

Western Water Policy

Influences & Control

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OVERVIEW

- Natural Laws and Order of Creation
- Water Cycle; all life is connected
- Man-made Laws & Federal Relations
- Traditional Knowledge

INTRODUCTION

- Inherent tribal sovereignty existed since time immemorial; it predates the U.S. Constitution.
- Imperial dissolution coincides with the silent conqueror.
- Water demands increasing throughout the west; U.S. water policy regulations, rules, and are changing to promoting *co-beneficiary* as a common term.

Our Path Travelled

- Prior Appropriation: “*First in Time; First in Right*”
- *Winters v. U.S.*, 207 U.S. 564, 28 S.Ct. 207, 52 L.Ed. 340 (1908)
- McCarran Amendment, (1952), 43 U.S.C.A. sec. 666
 - Waived U.S. sovereign immunity defense to be joined in state court lawsuits for river basin water right determinations.

A New Era

- Endangered Species Act, 16 U.S.C. §1531 et seq. (1973).
- Clean Water Act, 33 U.S.C. §1251 et seq. (1972).
 - Waters of the United States (WOTUS)
 - CWA WQS Tribal Reserved Rights
 - CWA Baseline WQS – National
- Water Right Settlement
 - In 1983, DOI internal policy memo, ‘...reward tribes that negotiate; punish those that litigate’ (McCool).
 - Negotiation = Compromise; Win Win vs. Lose Lose

Modern Challenges

- Science Politization
 - Renewable Energy vs. Fossil Fuel Industry
 - Global Warming and Climate Change
- Corporate/Industrial Control
 - 1971 Powell Memorandum: Attack on American Free Enterprise System (Powell)
- Technological Intelligence
 - Scientific Knowledge; Competitive Ability
 - Differentiate between Science and politics

