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From: Center for Environmental Law & Policy (CELP) <contact@celp.org>
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Washington Water Watch

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From the Director:

Dear Friends of CELP:

This has been a busy period for CELP. Not only are we in the middle of the legislative session- which our lobbyist, **Bruce Wishart**, calls the **worst he's seen in his 18 years in Olympia**- but we are continuing our work on two important lawsuits regarding the Enloe Dam and pollution limits on the Spokane River.

One thing that all our work has in common is that it would not be possible without the help of our members and supporters. Thank you to all of you who recently **contributed to our Enloe Dam litigation** (you can still do by sending a check to CELP with a note marked "Enloe"). And thank you to everyone who joined in the **Winter Waters 2013 celebration** (more on that below) And thanks to you all who contacted your legislators in response to our recent **legislative alert**.

We have updates and more details about all these activities in our newsletter below. We couldn't do this work without your political support- and indeed your financial support.

Thank you for all you do.



Suzanne Skinner
Executive Director

Litigation

Spokane River:

We are gearing up with our outside counsel, **Richard Smith** of **Smith and Lowney**, for hearing in **Sierra Club and CELP v. Department of Ecology** in front of the Pollution Control Hearings Board on March 25- 28 in Olympia: This case challenges the NPDES permit that the Department of Ecology issued to Spokane County for its new wastewater treatment facility. This facility is now discharging effluent, and effluent containing toxins including PCBs, into the Spokane River even though neither EPA nor Ecology has instituted a TMDL for the heavily polluted Spokane River to control and reduce pollutant loading from all sources (and there are many). This case is a companion case to another case Sierra Club and CELP brought for EPA and Ecology's failure to adopt a TMDL, even though Ecology has a draft TMDL on file, in lieu of an **unprecedented, voluntary process**, called Straight to Implementation. The Spokane River and the people who fish in its waters **can't rely on a voluntary clean-up**.

Enloe Dam/Similkameen Falls:

We are also hard at work preparing for an April hearing, also before the Pollution Control Hearings Board, that challenges Department of Ecology's failure to require the Okanogan PUD to assess the harm from its planned hydroelectric project to the beauty and recreational opportunities of **Coyote Falls and the Similkameen River. CELP (and friends) v. Ecology and Okanogan PUD**. The Clean Water Act requires that all the benefits of a river at least be assessed before the agency tasked with protecting our waters allows a PUD to essentially dewater a river. **Andrea Rodgers Harris** and **Kristen Larsen** are our attorneys. This also is an important case: **Washington has more applications for small hydropower projects pending than all other states combined**.

Olympia

We are also two thirds of the way through the 2013 legislative session. **This has been a session where the goal is to hold onto to past victories**. Sadly progress in making saner water policy isn't on the table. The defection of Senators Rodney Tom and Tim Sheldon to the Republicans in the Senate changed the balance of power, and some of our allies lost or had to share chairing roles on key committees. **Our allies are still hard at work- they just have had to work harder to keep from losing ground**.

Bruce Wishart, CELP's indefatigable lobbyist, **calls this session the worst he has seen in his 18 years in Olympia**. Luckily, even if we are surprised at how difficult this session has become, we were not unprepared. Bruce and I met with key legislators in summer and fall. Indeed, there was great concern before the session that a bill could be dropped to stymie adoption of the long-awaited Dungeness Instream Flow rule. That didn't happen: thanks to **Rep. Steve Tharinger** and others. We also help a legislative workshop in September for legislators, tribal and environmental lobbyists and leaders to discuss potential bills and forge alliances. Coming out of that workshop, CELP formed working groups of environmental and tribal lobbyists who weekly share information and coordinate positions on bills so that we can turn out in force to "fix" or "kill" regressive policy proposals.

So far, we've been successful. We've beaten back a proposal in the House to create a "water free for all" for new developments of unlimited size based upon permit exempt wells, reversing key court victories CELP helped win.

