6-6-2016

SLIDES: Indigenous Water Justice in the Columbia River Basin

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INDIGENOUS WATER JUSTICE IN THE COLUMBIA RIVER BASIN

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Photo from early 1900’s by Edward C. Curtis, copy from CRITFC website

Photo from UCUT
Flow pushed earlier in the year

IMPACTS OF DAMS [CRITFC]
UN Declaration on the Rights of Indigenous People, 2007

- Right of self-determination
  - Loss of land and resources has prevented indigenous people from exercising, in particular, their right to development in accordance with their own needs and interests,
  - Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples . . . especially their rights to their lands, territories and resources,
  - Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,
Recognition of Steven’s Treaty Fishing Rights

[t]he exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places in common with citizens of the Territory.
Reserved and Aboriginal Water Rights

- Colville instream flow rights – 9th Circuit court ruling
- Water rights recognized for tribal replacement fishery
- State has no authority to regulate the non-navigable water on the reservation
Canada

- **Doctrine of terra nullis inapplicable in Canada**
- **Calder v. Attorney-General of British Columbia, 1973**
  - Aboriginal land rights survived European settlement
- **CONSTITUTION ACT, 1982** PART II: RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA:
  - consultation regarding land and resources required
  - 1990 interpretation: Constitutional protection prevents infringement without a compelling and substantial public purpose
- **Tsilhqot’in Nation v. British Columbia, 2014**
- Aboriginal title “reconciliation” with common law
  - Established based on sufficient, continuous, and exclusive use and occupation [common law] as practiced/understood by the Aboriginal group
- Provincial duty to consult on a sliding scale from claim to established title
- Once title is established, incursions require a showing of compelling and substantial public purpose
Common Views on the Future of the Columbia River Treaty, February 25, 2010

• The Columbia Basin tribes’ interests must be represented in the implementation and reconsideration of the Columbia River Treaty.
  – Sovereign voice in river management
  – Equitable benefits to each Tribe in priority to other sovereign parties
  – Integrate traditional ecological knowledge in river management

• The Columbia River must be managed for multiple purposes, including -
  – Tribal cultural and natural resources
  – Recognize tribal flood control benefits
  – Protecting tribal [treaty and settlement] rights . . . consistent with ecosystem-based management.
Reconnecting the Columbia

- U.S. Columbia Basin Tribes: January 9, 2015,
  - available at http://www.ucut.org/Fish_Passage_and_Reintroduction_into_the_US_And_Canadian_Upper_Columbia_River3.pdf

- NWPCC: October 2014
  - https://www.nwcouncil.org/fw/program/2014-12/program/partthree_vision_foundation_goals_objectives_strategies/iv_strategies/c_other_strategies/3_anadromous_fish_mitigation_blocked_areas

Source: UCUT

By Nigel Bankes and Barbara Cosens

For the Program on Water Issues, Munk School of Global Affairs at the University of Toronto

October 2014
Pacific Salmon Commission
US Section

• Pacific Salmon Treaty requires appointment of 4 members by US and 4 by Canada
• Each Section has 1 vote
• US Implementing legislation specifies appointments
  – 1 US Representative
  – 1 Alaska Representative
  – 1 Oregon or Washington Representative
  – 1 Native American representative from the treaty tribes of Oregon, Washington or Idaho
The Importance of Capacity Building and Self-Determination

• Self-Determination: the freedom of a people to choose . . .
  – their own destiny (individuals)
  – their own government (groups)

• Local Capacity: Possession by a group of people of the skills, resources, and processes necessary to develop and manage their own priorities.
Participatory Capacity: NW Tribes/Ngarrindjeri

Fish passage & reintroduction are key to integrating ecosystem-based functionality into the Columbia River Treaty.

Since river ecosystems are interconnected, indigenous people in the Columbia River basin have a unique and invaluable perspective on ecosystem health.

In 1941, the Columbia River Treaty was established to regulate water use and fisheries between the U.S. and Canada. This treaty has been challenged and revised several times due to its impact on indigenous communities.

The treaty was designed with two primary purposes: reducing floods and increasing hydroelectric power generation.

In recent years, there has been increasing recognition of the rights and concerns of indigenous peoples.

**PROPOSAL**

Central to the treaty's modernization is the establishment of a process to consult and accommodate the rights and concerns of indigenous peoples.

Eliminating barriers would require a process of consultation, consent, and engagement with indigenous communities, including those affected by the Columbia River Treaty.