2012; Cheng and Fernandez-Gimenez 2006).

We examine the creation and management of the Blackfoot Community Conservation Area (BCCA) in the western U.S. state of Montana. The BCCA was conceived and developed as part of the wider "Blackfoot Community Project" (BCP), a public-private partnership formed to purchase thousands of acres of corporate timberlands and to convey them into conservation ownerships (including the BCCA). An influential partner and lead player in the effort was the Blackfoot Challenge, a nationally-recognized, landowner-led organization established in 1993 to "coordinate efforts that will enhance, conserve, and protect the natural resources and rural lifestyles of the Blackfoot River Watershed for present and future generations (http://biz170. inmotionhosting.com/~blackf22/Clone//who-are-we/)."[1]

The Blackfoot Challenge describes the BCCA as an innovative effort involving private (NGO) ownership of a 5,600 acre "Core" area located at the base of Ovando mountain and cooperative ecosystem management with adjoining public lands for a total of 41,000 acres across public and private lands. Situated at the southern end of the Crown of the Continent Ecosystem, the BCCA borders the Bob Marshall and Scapegoat Wilderness areas and includes an important transition zone between wilderness, national forest, and productive watershed bottomlands, with lush riparian and wetland areas and critical wildlife habitat for grizzly bears, wolves, and other flora and fauna. For centuries, the indigenous peoples of western Montana – the Kootenai, Salish, Nez Perce, Shoshone, Blackfeet, and Crow – utilized the Blackfoot valley for its plant, animal, stone, and mineral resources, as well as for cultural purposes.

Before the arrival of settlers, many groups of Pend d'Oreille and Salish occupied these valleys year-round (BCCA Management Plan for the Core, 2nd Edition 2017). Since the late nineteenth century, the valley has been populated by Euro-American settlers involved in livestock grazing, timber harvesting, and most recently, recreational activities including hunting, trapping, horseback riding, hiking, all-terrain vehicle riding, snowmobiling, and skiing. The Blackfoot watershed includes seven distinct towns: Bonner, Potomac, Greenough, Seeley Lake, Ovando, Helmville, and Lincoln.

We discuss the process that led to the formation of the BCCA Council, the leading institution for governing the new community conservation area, and the key challenges it faced in its first decade to develop policies and plans for motorized use of and grazing in the core lands. We pay close attention to how underlying social norms and practices were heeded in the BCCA Council's negotiations and in identifying governance rules, strategies, and plans for the community conservation area. The Council's task demanded attention to local socioeconomic and political differences, as well as the various laws, statutes, and historical practices related to the public and private properties encompassed by the wider BCCA. Strong multi-level partnerships and a crisis over privatization, land fragmentation, and dominance of market values were influential consolidating the project. The BCCA Council's institution building processes focused on strategies of relationship building, deliberate incremental learning, and adaptive modification that enabled development of policies and plans Council members could largely agree on.

---

[1] The Blackfoot Challenge helped to create the first conservation easement in Montana in 1976 (Lindbergh and Goetz 2016).

Methods

This case study is based on the first author's long-term research and collaboration with the Blackfoot Challenge and the BCCA since 2005 (see Belsky 2008, 2015). A central component of this research and collaboration entails two in-depth, participatory projects conducted under the first author's supervision: the first examined the origins of the BCCA and its governance institutions (Duvall 2006) and the other conducted by the second author charts the evolution and challenges faced in implementing BCCA governance institutions over the decade and is still ongoing.

We use longitudinal and participatory methodology in order to provide considerable insights to the processes and decisions that created and managed the BCCA over the past ten years. We utilized participant observation, regularly attended public meetings, tours, and demonstrations, and established close personal relationships with local leaders, members of the Blackfoot Challenge and BCCA, and with valley residents that facilitated sharing detailed information on even contentious issues. Standard methods were used to conduct and analyze a mail survey (Dillman 1978) and qualitative data collected in field notes and face-to-face interviews; the latter involved data sharing and cross-checking to increase rigor and validity (Creswell 2013).

Blackfoot Community Project: Local Collective Action as a Response to Market Forces

It all started at a kitchen table in the Blackfoot Valley. Back around 1970. Local folks like us… worried about increasing recreational pressure on the river, our property and the lands surrounding ours… We knew what we wanted to do, but we weren't sure how to do it. We knew we wanted to engage the public. They had a stake in the river and the land that surrounded it. So we got together landowners, river users, hunters, agency folks — to see what kind of options or solutions we could come up with…What has happened since is astonishing. Remarkable, really. We never anticipated it. (Lindbergh and Goetz, Seeley Lake Pathfinder, June 30, 2016, http://www.seeleylake.com/story/2016/06/30/opinion/montana-private-land-conservation-it-all- starts-with-people-around-a-kitchen-table/1058.html)

The conditions challenging coordinated watershed conservation in the Blackfoot watershed began to take shape more than a century ago. In 1862 legislation enabled the U.S. government to provide land grants (and federal bonds) of 400-foot right-of-ways plus 10^2 miles of land for every mile of railroad track built to railroad companies to encourage transcontinental railroad construction. The U.S. government permitted railroad companies to sell this land to help pay for the construction and encourage Euro-American settlement. In 1864 a new Act enlarged land grants from 10 to 20 miles of alternating sections on either side of the tracks and included mineral rights, allotted in a checkerboard pattern to avoid concentration of land ownership. A century later, the Northern Pacific railroad company, which had a history of benefitting from these land grants, merged with Great Northern to create the Burlington Northern Railroad. In 1988, Burlington Northern turned its resource arm into Burlington Resources, which a year later became Plum Creek Timber Company. Plum Creek retained 1.5 million acres of original grant lands, 842,000 in Montana; their holdings in Montana increased to 1.6 million acres in 1993 with the purchase of Champion International holdings (Jensen et al. 1995).

