

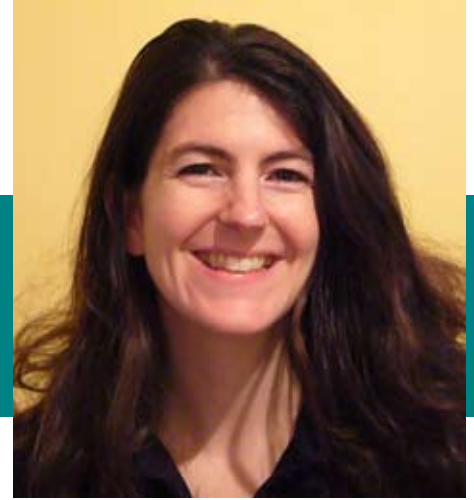


On the Ground

How the West Coast Environmental Dispute Resolution Fund has used the law to protect BC's environment for 20 years

By Andrew Gage, Dani Bryant and Emma Hume





Message from the ED

Legally binding measures to protect the environment are essential to ensure the health, safety and economic well-being of all citizens, today and for generations to come. West Coast not only works actively for strong environmental laws, but also provides a range of legal services to help other groups use the law to better protect the environment.

The Environmental Dispute Resolution Fund (EDRF) is the jewel in West Coast Environmental Law's (West Coast) Crown. The fund provides environmental legal aid for communities that find themselves wrestling with environmental problems. The value of the fund is obvious – having a lawyer or an expert in the right place, at the right time, can give the environment a fighting chance, and help ensure that citizens have a meaningful role in environmental decision-making.

But although the EDRF is easy to explain, we haven't always been very good at celebrating its considerable accomplishments. That's why this 20th Anniversary publication is so important – some of the victories discussed in here have never been fully celebrated. Others were huge, high profile wins, but the EDRF's role in funding the case was all but invisible.

The EDRF has won major environmental victories, and it has given a voice to people and communities who otherwise would not have been heard. We hope it will continue to do so for another 20 years – and beyond. We could not have accomplished this without the ongoing financial support of the Law Foundation of British Columbia to whom we express our sincere thanks.

The success of the fund depends on people knowing about us, and coming to us for help when they have environmental law needs. We need people who recognize the importance of the fund to talk about us – to ensure that this amazing service is used to its optimum. We also hope that you will consider supporting the West Coast's environmental legal aid work through a financial contribution.

Jessica Clogg,
Executive Director and Senior Counsel

Message from the Law Foundation

The Law Foundation of British Columbia is pleased to have been able to fund the Environmental Dispute Resolution Fund over the past 20 years.

As this publication demonstrates, environmental law does make a difference. We join West Coast Environmental Law in celebrating this remarkable community service.

Wayne Robertson, Executive Director
Law Foundation of British Columbia



Introduction

In 1989, West Coast Environmental Law submitted an application to the Law Foundation of British Columbia asking for \$60,000 to be used to fund environmental dispute resolution. Bill Andrews, then the Executive Director of West Coast, recalls:

[West Coast] discussed how we could expand our delivery of legal services, get out of Vancouver and meet regional needs ... [and] expand the public interest environmental bar in BC. ... It all came together with the idea of a fund that could pay for environmental help around the province, as it was needed.

We remain grateful to the Law Foundation for its leap of faith in making that first grant, as well as for its continued support over the past 20 years.

Bill's foresight and the Law Foundation's generosity have resulted in one of the most versatile and effective sources of environmental legal aid in the country. Celebrating its 20th anniversary, the fund continues to disburse \$192,000 each year to community groups and individuals who are struggling with environmental disputes. These funds allow clients to hire lawyers at a legal aid rate (it was \$50/hr until 2001, and has been \$80/hr since

then) or environmental experts to help protect their environment.

Since it began, the EDRF has granted more than \$4 million to more than 500 different projects. The focus of the fund has been to help British Columbians receive legal and expert support in protecting the environment. Where other groups have looked for precedent-setting legal victories, the EDRF has focused on achieving on-the-ground environmental results.

The people who come to us for help have often never hired a lawyer before, or filled out an application for funding. The EDRF's professional staff help them a) determine if they need a lawyer, b) find a lawyer, and c) submit an application. Once funded, EDRF staff continues to support both clients and lawyers – to answer questions about the fund, or to help with legal or political strategies.

Funding decisions are made by the EDRF Management Committee – possibly the hardest working committee of West Coast Environmental Law's Board. This Committee of volunteers represents a variety of legal and scientific expertise, and come from a range of professional backgrounds. They meet monthly to pool their collective wisdom and make the difficult decisions about which among the

many worthwhile funding requests to support.

