

Suzanne Skinner

From: Center for Environmental Law & Policy (CELP) <contact@celp.org>
Sent: Thursday, January 24, 2013 10:04 AM
To: sskinner@celp.org
Subject: CELP's Washington Water Watch

Having trouble viewing this email? [Click here](#)



Washington Water Watch

IN THIS ISSUE

[News on Enloe Dam](#)

[ARTICLE HEADLINE](#)

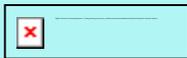
[Spokane Tribe to Intervene
in CELP Lawsuit](#)

[CELP People](#)

[News from Olympia](#)

[Cheap Water Rates in
Spokane](#)

[Support CELP:
Become a member](#)



Like CELP?



From the Director:

Dear Friends of CELP:

Happy New Year. I studied Zoology (and English) as an undergraduate before I became a lawyer so I get my "science fix" from Science News: a weekly news magazine for laypeople. Science News publishes its annual review of the 25 hot topics in science at the close of each year. This year, WATER, made the list of hot topics.

Science News chronicled what CELP members know all too well: our thirst for water is draining many aquifers faster than they can be replenished, with some disastrous effects. Agriculture is the biggest user. Ground water is being sucked up world-wide to water crops. ([SN: 9/8/12, p. 10](#)). Depleting our aquifers has immediate consequences, of course, but also "global" ones.

Pumping groundwater, whether for irrigation or drinking, contributes to global sea level rise ([SN Online: 5/21/12](#)). Water that we suck from aquifers eventually ends up in the oceans, and we are depleting those aquifers faster than they are recharged-even with impoundments. The danger to life and property from global sea rise is all too apparent.

And just as fracking can precipitate earthquakes, so may overpumping of aquifers. Geologists determined that that pumping aquifers shifted the stresses on faults in southeastern Spain-which may have accelerated a seismic shift that caused a magnitude 5.1 quake that killed nine people in in May 2011 ([SN: 12/1/12, p. 13](#)). In this new year, these Science News articles recommitted me to the work that we are doing together to save our drinking water and our rivers at CELP. Thank you for all you do.



Suzanne Skinner
Executive Director

THANK YOU FOR YOUR MEMBERSHIP AND SUPPORT!

TO EVERYONE WHO RESPONDED TO OUR ANNUAL APPEAL- THANK YOU FOR YOUR SUPPORT! WE ARE GETTING CLOSE TO MEETING OUR BOARD CHALLENGE OF \$13,000.

IF YOU HAVEN'T GIVEN YET OR IF YOU NEED TO RENEW YOUR MEMBERSHIP, THERE IS STILL TIME. WE ONLY NEED TO RAISE \$3,000 TO MAKE IT!

UPDATE ON ENLOE DAM LITIGATION

Last August, **CELP** along with its allies the **Sierra Club**, **American Whitewater**, the **Columbia River Bioregional Education Project**, the **North Cascades Conservation Council**, filed a challenge to Ecology's 401 certification under the Clean Water Act for Okanogan PUD's proposal to relicense Enloe Dam. The litigation has been contentious. Our litigation team has been wading through thousands of documents. We recently won a motion pushing the trial back to April 17-19, 2013, to give our experts time to review documents which the PUD gave us weeks after the original due date. We have hired the "go-to" experts nationally for assessing how to calculate the aesthetic and recreational value of river flows. Their understanding of the situation on the ground is central to our case.

This case is important to save Similkameen Falls (also known as Coyote Falls) and to protect the substantial investment of public funds in the Similkameen Trail which borders the river and highlights the Falls. Indeed, the environmental assessment for the Trail calls the Falls "**spectacular**".

We have a terrific litigation team: **Andrea Rodgers Harris**, **Kristen Larsen**, **Molly Barker**, and **Jake Cohen**. **Special thanks is due to our lead counsel, Andrea Rodgers Harris**. Because we did not hear from the Pollution Controls Hearings Board on our request to push back the trial date until after the holidays, Andrea worked non-stop over Christmas. We are indebted to her.

We are working hard to raise the money to support this lawsuit. You can support this effort by mailing a check to CELP with "Enloe" in the memo line.

CELP in "Read the Dirt"

Our intern, **Catherine Phelps**, recently published an article about the [Skagit Basin](#) in [Read the Dirt](#), an online publication based in Bellingham. **Read the Dirt's** contributors include **Amy Kober** from American Rivers, **Chris Wilke** from Puget Soundkeeper Alliance, **Bill McKibbin**, and **Robert McClure** from Investigate West.

