

Melissa Powers
Assistant Professor of Law
Lewis & Clark Law School

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Current Position

Lewis & Clark Law School, Assistant Professor of Law, Portland, OR, August 2008-Present
Courses: Energy Law, Climate Change and the Law, Administrative Law

Education

Northwestern School of Law of Lewis & Clark College Portland, OR
J.D., *magna cum laude*, May 2001, Environmental and Natural Resources Certificate
Class Rank: 4; Top 3%

Honors: Dean's Scholar List
Natural Resources Law Institute Leadership Award
Natural Resources Scholarship
Steven Manas Scholarship
Cornelius Honor Society
Best Oral Advocate, 1L Legal Analysis and Writing Course
Best Brief, 1L Legal Analysis and Writing Course
Finalist, National Environmental Moot Court Competition

University of California at Berkeley Berkeley, CA
B.A., Environmental Sciences, December 1992

Additional Teaching Experience

Lewis & Clark Law School, Clinical Professor of Law, Pacific Environmental Advocacy Center,
Portland, OR, August 2003-April 2008

Primary Responsibility:

Clinical professor and staff attorney for the Pacific Environmental Advocacy Center (PEAC), the law school's environmental litigation clinic. Co-instructed weekly classes with other professors. Lead complex litigation in federal and state courts and administrative fora. Developed expertise in pollution control laws. Supervised students' work on active cases, developed student research and writing assignments, and conducted individual weekly student meetings to discuss legal issues and strategy.

Additional Teaching Responsibilities:

- *International Environmental Law* (fall semester 2008) - Survey course of major environmental treaties.
- *Climate Change and the Law* summer intensive course (2006, 2007, and 2008) - Two-week intensive course that discusses international and domestic legal developments regarding climate change. Co-taught with Professor Chris Wold in 2006.
- *Clean Water Act* summer intensive course (July 2004) - Two-week intensive introduction

- to substantive requirements of the federal Clean Water Act.
- *Environmental and Animal Moot Court* (2003-2007)- Coached and judged student practice rounds in the fall and spring semesters to prepare students for national competitions held each February. Accompanied students to national animal law moot court competition at Harvard Law School in 2006 and 2007. Co-taught with Professors Craig Johnston, Don Large, and Allison LaPlante.
- *Introduction to Environmental Law and Policy* (spring semester 2005) - Undergraduate class introducing students to several federal environmental laws and basic legal analysis and writing.

University of Maine School of Law, Visiting Professor, Portland, ME, January 2007-May 2007
Taught environmental law survey course and coastal zone law to second and third-year law students. Advised 5 student papers.

University of Trento, Visiting Professor, Trento, Italy, May 2008
Taught undergraduate and graduate students about international and domestic legal approaches to addressing climate change.

Professional Experience

Western Environmental Law Center, Attorney, Eugene OR, July 2001-July 2003
Litigated environmental cases on behalf of environmental organizations and grassroots groups. Primarily focused on Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act. Supervised University of Oregon students in environmental litigation clinic.

Lewis & Clark College, Assistant Instructor, Environmental Law and Policy, Portland, OR, Jan. 2003-May 2003
Assisted environmental studies professor with organizing and teaching undergraduate seminar. Taught classes introducing students to environmental law and the Northwest Forest Plan. Created legal research problems. Edited student papers. Developed and graded final exam.

Northwest Environmental Defense Center, Co-Student Director and Law Clerk, Portland, OR, June 1999-May 2001
Taught basics of Clean Water Act to first-year law students, prepared litigation materials, researched and wrote litigation memoranda and documents, organized student volunteers, performed administrative and organizational duties, participated in board meetings and strategy sessions.

Lewis & Clark Law School, Research Fellow for Professor Michael Blumm, Portland, OR, July 1999-May 2001
Assisted Professor Blumm in writing a book (*Sacrificing the Salmon*) about the history and current status of salmon law in the Pacific Northwest. Researched the Pacific Salmon Treaty, hatchery production, and other subjects, and prepared memoranda. Edited various chapters.

Legal Writing Program, Lewis & Clark Law School, Teaching Assistant, Portland, OR, Aug. 1999-May 2000
Provided peer guidance to first-year law students. Edited papers and outlines. Helped students develop

and improve legal writing and research skills. Created hypothetical problems upon which students based their research and writing.

Earthjustice Legal Defense Fund, Legal Intern, Seattle, WA, June 2000-August 2000

Researched legal questions and wrote memoranda in preparation for litigation. Participated in strategy sessions and client meetings. Focused on the Endangered Species Act and Clean Water Act.

Youth Instructor, Various Organizations, Oregon and Washington, 1995-2000

Led teenagers in conservation work, wilderness travel, and environmental education. Worked with Outward Bound, Northwest Youth Corps, and Wilderness Volunteer Corps.

