



NORTHWEST DEFENSE

The Newsletter of the Northwest Environmental Defense Center

Fall/Winter 2012

THE ROAD TO THE SUPREME COURT

On December 3, NEDC will experience one of the most momentous events in our organization’s 43 year history. The U.S. Supreme Court will hear oral argument in our Clean Water Act logging road pollution case.

Six years ago, NEDC and our partners at the Washington Forest Law Center and Crag Law Center set out on a mission to protect water quality and improve logging road construction and management practices across the West. The timber industry, unlike other industrial sectors, had never been required to obtain Clean Water Act National Pollutant Discharge Elimination System (NPDES) permits for the discharge of polluted stormwater to rivers and streams. That seemed unfair to us, and we sought to rectify it.

Our extensive experience observing and recording how NPDES permits change behavior and protect the environment helped us recognize that requiring permits for stormwater pollutant discharges from active logging roads would result in reduced water pollution. Increased attention to logging road stormwater conveyance system design, installation and maintenance means more eyes out in the field attending to pollution problems, while also creating more jobs for local communities.

Our long and hard-fought legal battle culminated in a landmark victory before the Ninth Circuit Court of Appeals in

2010. The timber industry, rather than accept the well-reasoned decision of a unanimous Ninth Circuit panel and invest energy working to insure that state-issued permits remain flexible and don’t create an unnecessary regulatory burden, has continued to fight tooth and nail to avoid the reach of the Clean Water Act.

In fact, our work has been challenged every step of the way by a zealous and well-orchestrated campaign financed by Wall Street timber investment firms and other champions of environmental de-regulation, including Koch Industries, the par-

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For frequent updates on NEDC's work...



CLEAN WATER VICTORY IN WASHINGTON

On September 25, 2012, the Washington Court of Appeals upheld a decision by the Pollution Control Hearings Board (Board) that Clark County's stormwater program was not as protective as required by the county's MS4 permit. The Clean Water Act requires municipal separate storm sewers (MS4s), the urban systems that collect stormwater runoff, to have a permit. Larger municipalities were part of Phase I permit issuance, and smaller municipalities are part of Phase II.



In January of 2010, Clark County and Washington's Department of Ecology had entered an agreed order to bring

the County into compliance with MS4 requirements. Rosemere Neighborhood Association, Columbia Riverkeeper, and NEDC challenged the order before the Board. Jan Hasselman, Attorney at Earthjustice's Northwest office, represented the organizations against the County and Ecology. The Board ruled that the standards in Clark County's alternative program were not as protective as required by the MS4 permit. Specifically, the Board held that the alternative program was not applicable to developments commenced after the MS4 permit became effective but before the agreed order became effective, and it did not meet the "equal or similar" standard for alternative programs.

Q & A WITH EARTHJUSTICE ATTORNEY JAN HASSELMAN

Thank you for your excellent work on this case! What do you see are the major implications of this decision?

Hasselman: The decision shows that there are some standards in place, and the court is not willing to let lawbreakers just get away with it. Clark County really had no scientific or factual basis for its appeal. The opposite outcome would have set a precedent for weaker stormwater programs statewide. Under the Phase II MS4 permit, a municipality is free to adopt without approval an alternative program that has been approved under the Phase I permit. *[If the court had allowed Clark County's alternative program, other municipalities would be able to adopt the same alternative program under Phase II permits – and as Hasselman notes, were already lining up to do so].*

Does this decision have broader implications beyond the MS4 program?

Hasselman: The opinion also has implications for the application of Washington's



state vesting law. The Court of Appeals did directly address vesting, but it did uphold the PCHB, which held that Washington vesting law does not apply to stormwater. This issue was previously unclear.

Have you noticed any changes in public opinion or increase in public interest in stormwater issues in response to this case?

Hasselman: Generally no; this case did not initially make headline news. The major lesson is that municipalities and government entities can't get away with cutting corners. *[Subsequent to this interview, the Columbian newspaper ran an editorial chastising Clark County for its recalcitrant behavior, and referring to Earthjustice's repeated legal victories as "serial smackdowns". The editorial also implored the county to "cut bait and stop appealing stormwater runoff regulations"]*

THE LOW DOWN: Q & A WITH THE NEW LEGAL FELLOW



Welcome aboard, Marla. What made you want to work with NEDC?

NEDC was a major part of my legal education. I am pumped that I'm able to continue my connection with the organization while focusing on the environmental work I came to Lewis and Clark to accomplish. Plus, I realized that I really enjoy working with Mark and Andrew. NEDC's history of environmental work provides a strong foundation to work and learn from, and at the same time I'm given freedom to be creative with new project ideas.

