

# NORTHWEST DEFENSE

The Newsletter of the Northwest  
Environmental Defense Center

WINTER 2022

## A HISTORIC VICTORY FOR WILLAMETTE RIVER SALMON AND STEELHEAD

Willamette River Chinook salmon and steelhead populations have been declining for decades. In recent years, just one to two percent of historic populations have returned to spawn in the Willamette and its tributaries. This decline is due in large part to the presence of thirteen dams in the basin, which are operated by the U.S. Army Corps of Engineers. The dams' heights and large reservoirs make it nearly

impossible for small fish to swim downstream and for adult fish to access spawning habitats upstream. Dam operations also create unnatural flows, and impact

fish habitat, water quality, and water temperature. Taken together, these impacts have placed the Willamette's Chinook and steelhead on the brink of extinction.

After years of court battles, we're now proud to say that there is hope for these priceless species, and for Oregonians who treasure their continued presence in our state. In 2018, NEDC and our partners Native Fish Society and WildEarth Guardians sued the Army Corps, arguing it had failed to take necessary steps under the Endangered Species Act to ensure the survival and recovery of these fish.

Over the last two years we have won a series of legal victories that have provided a new template for managing the Corps-operated dams, and with it a lifeline to recovery for the Willamette's Chinook and steelhead. First, the Court ruled for NEDC and our co-plaintiffs on all of our ESA claims, finding that the Corps: 1) had failed to carry out sev-

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*Photo: Native Fish Society*

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eral required measures at the dams related to fish passage and water quality; 2) is jeopardizing and unlawfully “taking” Chinook and steelhead; and 3) had unlawfully delayed reinitiating ESA consultation for the species.

Then, late last year, the Court issued a final order directing the Corps to immediately undertake several major operational changes at dams throughout the basin, all designed to benefit salmon and steelhead. Further, the Court created an “Expert Panel,” which includes NEDC’s and our partners’ fish experts, which has been meeting to develop additional new measures to benefit fish.

We’re already seeing the impacts of these victories on the ground. Per the Court’s Order, the Corps has implemented several measures to improve fish passage on key tributaries,

including new deep drawdowns of reservoirs to help guide migrating juvenile fish downstream. The Corps is also implementing new strategies to improve water temperatures and dissolved gas levels below several dams. These required actions will continue to expand in 2023.

This case represents a historic victory for the Willamette’s embattled Chinook and steelhead. For the first time, the Corps is giving appropriate weight to protecting these threatened species in its operation of the basin’s expansive dam system. With several new measures designed to improve upstream and downstream fish passage, and provide more natural flows and better water quality, there is now real hope for the survival and recovery of these iconic species.

*Special thanks to Advocates for the West, who have provided incredible legal representation to NEDC and our partners throughout this case.*

## NOTE FROM THE NEDC BOARD PRESIDENT



*NEDC Board President  
Amy van Saun*

As a student at Lewis and Clark Law School, NEDC was my first point of entry into environmental law. Working with the passionate students and dedicated staff propelled me into the public interest impact environmental litigation I am privileged to practice today. I am forever grateful to NEDC for giving aspiring environmental advocates like myself the inspiration to pursue environmental law, a platform to do real environmental work as a 1L, and a place to belong.

environmental movement. We will continue this work to ensure the sense of belonging I felt as a student extends to all NEDC volunteers, members, and partners.

As you’ll read in these pages, what hasn’t changed is NEDC’s fierce commitment to protecting the Pacific Northwest. We’re fighting harder than ever to protect the region’s air and water, to preserve our iconic native species, and to push for environmental justice for Oregon communities. As ever, your support is critical to this work, and we’re so grateful for what you’ve helped us accomplish.

I was thrilled to join NEDC’s Board of Directors in 2018, and took over as President for the incomparable Lizzy Potter earlier this year. And wow what a first year as NEDC Board President! In 2022 we said a tearful goodbye to NEDC’s first and longest serving Executive Director—Mark Riskedahl—and welcomed Jonah Sandford as our new Executive Director with open arms and high hopes. Stepping up from staff attorney to ED is no small feat and the Board is thrilled to have Jonah at the helm. We also had the honor this year of welcoming a new fellowship attorney (*and a former clerk of mine*) Mary Stites! As we stand on the shoulders of the giants who steered NEDC before, we are looking out at a bright future for a more equitable and diverse NEDC and a place where students, community members, and attorneys can come together to save our Pacific Northwest home.