In the 1990s, Plum Creek Timber Company was the largest private timberland owner in the United States, but by 2000 timber production declined as the forest-products industry restructured (Best and Wayburn 2001). In 1999, Plum Creek became a Real Estate Investment Trust (REIT), the first timber company in the U.S. to do so, which is attractive to corporations and their shareholders because it offers more favorable tax benefits and profits than a conventional timber company.

Since restructuring as a REIT, Plum Creek announced its intention to sell its "higher and better use" (HBU) lands in western Montana. HBU lands are those that are likely to receive the highest price. In Montana, these are lands with the highest potential for high-end residential development. They are typically located near public lands with significant outdoor recreational opportunities; or near towns with low population density, little pollution or crime, and access to public services especially airports and internet (Rasker 2006). Plum Creek derived extraordinary profits from selling HBU lands in western Montana, not only due to tax benefits and high market prices, but also because they clear-cut and harvested the timber before selling.

Conservation leaders and residents across the Blackfoot watershed were very concerned with Plum Creek's announcement to sell HBU lands. All agreed that sale of these lands would lead to further fragmentation and forest management challenges to a landscape already burdened with checkerboard ownerships and aggressive commercial logging. In 2000, the Blackfoot Challenge formed the Conservation Strategies Committee to coordinate land conservation across public agencies, conservation groups, and private landowners in the watershed. In 2002, the chair of this committee, along with a representative from The Nature Conservancy and Plum Creek, met to discuss possible land purchases and thus began the plan that would become the Blackfoot Community Project (BCP).

The BCP entailed a tri-fold partnership among members of the Blackfoot Challenge, Montana chapter of The Nature Conservation, and Plum Creek. Between February and May 2003, BCP leaders organized dozens of public meetings throughout the watershed to provide background on the project and seek public comment on key issues, including grazing leases, timber management, public access, community development, cooperative management, property ownership and preferences for resale or "disposition" of the 89,000 acres of HBU lands that Plum Creek was willing to sell (Duvall 2006)

Public input was also solicited through local newsletters, emails, and comments cards left at the local post office. Subsequently, a "Disposition Workgroup" was formed and held dozens of community meetings over the years to guide the sale of the acquired land and conservation easements. Given this process, the leadership characterized the BCP as a "community-driven plan."

The Nature Conservancy assumed the critical role as bridge financer, purchasing Plum Creek lands in a series of transactions beginning in 2003 with the objective of selling and conveying purchased land to a mix of public and private buyers committed to conserving their ecological and social values.

Targeted public engagement in 2004 fostered local discussion about the Blackfoot Community Conservation Area (BCCA). A mail survey conducted among residents in the town of Ovando where the BCCA was to be established (Duvall and Belsky 2005)[2] found the greatest concerns were for wildlife (for hunting and wildlife viewing), recreation (non-motorized over motorized), and producing "sustainable" commercial uses. Preserving their rural lifestyle, defined as maintaining low population, low crime, lack of subdivisions, limited development, strong community ties, and natural resource-based livelihoods, especially ranching, was a priority. Concerns were also raised about the influx of "equity" or "amenity" migrants, i.e., those with income earned elsewhere who build second (or third or fourth) homes in previously working forest landscape. Research elsewhere in the U.S. West has suggested that amenity migrants often bring not only new demands and political views that can clash with longtime residents, but also skills, perspectives, and financial capital useful in community development (Bliss *et al.* 2008). In our case study, many large private donations were in fact made by newcomers to help purchase lands for the BCCA.

Local support for a community-owned and managed area in the Blackfoot Watershed was driven by residents' desire not to be subject to the policies, laws, and changing whims of government land management agencies, either federal or state, but instead to implement resource uses and rules determined by their concerns

and values. There was much discussion regarding what to call the new arrangement, and to find a title that was inclusive of local interests, resulting in a decision to call it a "community conservation area." The term "community forest" was rejected for a number of reasons. First, there was no historical familiarity with community forests. Second, the term could be confused with "community forestry," which has often been used to describe local participation in public forestland management. In fact, a conference held in the region during that time was purposefully titled "Community-owned Forests" to signal the difference; further, the role of local communities in public forestland management remains somewhat controversial, especially among national environmental organizations in contrast to the stable, government run program instituted in some Canadian provinces (McCarthy 2005). Third, representatives from Plum Creek did not relish future comparisons with their industrial forestry model (Belsky 2008). That the leaders of the BCP addressed these varied considerations in considerable detail reveals sophisticated understanding, sensitivity, and effort to identify a term appealing to different partners, including the seller, Plum Creek, which, it should be noted, yielded considerable power to decide which of its parcels it was willing to sell, to whom, and at what price.

That a local partnership was able to envision and implement a plan to purchase 89,000 acres for $73 million is impressive. It demonstrates that a local coalition is capable of challenging some of the most formidable forces operating in the world today: neoliberal market values, the hyper- commodification of nature, and corporate power and restructuring. However the Blackfoot Community Project itself utilized a market strategy (i.e., purchase) as its solution to a market problem, i.e., that land is more valuable than the forest as timber and ecosystem services provider. The example reflects what Fraser (2011, 2013) refers to as the "triple movement," a broadening of Polanyi's notion of a "double movement" as a response to processes of commodification of land (nature), labor (social relations) and money, (means of exchange).

