



NORTHWEST DEFENSE

The Newsletter of the Northwest
Environmental Defense Center

WINTER 2023

Photo: Bureau of Land Management

NEDC LAUNCHES NEW LAWSUIT TO PROTECT SALMON AND ORCAS FROM HARMFUL FLOODPLAIN DEVELOPMENT

This summer, NEDC and our allies filed a new lawsuit against the Federal Emergency Management Agency over its failure to protect threatened floodplain-dependent salmon, steelhead, and orcas in Oregon, all of which are protected under the Endangered Species Act.

FEMA's National Flood Insurance Program ("NFIP") provides taxpayer-subsidized flood insurance for structures in high-hazard, flood-prone areas that private insurers won't cover. The program is intended to provide federal flood insurance and reduce loss of life and property to floods by improving floodplain management. But despite its intent, the program has ended up increasing development in floodplains, placed people in harm's way, destroyed valuable habitat for endangered species, and left taxpayers with an ever-growing bill to cover flood damage. The program is \$22 billion in debt, and in 2022 taxpayers paid more than \$280 million in interest on that debt.

NEDC's new lawsuit follows a 2009 case brought by NEDC and our allies, regarding FEMA's failure to consult with the National Marine Fisheries Service on the NFIP's impacts to Endangered Species Act-listed species. That case led to a settlement agreement requiring formal ESA consultation between FEMA and NMFS, and the resulting Biological Opinion was released in April 2016.

NMFS concluded in its 2016 BiOp that FEMA's implementation of the insurance program in Oregon jeopardized the survival and recovery of protected species—including sixteen salmonid species, the southern eulachon, and the salmonid-dependent Southern Resident orca—through poor floodplain management and by encouraging development in floodplains. This rare "jeopardy opinion" underscored the severity of the program's harm to imperiled species.

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The BiOp recommended several changes to the NFIP to comply with the ESA, including updating flood maps, developing new criteria to limit floodplain development and more fully mitigate harm when development does occur, and improving reporting and enforcement. FEMA has failed to make these changes, and this failure is at the heart of the new lawsuit.

According to NEDC's legal fellow Mary Stites, in the 2016 BiOp "NMFS articulated a clear path forward for the NFIP

that is mutually beneficial to species and communities. It is critical that FEMA follow that path. We should not be incentivizing floodplain development that harms ecosystems, nor should we be subsidizing development that exposes communities to severe flooding events." And according to Mary, "implementation of NMFS' recommended measures is crucial to protect threatened species and to promote climate resiliency."

Our coalition in this case includes NEDC, Center for Biological Diversity, Willamette Riverkeeper, and The Conservation Angler.



Mary Stites, Legal Fellow

MEET NEDC'S LEGAL FELLOW

Mary Stites graduated from Lewis & Clark Law School in 2022 and became NEDC's Legal Fellow that summer. Now entering the second year of her fellowship, Mary played a central role in NEDC's recent advocacy, and we're thrilled to have her on board. *NEDC Executive Director Jonah Sandford* sat down with Mary recently to discuss her path to NEDC and her vision for the coming year.

You grew up in Texas and moved to Portland for law school. What brought you to the Pacific Northwest, and what drives you to protect this part of the country?

I moved to Portland specifically for the environmental law

program at Lewis & Clark. I had never been west of Salt Lake City when I signed my lease. I quickly fell in love with the landscape—the huge Douglas-firs, the Columbia River Gorge, the high desert of Central Oregon—I had never seen anything like it. There is such immense ecological and cultural value in this region and incredible communities of people that deserve to have these spaces protected.

As a law student, how did your experience with NEDC inform your thinking about a career in environmental law?

NEDC was my first exposure to what environmental law looked like in practice. It gave me a great deal of practical experience, but also impressed on me just how many types of work you can do in this space: you can challenge Clean

Water Act Permits, fight for a just transition, work on improving air quality, or advocate for reform of our industrial agriculture system. This was incredibly eye-opening, inspiring and empowering to learn that there are so many ways to utilize our advocacy skills.

