

# NORTHWEST DEFENSE

THE NEWSLETTER OF THE NORTHWEST ENVIRONMENTAL DEFENSE CENTER



SPRING 2006

## Factory Farming: Mega-Dairies Target Eastern Oregon

The headline in a recent edition of the *East Oregonian* newspaper read, “Hermiston gains ally in dairy dispute”. The residents of Hermiston, a small community in northeastern Oregon, are raising considerable public health and environmental concerns over a proposed new 7,000 head mega-dairy on the outskirts of town, and NEDC has weighed in on their side.

In 2004, NEDC, with the assistance of attorneys at the Western Environmental Law Center, worked hard to develop a protective Concentrated Animal Feeding Operation (CAFO) NPDES water pollution discharge permit for the state of Oregon. Oregon’s permit is widely considered to be one of the most stringent CAFO NPDES permits in the nation. The permit provides for an important public notification opportunity, and insures that neighbors of new feedlots and mega-dairies are given the chance to make their concerns known before new facilities are actually constructed.

The Premier Dairy, one of at least 4 new large dairies planned for northeastern Oregon, has been the most controversial applicant in the short history of Oregon’s CAFO NPDES permit program. Hermiston residents have past experience with air quality and odor problems related to a large beef feedlot on the edge of town, and are fighting to prevent their quality of life from diminishing even further.

NEDC submitted comprehensive comments on the Premier Dairy permit application, focusing on the very real threats to ground-water and surface water posed by the new proposal. The aquifer underlying the Premier Dairy site is formally designated as a “critical groundwater area”, and has a history of contamination. Large factory-farm waste lagoons inevitably leak and liquid manure from those lagoons is routinely over-applied to crop areas. Allowing a new mega-dairy waste lagoon directly over a critical groundwater area simply makes no sense.

*(see Dairies, continued on page 6)*

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## NEDC’s “Kayak Crusaders” Continue to Enforce Against Stormwater Permit Violators and Push for Tougher Regulations

Last November, the Sunday Oregonian featured an in-depth story about NEDC’s Clean Water Act enforcement, including a front page photo of Executive Director Mark Riskedahl in a kayak on the Columbia Slough “armed with plastic bottles and the law.” NEDC has been continuing its “kayak crusading,” as the Oregonian described it, in full force. In recent months, NEDC has identified numerous industrial stormwater permit violators and has sent them notices of intent to file suit for ongoing Clean Water Act violations. We will also soon begin to focus on stormwater pollution caused by cookie-cutter housing development projects. The scorched earth approach to development is incompatible with Oregon’s wet climate, highly erosive soils and steep slopes. Stay tuned for news concerning our efforts to encourage more sustainable development practices.

Last month, NEDC notified two industrial facilities located on the Columbia Slough, the Halton Company (“Halton”) and Campbell Crane Rigging Services (“Campbell Crane”), of their ongoing violations of the terms of the 1200-COLS general stormwater permit and the Clean Water Act. Halton sells and rents heavy equipment from a facility in Northeast Portland with a large outfall draining directly into the Columbia Slough. NEDC staff and volunteers have observed murky, foul-smelling water flowing from this outfall each time they have paddled by this rainy season.

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## FISH PASSAGE CENTER SCIENCE SAVED!

An article in the Washington Post, entitled “Zeroing out the Messenger” broke the story late last year- Senator Larry Craig (R-Idaho) was on a personal crusade to shut down the widely respected Fish Passage Center. The Portland-based center, which is funded by the Bonneville Power Administration (BPA), had been targeted because it was doing its job of counting salmon, steelhead, bull trout and other fish in the Columbia River basin just a little too well. The Center’s math clearly riled up Craig, who in his last election campaign in 2002 received more money from electric utilities than from any other industry, and who had been named “legislator of the year” by the National Hydropower Association.

