



CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for
Environmental Law & Policy

2019 Annual Report

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Ted Howard, Environmental Legal Fellow (March 2019-March 2020)

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OUR MISSION *The Center for Environmental Law & Policy is a statewide organization whose mission is to protect, preserve, and restore Washington's waters through education, policy reform, agency advocacy, and public interest litigation.*

OUR VISION *Washington State will have adequate and sustainable water supplies to support healthy ecosystems, thriving fish and wildlife, and robust communities.*

LETTER FROM THE EXECUTIVE DIRECTOR

For over two decades, the Center for Environmental Law & Policy (CELP) has been Washington State's top watchdog and defender of water rights and resources. We faced many challenges in 2019. The Trump Administration has continued to roll back environmental protections and gut funding for environmental programs and agencies, despite the fact impacts of climate change are being felt across the state, nation, and world. Here in Washington, our snowpack melted early and by the end of the summer an emergency drought was declared in 27 of the State's 62 watersheds. Climate change and increasing development are exacerbating the fact that our water resources are already over-allocated.

Yet CELP pushed on, working with the tribes, government agencies, partner organizations and community members to secure better, more sustainable water management practices for Washington. Communities across Washington have begun to rally to protect our endangered salmon and resident orca whales. Our work to protect Washington's waters is increasingly urgent to protect the wildlife and communities that depend on them.

2019 was a successful year for CELP thanks to our dedicated board, staff, partners and supporters, like you. Our victories during 2019 ranged from a win for the Spokane River when the court of appeals ruled in our favor finding the Washington Department of Ecology failed to protect summertime flows, to filing an amicus brief to help shut down Crown West's scheme to abuse municipal water law. CELP also coordinated our first Clean & Abundant Water Lobby Day assembling a coalition of organizations, activists, scientist and fishermen to advocate for smart water resource management.

2020 has presented us with new challenges and opportunities to fight for better water management. You'll find us collaborating with elected officials, Native American tribes and community members every single day. Our work takes us all over Washington State to defend senior water holder rights and to ensure healthy habitats for wildlife. CELP's work is critical to our state's growth and future, and we are ready for the challenges ahead with your continued support.

In just the past few years, CELP has accomplished so much thanks to our network of dedicated volunteers and supporters, like you. Obstacles remain and will continue to arise as the strain on Washington's water resources grows. CELP will anticipate and adapt to these challenges, and we hope you will join us on our mission! You can advocate for sustainable water use by attending public meetings or contacting your elected officials and can encourage friends and colleagues to help CELP raise funds to expand our reach.

Thank you, again, for your continued support in our mission to protect, preserve and restore Washington's waters!

Sincerely,



Trish Rolfe
Executive Director



Our Reach



CELP's work spans the state, impacting all of our 62 watersheds.

Litigation to Protect the Public's Interest in Water

CELP is the principal organization in Washington litigating to protect the public's interest in our rivers and aquifers.

Agency Advocacy and Legislative Reform

We work in Olympia with legislators, agency staff and regulators to advocate for science-based water management.

Public Education and Media

CELP educates the public through seminars, stories in the media, newsletters and outreach events. We also issue law review articles and white papers on critical water issues.



Recent News: Outside Interest in Washington's Waters

Washington's waters, which belong to the public, have become attractive to targets for out-of-state investors.

In the Upper Cowlitz River community of Randle, strong opposition from locals, the Lewis County Water Alliance, and the Cowlitz Indian Tribe stopped a California water bottling company, Crystal Geyser Roxane LLC, from moving forward with a permit to withdraw groundwater along the Cowlitz River. Because the Cowlitz lacks the protections of an instream flow rule, it was targeted by these outside interests. In the 2020 legislative session, a Commercial Water Bottling Ban that would have protected Washington's rivers from bottlers gained local support and national attention. Unfortunately, the bill did not pass out of committee in the House.

Abuse of Washington's water banking system by speculators is also an increasing concern. Water banking is inadequately regulated, allowing for Wall Street bankers and international investors to use water banks to buy water rights and then sell the water at a significant markup. Our system of water rights was intended to prevent this kind of profiteering in water and updating the laws is critical. This issue has also gained national attention. Moving into 2020, multiple bills were put forward to regulate water banks but none passed. CELP will be working with Washington stakeholders to protect the water that supports our way of life.