Have you enjoyed mentoring students in your new role?

It is one of my favorite parts of my job. As someone who came to Lewis & Clark with no real understanding of how I could succeed in this field, I learned so much from many accomplished people. I hope to provide that kind of support to others because it means so much to me. Working with students with fresh, intersectional, and thoughtful ideas is also incredibly energizing. Working with students makes me hopeful for brighter days ahead.

In your first year as NEDC's Legal Fellow, you've taken the lead on several new projects. What issues are a top priority for you at the moment?

I have the privilege of working on stormwater issues and have spent much time working on our challenge to Ross Island Sand & Gravel's new Water Quality Certification, along with our lawsuit seeking to implement reforms to the National Flood Insurance Program. While these issues differ in their legal and factual contexts, I think they all pres-

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Photo: Human Access Project

NEDC LAWSUIT SEEKS TO PROTECT WATER QUALITY IN ROSS ISLAND LAGOON

This spring, NEDC filed a new lawsuit against the Oregon Department of Environmental Quality in an effort to protect water quality in the Willamette River and Ross Island lagoon—a critically important location for fish, wildlife, and recreation in the heart of Portland.

From 1926-2001, Ross Island Sand and Gravel Co. mined the Ross Island lagoon. These mining activities significantly degraded the island and lagoon habitat. Since 1979 RISG has been required to perform restoration activities at the site—including the re-creation of upland forest, wetlands, and shallow water habitat important for threatened salmon and steelhead. Reclamation progress has slowed in recent years, and now, over 40 years since reclamation activities began, it is unclear when these activities will be completed. In the meantime, water quality in the lagoon is dangerous for salmon, steelhead, and other sensitive aquatic species.

The primary driver of these risks for aquatic species is a Harmful Algal Bloom, which has unfortunately been occurring more frequently in the lagoon in summertime. HABs thrive when three characteristics are found in a water body: warm temperature, nitrogen, and little to no water circulation—all conditions occurring at Ross Island Lagoon.

Because the reclamation activities involve depositing large amounts of fill material in the Willamette River, RISG must obtain a Clean Water Act permit from the U.S. Army Corps of Engineers to perform the work. A necessary component of this re-licensing process is obtaining a certification from Oregon DEQ (known as a “§ 401 Certification”) that these operations will comply with all applicable state water quality standards.

In October 2022, DEQ issued this §401 certification, despite significant concern from NEDC and other local conservation groups. And this spring, NEDC filed a lawsuit challenging the certification. The lawsuit argues that DEQ’s certification must include more robust conditions to ensure reclamation activities do not further degrade water quality in the lagoon.

In the lawsuit, NEDC points to several water quality parameters that are impacted by reclamation activities, including dangerously high temperatures,

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Photo: Google Earth

NEDC RAISES AIR QUALITY CONCERNS AROUND INTEL EXPANSION

This summer, Intel submitted plans to Oregon DEQ for a massive proposed expansion of its two semiconductor manufacturing facilities in Washington County. If approved, this expansion will significantly increase Intel's chip production capacity and its ability to develop new technologies. The State of Oregon has committed over \$100 million in public funding to incentivize Intel's new development.

This proposed expansion would also dramatically increase air pollution at Intel's Hillsboro and Aloha campuses. Intel's air quality permit application proposes a 110% increase in greenhouse gas emissions, making Intel's facilities the largest source of GHG emissions in Oregon. The plans also call for sharp increases in particulate matter, carbon monoxide, and nitrogen oxide emissions.

It is critical that environmental advocates and Washington County communities present a strong voice to ensure these air emissions are minimized and that public health is protected at Intel's facilities. NEDC and our partners at Neighbors for Clean Air have been leading this charge for years. In 2013, a Clean Air Act lawsuit led to an agreement with Intel, resulting in new monitoring and testing at the facilities, new health risk assessments, and new public processes for impacted communities—all designed to reduce dangerous air emissions.

