

## Melissa Powers

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### 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

### Current Position

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

#### **Primary Responsibility:**

Clinical professor and staff attorney for the Pacific Environmental Advocacy Center (PEAC), the law school's environmental litigation clinic. Co-instruct weekly classes with other professors. Lead complex litigation in federal and state courts and administrative fora. Expertise in pollution control laws. Supervise students' work on active cases, develop student research and writing assignments, and conduct 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 and 2007) - 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)- Coach and judge 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.

### **Additional Teaching Experience**

**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 (forthcoming)  
Invited to teach 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'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**

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

*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).

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

## **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

**Committee Member**, Portland River Plan Committee, a citizen group charged with advising the City of Portland's Bureau of Planning as it develops a plan to revitalize the Willamette River

## References

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