What will you work on as the Legal Fellow?

I will work with NEDC's Law Clerk, Andrew and Mark on various substantive projects, coordinate law student volunteer efforts on research projects, and maintain consistent contact between the students, staff, and board members as an additional liaison for students and the campus community.

My substantive work will focus on projects in both Oregon and Washington. In Oregon, I have been focusing on the Department of State Land's proposal to assume implementation of the section 404 dredge and fill program in Oregon. I will also help to address suction dredge mining in the state. In Washington, I will be responsible for the Spokane Clean Water Project, an effort to restore and protect the water quality of the Spokane River and provide hands-on learning opportunities for law students at Lewis and Clark and Gonzaga University. In addition I have plans to coordinate with the Earthrise Law Center to implement an NPDES permit compliance project.

How is NEDC funding the position?

NEDC received a generous grant from the Mike Chappell Fund for the Spokane River,

which will fund my work on the Spokane Clean Water Project. The Environmental Compliance Project is funded as a supplemental environmental project made possible by Columbia Riverkeeper.

Is this a permanent position?

No. The NEDC Legal Fellow is a 2-year position for a recent law school graduate, designed to bridge the often difficult transition from law student to environmental attorney.

What do you hope to accomplish?

Beyond the specific goals of each of the major projects, I hope to further community involvement and watershed protection by tracking and analyzing ongoing state policy decisions, organizing collaborative efforts to educate and inform Oregon and Washington communities, and work with students to ensure they get meaningful opportunities for hands on practical experience in environmental law.

Do you have any advice for incoming or current law students?

Besides making sure to devote some time to NEDC volunteer work, I suggest you try to discover the type of law that you are passionate about; what makes you tick. Once I was confident that environmental law was my calling, the classes were not nearly the chore that they had been. Also, look to those who do the type of work you want to do, and find out the path they took. That way you can focus your law school career in a way that best prepares you for the job ahead.

How will you fit in the NEDC office?!

NEDC has new digs! We are still in Gantenbein, but NEDC now has 2 office spaces. I will be sharing a new office with Laura, while Mark and Andrew will move into a new space next door.

Staff

Mark Riskedahl
Executive Director

Andrew Hawley
Staff Attorney

Marla Nelson
Legal Fellow

Student Staff

Laura Kerr
Law Clerk

Student Project Coordinators

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Sustainable Agriculture

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Karen Swift
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Westwind 2012

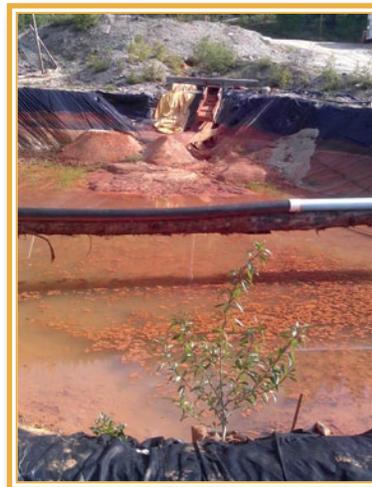
NEDC's annual Westwind retreat October 12th-14th was a blast – we hope you are able to attend next year!

GOLD MINE HELD ACCOUNTABLE

This summer, U.S. District Court Magistrate Judge Mikel Williams ordered Atlanta Gold Corporation to stop polluting Montezuma Creek, a tributary of the Middle Fork Boise River, near Atlanta, Idaho and ordered the company to pay at least \$2,000,000.00 in penalties as a remedy for more than two thousand violations of the Clean Water Act. This order is the result of a suit brought by NEDC and the Idaho Conservation League in 2011 challenging Atlanta Gold Corporation's long-running and blatant violations of its Clean Water Act permit. The water flowing from Atlanta Gold's mine is highly contaminated with arsenic and iron, yet Atlanta had done little to reduce or eliminate the discharge of these pollutants. In January 2012, the Court determined that Atlanta Gold was liable

under the Clean Water Act for its violations.

In this most recent ruling, announcing the penalties against Atlanta Gold for its violations of the Clean Water Act, the Court criticized the company for delaying cleanup actions for years to save money. As the Court put it: "Water is the West's most precious resource. Keeping Idaho's waters sufficiently clear of toxic elements so that they can support all the beneficial uses for which the State has designated them is a critical



public interest that profoundly outweighs a company's bottom line."