Just yesterday we managed to get 20 "no" votes on SB 5219 which would require that any unused water supplies associated with states lands be set aside for economic development projects in the region. Under current law, any unused water can be kept instream under what's known as the "Trust Water Rights Program" where it benefits salmon. This bill will lead to more development and significant impacts on instream flows. We are hopeful that those 20 "no" votes will make it easier for the bill to "fade away" in the House in the next few weeks.

That is just a sampling: scroll down for a **legislative scorecard (in grey)** thus far.

CELP Legislative Report Card: March 10, 2013

Bill	Description	CELP's Position	Status
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HB 1350	Allowing unlimited use of permit exempt wells for development	Opposed	DEAD
HB 1375	Allowing public water systems to acquire (and consolidate) permit exempt wells	Serious concerns CELP significantly improved.	DEAD
HB 1438	Requiring Ecology to allow certain changes of use of existing water rights	Opposed	DEAD
HB 1548	Limiting Ecology's review of certain water right change applications to impairment	Opposed	DEAD
HB 1549	Limiting Ecology's review of certain water right change applications to impairment	Opposed	DEAD
HB 1599	Specific exemption to berry growers in Whatcom County for changes of use that Ecology failed to process timely	CELP significantly improved Concerns	DEAD
SB 5199	Specific exemption to berry growers in Whatcom County for changes of use that Ecology failed to process timely	CELP significantly improved Concerns	PASSED SENATE
SB 5200	Allowing public water systems to acquire (and consolidate) permit exempt wells	CELP significantly improved	PASSED SENATE
SB 5219	Requires DNR and WDFW to audit their water rights and make unused rights available for private use if not put in trust water rights program.	Opposed	PASSED SENATE
SB 5462	Limiting Ecology's review of certain water right change applications to impairment	Opposed	DEAD
SB 5463	Limiting Ecology's review of certain water right change applications to impairment	Opposed	DEAD
SB 5667	Establishing autonomous water management board in the Methow	Opposed	DEAD
SB 5836	Allowing permit exempt wells irrespective of water availability (as long as no groundwater closure)	Opposed	PASSED SENATE

A Water Wonk to Lead the Department of Ecology

Governor Inslee named **Maia Bellon**, formerly the head of Ecology's Water Resources program as the Director of the Department of Ecology. Director Bellon is well known to CELP. While she may not appreciate being called a "wonk", she has been working on water issues for and with Ecology for decades....

A 1991 Evergreen State College graduate, Director Bellon spent 15 years as an assistant attorney general advising and representing Ecology in many areas, including air quality, toxic cleanup and water. Ms. Bellon joined Ecology in 2010 and reached out to CELP to many issues-especially legislative ones. Not only is Director Bellon smart and dedicated, she has remarkable warmth and energy. Those characteristics will be needed as she works in this legislative session, when the scramble is on to fund schools after the McCleary decision, to protect Ecology's budget, and channel more state resources into protection and enforcement.

In this funding environment, we are lucky that we have a Director at the Department of Ecology

who "gets water."

Winter Waters 2013: A very special evening

On the evening of February 23 in Spokane, over one hundred people joined the **Sierra Club's Upper Columbia River Group** and **CELP** at the beautiful Patsy Clark Mansion in Spokane in honoring the **Colville Confederated Tribes** with their **Watershed Hero Award** for the Tribes' successful effort to hold a British Columbia smelter, Teck Metals Ltd, accountable for dumping pollutants into the Columbia River for a century. Pollutants included 250,000 tons of zinc and lead, as well as 132,000 tons of other hazardous substances such as more than 200 tons of mercury, cadmium and arsenic. The tribes, having pressed their case for two decades, also made legal history when the court ruled that a foreign company could be sued in US Courts for violating U.S. law.