Check out [Catherine's piece](#)- and other articles- on [Read the Dirt](#)

SPOKANE TRIBE WILL INTERVENE IN THE SPOKANE RIVER LAWSUIT BROUGHT BY CELP AND THE SIERRA CLUB

Last fall, **CELP** and the **Sierra Club** filed suit against the Environmental Protection Agency challenging EPA's failure to adopt a TMDL (total maximum daily load) limit for polychlorinated biphenyls (PCBs) in the Spokane River. **The Spokane River is on the Clean Water Act impaired waterbodies list** for PCBs: a toxin that accumulates in the tissues of fish and people who eat those fish. PCB levels in Spokane River fish are so high that Washington issued an advisory telling people to avoid eating the river's fish. As we reported in our last issue of *Washington Water Watch*, this is worrisome for everyone but particularly members of the **Spokane Tribe** whose culture and economy are intertwined with the river's fish.

Listing of the Spokane River as an impaired water body under the Clean Water Act obligates Ecology or U.S. EPA to prepare a clean-up plan, also known as a TMDL. The goal of a TMDL is to identify the maximum amount of pollutant that can be discharged into a waterbody without impairing uses, such as fishing and recreation. In Washington, the TMDL must also include an implementation plan that includes a timeframe for meeting water quality standards, approaches for limiting pollutant loading, monitoring plans and feedback loops.

Back in 2007, the **Department of Ecology** issued a draft PCB TMDL which would have required significant reductions (up to 99%) in PCB loading to the river from sewage and industrial treatment plants, in order to meet both Washington and Spokane Tribe water quality standards. However, in May 2011 Ecology reversed itself and formally announced that it would not prepare a final PCB TMDL and **instead created the Spokane River Regional Toxics Task Force (RTTF)**: a group tasked with bypassing clean-up plans in favor of actually cleaning up the river.

While cleaning up the river sounds great, the **RTTF is neither a legally authorized nor a practical substitute for a TMDL**. The RTTF is yet another stakeholder group, without enforcement authority, comprised of local governments, EPA, Ecology, various environmental representatives, the Spokane Tribe, and the industrial and governmental dischargers into the Spokane River (City of Spokane, Spokane County, Liberty Lake Water & Sewer, Inland Empire Paper Co., and Kaiser Aluminum Co.). To be part of the RTTF, participants had to agree not to challenge the new Spokane County wastewater discharge plant even though that plant is yet another new discharger into the river, years after the 2007 TMDL draft issued. (It is important to note that the new wastewater discharge plant while better at removing PCBs from the effluent, did not replace Spokane's older one. More total effluent is going into the river.)

CELP did not join the RTTF because of that precondition. The Spokane Tribe did join the RTTF and worked with the group for almost one year. Just this week, the Spokane Tribe issued a resolution concluding that whatever comes out of the RTTF process will be unenforceable. The Tribe further resolved to intervene in our lawsuit against EPA for failure to adopt a TMDL. **Intervention means that the Tribe will be a full-fledged party to the lawsuit** (along with CELP and the Sierra Club), not just a friend of the court. The Tribe will have to apply to the court for permission to participate. Needless to say, the Tribe's participation would be most welcome. This case is significant to clean-up the Spokane River and to keep Ecology and EPA from circumventing the hammer of a TMDL with unenforceable "collaborative" processes. In short, **we are thrilled**.

CELP PEOPLE

This winter CELP is lucky to have **Molly Barker**, a third year law student from Northeastern University, working full-time. She has been indispensable to the team working on the Enloe Dam litigation: Andrea Rodgers Harris, Kristen Larsen, Jake Cohen, Rachael Osborn and Suzanne Skinner. Molly has reviewed thousands of documents relating to the Enloe project and has been instrumental in pulling our case together.

Before working for CELP, Molly's legal internships included working for Senator Katherine Clark in the Massachusetts Legislature and for the House Committee on Global Warming and Climate Change. She also interned with the Hon. Robert B. Collings, U.S. District Court of Massachusetts, and Stoel Rives LLP in Anchorage, Alaska. She will be interning at Massachusetts Department of Environmental Protection this spring during her last academic quarter. She is passionate about environmental law and is moving to Washington to take the bar exam this summer and practice environmental law thereafter. Molly reports that she has sincerely enjoyed her experience at CELP, both the projects and the people.