Since my time as a student some big things have changed. Most importantly, NEDC has come a long way in its journey to embrace the principles of equity and inclusion. From our offices at Lewis & Clark Law School, and through our extensive student training and mentorship programs, NEDC has a unique opportunity to not only increase our own organizational diversity, but to shape a more diverse and inclusive



# NEDC LAWSUIT SETTLEMENTS FUND RIVER CLEANUPS

Recent NEDC Clean Water Act enforcement actions helped fund a series of river cleanups this summer across Portland. In July, SOLVE Oregon used funds from an NEDC settlement to organize an extensive cleanup of the Holgate Channel, an ecologically important section of the Willamette River connecting Oaks Bottom Wildlife Refuge and the Ross Island archipelago. Volunteers collected trash from both the riverbanks and the surrounding parklands and wildlife refuge, including materials like PVC piping, waterlogged sleeping bags, and the bottom of a lawnmower. Additional NEDC settlement funds were used to organize a series of cleanup events at various locations on the Columbia Slough.



Together, these cleanups successfully removed over 20,000 pounds of trash and toxic materials from sensitive aquatic habitat, and kept untold amounts of pollution out of these Portland waterways. For each of these cleanups, SOLVE worked with locally owned Junk It to collect and properly dispose of the trash collected.



Clean Water Act enforcement has been a central focus for NEDC for decades. In recent years, a top priority for our litigation efforts has been protecting Pacific Northwest waters from stormwater pollution at industrial facilities. These stormwater “citizen suits” have resulted in significant upgrades in stormwater treatment systems across the state, reduced pollution in the region’s waters, and provided millions of dollars in funding for regional nonprofits to improve water quality.

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## A FIGHT FOR WATER QUALITY AND BULL TROUT IN THE HOOD RIVER BASIN



Clear Branch Dam was constructed in 1969 in the upper reaches of the Hood River basin. In the ensuing decades the dam—part of a larger irrigation project—has significantly impacted water quality in the Hood River and its tributaries, and damaged critical habitat for bull trout. When the dam was built, without fish passage, the last remaining bull trout population in the basin was fragmented, isolating some fish above the dam and submerging important spawning habitat. Further, discharges of warmer waters at Clear Branch have increased temperatures below the dam, which has made spawning for the coldwater-dependent bull trout nearly impossible. All together, these impacts have put the Hood River bull trout population at severe danger of extinction.

Now, a re-licensing process for Clear Branch Dam has given NEDC the chance to fight for the Hood River and its native fish. We're working to ensure that any future for this aging dam includes successful fish passage, to connect the remaining bull trout population and provide access to prime spawning habitat. And it's critical that dam operations do not warm river temperatures, or violate other important water quality standards.

Last year, we secured an important initial victory in this fight. Oregon DEQ denied a required water quality certification for the dam, agreeing with NEDC that proposed operations would not comply with temperature standards that are essential for protecting bull trout. As a result, the dam operators have been forced to consider new plans that are more protective of water quality and native fish.

NEDC is now closely tracking required assessments of proposed dam operations under NEPA and the Endangered Species Act. We will be advocating forcefully this year to ensure that any future operations at Clear Branch Dam are designed to protect water quality, and to prioritize the survival and recovery of the basin's bull trout.

## NEDC PUSHES FOR OVERHAUL OF OREGON'S AIR PERMITTING RULES

Oregon's air permitting regulations are past due for a major overhaul. Under the current rules, many industrial facilities are issued permits with emission limits that are well above what the facility is physically capable of emitting. As a result, these facilities can often expand operations—and significantly increase emissions—without modifying their permit, without meaningful review by DEQ, and without informing impacted communities. What's more, Oregon's rules were established before the current federal air quality standards, and do not reflect modern science on what levels of pollution exposure are harmful. Recent modeling of Portland facilities, conducted by Earthjustice and DEQ, demonstrated that under the current rules many sources in Oregon can cause violations of federal air quality standards—without ever exceeding their permit limits.