Representative Cases

- *Southeast Alaska Conservation Council v. United States Army Corps of Engineers*, 486 F.3d 638 (9th Cir. 2007) (authored amicus brief) - Successful challenge to Clean Water Act Section 404 permit that would have allowed company to fill a subalpine lake in the Tongass National Forest with gold mining wastes.
- *Safe Food and Fertilizer v. Environmental Protection Agency*, 350 F.3d 1263 (D.C. Cir. 2003), *reh'r'g granted*, 365 F.3d 46 (D.C. Cir. 2004) - Partially successful challenge to Environmental Protection Agency regulation promulgated under Resource Conservation and Recovery Act exempting hazardous wastes from regulation where such wastes are recycled into zinc-bearing fertilizers. Court upheld exemption but remanded for further agency explanation of certain findings.
- *Headwaters v. Bureau of Land Management and Umpqua Watersheds v. United States Forest Service*, 2002 WL 32124401 (9th Cir. May 28, 2003) - Partially successful appeal of district court cases. Ninth Circuit held that *res judicata* did not bar challenges to certain timber sales that were not previously challenged in prior lawsuit while finding *res judicata* barred challenges to other timber sales.
- *Northwest Environmental Advocates v. Environmental Protection Agency*, 2005 WL 756614 (N.D. Cal. Mar. 30, 2005) and 2006 WL 2669042 (N.D. Cal. Sept. 18, 2006)- Successful challenge to EPA's denial of a petition to repeal a regulation that exempts ships' discharges from the Clean Water Act's Section 402 permit requirements. Prevailed on summary judgment in March, 2005, and received favorable remedial order in September, 2006. Case is currently on appeal before the Ninth Circuit Court of Appeals.
- *Hells Canyon Preservation Council v. Haines*, 2006 WL 2252554 (D. Or. Aug. 4, 2006) - Successful challenge to Forest Service's authorization of 49 gold mining operations within the North Fork Burnt River in the Wallowa-Whitman National Forest in northeast Oregon. Received favorable summary judgment ruling on claims brought under the Clean Water Act and the National Forest Management Act. Case establishes that federal land management agencies must comply with Clean Water Act Section 401 prior to authorizing activities that will affect water quality.
- *Northwest Environmental Defense Center v. Owens Corning Corp.*, 434 F.Supp.2d 957 (D. Or. 2006) - Successful challenge to Owens Corning Corporation's unlawful construction of a major emitting facility in violation of the Clean Air Act. Court held that citizens have Article III standing to challenge actions that will contribute to global harms, such as climate change and ozone depletion.

- *Northwest Steelheaders v. Simantel*, 199 Or. App. 471 (Or. App. 2005), *rev. denied*, 339 Or. 407 (Or. 2005), *cert. denied*, *Grover v. Northwest Steelheaders*, 547 U.S. 1003 (2006) - Successfully defended state trial court ruling that certain stretches of the John Day River are navigable-in-fact and that beds and banks of the river are therefore owned by the State of Oregon.

Publications

CLIMATE CHANGE AND THE LAW (co-authored with Professor David Hunter and Professor Chris Wold) (forthcoming 2009)

Crimes Against the Environment, 2004 Update (2004) (authored Chapters 4 and 5; Professor Susan Mandiberg authored the remaining chapters).

Avoiding Dam Breaching Through Offsite Mitigation: NMFS's 2000 Biological Opinion on the Columbia Basin Hydroelectric Operations, 32 *Environmental Law* 241 (2002) (co-authored with Michael Blumm).

The Spirit of the Salmon: How the Tribal Restoration Plan Could Restore Columbia Basin Salmon, 30 *Environmental Law* 867 (2000).

Works in Progress

Beyond Cap and Trade: Embracing Technology-Based Standards in the Development of an Effective, Efficient, and Enforceable Climate Change Law.

Coal Mining, Gold Mining, and the Clean Water Act's Regulation of "Fill Material": How the "Fill Rule" Impermissibly Blurs the Lines Between the Clean Water Act's Permitting Programs.

Presentations and Lectures

Scholarly Presentations:

IUCN Academy of Law Colloquium, *Beyond Cap and Trade: Embracing Technology-Based Standards in the Development of an Effective, Efficient, and Enforceable Climate Change Law* (Paraty, Brazil 2007).

Faculty Scholarship Exchange, University of Maine School of Law, *Down From the Mountain: The Uncertain Future of the Mountaintop Mining 'Fill Rule' in Light of Southeast Alaska Conservation Council v. United State Army Corps of Engineers* (Portland, ME 2007)

IUCN Academy of Law Colloquium, *Mechanisms for Public Involvement in Environmental Compliance Enforcement* (White Plains, NY 2006).

IUCN Academy of Law Colloquium, *Lessons from the Montreal Protocol: How the Successes and Failures of the Treaty Governing Ozone Depleting Substances May Inform Future International Climate Change Agreements* (Sydney, Australia, 2005).

Other Presentations:

River Network River Rally, *Getting Federal Agencies to Comply with the Clean Water Act* (Stevenson, WA 2007).

River Network River Rally, *Effective Public Commenting on National Pollutant Discharge Elimination System Permits* (Stevenson, WA 2007).

Public Interest Environmental Law Conference, *Lowering the Bar on Clean Water* (Eugene, OR 2006).

Environmental Law Education Center, Continuing Legal Education, *Environmental Enforcement* (Portland, OR 2005).

Multnomah Bar Association, Continuing Legal Education, *Citizen Suits* (Portland, OR 2005).

Public Interest Environmental Law Conference, *Clean Water Act Year in Review* (Eugene, OR 2005).

Public Interest Environmental Law Conference, *Clean Water Act Workshop* (Eugene, OR 2005).

Multnomah Bar Association, Continuing Legal Education, *Norden Revisited* (Portland, OR 2005).

Public Interest Environmental Law Conference, *Stormwater Pollution* (Eugene, OR 2004).

Public Interest Environmental Law Conference, *Clean Water Act Year in Review* (Eugene, OR 2003).

Public Interests Environmental Law Conference, *Hazardous Wastes in Fertilizers* (Eugene, OR 2003).

Animal Law Conference, Lewis & Clark Law School, *Using Federal Laws to Protect Imperiled Species* (Portland, OR 2002).

Associations and Memberships

Member, Oregon State Bar

Admitted, United States District Court for the District of Oregon; United States Court of Appeals for the Ninth and District of Columbia Circuits; United States Supreme Court

Board Member, Northwest Environmental Defense Center, a local non-profit environmental organization; Pacific Environmental Advocacy Center