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Memorandum

To: Thomas O'Keefe, American Whitewater
From: Rick Eichstaedt, Attorney, and Justin Elder, Legal Intern, Center for Justice
Date: July 19, 2007
RE: Recreational Statute and Dam Liability

Issue:

Given the Washington Supreme Court's ruling in Ravenscroft v. Washington Water Power Co., 136 Wash.2d 911, whether a dam owner needs more immunity than that which is already provided by RCW 4.24.210.

Discussion:

The current version of RCW 4.24.210 provides immunity to landowners whose land is used for both "boating" and "water sports." Nothing in the statute indicates that "boating" does not currently include kayaking, rafting and canoeing." If this is indeed true, the proposed changes to Section 1 of RCW 4.24.210 are redundant and unnecessary.

It also appears that Chelan PUD's concern over the Ravenscroft ruling is unfounded. While Ravenscroft does contain much dicta, the holding of the case is very narrowly limited to the facts of the dispute, which involve submerged, rooted tree stumps near the middle of a water channel in a dam reservoir. See Ravenscroft, 136 Wash.2d 911 at 914, 919, 931. Any time the issue of the particular danger faced in this case was discussed, it was always in the specific context of something submerged in a dam reservoir.

Furthermore, according to the dissent, Ravenscroft does not provide future courts with any clear guidance on how to interpret whether an injury was sustained "by reason of a known dangerous artificial latent condition." See Ravenscroft, 136 Wash.2d 911 at 932. This seems to be further indication of the narrowness of the Ravenscroft ruling.

Conclusion:

RCW 4.24.210 already provides substantial protection for dam owners who allow the water below their dams to be used for recreation. Any fears that this protection is eroded by Ravenscroft are unfounded.