



NORTHWEST DEFENSE

The Newsletter of the Northwest Environmental Defense Center

Summer 2011

PGE BOARDMAN LAWSUIT RESOLVED

The End of Coal-Fired Energy Production in Oregon

PGE has finally committed to stop burning coal at the Boardman plant in Eastern Oregon, and NEDC played an important role in securing the victory.

In 2005, the Oregonian newspaper ran several stories by reporter Michael Milstein focusing on pollution from the PGE Boardman plant and the environmental harm caused by that pollution. Studies were beginning to emerge showing that haze and acid

The resolution mandates the cessation of coal burning at the Boardman plant by the end of 2020, decreases sulfur dioxide pollution during the interim period by 3,000 tons beyond what is called for under current rules, and also creates a new \$2.5 million conservation fund.

rain pollutant levels in the Columbia Gorge were some of the worst in the entire nation. Federal agency scientists were documenting significant degradation of lichens and other signature species in the Gorge. As data emerged, fingers were pointing squarely at Oregon's only coal-fired power plant.

Numerous NEDC board members, staff and student volunteers had raised concerns over the years that the Boardman plant was being given a free pass by the Oregon Department of Environmental Quality (DEQ). DEQ had never required the installation of modern pollution controls at the plant. "It didn't seem right that the largest source of pollution in the entire state wouldn't be required to install industry-standard emissions control equipment", said Mark Riskedahl, NEDC's Executive Director. "This felt particularly so once data began

SAVE THE DATE!

NEDC and PEAC Party... Come celebrate the closure of Oregon's only coal-fired power plant, and the promise of a transition towards a clean energy future.

WHEN: Friday, September 16th from 6:30 – 9:30 PM

WHERE: Oregon Golf Club
25700 SW Pete's Mountain Rd., West Linn

to emerge showing the full extent of the harm those emissions were causing."

In 2006, NEDC took these concerns to attorneys at the Pacific Environmental Advocacy Center (PEAC). At the same time we reached out to other conservation groups and tribes and worked to develop an informal network of organizations, the Columbia Clean Air Alliance, intent on improving air quality in the Columbia Gorge.

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For frequent updates
on NEDC's work...



INTO THE LAST FRONTIER

NEDC Collaborates with Alaskan Non-Profit to Protect World's Greatest Salmon Watershed

BY BETH OATES

Last semester, 13 NEDC student members, under the guidance of Trustees for Alaska Staff Attorney and former NEDC Student Director Katie Strong, analyzed over 7,000 documents in an effort to assist the Trustees in their lawsuit seeking declaratory and injunctive relief for state permits issued for the Pebble Project in the Bristol Bay region of southwest Alaska. This lawsuit questions the constitutionality of the exploratory and temporary water use permits issued by the State of Alaska Department of Natural Resources (DNR) for the Project.

The Pebble Project (a.k.a. "Pebble Mine") is an open pit gold and hard-rock mine proposed to be located at the headwaters of the Bristol Bay watershed. The mine is projected to be over two miles wide, several thousand feet deep, and is expected to create up to 2.5 billion tons of waste rock. If constructed, it will be the largest open pit gold mine in North America.

The most grave environmental concern seems to be the potential effect of water pollution from the mine tailings on the local salmon runs, especially hard metals like mercury and copper which salmon are particularly sensitive to. The Bristol Bay watershed is home to some of the world's largest runs of salmon including the world's largest sockeye salmon fishery. All five species of Pacific salmon spawn in the Bristol Bay tributaries and rely on the pristine nature of these freshwater creeks and rivers.

The Environmental Protection Agency is currently planning a study to determine the broader issues of large-scale development in the Bristol Bay region, and will likely use this information to either approve or deny any future development.

Trustees for Alaska, along with a handful of other non-profit organizations are making a huge impact in Alaska, but often only projects with the most severe environmental implications receive attention. Alaska boasts 16 National Wildlife Refuges encompassing over 70 million acres of protected land (almost half of the national total), 34,000 miles of tidal shoreline, over three million lakes, and an endless



supply of proposed environmental travesties. With so much to protect and without a law school to provide students for pro bono work I am hopeful NEDC student members will continue to pursue collaborative opportunities to protect the "Last Frontier."