While acquisition as a conservation strategy is popular in the current neoliberal economic era, it raises many additional issues. Fairfax *et al.* (2005) have suggested that "buying nature" is problematic because the option is not generally available because of high costs, nor does it assure permanent protection as would land regulation or zoning. However, passing legislation on zoning is difficult in Montana where residents hold strong private property beliefs alongside recognition that property rights also entail public goods and responsibilities (Yung and Belsky 2007). Additionally, as a major private landowner in the past, Plum Creek wielded voting dominance to preclude zoning legislation should it have been raised. Private acquisition also leaves key decisions, such as which parcels are available for sale and to receive conservation protection, up to the seller rather than to land assessments and purposeful targeting. As described above, Plum Creek was able to profit repeatedly from its land sales, which upset

---

[2] Financial resources limited the sample coverage to landowners residing near the BCCA (i.e., residents of Ovando) despite explicit understanding of the survey authors that the "community" for the BCCA may extend far wider than Ovando.

many given that these lands historically belonged to the public before being gifted to the railroad companies (that is, after being seized from Native Americans). There are also concerns that land prices themselves have increased because of greater conservation and amenity values of acquired lands, making it extremely hard for the next generation to remain in the area. Additionally, there is a loss of tax revenue when tax-exempt ownership (such as government owned, public lands) replaces private ownership, although a PILT (payment in lieu of taxes) can enable compensation for lost tax revenue. All of these factors lead to concern about increasing government ownership of land in the region (Parker 2014).

To address the question of how, having collectively worked to gain control over resources in their landscape, this group of local partners has been able to claim authority to make rules to use and protect them, we turn to the key local institution created to govern BCCA lands, the BCCA Council. Following a brief background on its formation, we examine its foremost initial governance challenge of how to manage motorized recreational use in the newly formed community conservation area.

The BCCA Council and its Workgroups

In 2005, the BCCA Council was created to govern the new Blackfoot Community Conservation Area (BCCA). The Blackfoot Challenge Board granted the Council considerable governance autonomy although it retained authority over approving a final BCCA management plan, annual budgets and work plans, new BCCA Council membership and appointments, and, if necessary, the dissolution of the Council. The Council would be responsible for establishing administrative procedures and rules for the BCCA Core and collaborative management of the wider 41,000 acres. The decision to create a separate and partially autonomous governance institution, and to view the BCCA as a watershed level "community" area, was informed by information obtained in a residents' mail survey that specifically asked "who is the 'community' that the BCCA should be owned and managed by and for?" Of Ovando respondents (i.e., those living near the BCCA), 38% replied all residents of the Blackfoot Watershed, 18% said for nearby property owners, 13% replied anyone who wants to use the area, and the remainder identified other interests. About half of the survey respondents expressed uncertainty regarding whether the Blackfoot Challenge should own and manage the BCCA. Responses noted strong interest in creating a governing body that would represent a broad array of interests in the watershed, balance environmental protection with livelihoods, and provide steady, durable management despite turnover among volunteers and government personnel and policy. There was also concern if sufficient skills were available locally to manage the novel property arrangement (Duvall and Belsky 2005).

To respond to the concern for broad representation, the initial BCCA Council included 15 members including five from three categories the Challenge Board considered reflected key local group interests: (1) private landowners, (2) public land management agencies owning land within the wider BCCA, and (3) user groups. Respondents to the mail survey who indicated interest in being involved in the BCCA were contacted and invited to apply to become a Council member. The original 15 members were selected from those who responded to this invitation and to others who stepped forward after receiving mailings and updates. Initially the Council established five independent working groups tasked with conducting fact-finding and developing proposals for activities for the Council's review. These groups included resource inventory, recreation, and roads and access. Over time, new workgroups were formed to identify natural resource and social/community goals and objectives, and later forestry, grazing/weeds, recreation, education, and wildlife management policies and practices (the latter three abbreviated as REW). The Council hired a Land Steward who, in late 2016, transitioned from quarter-time to half-time work with the BCCA.

In 2008, the first BCCA management plan developed by the Council was approved by the Blackfoot Challenge Board and subsequently implemented. In spring 2017 the BCCA management plan was revised. The revision process as well as outcome (in which the second author was closely involved as a summer intern) illuminate how Council members and the public interpreted what was working and what required adjustment or change over the decade. Among the most significant changes was the recommendation by the BCCA Council regarding its own composition. The Council consolidated the two earlier categories of *private landowner* and *user group* into the single category of *stakeholders* that includes 11 individuals "representing both newer landowners and multi-generation ranch families, recreationists, local businesses, commercial outfitters, schools, and local clubs and organizations (BCCA Management Plan for the Core, 2nd Edition 2017: 28)." Four representatives from *agencies* that own or manage land adjacent to the Core bring the total to 15 on the Council. The term limit policy was also modified so that instead of two consecutive 2-year terms with an option to re-apply after a full term elapses, Council members can now serve 3-year terms consecutively.

Participants in the revision process suggested that these changes were aimed at enlarging the potential pool of volunteers who qualified for membership of the BCCA Council, as well as to soften the distinction between landowners and user groups (Barton field notes 2017). In recent years, the number of applicants for available Council positions has decreased, and with fewer applicants each year, more BCCA Council members are re-applying at the end of their terms. Council members discussed whether or not their length of service is advantageous

to achieving the Council's goals, and whether their composition is sufficiently representative of the wider watershed. Some members suggested that low turnout may reflect contentment with the status quo, though others expressed concern that the BCCA Council has become a revolving door for people with similar interests and preferences for how the landscape should be managed (Barton field notes 2017).

