



CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for Environmental Law & Policy

Washington Water Watch

November 2014

In This Issue

[Spokane River Instream Flows](#)

[Spokane PCB Victory!](#)

[Remembering Justice Robert F. Utter](#)

Next month in Washington Water Watch

CELP's 2014
Annual Highlights!

CELP Conference:
Water Law &
the Public Trust
December 5 in Seattle

Mark your calendars for CELP's annual "Water Law & the Public Trust" CLE in Seattle. This day-long CLE (6.5 credits, includes 1.0 ethics credit) will feature hot topics and leading voices in water law. Register on-line [here](#). Click [here](#) for current agenda & mail-in form.

Focus on the Spokane River

Dear CELP Friends,

"The Spokane River in the middle of this city is the best kept urban secret in the United States today."

-- former Interior Secretary
Bruce Babbitt (2004)

The Spokane River has twin personalities. It is a sublimely beautiful river that offers unparalleled urban whitewater. The River's redband trout may carry the DNA to restore steelhead to the Upper Columbia watershed. The Spokane is loved to pieces by people of the Inland Northwest. Unfortunately, it is also heavily polluted and in summer months, pumping the aquifer to support 500,000 people has dropped instream flows to half of what they were historically.



Bowl & Pitcher,
Riverside State Park

John Roskelley Joins CELP Board

Water advocate, [legendary mountaineer](#), and author [John Roskelley](#) has joined the CELP Board of Directors. John has served as Spokane County Commissioner and on the Washington State Growth Management Hearings Board. John's latest book is [Paddling the Columbia: A guide to all 1,200 miles of our scenic and historical river](#). A big welcome to John: rivers and aquifers need his help right now.



#GIVINGTUESDAY™

Black Friday. Cyber Monday. And now . . . [#GivingTuesday](#). If you like to donate on-line to your favorite non-profit, (ahem ... that's [CELP](#), right?) a great opportunity will arrive in your inbox on Tuesday, Dec. 2nd. Watch for us!



Like us on Facebook 

The Spokane River contributes to our community, state, and region. **Now, the Spokane River needs YOU.** [Read on](#) - and please take a few minutes this week to inform the [Department of Ecology](#) about your concerns about the proposed Spokane River instream flow rule. All the info you need to comment can be found right here. *CELP members: this is a special request to you to please take action.*

CELP has advocated for Spokane River water quantity and quality for 15 years. Last week, [we successfully defended an appeal](#) by Ecology and Spokane County regarding PCBs.

This court victory has statewide significance, because the pollution at issue violates the Spokane Tribe's fish consumption rate (FCR) based water quality standards. For those who follow the ins-and-outs of the FCR controversy - this decision is for you.

[CELP's annual CLE](#), Water Law & the Public Trust, will be held in Seattle on Friday, December 5th. We'll examine hot topics, including the afore-mentioned PCB decision, along with a terrific panel of speakers discussing water and land use, agricultural water quality litigation, and more.

And, we've added two great speakers to the CLE program: civility guru [Professor Paula Lustbader](#) of Robert's Fund and Seattle U Law School will discuss the links between civility and ethics. [Paul Fleming](#) leads Seattle's Climate Resiliency Group, and will present real-life adaptation strategies for climate impacts on water resources. This is information *you can use*. Please join us - we strive to make this a low-cost event that all water advocates can attend. [Register on-line here](#).

Finally, we are delighted to announce that John Roskelley has joined the CELP Board of Directors, and that Tom Fox has joined our Science-Policy Board of Advisors. Welcome John and Tom!

Thank you, as always, for your continuing support of CELP.



Salmon Chief (by Virgil 'Smoker' Marchand), located at the base of the Spokane Falls



Spokane River Redband Trout

Follow us on [twitter](#)

Best wishes,

Rachael Paschal Osborn
Interim Executive Director

P.S. - All of the pictures shown here depict the "Monroe to Nine Mile" reach of the Spokane River.



Spokane River Rafters putting in at Water Street (August 2014)

Spokane River Instream Flows - When Will They Ever Learn?



Spokane River from the Westlink pedestrian bridge - near popular boater put-in points. Flows in this photo (taken on 9-3-03) are around 500 cfs. This is where Spokane River flows are headed with Ecology's proposed rule.

CELP MEMBER ACTION NEEDED by Nov. 7

By [Rachael Osborn](#)

[Spokesman-Review editorial for Sunday, November 2, 2014](#) -

"Washington needs to get river flow marker right. . . . Washington should set instream flows that provide a margin of error for the fish and the future, when the climate may push the resource to the limit."

In 1969, the Washington legislature enacted the Minimum Flows Act, followed by the Water Resources Act of 1971. These two statutes directed the Department of Ecology to adopt instream flow rules for all of Washington's rivers, to protect instream resources and determine how much water would be available for future allocation.

Forty-five years later, Ecology has adopted rules for fewer than half of Washington's rivers. Many of these rules, particularly the ones adopted in the 1970's and 80's, lack solid scientific foundation. Repeating past mistakes, Ecology is preparing to adopt an instream flow rule for the Spokane River that lacks basic scientific analysis and is completely inadequate to protect this much loved river.

If you care about the Spokane River, or the integrity of Ecology's instream flow program, please send a comment to Ecology before **Friday, November 7** and ask the agency to re-evaluate the Spokane River proposed rule. Ecology's address for your comments is [here](#). Click [here](#) for

CELP's preliminary comments and here for our [talking points](#) on the draft rule.

