



Washington WaterWatch

**Citizens Challenge
Lewis County
Development**
(see p. 9)

“...where water quality and water quantity are inextricably linked...”

Water Law Front and Center in Olympia

by Rachael Paschal

Fish need water — a fact recognized by most parties as Endangered Species Act (ESA) listings loom for various Pacific salmon and trout populations. Response in Olympia has been quick and concerted: Governor Locke’s Joint Natural Resources Cabinet and “Salmon Team” recently issued “Extinction is Not an Option,” a draft state-wide strategy to recover salmon, along with accompanying legislation. [On the Web at <http://www.wa.gov/esa>.]

Most river basins in Washington are affected by ESA listings, and analysis reveals that the exercise of water rights appears to be a limiting factor for recovery of endangered species throughout the state. Thus, salmon policy is water policy, and nothing more clearly demonstrates that fact than the governor’s omnibus water bill (SB 5289 and HB 1314).

The governor’s bill, weighing in at 65 pages, covers a wide range of topics, including water conservation standards, municipal water supply, exempt wells, hydraulic

continuity and water rights mitigation, enforcement, and funding. Reviews are mixed. No one likes every part of the bill, but it does show a willingness to consider sweeping changes in current law.

Senator Karen Fraser, chair of the Senate Committee on Environmental Quality and Water Resources, is sponsoring four bills relating to water rights. Most pertinent to ESA recovery is SB 5478, establishing new standards for **instream flows**. Flows shall be adequate for fish, according to “best available science,” and the state shall quickly go about the business of flow setting in watersheds with depressed salmon and trout populations.

Importantly, Fraser’s bill authorizes the governor to

prioritize instream flow protection over existing water rights, if needed, to avoid unlawful “taking” or killing of fish, a violation of the ESA. Sure to attract controversy, this proposal nonetheless recognizes that the federal ESA statute can and will trump the exercise of state-based water rights.

Although 225,000 water rights are registered in Washington, no one knows how much water is actually used. Senator Fraser’s SB 5565 would require **water metering**, an essential first step for meaningful water conservation. SB 5546 would establish a volunteer “stream keeper” program. It also includes the Center’s perennial request, a requirement that the Department of Ecology issue a **draft decision** before the final water right. Unlike every other environmental permit issued by state and federal authorities, Ecology does not share its proposed water right decisions with the public — until it’s too late. We promise, Ecology, we’ll quit filing

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Conservancy Boards: Ready, Fire, Aim?

by Rob Caldwell

The Department of Ecology has a backlog of 6200 applications for permits for the use of the state's water, including 1300+ applications for transfer of existing water rights. Transfers can be valuable vehicles for water conservation. The public interest is served when water is reallocated from low value, highly consumptive uses (hay crops, for example) to high value, efficient uses (orchards with drip irrigation).

Budget cuts have negatively impacted Ecology's ability to act on outstanding applications, including transfers. To expedite water transfer requests, and to capitalize on conservation efficiencies from transfers, the 1997 Legislature enacted a system in which water transfers can jump to the head of the line to be processed before requests for new water rights.

Addressing needs of frustrated applicants sounds great—but there is a catch. Bypassing Ecology's experienced professional staff, the Legislature granted authority for water transfer processing to a new type of governmental entity—**water conservancy boards**.

In keeping with the current craze of "leadership from the bottom up" in water resource issues, the Legislature delegated authority over water transfer applications to any county that chooses to cre-

ate a local water conservancy board. Boards are composed of three members appointed by county commissioners. Eighteen hours of training is the only qualification. Once training is complete, board members are turned loose to examine and decide water transfer proposals.

Once a board approves a transfer application, Ecology may reverse, deny or modify the board's decision. Even though this procedure appears to prevent conflicts with state law, it ultimately duplicates effort and drains Ecology's meager budget.

Under the water conservancy board scenario, Ecology still has to conduct legal and technical reviews that the board has presumably done to assure correctness of each decision. Conservancy boards have unlimited time to act on transfer applications; however, Ecology has only 45 days to review the board's decision, or the decision stands by default. Additionally, Ecology is charged with the burden of training conservancy boards. This is no small task in the complex realm of water resource policy.