Creating Local Institutions and Rules for Developing a Motorized Use Policy

The process to develop a motorized use policy has been one of the most contentious and time-consuming activities of the BCCA Council over the past decade. Prior to the creation of the BCCA, the various timber companies that owned the property did little to restrict the use of motorized vehicles by the public. But starting in the 1990s, Champion and later Plum Creek closed some roads with the assistance of Fish, Wildlife and Parks (FWP) to better manage public recreation, prevent resource degradation, and provide wildlife security. When TNC purchased the BCP properties, they maintained Plum Creek's closures. In January 2007, one year before completion of the first Management Plan, the BCCA Council decided to maintain the existing motorized use policy for the Core. However, following a request from some community members for more motorized access and after one year of contentious negotiation, the Council initiated a three-year trial period that permitted a limited number of guided tours and vehicles during the summer season. In 2011, at the close of the trial period, the Council decided to allow "… a moderate increase in seasonal recreational motorized vehicle use opportunities, with a moderate level of management oversight" (REW Meeting Minutes Feb. 2011). The REW workgroup recommended a single season permit-based system for users to access to interior roads.

To administer the permit-system, users were required to visit the Blackfoot Challenge office in person to obtain the permit and lock combination and to sign-in at the registry, thus requiring some personal contact in this process to encourage user accountability and engagement. The workgroup also decided that information collected on use levels and user feedback would be used in efforts to monitor the impact of the policy on the natural resources of the Core (REW Meeting Minutes Feb. 2011). Like the guided tour policy, it was to be a provisional trial reevaluated after the first year. The Council has opted to maintain the permit-system for the past six years.

In April 2017, the REW workgroup reviewed six years of data gathered during the permit-system and found use to be far below what had been expected. Partners managing public lands had asked for more monitoring and notably of why a vehicle counter was purchased and used. A new policy proposed in 2017 by several Council members leaves road designations and uses the same, but does away with the permit system and weekly limits on trips and vehicles. The committee unanimously recommended the proposed policy to the full BCCA Council with no amendments, and it is currently (as of the time of writing) being vetted with the neighboring BCCA partners (i.e., USFS and DNRC).

The decade of developing the motorized use policy involved considerable negotiations. No particular group had more decision-making authority than another, and any interested person was able to attend and offer input at BCCA Council meetings. Positions for either increasing or decreasing motorized use in the BCCA Core were strongly held. Among BCCA Council members interviewed, some saw the purchase of the BCCA Core as a means through which they could reclaim motorized access they felt had been wrongly denied them for a decade:

> There's still people that live here, that were born and raised here that used to go out there all the time that have basically had that right taken away from them! You know, call it a right, call it a privilege, or whatever you want, but it was taken away from them. (Barton field notes 2016)

Traditional use was evoked as justification to reopen the BCCA Core to motorized use, as well as for implementation of the disposition plan developed by the Blackfoot Challenge and TNC to accommodate particular forms of access and recreation on BCP lands (BC Disposition Plan 2003). Some Council members, however, remembered an earlier era of considerable garbage and land degradation, and felt that restricting public access was necessary to reduce further damage, emphasizing that the primary objective of purchasing and establishing the BCCA was wildlife and land conservation.

Support on opposing sides in the motorized use debate often aligned with positions in the watershed as an insider or outsider. Users and proponents of increased motorized access were often long- term residents, whereas proponents of more restrictive policies tended to be either new to the area or residents outside of the watershed. As one Council member noted:

> The advocates for additional motorized opportunities were almost all locals… Many of the voices coming from the outside that wouldn't need or want to use motorized vehicles on the interior of the properties advocated a more restricted motorized use plan. (Barton field notes 2016)

Financial donors to the acquisition of the BCCA lands were also vocal in the debate. The perspectives and values of donors and newcomers were perceived to be particularly sensitive to ecological concerns. Even in 2017 as the Council was deliberating on the decade of debate over motorized use and access,

one Council member made an impassioned comment that his biggest frustration has always been the perception that "outsiders" feel a need to "save the BCCA from the locals" (Barton field notes 2016). A non-Council attendee at the meeting countered the sentiment saying that the BCCA Core, "is mostly going to be used by local people, and the local people are very protective" (Barton field notes 2016).

As different proposals were presented and discussed over the years, one Council member stated that the Council as a whole made a deliberate effort to proactively encourage participation from different groups who would be affected by their decisions:

> Anybody [who] was interested had the opportunity and I think the Council did a good job of…involving key constituents from the community participating as an ad hoc person to come in and present and offer their input. (Barton field notes 2016)

More public meetings were held in 2007 to discuss the development of the motorized use policy and its implementation for the BCCA than in any period, and they were more highly attended. They also reflected a greater variety of concerns and suggestions for motorized use policy.

BCCA governance leaders used three deliberate strategies to achieve a compromise solution, each with implications for understanding local institution building within the particular cultural context. First, they gave more authority to the REW group, reflecting the well-known subsidiary principle (i.e., to let matters be handled by the smallest, lowest, or least centralized competent authority), and following two unique rules developed by the Blackfoot Challenge: proper pacing and the 80/20 rule. Devolving power to the REW to play a stronger role enabled what the BCCA Land Steward termed the ability to "get more into the weeds" (Barton field notes 2017). The REW was able to call additional meetings, permitting more time for discussing alternatives, analyzing costs and benefits of proposals, and coming to policy terms that satisfied BCCA Council members and citizens present at meetings. Once a proposal was vetted in the workgroup, it was referred to the full BCCA Council for final approval. The Council permits three options for voting: thumbs up to signify agreement, thumbs down to reject it, and thumbs out to indicate it is not perfect, but is an acceptable compromise. Unsatisfied Council members are expected to provide an alternative.