Senator Craig, unable to get support for legislation to zero out funding for the Center, attempted to achieve the same result by inserting a few lines into a conference committee report. BPA took Craig’s cue, arbitrarily treating the committee report language as if it was binding. Into the fray stepped Pacific Environmental Advocacy Center attorney-extraordinaire Stephanie Parent, and thus was born *NEDC vs. BPA*.

NEDC, joined by Public Employees for Environmental Responsibility, and Northwest Sportfishers’ Industry Association, filed a petition for review of BPA’s decision to defund the Center because it violates the Northwest Power Act. In the first important development in the *NEDC vs. BPA* case, Judges Beezer and Bea of the Ninth Circuit granted an extremely rare stay of BPA’s decision to defund the Fish Passage Center, ordering BPA to continue its funding and support of the Center until the merits of the petition could be heard.

The Northwest Power Act requires BPA to allocate funds consistent with the Fish and Wildlife Program adopted by the Northwest Power and Conservation Council in order to mitigate the impacts of hydropower operations. The Program expressly provides for continued funding of the Fish Passage Center. BPA’s decision is beyond its legal authority, absent an amendment of the Program, which would require input and recommendations from tribes, fish agencies and the public. In relying upon Craig’s committee report language, BPA is violating express provisions in the Program.

It was no mere coincidence that Craig’s move came after U.S. District Court Judge James Redden ordered summer spill as part of dam operations along the Columbia and Snake rivers, after concluding that the Bush administration offered an inadequate plan for protecting salmon listed under the Endangered Species Act.

BPA has since extended the contract for the Fish Passage Center at least until November 30, 2006. The Ninth Circuit has set a schedule so that the merits of the case will be briefed and heard by September, 2006, with a decision expected shortly thereafter. Many thanks to Stephanie Parent for her ability to respond swiftly and decisively in this matter.

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### **Willamette Names America’s Third-Most Endangered River**

American Rivers, a national river advocacy group, recently published its annual “Most Endangered Rivers” report - including the Willamette at number three. According to the report, “Factories and cities are allowed to degrade water quality and threaten river health by dumping millions of pounds of pollution, including mercury, lead, zinc, and arsenic, at levels known to be toxic.” The full report is available on the American Rivers website, [www.americanrivers.org](http://www.americanrivers.org). NEDC has been actively involved in the mixing zone issue, and we continue to pressure DEQ and the state legislature to address this important problem.

## Student Project Updates - Spring 2006

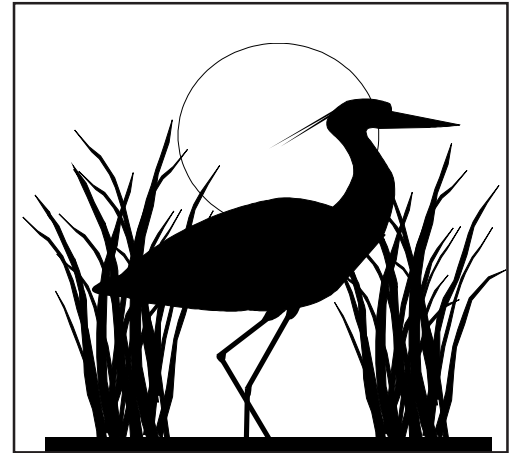
As you may know, the research projects conducted by our student volunteers become the backbone of NEDC's important work to protect the environment. This year, we had a committed and active group of volunteers working within our two project groups; we estimate that more than 40 students took on substantive projects for NEDC - in addition to their heavy class loads. Here is a brief summary of what our students accomplished:

