

Friday, **May 19th** - Join us for a day on the Yakima River... CELP's 4th Annual "Waters of Washington" Fly-Fishing Adventure! For more information, please contact Sims Weymuller 206.386.5566 - sims@johnsonflora.com.

Thurs., **June 8th**, at Seattle's Mountaineers Clubhouse - John Lombard will discuss his new book *Saving Puget Sound: A Conservation Strategy for the 21st Century*. Scheduled for publication this October (see www.savingpugetsound.com), this book develops a practical proposal to conserve the Puget Sound region's most important ecosystems in the face of long-term population growth.

Thursday, **June 22nd** CELP's 10th Anniversary Celebration Extravaganza - Mark your calendars, invitations forthcoming!

Friday, **October 6th** at the Mount Baker Community Club - CELP's 3rd Annual Benefit Auction Save the Date NOW!

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CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for
Environmental Law & Policy

Washington WaterWatch

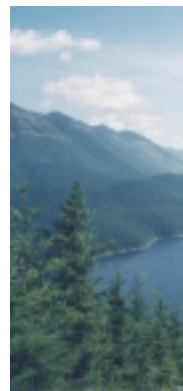
The official newsletter of the Center for Environmental Law & Policy

Watershed Planning: A Mechanism for Washington's Other Watersheds

Watershed planning has been proceeding in 46 of the 62 watersheds (Water Resource Inventory Areas or WRIAs) in Washington ever since the Legislature passed the Watershed Planning Act (Ch. 90.82 RCW) in 1998. This often amorphous and little understood process has huge ramifications for how YOUR water is managed by the state Department of Ecology in the future.

In a nutshell, watershed planning allows "local citizens" in a watershed to "join together in an effort to: (a) Assess the status of the water resources of their WRIA or multi-WRIA area; and (b) determine how best to manage the water resources of the WRIA or multi-WRIA area to balance the competing resource demands for that area within the parameters [of the Watershed Planning Act]."

In our experience, these localized planning groups often include special interests inherently in conflict with the protection of instream flows—creating a "fox guarding the henhouse" dynamic. This law essentially ignores another law that clearly states that water belongs to all the citizens of Washington; it sets up a legal structure that disregards the perspectives of people (and organizations like CELP, working on their behalf) who live outside the watershed who might go there to fish, boat, or enjoy the rivers.



How Pervasive

As of Dec 2008, 38 planning groups have been established, 18 of them covering...

Story continues...

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Executive



heritage of flowing rivers—as I am.

Because of my work at CELP over the last five years, Washington now has a law that requires water suppliers to conserve water; the \$10 fee for a water permit was raised to \$50 (a baby step, I know, but a step nonetheless); there are a lot more meters installed and reporting water use than would have if CELP hadn't pressured Ecology toward compliance over the last couple years; and Ecology is diligently working toward a consistent process of including more complete information in its permit decisions—showing its homework, if you will.

The Partnership for Water Conservation is also making good strides and I will continue to help that organization grow and prosper.

As they say, change is good. I await positive changes at CELP. I look forward to many opportunities to stay involved in water issues representing my new client and as an active member of CELP.

Peace and flowing rivers,



Watershed Planning continued from page 6

water is flowing in amounts above the minimum flow requirement may be available for out-of-stream use. If the minimum flow is not available for out-of-stream uses, and Ecology should not issue a permit for out-of-stream uses.

One of the most troubling aspects of watershed planning is the decision made in 2003. The law now states explicitly that the state plans as the “framework for making future water resource decisions and **must** rely on the plans “as a primary consideration in decisions to such decisions.”

What does this mean? **Even though water belongs to all of us, it is managed on our behalf by the state Department of Ecology. Watershed planning groups are allowed by the law to treat the water as their own decisions as “theirs” and can ignore the greater public interest.**

Some Examples...