This process is in line with the second, broader deliberate strategy of proper pacing. Two leaders in the early years of the BCCA characterize the value of this for the Council in "creating customs and institutions in a dynamic way and at a "natural" pace," insisting that:

> This citizen council is a true exercise in participatory democracy and as with the Blackfoot Challenge, it takes time for folks to build trust and confidence in one another. For this reason, we made the decision early on that we would not set rigid time tables or deadlines for accomplishing specific tasks but rather we would let the group dynamics dictate the pace of our deliberations. (Goetz and Duvall 2006: 5)

A leader of the Blackfoot Challenge also emphasized the relevance proper pacing in working with different partners, including state agencies:

> Patience has a lot to do with respect. Some people have [a] different pace. This idea…called proper pacing. It's a really helpful concept to think about how do you pace with your partner. So for example…when the state comes in people go well oh the state has a different pace… They're a new partner and the pace is probably going to kick up because the average pace is going to be faster. They are not so willing to wait eight years to get a project done. (Barton Field Notes 2016)

Working with landowners with respect and patience evidenced in proper pacing are key values in the Blackfoot watershed, and undergird the third strategy: the 80/20 rule. The Blackfoot Challenge's website states that the organization's practice is to "focus on the 80% where we agree, not the 20% that divides" (downloaded May 1, 2017: http://blackfootchallenge.org/?cat=4). The rationale of the 80/20 rule is not to ignore dissenting opinions or the extremes, but rather for focus on agreement to "just leave it and move on if something is too controversial, or we are not sure what to do with it at that time" (Barton field notes 2016). One Council member insisted that they always return to contentious issues as trust and relationships are built and constructive debate and compromise become likely. Taking a slower pace also enables modification as new information becomes available. In the example of the motorized use policy, monitoring data after six years showed motorized vehicle use to be significantly lower than previously thought, which contributed to the decision to implement the permit-system. When use data from the permit-system trial was considered in April 2017, one member of the REW who had previously been concerned about loose regulations gave his support to the less restrictive policies.

Governing Grazing and Improving Ecological Trends

The constitutionality approach presumes that local institutions can be crafted among heterogeneous (even unequally powerful) forces and lead to positive ecological outcomes. In light of intensive logging as well as grazing in the watershed area, a range of environmental conditions in the BCCA core needed to be addressed. A baseline inventory completed in 2007

provided data for initial BCCA Council planning. We focus on the development of a grazing plan because it covers 4500 of the total BCCA core of 5600 acres, and because it represented a major management shift in which local knowledge and resources from local partners played significant roles.

Prior to the purchase by the Blackfoot Challenge, there were two BCCA Core leases technically accountable to grazing lease terms and conditions from Plum Creek Timber Company and the Nature Conservancy. However, BCCA Council members we interviewed said that in practice the majority of these lands were used as a continuous one-pasture system with livestock grazing with relative "free choice." Because of concern over the condition of the grasslands, in 2009 the BCCA Council developed a management plan that established "Resource Condition Standards" and monitoring protocols to inform annual adjustments to timing and stocking rates for each pasture. The two lessees were active participants in its design and ongoing modification. While the plan represented a major change to existing grazing practices and compliance is not mandatory, it remains in place as of the time of writing. Our analysis below gives particular attention to points of conflict and eventual compromise, as well as initial and admittedly partial evidence of ecological improvement.

The plan objectives are explicitly stated to "protect water sources, such as springs and pothole wetlands from grazing and livestock watering impacts" (BCCA Management Plan 2008:34) through.is reducing spread of noxious weeds, reducing cattle impacts to riparian and wetland areas by fencing riparian corridors and providing off-site watering facilities, and by generally discouraging overgrazing. According to the plan, cattle are moved from throughout the spring-summer-fall months, spending only a month or so in any one pasture. Each year, one pasture is rested and a 1000-acre parcel is fully excluded from grazing.

The Mollet Park wetlands were an early BCCA restoration project, initiated in 2006 by TNC and the Council. Mollet wetlands had been partially drained in the past and were the site of a Champion International tree plantation. Under the BCCA restoration effort, a new water control structure restored the surface area of the wetland during the spring and early summer to about 40 acres, and cattle were excluded with an electric fence to restore native grasses and riparian vegetation. The wetland is home to at least five amphibian species and rare plants unique to the area.

From 2007 to 2011 wetlands were completely excluded from the grazing units. In June of 2012, the Council considered potential positive and negative effects of a proposal from the lessee to graze the wetlands for 20 days during that summer (BCCA Council Meeting, June 2012). The lessee claimed that significant time and energy were required to implement the rest-rotation system and that regulated grazing could be accommodated with no significant ecological impacts. The investments in riparian area restoration provided grounds for

excluding cattle in the Mollet Park wetlands, but exclusions elsewhere demonstrated that the costs and risks could be spatially confined and managed.

Deliberations among the BCCA Council members and Land Steward had to take account of a number of ecological uncertainties and risks. In addition to threats to the amphibian populations, some Council members were concerned about potential impacts on ground-nesting birds that use the surrounding riparian vegetation during the spring and early summer. After the restoration effort, Mollet wetlands appeared to foster greater plant and animal diversity. However, the Council did not have prior population data so it was unclear what benefits had resulted from eliminating cattle (BCCA Council Meeting June 2012). One Council member noted that lack of vegetation disturbance was a problem:

It was getting choked out, which was part of the reason to open it up for grazing. So would it really hurt it to get some disturbance? Fire, grazing, or whatever it may be? So there was some discussion on that, "is it really being choked out?" There were varying opinions on that, but everyone came to a consensus that we should allow a bit of disturbance in there. (Pers. Comm. US1, 2017)

The Council decided to approve a trial grazing period to gather further data about impacts of cattle use on wetland environments in a controlled, pseudo-experimental setting, on condition that the Land Steward photo monitor the area before, during, and after a two-week grazing period (from middle of June to July) and report back to the Council (BCCA Council Minutes June 2012). Several metrics in addition to those provided in the overall Grazing Management Plan were selected to serve as "triggers" for monitoring the cattle effects. The Council reevaluated the decision each year based on observed impacts and data collected by the Council, the Lessee, and the Land Steward in the field. The Grazing Workgroup continues to meet and discuss observed impacts around and within the wetlands. In spring 2017 it approved the installation of a temporary fence to mitigate soil erosion resulting from cattle trailing, which was installed before the summer grazing periods.

