



*Pacific NorthWest
Economic Region*

The Pacific Northwest Economic Region Presents:

Water Infrastructure & Policy

Wednesday, August 18th | 1:30pm-2:30pm



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Moderated by:



Senator Bill Hansell
Oregon State Legislature

Session Speakers



Reed Benson
*Professor of Law
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The Honourable Katrine Conroy
*Minister of Forests, Lands, Natural Resource
Operations & Rural Development,
Government of BC*



Sylvain Fabi
*Consul General
Consulate General of
Canada-Denver*

*Interjurisdictional
water resources:
is conflict inevitable?*

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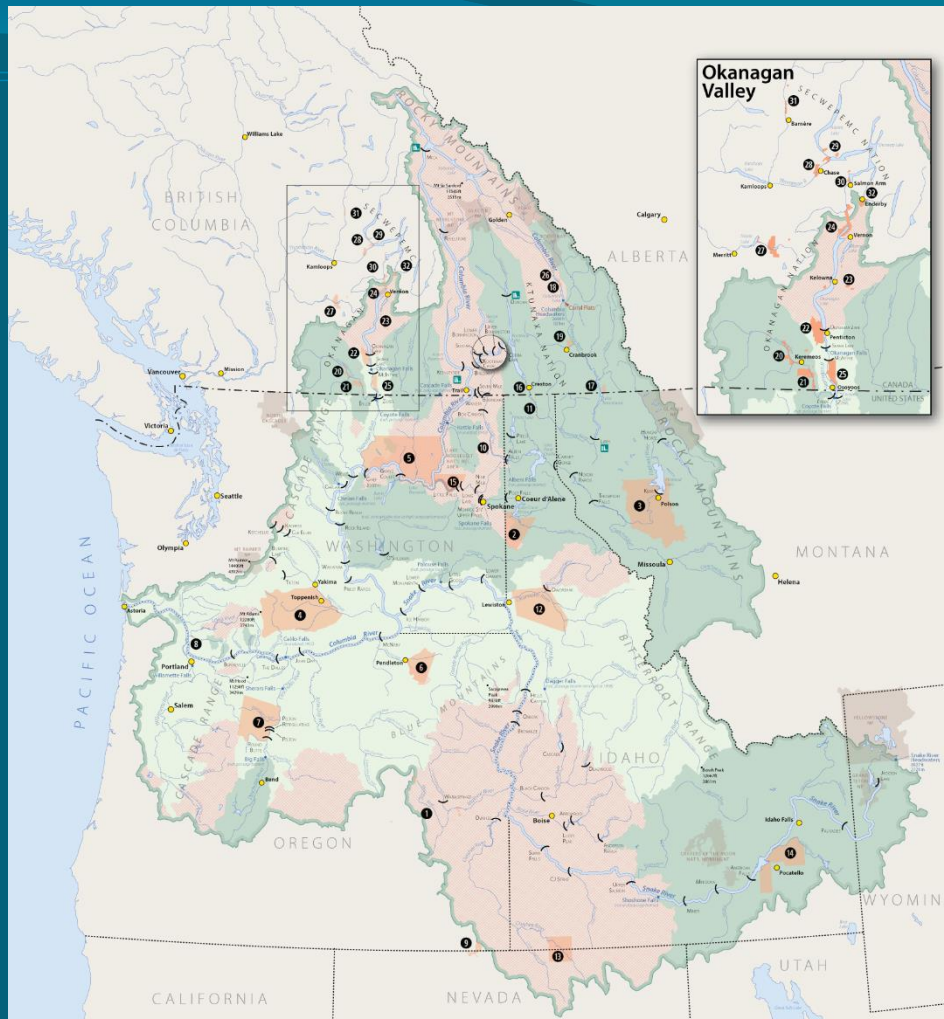
“Interjurisdictional water”?

