

An aerial photograph of a mountain range. The peaks are covered in snow, with patches of snow melting on the slopes. The mountains are densely forested with green trees. A river winds through the forest, forming a large loop. The sky is cloudy.

# **WEST COAST ENVIRONMENTAL LAW**

**ANNUAL REPORT 2010-11**

# Letter from Executive Director & President



JESSICA CLOGG  
Executive Director and Senior  
Counsel



MARK UNDERHILL  
President

One of the few environmental issues to get significant national play this past year was the threat of tar sands oil tanker and pipeline spills. From public legal education initiatives across northern BC, to the hallways of Parliament, since 2004 West Coast's team of environmental law strategists and analysts has played a key role in efforts to secure a legislated tanker ban on BC's northern coast, and in the closely related opposition to the Enbridge Northern Gateway Pipelines project that would pump crude oil across northern BC from Alberta to the coast.

One of the highlights of that campaign occurred on December 2<sup>nd</sup>, 2010 when 62 First Nations with territory in the Fraser River watershed declared their opposition to the Enbridge Northern Pipelines project as an exercise of their own inherent authority and jurisdiction as nations. From the resulting high level meetings with corporate board members and elected officials to the extensive media coverage, the "Save the Fraser" Declaration demonstrated the powerful potential of West Coast's Indigenous Environmental Law project. Through this project, made possible through the support of a wide range of funders and partners, we continue to work closely with First Nations partners and allies to develop and implement strategies grounded in their own laws and in Canadian Constitutional law.

As this example demonstrates, environmental law is not all about courtroom drama, with the fate of an environmentally sensitive area hanging on a judge's interpretation of an arcane point of law. Courtroom battles are important, but even more important is the effective use of the law in ways that protect the environment while avoiding expensive litigation and its drain on other community resources.

West Coast Environmental Law's role is two-fold. First, we help people who are seeking to protect the environment to understand, and use, their legal options. This includes providing people information on their rights, helping them to get legal support when they need it, and empowering them to make their voice heard.



*West Coast has a unique approach that uses hard-hitting and in-depth legal research and analysis to engage citizens, catalyze coalitions, mobilize allies, and influence decision-makers to protect the environment and build stronger environmental laws.*



And second, we propose and push for new environmental laws or stronger existing ones that better protect our environment. West Coast has a unique approach that uses hard-hitting and in-depth legal research and analysis to engage citizens, catalyze coalitions, mobilize allies, and influence decision-makers to protect the environment and build stronger environmental laws.

In addition to our legal role in the Enbridge Pipelines and Oil Tankers campaigns, in this report you will learn about some of the accomplishments of West Coast Environmental Law over our 2010-2011 fiscal year. In addition to our legal role in the Enbridge Pipeline and Oil Tankers campaigns, we are:

- developing ground-breaking resources to help local governments deal with the realities of global warming;
- providing legal support to communities that are seeking to protect caribou, address the health impacts of the Oil and Gas industry, and keep their air clean from pollution from an Asphalt Plant, along with many other important files funded through our Environmental Legal Aid Program;
- proposing laws that advance the cause of responsibly developed renewable energy by ensuring that controversial independent power projects are not allowed to compromise our environment; and,
- pressing the Province to ensure that its emerging laws around carbon offsets work to protect our forests and natural environment, and don't end up inadvertently subsidizing business as usual and polluters.

We continue to build a strong and growing community of British Columbians who believe that the best way to protect the environment is through the law. We're proud of our work, and hope you enjoy reading about it in this report.



# Environmental Legal Aid

## A HELPING LEGAL HAND

Often a simple telephone conversation with a lawyer, or a written letter on West Coast's letterhead, makes a big difference. Our staff help members of the public seeking to protect the environment navigate complicated environmental laws and government bureaucracy. A letter from our staff lawyer, Andrew Gage, recently convinced Whistler's Council to reject plans to legalize an asphalt plant near a new residential neighbourhood, and instead to initiate enforcement action against the plant's owners.

