

Suzanne Skinner

From: Center for Environmental Law & Policy (CELP) <contact@celp.org>
Sent: Thursday, August 22, 2013 1:36 PM
To: sskinner@celp.org
Subject: CELP's Washington Water Watch



Washington Water Watch

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Dear Friends,

It has been a great few weeks for the future of Washington's rivers....

We have some great victories to share with you.

This July, **CELP and its allies won TWO lawsuits** before Washington's Pollution Control Hearings Board: victories for clean, flowing water.

First, we won our lawsuit to keep water flowing over Similkameen Falls, and to make preserving recreation and the scenic beauty of our rivers a meaningful part of our water quality standards.

Second, we won a victory for ridding the Spokane River of PCBs, which we hope will step up pollution control statewide.

We worked very hard with our partners and counsel for these wins. We are indebted to them--and to you for supporting these lawsuits. Lawsuits are a last resort--but sometimes a necessary one. Please read further to learn the details of these wins.

Looking forward: We have some great seminars coming up in September and November which we hope you will attend. We are planning a few parties--so stay tuned for updates and invitations this Fall. And once again, we are preparing for the upcoming legislative session....

Thanks for your support- you make CELP happen.



Suzanne Skinner

Like CELP?



Executive Director

VICTORY FOR KEEPING WATER FLOWING IN THE SIMILKAMEEN RIVER

CELP members will recall that last August CELP and its allies, American Whitewater, the Columbia River Bioregional Education Project, the North Cascades Conservation Council and the Sierra Club, filed an appeal challenging Washington Department of Ecology's certification under section 401 of the Clean Water Act that the Okanogan PUD's proposal to re-energize Enloe Dam on the Similkameen River satisfies state water quality standards.

Why did we do so?

Well, Enloe Dam is a 100-year old concrete plug sitting in the (near Oroville) that has not generated power since the 1958. The Similkameen River now flows over the dam creating stunning, man-made falls which cascade downstream into craggy, beautiful Similkameen Falls. Indeed, Similkameen Falls is now an official viewpoint on the recently constructed Similkameen River Trail, which is part of the Pacific Northwest National Scenic Trail, stretching from Montana to the Washington coast. The Falls increasingly draw fishers and locals from nearby Orville, and the newly constructed trails draws tourists and hikers from both Washington and Canada.

Meanwhile, Okanogan PUD began its fourth attempt to reenergize Enloe dam several years ago. To receive a hydropower license to restart Enloe Dam from the federal government, the PUD must procure Ecology's certification that the project would protect the Falls' scenic and recreational values. But because reenergizing Enloe Dam is such an expensive proposition, the PUD convinced Washington's Department of Ecology that it would have to virtually dewater Similkameen Falls if the project were to continue. Remarkably, despite the obvious harm that reducing Similkameen Falls to a mere trickle would do to the river and the area, Ecology certified that the PUD's proposal met state law in August of 2012.

Because of the outrageousness of Ecology's certification, and the terrible precedent it could set state wide, CELP and its allies appealed: an appeal that resulted in a six day trial before Washington's Pollution Control Hearings Board in Tumwater, Washington. **Attorneys Andrea Rodgers Harris and Kristen Larson ably represented us.**

On July 23, 2013, we won a great victory! The Pollution Control Hearings Board ordered Ecology to do an aesthetic flow study if Okanogan PUD ultimately builds its economically troubled Enloe Dam project. The Board found that Ecology had simply failed to study and protect the proposed project's impact on the scenic and recreational values of Similkameen Falls in a clear violation of state law, and instead chose flows based upon the Enloe Project's economics. The Board called Ecology's certification "deficient" to protect the Similkameen River "without further conditions" on aesthetics. Order at 33.

The Board pointedly criticized Ecology for choosing flows according to their impact on project economics, not according to their impact on the scenic and recreational environment. Order at 27. To correct Ecology and preserve Similkameen Falls, the Board added an additional condition to the 401 Certification requiring Ecology to develop an aesthetic flow monitoring program. Order at 34-35. The importance of the Board's decision cannot be overstated. Thanks to you, we have kept Similkameen Falls from becoming a sorry trickle. Moreover, since there are more applications for new hydropower projects pending in Washington State than in all other states combined, **we have created valuable precedent: making it clear that the state cannot ignore state law protecting scenic and recreational uses simply because a river or waterfalls is not in a major city** with thousands of daily visitors. For we all know that the beauty of our rivers and waterfalls is integral to how we enjoy and use them.