CELP and the Sierra Club also awarded their first **environmental justice award** to **Patty Martin**, the Mayor of Quincy, Washington, who has worked tirelessly to improve air quality around the mega-data centers in Quincy. The diesel backup generators from centers run by Google and Microsoft harm air quality in this region where many residents are without a voice. [Wired](#) wrote a story about Mayor Martin and her work.

Winter Waters could not have occurred without the incredible efforts of the event's many sponsors, donors, volunteers, and friends who together held a beautiful dinner and created a very special evening. There are too many to thank here but please learn more and browse our [slide show](#).

CELP NEEDS YOUR SUPPORT

We will be sending out a letter asking you to support our legislative (and other work). CELP only has one full time staffperson (**Suzanne**), a part-time staff attorney (**Rachael**), a part-time development and outreach person (**Amy**) and a part-time lobbyist (**Bruce**). We get a tremendous amount done with very little. But even with inventive leveraging, and loads of volunteers, we need money to operate. Please give generously in response to this letter-and if you have friends who might be interested in CELP, forward this newsletter to them and encourage them to sign up with CELP.

Thank you for your support- and for helping to spread the word! We couldn't do it without you.

From the docket....

Supreme Court tackles water rights in the Yakima Basin for the fifth time: *Department of Ecology v. Acquavella*.

The long history of litigation over water in the Yakima Basin hit a new milestone last week: the fifth decision from the Washington State Supreme Court in an adjudication proceeding filed by the Department of Ecology of the surface water rights in the **Yakima River Basin**. The Court's decision last week, *Department of Ecology v. Acquavella, et al.* (Dkt. No. 86211-7, Mar. 7, 2013) (*Acquavella V*), was a mixed bag: affirming, reversing and remanding the case to the trial court. The case concerns Ahtanum Creek, which from its source in the Cascades mountains forms the northern boundary of the Yakama Indian Reservation. The adjudication (or determination of the water rights) of the members of the Ahtanum Irrigation District, who reside on the north side of the creek, began in 1993. Users divert directly from the creek. In 2009, the trial court issued a conditional final order determining the parties' water rights. The Supreme Court took review of the case directly-skipping the Court of Appeals.

Among the parties to the appeal are the United States on behalf of the Yakama Nation, the Nation, Ecology, the Irrigation District, a ditch company, and others. Just two of the many issues raised in the appeal are touched on here.

Interestingly (and perhaps inevitably) *Aquavella V* focused on what two earlier federal court decisions from decades ago mean: *United States v. Ahtanum Irrigation Dist.*, 236 F.2d 321 (9th Cir. 1956) (*Ahtanum I*) and *United States v. Ahtanum Irrigation Dist.*, 330 F.2d 897 (9th Cir. 1964) (*Ahtanum II*, also known as the "Pope Decree"). The Supreme Court determined that the first *Ahtanum* lawsuit had actually adjudicated the water rights of the non-tribal users north of

Ahtanum Creek (even though it had begun as an effort to set aside an unjust (and illegal) agreement in 1908 that allocated 75% of the creek to white farmers and only 25% to the Yakama). The Supreme Court also decided that the prior decisions did not determine the reservation rights of the Yakama Nation to water. Relying on the *Winters* doctrine, a US Supreme Court decision that held an Indian reservation carries an implied right to water sufficient to meet the present and future needs of the reservation, the Supreme Court sent *Aquavella V* back to the trial court to determine the irrigation rights of the Nation according to the "practically irrigable acreage" standard. The "practically irrigable acreage" standard assesses the present and future water needs of a reservation for agriculture according to what would be the amount of water sufficient to irrigate all the practicably irrigable acreage on a reservation (even if not all that acreage is being irrigated now). The Court also ruled that the Yakama Nation has a right to store water year round to fulfill its practically irrigable acreage right. On remand, the trial court will determine the scope of that storage right.

So with the case going back for remand, we have not heard the last of *Aquavella*. And it cannot be forgotten that all the decisions to date do not concern ground water....only surface water. A bit disheartening.

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](#).

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