But in cases where a bit more help is required, we provide funding for communities with an environmental conflict to get legal help from private lawyers—often in their own communities—through our Environmental Dispute Resolution Fund (EDRF). In the past year the EDRF funded many files, resulting in several environmental victories, including:

- The West Moberly First Nation in their ongoing fight to protect the Burnt Pine caribou herd from mining. Just recently the BC Court of Appeal suspended exploration rights in the caribou herd's habitat pending government consultations with the First Nation.
- The Peace Environment and Safety Trustees (PESTS) in their requests for a public inquiry into the health impacts of oil and gas operations in the Peace River region. Premier Christy Clark and Health Minister Michael De Jong have now publicly committed to such an inquiry.
- The Mount Newton Neighbourhood Association in their legal challenge of a water line which would have facilitated development in lands zoned for rural development in Central Saanich. The District of Central Saanich settled the case, agreeing to repeal the bylaw authorizing the water line.

“I am convinced that without the assistance of Andrew Gage and West Coast Environmental Law, we would have lost this case. The Asphalt plant would be operating forever on the new area site.”

Iona Lake, resident of Cheakamus Crossing, Whistler

# Keeping our Coasts Free from Oil Spills

The federal environmental assessment and regulatory review for the Enbridge Northern Gateway Pipelines swung into motion in 2010. West Coast provided legal assistance to numerous First Nations and other communities across northern BC, so that they can effectively make their voices heard in this complicated process. If built the oil pipeline will cross more than 1,000 rivers and streams, and an oil spill would affect countless communities, including those living both up and downstream of the pipeline crossings. Through our work for these communities, West Coast has pressed for improvements to the environmental assessment process and has raised issues such as the broader cumulative impacts of introducing oil tanker traffic to the north coast for the first time, the impacts on water and land, and the potentially negative impact of the project on global climate change. So far, the federal panel has agreed to review the greenhouse gas emissions of the proposed pipeline's operations.

We were honoured in 2010 to be asked to assist a multitude of First Nations across British Columbia—including the Fraser River watershed—as they made decisions about the proposed Enbridge pipeline. In 2010, the number of First Nations who had used their laws to make decisions about Enbridge quadrupled from about 20 to more than 80. A demonstration by the Yinka Dene Alliance outside of Enbridge's Annual General Meeting prompted former Environmental Minister, Jim Prentice, to observe that "the reality on the ground is that the constitutional and legal position of [these] First Nations is very strong." The use of Indigenous laws to make decisions about land and water in BC made national and global headlines and companies wishing to build large and small resource developments in BC—and governments—will increasingly need to recognize the laws and decision-making authority of First Nations.

# Law Reform

## **NO TANKERS ON BC'S NORTH COAST**

BC's north coast, its communities and its economy came as close as we've ever been to full, legal protection from oil tankers in 2010. Years of work by West Coast and a handful of close allies culminated in the passage of a motion through the House of Commons in support of a ban, and the introduction of a private member's bill setting out a tanker ban in the House of Commons, before the election was called.

Leading up to that moment, West Coast had been working tirelessly to gain support among MPs for a legislative tanker ban. In June 2010, the Liberal official opposition committed to a legislated tanker ban, joining the NDP in this commitment. In November, West Coast co-organized a delegation to Parliament Hill led by Coastal First Nations, who declared a tanker ban based in their Indigenous laws in March 2010. The delegation also included members of the wilderness tourism and commercial fishing industries. Days later, the historic but non-binding motion in favour of a tanker ban was passed by a majority of MPs in the House of Commons. The following week, the private member's bill was introduced into the House of Commons, and was about to go to a vote when the election was called—a vote we were likely to win.

Although the Bill was shelved with the federal election, West Coast will carry on this work until permanent, legal protection for the coast is achieved.

## **CLEAN, GREEN POWER FOR BC**

The BC government moved ahead with its "Clean Energy" agenda in 2010, hastily passing the *Clean Energy Act* and setting BC Hydro to work on a provincial plan for renewable electricity generation. While the new *Act* included a number of features that West Coast had recommended in 2009, the planning process it created fails to minimize the negative environmental impacts of new electricity generation. The province-wide planning process will give some, but inadequate, consideration to the environmental impacts of electricity developments.