This victory is a major win for Idaho's waters. It also demonstrates how former and current NEDC'ers frequently collaborate in order to protect the environment. NEDC's law clerks and numerous student volunteers did exceptional work assisting our attorneys in developing the case. Kristin

Ruether, a Staff Attorney at Advocates for the West and former NEDC Project Coordinator and Student Director, has worked tirelessly in partnership with NEDC's Staff Attorney Andrew Hawley to hold Atlanta Gold accountable.

MY SUMMER LEGAL INTERNSHIP AT ORANGE COUNTY COASTKEEPER



By DON GOURLIE

This summer I worked as a legal intern for Orange County Coastkeeper (OCCK), located in southern California. OCCK is part of the Waterkeeper Alliance, a worldwide organization of environmentalists, scientists, lawyers, and educators working to protect rivers, lakes, and coastlines. I studied marine biology as an undergraduate

and chose to intern with OCCK to continue my work in the arena of marine conservation.

My experiences at OCCK dealt with a variety of topics relating to domestic water quality issues and its effect on the marine environment. For example, the San Diego region is currently developing a stormwater sewer permitting system based on cross-county watershed boundaries, rather than political boundaries. I was invited to attend stakeholder meetings that changed my perspective drastically, exposing me to the real world challenges of implementing a program with vast socio-economic consequences. Another great aspect of my experience with OCCK was my ability to volunteer with other parts of the organization. I was able to assist with education and outreach as well as restoration and research with several OCCK staff. Snorkeling, kayaking, hiking, and going to the beach were all a part of my summer experience.

Many of the projects I worked on at OCCK involved issues I had already become familiar with due to my work with NEDC. Writing enforcement letters, commenting on proposed agency action, and conducting legal research were all aspects of my work with NEDC that carried over into my summer internship. Even when encountering new issues, I found that my experience with NEDC had given me a greater capacity to succeed at OCCK. Working with NEDC project group leaders on writing comments was instrumental in developing confidence in my writing abilities and preparing me for the real world application of my legal education.

MY SUMMER CLERKSHIP AT ADVOCATES FOR THE WEST - NON-PROFIT LAW FIRM

By KYA MARIENFELD

This past summer I had an amazing clerkship at Advocates for the West in Boise, Idaho. Advocates is a small non-profit environmental law firm that works to protect public lands, wildlife, and natural resources in the Intermountain West and the Great Basin. Before law school, I worked as a wilderness guide in Yellowstone National Park, and I was drawn to Advocates because of the successful work they do throughout the region that encompasses the park I called home for many summers. I had a busy and productive summer in Boise, and I credit my ability to be a successful environmental law clerk to my volunteer work with NEDC last year.

As a 1L, I thought I would have to slog through my whole first year without doing an ounce of real environmental work—but that was before I discovered NEDC. Not only did working with the Lands & Wildlife group last year show potential employers that I had some experience in real legal work, but it also helped me to feel far less overwhelmed when I got my first assignment as an actual law clerk. Starting my clerkship, I was still just a first year who hadn't had a lick of environmental or administrative law coursework, but my work with NEDC helped me search and use a very large administrative record, write memos on administrative exhaustion, and research and interpret agency policies for implementing the ESA. In fact, I had the unique opportunity to work with one of Advocates' Senior Staff Attorneys on all aspects of a challenge to a decision not to list the pygmy rabbit as an endangered or threatened species. For this suit, I had to dive headfirst into the ESA and the Ninth Circuit's handling of agency deference. Instead of falling flat on my first-year face, I held my own and contributed in a meaningful way to Advocates' work, and I think NEDC was a big reason why.