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### *Lands & Wildlife*

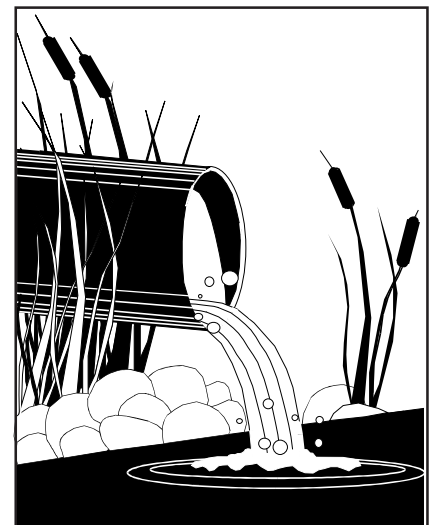
The Lands & Wildlife project group continued to fight the good fight to protect our public lands this winter. Over 25 student volunteers contributed to projects which ranged in subject-matter from water rights to the ESA to timber sales to invasive plants, and included submitting comments on the latest step in the three-year Western Oregon Plan Revision process for BLM Oregon & California lands in Western Oregon. The group co-hosted a visit from Democratic gubernatorial candidate Pete Sorenson, and held a talk by LLM student David Becker, who discussed his recent argument before the Ninth Circuit in a case seeking to restrict livestock grazing in the Malheur National Forest in eastern Oregon that has harmed threatened steelhead and bull trout habitat. The project coordinators would like to thank the many enthusiastic and dedicated student volunteers who contributed their time and energy to NEDC projects this year.



*~ Sherry, Jessica and Chris*

### *Air & Water*

This spring, the Air & Water Group took a new step in developing students' skills and knowledge about different areas of environmental law. One of the project coordinators, Jared Kahn, spearheaded student efforts targeting the lack of regulation on toxic materials in our country's fertilizers. These projects were coordinated with Patty Martin of Quincy, Washington, and involved creating requests for information under the federal Freedom of Information Act (FOIA), as well as researching the loopholes in regulations designed to protect human health and the environment. Another project coordinator, Kevin Kerr, directed student efforts related to Clean Water Act permitting and citizen suit enforcement. The last project coordinator, Katherine Lin, focused her efforts on developing NEDC's understanding of air quality issues, focusing on Oregon DEQ's Title V permitting for major industrial sources of air pollution, the differences between the Oregon state regulations and federal Clean Air Act New Source Review requirements, and the inadequate protection of public health provided in the newest proposed federal rule for particulate matter. (For more information about our air pollution projects, see page 4)



*~ Katherine, Kevin and Jared*

## Student Focus - Air Pollution Projects

The current state of our nation's air resources continues to be threatened with increasing emissions of pollutants and a regulatory framework too weak to clean up the air in a timely manner. NEDC continues to focus energies on regulatory inadequacies, especially in Oregon. State regulations, referred to as State Implementation Plans (SIPs), which are approved by the US Environmental Protection Agency (EPA) on a state-by-state basis, must be equivalent to the level of air pollution controls in the federal regulations. One of the federal programs under the Clean Air Act (CAA) requires major sources of air pollution to have an approved Title V permit in line with federal and state regulations. In Oregon, the Department of Environmental Quality (DEQ) has the authority to issue these Title V permits. Through protracted efforts to monitor the DEQ's issuance of these Title V permits, NEDC continues to believe the Oregon program is inadequately protecting the state's air resources from continued degradation.

NEDC also works collectively with the Pacific Environmental Advocacy Center (PEAC) on air pollution issues. This semester, PEAC attorney Allison LaPlante further investigated the inadequacies of Oregon's New Source Review (NSR) process. Students Kevin Kerr and Katherine Lin provided research memos comparing the federal requirements with the Oregon regulations, supporting the NEDC and PEAC hypothesis that Oregon's program is not equivalent to the federal framework due to gaps in pollution control, such as that created by Oregon's use of old baseline emissions dates in order to justify allowing releases of higher levels of pollutants.