West Coast published a critique of the *Clean Energy Act* and advocated for improvements to the proposed electricity planning process throughout the year. West Coast spoke as a keynote at a university conference on BC's electricity future, and on the cumulative impacts of electricity development at an electricity industry conference. At BC Hydro's invitation, we presented our position to northwest US electricity regulators and operators in Portland, Oregon. We also presented to First Nations and community members in northeastern BC on the weaknesses in the new *Act* and the implications for major hydro developments in that part of the province.

West Coast has been developing detailed legislative and policy proposals which press for an overhauled planning and assessment process for renewable electricity. This process is informed by ongoing discussions with both provincial and federal officials, and industry representatives, and consultation with local community members.

**“** *The Dialogue on Law Reform for Nature, Climate and Communities ... was an excellent event. The speakers were well informed and the format used provided a very engaging dialogue.* **”**

Dialogue attendee

## **OUR FORESTS AND CLIMATE CHANGE**

A key climate policy development in British Columbia last year was the Provincial Government’s Forest Carbon Offset Protocol. Under the Protocol, the value of living trees in removing and storing carbon from the earth’s atmosphere can be measured and quantified as “offset credits,” which can then be sold to companies or other organizations that emit greenhouse gases. West Coast was the only environmental organization invited to the government’s Technical Working Group to provide direct input into the Protocol’s drafting. We also played a lead role in subsequent stakeholder consultations about the draft Protocol. Our aim is to ensure that the Protocol will enable projects with real climate benefits, while safeguarding the environment and creating potential new revenue streams for First Nations, land trusts, communities and companies that support conservation and responsible forest practices.

Safeguarding nature and communities in light of climate change was also the theme of West Coast’s second event in our Dialogues for Legal Innovation Series, Law Reform for Nature, Climate and Communities. The Wosk Centre was packed on a rainy February evening with people wanting to hear eight thought leaders and stakeholders engage in a conversation about the way we need to evolve our laws to manage BC’s forests in this time of challenge and opportunity. We were honoured to have eminent botanist Dr. Richard Hebda from the Royal BC Museum, and Chief Siidok, Deborah Good, from the Gitanyow Hereditary Chiefs give opening presentations on the ecological and First Nations perspectives, along with West Coast’s Staff Counsel, Deborah Carlson, who outlined the legal issues and opportunities. The dialogue demonstrated a common ground among the expert panelists who represented the academic, First Nations, provincial government, industry, social justice and environmental communities, as well as a keen interest on the part of members of the public audience who attended from all across BC. This common vision continues to be a source of momentum for our work for forests and carbon law reform.

## **COMMUNITIES LIVING IN THE AGE OF CLIMATE CHANGE**

To lessen the impacts of climate change we need to continue to reduce our greenhouse gas emissions. That said, because of the amount of greenhouse gas emissions we have produced to date, living in the 21<sup>st</sup> century means adapting to a certain and significant level of climate change. For BC communities this will mean impacts such as rising sea levels, floods, seasonal water shortages, increased risk of forest fires, more frequent freeze-thaw cycles, and others, depending on where communities are located in the province. This past year, under the umbrella of a much larger program—the British Columbia Regional Adaptation Collaborative (RAC), funded by Natural Resources Canada and coordinated by the Fraser Basin Council—West Coast has been developing guidance materials for use by local governments in addressing climate change adaptation in their communities. We expect the guidance materials resulting from this multi-year RAC project to be publicly released in Spring 2012.

# Environmental Law Alert

2011 marks the second year of West Coast's Environmental Law Alert blog, which investigates and reports on emerging environmental law problems and issues that affect people in BC. Our Environmental Law Alerts have helped turn many environmental problems around in BC just by shining a needed spot-light on them:

- Our Alert demonstrating that 88% of responses to the province's consultations on cosmetic use of pesticides called for a ban of such uses (a fact conspicuously absent from the province's summary of the consultations) is helping the campaign in favour of a ban. Kathryn Seeley, Public Issues Director of the Canadian Cancer Society, BC & Yukon, explained: "[We] found West Coast's analysis so helpful that we used it in all of our written and in-person communications with politicians and government staff in the campaign to ban cosmetic pesticides in BC."
- A series of Alerts about the province's failure to enforce environmental laws was followed by the government overhauling the Conservation Officer Service to focus more closely on enforcement and in changing how enforcement data is reported.
- We have been informed that our Alerts on the controversial Prosperity mine, which would have destroyed Fish Lake and other fish habitat, have helped would-be investors see through Taseko Mine's claims about the environmental merits of the project.

