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



Washington Water Watch

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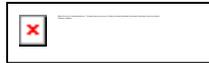
From the Director:

Dear CELP Friends,
CELP continues to work hard on many fronts to meet our mission: ample, clean water for Washington. That means working on improving water quality, as well as sustainable use of water in our communities so that people, and fish and wildlife not just survive, but thrive. As CELP's calendar for the past few weeks and next week show, our work on this relatively narrow mission takes many forms and in many forums.

- During the week of **March 25th we were in front of the Pollution Control Hearings Board** on our lawsuit to curtail PCBs in the Spokane River
- On **April 16th** we return to the Pollution Controls Hearing Board on our lawsuit to save the **Similkameen River and Coyote Falls.**
- On **April 3rd CELP joined the Columbia River Tribes** and many conservation organizations at a workshop on the Columbia River Treaty.
- We continue to **work to improve water legislation in Olympia** as the session comes to a hectic end.

We are able to work on behalf of Washington's waters in all these forums because of the support of our members and the help of volunteer professionals. So thanks to all of you who responded to our recent appeal to support our legislative work. **Every penny helps keep CELP in Olympia** fighting for clean flowing water. And thank you to all of you who have contributed to paying for our expert testimony in the Enloe Dam case and the PCB cases: this is expensive but essential work that we could not do without you... If you haven't yet contributed, and want to, we are still raising money! Send your check to CELP, made out to CELP, with a note that it is for Enloe.

Thanks for your support- you make CELP happen.



Suzanne Skinner
Executive Director

Spokane River PCBs Hearing Recap:

On March 28th we ended our four day hearing before the Pollution Control Hearings Board in **Sierra Club and CELP v. Department of Ecology et al**, a challenge the Department of Ecology's NPDES permit for Spokane County's new wastewater treatment facility. Although that facility is a significant improvement over the City's, it nevertheless adds to the load of PCBs in the Spokane River. **That increased loading violates the Clean Water Act.** The NPDES permit Ecology issued to the County neither required the County to figure out the sources of PCBs in its waste stream, nor to reduce them.

The Spokane River has the highest levels of PCBs in Washington State. PCBs are man-made chemicals that do not break down. Tiny amounts in water magnify thousands of times in the food chain and place humans and wildlife at risk. In children, PCBs can cause neurobehavioral defects and developmental deficits; and, in adults, malignancies such as non-Hodgkins lymphoma.

Eating Spokane River fish is a public health hazard according to both the Washington Department of Health (DOH) and Center for Disease Control's Agency for Toxic Substances and Disease Registry. Since 2008, DOH has been issuing fish consumption advisories as to how much (if any) Spokane river fish people could eat.

The problem is that **DOH's advisories are set absurdly low: 6.5 grams of fish per day.** That quarter in your pocket weighs 5.67 grams. Oregon, by contrast, uses a standard of 175 grams per day. Needless to say, real people eat a lot more Spokane River fish than the advisories recommend- especially members of native and immigrant communities. Accordingly, the Spokane Tribe set a much higher than DOH's to standard to protect its members. The Spokane Tribe's reservation is downstream of the County's new wastewater treatment facility.

The State has long acknowledged that the Spokane River is "impaired" for PCBs under the Clean Water Act, and began writing a cleanup plan called a total maximum daily load (TMDL). Scientific assessments showed that PCB-containing discharges would need to decrease substantially to meet the Tribe's human health standard.

In 2011 the Washington Department of Ecology halted its PCB TMDL. The agency then re-issued permits for existing dischargers (without PCB effluent limits). Ecology also issued a new NPDES permit to Spokane County for its wastewater treatment plant-which is the subject of the Sierra Club and CELP lawsuit.

Attorney **Richard Smith of Smith and Lowney**, who is an expert in Clean Water Act law, represented CELP and Sierra Club before the Pollution Control Hearings Board. In some ways the case is difficult: the Spokane County wastewater facility uses some of the best available technology to reduce pollutants. But that improved facility STILL adds small amounts of PCBs to the river--as the respondents' witnesses acknowledged. The point is that Ecology should not have issued the County's permit without enforceable permit provisions to figure out where the PCBs are coming from and reduce those inputs into the county's waste-stream, and without an enforceable overall plan to clean up the polluted Spokane River.