Pilot boards in Lewis and Benton Counties are now testing pilot rule procedures. The Benton County board recently issued its first decision on a transfer request by Kiona Vineyards that would double the vineyard acreage

without analysis of water savings realized by converting from sprinklers to drip irrigation.

Board members so far have one thing in common -- no experience in water resource decision making. Boards are heavy on well-drillers and agricultural interest and light on scientists and policy makers. To date, neither board has hired experienced water resource allocation staff to assist.

The first few Benton County decisions are not firmly based on sound legal and technical principles. The Center will file appeals with the Pollution Control Hearings Board to assure that decisions rendered by these new governing entities comply with Washington's water code.

*Attorney **Rob Caldwell** is the Center's secret weapon. Rob spent half a lifetime running a surveying business in Nevada before attending law school. While studying at the Northwestern School of Law at Lewis and Clark College, Rob worked as a legal intern for the Center. He graduated in May 1998 and promptly passed the Washington State Bar, fulfilling his dream of becoming a water lawyer. Rob's wife, Susan, an attorney and a Seattle native, helps him with the climactic adjustment from high desert to mossy maritime. As the eyes and ears of our water rights monitoring program, Rob makes work for himself and the rest of us. Congratulations and welcome, Rob!*

Jet Skis: Victory at Sea

by Jill Sheldon

In July, the State Supreme Court upheld San Juan County's right to ban jetski use in the waters of the San Juan Islands. While we at the Center don't normally focus on jetskis, we take our sense of victory from the Court's citation of the **public trust doctrine** in upholding the ban. We were pleased to note that the Court cited our public trust arguments in their final decision.

In 1995, San Juan County legislated a ban on personal watercraft (PWC), or "jetskis," from County lakes and marine waters. A short time later, a group of PWC users, rental and sales businesses and a PWC industry association brought suit against San Juan County's ban in Whatcom County Superior Court. They argued that banning jetskis was a violation of the **public trust**, in as much as the doctrine was intended to hold the right of navigation in trust for the public. The Center saw in this case an opportunity to further broaden and solidify the **environmental scope** of the public trust doctrine in Washington State, which is one of the Center's primary goals. In our "friend of the court" brief, we outlined the entire spirit of the public trust doctrine as it pertains to the jetski ban.

The origins of the public trust doctrine can be traced to Roman Times. The Institutes

of Justinian (533 AD) provided that by the law of nature, *things that are common to humankind are the air, running water, the sea and the seashores*. Hundreds of years later, England adopted the doctrine. The doctrine was perpetuated in United States as English common law was adopted by the former colonies.

In Washington state, the public trust doctrine had long been held to apply to navigation rights. However, in 1987, the state Supreme Court held that "the public trust doctrine protects a wide range of public interests including fish and wildlife habitat, water quality, and other ecological values, and that the limits of the doctrine are coextensive with public need." (*Orion Corp. v. State*) This official recognition of the environmental scope of the doctrine marked an important moment in the fight for water quality and quantity.

In the San Juan case, the Court reiterated the environmental component of the public trust doctrine. In the decision to uphold San Juan County's ban on jetskis, Judge Charles Johnson wrote:

"It would be an odd use of the Public Trust Doctrine to sanction an activity that actually harms and damages the waters and wildlife of this state."

The decision further states that the "public trust doctrine protects public ownership

interests in certain uses of navigable waters and underlying lands, including navigation, commerce, fisheries, recreation, and **environmental quality**, by reserving a public property interest, called the 'jus publicum,' in tidelands and the waters flowing over them..." This strong statement about the scope of the public trust bodes well for Washingtonians who have an interest in preserving freshwater ecosystems for the future.

On September 29th, after two public comment meetings which followed the expiration of the first ban ordinance, the San Juan County's Board of Commissioners enacted a new personal watercraft ban on marine waters and freshwater lakes. Another victory for Washington's aquatic environment!

Unclear on the Concept?

Overheard during a legislative work session on Monday, February 1: a Senate committee member read written testimony stating that *the water rights backlog at Ecology contributes to global warming*. Apparently, no new water rights means no new crops. No crops means less oxygen and more carbon dioxide, a greenhouse gas. Hmmm...