NEDC WINS VICTORY FOR NORTHWEST STREAMS

BY AARON STARK



For nearly forty years, the Clean Water Act has protected our Nation's water supply by limiting discharges of pollutants to U.S. waters. While the Clean Water Act has had great success in improving water quality, there are still significant sources of pollution that remain unregulated, freely flowing into sensitive water bodies and threatening the health of vital resources. Until recently, polluted runoff from logging roads remained one of these major, unregulated sources of pollution, but thanks to hard work at NEDC, the Washington Forest Law Center, and the CRAG Law Center, that is on the verge of changing. The U.S. Court of Appeals for the Ninth Circuit in *Northwest Environmental Defense Center v. Brown*¹ agreed with NEDC, holding that channeled and directed discharges of polluted runoff from logging roads require permits under the Clean Water Act. After the court's decision, channeled runoff from logging roads may no longer slip under the radar. This is a huge victory for the ecosystems of the Pacific Northwest.

Clean, drinkable water is a finite resource—increasingly important to preserve and protect, not only for beneficial agricultural, industrial, ecological, and recreational uses, but most importantly, for safe and healthy domestic use. In freshwater river systems, water withdrawal for commercial and domestic water use supports the needs of homes, farms, and industries that require a constant supply of clean water. Waters from Forested Lands are especially important to protect. Approximately 180 million Americans in 68,000 communities depend on waters captured and filtered by forested lands.² Waters from National Forest lands are the largest source of public drinking water, serving more than 66 million people in 3,400 communities in 33 states, including the cities of Los Angeles, Atlanta, Denver, and Portland; and

while you cannot put a price on clean water, the Forest Service estimates the value of waters flowing from National Forest lands at \$7.2 billion annually.³

Dispersed amongst a vast network of National Forest and several State Forest systems exist hundreds of millions of acres of forestlands containing over 400,000 miles of streams and about 3 million acres of lakes. Winding throughout these lands are hundreds of thousands of miles of forest roads. As part of maintaining many of these roads, culverts and ditches are constructed alongside the roads to drain and channel runoff from rain and snowmelt away from the roads and into nearby streams. The construction and use of poorly-designed logging roads creates a constant source of sediment discharged to nearby rivers and streams; such sedimentation creates chronic stress that has detrimental effects. Chronic sedimentation effectively chokes the life out of cold-water rivers and streams by decreasing dissolved oxygen levels, increasing temperature, and destroying essential biotic habitat. Moreover, sediment clogs industrial and municipal water-intake systems, increasing maintenance and operation costs as well as the need to dredge around intake facilities in order to prevent sediments from negatively affecting facility operations. "Research has shown that 90 percent of the sediment that ends up in our nation's waters from forested lands is associated with improperly designed and maintained roads."⁴ These pollutant-caused effects are anything but minor harms, and for over thirty years, Congress has sought to limit and eliminate such harms through the Clean Water Act. Through its victory in *NEDC v. Brown*, NEDC has become a significant force in furthering the goal of limiting and eliminating significant sources of pollution in our Nation's waters.

1. 617 F.3d 1176 (9th Cir. 2010).

2. U.S. FOREST SERVICE, BRIEFING PAPER: TODAY'S CHALLENGES AND OPPORTUNITIES; ABUNDANT CLEAN WATER (2007), AVAILABLE AT [HTTP://WWW.FS.FED.US/BIOLOGY/RESOURCES/PUBS/WATERSHED/WATER-BRIEF.PDF](http://www.fs.fed.us/biology/resources/pubs/watershed/water-brief.pdf).

3. *Id.*

4. BARBARA DANIELS, ET AL., MANAGING FORESTS FOR WATER QUALITY: FOREST ROADS, UTAH FOREST FACTS, UTAH STATE UNIVERSITY (2004), AVAILABLE AT [HTTP://EXTENSION.USU.EDU/FILES/PUBLICATIONS/FACTSHEET/NR_FF_010.PDF](http://extension.usu.edu/files/publications/factsheet/NR_FF_010.pdf).

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RECENT NEDC ALUMS MAKING A DIFFERENCE IN WASHINGTON, D.C.

Tarah Heinzen, Environmental Integrity Project

Tarah was an NEDC student board member for three years and an active volunteer while in law school. Her first volunteer projects with NEDC included comments on NPDES permits for industrial dischargers and Concentrated Animal Feeding Operations (CAFOs). During her second year of law school, Tarah took on a leadership role as a Project Coordinator focused on CAFO issues.

