

HAVE WE KEPT FAITH WITH OUR RIVERS?

An Assessment of Legal and Ethical Challenges to Watershed Health

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For the nineteenth century and much of the twentieth, water policy in the American West meant the stability offered by the combination of the “first in time, first in right” prior appropriation doctrine and large dam-and-reservoir projects. Then, beginning roughly in the 1970s, environmental regulation and other social and legal concerns began to take hold in the form of instream flow programs, Indian reserved rights, the Endangered Species Act, the Clean Water Act, and other laws. Now, across the West—and the East and Canada as well—we are asking ever more of our rivers: more development and more protection, even as climate change looms ominous. This presentation will address three ethics that seem to be emerging across North America: we cherish the wildness in our rivers; the best way to protect our rivers is to improve watershed health; and, while regulation remains important, we are willing to expend the necessary time to improve watershed health through broad-based negotiation and collaboration among all watershed interests.