Cedar River HCP: Buyer Beware

Seattle owns the upper Cedar River drainage, representing most of its municipal water supply. The watershed is home to more than 80 species of animals and plants, including steelhead and Puget Sound Chinook, that are now or soon to be listed as endangered or threatened under the Endangered Species Act.

To comply with federal law, Seattle has invoked a section of the ESA that would allow the city to kill or harm endangered species if such harm is incidental to lawful activity (in this case, operating the city's water system). The law requires Seattle to create a "habitat conservation plan" to provide greater overall benefits in exchange for the right to kill individual members of listed species. If approved, the HCP would provide such immunity to the City for fifty years.

Seattle Public Utilities has made substantial efforts to engage the public in reviewing the proposal. Although the process is admirable, the HCP contains some unfortunate flaws from a water rights perspective.

Because Puget Sound Chinook and steelhead are species of concern, the HCP addresses maintenance of instream flows below the City's diversion point. The City claims a right to take water from the Cedar in the amount of 465 cubic feet per

second. But on average, Seattle's customers have historically only used 118 cfs. While the HCP contains requirements for maintaining a minimum amount of water in the river, it does not put a limit or "cap" on diversions.

According to state law, Seattle may not use all of its water rights claim because of the "use it or lose it" doctrine. The state should file a water rights adjudication to determine the City's maximum entitlement based on actual water usage. But, interestingly, Seattle negotiated a side agreement with the Department of Ecology, in which the agency promises not to pursue adjudication of Seattle's water claim for the lifetime of the agreement.

Seattle promises to do its best not to take any more water out of the Cedar, but will not guarantee it in writing.

Why does this matter? The evolving science of instream flows teaches us that "minimum" flows are not enough. We need to return rivers to a more natural flow regime in which high flows replenish ground water (which drains back into the river in low flow times), maintain the stream channel, and provide other benefits that create and improve fish habitat.

Why won't Seattle cap its water diversions? First, it plans to increase its sales of Cedar River water to meet future growth in the Central Puget Sound. Seattle currently sells water to 28 wholesale customers and could add several more, including Issaquah and Federal Way's Lakehaven Utility District. Water is money.

Second, high flows would attract more fish to spawn in the upper stream channel. Seattle would then have to maintain higher flows later in the year to protect these redds. The City cannot accept the notion of fish



"Dam in Seattle," courtesy of Kyu/Youth In Focus

needs for water taking precedence over green lawns and golf courses.

The Cedar River HCP is a landmark document: a water user acknowledges that the Endangered Species Act can limit exercise of water rights. But in-depth review of the HCP reveals virtually no analysis of alternative flow regimes. Buyer beware... when it comes to water, Seattle might not be as green as it looks.

Water Transfers: *R.D. Merrill* Explained

By Rachael Paschal

R.D. Merrill v. State involves water supply for a cross-country ski resort under construction in the upper Methow basin. The waters of the Methow watershed are fully appropriated, and low instream flow problems persist throughout the year.

In January, the Washington Supreme Court issued a much-awaited decision in *R.D. Merrill*, highlighting the technical aspects of the state's water transfer statute. A mixed decision for all parties, the opinion addresses changes in season of use, transfer of unperfected ground water rights, and abandonment and relinquishment of water rights, including clarification of statutory exemptions relating to legal proceedings and future development plans.

Plans for what was once called the Early Winters Resort, a destination ski hill, were nixed following a 1989 U.S. Supreme Court decision affirming deficiencies in an environmental impact statement prepared by the Forest Service.

R.D. Merrill Co. then acquired the property via receivership and downsized the project. The renamed Arrowleaf Resort included more than 700 condominiums, a golf course, and winter recreational facilities. Wilson Ranch, the first phase of the Arrowleaf project, includes a main lodge, 27 dwellings,

and an artificial lake. The approximate 100 acre-feet in water rights needed for this phase were addressed by the Court. Further work depends upon the outcome of continuing environmental impact litigation and approval of additional water rights.

