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### SLIDES: Beyond Rethinking: Redoing Western Water Law

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# Beyond rethinking: *redoing western water law*

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Lewis & Clark Law School

*Shifting Baselines & New Meridians*  
*NRLC Summer Conference, 2008*

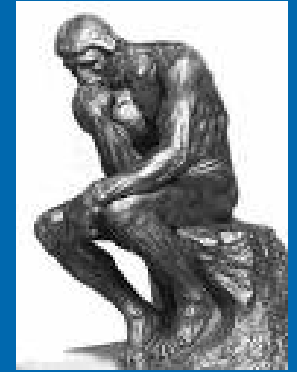


# Enough thinking!

## Time to act . . .

- The problems in western water law don't stem from a lack of thought, but from a lack of action
- What's needed isn't rethinking, but *redoing*: a water action agenda & implementation plan
  - First, review the thinking/rethinking that's already been done
  - Second, consider why the ideas haven't been implemented
  - Third, address how to turn the ideas into action

# Thinking, thinking, and thinking some more



- Nearly 40 years of thought already
  - 1973 National Water Commission Report
  - 1986 Report to Western Governors' Assoc.
  - 1992 Park City Principles/ Longs Peak Report
  - 1998 Water in the West Report
  - 1999 New Strategies for US Watersheds
  - 2006 Western Governors' Association Report
  - 2008 21<sup>st</sup> Century Water Commission Bill

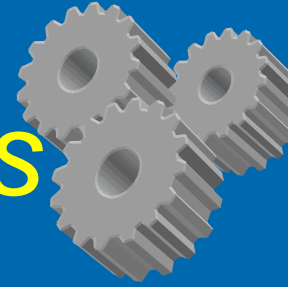
# Great minds think alike: previous reports/common thoughts

- Recognize the nature of water resources
- Incorporate economics and improve efficiency
- Acknowledge and adapt to changing understandings, values, and needs
- Tailor institutions to problems being solved and promote public participation
- Address inequities
- Consider climate change (1998-on)

# The **nature** of water resources

- Recognize how hydrologic systems work
  - Improve data collection
  - Respect basins, watersheds, flow regimes, & aquatic/riparian ecosystems
  - Integrate surface water and groundwater management
  - Integrate water quantity and water quality
  - Integrate land use and water use planning

# Economic\$ and *efficiencies*



- Incorporate conservation and efficiency as explicit components of water policy
- Apply sound economic principles to water projects and water use to promote conservation and efficiency & create new supplies:
  - eliminate counterproductive subsidies
  - reassess costs and benefits of water infrastructure
  - use pricing, incentives, “user pays” principles, and voluntary market transactions





# Changing understandings, values, and needs



- Address environmental impacts of water development and use
- Recognize public values for water *in situ*
- Incorporate principles of sound science, adaptive management, and sustainability
- Recognize that policy choices significantly affect future water demands derive in large part from policy choices





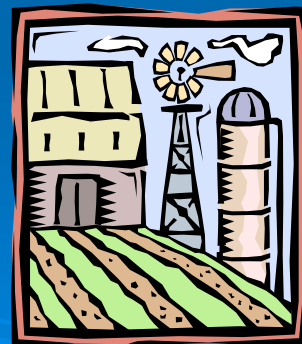
# Tailor institutions and promote public participation

- Align water management with water “problemsheds”
- Assign water management responsibility to the lowest possible level of governance; continue to refine water federalism, with appropriate roles for federal, tribal, state, regional, and local entities (and private sector)



