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Environmental Law & Policy

COLUMBIA RIVER WATER MANAGEMENT POLICY & RULE-MAKING

FUNDAMENTAL PRINCIPLES – FROM THE CENTER FOR ENVIRONMENTAL LAW AND POLICY

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I. The NAS/NRC Report – MANAGING THE COLUMBIA RIVER, INSTREAM FLOWS, WATER WITHDRAWALS, AND SALMON SURVIVAL - commissioned by Washington State and published by the NAS in March, 2004 - represents sound science and policy advice, and should serve as the foundation for state actions. Among other reasons, the report's credibility will carry great weight in the event of court challenges over future water allocations. *See,* for example, the law review article entitled *"'The Supreme Court of Science' Speaks on Water Rights: The National Academy of Sciences Columbia River Report and its Water Policy Implications*", author Reed Benson, Lewis & Clark Law School Journal of Environmental Law, Volume 35, p. 85 (2005).

II. The Columbia River is already over-appropriated, and additional unmitigated diversions will only make conditions worse. If new permits are issued, mitigation in the form of replacement water for the full value of the water right (not just the consumptive use portion) is a must, and such mitigation must be permanent and real (meaning, not temporary "re-plumbing" or "re-shaping" of dam operations). Among the reasons:

- A vast number of existing unused water rights, including the second half of the Columbia Basin Project, will be put to use in the future, further depleting flows.
- Climate change is predicted to result in less snowpack & will change in the timing of peak flows, making river conditions worse in the critical summer months.
- 85% of the river's flows originate from sources outside of Washington State & we have no control over our neighbors' additional diversions.

III. New Columbia River water rights should not be issued until basic water management data can be gathered and a realistic water budget can be developed. Data-gathering essentials include:

a. The amount of water already allocated via Washington water right permits, but not yet put to use. (In other words, tally and account for all inchoate water rights, both municipal and agricultural/industrial.)
b. An accounting, via metering or other accurate measurements, of how much water is currently being diverted from the Columbia River in Washington State.
c. An accounting of the amount of water currently being used, as well as an accounting of inchoate water rights outstanding on the Columbia's major tributaries and in neighboring states and Canada.
d. An analysis of outstanding water-right applications on file with Ecology, to assess whether the applicants are indeed still interested in pursuing their projects. (Because many applications were submitted over ten years ago, it is doubtful that they accurately reflect the current demand for water.) This analysis should be broken out by geographic area, proposed types and seasons of use, quantities requested, quantities likely to be awarded, etc.

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e. An accounting for the amount of water already allocated from the John Day-McNary Reserve.
f. Metering or other records showing the amount of water being used by those with interruptible water rights. This accounting should also show how many interruptible water rights are still in permit status as opposed to being fully perfected.
g. Data describing the outcome of the state's 2001 provision of drought emergency relief to interruptible water right holders so that they would not have to interrupt their water use. How much did the state pay to rescue these users? How many took advantage of the program? Did program participants comply with metering and other requirements? Did the monetary benefits outweigh the state's costs?
h. A separate analysis estimating the amount of water that could be saved via conservation – across all sectors of water use – agriculture, municipal, industrial.

IV. Neither science, nor water law principles support retroactively "drought proofing" existing interruptible water right holders. Interruptible water rights are a necessary back-up to protect river resources in times of drought and reduced river flows, and, as noted by the NAS in its report, are a means to maintain needed flexibility in managing the resource.

V. The fishery and aquatic resources of the Hanford Reach are particularly valuable and have national significance, as evidenced by, among other things, the creation of the Hanford Reach National Monument. These resources should be protected and enhanced via adoption of a protective instream flow rule.

VI. A credible economic analysis must be conducted which accurately reflects the impact of in-stream versus out of stream uses. The analysis must not ignore values attributable to commercial, recreational and tribal interests.

VII. The Department of Ecology must be given the mandate and resources to do its job. This should include funding for essential data-gathering, as well as water right permitting, compliance and enforcement activities.

VIII. The state should explore creative ways to improve conditions for Columbia River fish (such as enhancing river flows) while at the same time living within the existing water allocation budget (meaning, issuing no new water rights). Ideas should include metering and reporting by all water users, mandating water conservation by all users, water marketing, and "moving" water from existing water right holders (such as the Quad Cities) to those with legitimate needs for new water.