Now, NEDC and NCA are leading the charge again, working with impacted neighborhoods and air quality experts to review Intel's permit applications carefully. Before any new air permit is issued, Intel and DEQ must perform complete and adequate analyses of Intel's new emissions. This must include accurate modeling to ensure compliance with health-based air quality standards, a careful analysis of the new emissions' impact on the surrounding communities, and commitments to install the most effective pollution control equipment.

Oregon is allocating vast amounts of public funding to boost the state's semiconductor industry. As new projects like Intel's take advantage of these taxpayer-funded financial incentives, NEDC and our partners will work to ensure that air quality, public health, and climate impacts are not sacrificed for new economic development.

(Meet NEDC's Legal Fellow...Continued from page 2)

ent opportunities to boost community while promoting ecological resilience. As climate change persists, I try to prioritize issues that allow NEDC to advocate for both—making sure our Willamette River is safe to swim in during persistent heat waves or our floodplains can withstand flooding events.

You gave a presentation at NEDC's Westwind retreat in September. How would you describe the community that has been built around this organization over the last 50+ years?

The NEDC community is a tangible reminder that we have so much to be hopeful for. Rarely do you get to sit on a beach surrounded by incredibly intelligent and inspiring people. Seeing multiple generations of advocates in one place, along with a new group of folks learning the ropes, is something special. I have spent these past few years in awe of those around me, and it is quite a privilege to join this community and continue to advocate for the people and the places in the Pacific Northwest.

(NEDC Lawsuit Seeks to Protect Water Quality In Ross Island Lagoon...Continued from page 3)

increased turbidity, and the presence of Harmful Algal Blooms. DEQ has failed to ensure, through its certification, that RISG will comply with these important standards.

It's important that reclamation activities in this invaluable habitat are completed quickly and successfully, but we cannot sacrifice water quality while the restoration activities are ongoing. DEQ has a key opportunity here to throw a lifeline to threatened salmon and steelhead, and make sure that the restoration work doesn't further degrade this sensitive area.

NEDC is represented in this case by the Law Office of Karl Anuta, and by NEDC Legal Fellow Mary Stites.

VICTORY FOR MCKENZIE RIVER WATER QUALITY!

NEDC has advocated for water quality compliance at Oregon's many state-operated fish hatcheries for years. Without proper management, these hatcheries can discharge dangerously high temperatures and other toxic pollution to the state's most ecologically important rivers. This work took a significant step forward this year, as NEDC and our partners successfully challenged new water quality permits for two hatcheries on Oregon's McKenzie River.

The McKenzie is home to several important native species, including threatened bull trout and Spring Chinook salmon, who rely on the river's cold, clean water. Unfortunately, the Leaburg and McKenzie hatcheries have for years been discharging water to the McKenzie that is too warm for fish. Despite knowing this, Oregon DEQ issued new water quality Permits that effectively would have allowed these facilities to continue these harmful discharges many years into the future.



Photo: Rick Obst

This year, NEDC and our allies, The Conservation Angler and Willamette Riverkeeper, challenged those new Permits. In November we got the great news: due to that lawsuit, DEQ has proposed to withdraw the unlawful Permits and has issued new draft Permits for public comment. The new Permits would forbid the hatcheries from discharging any heat to this sensitive aquatic ecosystem. NEDC will monitor this situation closely in the coming year to ensure the new Permits are as protective as possible and that these hatcheries comply with the new restrictions.

Thanks to Crag Law Center and the Law Office of Karl G. Anuta for their outstanding representation in this important case!



Photos: Columbia Slough Watershed Council

NEDC LAWSUIT SETTLEMENTS FUND COLUMBIA SLOUGH RESTORATION

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.