“West Coast Environmental Law's [Environmental Law Alert] is frustratingly good. On more than a few occasions, I've been scooped by one of their postings.”

Sean Holman, Investigative Journalist, Public Eye On-line.



# Intern program/UBC Law Workshop



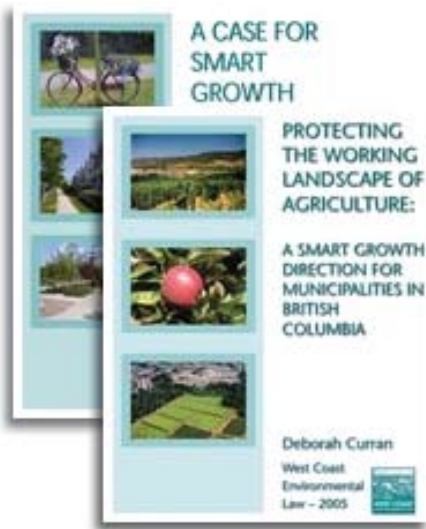
West Coast Summer 2010 interns with West Coast staff in Kitamaat Village, BC. Left to right: Josh Paterson, Staff Counsel; Jessica Clogg, Executive Director and Senior Counsel; Emma Hume, legal intern; Justin Basinger, summer intern; Servane Phillips, legal intern.

West Coast has always played an important role in helping to build the community of environmental lawyers in BC—legal advocates all over the province who can help people to protect the lands and waters that are important to us all—and our commitment to fostering the practice of progressive environmental law in BC starts right inside our own offices.

West Coast continues to expand our student and internship program because we want to help develop the skills of tomorrow's environmental lawyers. In 2010-2011, we more than doubled the size of our legal intern program to include five full time law students, and we hosted two students from Australia for several months in the winter. We also developed, with UBC's Faculty of Law, a pilot environmental law workshop course that saw a number of students join us in the Winter 2011 academic term. The Workshop is the first of its kind in Canada to focus on the field of environmental law reform, and an important new opportunity for law students to gain practical experience. Beyond law schools, we have hosted interns in communications, technology, and other disciplines.

West Coast is grateful to all of our students and interns, who increase our capacity, as a small group of non-profit environmental lawyers, to achieve environmental law reform and to protect the environment through the law.

# Publications



**SMART BY-LAWS GUIDE — STILL LEADING THE WAY**  
By popular demand, one of our most viewed electronic publications, the *Smart By-laws Guide*, has been re-launched on our website with a fresh new look. First released in 2004, the *Smart By-laws Guide* has been a resource for thousands of people, and remains the go-to resource for local and regional governments, consultants, community organizations and developers looking for tools to bring smart growth principles to life: how to use land more efficiently to stop urban sprawl, revitalize commercial centres, and maintain a working land base for agriculture. Growing interest in more liveable and efficient communities, and protecting and enhancing local food systems means that the solutions and case studies offered by the *Guide* are more timely than ever.



## BC GUIDE TO WATERSHED AND PLANNING

First written in 2003, we have updated this ground-breaking on-line resource. Readers can learn about which BC and Canadian environmental laws might be able to help protect their watersheds. The *Guide* explains which laws apply to which environmental issues, as well as providing a basic primer for members of the public seeking to influence government or the media.

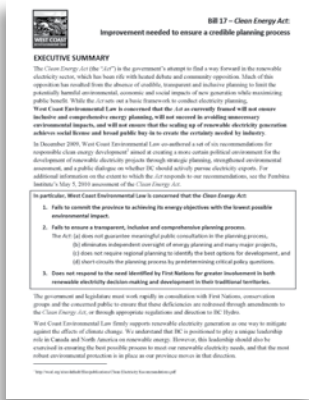
In keeping with the evolution of the internet, this latest version of the *Guide* is a "Wiki" — which any lawyer will be able to update and correct when it becomes dated. This format will allow for a broader community to own this important resource.