New water rights are not available in the upper Methow basin. *R.D. Merrill* sought to consolidate six existing irrigation, domestic and stock watering rights, which variously required changes in the purpose, season, place of use and point of diversion for the rights. The Court's decision relied heavily on a strict and technical construction of the state water code, along with recent opinions affirming the vitality of the beneficial use doctrine in determining the validity of existing rights.

Season of use: The Court clarified that a transfer from three-season to year-round use could occur if the water resources agency could make a finding of no impairment to other rights. Curiously, the Court did not discuss the relative priority, with respect to other winter-time water users, of a senior right expanding into a new season. Nor did the Court address instream flow problems in the valley.

Transfer and perfection: The Court also approved transfer of two unperfected ground water permits, based

on language found in RCW 90.44.100 which specifically authorizes changes in the well location, manner, or place of use, *even when the water has not yet been put to beneficial use.* (In contrast, the state's surface water transfer provision explicitly requires that the water permit be perfected before transfer may occur.) The inconsistency between ground and surface water transfers makes the issue ripe for legislative treatment. It also eases the path for some municipal water transfers involving "inchoate" rights, currently a political hot potato in Washington.

Abandonment: In the matter of a 35 acre-foot irrigation claim, the Court deferred to findings by the water rights court -- that this "Wilson right" had never been perfected. Irrigation of the original property was accomplished by diversion from a mutual ditch company pursuant to other legal claims. Therefore, the right proposed for transfer did not exist and was deemed abandoned.

Relinquishment: With respect to the largest right, a 70 acre-foot irrigation claim, the Court remanded for a hearing on factual issues that were not considered in the original proceedings.

Five years of non-use results in loss of a water right, except in certain circumstances outlined in the relinquishment statute (RCW 90.14). *R.D. Merrill* and its predecessor

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Local Control and Public Resources

guest editorial
by Dick Rieman

If it had been up to local control to determine if land should be set aside as wilderness, we would have no wilderness today. The same is true for our park and interstate highway systems. When these topics were hot ticket items, our state and federal governments functioned more as they were originally designed to function.

Endangered salmon and steelhead are the big ticket items these days. The problem dwarfs the Spotted Owl debates of the late 1980s because it affects a thousand times more private landowners. Endangered salmon and steelhead are a social issue that cuts to the core in the debate between environmentalists and western industrialized civilization.

Our governor is an education guy. He makes speeches about salmon and steelhead, but his heart is with education. He's not a resource guy. Our Governor also happens to be a Democrat who has had to deal [*in 1998*] with a Republican-dominated house and Senate. Republicans are free market guys. Environmental issues and endangered species don't fit the free market philosophy.

Nevertheless, all politicians know they have to deal with

the ESA because it is the law. Washington's answer is to do the same as Oregon and obtain a Section 10 permit. But Washington parts company with Oregon in one major area; Washington wants to deliver the endangered salmon and steelhead issue to local county and city governments for a solution. Local control is the buzzword of the day. It has caught on like wildfire because lawmakers have what they think is a panacea for sticky problems. The legislative solution to the listed salmon and steelhead problem is to heavily fund programs where local citizens set the standards. The entire effort is voluntary.

ESHB 2496 and ESHB 2514 are two 1998 bills that gave a lot of money to local efforts to pursue stream restoration projects and stream quantification and implementation projects voluntarily. Can an issue as volatile and as complicated as endangered and threatened salmon and steelhead be successfully dealt with at the local level on a volunteer basis? I don't think so.

At the local level, everything becomes emotional and personal. No one wants to be restricted by his neighbor. No one wants to restrict his neighbor. Only those with vested interests participate. At the local level, the public's resources suffer. As James Madison reasoned: "The idea of citizens beholding, let alone acting upon, the public interest is contrary to the narrow self-centeredness of individual human nature."

Sending public resource issues such as endangered salmon and steelhead to the local level for solutions on a voluntary basis will result in tearing a community apart. Polarization will intensify. And the sad part is that, while citizens fight among themselves, species like salmon and steelhead quietly slip into extinction.

