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Instruments Not Monuments: An Introduction to the Issue

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INSTRUMENTS NOT MONUMENTS: AN INTRODUCTION TO THE ISSUE

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In 1998, Bruce Babbitt, then Secretary of the United States Department of the Interior ("Interior Department"), wrote: "Let us remember that dams are not monuments. They are tools—instruments that serve the needs of the people that oversee them. Those needs change."[1] After leaving his post with the Interior Department after President Clinton left office, in 2006 Babbitt commented: "We routinely demolish buildings that have served their purpose or when there is a better use of the land. Why not dams? For whatever reasons, we view dams as akin to the pyramids of Egypt—a permanent part of the landscape, timeless monuments to our civilization and technology."[2]

Babbitt's observations align closely with the conclusions reached by the Congressional Research Service ("CRS"). In its 2006 report, *Dam Removal: Issues, Considerations, and Controversies*, CRS noted:

> Many dams were constructed in the first half of the last century. As they age, maintenance and repair costs often increase substantially, making continued investments a questionable decision. Older dams

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[1] Bruce Babbitt, *Dams Must Be Looked at Critically, with Eye Toward Environment*, WIS. STATE J., Nov. 29, 1998, at 3B.

[2] Bruce Babbitt, *A River Runs Against It: America's Evolving View of Dams*, OPEN SPACES Q., Jan. 11, 2005, *available at* http://www.open-spaces.com/article-v1n4-babbitt.php.

> may not serve their purpose as well as they did when they were built, as sediments accumulate and displace the amount of water that can be stored in the reservoir. At some point, routine repair and maintenance may no longer ensure the structural stability of the dam, increasing the potential for dam failure and associated losses in property damage and possibly human life.[3]

These considerations led the Federal Energy Regulatory Commission ("FERC"), the main federal agency responsible for the relicensing of existing dams, to adopt its *Policy Statement on Project Decommissioning at Relicensing*, which provides guidance on the circumstances when dam removal may be the more appropriate course of action than continued maintenance and operations.[4] In this symposium edition of the Golden Gate University *Environmental Law Journal*, titled *The West's Aging Dams: Retain or Remove?*, we examine ongoing dam-specific and pending political and policy controversies where the issue of dam removal is very much in the crosshairs.

Our first article, by Russell Busch, considers the Native American perspective on dam removal. Busch is an attorney for the Lower Elwha Klallan Tribe in the State of Washington and has been involved for more than a decade in the debate over the fate of Elwha Dam (constructed in 1913) and Glines Canyon Dam (constructed in 1927) on the Elwha River in the Olympic Peninsula. FERC and Congress have approved the removal of dams, but actual removal is languishing and has been delayed due to lack of funds.

The next piece examines O'Shaughnessy Dam on the Tuolumne River in Yosemite National Park in California. The construction of O'Shaughnessy Dam, authorized in 1913 and completed in 1923, resulted in the inundation of Hetch Hetch Valley. The struggle of John Muir to save Hetch Hetchy Valley, which Muir considered as magnificent as Yosemite Valley, is part of the lore of the origins of the Sierra Club specifically and of the conservation movement in the American West more generally. Gerald Meral (former Deputy Director of the California Department of Water Resources, who is now affiliated with the group Restore Hetch Hetchy and currently serves on the National Wildlife Federation's Board of Directors) moves beyond this

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[3] NIC LANE, CONG. RESEARCH SERV., DAM REMOVAL: ISSUES, CONSIDERATIONS, AND CONTROVERSIES, at CRS-2 (2006), *available at* http://assets.opencrs.com/rpts/RL33480_20060619.pdf.

[4] *See* Project Decommissioning at Relicensing: Policy Statement, 60 Fed. Reg. 339, 345 (Jan. 4, 1995).

history towards the current rationales now being advanced in support of decommissioning O'Shaughnessy Dam and restoring Hetch Hetchy Valley.

Following Meral's article, we shift our attention to the Colorado River storage system and Glen Canyon Dam. This article by David Wegner (former Director of the Glen Canyon Studies Project with the United States Bureau of Reclamation) addresses the past failures of the federal government in conducting a comprehensive environmental evaluation of the operation of Glen Canyon Dam as part of the larger storage system on the Colorado River (which also includes Hoover Dam and Lake Mead). Wegner discusses more recent proposals to conduct such a system-wide analysis under the National Environmental Policy Act, and explains how such an analysis raises the possibility that the water storage contributions of Glen Canyon Dam could be satisfied through modification of other storage facilities along the Colorado River.

In the final piece, Jonas Minton (former Deputy Director of the California Department of Water Resources and now senior water policy advisor for the Planning and Conservation League in Sacramento) focuses on some of the current political debates involving dam removal in California, which increasingly involve flood control and water storage aspects related to climate change and global warming. In particular, Minton evaluates the statewide water-related bond measure now being promoted by California Governor Arnold Schwarznegger and its potential impacts on both existing and newly proposed on-stream dams.

The articles in this symposium edition reveal that dam removal is no longer considered a radical approach, but rather now one of the more standard options evaluated as dams age. In recognizing this shift, Bruce Babbitt clarified back in 1998:

> Does this mean I support tearing down all, most or even many dams? Of course not. But I do believe we should challenge dam owners everywhere—including the U.S. Bureau of Reclamation, the Army Corps of Engineers and other federal agencies—to defend themselves, to demonstrate by hard facts, not sentiment and myth, that continued operation of a dam is in the public interest.[5]

A dam, whatever it is, is not an organic or natural feature. It is a built structure, and like most built structures it has a lifespan. Much of the dam removal debate can therefore be understood as a 21st century societal effort to come to terms with the impermanence and mortality of

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[5] *Supra* note 1.

the water storage infrastructure installed in the early 20th century. For many dams, the question may not be so much whether they will eventually no longer be justifiable on economic or ecological grounds, but rather when.