To all of you who have supported CELP and our efforts to fund this litigation: This victory is yours! Thank you.

VICTORY NUMBER 2: Keeping PCBs Out of the Spokane River!

No doubt, you know that the Spokane River is Washington's most contaminated river for PCBs. PCB contamination in the river is so bad that the state Department of Health's recommends that we avoid eating fish from Lake Roosevelt and the Spokane River.

The Department of Ecology nevertheless approved a new pollution discharge permit (NPDES permit) to Spokane County for its new wastewater treatment facility which would add to PCB loading of the Spokane River and failed to set any time frame for controlling sources. Meanwhile, the Department has not prepared a mandatory PCB clean-up plan for the river (known as a TMDL plan).

In that context, CELP and the Sierra Club teamed up to challenge the NPDES permit for the new wastewater treatment facility-it was a tough decision because the facility is "state of the art". But without an overall clean-up plan in place, that new facility still would add yet more PCBs to the Spokane River, under an NPDES permit that lacked any hard fast deadlines or standards for stopping this on-going mess. That challenge, ***Sierra Club and CELP v. Department of Ecology et al***, culminated in a four day trial in March 2013.

On July 19th, **the Pollution Control Hearings Board agreed with CELP and the Sierra Club and sent the NPDES permit back and ordered Ecology to write a new permit with teeth in it.** The Board rejected the permit because under it the County did not have to identify pollutant sources, set reduction standards, or meet deadlines for achieving those reductions. Final Order 25:1-4. In short, the permit as written failed to comply with state water quality standards, as well as the downstream water quality standards of the Spokane Tribe.

Additionally, the Board rejected Spokane County's claim that its participation in the Regional Toxics Task Force augmented the toothless NPDES permit. The NPDES permit requires the County's participation in the Task Force which is charged with developing a comprehensive plan for reducing PCB loading into the contaminated river. But while the Board found that while the creation of the Task Force was a

positive step to cleaning up the river, the mere existence of the Task Force, despite its good intentions, was not a substitute for restrictions on quantities, rates, and concentrations of PCBs being discharged from point sources into the Spokane River. The Board underscored that it was "uncertain that the Task Force will achieve any of its stated goals or achieve a measurable reduction in the discharge of PCBs." Final Order 26: 17-21. The Board remanded the permit to Ecology to clarify that complying with the permits requirements takes "precedence over the work of the Task Force." Final Order 24: 1-3.

This is a great win for the Spokane River--and for ridding our rivers of toxins statewide. We thank **Richard Smith of Smith and Lowney** in Seattle for his excellent work on behalf of CELP and the Sierra Club. We also appreciate the work of attorney **Ted Knight**, who represented the intervener, the Spokane Tribe. And we thank you: **Your support of CELP is helping clean up our rivers so that our children may know the joy of eating locally-caught fish without risking their health.**

Interested in learning more about water issues in Washington? This year the American Water Resources Association--Washington Chapter--will be holding its annual conference in Seattle. This year's conference boasts an impressive line-up of speakers and topics, including **Rachael Paschal Osborn of CELP speaking on New Directions/New Opportunities:** Over-appropriation, population growth and climate change pressures on Washington's water resources.

Here's what you need to attend:

2013 AWRA Washington State Conference
Future Directions in Water Resource Management
Thursday, September 26, 2013
Mountaineers Seattle Program Center, Seattle WA
Keynote Speaker: Maia Bellon, Director of the Department of Ecology

Early bird registration ends September 8

[Up Time Technology has detected a possible fraud attempt from "r20.rs6.net" claiming to be http://www.waawra.org/Events/Conference2013](http://www.waawra.org/Events/Conference2013)

FRIENDS: Please Join Futurewise and CELP for Two Continuing Legal Education Seminars

Hot Environmental Issues for the Puget Sound Region
September 20, 2013

Green meets Blue: Growth Management and

Water

November 14, 2013

Sponsored by
THE CENTER FOR ENVIRONMENTAL LAW & POLICY
and
FUTUREWISE

8:25 AM TO 6:00 PM
Seattle Central Library
Level 4, Room 1 (Washington Mutual Foundation Meeting Room)
1000 Fourth Ave., Seattle, WA

7.0 CLE credits (including 1.0 ethics) (WSBA pending)

Tickets and Pricing are separate for each CLE:

