

Suzanne Skinner

From: Center for Environmental Law & Policy (CELP) <contact@celp.org>
Sent: Wednesday, October 09, 2013 4:01 PM
To: sskinner@celp.org
Subject: CELP's Washington Water Watch



Washington Water Watch

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Dear Friends,

We are on a roll--we have more good news to report for the future of Washington's rivers....

Last week, the Washington State Supreme Court ruled that an instream flow, established by the state to protect environmental flows, is a water right equal to private water rights, and cannot be skimmed off to provide water for subsequent private development. Scroll down for a full report on *Swinomish Indian Tribal Community v. Ecology*. **CELP, with Earthjustice, filed a friend of the court brief which the Court appears to have incorporated into its decision.** We were glad to help!

CELP also met with representatives of the US State Department in Portland last month on the Columbia River Treaty, as well as the Bonneville Power Administration and the Army Corps of Engineers. Those meetings, and your comments on the draft recommendation, have borne fruit. Scroll down below for the full story. **We are making progress towards getting an updated Treaty that makes restoring the Columbia's beleaguered ecosystem a central goal.**

We also sponsored a great seminar on the state of Puget Sound with Futurewise in September. We were pleased that interim director of the **Puget Sound Partnership, Marc Daily**, joined us. It was great to see many CELP members there, and at the evening reception with **Commissioner of Public Lands, Peter Goldmark**.

Looking forward: CELP and Futurewise are co-hosting another **continuing legal education seminar on November 14th** at the downtown Seattle Public Library: **Green meets Blue: Growth Management and Water**. We hope you will join us (see below for registration information).

And even if you cannot attend the seminar, please consider joining



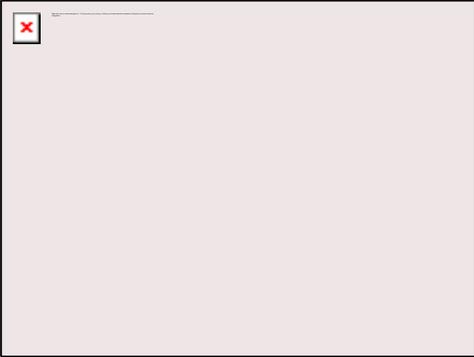
us for an evening reception on November 14th--to thank you, our members, for your support. Director of Ecology Maia Bellon will be our featured speaker. The reception is free--we are just asking for registration so we know how much food and drink to bring. See you there....

Thanks for your support- you make CELP happen.



Suzanne Skinner
Executive Director

Skagit River Wins Big in Court



Skagit River

Last week, the Washington State Supreme Court deftly summarized why we all are working to protecting Washington's rivers:

"How does one put a dollar value on being in the presence of crystal clear water coursing down a steep slope through a rock-lined, moss-edged stream bed among evergreen trees, for example? While commercial uses of the state's instream flows might be made - tourism and paid-for recreation, for example - such uses do not entail the total benefits derived from streams and lakes."

In *Swinomish Indian Tribal Community v. Department of Ecology*, Washington's State Supreme Court shut down a practice Ecology began a decade ago of abrogating instream flows, set by regulation and often based upon the best-available science, to allow private development using a provision in the Water Resources Act called "overriding considerations of the public interest" (abbreviated OCPI). [Up Time Technology has detected a possible fraud attempt from "r20.rs6.net" claiming to be http://www.courts.wa.gov/opinions/pdf/876720.pdf.](http://www.courts.wa.gov/opinions/pdf/876720.pdf)

Here's a little background...

In 1969, Washington recognized that its rivers and streams were simply being "used up" by claims for their waters based upon prior appropriation doctrine. That doctrine, which originated in the Wild West's mining camps, encourages maximum private use of water- with no thought how much water must be kept instream to sustain fish and wildlife, water quality, and recreational and aesthetic uses. So in 1969, the Legislature adopted the Minimum Flows Act which authorizes the Department of Ecology to set minimum

instream flows for rivers and streams in Washington. What is an instream flow rule? Simply, a water right for the river: the amount of water that should be kept instream. (Unfortunately, only about a third of the state currently has an instream flow rule-but that is problem to be addressed another day.)

Turning to the Skagit...

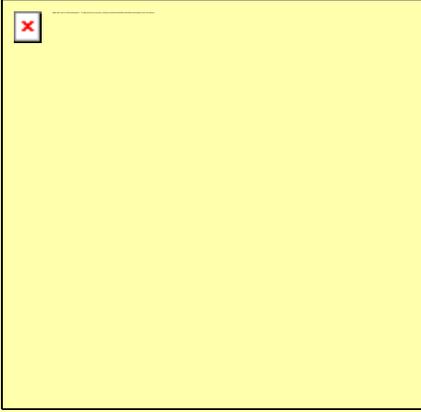
The Skagit River is the third biggest river in the West and is home to all five Puget Sound salmon species. But water has been in short supply in the river's many tributaries for decades. In 2001, after a stakeholder process that brought together Skagit County, Skagit River Tribes, the City of Anacortes and state agencies, the Department of Ecology adopted an instream flow rule for the Skagit River and its tributaries based upon best available science. The rule, unlike prior instream flow rules adopted by Ecology, included wells. Wells tap groundwater that often feeds rivers and streams-which science shows is precisely what happens in the Skagit River basin.