Finally, NEDC reviewed the most recent EPA proposed PM<sub>2.5</sub> rule updating the National Ambient Air Quality Standard (NAAQS) for particulate matter (PM). PM is regulated by its particle diameter size – 10 micrometers (µm) and 2.5 µm. The smaller the particle size, the greater the threat to human health and the environment. Thus, NEDC chose to focus on the newest proposed PM<sub>2.5</sub> rule released in the Federal Register for public comment this past January. Despite the concerns of an independent expert advisory committee (the Clean Air Scientific Advisory Committee, CASAC), created under the CAA itself, the EPA chose to ignore much of the expert committee's recommendations. NEDC students Erin Smith and Katherine Lin worked with NEDC Board Member Dona Hippert, to provide commentary supporting the CASAC recommendations, arguing that the EPA's decision to choose higher allowable amounts of PM<sub>2.5</sub> in the ambient environment fail to protect the public health and environment. Under the CAA, NAAQS health with an adequate margin of safety. suspected adverse effects, the EPA is creating the standards. EPA's failure to in the proposed rules is arguably contrary to

With the momentum from this past to ensure that the air quality of Oregon, the fall prey to the whims of captive regulators



must be set at a level to protect human Moreover, when there are known or directed to consider these effects when incorporate these congressional directives the requirements of the CAA. semester, NEDC will continue its efforts Pacific Northwest and the Nation do not and lax enforcement.

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*(Stormwater, continued from page 1)*

The Halton outfall is the same outfall described in the Oregonian story as pouring out “chocolate brown gasoline-smelling muck”. NEDC's review of agency files revealed that the company has repeatedly exceeded the pollutant “benchmarks” established by its permit, has failed to adequately prepare, revise and implement a Storm Water Pollution Control Plan (“SWPCP”), which is intended to keep the stormwater discharges from this facility below the applicable benchmarks, and has otherwise violated the express terms of the permit and the Clean Water Act.

Data on Halton's discharges show that the facility is discharging pollutants far in excess of the permit limits. For example, Halton's own data shows discharges of lead 3,233% above the permit limit for lead. NEDC's recent sampling revealed discharges of total suspended solids (“TSS”) 1,900% above the permit limit for lead. NEDC has also tested the turbidity of Halton's effluent and compared it to the natural background levels of the Columbia Slough near Halton's site. NEDC's evidence shows that Halton is violating the Oregon water quality standard for turbidity by more than 9,000%.

*(see Stormwater, continued on next page)*

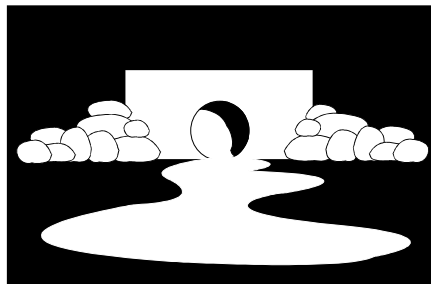
*(Stormwater, continued from previous page)*

NEDC's investigation has led to similar conclusions about Campbell Crane, another large machinery rental company located near the Columbia Slough. The data provided by the company to DEQ shows that it has consistently exceeded many benchmarks each time it has submitted sampling data. Notably, Campbell Crane has never once complied with the permit benchmark for TSS. In several instances, the exceedances have been massive. One sample showed that Campbell Crane discharge was 3,200% above the permit limit for TSS. NEDC has also documented unpermitted discharges from the Campbell Crane facility into an adjacent wetland. Like Halton, Campbell Crane has also violated numerous other provisions of its permit as well.

On March 7, 2006, the Pacific Environmental Advocacy Center ("PEAC"), on behalf of NEDC, sent a notice letter outlining these ongoing violations to Halton; on April 18, PEAC sent a notice letter to Campbell Crane. We are hopeful that both companies will take the same aggressive approach to protecting the water quality of the Columbia Slough that others along the Slough have taken after receiving a formal 60-day notice of intent to sue from NEDC.

While keeping up our efforts to enforce against stormwater permit violators, NEDC has also been pushing DEQ to strengthen the terms of the permits. On April 14, PEAC, on behalf of NEDC and Columbia Riverkeeper ("CRK"), submitted extensive comments to DEQ regarding DEQ's long-awaited proposed changes to the 1200-COLS, 1200-A and 1200-Z general stormwater permits. Although DEQ took more than 14 months to revise the permits, the permits continue to suffer fundamental legal flaws.