Suffice it to say, CELP has been underwhelmed by the results of final watershed plans, and we are skeptical that they will result in increased stream flows. A close read reveals that some plans have recognized water use and stream flows, “emphasize implementation of all measures,” “retain flows to the extent possible,” and even “restoration plans are no real action plans included to make these statements actual.” Implementation plans are intended to provide this mechanism, but in practice, they are not likely to result in real stream protection or enhancement.

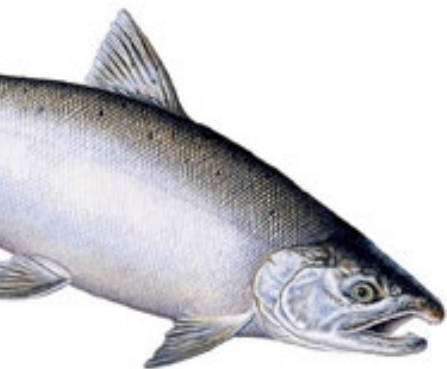
In many watersheds, because the assessments of available water resources show that water is not available for future out-of-stream uses, the amount of water to be withdrawn despite further adverse impacts is called these “reservations” and has already built them into one of the Skagit River rule (Ch. 173-503 WAC). In brief, Ecology has agreed for future uses, but has agreed to degrade fish habitat (not the same measure thereof) by up to 2%. In order to legally justify degradation determinations that water for future growth is an “overriding public interest.” This test has generally been applied cautiously, and in many cases. We believe growth is not an emergency, that there are other options. This application of the test is legally questionable.

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unique economic welfare? Many compromises have been made but there is not yet a balance to offset the 150 years of watershed degradation. The balance for fish has not yet been found.

So what’s news? I’m still at the table. I’m fully in it for the fish, not as an icon but as an indicator of a prosperous future. I am a scientist and educator, but I ask you all to bring your common sense and sense of the commons to the table again not your lawyers. The data is clear, the fish can’t survive our modern industrial footprint, and they can’t survive without a dedicated stream flow. Power structures must get out of the way, stop confusing us with endless process and let our community heart guide the decision making process. There is common ground to find once again as well as alternative technologies to discover and adopt, but the wild fish cannot wait another generation for sanctuary in their own home. We must recognize we need what the salmon need, healthy watersheds and clean, clear cold water in the streams.



Meet the New CELP Crew

Juna Hickner, Summer Legal Intern



Juna Hickner is a graduate of Western Washington University with a degree in Environmental Policy, and is currently a law student at Seattle University. A native Seattleite, she enjoys spending her free time hiking in the Cascades, kayaking on Puget Sound, or mountain biking. She holds a certificate in Environmental and Natural Resources Management and is joining CELP.

Sherry Bosse, Coordinator of Communications, Development

Sherry Bosse graduated in 1999 with honors and a major in Environmental Policy from Western Washington University. She worked in Seattle for the environmental magazine *Earthjustice* and the *Seattle Times*. She received her law degree from the University of Washington School of Law in 2004. Sherry’s sharp analytical mind and organizational skills are complemented by her unique abilities to trouble-shoot technical issues. She is currently working during her summer legal internship with CELP in 2005. We are excited to have her starting in late May, where her responsibilities this year will include coordinating about resource protection and responsible water management.

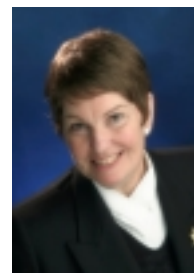
Rebecca Phelps, Staff Attorney

Rebecca Phelps will be joining CELP’s staff in May, 2006, to work with CELP’s Litigation & Policy Committee. Rebecca practiced water law for thirteen years in California before joining the Washington State Bar. Her pro bono work at CELP has included municipal water supply and distribution issues, as well as salmon recovery planning under the ESA.

Patrick Williams, Staff Attorney

Patrick received his Juris Doctor from Golden Gate University in San Francisco. He was Managing Editor of the *Law Review*. Patrick’s legal experience includes working at Earthjustice in Oakland, CA and interning at the Environmental Defense Fund in San Francisco. Before joining CELP in April, Patrick provided legal support on matters relating to FERC relicensing of hydropower dams. An avid birdwatcher.