Skagit County sued when the rule was adopted. To settle the lawsuit in 2006, Ecology adopted a revised instream flow rule that created "reservations" for private development: essentially skimming off 2% of the water set aside in the original rule to sustain the river's ecology and water quality. Ecology used OCPI and a complicated cost-benefit analysis to justify its amended rule. The Swinomish Indian Tribal Community then sued challenging many aspects of Ecology's rationale, but at the core, contending that private development is neither a "public" interest nor an "overriding" one. The Tribal Community lost at the Superior Court level. Last week, however, the Supreme Court reversed and held in favor of the Swinomish Indian Tribal Community and the Skagit River.

The *Swinomish* decision is a great win for rivers and for future generations. But the decision also creates uncertainty for those who relied upon the reserves to get a building permit in the Skagit basin. This is unfortunate and would never have happened if Ecology had recognized that an instream flow right is legally equivalent to any other water right. Solving this problem will likely become a hot topic in the next legislative session. The implications of the Court's decision will likely impact other rivers for which Ecology adopted instream flow rules that also included development 'reservations,' such as the Stillaguamish, Quilcene-Snow, Salmon-Washougal, Lewis, Wenatchee, and Entiat Rivers.

We thank **Swinomish Indian Tribal Community** for its courageous stand for the Skagit and for Washington's rivers. (Indeed, CELP honored the Tribal Community with its Ralph Johnson award in July 2013 for its work on this case). The full impact of this decision, and the Tribal Community's work for rivers, has yet to be felt.

CELP also thanks attorneys **Janette Brimmer** and **Amanda Goodwin** of **Earthjustice** in Seattle for writing a brilliant friend of the court brief on behalf of CELP in support of the Swinomish's position.



COLUMBIA RIVER TREATY: What's next?

Many thanks to all of you who wrote the Bonneville Power Administration and the Army Corps back in August in response to their draft working recommendation to urge them to make restoring the Columbia River's ecosystem co-equal in a new treaty with power generation and flood control. Believe it or not, they listened!

BPA and the Army Corps issued their final draft recommendation to the State Department last month which, in many ways, is a stronger call for restoring the Columbia River than the working draft. Congratulations!

That is not to say that the recommendation is all what the region needs to prepare for climate change. **We will be shortly sending out an alert asking you once again write BPA and the Corps on behalf of the Columbia-comments are due October 25th.** We need to remind the agencies that climate change will be a game changer: we cannot continue with business as usual: river flows in the Columbia will change as to timing and volume. Those flow changes will impact our fisheries, hydropower forecasting, flood management, navigation, and water supply. We must be mindful of how flow changes will impact Tribal fishing rights-and honor those rights. Our environment and our economies will be impacted by climate change, and we need a modernized, adaptive Columbia River Treaty that will protect and sustain both our environment and our economies.

The comment deadline is not the end of our work on the Treaty. After BPA and the Army Corps submit their final recommendation to the State Department this December, the real work begins: Plain old, roll your sleeves up advocacy. **We are launching a campaign to reform the Treaty this November to support this work for the next two or three years it will take to ensure that the State Department goes to the negotiating table with Canada with a bottom line goal: making restoring the Columbia River a core purpose of an updated Treaty.** We will need your support-in advocacy and financially. This is a big task. CELP is not doing this alone. We are working with at least 11 other conservation organizations, in alliance with the 15 Columbia River Tribes. Our coalition will be pounding the halls of Congress, state capitols here in the Northwest, and conference centers in British Columbia patiently but persistently repeating the same message. It is a big task but doable-indeed, in less than a year, we have already made real progress.

SAVE THE DATE!

PLEASE JOIN US FOR A COMPLIMENTARY WINE AND CHEESE RECEPTION WITH WASHINGTON STATE DIRECTOR OF ECOLOGY, MAIA BELLON.

**November 14, 2013
4:00pm - 6:00pm
Seattle Central Library
1000 4th Ave.
4th floor, room1**

Ms. Bellon will speak to us about the Department of Ecology's vision for the next two years.

This event is in appreciation of all CELP supporters. A separate email invitation will be sent with information on how to RSVP. We hope to see you all there!

FRIENDS: Please Join Futurewise and CELP for our next Continuing Legal Education Seminar

Green meets Blue: Growth Management and Water

November 14, 2013

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

CLE credits pending

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> (click on "dates" to see both events)

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	Free

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

CELP Members: The Washington Foundation for the Environment and the South

Sound Estuary Association invite you to a panel discussion with local experts on
"Ocean Acidification: Shellfish, Science, Solutions and the Sound"

Wednesday, October 16, 6:30 - 8:30 PM

LOTT Clean Water Alliance WET Science Center
500 Adams ST NE, Olympia 98501

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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