Transboundary waters are rivers, aquifers or lakes that span a border between sovereigns

- sovereigns include nations, Indigenous tribes/First Nations, and states/provinces

Transboundary or not, a water body may be governed by law from multiple levels/sources

- state/provincial, federal, tribal/First Nation, international



This map was produced by the Columbia River Inter-Tribal Fish Commission. It is meant for informational and display purposes only and was created with the best data available at the time of production. It does not represent any legal boundaries or information. Map date: October 2014

0 25 50 100 200 Kilometers
0 25 50 100 200 Miles

Legend:
 - Green outline: Columbia Basin Boundary
 - Green shading: Area naturally inaccessible to salmon
 - Pink shading: Area rendered inaccessible to salmon
 - Orange shading: Reservation or Reserve
 - Blue square with 'D': Dam authorized by Columbia River Treaty

Tribal Nations in the United States*

- 1 Burns Paiute Tribe
- 2 Coeur d'Alene Tribe
- 3 Conf. Salish and Kootenai Tribes of the Flathead Nation
- 4 Conf. Tribes and Bands of the Yakama Nation
- 5 Conf. Tribes of the Colville Reservation
- 6 Conf. Tribes of the Umatilla Indian Res.
- 7 Conf. Tribes of the Warm Springs Res. of Oregon
- 8 Cowitz Indian Tribe
- 9 Ft. McDermitt Paiute Shoshone Tribes
- 10 Kallispel Tribe of Indians
- 11 Kootenai Tribe of Idaho
- 12 Nez Perce Tribe
- 13 Shoshone Paiute Tribe of the Duck Valley Indian Res.
- 14 Shoshone-Bannock Tribes of the Ft. Hall Res.
- 15 Spokane Tribe of Indians

First Nations in Canada

- Inside the Columbia Basin*
- 16 KUTVANSIA NATION
 - 17 Yaqaṇ nu'kyi (Lower Kootenay Indian Band)
 - 18 ʔakinkumtasnuqʔit (Columbia Plateau Indian Band)
 - 19 ʔakisq̓nuk (Columbia Lake Indian Band)
 - 20 ʔaq̓am (St. Mary's Indian Band)
 - 21 OKANAGAN NATION
 - 22 c'ac'awixaxʔ (Upper Similkameen Indian Band)
 - 23 k'k'ar'miws (Lower Similkameen Indian Band)
 - 24 snpinktn (Penticton Indian Band)
 - 25 stqa'rk'awt (Nechako First Nation)
 - 26 suknaq̓inx (Okanagan Indian Band)
 - 27 swiws (Shuswap Indian Band)
 - 28 KENPÉSDIT (Shuswap Indian Band)

Outside the Columbia Basin with Asserted Interests

- 29 OKANAGAN NATION
- 30 spaxom̓an (Upper Menth Band)
- 31 SEWEPEMAC NATION
- 32 Qw'ewet (Elder Shuswap Indian Band)
- 33 Sexqetqin (Middle Lake Indian Band)
- 34 simpcw (Simpson First Nation)
- 35 skemtsin (Nechako Indian Band)
- 36 Splatsin (Squamish First Nation)

Columbia River Treaty

* management authorities and responsibilities effected by the Columbia River treaty; does not include all tribes in the Columbia Basin

Interjurisdictional arrangements

For international waters:

- treaties, e.g. 1909 Boundary Waters Treaty

For interstate/interprovincial waters

- apportionment agreements are preferred

For waters claimed by tribes/First Nations,
establishing/confirming their legal rights

For federalized waters, clarifying and sharing
powers and responsibilities among levels

In U.S., water conflict is common

Between states: Supreme Court litigation, esp. to enforce interstate water compacts

Between states and tribes: litigation (which may take decades) over tribal water claims

Between states and feds: legal/political fights over dam operations, endangered species

Plus a few international disputes ...

Such conflicts appear less common in Canada

Why do “we” fight over water?

Interjurisdictional water conflicts tend to have one or more of the following features:

- sovereigns have different goals for resource
- zero-sum games
- antipathy toward the “other side”
- politics favor fighting

Such factors can make fighting the “easy way”

Florida v. Georgia: a huge water battle, too



Is conflict inevitable?

Though fighting over interjurisdictional water may be the easy way, there is another way

- interstate/interprovincial problem-solving
- water settlements with tribes/First Nations
- multilateral fish/wildlife recovery efforts

As water problems get more complex and difficult, sovereigns should try the hard way

Thanks! benson@law.unm.edu