Because of these and other outdated provisions, Oregon's permitting framework is notoriously industry-friendly. And these benefits for industrial polluters come at the expense of local communities, who are subject to dangerous levels of pollution and increased health risks, and are unable to meaningfully participate in the permitting process. These impacts are felt most acutely in environmental justice communities, which are exposed to disproportionately high levels of pollution due to their proximity to industrial facilities.

This year, NEDC helped lead a coalition of community organizations in pushing for significant updates to these antiquated rules. As part of a statewide Advisory Committee appointed to update



## WESTWIND IS BACK!

It was a true pleasure to be back at Camp Westwind for NEDC's annual retreat October 7-9. Attendees heard inspiring presentations from some of the Pacific Northwest's most effective environmental advocates, and took time to explore this unique location on the Oregon coast. After missing the last two years due to the COVID pandemic, the weekend was a great reminder of the power of this wonderful NEDC community.

*We can't wait for next year—mark your calendars now for September 15-17, 2023!*



**THANK YOU FOR  
YOUR SUPPORT!**

## DONATE TO NEDC, AND GET A FREE T-SHIRT!

Donate *before* December 31, 2022, and we'll send you a very fashionable NEDC T-shirt! To qualify, either:

- Make a one-time donation of \$150 or more; or
- Become a monthly donor of \$10 or more.

**That's it! We'll contact each qualifying donor about size and color preference.**

**DONATE ONLINE AT**  
[WWW.NEDC.ORG/SUPPORT-NEDC](http://WWW.NEDC.ORG/SUPPORT-NEDC)

*(NEDC Pushes for Overhaul of Oregon's Air Permitting Rules...  
Continued from page 4)*

the regulations, NEDC helped develop a new draft framework that eliminates unnecessarily high permit limits, provides additional opportunities for public review of facility modifications, and ensures that Oregon permits account for new air quality standards and the latest science.

This campaign to modernize Oregon's permitting system is not over yet. Somewhat predictably, Oregon industries are pushing back on these long-overdue changes. In 2023, NEDC and our partners will be pushing to make these important updates a reality, and to ensure Oregon's air—and local communities' health—is adequately protected.



# STUDENT PROJECT HIGHLIGHTS

*From our offices at Lewis & Clark Law School, a central part of NEDC's mission is to provide training, mentorship, and attorney supervision to the next generation of environmental advocates. Our student work for the 2022-23 academic year has gotten off to a great start—here are a few highlights.*

## CLEAN WATER

### ALASKA DREDGE AND FILL PERMITTING

The Clean Water Group has been working on a white paper to argue for more environmentally protective guidance regarding compensatory mitigation requirements for Clean Water Act dredge and fill permits issued in Alaska. Current guidance allows the Army Corps of Engineers to issue dredge and fill permits without requiring proper compensatory mitigation, in apparent violation of CWA regulations. This guidance is based in part on a 2018 Memorandum of Understanding (MOU) between the Alaska Corps and EPA, which grants the Alaska Corps considerable flexibility when approving dredge and fill permits. Working with Audubon Alaska and Earthrise Law Center's Kevin Cassidy, NEDC students are making the case for rewriting or rescinding the 2018 MOU, updating an old 1994 Fish and Wildlife Service (FWS) study of wetlands in Alaska, and ultimately, encouraging EPA and the Corps to issue new guidance requiring proper compensatory mitigation for Alaska dredge and fill permits in compliance with the CWA. Protecting Alaska wetlands is especially relevant as Alaska hydrocarbon revenues decline and the state pivots its extraction-based economy to focus more on mining projects.

Upon completion of this white paper, NEDC students, alongside Alaska Audubon, may have the opportunity to meet with political appointees at the Corps and FWS to discuss this research, and hopefully, to persuade them to enact the change necessary to protect precious aquatic resources in Alaska.

## ENVIRONMENTAL JUSTICE

### CAFO RULEMAKING PUBLIC COMMENT

During the fall semester, the Environmental Justice group partnered with the Air and Climate group to write a public comment to the Oregon Department of Environmental



Quality (DEQ) in support of a petition to promulgate a dairy emissions regulatory program. Concentrated animal feeding operations (CAFOs) pose ambient air quality concerns - the consequences of which disproportionality impact low-income communities and communities of color and pose significant risk to worker health and safety. Volunteers researched the impacts of CAFO emissions on air quality, the risk to community and worker health from long-term exposure to these emissions, and the demographics of the communities located near CAFOs in Oregon. Our goals were

to support the petition for rulemaking, to underscore the program's utmost importance to improve air quality, public health, and worker safety, and to address the environmental injustices that surround emissions from CAFOs.