Our Impact

Climate Change and Water Scarcity

As well as Washington's growing population, climate change will amplify the strain on our water resources. We are already seeing climate change effects on the water cycle, which impact all types of water users. By the end of summer 2019, an emergency drought was declared for 27 of the state's 62 watersheds. Droughts are becoming more frequent as the climate warms. We depend heavily on mountain snowpack to act as a reservoir as it gradually melts through the summer. But more winter precipitation is falling as rain rather than snow, leading to flooding and a declining snowpack. With these declining snowpack levels, water shortages and droughts are intensifying and impact all uses of rivers. Lack of adequate river flows threatens recovery of our endangered salmon species. Many businesses depend on clean, flowing rivers. Farmers' crops struggle when river flows are too low. Water connects us all and we need sustainable water management policies. **To mitigate these effects and adapt to the changing climate, CELP works tirelessly in the courts, legislature and our communities to secure better management decisions, such as minimum flow rules.**

Legislative & Agency Advocacy

CELP's work in the legislature is three pronged:

- 1) **Developing relationships** with legislators, tribal lobbyists, and environmental lobbyists prior to the session
- 2) **Supporting good water bills** or to fixing regressive legislation by calling on these relationships during the session; and
- 3) **Working for real reform** of water policies.

CELP managed to defend Washington's waters from detrimental legislation as well as pass multiple bills to advance sustainable water management. We created and coordinated our first Clean & Abundant Water lobby day, assembling a coalition of organizations, activists, scientists, and fishermen from across Washington representing 14 different legislative districts, to advocate for smart water resource management.

Outcomes

- 🔹 **Culvert replacement:** CELP urged legislators to make culvert replacement a priority to protect salmon and orcas. Governor Inslee prioritized culvert funding in the budget and put an additional \$175 million forward to get started on restoring critical salmon habitat.
- 🔹 **Orca Task Force:** CELP asked legislators to make two budget items in the Task Force recommendations a priority. The first is to support the Department of Ecology in enforcing existing instream flows, and the second is to prospect watersheds in Washington to determine where would be most beneficial to adjudicate water rights. Gov. Inslee prioritized money for both.
- 🔹 **Appliance efficiency standards bill:** We thanked house members for voting to update water appliance efficiency standards in new developments and urged senate members to vote yes on the bill. This bill was passed by legislature and signed into law by Gov. Inslee.

Throughout 2019, CELP also participated in Ecology Water Resource Advisory Committee meetings and provided comments on Ecology's agency actions like new rulemaking and permits. CELP represented the environmental community on the Watershed Restoration and Enhancement Committees in three Puget Sound watersheds, helping to ensure that the watershed plan updates being developed strongly protect streamflows and fish.

Public Education & Outreach

- ◆ In May 2019, CELP helped organize and support the **sixth** conference in the “**One River, Ethics Matter**” series at Selkirk College at Castlegar, British Columbia. The conference featured expert panels, discussions, and field excursions. Topics included the voice of youth in decisions, addressing climate change, righting historic wrongs, and the ties that bind us together—our common history, community, culture, and economy.
- ◆ CELP hosted **two Continuing Legal Education workshops** with approximately 60 attendees in 2019. The first CLE, hosted before Celebrate Waters, featured a presentation from Amanda Cronin with AMP Insights on “Incentives for voluntary groundwater mitigation in Arizona—What’s in it for water users?” In December, CELP hosted its annual full-day workshop with the focus “Protecting the Public’s Interest in Washington’s waters” featuring panels and lectures from ten speakers, and an invaluable ethics hour.
- ◆ In June 2019, CELP hosted its **annual Celebrate Waters** fundraising event to commemorate another successful year of CELP’s work advocating for Washington’s rivers and streams. With **over 80 attendees** and everyone’s generous support, **we raised over \$10,000**. We awarded **Larry Wasserman the Ralph W. Johnson Water Hero Award** for his activism for the state’s waters and salmon and his contribution to important legal protection of these resources. Leading up to the event, CELP started its **Water Stories** campaign, **publishing 5 stories** featuring voices from across the state to highlight the vital importance of healthy amounts of clean, flowing waters in our communities.
- ◆ CELP’s **Water Policy Coordinator**, Nick Manning spent the summer tabling at community events and farmers markets, and spent the fall giving presentations to several different organizations and leading entity meetings (Coastal Salmon Partnership, Dungeness River Management team, WSU, etc.) to build a community around preserving streamflow and water resources.
- ◆ CELP published **4 press releases and 4 issues of Washington Water Watch**, a newsletter featuring articles on our state’s watersheds, water law news, and legislative and advocacy updates.
- ◆ CELP also started a weekly social media campaign, **Water Wednesday**, to increase education and awareness of water issues.