# Address inequities

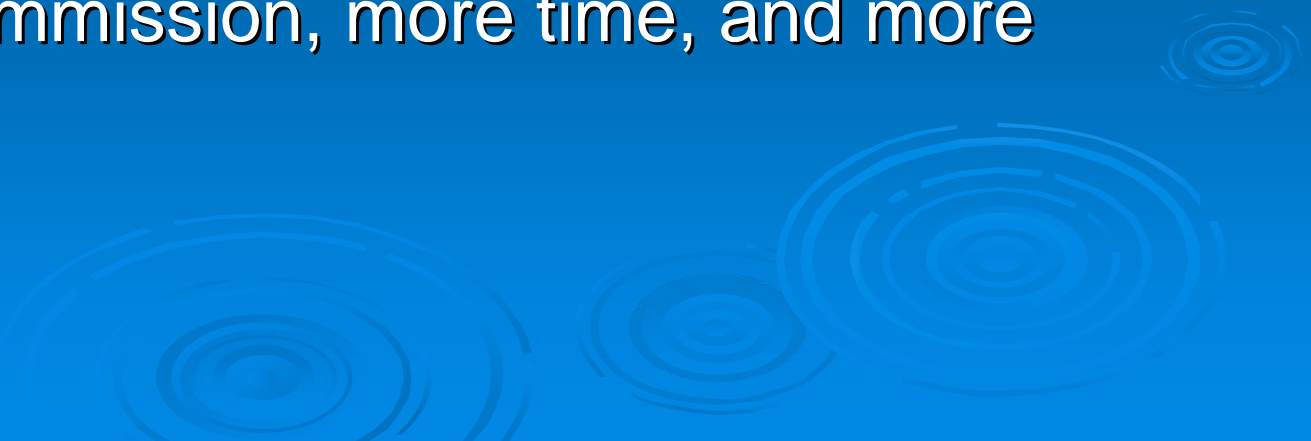
- Fulfill tribal water rights obligations
- Address rural water needs
- Reassess basin of origin protections
- Respect existing rights



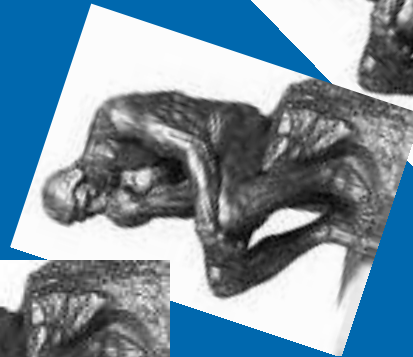
# 21<sup>st</sup> Century Water Commission (HR 135)

- Likely to say more of the same
- Similar charter:
  - Project future water supply and demand
  - Study water management programs
  - Develop comprehensive water strategy
    - Respect role of states; avoid increasing mandates
    - Eliminate duplication among federal programs
    - Optimize supply while protecting environment
    - Promote conservation

# Proposed amendments

- All of the above
  - With the addition of:
    - Greater attention to climate change, natural hydrologic processes and watersheds, and consideration of non-structural/sustainable methods of increasing water supply
    - Bigger commission, more time, and more money
- 

More thinking.....



What is said

Great ideas for  
water policy reform...

Blah, blah, blah, blah, blah, blah,  
blah, blah, WATER, blah, blah, blah,  
blah, blah, blah, blah.....

What is heard



# Anything new under the sun?

- What would constitute truly radical rethinking?
  - Move agriculture back to humid areas
  - Limit urban growth in arid areas
  - Treat water as liquid blue gold
  - Elevate ecosystem services of watersheds over jurisdictional lines

Chances of this kind of thinking are slim to none, so need to concentrate on implementing existing ideas in current **climate**





# Why haven't all the good ideas been implemented?

- Recommendations threaten vested interests
- Proposals also threaten “home” for many people
- No economically powerful group exists with “change” as its agenda
- Change= benefits + costs x uncertainty
- Short societal and institutional memory & desire for quick fixes stymie implementation

# What to do?



- Don't need to reinvent the wheel, just need to get it rolling
  - Form new coalitions
    - Rural communities, conservationists, fiscal conservatives, municipalities
  - Educate the public and policy makers
    - Water 101
  - Get on lawmakers' radar screens
    - Federal, state, and local
  - Connect the platform to the crucial issues of the day
    - Climate change, the war in Iraq, "homeland security," energy policy, the economy, natural disasters, etc.