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10 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
11 FOR THE COUNTY OF THURSTON

12 AMERICAN RIVERS, et al.,)	Civ. No. 99 2 00480 6
)	
13 Petitioners,)	ORDER RESOLVING REMAINING
)	CLAIMS AND GRANTING PETITIONERS'
14 v.)	REQUEST FOR AN INJUNCTION
)	
15 WASHINGTON STATE DEPARTMENT OF)	
16 ECOLOGY,)	
)	
17 Respondent.)	

18 In this action, petitioners, American Rivers, et al. (hereinafter "American Rivers"), have
19 sought a declaration that the respondent, Washington Department of Ecology ("DOE"), has
20 failed to implement the specific requirements of RCW 90.03.360 (hereinafter the "Water
21 Metering Statute"), and an order enjoining DOE to implement the statute in accordance with its
22 terms.

23 The Court already has resolved most of the claims in the case following a hearing on

24
25 ORDER RESOLVING REMAINING CLAIMS
AND GRANTING PETITIONERS' REQUEST
26 FOR AN INJUNCTION - 1-

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1 February, 22, 2000, on American Rivers' motion for summary judgment and an injunction and
2 DOE's cross-motion to dismiss or for partial summary judgment. The Court's rulings in the case
3 thus far are set forth in its written order of March 22, 2000, which has previously been filed and
4 is incorporated herein by this reference, except as amended by paragraph 10 below.

5 In its earlier ruling, the Court also set a hearing on the remaining issue in the case, which
6 it could not resolve on summary judgment. That hearing was held from December 4 through
7 December 6, 2000. Following that hearing, the Court issued its oral findings of fact and
8 conclusions of law. This order is based on that oral ruling, a transcript of which is attached
9 hereto as Exhibit A and incorporated herein by this reference.

10 The Court now being fully briefed by the parties, having heard and considered the
11 arguments of counsel and the testimony of witnesses, having reviewed the documentary
12 evidence, and being fully apprised,

13 IT IS HEREBY ORDERED:

14 1. The DOE is not free to follow its view of best management practices but must
15 follow the legislative directive of RCW 90.03.360(2). In matters of allocation of resources under
16 Hillis v. Ecology, 131 Wn.2d 373 (1997), only a low level of review is called upon for this
17 Court.

18 2. Because DOE admits to adopting a different priority for metering than that set out
19 by the legislature, it must bring its actions into conformity with the will of the people.

20 3. Failure to follow the legislative directive is arbitrary and capricious because there
21 is no grant to exercise discretion. Therefore, unlike cases where discretion is to be exercised,
22 any action outside of the limitation of authority granted is capricious, or under terms of the APA,
23 RCW 34.05.574(b), the agency has failed to act in accordance with the statute.

1 4. The petitioners have a clear legal and equitable right to have the state statute
2 followed, and DOE's admission that they do not is an invasion of that right that causes an actual
3 injury.

4 5. This Court is not going to direct DOE how to allocate resources except to order
5 the department to follow the statute.

6 6. DOE is enjoined to report to this Court by March 31, 2001, with a water metering
7 compliance plan demonstrating that there is no compliance alternative being enforced of a higher
8 priority than metering in the 16 Water Resource Inventory Areas ("WRIAs") for which
9 petitioners seek metering at this time. Where two or more compliance tools are being used in
10 these 16 areas, DOE must demonstrate that metering is being given the highest priority in the
11 application of resources.

12 7. Where DOE can demonstrate that other enforcement tools that do not necessitate
13 water meters or other measuring devices will be more effective at improving instream flows (a
14 possibility may be enjoining unauthorized use of water without the aid of a meter or other
15 measuring device), that compliance tool is not to be totally discarded in favor solely of metering
16 but to be allocated some resources in any amount not to exceed those resources allocated to
17 metering.

18 8. DOE's water metering compliance plan must achieve substantial compliance with
19 the statute, which the Court finds to be metering of 80 percent of water use in each of the 16
20 WRIAs within the next two years.

21 9. DOE must provide copies of the water metering plan to all parties on or before
22 March 31, 2001, after which time the Court will set a time for petitioners to respond to the plan.
23 If petitioners request a hearing in their response, the Court will set a hearing date at that time.
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1 DOE is ordered to implement the plan once it has reported back to the Court and the Court has
2 approved the plan.

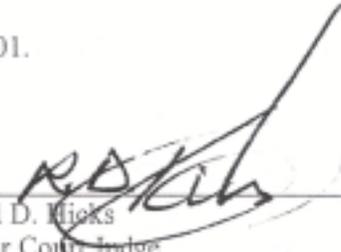
3 10. Paragraph 2 of the Court's Order of March 22, 2000, is hereby amended and
4 clarified by adding a new sentence as follows after the first sentence of that paragraph:

5 Petitioners' motion for summary judgment and an injunction is also GRANTED
6 insofar as the Court concludes that the requirements of RCW 90.03.360 (2) apply
7 to existing water diversions where such water diversions are from waters where
8 salmon stocks are depressed or critical as determined by the Department of Fish
and Wildlife, or where the volume of water being diverted exceeds one cubic foot
per second.

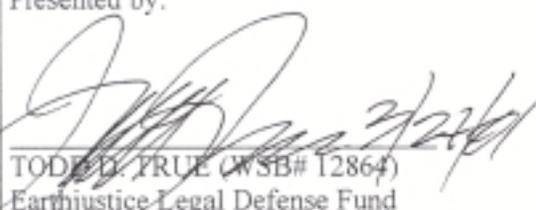
9 Except as so amended, the Court's earlier Order is not affected or otherwise altered by this
10 Order.

11 IT IS SO ORDERED.

12 DATED this 30th day of March, 2001.

13
14 
15 Richard D. Hieks
Superior Court Judge

16 Presented by:

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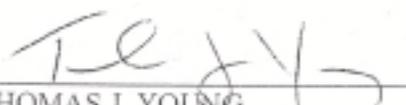
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