NEDC's involvement with the revisions to Oregon's general stormwater permits began as the result of NEDC and CRK's challenge to DEQ's improper decision to extend 1200-Z permit coverage to Sundial Marine shipyard. Ultimately, NEDC, CRK and DEQ reached a settlement, which required DEQ to revise, and propose certain terms for inclusion in, its stormwater permits. At the time the parties entered into the settlement agreement, NEDC and CRK expected that DEQ would use the revision process as an opportunity to improve upon its wholly inadequate stormwater permitting program. Unfortunately, DEQ has not lived up to these expectations.



NEDC's April 14th comments outlined the numerous problems with the proposed new stormwater permits. Overall, rather than adhere to the requirements the CWA establishes for NPDES permits, DEQ has chosen to use entirely different, and legally insupportable, mechanisms for regulating industrial stormwater discharges. In place of technology-based effluent limitations, DEQ instead uses Best Management Practices ("BMPs") and benchmarks, which are theoretically designed to determine whether BMPs work. The benchmark values, however, have no relationship to the BMPs' adequacy. Additionally, the benchmarks address only three toxic pollutants and thus fail to account for at least a dozen toxic pollutants that the EPA has detected in industrial stormwater discharges. DEQ's minimal "record" provides no support or explanation for the decisions it made with respect to the toxic pollutants it chose to regulate or for the levels at which it set the permit benchmarks. The stormwater permits also establish a presumption that permittees' compliance with BMPs will result in compliance with water quality standards, yet DEQ has put nothing forward that supports this presumption. The stormwater permits are wholly deficient in how they propose to regulate industrial stormwater discharges.

In the end, the Oregonian was correct in reporting that NEDC has the law on its side as its primary tool; but NEDC also needs DEQ to do its part by developing properly protective permits as well.

## Tualatin River Fund Wrap-Up

Earlier this month, the Tualatin Basin Water Quality Endowment Fund advisory committee met for the last time in order to agree on how to spend down the remainder of the fund. The fund was established in 1991 as a result of a \$1,000,000 Clean Water Act lawsuit settlement brokered by NEDC president Karl Anuta with the Unified Sewerage Agency of Washington County (now Clean Water Services).

The fund has been managed by the Oregon Community Foundation, and due to significant investment gains in the late 90's, advisory committee members were ultimately able to disburse over \$2,000,000 towards watershed restoration, advocacy and education efforts in the Tualatin River basin over the past 15 years.

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## NEDC Announces New Student Staff for '06 -'07

NEDC is pleased to announce our incoming student leadership for the upcoming academic year. Thanks to the many outstanding students who have expressed an interest in continued service - we couldn't do it without them!

*Law Clerk*  
Bethany Cotton

*Student Directors*  
Jamie Saul and Ellen Trescott

*Project Group Coordinators*  
Natasha Bellis, Lauren Goldberg, Jay Sayles,  
Austin Saylor, and Katie Strong

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*(Dairies, continued from page 1)*

Mega-dairies can either be constructed as “flush” dairies, liquefying animal waste and sending it to a lagoon; or as dry “scrape” dairies. Scrape dairies use considerably less water, pose less risk of groundwater and surface water contamination, and also result in considerably less volatilization of harmful pollutants such as ammonia. Ammonia and particulate emissions from the eastern side of the state have been directly implicated in acid rain and visibility problems in the Columbia River Gorge. NEDC, in its comments, requested that the Oregon Department of Agriculture mandate, or alternatively that the dairy owner, in a show of good faith, voluntarily choose to construct the dairy as a scrape operation rather than a flush operation. We await the response to our comments.

This is the first of at least four new mega-dairies planned for northeastern Oregon. NEDC will continue to reach out to local communities and work with concerned citizens to ensure that the degradation of our air and water will be minimized by harmful industrial farming practices.