FLOW REGIME

MAGNITUDE
FREQUENCY
DURATION
TIMING
RATE OF CHANGE

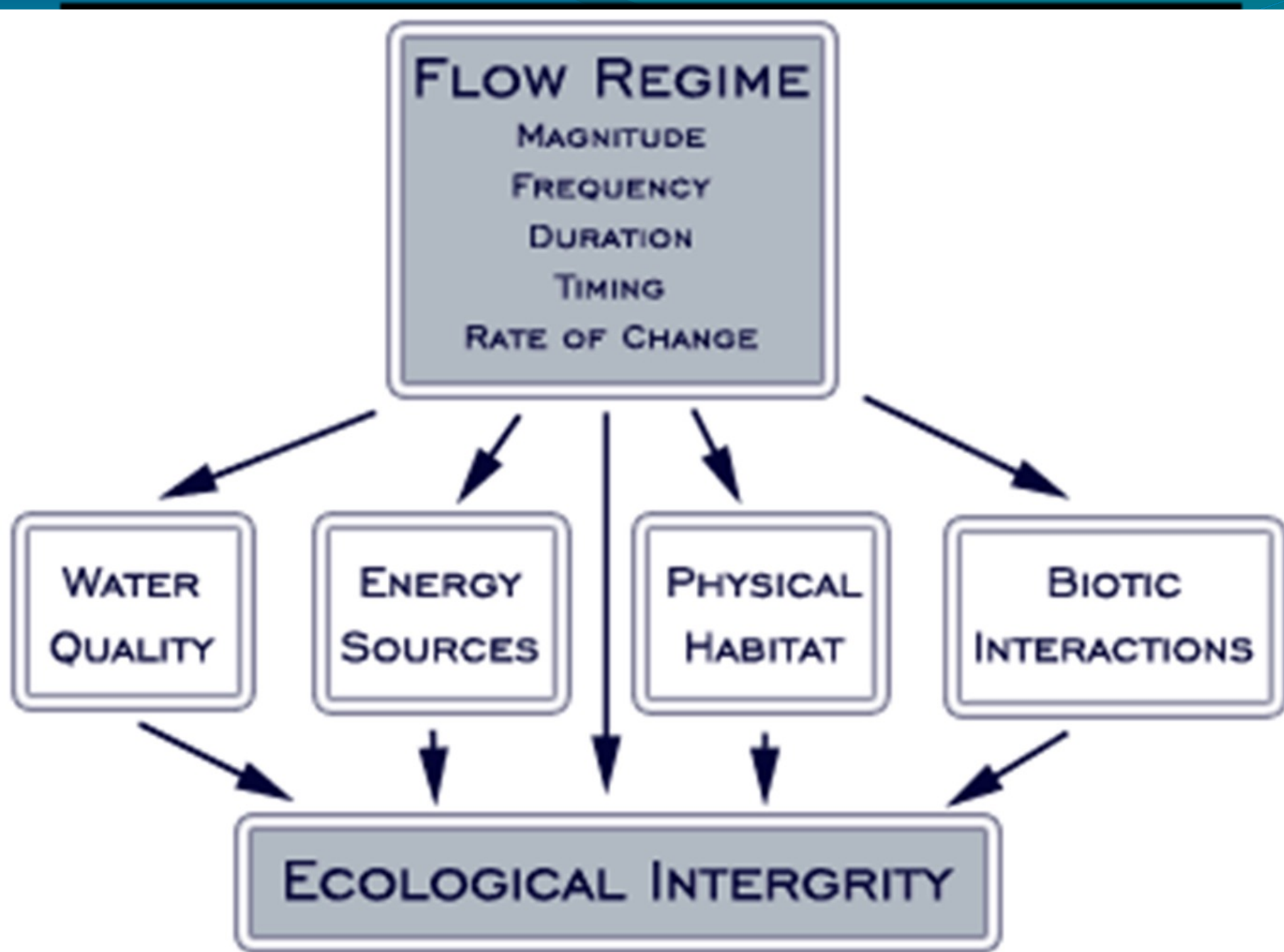
WATER
QUALITY

ENERGY
SOURCES

PHYSICAL
HABITAT

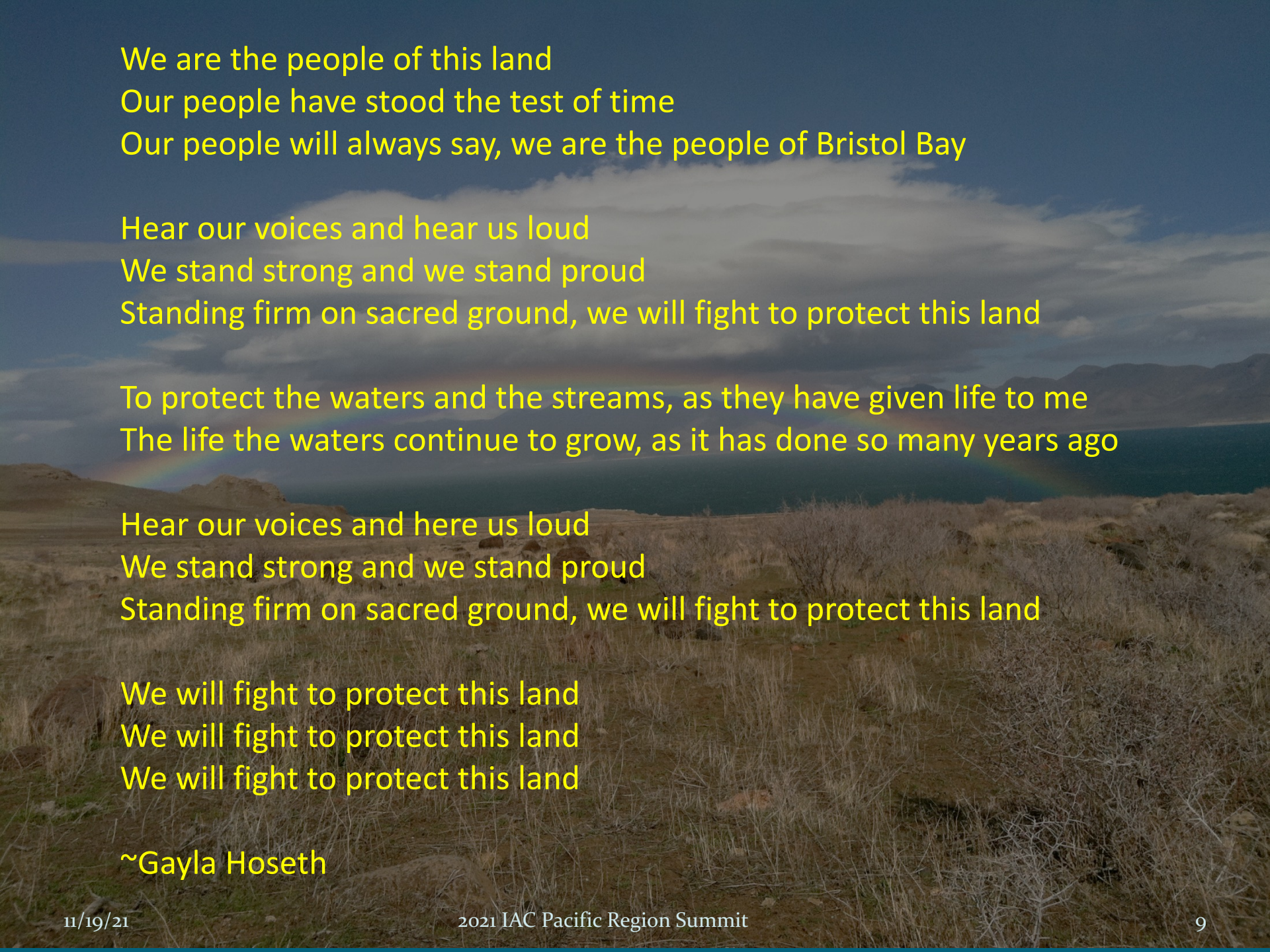
BIOTIC
INTERACTIONS

ECOLOGICAL INTEGRITY



TAKE IT TO THE TOP





We are the people of this land
Our people have stood the test of time
Our people will always say, we are the people of Bristol Bay

Hear our voices and hear us loud
We stand strong and we stand proud
Standing firm on sacred ground, we will fight to protect this land

To protect the waters and the streams, as they have given life to me
The life the waters continue to grow, as it has done so many years ago

Hear our voices and here us loud
We stand strong and we stand proud
Standing firm on sacred ground, we will fight to protect this land

We will fight to protect this land
We will fight to protect this land
We will fight to protect this land

~Gayla Hoseth

Suggested Reading

- *Uneven Ground*, David Wilkins (2001)
- *Cadillac Desert*, Marc Reisner (1993)
- *Unscientific America*, Chris Mooney (2009)
- *Of Utmost Good Faith*, Vine Deloria Jr. (1971)
- *An Indigenous Peoples' History of the United States*, Roxanne Dunbar-Ortiz, (2015)