Moreover, further loading of PCBs into the river is likely. Prior to building the new facility, Spokane County discharged county waste through the City-County sewage facility. That facility is still on line, and will remain on-line. Depending upon future growth, at some future point, the County will use that at-present unused capacity in the City-County plant. Unless work is done to stem the inputs of PCBs into that plant, as well as the new County plant, the people of Spokane will have

even more PCBs going into their river over time.

The Pollution Control Hearings Board will issue a decision within the next 3 months. In July, a federal district court will hear the Sierra Club's and CELP's companion lawsuit that focuses on the failure of the U.S. Environmental Protection Agency to complete a PCB clean-up plan (TMDL) for the river.

We thank members of our team: attorneys Richard Smith and Rachael Paschal Osborn, PCB toxicologist Peter deFur, and Brian Crossley water program director for the Spokane Tribe of Indians.

More Resources:

For more on why Washington's fish consumption standards lag so far behind Oregon's, please read **Robert McClure's excellent article on [InvestigateWest](#).**

[Background](#) on the Spokane River PCB litigation

[Frequently Asked Questions](#)

Legislative Update: News from Olympia

Much of CELP's work in the Legislature this session has focused **on providing sustainable water for communities while protecting critical environmental values-- like instream flows and clean water.** A major disappointment has been the absence of clear, practical guidance to assist counties in ensuring that when they issue building permits they do not harm instream flows or private users. **CELP is committed to working with Ecology, counties, Tribes, and other interests to find a workable solution.** Unfortunately, the proposals put forward this year avoided the hard questions, and despite our efforts, resisted amendment. So while CELP's work thus far this session kept matters from getting worse, we still have no solution. We are committed to finding one.

As mentioned in our legislative alert of a few days ago, the last two remaining water bills died a quiet death last week:

SB 5200 would have required state agencies that have water rights, like the Department of Natural Resources, to **create a water rights inventory.** If those rights were not being "consumed" for stockwatering, irrigation or other consumptive purposes, the bill would have forced the agencies to make those water rights available for private use. In short, water that was instream because the agency wasn't using it would go to private hands.

SB 5219 would have allowed existing private water districts to obtain permit exempt wells and consolidate them into their system. **The Yakama Nation** and CELP worked with the sponsor, the **Pierce County Water Cooperative** to significantly improve this bill, but it died anyway.

Indeed the only environmental bills likely to pass this session are the derelict vessel bill SB 1245 and the Governor's Climate Bill, SB 5802.

SB 1245 would prevent abandoned ships from polluting our waterways by providing potential new owners with information about seaworthiness of vessels before sale and provide authority to the Department of Ecology to board and drain fuel and oil from derelict vessels before they sink. While still in the Senate it looks good for passage- **so please take a moment to [tell your Senator](#) that you support this bill.**

The **Governor's Climate Bill, SB 5802** establishes workgroups to recommend state programs that would achieve the state's targets for reducing greenhouse gases. Unfortunately the bill is far weaker than as proposed by the Governor: essential intent language has been stripped out and makes the Governor a non-voting member of the oversight commission.

Now it is on to the budget. Last week, the Senate issued its operating budget. Unfortunately, the proposed Senate budget is **very bad news for Ecology's Water Resources Section,** and quite likely other natural resource agencies. We fear that the budget's general fund and efficiency

cuts translate to as much as a 1/4 cut to the Water Resources budget on top of all the cuts that have already been absorbed over the past 5 years. Just for context, the Water Resources Section had 165 Full Time Equivalents (that is employees in non-government speak) in 2009. Now the Section only has about 125. **Loss of 25 percent of current staff would be crippling and a major step backward for water management---** and no doubt hit programs like instream flow protection the hardest.

CELP is marshaling allies now to return money to Ecology's budget. We will keep you posted.

Ecology's Decision to Effectively Dewater the Similkameen River is Put to the Test:

On Tuesday, April 16, the Pollution Control Hearings Board (PCHB) will begin a four day hearing on whether Washington State Department of Ecology (Ecology) should allow a utility to effectively dry up a river to fire up an old hydroelectric project that will generate only a few megawatts of power. **Center for Environmental Law and Policy et al v. Department of Ecology and Okanogan County PUD** challenges Department of Ecology's 401 certification for the proposed Enloe Dam hydroelectric project which would allow the Okanogan PUD to essentially dewater the river and Coyote Falls for eight months every year, without first assessing the harm from to their beauty and recreational opportunities. The suit is brought by **Columbia Bioregional Education Project, North Cascades Conservation Council, American Whitewater, Sierra Club** and **CELP**. We are represented by dedicated *pro bono* attorneys: **Andrea Rodgers Harris and Kristen J. Larson**. This lawsuit asks the PCHB to require Ecology to fully assess the aesthetic and recreational values of Similkameen River and its falls as required under the Clean Water Act, before deciding whether the Okanogan PUD can dewater Similkameen Falls.