Thank you to West Coast Environmental Law for advocating for people, animals and nature—we are all inter-connected. Using the law is a powerful approach to bring lasting change in a socially recognizable way. Thank you for doing what you do!



## West Coast Supporter



## BILL 17— CLEAN ENERGY ACT BACKGROUNDER

The *Clean Energy Act* is the government's attempt to find a way forward in the renewable electricity sector, which has been rife with heated public debate and community opposition. Much of this opposition has resulted from the absence of credible, transparent and inclusive planning to limit the potentially harmful environmental, economic and social impacts of new generation while maximizing public benefit. While the *Act* set out a basic framework to conduct electricity planning, West Coast released a widely circulated backgrounder critiquing the *Act* because it fails to ensure inclusive and comprehensive energy planning and fails to ensure that renewable power developments avoid unnecessary environmental impacts.



## SITE C LEGAL BACKGROUNDER

The BC government renewed its commitment to the Site C Hydroelectric Dam in 2010. West Coast responded by providing detailed information to affected communities and First Nations about the process that the government will use to consider the new dam, what some of the weaknesses of the process are, and how community members can participate.



## ENBRIDGE BACKGROUNDER

West Coast has released a continuous series of short publications to help community members participate in and understand the government's process to consider the Enbridge Northern Gateway Pipelines and Tankers project. This included materials to help people who were preparing to speak at preliminary public hearings on the project. West Coast also released a Legal Backgrounder on the significance of the Coastal First Nations' declaration banning oil tankers in their north coast waters, which has been cited in media and others to explain the legal significance of the declaration, and the potential legal repercussions.

# West Coast People

West Coast is extremely fortunate to have expert, dedicated staff and board members; we are also incredibly fortunate to have these qualities in the indispensable volunteers, student interns, allies, and professionals in the broader legal community who are involved in our work. Their collaboration is crucial to achieve West Coast's role as BC's legal champion for the environment. We extend our deepest thanks to our many environmental champions and supporters.

## BOARD OF DIRECTORS

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Mahmoud Virani, Treasurer  
Lorene Oikawa, Secretary  
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Kat Hartwig  
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Lisa Matthaus

Nancy McHarg  
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Tracy Wachmann  
Nancy Hannum (to September 2010)  
Nancy Knight (to September 2010)  
Ardith Walkem (to September 2010)

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Darryl Walker

Passionate and knowledgeable lawyers representing equally passionate clients are the backbone of the Environmental Dispute Resolution Fund (EDRF). These dedicated advocates work for partial pro-bono fees on behalf of clients throughout the province, to stop environmental injustices and to give citizens a voice in protecting their communities and wild places. West Coast salutes the consummate professionals who worked on EDRF cases in 2010-2011:

David Aaron  
Bill Andrews  
Wendy Baker  
Glen Bell  
Scott Bernstein  
Jenny Biem  
Catherine Boies Parker  
Rebeka Breder  
Murray Browne  
Thomas Buri  
Gary Campo  
Carly Chunick  
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Krista Robertson  
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# Staff Team

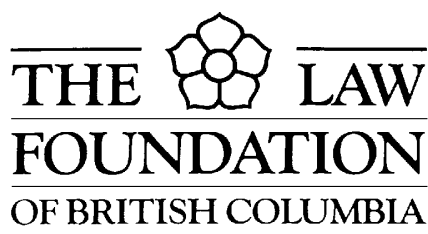


Back row left to right: Deborah Carlson, Staff Counsel; Todd Monge, EDRF Coordinator and Communications Manager; Andrew Gage, Staff Counsel and Acting Executive Director (from October 2010); Josh Paterson, Staff Counsel.

Front row left to right: Ceciline Goh, Office Administrator; Lucy Hough, Director of Development; Jeanette Ageson, Communications and Donor Relations Officer.