In May 2010, Tarah moved to D.C. to take a position as the Concentrated Animal Feeding Operation (CAFO) Law Fellow at the non-profit Environmental Integrity Project (www.environmentalintegrity.org). Over the past year she's worked on a range of CAFO and water quality issues at the federal and state level. Her projects have included working with community groups in Illinois and Iowa to improve the states' CAFO permit programs, appealing Delaware's new CAFO rule, reviewing EPA data on CAFO air emissions, writing reports, petitioning EPA to list ammonia as a Clean Air Act criteria pollutant, and challenging a CAFO exemption from federal pollution reporting requirements. Tarah says, "My day-to-day work focuses on finding ways to use federal law



to require factory farms to pay the true costs of the way they do business, and I like to think I'm playing a small role in creating a more sustainable and just food system." Keep up the great work, Tarah!

Kristen Monsell, The Humane Society of the United States

Kristen's involvement with NEDC began her third week of law school when she wrote her very first public comments on a proposed stormwater pollution permit. Kristen recalls the experience as inspiring, both because it provided her with the opportunity to learn the basics of the Clean Water Act, and because it introduced her to a group of passionate, dedicated advocates and students. She knew right then that she wanted to immerse myself in the people and the work of NEDC. Kristen fulfilled that desire during law school as an active volunteer, the law clerk during her second year, and as a student director in her third year. She's grateful for the opportunity NEDC provided to learn through experience. "Not only did I learn the intricacies of various environmental laws," Kristen recalls, "but I learned how to be a more effective advocate, how a successful non-profit operates, and even how to manage paddling in a kayak while taking water samples in the Columbia Slough!"

Kristen now works as a wildlife attorney with The Humane Society of the United States. In her work, Kristen uses the ESA, MMPA, and pollution control laws to help protect various species and the habitats upon which they depend.



Clarke Thurmon, U.S. Environmental Protection Agency

Clarke first got involved with NEDC during his first year of law school as a Student Board Member and volunteered in the Water Project Group. During his second year, Clarke continued working with NEDC as a Water Group Project Coordinator.

Today Clarke is working for the U.S. EPA in the Water Enforcement Division of the Office of Civil Enforcement. His caseload focuses on enforcing the Clean Water Act and Safe Drinking Water Act, typically working with municipalities on sewage management. Clarke also provides support for rulemakings and guidance documents related to Hydraulic Fracturing activities under the Underground Injection Control (UIC) program of the Safe Drinking Water Act.

Clarke says he's very thankful for the experience he gained while volunteering for NEDC. His NEDC experience was of great value during his law school internships because his first-hand knowledge of Clean Water Act enforcement put him ahead of the curve. That first-hand knowledge was also valuable during the interview process with EPA because not too many law students have the benefit of "working with such a wonderful organization right on their school campus." "But most importantly," says Clarke, "the mentorship and friendships made at NEDC continue to fill my work-life and life-life with valuable insight and fun to this day."



Monitoring water quantity and doing restoration ecology for Seattle Public Utilities, just prior to starting law school. (Thornton Creek, 2006).



Westwind Weekend Sept. 30 - Oct. 2

You are warmly welcome to attend!

Each fall, NEDC holds an annual meeting and retreat at beautiful Camp Westwind on the Oregon Coast. It is attended by approximately 100 environmental attorneys, law students, and NEDC members. We host speakers, conduct environmental workshops, and introduce law students and interested NEDC members to environmental issues currently affecting the Pacific Northwest. In addition to this educational aspect, the retreat offers a relaxing atmosphere full of delicious organic food, tasty micro-brewed beers from local breweries, ultimate frisbee games on the beach, nature hikes, and enthusiastic environmental folks.

A FIRST YEAR'S PERSPECTIVE

By SCOTT HILGENBERG

One of the most difficult aspects of a law student's first year is the constant necessity to work in the hypothetical world. Although the first year curriculum offers little in regards to practical legal experience, volunteering for NEDC is a great way to gain practical skills and learn about state and federal regulations, the public commenting process and enforcement actions.

The NEDC organizational structure offers great flexibility for its volunteers. As a first year, students may be hesitant to take on more work, but due to NEDC's flexibility, students can take on projects as it suits their schedule. Weekly meetings occur for each of the four divisions of NEDC: Water, Air, Sustainable Agriculture and Pesticide Policy, and Lands and Wildlife. With a strong interest in water law, I began attending Water Group meetings and would receive research projects and discuss current environmental issues with my colleagues. Being new to environmental law, the support of the upper division students allowed me to work independently on my research, but still receive helpful feedback and guidance when needed.