- *Conquest by Law*, Lindsay G. Robertson (2005)
- *In The Light of Justice*, Walter R. Echo-Hawk (2013)
- *The Rights of Indians and Tribes*, Stephen L. Pevar (2012)

REFERENCES

1. Uneven Ground, American Indian Sovereignty and Federal Law. David E. Wilkins & K. Tsianina Lomawaima. University of Oklahoma Press. 2001.
2. Unscientific America, How Scientific Illiteracy Threatens Our Future. Chris Mooney & Sheril Kirshenbaum. Basic Books. 2009.
3. The Republican War on Science. Chris Mooney. Basic Books. 2006.
4. The McCarran Amendment. 43 U.S.C. § 666. www.justice.gov/enrd/mccarran-amendment. 5 November 2021.
5. Working Group In Indian Water Settlements; Criteria and Procedures for the Participation of the Federal Government In Negotiations for the Settlement of Indian Water Rights Claims. Vol. 55, No. 48. (March 12, 1990). Department of the Interior Policy Statement.
6. Command of the Waters: Iron Triangles, Federal Water Development, and Indian Water. Daniel McCool. University of Arizona Press. 1994.
7. Stern, Charles V. Indian Water Rights Settlements. Congressional Research Service. Updated 22 May 2020.
8. Smith, M. Memorandum to Eugene B. Sydnor, Jr., Chairman Education Committee, U.S. Chamber of Commerce. 23 August 1971.