NEWS FROM OLYMPIA

We have a **new governor who "gets" water**. As far back as 1994, then Congressman Jay Inslee got \$150 million in federal funds to improve irrigation systems in the Yakima Basin to restore water for endangered fish. **Governor Inslee** has appointed former Department of Ecology head, **Ted Sturtevant**, as his legislative and policy director. Mr. Sturtevant also "gets" water and will be the Governor's point person with the legislature.

CELP will be working hard in this legislative session. **Bruce Wishart** will be working for CELP again--we are very fortunate. Other than Bruce, no other environmental lobbyist will be directly tracking and fighting for water. Due to hard economic times, many environmental organizations have had to pull out of Olympia and out of water issues. We are working with other lobbyists to call them in as needed but, essentially, CELP is the front line on water. Luckily, several Washington tribes actively follow water issues in Olympia. Bruce and CELP are already working with all our friends and allies.

We will need to.

The early indications are troubling. This looks like another session where CELP will be on the defense. **The Washington Association of Counties** has floated a draft bill to address the permit exempt well problem. The bill is a problem for CELP. One provision would give counties the ability to create water banks and expressly allow counties to include "paper rights" (unused and therefore expired, nonexistent water rights) in the bank. The havoc and harm that provision alone would cause is boggling. The Counties, to their credit, have taken the comments of CELP and others, and are redrafting. We will see what the redraft looks like.

And not surprisingly, one of the first water bills to be introduced is SB 5071: yet another attempt to gut relinquishment by extending the relinquishment period for twenty years. Washington's water laws are grounded in "use it or lose it" prior appropriation doctrine. Needless to say, we will work, as always, to preserve our relinquishment statute which provides the "lose it" so necessary to ensuring wise use and conservation of our scarce water resources.

These bills will first be introduced and heard in either the **House Agriculture and Natural Resources Committee** or the **Senate Agriculture, Water and Natural Resources Committee**. Please review the lists of committee members below. These individuals are very important to future water policy in Washington. We will be asking your help to contact them and your voice is even more important if you happen to live in the district of one of them. If you live in any of the districts below, and are willing to be "on call", please email Suzanne.

Senate Agriculture Water and Natural Resources

Senator	District	Phone
Hatfield, Brian (D)	19th	360.786.7636
Honeyford, Jim (R)	15th	360.786.7684
Delvin, Jerome (R)	8th	360.786.7614
Eide, Tracey (D)	30th	360.786.7658
Hobbs, Steve (D)	44th	360.786.7686
Schoesler, Mark (R)	9th	360.786.7620
Shin, Paul (D)	21st	360.786.7640

House Agriculture and Natural Resources Committee Members

Representative	District	Phone
Blake, Brian (D)	19th	(360) 786-7870
Lytton, Kristine (D)	40th	(360) 786-7800
Chandler, Bruce (R)	15th	(360) 786-7960
MacEwen, Drew (R)	35th	(360) 786-7902
Buys, Vincent (R)	42nd	(360) 786-7854
Dunshee, Hans (D)	44th	(360) 786-7804
Haigh, Kathy (D)	35th	(360) 786-7966
Hurst, Christopher (D)	31st	(360) 786-7866
Kretz, Joel (R)	7th	(360) 786-7988
Orcutt, Ed (R)	20th	(360) 786-7990
Pettigrew, Eric (D)	37th	(360) 786-7838
Schmick, Joe (R)	9th	(360) 786-7844
Stanford, Derek (D)	1st	(360) 786-7928

Van De Wege, Kevin (D) 24th (360) 786-7916
Warnick, Judy (R) 13th (360) 786-7932

BUCKING THE TREND:

SPOKANE REINSTATES CHEAP WATER RATES TO DISCOURAGE CONSERVATION

There's a saying in California: "**Water will get you elected and water will get you fired.**" California came to Spokane in 2011, when a progressive mayor and environmentalist councilman got unelected, thanks to controversy over water rates, which was pumped up for all it was worth by the opposing candidates. The rate controversy ultimately generated a detracting Facebook page ("Repeal Spokane's Unreasonable Water Rates"), an anonymous billboard advertising misleading "statistics" about the state of the local aquifer, and lots of media coverage.