And re-introducing — Shirley Nixon



Shirley joined CELP as staff attorney in May and will be Executive Director in May. Shirley monitors and reports on law and policy issues for CELP, and will coordinate the implementing CELP’s policy and program. She received her Degree in Law & Marine Affairs from the University of Michigan from Michigan’s Thomas M. Cooley Law School. She was a deputy prosecuting attorney in Clallam County and a clerk for the Washington State Court of Appeals. She is also a professor of law, and a legislative analyst/g

ing for the Fish?

shed planning participant

since the Chelan Agreement was signed in 1990. This her-
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Salt water, freshwater, groundwater, fish, trees and people,



es in this soap opera. My grown children have never known a
They heard about people vilifying summer chum as “useless
creek, then rebirthed through a totally citizen-based effort,
red Species Act in 1999. That was nearly a decade after the
community story, these summer chum. We parade our Giant Salmon
train ourselves to fill data gaps and spend righteous amounts
ing these Northwest icons a living, sustainable right to water in

er-literate resource managers, water purveyors, elected offi-
and farmers worked through our data gaps, visited each other’s
se other shoes. While we found some common ground during
ows were legally dedicated for fish survival, no basin closed, no

Watershed Planning Act (2514), and dangled money statewide,
keholders” to a revamped table, but now only the “Initiating
nsensus. The process became more political. More data gaps
more land denuded, platted and paved through the GMA
lk continued to set up monitoring stations, planted trees and
on. This dichotomy created a spiraling, inflationary mode of

Story continued on pg 10, see “Speaking for the Fish”

Have You Heard The Buzz? King County Kicks Off a New Regional Water Planning Effort

King County has recently embarked on a regional water planning process to “move discussions forward on water resource and water supply planning.” One key goal of this process is to generate information that will assist the County in updating Coordinated Water System Plans within its boundaries, particularly in light of the Cascade Water Alliance’s plans to develop the Lake Tapps Reservoir as a new source of water supply. The County has brought together representatives from various cities, water utilities, the Muckleshoot Indian Tribe, three state agencies (Ecology, Fish and Wildlife and Health), and representatives of the environmental community.

CELP and Washington Environmental Council are both members of the Coordinating Committee, which has been convened by Executive Ron Sims to coordinate and integrate information developed by various subcommittees. The ultimate work product will be a final recommendation on the scope of Coordinated Water System Plans in King County. Anticipated information will include: a regional demand forecast for the Snohomish, Pierce and King County area; a supply alternatives analysis for the tri-county area; source exchange strategies; a prioritization of streams with low flow problems; an understanding of potential climate change impacts; reclaimed water use opportunities; and a strategy to address small water systems in King County.

If you’d like to be involved in this process, let us know!

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Our mission
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To become
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of New Initiative in the Walla Walla

Oregon authority to help implement local water management goals and objectives, and to make joint requests for legislation to enable implementation of specific water management measures where additional authority is needed.

CELP and other environmental organizations were recently approached by participants in the WWWMI and asked for our feedback about the process. It's too soon to tell whether this approach is workable, or whether it represents sound water policy. Because Washington's water belongs to all of us – no matter where we may live, or where the rivers are located, it is always a bit disquieting to CELP when policy makers seem to view water management as primarily a local concern. The Walla Walla



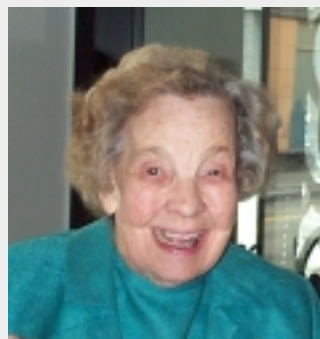
Walla Walla Watershed

Water Management Initiative certainly bears a closer look. Check out the website at www.walla.wallawatershed.org/ and let us know what YOU think!

The Benella Caminiti

CELP's resident "Public Trustee," Benella Caminiti, dedicated her life to environmental activism and using the Public Trust doctrine to ensure public's access to Washington's parks, beaches and shorelands.