All of the experiences I've had over the past eight years indicate that local solutions to public resource issues will fail without the support of a standard determined at a higher level of government. Local governments are not capable of setting standards, as has been painfully demonstrated time and time again during the last eight years of Growth Management deliberations. Where local control succeeds is when local elected officials are skillful at tailoring a standard to their local area. The skill to do this comes from a full understanding of the law and the principles embodied within the law.

If salmon and steelhead are allowed to go extinct, no living organism on this earth will be safe from us. Any society that can throw away a heritage with the kind of aura that surrounds these fish will be capable of throwing away anything.

Dick Rieman, formerly an airline pilot, is an orchardist in Leavenworth. After questioning standard-setting in growth management last fall, he has gotten involved at the local level to rehabilitate Icicle Creek for native steelhead.

Olympia, continued

so many appeals if you'll just give us a meaningful opportunity to comment in advance!

The governor's bill, Fraser's SB 5479, and a bi-partisan effort from the House, HB 1502, all address the critical issue of **water transfers**. New water rights are increasingly difficult to obtain, hence transfer of existing rights is an important tool both for meeting new demand and restoring stream flows. Because Washington's transfer procedures are outdated and inflexible, these bills propose some changes that are sure to help.

One good idea is quite simple -- create a **separate queue** for processing transfers faster than new rights. Another involves the important clarification that private individuals may hold instream rights. Several sections of the governor's bill propose increased use of **trust water rights** to improve river flows, and creation of a **stream flow restoration account** to be used for purchasing water rights for conversion to instream flows.

While innovative ideas abound, a few stink bombs remain. The governor's bill would have Ecology negotiating **interlocal agreements** with hundreds of water utilities and all 39 counties, in addition to intensified review of water system plans for compliance with environmental laws. Too many memo-

randa of agreement, not enough resources, and definitely not enough standards and guidance to ensure environmentally responsible outcomes.

The governor's proposed response to the George Theodoratus case (*see page 10*) mysteriously exempts **unused municipal rights** from instream flow requirements in basins with endangered fish listings.

Exempt wells would be abolished in their current form and replaced by county-state agreements that consider environmental impacts.

Finally, the governor's "**Sinking Creek**" fix, to restore water rights enforcement authority to Ecology, would require the agency to file a lawsuit in Superior Court in order to start an enforcement action. This does not constitute progress on the issue. Indeed, Ecology can do that now, and it never does.

A fine session is shaping up. We look forward to keeping you informed about the fray.

Transfers, continued

sors have not used the water since the 1960s. In remanding, the Court limited the scope of two of the statutory defenses raised by Merrill, noting that exceptions to the

water code must be read narrowly.

R.D. Merrill claimed that, because the Arrowleaf property has been the subject of litigation for more than two decades, these lawsuits excuse its non-use of water rights during that time. The Court ruled that the nonuse of water must "be attributable to the legal proceedings, i.e., that the legal proceedings prevent the use of water." Merrill will have to demonstrate why it could not have continued to irrigate or otherwise use the water pending outcome of court proceedings.

Merrill also argued excusable nonuse because the water rights were claimed for a "determined future development" to take place within 15 years of the last beneficial use of the water. The Court noted that fixed development plans must be in place before 5 years of non-use occurs. Some affirmative steps toward realization of the fixed development plans must occur within the 15-year period.

The technical nature of the *R.D. Merrill* decision provides welcome guidance to current administrative process for water rights. Transferring existing rights is an increasingly important option for obtaining water supply for new development as well as augmenting low instream flows.

Fountains of Youth?

Look for contributions from some of Seattle's most talented young photographers in this and future issues of *WaterWatch*. **Youth In Focus** is a nonprofit program providing scholarships to introduce inner-city youth to a rich learning experience using photography as a tool for personal growth and vocational skill-building. Photos have been selected from a recent project that focused on the Cedar River Watershed. Students not only documented valuable environmental and conservation issues, but their own stories as well.

Participating students photographed water in Seattle homes, schools and neighborhoods, then spent a day documenting water at its source -- the Cedar River watershed. Twenty-eight images reveal how these young people experience water moving through their lives. Student efforts have been displayed at the Seafirst Gallery and at several local watershed celebrations.

