

Volume 27, Issue 1

Spring 1997

ARTICLES

Beyond the Parity Promise: Struggling to Save Columbia Basin Salmon in the Mid-1990s

Michael C. Blumm, Michael A. Schoessler, & R. Christopher Beckwith

The alarming decline of Columbia River Basin salmon and judicial rejection of salmon restoration plans resulted in the development of three competing restoration plans in the mid-1990s. Professor Blumm, Mr. Schoessler, and Mr. Beckwith analyze and critique these three plans in light of the Northwest Power Act's requirement of parity between hydropower and salmon in the operation of the Columbia dams. The authors conclude that lowering the burden of scientific proof demanded of mainstem passage measures and implementing adaptive management policies would offer a greater potential for restoring the signature species of the Pacific Northwest and ensuring that the right to take fish promised to the Columbia River Indian tribes 140 years ago is fulfilled.

Water for Growing Communities: Refining Tradition in the Pacific Northwest

Janis E. Carpenter

Ms. Carpenter highlights some of the major water supply issues arising in Pacific Northwest communities as they increase in population and change their economic focus. The author identifies legal and policy questions related to the traditional "growing communities doctrine" and proposes legislative review of municipal water rights and responsibilities in light of progressively competitive demands for water rights throughout the region.

Wasting Water in the Northwest: Eliminating Waste as a Way of Restoring Streamflows

Karen A. Russell

Ms. Russell examines the failure of the Columbia Basin states to stop wasteful water use despite beneficial-use requirements mandated by state water allocation laws. She concludes that this failure reflects lax enforcement, which in turn reflects uncertainty in the definition of waste and the political influences that shape water policy. Ms. Russell describes legal changes that could stem waste by adding certainty and rigor to enforcement, thereby providing additional water for both consumptive uses and instream flows.

Instream Rights & Invisible Hands: Prospects for Private Instream Water Rights in the Northwest

Jack Sterne

Mr. Sterne surveys the state programs available in the Northwest to protect instream flows. He concludes that those programs are of little value as they are currently used, and advocates statutory changes to allow private parties to hold and enforce instream water rights.

COMMENTS

Slowing the Net Loss of Wetlands: Citizen Suit Enforcement of Clean Water Act § 404 Permit Violations

Phillip M. Bender

With effective Army Corps of Engineers enforcement of the Clean Water Act's section 404 permits lacking, Mr. Bender advances the proposition that a remedy - citizen suit authority - currently exists. Mr. Bender finds this authority through a careful reading of the Clean Water Act, in conjunction with the Clean Water Act's legislative history, prior case law, and the general policy behind wetlands protection.

The R.S. 2477 Right of Way Dispute: Constructing a Solution

Mitchell R. Olson

Mr. Olson examines the controversy surrounding proposed Department of the Interior regulations that establish standards and processes for validating R.S. 2477 rights of way at the federal level. Western states oppose these regulations because historically state law has determined R.S. 2477 validity. Mr. Olson concludes that state law determinations of validity must be included in the federal regulations.

NOTE

Current Trends in Judicial Review of Environmental Agency Action

The Honorable Diarmuid F. O'Scannlain

Judge O'Scannlain, Circuit Judge, United States Court of Appeals for the Ninth Circuit, argues that *Chevron* deference is ultimately a function of Congress's intent and, a priori, a judge's approach to statutory interpretation. Judge O'Scannlain presents a sample of Supreme Court and Ninth Circuit cases to illustrate why he suggests that the environmental bar should monitor not just specific interpretations of environmental statutes but the underlying methods of statutory interpretation and faithfulness to the *Chevron* doctrine.

BOOK REVIEW

An Update on Pleadings, Sanctions and Civil Justice Reform

Carl Tobias

Professor Tobias concludes that the heightened pleading requirements of FRCP Rules 8 and 11 are having little impact on plaintiffs filing environmental lawsuits.