Tickets available at: [Up Time Technology has detected a possible fraud attempt from "r20.rs6.net" claiming to be http://www.brownpapertickets.com/event/442190](http://www.brownpapertickets.com/event/442190) (click on "dates" to see both events)

Hot Environmental Issues for the Puget Sound: September 20, 2013

Early Bird Professional (through Sept 13 th)	\$150
Professional (after Sept 13)	\$200
Agency/Nonprofit	\$100
Student	\$50

Green meets Blue: Growth Management and Water: November 14, 2013

Early Bird Professional (through Nov 7 th)	\$150
Professional (after Nov 7 th)	\$200
Agency/Nonprofit	\$100
Student	\$50

Registration for either CLE includes 1 year complimentary membership to CELP and Futurewise.

Hot Environmental Issues for the Puget Sound Region

Puget Sound abounds with natural assets to be managed in trust for the public. Pressures from population growth and development have come head-to-head with listings of species as threatened and endangered. Many changes have occurred over the past few years with the potential for changing Puget Sound's future, including the maturation of the Puget Sound Partnership - the state agency tasked with restoring the Sound. We also have a federal court decision requiring the state to remove culverts, proposals to change water quality standards and to alter fish consumption rates and, not to mention, the prospect of new coal terminals on the

Sound. Please join us for *Hot Environmental Issues for the Puget Sound Region*- a conference designed to tackle these developments and more with an engaging and expert faculty.

Not just for lawyers! Water managers, nonprofit advocates, agency staff, and water users will learn and discuss insights into the challenge: how to address these challenging issues to benefit all.

Hot Environmental Issues for the Puget Sound Region: September 20, 2013
PROGRAM AND AGENDA

8:00. **Registration & Coffee**

8:25. **Welcome & Introduction to the Program**

Suzanne Skinner, Executive Director, Center for Environmental Law & Policy (CELP)

8:30- 9:30. **Puget Sound Partnership. Progress towards targets and next steps (1 credit)**

Marc Daley, Acting Executive Director, Puget Sound Partnership

9:30- 9:45 Break

9:45 - 11:30. **(1.75) Water Quality Standards and Fish Consumption Rates (1.75 credits)**

Fran Wilshusen, NW Indian Fisheries Commission

Jeanette Brimmer, Earth Justice

Kris Holm, Water Resources Northwest

11:30- 12:30. **Lobbying ethics/Lawyers contacting agencies and tribes (1 credit)**

Paul Parker, Sr. Policy Analyst

Transportation Commission

12:30 - 1:30. **Lunch** (on your own)

1:30-2:45. **Coal Transport and Export in the Pacific NW (1.25 credits)**

Andrea Rogers Harris, Esq. Western Environmental Law Center

Lauri Hennessey, Alliance for Jobs

2:45-3:00. **Break**

3:00 - 4:00. **PCB case - Spokane County - implications for the state (1 credit)**

Richard Smith - Smith and Lowney

Additional speakers asked

4:00 - 4:30. **Wine and cheese reception.**

4:30 - 5:30. **Keynote presentation. "Challenges and Opportunities for the Future of Puget Sound." (1 credit)**

Washington State Commissioner of Public Lands Peter Goldmark

5:30-6:00. **Closing reception**

(7.0 CLE Credits Total)

**Green meets Blue: Growth Management and
Water
November 14, 2013**

Water is our most essential resource. Certainly economic growth cannot occur without water. All uses of

land, agricultural, residential, commercial, and industrial, require access to reliable water supplies. While the relationship between land use and water is fundamental, Washington's land use planning has been slow to integrate sustainable use of water resources at the local county building permit counter.

One of the pressure points is the increasing reliance on permit exempt wells to provide water to residences and subdivisions outside of urban growth boundaries. Permit exempt wells have been the subject of key court cases and several controversial bills in Olympia over the past few years. Join CELP and Futurewise for an update on integrating water use and quality with land use planning, featuring experts who have been in the cross-hairs.

Green meets Blue: Growth Management and Water: November 14, 2013
PROGRAM AND AGENDA

7 CLE credits: Topics will include:

- **A water law and Growth Management Act boot camp**
- **Update on permit exempt wells: Ecology guidance and county planning**
- **Update on litigation on Overriding Considerations of the Public Interest**
- **Update on Culverts: The Litigation and the Biology**
- **MTCA Update**

And featuring a keynote presentation by Department of Ecology Director Maia Bellon (4:30-5:30 pm, with a wine and cheese reception at 4:00 pm)

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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