Thanks to instructor Bryan Baker for helping us choose from among many wonderful images! For more information on Youth In Focus, including information on their upcoming fundraising auction, "DoubleExposure," contact Bryan at 206-723-1479 or yif@speakeasy.org.



"Jiyeon in the Morning,"
courtesy of Kyu/Youth In Focus

Gift Honors Longtime Public Trust Activist

The Center has recently received an anonymous \$2,000 gift in memory of **Dr. Virginia Richmond**, who died on April 7, 1998. Dr. Richmond worked as a research biochemist at several institutions, including the University of Washington and the Pacific Northwest Research Foundation. She helped found the Seattle Shoreline Coalition and worked tirelessly to hold the line against encroachments on public waterfronts and parklands. Dr. Richmond also spoke up for traditional maritime businesses on Seattle's waterfront. Her community involvement included the League of Women Voters, People to People, and the Democratic Party. The Center honors Dr. Richmond and her colleagues as mentors and sources of inspiration for years to come. Many, many thanks to the anonymous gift giver!

CEDAR RIVER NEEDS YOU!

Please contact Seattle Public Utilities about the Cedar River HCP before March 1. Says biologist Holly Coccoli, author of "The Continually Shrinking Cedar River" in our last issue, "A moratorium or cap on new withdrawals seems reasonable and justified." See pages 10 and 12 for details.

Washington WaterWatch is published by The Center for Environmental Law & Policy, a non-profit membership organization dedicated to preserving Washington's aquatic ecosystems. Through monitoring, education, litigation, policy studies and advocacy, the Center works toward its vision of sustainable human water use in balance with healthy rivers and aquifers.

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NEWS DROPLETS

Quality & Quantity Linked Again on Sullivan Creek

Remember the Dosewallips decision? Sometimes called 'Elkhorn' or 'Jefferson County,' the case involved a proposal to build a hydro project on the Dosewallips River on the Olympia Peninsula. Both the Washington and the United States Supreme Courts affirmed that the Department of Ecology could use the Clean Water Act to impose instream flow conditions on a hydroelectric license. As Justice Sandra Day O'Connor said, water quality and water quantity are inextricably linked.

Well, they've done it again -- Ecology, that is. In October 1997, Ecology issued a water quality certificate to the Pend Oreille Public Utility District imposing stream flow conditions on a hydropower proposal. The Sullivan Creek Project, located on a small stream in the far northeast corner of the state, will divert water out of the creek and into a three-mile-long pipeline, or penstock, that would feed into a power generator just outside Metaline Falls.

Ecology consulted with state and federal fish biologists who proposed an instream flow regime to protect trout fisheries and recreational use of Sullivan Creek. As in the Elkhorn Project, the PUD claims that the requirement to leave that much water in

stream will make the project economically infeasible.

Unlike the Elkhorn case, however, Pend Oreille PUD possesses water rights that date back for several decades -- 550 cubic feet per second! The PUD argues that the Clean Water Act prohibits the state from issuing water quality permits that would interfere with exercise of those water rights.

Appeals were filed, and the Pollution Control Hearings Board upheld Ecology's decision in October. The Center intervened to support Ecology and make a few arguments of our own. In addition to water quality law, the case involves issues relating to abandonment of water rights and the public trust doctrine.

All parties agreed that an expedited appeal would be helpful, and a petition for review is now pending with the state Supreme Court. Stay tuned for a landmark decision.

CELP Members Ride the Wild Water Code

by Bill and Patti Barmettler

[Editor's note: Bill was recently named Citizen Activist of the Year by the Chehalis River Council. We are as excited as he and Patti are about the success they had in their local appeal process. Congratulations

and many thanks, Bill and Patti!]

In July of 1998, we got a letter from the Lewis County Planning Department informing us of a proposed 71-home development at the headwaters of Coal Creek, a mile upstream of our place. There was a copy of the Mitigated Determination of Non-Significance (MDNS) and some information about making comments, including appealing the MDNS. We knew nothing of the appeal process, but, as we learned more about this development, it seemed we had to do something.