As the following pages will demonstrate, the EDRF's hands-on and grassroots approach has resulted in the fund (through its history) being instrumental in a wide range of major victories – from striking down provincial fish farm laws to convincing MetroVancouver to commit to achieving zero waste.

In the pages that follow, these wins are organized by:

- Clean Water, Healthy Fish
- Clearing the air
- Climate Change/Green Energy
- Liveable Cities
- Pesticides and Toxins
- Parks and Protected Areas
- Sustainable Forestry and Land Use

In order to keep this 20th Anniversary summary to a manageable length, it's been necessary to limit the number of topics covered. Over its 20 year history, the EDRF has tackled just about every kind of environmental issue, but many of these have been rolled into one or more of the above topics for the purpose of this publication.

“I love my relationship with West Coast and exploit it shamelessly. I think West Coast is one of the best things going in the Canadian environmental scene. Activists in other provinces envy us.”

~ Delores Broten, Reach for Unbleached

Clean Water, Healthy Fish

Two recurring themes for the EDRF over the past two decades have concerned protection of fish and drinking water. British Columbians care passionately about their water, and the EDRF has helped them fight for it.

Early in the EDRF's history, the fund tackled a chronic problem of highly toxic dioxins being dumped into water by pulp mills around the province. West Coast initiated a province-wide campaign to ban dioxins that were poisoning shellfish and the aquatic environment, and through the EDRF, supported a wide range of regional environmental groups fighting pulp mill pollution. As a result of this campaign, in 1992, a new provincial regulation forced pulp mills to cut back on their dioxin levels dramatically.

Other EDRF files have focused on the risks of poorly designed septic systems, damage to fish habitat from boat traffic, and overuse of water resources. Water tends to be a cross-cutting issue, and the EDRF's efforts to protect drinking water from logging and toxins are discussed elsewhere in this report (pages 16 and 10, respectively).

Timeline of EDRF supported victories for Clean Water and Healthy Fish

2008-2009 – BC Fish Farm Laws Unconstitutional – Alexandra Morton convinced the BC Supreme Court that fish farms are fisheries, and the province's laws authorizing fish farms in BC's waters are unconstitutional.

2004-2005 – Hotel Lake protected – The Sunshine Coast's Area A Water Quality Association successfully appealed the transfer of an unused water license to provide water to a new development, with the Environmental Appeal Board requiring extensive water planning to demonstrate that there was enough water available.

2001-present - Motors in the Columbia Wetlands – The East Kootenay Environmental Society and their lawyer were successful in convincing Transport Canada to develop Canada's first regulations under the Canadian Shipping Act aimed at protecting ecological features.

2001-2008 – Cranbrook wetland protected – An agricultural water license will not drain the ecologically significant Ha Ha Creek Wetland, after an appeal by local land owners resulted in an agreement to amend the license to guarantee the flow of water to the wetland.

2000-2001 – Pitt River gravel pit blocked – The lawyer for the Pitt River Area Water Network, together with the community, demonstrated that a proposed gravel pit threatened water supplies and convinced the gravel company to withdraw its application.

1998-1999 – Sewage on Cortes – The Environmental Appeal Board

agreed with the Friends of Cortes Island that a proposed septic field for the then new 11-unit motel on the Island was not sufficient to protect the environment, and ordered the Ministry of Environment to use more realistic figures in future evaluations of septic systems.

1995-1996 – Hovercraft damages to fish habitat – Teck Cominco stopped using their hovercraft in the Stikine River after the Friends of the Stikine launched a private prosecution against the company for damaging fish habitat.

1990-1991 – Oil spill compensation – Volunteers who cleaned up oil after the Nestucca oil barge spill and rescued animals in distress on the West Coast of Vancouver Island reached a settlement in a lawsuit to recover their expenses.



Valley view of the Ha Ha

Stopping the Kemano Completion Project

In the 1950s, the BC government gave the Aluminum Company of Canada (Alcan) water rights to the Nechako River. Alcan built the Kenney Dam, flooding 800 square kilometers of lakes, streams, forests and homesteads, bored a 16-km tunnel under Mt. Dubose to a generating station and constructed an 80-km long custom-built twin circuit transmission line as part of the Kemano Project.

By the 1980s, Alcan had developed plans for a “Kemano Completion Project (KCP)” which would double its power capacity, at the cost of reducing the mean annual flow of the Nechako River by over 85% of its natural volume, endangering the spawning and rearing of Chinook and Sockeye on the upper Fraser.

The Rivers Defence Coalition (the Coalition), a collection of fishermen, community and labour groups, used EDRF funds to sue the federal government in 1990 to force a public environmental assessment of the KCP. “We were promised a public

hearing by successive federal and provincial governments, but in the end, Alcan got approval for its plans without any public review,” recalled Coalition Chairperson, Pat Moss. An initial win in 1991, when Justice Walsh of the Federal Court agreed that an environmental assessment was required, was quickly overturned by the Federal Court of Appeal. However, the case gave the project’s opponents credibility, and raised public awareness of the fact that no environmental assessment of the project had been done.