As promised during the election cycle, in May 2012, the new pro-development mayor and council lowered water rates. Just as economists predict, when water rates go down, water usage goes up. This about-face reverses six years of effort to promote sustainable water use in Spokane, and is contrary to the trends in virtually every other city in the dry regions of the western United States. The story starts with the resource. Spokane is semi-arid, receiving average annual precipitation of 17 inches. Summers are very hot and dry. Water supply for the region (approximately pop. 500,000) is the sole-source Spokane-Rathdrum Aquifer, which is fed by mountain snowpack and several lakes in Idaho, and which discharges to the Spokane and Little Spokane Rivers. Because of unique hydrogeology (dating from ice age floods), pumping from the aquifer directly and quickly depletes river flows.

There are many straws in the aquifer, but the biggest one belongs to the City of Spokane. In 2006, concern about a report showing Spokane to have some of the largest per capita consumption in Washington state, the Spokane City Council adopted a new structure for billing city water customers. The new rates were designed to promote household water conservation. The formal name, "inverted block rate structure," is actually premised on a simple idea: the more you use, the more you pay.

However, Spokane's 2006 rate system, while well-intentioned, did not establish large enough rate changes between the usage blocks for customers to register the benefits of conservation in their pocketbooks. Nor was the rate system a boost to meet the Spokane's Water Department 2006 conservation goals which proposed to reduce per capita consumption by 1% per year. With the new goals in mind, the Water Department reexamined the rate structure to improve conservation. Based upon a study of various rate scenarios, the City raised water rates in 2011. Base rates went up by \$1.60 (20%), usage rates increased from \$0.02 to 0.15 cents per 100 cubic feet (748 gallons), depending on volume. The City also instituted a water stewardship program with education, incentives for conservation sprinklers and toilets, audits, and other best practices.

2011 was a hot summer, and overall water use increased. Even so, in 2011 water bills actually decreased for 53% of the City's customers. Only higher usage households saw their bills increase. Meanwhile, Spokane's water rates remained among the lowest in the Northwest. For example, 21,700 gallons (average summer use in Spokane) cost Spokane customers \$37, compared to \$40 in Kennewick, \$47 in Yakima and Vancouver, \$58 in Boise, \$61 in Tacoma, and \$134 in Seattle.

ns. Mere facts and conservation benefits were lost, however, in the ensuing political hype. Heavy media coverage, panicked letters to the editor, and right wing radio diatribes convinced citizens that they would incur a massive increase in utility bills if they watered their law

The media frenzy over water rates became an issue in local electoral campaigns as summed



up in this billboard posted in several spots around Spokane.

Despite the media uproar, in September 2011, the council voted to further increase rates for high-end users. The timing, combined with media furor, made water rates an inevitable campaign issue during the mayoral and city council races. The challengers promised to roll back rates if elected. Those promises ultimately contributed to the ouster of two incumbents who cared deeply about Spokane's water resources.

It was no surprise that once the challengers were sworn, the City rolled back rates to pre-2011 levels. The City's water stewardship program was abandoned, along with incentives and educational programs. In November 2012, the Spokesman Review reported that summer 2012 water usage had increased by 7%. The current crop of city officials applauded the increase in usage, clearly failing to understand the connection between Spokane's aquifer pumping and the impact on local rivers. Instead, citizens are encouraged to use as much water as they want and maintain civic pride by keeping lawns green.

Spokane's brief foray into sustainable water resource policy is over. It is a continuing conundrum that a city in the interior west would view water resources with so little concern for environmental impacts or next generation needs. California-style water politics may play out differently when Spokane's future is high and dry.

Thanks for taking the time to read CELP's newsletter. Thanks to your help, CELP has accomplished much but, as you can see, more needs to be done. CELP needs your help once again to tackle the ever-increasing squeeze on our essential water resources.

Please join CELP or renew your membership for 2013. We need you!
You can join and make a donation to CELP [here](#) or send a check to our offices at:
911 Western Ave- #305, Seattle WA 98104

THANK YOU!

ABOUT CELP

CELP's mission is to protect and restore Washington's rivers and aquifers through science-based management of 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](#).

[Forward email](#)



This email was sent to sskinner@celp.org by contact@celp.org |
[Update Profile/Email Address](#) | Instant removal with [SafeUnsubscribe™](#) | [Privacy Policy](#).
Center for Environmental Law & Policy (CELP) | 911 Western Ave- #305 | Seattle | WA | 98104