



Defining Public Interest: Analysis of Western State Approaches and Stakeholder and Tribe Perspectives

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Introductions

- Graduate students at the Evans School working on our capstone project with Ecology
- Tasked by Ecology to help with the issue of defining public interest as it relates to water rights
- Dave, Noah, Barbara, and Austin have been a great help!
 - Provided an overview on water rights at the onset
 - Bi-weekly meetings

Agenda

1. Background
2. Research Questions
3. Research Methods
4. Other Western States Results
5. Washington Tribes and Stakeholders Results
6. Recommendations

Background

- "Public interest" found throughout Washington water law
 - 4 – part test: the new use will not impair the public interest
- Public Interest is not defined
 - Ecology implicitly defines it through appropriation decisions
 - Uncertainty among water users
- This project seeks to provide Ecology with guidance on how to move forward
 - Survey how Western States use and define public interest
 - Gather perspectives from Washington Tribes and stakeholders

Report has not been finalized but Ecology will make it available in June.

Research Questions

How do other Western states use and define public interest?

- Do other states use and/or define public interest?
- Has it been determined?
- Do they use feedback for public interest definitions?

What do Tribes and stakeholders in Washington think about public interest?

- Perception?
- How should it be defined?
- Concerns?

Methods

Western States: Survey how public interest is used and defined

- Literature review
- Semi-structured interviews with water managers and administrators
- Analyzed nine states

Washington State: Examine how Ecology uses public interest and gather perspectives from Tribes and stakeholders on the future of public interest

- Literature review
- Semi-structured interviews with stakeholders and Tribes

Western States

State	Public interest provisions in statute?	Use of public interest for water rights decisions?	Statutorily defines public interest?	Working to define public interest?	Authority for administering water rights?
Alaska	Yes	Yes	Yes	-	DNR
Arizona	Yes	No	No	No	ADWR
Colorado	No	-	-	-	Water Courts
Idaho	Yes	Yes	No	No	IDWR
Montana	No	-	-	-	DNRC
Nevada	Yes	Yes	No	Sort of	State Engineer
Oregon	Yes	Yes	Yes	-	WRD
Utah	Yes	Rarely	No	No	State Engineer
Washington	Yes	Yes	No	Yes	DOE
Wyoming	Yes	Rarely	No	No	State Engineer

Tribes and Stakeholders in Washington

Perception of Public Interest Use in Washington State

- Understand that public interest is included in the four-part test
- Mixed reviews about whether Ecology is making decisions the "right" way

Impacts of How Ecology Currently Uses Public Interest

- Seemingly inconsistent and lacking transparency
- Not considering natural resources such as fish and wildlife
- Golden Eagle – people are concerned with this decision

Washington Tribes and Stakeholders

List of characteristics stakeholders and Tribes would like to see in a public interest definition and why

Definition Characteristic	Why?
Objective	<ul style="list-style-type: none">• Current system is too subjective
Binary	<ul style="list-style-type: none">• Easier to implement
Flexible	<ul style="list-style-type: none">• Water needs and issues will change over time• Climate variability
Holistic	<ul style="list-style-type: none">• Include more than just environmental interests
Local	<ul style="list-style-type: none">• Needs of different parts of Washington are different• Focus on Tribal rights and interests
Defined by Legislature	<ul style="list-style-type: none">• Incorporate public interest into statute
Driven by a public process	<ul style="list-style-type: none">• Either through rulemaking or the legislative process• Deserves a healthy debate and requires multiple perspectives
Protects sovereign Tribal rights	<ul style="list-style-type: none">• Tribes have senior yet undetermined water rights• Public interest should be in part defined by Tribes

Washington Tribes and Stakeholders

List of perceived advantages and concerns mentioned by stakeholders and Tribes to defining public interest

Advantages	Concerns
<ul style="list-style-type: none">• Greater clarity and direction• Less uncertainty, risk, and costs for applicants• Less ad hoc decision making• Less change over time• More defensible legally• Greater inclusion of Tribes and stakeholders	<ul style="list-style-type: none">• Will create winners and losers• Less flexible• Ecology will be more lenient to Tribal and environmental interests• Ecology will not consider Tribal interest and treaty rights• Private interest will be prioritized over environmental interests

“Public sentiment doesn’t equate to public interest, and as Ecology has meetings and workshops, it’s important to consider what’s in the long-term interests of all Washingtonians and recognize the legal obligations of the State for tribal and non-tribal populations”

- Interviewee

Recommendations

Based on this analysis, we recommend that:

1. Incorporate local perspectives in the definition and implementation of the public interest
2. Defining public interest should be driven by a collaborative and public process
3. The Legislature should define public interest in statute and prescribe objective criteria

Questions?

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Contact us with questions!