The Council, the Lessee, and the Land Steward continue to monitor the area, gather further data, and make modifications accordingly. An essential component of this process is connecting local knowledge of streams, ranges, and livestock production and conditions with available scientific knowledge, specifically with public land managers, even if it involves negotiations over best management practices. As stated by the BCCA Land Steward:

… range management, a lot of it early on I gleaned from my time with NRCS [National Resources Conservation Service], also an FWP grazing specialist. He's the one

who kind of put together the rest-rotation thing, or the concept behind it. But there
were shortcomings with it because he thought it applied everywhere, it was just this recipe. And then Lessees were pissed because [they said], "why do I have to graze this now, there's no grass up there?" but the plan said it. Just some stuff that didn't make sense…and we adjusted it. (BCCA Land Steward 2016)

The Land Steward emphasized that incorporating knowledge of the two lessees into the design of the plan resulted in more robust and suitable arrangements.

Local knowledge comes in a lot…like, "where the elk used to be" or "what this pasture was," or irrigation, or what's the best way for different techniques of grazing and why they graze at a certain time in this place. There are a lot of pieces that I use. And if you use some of that then it often makes it more durable when you're … blending it with some of the new Best Management Practices. (BCCA Land Steward 2016)

The BCCA Council utilized multiple funding sources to install and maintain monitoring infrastructure for ecological outcomes of the plan on the ground. For example, the Land Steward annually photo-monitors eight permanent transects for six "Resource Condition Standards" created in the Grazing Management Plan, including specific information on species composition, percent bare ground, basal area coverage, and canopy coverage, for inclusion in reports to the NRCS as part of the Council's enrollment in its Conservation Stewardship Program (CSP) (BCCA CSP 2010-2015).

While the BCCA Land Steward noted the difficulty of rigorously monitoring such a large area, BCCA Council members and other local partners agree that the Grazing Management Plan, based on an adaptive modification approach, is improving rangeland health. One Council member's comment reflects the general consensus:

The grazing situation up there has improved greatly with the rotational system. In fact, I think that was probably the best thing to come out of the initial Council. (Barton field notes 2016)

Conclusion

The constitutionality approach focuses on the capacity of local actors to design and effectively manage bottom-up institutions they jointly create for managing local natural resources even in the face of opposition from more powerful forces operating at material or ideological levels, and at supra or place-based scales; indeed often they are nested and occur simultaneously. This focus on local agency, creativity, and subjectivity offers an alternative to both environmentality and so-called participatory and community-based natural resource management that are imposed and controlled by outside forces and agents. Thus, scholars using the constitutionality approach address the questions of how people with different levels of bargaining power collectively gain or regain control over resources they used to manage (or seek to manage), and claim authority to make and enforce rules over use of these resources; how local actors become empowered; and who is recognized as legitimately owning these resources and how are they protected (Haller et al. 2016; Haller and Merten 2018). On the last point, Haller and Merten (2018) specifically ask,

…do local actors have a sense of ownership of these resources or is there a constant insecurity of having these resources taken away by powerful state or market actors in a weak neoliberal state? Who, for example, is responsible to uphold law and order in an emerging trading place if the state fails to do so and local people are not empowered to do it either?

Addressing these questions illuminates our analysis of our case study of the Blackfoot Community Conservation Area (BCCA) over the past decade. The BCCA has achieved many accomplishments amidst an increasingly neoliberal state and increasingly heterogeneous locality. While our conclusions are limited and cautious because of limited examples and data over one decade, we nonetheless think the case of the BCCA illustrates significant creative innovation by local actors obtaining real ownership of local resources and capacity to steward them and in bottom-up institution building for effective ongoing management.

The history of the BCCA reveals the centrality of local leadership in the formation and ongoing activities of the grassroots, landowner-led Blackfoot Challenge, whose leaders have been able to build relationships and understandings of the goals and mechanisms involved in forging partnerships across seven towns in the Blackfoot watershed, with The Nature Conservancy, and with state and federal resource management agencies, and politicians necessary to raise funds to realize a vision of purchasing thousands of acres of corporate timberlands, a transaction of considerable magnitude and novelty. The catalyst fueling this achievement was in part a mutually perceived threat to many in the local communities from a former timber company's designation and sale of "higher and better use" (HBU) lands, both because of the prioritization of market price over all other values and the consequent foreshadowing of further landscape fragmentation, sub-division, and increased socioeconomic heterogeneity.

Nevertheless, concerns remain in the Blackfoot as well as the nearby Swan valleys over the legitimacy, disposition, and

distribution of costs and benefits of purchasing and reselling former corporate timberlands. These include complaints over intervention in what some felt should have remained free market transactions, while other community members were more concerned that, as a market transaction the, acquisition itself is a limited and compromised solution compared to zoning and permanent land use laws, and that landowners in the area reap higher land prices as a result of the increase in conservation ownerships; some have suggested that the ultimate beneficiary is the former timber company, which received extraordinary profit from selling land that it had already logged, and which historically were in the public domain. Indeed, some have questioned why these lands should not be repossessed by local people (indigenous and otherwise) rather than enabling a global corporation to continue to profit from them (Belsky 2008; Duvall and Belsky 2005; Parker 2014).