Following their defeat in court, the Coalition persuaded the BC government to conduct a provincial inquiry through the BC Utilities Commission (BCUC), with the Rivers Defence Coalition as a lead participant after Alcan. In December 1994, the BCUC reported the KCP would seriously impact the health of salmon fisheries, resulting in the province’s decision, in January 1995, to reject the



Rivers Defence Coalition field trip on the Nechako River

project. Over a period of 5 years, the EDRF granted \$130,000 towards the Coalition’s expert and legal work. Pat recalls: “Funding from the EDRF allowed the Rivers Defence Council to have lawyers representing us in court and at every stage of the Kemano Completion Project inquiry. We were able to hire experts to take apart Alcan’s reports, and show how they would impact fish. Without the EDRF, Kemano II - with all its environmental impacts – might well have been built.”

Establishing Canada’s Environmental Assessment Laws

It was in the context of protecting rivers that the EDRF played a key role in establishing environmental assessment legislation in Canada. Although the EDRF focuses on BC cases, it helped fund the appeal of the Friends of the Oldman River to the Supreme Court of Canada in their fight to force an environmental assessment of the Oldman River Dam in southern Alberta. The Court’s 1992 decision held that federal regulation required a full environmental assessment of the project and led directly to the enactment of the Canadian Environmental Assessment Act, benefitting all Canadians.

Prior to the Supreme Court’s decision in 1992, BC’s Rivers Defence Council, with funding from the EDRF, was using the same arguments to demand an environmental assessment of the controversial Kemano Completion Project. Since then, the EDRF has helped to use and test environmental assessment laws at both the federal and provincial levels, most recently helping MiningWatch Canada get permission to appeal a critical environmental assessment case concerning the proposed Red Chris Mine in northwest BC to the Supreme Court of Canada.

Clearing the Air

There's a tendency to take clean air for granted, but BC's Provincial Health Officer estimates "conservatively" that between 25 and 250 British Columbians die each year due to outdoor air pollution; furthermore, air pollution is responsible for about 700 hospital admissions and 944 emergency room visits annually in BC.

The EDRF has supported many communities dealing with industrial air pollution throughout BC. In many cases, concerned communities faced direct threats to their health; other cases involved new sources of air pollution proposed for previously pristine areas.

In the fund's early days, EDRF funded lawyers negotiated with aluminum giant, Teck Cominco, to compensate a family in Trail whose children were found to have dangerous levels of air borne lead from an aluminum smelter

in their system. However, most of the EDRF files concerning air pollution over the years have focused on government approvals for air emissions, and appealing those approvals to the province's Environmental Appeal Board.

Timeline of EDRF supported victories for Clean Air

2004-2005 – Burning tires in Crofton – The Crofton Airshed Citizens Group convinced the local pulp mill to withdraw its application to burn "alternative



fuels" such as ground up tires.

2002-2003 – Duck stench not "normal" – The West Creek Citizens Society in Langley convinced the Farm Industrial Relations Board that severe odours from a poorly managed duck farm were not "normal farm practices" and that the farmer must overhaul his waste management systems.

1999-2000 – Bulkley Valley beehive burners – The BC Lung Association joined in an appeal against permits issued to beehive burners and their high levels of pollution from burning wood waste in the Smithers area, convincing the Environmental Appeal Board (EAB) to make a number of changes to two of the permits and to plan for the eventual closure of the beehive burners.

1998-2000 – Pulp emissions in Powell River – Members of Solution to Our Pollution appealed a government decision to delay a requirement that Pacifica Paper Ltd.'s pulp mill



Esther Reed and Annabel Dean of The West Creek Citizens Society

meet more stringent standards, convincing the EAB to make a range of orders for further testing, monitoring and community consultations in respect of the pulp mill.

1998-1999 – Insulation air pollution – An appeal by the Friends of the Granby, based in Grand Forks, against a permit authorizing the emissions of particulate and formaldehyde from a Roxul stone wool insulation manufacturing plant resulted in increased requirements for regular and public air quality testing.

1990-1991 – Lead in kids

– After a study found elevated levels of lead in the children of the city of Trail, apparently resulting from air pollution from Teck Cominco’s aluminum smelter, one family sued the company, eventually receiving compensation through a settlement.