## FOOD AND AGRICULTURE

### COMMENTS ON EPA'S PFAS STRATEGIC ROADMAP

Late in 2021, the EPA released its PFAS Strategic Roadmap, laying out the various commitments it will take in the coming years to address contamination from PFAS, or "forever chemicals." In an effort to protect public health and the environment from the harmful effects of PFAS exposure, EPA has since proposed several rules intended to mitigate the use of these toxic chemicals in industry and reduce their presence in our air- and watersheds. In September, EPA proposed a rule that would de-list 12 PFAS that are no longer in use from the approved inert ingredient list in pesticides.

The Food & Agriculture group submitted a comment on the proposed rule during the Fall 2022 semester. Although NEDC supports the rule broadly, the group outlined the ways in which the rule does not go nearly far enough in



light of the numerous health and environmental risks posed by the continued use of approved PFAS in pesticides. Additionally, the comment addressed the important environmental justice impacts that PFAS present when they are not strictly regulated, such as increased risk of exposure by undocumented farmworkers applying these pesticides daily, or heightened levels of PFAS contamination, commonly caused by agricultural runoff, in fish and wildlife species relied upon by subsistence communities. The group urged EPA to use the broad scope of its authority under FIFRA to remove PFAS that are actively in use from both the active and inert ingredient list.

## CLEAN AIR AND CLIMATE

### EXPANSION OF OREGON'S VEHICLE INSPECTION PROGRAM

This fall semester, the Air and Climate team is continuing the work of previous years by addressing diesel pollution in Oregon. Oregon currently addresses diesel emissions through its vehicle inspection program (VIP), but for outdated reasons diesel vehicles over 8,500 lbs are exempt from testing. Previous NEDC volunteers began research which demonstrated that the Oregon Department of Environmental Quality (DEQ) has the authority and ability to include these vehicles within the program. The Air and Climate group intends to petition DEQ to expand the program. Our volunteers are focused on conducting the necessary research to bolster our petition and to begin drafting a petition to DEQ this spring.

## PUBLIC LANDS AND WILDLIFE

### LIVESTOCK GRAZING IN PNW NATIONAL FORESTS

The overarching goal of this project is to understand and assess the impacts of livestock grazing on threatened steelhead and bull trout in Eastern Oregon. This project began in the spring of 2022 when students worked with attorneys at the Center for Biological Diversity to submit FOIA requests to the US Forest Service. These requests sought all documents related to grazing permits granted in the Umatilla, Ochoco, Wallowa-Whitman, and Malheur National Forests. NEDC began receiving these documents this fall, and student volunteers are now working to sift through them (in addition to some good old fashion Google-sleuthing) to find relevant biological assessments (BA), biological opinions (BiOp), and any other noteworthy information. Once the relevant BAs and BiOps have been located, students will be comparing their current iterations to previous versions to determine if the Forest Service has made any substantial changes that may be affecting threatened steelhead and bull trout. Several other groups of student volunteers are working on separate facets of this project. One such project includes research into possible Wild & Scenic River designations for the rivers and streams that make up steelhead and bull trout critical habitat. This has been quite a large undertaking, but, with almost 30 eager volunteers, a project that could have been daunting has turned into a wide array of opportunities for engagement. Students, many in their first year, are getting involved, learning the nuances of administrative procedure and various environmental laws, and are excited to continue volunteering with NEDC throughout the rest of their law school careers.

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*NEDC Staff, L-R: Legal Fellow Mary Stites, Law Clerk Eve Goldman, Bookkeeper Karen Russell, Executive Director Jonah Sandford*

We are so grateful for the incredible community around this organization, and can't wait to celebrate with you in 2023! Keep an eye on our website and email notifications for details on these upcoming NEDC events:

**TEAM NEDC ROAD RACE**  
MARCH 2023

**PEDAL PURSUIT**  
MAY 2023

**WESTWIND**  
SEPTEMBER 15-17, 2023