MY SUMMER INTERNSHIP AT TRUSTEES FOR ALASKA - A NON-PROFIT LAW FIRM

By JORDAN SCHOONOVER



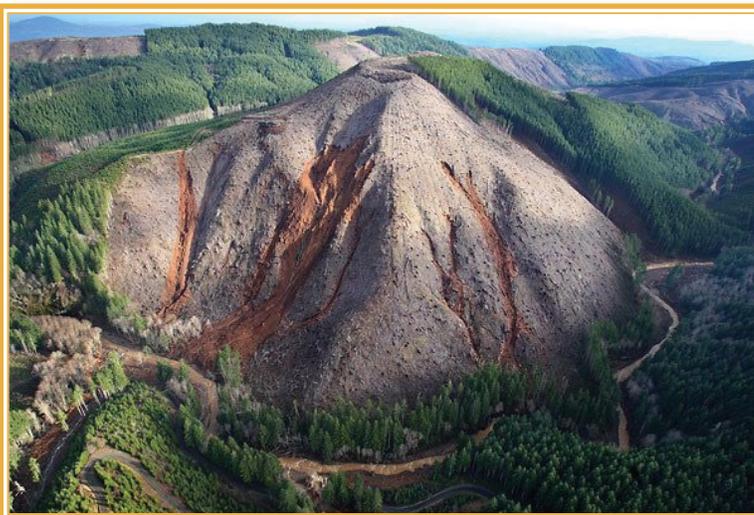
This summer I interned at Trustees for Alaska, a non-profit environmental law firm in Anchorage, Alaska. Trustees works to protect Arctic ecosystems, address impacts of global warming, promote clean air and water, and prevent destructive impacts of mining in Alaska. My experience as an NEDC volunteer for the Air Group during my first year of law school helped prepare me for my summer internship. I appreciated the introduction to environmental law that I received from my work with NEDC. This background allowed me to keep up with the other interns, most of whom were second year students with coursework in environmental law.

I learned an extraordinary amount during my 10-week internship. I re-

searched topics ranging from federal abstention doctrine to experimental halibut fishing permits. I drafted a reply brief, a notice of appeal, four legal memos, and several letters to agencies. I also helped the attorneys prepare for an oral argument before the Alaska Supreme Court and participated in meetings with clients and experts.

Throughout the summer, I was guided by the talented attorneys at Trustees, three of whom are graduates of Lewis & Clark Law School and former NEDC volunteers. I was proud to carry on the tradition and represent Lewis & Clark and NEDC in Alaska this past summer. I look forward to bringing the skills I learned at Trustees to my new position as an Air Group project coordinator this year.

(The Road to the Supreme Court...Continued from page 1)



ent company of Georgia-Pacific, the lead petitioner in our case. Throughout much of 2011, industry lobbyists descended on Capitol Hill and barraged state legislatures across the nation hyping the economic doom and gloom that would surely result if the timber industry had to get Clean Water Act permits for polluted stormwater discharges.

The timber industry's scare tactics and sky-is-falling rhetoric reached a feverish pitch late in 2011 when the industry found a sympathetic ally in the Wall Street Journal editorial board. The night before the U.S. Supreme Court was to conference and determine whether our case was worthy of review, the Wall Street Journal printed a scathing editorial, chastising the Ninth Circuit Court of Appeals for issuing a decision that, if allowed to stand, would "wreak havoc on the timber industry". The editorial implored the Supreme Court to "play janitor and clean up after the legal elephant parade that is the Ninth Circuit."

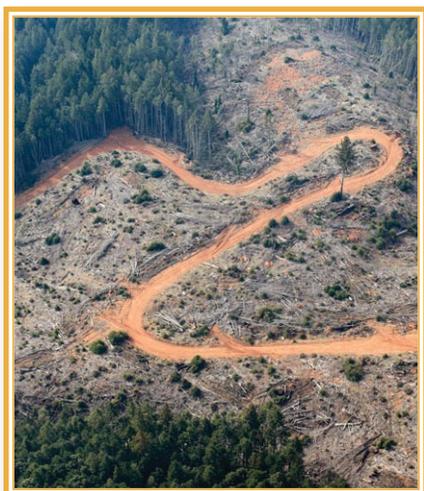
Earlier this summer, NEDC learned that review had been granted by the Supreme Court and we decided to supplement our stellar legal team by adding experienced Supreme Court practitioner Jeff Fisher of the Stanford Supreme Court Litigation Clinic. Jeff will serve as NEDC's Counsel of Record in the Supreme Court proceedings, and will argue the case before the high court. Attorneys Paul Kamp-

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*(The Road to the Supreme Court...
Continued from page 6)*

meier at the Washington Forest Law Center and Chris Winter at the Crag Law Center have remained incredibly diligent and engaged throughout this long haul, and our entire legal team is functioning exceptionally smoothly together.

If you are interested in more background on the case or want to view briefs filed in support of our position, visit NEDC's website (www.nedc.org).



If you live in Washington D.C. or are visiting the area on December 3rd, we hope you are able to join us for the argument. NEDC will also be holding a reception that evening in Washington D.C. – please contact our office for details. If you aren't able to attend the argument or reception, but wish to make a special donation in support of our Supreme Court challenge, please do so today. As always, thank you for your support!

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Join NEDC and the Crag Law Center for a Supreme Court Send-off Party!

WHERE:

Migration Brewing Company
2828 NE Glisan Street, Portland

WHEN:

Tuesday, November 27th, 6–9 PM



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