This year, NEDC stormwater enforcement actions have helped fund major restoration projects on Portland's Columbia Slough—an urban waterway with enormous po-

tential for wildlife habitat and recreation. Over the coming year, the Columbia Slough Watershed Council will use funds from two separate NEDC settlement agreements to undertake work designed to enhance habitat and improve water quality on the Slough. This work will include invasive species removal, protection of mature tree canopies, and native plant and tree installation. According to CSWC Stewardship Director Max Samuelson, "This support from NEDC will make a world of difference in the Columbia Slough by bringing critical habitat and water quality enhancements directly to the places in the watershed impacted by polluted stormwater runoff." We're thrilled to support this important work through our Clean Water Act litigation.

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 2023-24 academic year has gotten off to a great start—here are a few highlights.

FOOD AND AGRICULTURE

CAFO LEGISLATION

This spring, the Food & Agriculture Group made important contributions to the debate around Oregon Senate Bill 85, a law intended to reduce environmental impacts from Confined Agricultural Feeding Operations (CAFOs) in the state. Food & Ag Group members submitted written and oral testimony to the Oregon Legislature, voicing their support and concerns with the proposed bill. The bill originally called for a moratorium on new CAFO permits until the Oregon Department of Agriculture and the Oregon Department of Environmental Quality understood the environmental impacts of CAFOs. Unfortunately, while the passed law still directs the agencies to understand CAFO impacts, the permitting restrictions were significantly watered down. The Food and Ag Group's continuing efforts related to Senate Bill 85 are directed toward ensuring the effective implementation of the law by ODA and ODEQ. In the coming year, group members will participate in public meetings with the agencies and submit detailed public comments on proposed agency actions.

CLEAN AIR AND CLIMATE

WAREHOUSE FIRE CLEAN-UP

This fall, the Clean Air and Climate Group collaborated with Crag Law Center to review public records related to Oregon DEQ's clean-up response to a warehouse fire in Portland's Argay Terrace neighborhood. The fire occurred as Argay Terrace residents have been urging regulators to reconsider approvals for a planned Prologis freight distribution warehouse at the site, which is located across the street from Parkrose High School and Parkrose Middle School. A new freight warehouse would bring increased truck traffic and air pollution to a neighborhood already burdened with several warehouses and poor air quality. NEDC's work on this project is intended to hold Prologis accountable for its impacts on the neighborhood, including significant ash and debris from the fire, and to ensure DEQ's clean-up work protects public health and incorporates environmental justice perspectives.



Photos: Karen Russell

ENVIRONMENTAL JUSTICE

The Environmental Justice Group has worked on a variety of issues this year. In the spring, students researched Washington's Climate Commitment Act. They wrote a memo discussing the legal implications of that bill in Washington, along with lessons for Oregon as it seeks to incorporate environmental justice concerns into agency decision-making. Another team collaborated with the Clean Air Group to draft comments on the Council for Environmental Quality's proposed NEPA Guidance revisions. Students also collaborated with Portland Community College's Climate Refugee Project.

This fall, the EJ Group is organizing a new project called the Equitable and Sustainable Transportation Initiative. Through this project, a collaboration with the Lewis & Clark Student Bar Association, students will work to reduce barriers to accessing the Lewis & Clark Campus and promote sustainable infrastructure. The EJ Group has also partnered with the NEDC Food and Agriculture Group to comment on EPA's proposed seed paint and pesticide registration rules.

CLEAN WATER

INDUSTRIAL STORMWATER PERMITTING

In September, the Clean Water Group submitted comments on Amalgamated Sugar Company's application for cover-

(Student Project Highlights...Continued from page 6)