We paid the \$100 to appeal the MDNS. Now what? The first month was a long haul from total ignorance to a point where we at least understood the issues. Some members of the Chehalis River Council referred us to CELP. The first time Rob Caldwell called, he told us that Salzer Creek, the stream east of the development, was protected under Washington Administrative Code 173-522-050 from further consumptive appropriation during the summer. I didn't understand the significance. Rob explained hydraulic continuity. He was calling from Seattle, telling me things I didn't know about a creek a few miles distant from us. I was impressed.

continued on next page

Water issues abound in this proposal. The developer plans to drill six packs [*not-strictly-legal exempt wells combined into a private water system*] if the water rights can't be transferred quickly. The rights are agricultural and are owned by a local well driller who just happens to sit on the newly formed Lewis County Water Conservancy Board [see page 2]. The aquifer is probably continuous with both streams. Coal Creek is on the [Clean Water Act] 303(d) list for coliform bacteria. Salzer is on the 303(d) list for coliform, dissolved oxygen, and elevated temperature. The southwest coho population may be listed soon. We knew none of this when we started.

We went before the hearings examiner in August and again in September. Before the third hearing, the developer's lawyer pulled the proposal, stating they needed to re-examine traffic impacts. We expect that they will be back with a slightly improved version.

Some lessons learned:

Get help. We had to learn a lot in a short time. We've been getting some kudos for slowing this down, but nothing was accomplished without input from others.

Technology is good. Without a computer, fax, scanner, printer, e-mail, etc., we would have been lost.

I tended to skip over documentation and advice if it didn't make sense right off the bat. Next time, I'll pay more attention even if it

doesn't seem important at first.

It is critically important to be organized.

Citizen input can be powerful. The people living closer to this development figured there was nothing they could do about it, so that's what they did. We don't know what's going to happen to our little creek in the end, but we do know we didn't just watch it happen.

Muni Water Wars

Important developments in municipal water policy are in the offing. Public water purveyors are thirsty for water rights to serve future growth. Thanks to an increased environmental consciousness, new water rights are hard to obtain. Thus, utilities that possess large blocks of "inchoate" or unused water rights want to sell to the have-nots. A survey of municipal water rights conducted by the City of Everett revealed more than 340 million gallons per day of unused water rights are held by ten utilities.

The problem: unused water rights may not be transferred under current law. A second problem: this unused water is presently flowing in Washington's rivers and aquifers, and in many places needs to stay there. Thus, instream flow advocates have a keen interest in preventing changes in the law that could result in environmental damage.

In late 1997, the legislature convened a group of stake-

holders, the Municipal Water and Instream Flow Work Group, to hammer out conditions for transfer of unused water between utilities. Those conditions now appear in the governor's water bill (see page 1). In July, while the Work Group met, the Supreme Court issued its decision in *Ecology v. Theodoratus*, ruling that public supply water rights are measured by actual use, not system capacity (also known as "pumps and pipes"). This ruling has cast uncertainty on more than 10,000 public water supply rights (including the 340 mgd described above) issued by the state. The governor's water bill also contains a response to this ruling. In both circumstances, unused water rights may be accessed and transferred, but only if impacts to the natural environment, including instream flows, are addressed.

Not satisfied with the Work Group's negotiated agreement, King, Pierce and Snohomish County utilities recently founded the Central Puget Sound Water Suppliers Forum. An alternative legislative proposal from the Forum would create "integrated water supply management areas." The purpose of this new process would allow free transfer of water across service area boundaries, eliminating state approval for transfers of unused water between utilities. Ecology has abandoned the Work Group format of broad representation and is now negotiating exclusively with the Forum to create new law.

FROM OUR READERS...

Dear Editor:

In your Spring '98 issue, Joe Mentor wrote to nominate Trendwest's proposed Mountainstar resort for "Conservation Champion" status. Unfortunately, he painted a misleading picture.

