



**Operationalising Equitable and
Reasonable Utilisation**

The Columbia River

Patricia A. Jones

**Aral Sea Professional Training
Seminar**

September 2001

Introduction

- Brief Overview of the Columbia River Basin and Controversy
- The application of equitable and reasonable utilisation in the Columbia River Basin
- Columbia River Basin as a model for international water law - future challenges

The Columbia River Basin

- Drainage area: 259,000 sq. miles
- 1,705 miles
- Elevation: 2,655 ft
- 180 million acre feet average volume of runoff
- Uses: hydro, irrigation, domestic supply, navigation, flood control, conservation

Columbia River Basin



Пред-история: переговоров между США и Мексикой – доктрина Хармона (абсолютный суверенитет)

История



Pre-Columbia Treaty Agreements

- Договоры о мире и границе

- 1909 Договор о пограничных водах

Статья II – Исклyчительно and remedies

Article III - Ordinary and domestic use

Articles VII-X - International Joint Commission (IJC) - ***“equal and similar rights to use boundary waters”***

- Under Article IX Canada / US make the 1944 Referral

Negotiations, Co-operation and Settlement

- 1944 Referral

“greater use - **benefits vs. adverse effects**”

- 1959 Engineers Report

“optimal use - storage projects in Canada”

- 1959 IJC Report: Apportionment Principles

“**equitable sharing** of the benefits”

The Columbia River

“*sharing the benefits*”

- 1959 Engineers Report (hydro-electric development is priority)
- Basin hydrographic and hydrologic conditions
 - Economic Development in the Basin
 - 1959 IJC Report - legal issue resolved - storage development plans and sharing of expected benefits 50/50

The Columbia River Treaty

- Equitable sharing of benefits result in construction of Canadian storage and the downstream benefits scheme (50% of improved power production; monetary payment for decreased flood damages)

Equitable and Reasonable Utilisation Columbia River Treaty Regime

Study

Hydrographic and hydrologic conditions of the basin

Economic aspects (irrigated acres, projected power supply needs)

Weigh the equities



Adverse Effects

Benefits

Conclusion

- Columbia River treaty regime model balances the equities of Canada and the U.S. through scientific, economic and legal factors
- Future challenges: In-stream uses (salmonid species)
- Globalisation: NAFTA Environmental Side Agreement - national environmental law

Acknowledgements

- IWLRI - University of Dundee

- DFID - UK

Research

- US GS

- BPA

- US DOS



1997 UN Watercourses Convention

- Art. 5 Equitable and reasonable utilisation
- Art. 6 Factors
- Art. 7 No significant harm without negotiations for payment of damages
- Art. 10 Vital human needs

Confirmed by ICJ in 1997 - Gabčíkovo
Case

1997 UN Watercourses Convention

“Article 6 Factors relevant to equitable and reasonable utilisation

1. Utilisation of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:
 - (a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;
 - (b) The social and economic needs of the watercourse States concerned;
 - (c) The population dependent on the watercourse in each watercourse State;

- (d) The effects of the use or uses of the watercourses in one watercourse State on other watercourse States;
- (e) Existing and potential uses of the watercourse;
- (f) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;
- (g) The availability of alternatives, of comparable value, to a particular planned or existing use.

[1997 UN Watercourses Convention]

1997 UN Watercourses Convention

1997 UN Watercourses Convention

Article 10 gives no use priority - residual rule (Art. 5-7)

Conflict – Art. 5-7 with “special regard to the requirements of vital human needs.”

1994 ILC Commentary:

“providing sufficient water to sustain human life, including both drinking water and water required for the production of food in order to prevent starvation.”

Are there existing agreements or custom with regard to a priority of uses on the specific watercourse?

Are all “vital human needs” met?