Despite these local differences, the Blackfoot Challenge and its partners have created the Blackfoot Community Conservation Area (BCCA) in response to considerable public discussion and deliberate community engagement efforts. While market purchase provides a partial answer to the question raised by constitutionality scholars as to what basis a local group is able to claim ownership of resources, it begs the questions as to the basis for claiming authority to make rules for the use and environmental conservation of the resources. Based in part on responses to a survey and local outreach, the Blackfoot Challenge Board established an autonomous BCCA Council to govern the core BCCA area. We suggest that this decision reflects a strategic understanding of the potential, of local social networks and ties becoming so strong they become too powerful, even exclusionary, and contain rather than resolve local conflicts (Portes and Landolt 1996). We analyzed two contentious arenas (motorized use and grazing in the core BCCA) in which the BCCA Council needed to make plans and policies to explore how the BCCA actually operated. We conclude that while there continues to be creative innovation in local community engagement, decision-making, and resource use and protection, there remain identifiable gaps and necessitating further study.

The BCCA Council has utilized its parent organization's consensus-reaching model of focusing initially on the majority in agreement rather than the minority who disagree (the 80/20 rule) . A critical dimension of this approach to producing workable solutions is that it remains open, incremental, and adaptive. Many of these elements were evident in the BCCA's evolution in developing, instituting, and adapting motorized use and grazing management plans over time. The BCCA Council and its workgroups modified their rules as they received new data on the effects of implementation; in turn Council members became responsive to new positions. While these are only two examples and are viewed only from the perspectives of BCCA Council members, we see seeds of what may be viewed as social learning and adaptive

modification. We recognize the 80/20 rule entails a tricky balance, even if as claimed, the Council always returns to minority positions. One can see how easily the rule can slip into exclusion of dissenting opinions. Earlier we raised the question of whether the limited application pool of potential BCCA Council members is indicative of satisfaction with the status quo, or the opposite, that the Council is not representative or responsive to the range of concerns and opinions among people who use the BCCA. This is critical to answer the question of whether local actors affiliated with the BCCA have developed a sense of ownership and security in light of powerful state or market forces; as well as in regards to their own hetereogenity. The local actors have achieved legal ownership of the 5,600 acres of BCCA core lands that hence could rightfully be called a community-owned conservation area (or forest). With the Blackfoot Challenge as the legal owner there is security that they have control over locally created governance institutions, plans, and policies for the Core. The cooperative arrangement with adjoining lands under public management is more subject to whims of governmental changes and market logics. Even so, the extent to which a wider and diverse population of local actors across the watershed feels a sense of ownership in the BCCA, and involve themselves in governing as well as using it, is likely to be the deciding factor on the question of the long-term security of the area. Further monitoring, community engagement, and adjustments that are open and critically self- reflective are necessary to maintain effective governance, and to promote positive relationships among local institutions, practices, and the ecological viability of resources.

Compliance with Ethical Standards

Conflict of Interest The authors declare that they have no conflict of interest.

References

Agrawal A., and Gibson C. (eds.) (2001). Communities and the Environment, Rutgers University Press, N.J.

Agrawal, A. (2005). Environmentality: Community, Intimate Government, and the Making of Environmental Subjects in Kumaon, India. Current Anthropology 46(2): 161–181.

BCCA (2008). Management Plan for the Core, 1st edn.

BCCA (2017). Management Plan for the Core, 2nd edn.

Belsky J. M. (1999). Misrepresenting communities: the politics of community-based rural ecotourism in Gales Point Manatee, Belize. Rural Sociology 64: 641–666.

Belsky, J.M. (2008). Creating Community Forests. In: Forest Community Connections: Continuity and Change. E. Donoghue and V. Sturtevant (eds). Chapter 12. Washington D.D.: Resources for the Future.

Belsky J. M. (2015). Community forestry in Bhutan and Montana: comparative engagements with market forces. Forest Policy and Economics 58: 29–36.

Best C., and Wayburn L. A. (2001). American's private forests: states and stewardship, Island Press, Washington, D.C.

Beymer-Farris B. A. (2013). Producing biodiversity in Tanzania's mangrove forests? A combined political ecology and ecological resilience approach to sustainably utilized landscapes. In Brannstrom C., and Vadjunec J. M. (eds.), Land Change, Science, Political Ecology, and Sustainability: Synergies and Divergencies, Routledge, London.

Bliss, J.C., E.C. Kelly, J. Abrams and C. Bailey. (2008). Disintegration of the industrial forest estate and the future of small-scale forestry in the United States. Working Paper Number RSP 08–03. Rural Studies Program, Oregon State University.

Brosius J. P., Tsing A. L., and Zerner C. (1998). Representing Communities: Histories and Politics of Community-Based Natural Resource Management. Society & Natural Resources 11: 157–168.

Bullock R., Broad G., Palmer L., and Smith M. A. (eds.) (2017). Growing Community Forests: Practice, Research and Advocacy in Canada, University of Manitoba Press, Manitoba, Canada.

Bullock R., Armitage D., and Mitchell B. (2012). Shadow networks, social learning, and collaborating through crisis: building resilient forest-based communities in Northern Ontario, Canada. Chapter 13. In Bullock R., Armitage D., and Mitchell B. (eds.), Collaborative Resilience: Moving through Crisis to Opportunity, MIT Press, Cambridge, Mass, pp. 309–335.

Campbell L. M., Haalboom B. J., and Trow J. (2007). Sustainability of Community-Based Conservation: Sea Turtle Egg Harvesting in Ostional (Costa Rica) Ten Years Later. Environmental Conservation 34: 122–131.

Cheng, A.S. and M. Fernandez-Gimenez. (2006). Ford Foundation community-based forestry demonstration program research Component: Final report, Department of Forest, Rangeland, and Watershed Stewardship, Colorado State University, Fort Collins.

Cleaver F. (2012). Development through Bricolage: Rethinking Institutions for Natural Resource Management, Routledge Press, London and New York.