According to Trendwest, the project includes more than 4,300 dwellings serving up to 12,500 residents and visitors, with additional development and population spinoff. These numbers eclipse the current population projection for up to 4,285 new residents in unincorporated Kittitas County over the next 25 years. Mountainstar would become Kittitas County's second largest "city," just an hour and a half from Seattle and five minutes from the golf course. Where do you begin to assess environmental damage — noise, fire danger, traffic, displaced wildlife? What of the social impacts — increased demands on social services, increased taxes and housing costs, and an influx of seasonal, minimum wage jobs? What about impacts on nearby, undisputedly "pristine" lands in the Alpine Lakes? The scale of the proposed resort and its environmental impacts makes conservation claims ludicrous. The rural quality of upper Kittitas County would be only a memory.

What about water? Mentor claims the resort would

exchange existing water rights rather than develop new water rights. Trendwest proposes various transfers of mostly seasonal, agricultural rights in return for year-round Federal water from Lake Cle Elum. All of these run substantial risk of causing a net increase in water use. What will occur on agricultural lands where water rights would be "abandoned"? With an end to farming comes subdivision, "ranchettes," and exempt wells. When we assess the impact of new uses, not much water would seem to be available for transfer. The benefits to instream flows would be better obtained via the water rights acquisition program of the Bureau of Reclamation. There, trade-offs don't have to be made when converting senior ag rights to instream uses.

As more facts become available and as transfer proposals face the scrutiny of agency and judicial review, I think Trendwest's claims of "no net impact" will become less convincing. The carefully cultivated impression that the water transfer is a "done deal" and the resort is inevitable will fall away.

Doug Kilgore
RIDGE

(Founded in 1987, RIDGE advocates for sustainable land use practices in the Cle Elum River basin. Reach them at P.O. Box 927, Roslyn, WA, 98941.)

THANK YOU

to departing Board members, **Betsy Dennis** and **Julia Parrish**, for their incredible devotion and work since the Board's inception, and to new Board member, **Patrick Oshie**, attorney from Yakima;

to our friends for **volunteering or for in-kind donations**:

Ginny Allemann • John Arechavala • Benella Caminiti • Greg Caron • Chris Coffin • Margaret Delp • Beth Fries • John Hebert • Kris Kristoferson • Sheila Lynch • Patty McCleary • Brenda McMurray • Jessica Michal • Bob Mittelstadt • Keith Phillips • John Rosapepe • Jose Rosapepe/IMPart, Inc. • Nancy Rust • Eric Warner • Fran Wood;

to our **newest members** and to **those who have recently renewed their membership** (there are too many of you to list this issue);

and finally to
General Service Foundation
Henry P. Kendall Foundation
Horizons Foundation
Northwest Fund for the Environment
Overton & Katharine Dennis Fund
REI
Washington Fly Fishing Club Foundation

for your generosity and support.

CELP CALENDAR

February 20:

Growing Smart: Neighbors Working Together to Stop Sprawl and Build Better Communities. Vancouver, Washington. **Co-sponsored by CELP**, 1000 Friends of Washington, and others. Call 360-695-5570.

March 1:

End of public comment period on the draft EIS for the Cedar River Habitat Conservation Plan. Send written remarks to: Seattle Public Utilities, P.O. Box 21105, Seattle, WA, 98111-3105. Call 206-684-4144 for an executive summary. CELP supports a cap on withdrawals to provide engineering flexibility and protection of Rock Creek and other Cedar River tributaries.

March 4-7:

17th Public Interest Environmental Law Conference: Fierce Green Fire. Eugene, Oregon. Cosponsored by Friends of Land, Air, and Water and the University of Oregon School of Law. Includes a water law symposium on March 5. Registration at <http://www.pielc.uoregon.edu/>.

March 30:

Terry Glavin, Canadian author and conservationist, speaks on "Confronting the Current Crisis in Pacific Fisheries." 7:30 pm, Mountaineers Clubhouse, Seattle. Sponsored by the Mountaineers.

April 9:

1999 Sinking Creek Water Law Conference: Water for the Future. Cavanaugh's Fifth Avenue, Seattle. **Co-sponsored by CELP** and the University of Washington School of Law. Registration information: 206-543-8881 or kkline@u.washington.edu.

April 20-24:

International Workshop on Instream flows. Victoria, B.C. Cosponsored by the World Bank and others. Contact Charles Howard at 250-385-0206 or chuck.howard@chal.bc.ca.

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