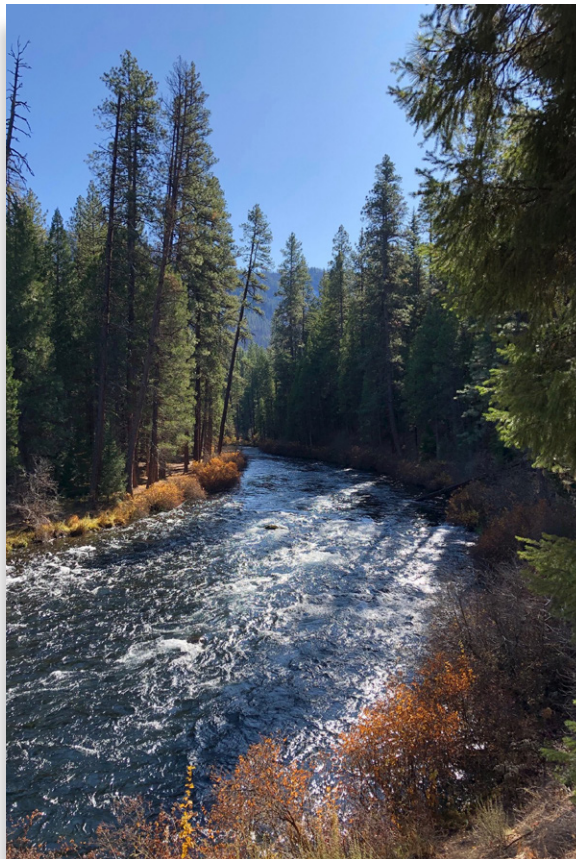
age under Oregon's Industrial Stormwater (1200-Z) General Permit. Amalgamated Sugar plans to discharge industrial stormwater to the Snake River in Eastern Oregon; students reviewed the facility's proposed Stormwater Pollution Control Plan (SWPCP) to ensure it satisfied all required elements of the 1200-Z permit. Students identified several missing or insufficient elements in the SWPCP and, in response to NEDC student comments, DEQ required Amalgamated Sugar to revise several elements of its SWPCP to provide the public with greater clarity and ensure protection of Snake River water quality and aquatic life.

PUBLIC LANDS AND WILDLIFE

WILD SALMON PROJECT

The Public Lands and Wildlife group has been building an active group of students monitoring new opportunities to advocate for wild salmon and steelhead. NEDC students completed two salmon-related projects this fall. First, students submitted comments on Jackson Middle School's plan to replace its sports fields with an artificial turf surface. The fields at issue sit atop Falling Creek, a tributary near the headwaters of Tryon Creek. The field replacement raised serious concerns because of the well-documented environmental impacts of artificial turf surfaces on watersheds, including increased toxic runoff and subsequent impacts to salmon and other aquatic life.

Next, students wrote a letter of support to NOAA Fisheries on behalf of the City of Portland, urging the federal agency to grant the city several million dollars needed to replace an impassable culvert on Highway 43, near the mouth of Tryon Creek. Replacing this 100-year-old culvert would open up critical spawning habitat and refugia for Steelhead, Coho, and Chinook salmon that migrate up the Willamette River. In this effort, students joined a two-decade campaign by committed citizens to restore salmonid access to Lewis & Clark's nearest salmon-bearing stream. Over the next six months, the salmon project will continue to engage in local and regional commenting and advocacy efforts.



Photos: Karen Russell

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NEDC COMMUNITY

Thank you to everyone who helped us celebrate this year! Events like NEDC's Pedal Pursuit and Westwind were reminders of the incredible community around this organization. Keep an eye on our website and email notifications for details on these and other upcoming events. We'll see you in 2024!



PEDAL PURSUIT
MAY 2024



WESTWIND
SEPTEMBER 13-15, 2024



NEDC STAFF

L-R: Legal Fellow Mary Stites, Bookkeeper Karen Russell, Law Clerk Maggie Baker, Executive Director Jonah Sandford

THANK YOU FOR YOUR SUPPORT!

NEDC can fight to protect the Pacific Northwest thanks to ongoing support of individuals like you. From protecting resources like the Willamette River, to ensuring clean air for all Oregonians, to mentoring the next generation of environmental advocates, your contributions help NEDC continue our mission.

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

Donate *before* December 31, 2023, 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

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