Absent: Jessica Clogg, Executive Director and Senior Counsel; Anna Beard, Donor Relations Officer (to August 2010); Alison Grose, Executive Assistant and Project Manager (to May 2010).

# Thank You



## **SUSTAINING PARTNER:**

### **THE LAW FOUNDATION OF BRITISH COLUMBIA**

The Law Foundation of BC has been West Coast Environmental Law's Sustaining Partner since 1974. The Law Foundation's funding enables us to work on our priority objectives, helps us to achieve success in all program areas, and most importantly, allows us to leverage additional funds from other granting agencies, companies and individuals.

## **FOUNDATIONS**

Program support from private, community and family foundations remains a crucial component of our overall funding. West Coast is honoured by the long-standing and diverse partnerships of our foundation funders. This past year, we were supported by foundations from across Canada and the United States.

Ashoka

The Bullitt Foundation

Catherine Donnelly Foundation

Doreen and Bernard Crook Fund

Eden Conservation Trust

glasswaters foundation

McLean Foundation

North Growth Foundation

Oak Foundation

The Real Estate Foundation of

British Columbia

Stewart Fund

Tar Sands Campaign Fund

Vancouver Foundation

WestWind Foundation

Wilburforce Foundation

Wosk Centre for Dialogue (Welch Fund)

YMCA Youth Eco-Internship Program

## **COMPANIES AND ORGANIZATIONS**

As we seek to diversify our funding, West Coast is increasingly looking towards socially and environmentally responsible companies and organizations to partner with us. This year we thank the following for their support:

British Columbia Government and Service Employees' Union

CNC Repair & Sales Inc.

Mountain Equipment Cooperative

Patagonia Environmental Grants Fund

## **PHOTO CREDITS**

Front cover photo, and photos on pages 2, 4, and 6 are courtesy of Andrew S. Wright/[www.cold-coast.com](http://www.cold-coast.com). Photo on page 12 is courtesy of Fabrice Grover/[www.fabricegroverphoto.com](http://www.fabricegroverphoto.com)

# Financials

## EXTRACTS FROM THE COMBINED STATEMENT OF REVENUE, GRANTS AND EXPENSES

### REVENUES

|                            | <b>For year ended<br/>April 30, 2011</b> | <b>For year ended<br/>April 30, 2010</b> |
|----------------------------|--|--|
| Law Foundation Grants      | 357,803                                  | 553,385                                  |
| Law Foundation EDRF Grants | 200,000                                  | 202,212                                  |
| Donations                  | 202,532                                  | 112,419                                  |
| Grants & Contracts Earned  | 374,926                                  | 362,364                                  |
| Miscellaneous              | 30,294                                   | 22,662                                   |
| <b>Total</b>               | <b>1,165,635</b>                         | <b>1,253,042</b>                         |

### GRANTS AND EXPENSES

|                                    |                  |                  |
|------------------------------------|------------------|------------------|
| Personnel Related                  | 537,298          | 725,969          |
| Accounting & Professional Services | 49,683           | 48,759           |
| Office Expenses                    | 148,264          | 144,820          |
| Amortization                       | 22,067           | 25,209           |
| EDRF Grants                        | 200,000          | 202,212          |
| Program Expenses                   | 74,840           | 86,247           |
| Fundraising                        | 4,606            | 5,832            |
| General                            | 4,775            | 7,657            |
| <b>Total</b>                       | <b>1,041,533</b> | <b>1,246,705</b> |
| Excess of revenue for the year     | 124,102          | 6,337            |

*Excerpt from the combined audited financial statements of West Coast Environmental Law Association, West Coast Environmental Law Research Foundation, and West Coast Environmental Dispute Resolution Fund Society. Full audited financial statements available upon request.*

West Coast Environmental Law is a non-profit group of environmental law strategists and analysts dedicated to safeguarding the environment through law. We believe in a just and sustainable society where people are empowered to protect the environment and where environmental protection is law. For almost 40 years we have played a role in shaping BC and Canada's most significant environmental laws, and have provided legal support to citizens, First Nations, and communities on practically every environmental issue imaginable.



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