The Spokane River is an amazing place. It is beautiful and beloved. It was once an important salmon river, and its waters still harbor a wild redband (rainbow) trout population that likely contains the DNA to support wild steelhead restoration to the Upper Columbia watershed. The Spokane offers fabulous whitewater boating right in the middle of a metropolitan area. Thousands of people raft and float the Spokane Gorge during summer months. And, the Spokane Falls are the spiritual heart of the city. (CELP restored water to the Falls in 2009!)

[Read More](#)

SPOKANE RIVER PCB VICTORY !

CELP and Sierra Club Win Second Round of Spokane River PCB Permit Appeal

On Friday, October 24, Thurston County Superior Court Judge Eric Price gave a hand to Washington's most PCB-polluted waterbody: the Spokane River. The Court upheld CELP & Sierra Club's 2013 victory in an appeal of Spokane County's new wastewater treatment plant permit, which Ecology issued without any limits on PCB pollution.

Pursuant to the court decision, Ecology must issue a revised permit for the County sewage plant that limits the quantities of the cancer-causing chemicals it discharges to the Spokane River.

This court decision is - more importantly - a win for wildlife, fish, and people who eat fish from the Spokane River: tribal members, immigrant communities, CELP members, and others. The Spokane County permit appeal is also important because it will require Ecology to implement the Spokane Tribe's fish consumption standards - the first and only fish consumption standards currently in use in Washington.

Many thanks to our expert Clean Water Act attorney, Richard Smith of [Smith & Lowney](#), Seattle.

Links for more info -

- [CELP, Sierra Club News Release](#)

- [Judge's ruling sides with tribe, environmentalists on PCBs, river pollution](#) (Spokesman Review, Oct. 28, 2014)

Spokane River Fish Advisory
Updated 2009

Spokane River fish contain chemicals called PCBs and PBDEs (flame retardants). These chemicals can be harmful to your health and the health of your children if eaten in quantities higher than advised. This advisory is for everyone: men, women, and children. Women who are or might become pregnant, nursing mothers, and young children should pay special attention to this advisory.

From Lake Spokane (Leaning Lake)
Two meals per week:
Rainbow Trout, Yellow Perch
One meal per week:
Mountain Whitefish
One meal per month:
Brown Trout & Largemouth Sucker

From Nine Mile Dam to Little Falls Dam
Do Not Eat:
Largemouth Sucker
All other species:
One meal per month

From Little Falls Dam to Post Falls Dam
Do Not Eat Fish (Catch & Release Only)

You can reduce your exposure to PCBs if you prepare your fish this way:

- When cleaning fish, remove the skin, fat, and internal organs before cooking.
- Cook fish on a rack so the juices and fat will drip off.
- Do not eat the head, gills, bones, organs, fat, and skin.
- Consume younger, smaller fish.

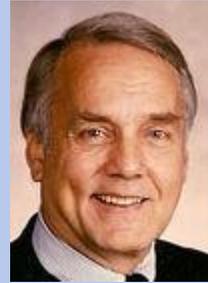
Washington State Mercury Advisory: Women who are or might become pregnant, nursing mothers, and young children should follow this advice due to high mercury levels in these fish statewide:
Northern Pike/minnow - Do Not Eat **Largemouth and Smallmouth Bass - Two meals per month**

DCW 114-164 June 2009 For people with disabilities, this document is available in request in other formats. To submit a request, please call 1-800-325-0127 (TDD/TTY call 711).

[Dept. of Health Advisory](#): Do not eat fish from the Spokane River because of PCB contamination

In Memory: Justice Robert F. Utter

Washington lost a true champion of civil rights and the environment when retired Supreme Court Justice Robert Utter passed away earlier this month. Justice Utter served on the high court for 23 years, and for several years before that as a court of appeals and superior court judge. He was well-known as a constitutional scholar, and resigned from the Court in 1995 because of his personal opposition to the death penalty.



Justice Utter also authored important environmental decisions, including the first modern water law case, [Stempel v. Department of Water Resources](#) (WA Supreme Court, 1973). In April 1968, the Water Resources Department (now the Department of Ecology Water Resources Program) issued a water right to Loon Lake Water Company, near Spokane. Thereafter, the legislature enacted the Water Resources Act of 1971 (the "WRA"), establishing that instream flows are beneficial uses of Washington's waters. Citizens appealed the Loon Lake permit because of unstudied water pollution concerns. Ecology argued that it was not required to consider pollution issues when making water right decisions.

Justice Utter wrote for the Court that the WRA obligates the Department of Ecology "to consider the environmental and ecological factors to the fullest in deciding major matters," including issuance of new water rights. The WRA is a "legislative declaration of the ecological ethic." This was a true first in the annals of Washington water resource management. Based on this ruling, Ecology was required to consider public health, preservation of natural resources and aesthetic values. For the Loon Lake application, Ecology was specifically required to consider the water quality impacts associated with the new water right.

Justice Robert Utter's words of 40 years ago resonate today. The WRA remains an essential tool that CELP uses *every day* to protect and restore Washington's rivers and aquifers. We are grateful to remember Justice Utter's wisdom and integrity, and the legacy he leaves for Washington's water resources.

A wonderful oral history/biography of Justice Utter's life can be found at the Washington Supreme Court [website](#).

Thanks for taking the time to read Washington Water Watch! Thanks to your help, CELP has accomplished much but, as you can see, more needs to be done. You can support our work by [making a donation online here](#), or mailing a check to the address below.

CELP's mission is to protect and restore Washington's rivers and aquifers through science-based management of and advocacy for our waters. CELP works through public education, grassroots assistance, agency advocacy, legislative reform, and public interest litigation.

If you care about a future with water, please become a [CELP member](#) today!

You can reach us at: 206-829-8299 or [email us](#).