CELP’s 2019 Ralph W. Johnson Water Hero recipient Larry Wasserman at Celebrate Water

Litigation to Restore Rivers

Led by Staff Attorney Dan Von Seggern, CELP had an eventful 2019 keeping up with ongoing litigation. CELP won important victories in two instream flow cases (one of which is now before the Washington Supreme Court), and is participating as amicus curiae in several other matters.

◆ ***CELP, American Whitewater, and Sierra Club vs. Washington Department of Ecology***

The Spokane River’s Instream Flow Rule (WAC Chapter 173-557) was adopted in 2015. Instream flow rules are intended to protect a wide variety of instream values and uses, including fish & wildlife, recreation, navigation, and aesthetic values. In adopting the Spokane River Rule, Ecology considered only the needs of fish and adopted a summer flow of 850 cubic feet per second. This is a near-drought level for the river and would be devastating to whitewater rafting, kayaking and other recreational uses of the Spokane.

In 2016, along with American Whitewater and the Sierra Club, we filed a challenge to the Rule's summer instream flow. We argued the state was required to consider all uses of the river, not just habitat needs of fish, in adopting instream flow rules. The challenge was initially denied in the Thurston County Superior Court. In 2017, we appealed the Superior Court's decision to the Court of Appeals, Division II. In 2019, the court ruled in favor of CELP and the Spokane River advocates, finding that Ecology failed to protect summertime flows needed by the river and other instream flow values. Ecology requested review of the Court of Appeal's decision by the Washington State Supreme Court, which accepted the case. The case was argued before the Court on May 14th, 2020. We will continue to fight for an instream flow rule that protects the Spokane River and its users.



Spokane River by John Osborn

💧 *Basset et al. vs. Washington Department of Ecology*



Dungeness River by Steve Farquhar

In 2014, CELP intervened in a lawsuit against the Department of Ecology to overturn the Dungeness River instream flow which Ecology adopted in 2013. We supported Ecology's instream flow rule, which was established to protect existing water resources and lay the groundwork for future mitigation efforts. Thurston County Superior Court Judge Gary Tabor denied the challenge in October 2016, and the plaintiffs (a group of developers and landowners) appealed the ruling. In October 2018, oral arguments were heard at the Court of Appeals. The plaintiffs made arguments that would have

made establishing new instream flows and regulating new permit-exempt water uses much more difficult with predictably harmful effects on our state's rivers. In April 2019, the Court of Appeals affirmed that Ecology did not exceed its statutory authority in adopting the Dungeness Rule or show that the department acted in an arbitrary or capricious manner in doing so. As a result, instream flows in the Dungeness remain protected.

💧 *Crown West Realty, LLC vs. Washington Department of Ecology and Pollution Control Hearings Board*

Crown West is a development company that owns the Spokane Industrial Park, a former Navy supply depot that held rights to groundwater in continuity with the Spokane River. Crown attempted to use these water rights in a scheme to sell mitigation water in areas along the Columbia River, far downstream from Spokane. The water rights in question had not been used for decades. Crown attempted to protect them from relinquishment by misuse of the municipal water laws. Ecology denied Crown's application. After the PCHB agreed with Ecology, Crown appealed to the courts. CELP filed an amicus brief at the Court of Appeals, explaining the context around municipal water rights and the consequences of allowing such improper use. On February 26, 2019, the Court affirmed the PCHB, holding that Crown West's scheme was improper because the water rights in question did not qualify as municipal rights.