A compilation of the legal documents she collected, and related to her activism has been given to the University of Washington Collections Library. They bear the title, "The Benella Caminiti Papers."



Benella Caminiti

They supplement an earlier gift of documents documenting her involvement with the U.S. Navy homeport in Everett. The collection includes documents Benella collected in 2003 regarding specific environmental issues and philosophical tenets as bases for her activism.

The Benella Caminiti Papers, along with other environmental activism documents, agencies, and newspaper articles, a biography of Benella, copies of her

keyword list. The entire collection will be available for viewing at the University of Washington is still processing the collection. The website as soon as it's available. For more information contact the Washington Libraries Special Collection at 206-543-1900.

Shop on line and Support CELP!

Who hasn't uttered the words, "I wish there was something I could do to help?" When you need to make a purchase check out: www.iGive.com. You can buy the items you need and support CELP at the same time.

It's FREE, no invisible costs or tricky obligations. Shop for everything you need over 650 stores at the Mall at iGive.com, like Barnes & Noble, Target, Buy, and Neiman Marcus. Up to 26% or more of each purchase is donated to Your Cause -- CELP!

continued from page 1

resulted in completed watershed plans that have been implemented by local governments within the watersheds (and of these, 7 are now finalizing their plans); 6 watersheds have terminated the process; 3 watersheds have watershed planning units and await adoption by county; 3 watersheds are still ongoing.

Department of Ecology's (Ecology) 2005 Report to the Legislature, "Investment of operating funds made available by the legislature for this program. Combined with more than \$54 million in capital funding for improved water management activities, the state's investment is **more than \$98 million.**" This \$98,000,000 doesn't include federal subsidized planning processes and feasibility studies for

Watershed planning?

Watershed planning is completely voluntary. Local governments and water supply utilities can decide to initiate watershed plan-

ning. The process is structured into four phases: organization, assessment, planning, and implementation. Page 7 indicates what must be accomplished in each phase in order to be eligible for funding for the next phase.

The implementation Phase (not added to the 1998 law until 2003) is designed to develop detail regarding the strategies, recommendations, and implementation plans. A required component of this phase is to complete an implementation plan within one year that describes not only the lead strategies but also timelines for achieving each strategy, milestones to be achieved, and potential funding sources. To date, no final implementation plans have been completed.

Watershed planning groups can voluntarily opt to address any of the strategies, each of which have additional legal minimum requirements: water quality. Naturally, CELP is most interested in the strategies which allows watershed planning groups to make instream flow rules, which Ecology can consider as it establishes rules governing instream flows in rivers and streams. NOTE: just because Ecology sets a flow rule doesn't mean the water will actually be there. Setting a flow by rule can be withdrawn from that river or stream—if sufficient

Story continued on pg 11, see "Watershed Planning"

Phase I: Organization RCE 90.82.060	Phase II: Assessment RCW 90.82.070
<ol style="list-style-type: none"> 1. Initiating governments to identify and appoint the planning unit members that represent wide range of water resource interests in the watershed 2. Operational and decision making structures and goals for the planning unit are developed 3. Ground rules for decision making are adopted 4. A detailed scope of work for Phase 2 Assessment is adopted 	<ol style="list-style-type: none"> 1. Estimate the surface and groundwater resources present in the management area 2. Estimate the surface and groundwater resources available in the management area taking into account seasonal and other variations 3. Estimate the water in the management area represented by claims in the rights claims registry, water use certificates, certification rights, existing riparian instream flow rules, federally reserved rights, and any other rights to water 4. Estimate the surface and groundwater resources actually being used in the management area 5. Estimate the water needed in the management area for use in the management area 6. Identify the location of areas where aquifers are known to recharge, and bodies of water and areas known to provide for the recharge of aquifers from the surface 7. Estimate the surface and groundwater resources available for further appropriation taking into account the minimum instream flows adopted by rule and the flows adopted by rule under this chapter for streams in the management area and the data necessary to evaluate the flows for fish