Besides being a great way to gain practical legal skills, NEDC consists of a community of people that a new 1L can depend on. Social and educational experiences such as the coastal retreat to Westwind, the Mentor/Mentee program, the Public Interest Environmental Law Conference and the Bike to Eugene Trip help first years navigate the waters of Lewis and Clark law school, and allow them to gain new perspectives and knowledge about environmental law. As a new student, I found that these events brought students together with similar interests and allowed us to have something to discuss other than the elements of trespass or the terror that Professor Funk can instill in a student with just a slight glance.

I would encourage any student interested in Environmental law to volunteer for NEDC. Not only does the organization offer a fun and diverse array of opportunities to get involved with, but it also is a great community of people in and of itself. NEDC volunteers gain practical legal skills, become familiar with the environmental law profession in Portland and gain pro-bono hours all at the same time. But most importantly, students have a real opportunity to make a positive impact on the environment with the work they do at NEDC.



To learn more about team NEDC's efforts, or to make an online donation to the team, please visit <http://teamnedc.bbnw.org/>. We appreciate your support in helping us achieve our individual and team goals!

TEAM NEDC GETS ACTIVE

Help team NEDC Reach Its Goals!

By MARLA NELSON

Student volunteers, alumni and NEDC board members have banded together to re-form Team NEDC. Members of Team NEDC competed earlier this year in the Race for the Roses in Portland. Team members solicited donations for their efforts in either the 5K, 10K, or half marathon. The event was hugely successful, with a turnout of almost forty Team NEDC runners, and many members achieved personal best times.

Team NEDC's next goal is to run the Portland Marathon on October 9, 2011. The current marathon roster consists of 12 runners, including board members

Dan Mensher and Melissa Powers, as well as student board members Aaron Stark and Jeffrey Van Name. Professor Mensher raised the stakes at a recent board member meeting, declaring that he will donate an additional \$1,000 if any team member beats him in the marathon. Because it is well known that the average "type A" law student is unable to resist such competitive challenges, this prompted valuable additions to the team roster. We wish team NEDC the best in their marathon training, and secretly hope that Professor Mensher doesn't train too hard.

(PGE Boardman...Continued from page 1)

NEDC's student law clerk and numerous law student volunteers then worked under the direction of PEAC's outstanding legal team to develop the basis for a Clean Air Act lawsuit that would force PGE to clean up emissions from the Boardman plant. At the same time, several members of the Columbia Clean Air Alliance- NEDC, Friends of the Columbia Gorge, Columbia Riverkeeper, the Sierra Club and the Hells Canyon Preservation Council- joined forces to become plaintiffs in the case. Each of these partner groups played key roles at various points throughout the resulting multi-year team advocacy effort.

On July 19, 2011 our groups lodged a consent decree resolving the Clean Air Act lawsuit that mandates the cessation of coal burning at the Boardman plant by the end of 2020, decreases sulfur dioxide pollution during the interim period by 3,000 tons beyond what is called for under current rules, and also creates a new \$2.5 million conservation fund at the Oregon Community Foundation. The Penstemon Fund will provide seed money for land acquisition and habitat protection in the Columbia River Gorge, Hells Canyon, and Eagle Cap. It will also fund community-based renewable energy generation projects, and clean air advocacy work.

"This outcome demonstrates that pollution control laws like the Clean Air Act provide tremendous benefits to public health and the environment," said Aubrey Baldwin, PEAC Staff Attorney.

The Penstemon Fund is just the latest in a long string of substantial Supplemental Environmental Project (SEP) funding generated in support of work performed by other conservation organizations across the region. As NEDC has a policy against directly accepting SEP funds through our enforcement work, your membership support is critical to insure that we are able to keep up our enforcement efforts. Thank you for your support!

SUPPORT NEDC TODAY!

Donation Gift Options	
<input type="checkbox"/> \$1,000 Partner	<input type="checkbox"/> Or monthly
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NEDC has a strict privacy policy. We will not share your contact information with anyone, and membership with NEDC will not generate unsolicited requests from other sources.

My donation is by:

Check (enclosed & payable to "NEDC") Visa/MC

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Please send donations to:

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NEDC T-SHIRTS!

American Apparel T-Shirts are complimentary with your generous donation of \$100 or more. T-Shirts are also available for \$14.

MALE: Select Blue or Grey in M, L, XL sizes.

FEMALE: Select tank-top style in Yellow or Blue in S, M, L sizes. Also available in traditional t-shirt style made of organic cotton in Tan in sizes S and M

M or **F** Style _____ Size _____ Color _____

Please indicate what size, color, and style you would prefer.

Don't Miss Westwind 2011!

Friday (09-30) - Sunday (10/02)

Please RSVP today to NEDC's Law Clerk at maggiehall@nedc.org.

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