Litigation to Restore Rivers Cont'd

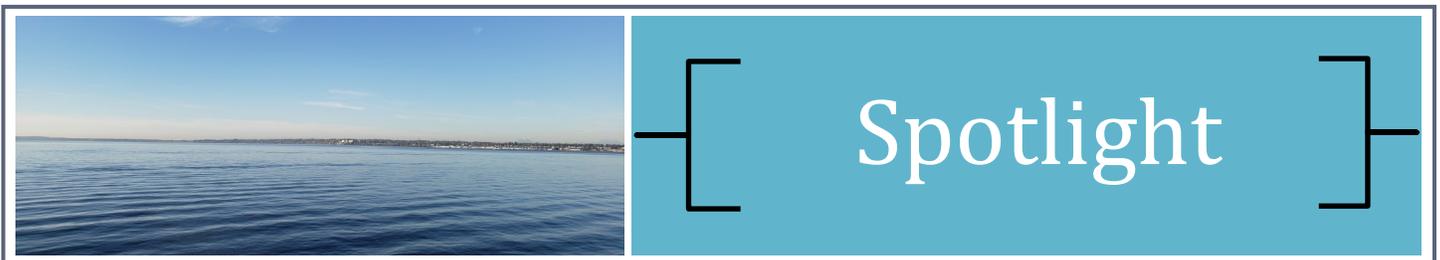
🔹 Enloe Dam

Enloe Dam, on the Similkameen River in Northern Washington, blocks over 100 miles of potential salmon and steelhead habitat. The dam has not generated power since the 1950s, but the Okanogan County PUD had planned to resume electrical generation. CELP has been fighting for over a decade to kill this project and have the dam removed. After several court cases and years of litigation the PUD ultimately decided not to pursue the project. Because construction had not started by the July 2019 deadline, the Federal Energy Regulatory Commission terminated the PUD's license. CELP will be working with stakeholder groups going forward to ensure that the dam is properly removed and the Similkameen once again provides free-flowing habitat.

🔹 Climate change litigation

Groups of young people who have been and will be harmed by the effects of climate change have filed suits against both the state and Federal governments in many courts, asking that the courts order action to stop harmful emissions of greenhouse gases. CELP is involved in two of these. In *Aji P. et al. v. Washington*, the youth plaintiffs are Washington residents who are asking that the State be ordered to act to reduce greenhouse emissions. CELP filed an amicus brief on behalf of itself and a coalition of 10 other environmental groups, explaining to the Court the importance of a stable and healthful climate to the American concepts of life, liberty, and the pursuit of happiness. The case is currently before Division 1 of the Washington Court of Appeals, awaiting a hearing date.

Staff attorney Dan Von Seggern has also taken over as counsel for an amicus curiae group of history professors in *Juliana et al. v. United States*, a suit whose plaintiffs are asking for action at the Federal level to stop greenhouse emissions. *Juliana* is currently before the 9th Circuit Court of Appeals.



CELP Legal Fellow Ted Howard

A recently-minted attorney, Ted received a J.D. from Washington University in St. Louis and an M.Phil. from the University of Oslo in Norway.

Ted was with CELP on a one-year fellowship. While he was with us he wrote a paper on the water supply effects of agricultural efficiency, participated in the WRIA 49 watershed planning meetings, studied habitat

mitigation scoring, did extensive public records research, including review of Ecology's water right curtailments, helped draft comment letters, and assisted on some of CELP's ongoing litigation. We are thankful for all of his work.

THANK YOU TO OUR 2019 SUPPORTERS

Volunteers

Kaeli Fertal, Sasha Harmon, Madeline Lee, Braden Sigua

Pro Bono Counsel/Volunteer Professionals

Brian Buske, Steve Fahrquar, Kai Hiatt, Rosemary Moore, Rachael Osborn, Sara Parker, Benjamin Simpson

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Big 5, Emerald Water Anglers, Eymann Allison Jones P.S., Fishpond, Fremont Brewing, Grand Central Bakery, Lummi Island Wild, Marcrina Bakery, Northwest Outdoor Center, Seattle Mariners, Victoria Clipper

Foundations

The Burning Foundation, Liberty Hill Foundation Satterberg Fund, NW Fund for the Environment, Patagonia Foundation, Satterberg Foundation, Seattle Foundation

Tribes

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Businesses

Adidas Outdoors, Kampmeier & Knutsen PLLC, Kanji & Katzen, Law Firm of M. Patrick Williams, Wright Yachts

Organizations

Anglican Provincial Synod BC & Yukon, Carnegie Group, Columbia Institute for Water Policy Deschutes Estuary Restoration Team , Save A Valuable Environment, Sierra Club: Upper Columbia River Group, South Sound Group Sierra Club

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Our work is possible because of your generosity — Thank you!

