

SYMPOSIUM

WESTERN INSTREAM FLOWS: FIFTY YEARS OF PROGRESS AND SETBACKS

Lewis & Clark Law School continues its celebration of the bicentennial of the Corps of Discovery's extraordinary journey, focusing this year on "Restoring the Rivers of Lewis & Clark." On April 20–21, 2006, at the Oregon Convention Center in Portland, Oregon, the Oregon Law Institute and Lewis & Clark Law School hosted a symposium entitled "Western Instream Flows: 50 Years of Progress and Setbacks." This multi-faceted symposium brought together nationally renowned legal scholars as well as water resource managers, biologists, water policy advocates, tribal resource managers, and an audience of practicing attorneys and visiting professors. This edition of *Environmental Law* is rooted in that symposium and explores western water law as it applies to conservation efforts and the public interest in flowing rivers.

The rivers of the West have changed dramatically since the Lewis and Clark expedition made its way to the Oregon coast. As ever-growing populations in the arid West continually increase demand for water, our rivers have been dammed, diverted, and drained to meet the needs of cities, agriculture, ranching, and industry. Water alone, however, is not the only resource in rivers and streams. These waterbodies, the lifelines of the West, are of fundamental importance to natural ecosystems, as well as human cultural and recreational activities.

For fifty years, western water policy has struggled to find a place for ecosystem, cultural, and recreational instream uses within the doctrines of prior appropriation and beneficial use. This symposium, and its subsequent articles, examine the development of instream flow rights and obstacles to their implementation, the interplay of federal and tribal instream flow protection with state water law, and innovative approaches for the future of instream rights. Each author discusses the issue of instream rights from his or her area of specialty. Charles Wilkinson¹ provides a moving discussion of

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the importance of instream flows and the advocates who work to protect our rivers. Janet Neuman² traces the history of Oregon's instream flow protection legislation, and evaluates the failures, successes, and implications of Oregon's statutes both within and outside Oregon's borders. Michael Blumm,³ David Becker,⁴ and Joshua Smith⁵ examine the efforts of six tribes to restore streamflows necessary to fulfill the purposes of their reservations, and the special problems tribes face by being forced to bring these challenges in state courts. Charlton Bonham⁶ delves into the instream flow laws of California, Montana, and the Intermountain West (Colorado, Idaho, Utah, and Wyoming) and their developments specifically with respect to water for fish, and concludes with recommendations for balancing the interests of the many stakeholders on rivers. Adell Amos⁷ examines the interplay between the four major federal land managing agencies and state water law, and provides a comprehensive set of recommendations to balance the tension between state and federal governments over water rights for federal lands. Reed Benson⁸ compares the water law systems of Colorado and Wyoming and answers the question whether these states have made "adequate progress" since 2000 in improving their instream flow laws. Lastly, Ruth Mathews⁹ provides a survey of state instream flow laws, looking beyond the legal framework to capacity, public awareness, science and technical tools, and monitoring and enforcement.

As demands on water resources increase with population growth, and climate change impacts the ecology of the rivers, the place for instream flows in water law is by no means certain. We hope these articles will give readers an understanding of instream flows, as well as inspire discussion on the impact and future of these flows in the restoration of the rivers of the West. Our rivers will never be what they were when the Corps of Discovery followed the mighty Columbia to the Pacific, but the vitality of this incredible western resource depends in large part on this element of water law. *Environmental Law* would like to thank all of our authors and the symposium planning committee—John Devoe, Janet Neuman, Anne Squier, Lin Harmon, Janice Weis, and Charles Wilkinson—for all of their hard work.

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