Cleaver F., and de Koning J. (2015). Furthering critical institutionalism. International Journal of the Commons 9: 1–18.

Creswell J. W. (2013). Qualitative Inquiry and Research Design: Choosing among Five Approaches, Sage Publications, Los Angeles, CA.

Dillman D. A. (1978). Mail and Telephone Surveys: The Total Design Method, Wiley and Sons, New York.

Donoghue E., and Sturtevant V. (2008). Forest community connections: continuity and change, Resources for the Future, Washington D.D.

Duvall, A. (2006). Towards Community-Owned Forests: Landowner Perspectives on the Blackfoot Community Conservation Area. Master's Thesis. University of Montana.

Duvall, A. and J.M. Belsky. (2005). Blackfoot community conservation area survey: Your views on Future use, ownership and management (Preliminary Survey Results). January 26, 2005. Unpub. ms.

Fairfax S. I., Gwin M. A. K., Raymond L., and Watt L. A. (2005). Buying nature: the limits of land acquisition as a conservation strategy, 1780-2004, MIT, Cambridge, MA.

Fortmann L. (1995). Talking Claims: Discursive Strategies in Contesting Property. World Development 23(6): 1053–1063.

Fraser N. (2011). Marketization, social protection, emancipation: toward a neo-polanyian conception of capitalist crisis. In Calhoun C. J., and Derluguian G. M. (eds.), Business as Usual: the Roots of the Global Financial Meltdown, NYU Press, New York, pp. 137–158.

Fraser N. (2013). A Triple Movement? Parsing the Politics of Crisis after Polanyi. New Left Review 81: 119-+.

Gilmour, D. (2016). Forty years of community forestry. Food and Agriculture Organization. Forestry Paper 176, Rome, Italy.

Goetz, H. and A. Duvall (2006). Final Report – BCP and BCCA. December 2006. Unpub. Ovando, MT.

Haller, T. and Merten. (2017). Crafting our own rules: Constitutionality as a bottom-up approach to crafting by-laws in Zambia. Human Ecology. https://doi.org/10.1007/s10745-017-9917-2.

Haller T., Acciaioli G., and Rist S. (2016). Constitutionality: Conditions for Crafting Local Ownership of Institution-Building Processes. Society & Natural Resources 29(1): 68–87. https://doi.org/10.1080/08941920.2015.1041661.

Hecht S. B., Morrison K. D., and Padoch C. (eds.) (2014). The social lives of forests: past, resent, and future of woodland resurgence, The University of Chicago Press.

Jensen D., Draffan G., Osborn J., and Council, I. E. P. L. (1995). Railroads and clearcuts: legacy of Congress's 1864 Northern Pacific Railroad land grant, Keokee Co Pub Inc.

Kusel J., and Adler E. (2003). Forest communities, community forests: struggles and successes in rebuilding communities and forests, Rowman & Littlefield Publishers.

Li T. M. (2007). Practices of assemblage and community forest management. Economy and Society 36: 264–294.

Lindbergh, L. and H. Goetz. (2016). Guest opinion: Montana conservation starts around kitchen table. Seeley Lake Pathfinder, June 30, (2016). Downloaded April 22, 2017 from http://www.seeleylake.com/story/2016/06/30/opinion/montana-private-land-conservation-it-all-starts-with-people-around-a-kitchen-table/1058.html.

Lyman M. W., Danks C., and McDonough M. (2013). New England's Community Forests: Comparing a Regional Model to ICCAs. Conservation and Society 11: 46.

McCarthy J. (2005). Devolution in the woods: community forestry as hybrid neoliberalism. Environment and Planning 37: 994–1014.

Mwangi E., Markelova H., and Meinzen-Dick R. (eds.) (2012). Collective Action and Property Rights for Poverty Reductin: Insights from Africa and Asia, University of Pennsylvannia Press, Philadelphia, PA.

Ostrom E. (1990). Governing the Commons: The Evolution of Institutions for Collective Action, Cambridge University Press, Cambridge.

Ostrom E. (2005). Understanding Institutional Diversity, Princeton University Press, Princeton N.J.

Parker, M. (2014). Swan Story. In: Charnley, S, Sheridan, T.E. and Nabhan, G.P. (eds.). Stitching the West Back Together: Conserving Working Landscapes and Biodiversity in the American West. The Univesity of Chicago Press. pp. 123-136.

Perreault T., Bridge G., and McCarthy J. (2015). The Routledge Handbook of Political Ecology, Routledge, Oxon and N.Y.

Portes, A. and P. Landolt. (1996). The Downside of Social Capital. The American Prospect 26 (May- June): 18-21, 94 http://epn.org/prospect/26/26-cnt2.

Rasker R. (2006). An Exploration into The Economic Impact of Industrial Development versus Conservation on Western Public Lands. Society and Natural Resources 19(3): 191–207.

Siebert S. F., and Belsky J. M. (2014). Historic livelihoods and land uses as ecological disturbances and their role in enhancing biodiversity: an example from Bhutan. Biological Conservation 177: 82–89.

Singh, N.M. (2013). The Affective Labor of Growing Forests and the Becoming of Environmental Subjects: Rethinking Environmentality in Odisha, India. Geoforum 47: 189-198.

Yung L., and Belsky J. M. (2007). Private Property Rights and Community Goods: Negotiating Landowner Cooperation Amidst Changing Ownership on the Rocky Mountain Front. Society & Natural Resources 20: 689–703.

Zimmerer, K. S. (2015). Methods and environmental science in political ecology. In Perreault, T., Bridge, G., and McCarthy, J. (eds.), 2015. The Routledge Handbook of Political Ecology. Oxon and N.Y., Routledge. Chap 11, 150–168.