A little background: Enloe Dam blocks the Similkameen River approximately four miles west of Oroville, Washington. The dam, which was originally built in the early 1900's, has not generated hydropower since 1958. This is Okanogan PUD's fourth attempt since the mid-1980's to add power generation to the dam, and previous licensing efforts have failed due to poor economics and fish passage issues. The PUD's proposal also ignores the Falls' cultural and historical importance to the Upper and Lower Similkameen Indian Bands.

If the proposal to reenergize Enloe Dam goes forward, it will reduce Similkameen Falls to a trickle, and undermine the aesthetic and recreational values of the Falls. The beauty of the Falls against the stark landscape has made them the focal point of the newly developed Similkameen River Trail, which will become part of the 1,200-mile Pacific Northwest National Scenic Trail. The new river trail is projected to attract thousands of visitors to the area each year - bringing up to **\$516,000 to the local economy**. By contrast, an economic study completed in 2012 by [Rocky Mountain Econometrics](#) shows that the PUD's project is economically unsound, and that the Okanogan region would lose \$20 million over the term of the license while simultaneously dewatering the Falls.

If you would like to attend the Hearing-observers are welcome:

- Location: Environmental & Land Use Hearings Office, Tumwater, WA
- Dates: April 16 - 19 (courtroom hours: 9:00 a.m. - 4:30 p.m.)
- Court Address: 1111 Israel Rd. SW, Suite 301, Tumwater, WA
- [Driving Directions](#)
- [Visitor & Parking Information](#)

Modernizing the Columbia River Treaty to Restore the Columbia River's embattled ecosystem:

Last week, **CELP spearheaded a workshop with the Columbia River Tribes and other environmental organizations with a passion for the Columbia River** in Portland to learn about the Columbia River Treaty and the process for its reconsideration. The Treaty has governed management of the river for five decades for hydropower generation and flood control. The past two decades required some changes to improve spill for fish, but the ecosystem of the river remains in bad shape, and the climate change will exacerbate the river's current problems.

Coming out of the workshop, we hope that coordinated advocacy between the Tribes and environmental organizations could **actually change future management of the river to restore**

its ecosystem. It won't be easy, but we are dedicated- **really, do we have any other choice?**

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.

Benton County's Commissioners Act to Protect their Community and its Water Supply:

One of Washington's most acute water shortages lies in the Yakima River basin. Benton County lies in the southern half of this hot spot, and right above the Wanapum aquifer.

The Wanapum aquifer is running out of water. The United State Geological Survey issued a 2010 comprehensive study of the Yakima Basin showing a precipitous drop in the aquifer. A well owned by the Department of Natural Resources, for example, dropped roughly 70 feet since 1978, and 40 feet since 1994, equating to roughly two feet per year. **The Department of Ecology has determined that recharge to the Wanapum aquifer is virtually non-existent, with the aquifer in a state of decline rather than a state of balance.**

Nevertheless, in spite of this overall shortage, **a stockwatering operation, Driscoll Dairy, proposed to move into the lower Yakima with 4,000 head of cattle and operate off a permit exempt well.** Instead of responsibly assessing what the impact would be of its proposal, Driscoll claimed that the Supreme Court decision in *Five Corners Family Farmers, et al. v. State of Washington, et al*, gave it an automatic groundwater right for stockwatering purposes in Benton County. **CELP, the Yakama Nation, and neighbors of the would-be Driscoll Dairy project, strongly objected.** As CELP pointed out in repeated letters to the County, that is not Washington law. Use of a stockwatering well is prohibited if it would impair senior rights.

The Benton County Planning Department wisely decided to require Driscoll to prepare an environmental impact statement (EIS) to assess the impacts of the proposed cattle operation on water, air quality, and other aspects of the environment. Driscoll appealed to the Benton County Commissioners. The Benton County Commissioners acted to protect the community's water and require the EIS (and **cited CELP's letter** during the hearing no less). **The Commissioners are to be applauded for their thoughtfulness and commitment to a sustainable future.**

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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