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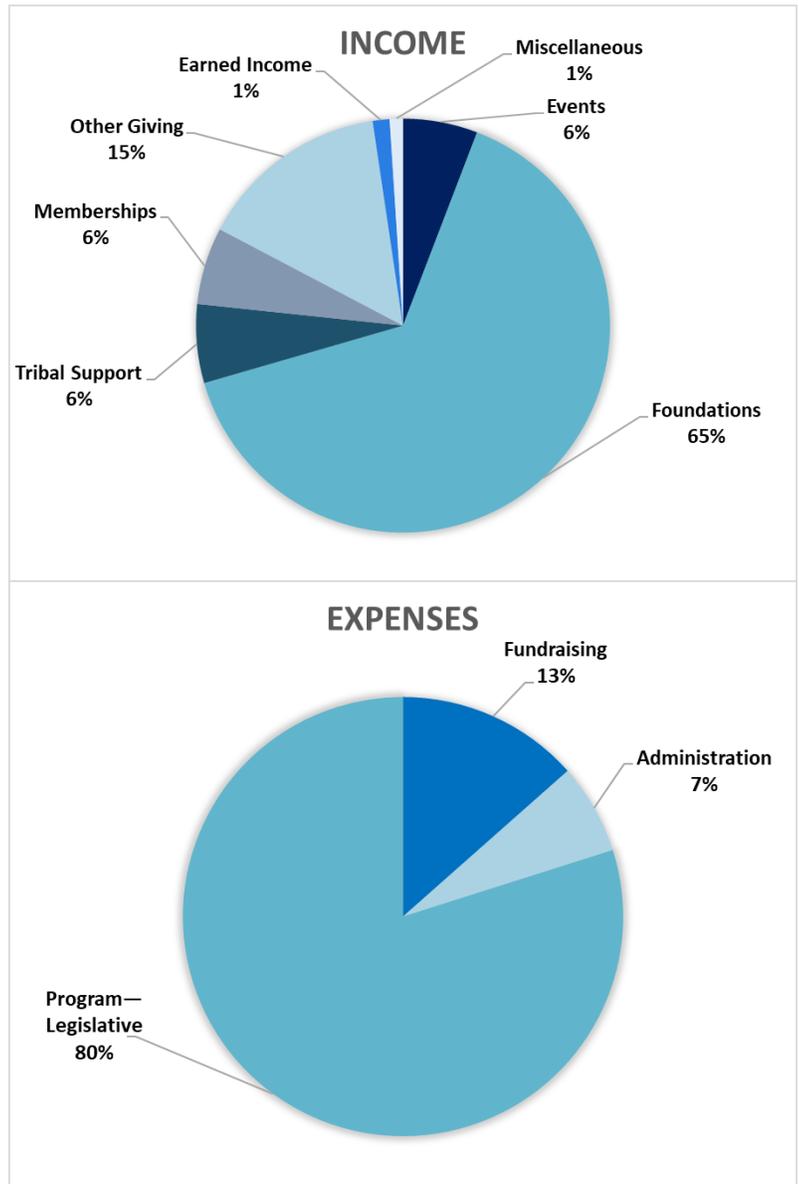
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By the Numbers



<u>INCOME</u>	<u>Amount</u>
Events	\$12,789.85
Foundations	\$142,000
Tribal Support	13,500
Memberships	\$13,240.74
Other Giving	\$32,809.91
Earned Income	\$2,885.91
Miscellaneous	\$2,268.17
<i>TOTAL</i>	<i>\$219,494.58</i>
<u>EXPENSES</u>	<u>Amount</u>
Fundraising	\$33,166.22
Administration	\$16,387.41
Program—Legislative	\$196,991.18
<i>TOTAL</i>	<i>\$246,544.81</i>



Photos:

Cover upper left clockwise: Dungeness River by Steve Farguhar, Smilkameen River by Julie Titone, Columbia River by Kayla Magers, Snohomish River by Julie Titone

P.4 Spokane River by Kayla Magers

P.5 Body of Water Under Blue and White Skies by Matt Hardy

P. 8 Bellingham Bay by Kayla Magers

P.12 Columbia River Barge by Julie Titone