Supporting BC’s First Nations

While today, it is commonplace to think of First Nations as a natural ally for environmentalists, from its very beginnings, the EDRF supported BC’s First Nations in protecting their territories from environmental threats. The third grant ever made by the EDRF was to the Bonaparte Stucwesemc Indian government of the Shuswap Nation to examine the impacts of the then proposed Cache Creek landfill on groundwater. During that first year, the EDRF also supported the Ingenika Tribal Association (Tsay Keh Dene First Nation) in their opposition to a mine upstream from one of their village sites.

While these two early grants did not result in victory, many of the wins highlighted in this report involve First Nations. These victories include the Nlaka’pamux Nation Tribal Council’s efforts to stop a new landfill at Ashcroft Ranch, the Gitanyow Hereditary Chief’s challenge of the failure of the Ministry of Forests address their environmental concerns in their territories in the Nass Valley, and negotiations between the Central Coast’s Nuxalk Nation and forest giant, Interfor, about pesticide use in their territory.



Climate Change/Green Energy

Climate change is the environmental challenge of our time. In BC, much public debate has been generated around “green power”, and what that term even means. Unlike many jurisdictions, BC has generally obtained most of its power through hydro-electric projects, rather than through the burning fossil fuels which emits enormous amounts of greenhouse gases (GHGs).

The EDRF plays an active role in ensuring that BC’s energy future continues to be GHG-free, including opposing coal-fired and natural gas power plants. As detailed at page 9, the EDRF was instrumental in persuading BC Hydro to abandon plans for natural gas power plants on Vancouver Island.

In addition, the EDRF plays an active role in helping communities deal with weak regulation of the oil and gas and coalbed methane (CBM) industries, including providing advice to land owners living next to a proposed sour gas well and helping the Bonaparte First Nation in asserting its opposition to CBM development in its territory.

Although hydro generation produces much less GHGs than the burning of fossil fuels, it is not without its environmental impacts; throughout the history of the EDRF, West Coast has insisted that power generation projects protect fish and other environmental values. While West Coast believes that micro-hydro projects, including Independent Power Projects (IPPs), will be part of the future of green power in BC, the EDRF continues to challenge projects which have unacceptable environmental consequences or which do not include fair and transparent public process.

Timeline of EDRF supported victories for green energy

2006-2008 – Transmission lines in provincial park – EDRF lawyer, Mark Haddock, played a crucial role in helping the Burke Mountain Naturalists and their allies successfully oppose a proposal to route transmission lines for the proposed Upper Pitt independent power project through Pinecone Burke Provincial Park.

2006-2007 – Coal power in Princeton – Plans for a coal-powered electrical generator in Princeton were shelved in the face of opposition from the Save our Okanagan and Similkameen and tough new provincial rules for coal powered plants.

2003-2005 – First Nation say no to coalbed methane – The lawyer for the Bonaparte First Nation kept coalbed methane development out of the Nation’s territory by vocally putting government and industry on notice of the nation’s opposition.

2001-2002 – Gas generator shelved – The Citizen’s Stewardship

Coalition convinced the city of Port Alberni not to rezone the land to allow a gas-powered generator, the Port Alberni Generation Project, to be developed near retail and residential areas of Port Alberni.

1998-2000 – Draining lakes on Haida Gwaii – The Northwest Habitat Foundation convinced BC’s Comptroller of Water Rights to refuse a water licence to Queen Charlotte Power company, which would have allowed the company to drain Takakia Lake into Moresby Lake to generate power.

1995-1996 – BC Energy Coalition – The EDRF provided several grants to the BC Energy Coalition to press for a sustainable BC energy policy at hearings of the BC Utilities Commission.



Takakia Lake on Haida Gwaii

Green Energy on Vancouver Island

In early 2000, BC Hydro unveiled plans to build a gas pipeline across the Georgia Strait to supply three gas-fired generation plants with natural gas. Just one of the plants, to be located at Duke Point, would have released 800,000 metric tonnes of greenhouse gas emissions each year – the equivalent of exhaust from 180,000 cars.

The EDRF provided initial funding to the newly-formed Georgia Strait Crossing Concerned Citizens Coalition (GSXCCC) to help ensure a fair and rigorous government assessment of the pipeline proposal. Thanks in part to extremely active public participation by residents of Cobble Hill, Port Alberni, Nanaimo, Victoria and the Gulf Islands, the review period by the National Energy Board was extended.

During this time, gas prices rose, giving BC Hydro a reason to reconsider the pipeline, which was cancelled in November 2003.

But the fight wasn't over. BC Hydro pressed ahead with a contract to purchase power from the proposed Duke Point Power Plant, which now needed to be approved by the BC Utilities Commission (BCUC). When the Electricity Purchase Agreement was approved, the GSXCCC turned to the EDRF for funds to ask the BC Court of Appeal to hear an appeal of the BCUC.

When the Court of Appeal agreed to hear the GSXCCC's appeal, this opened up a loop-hole in BC Hydro's contract with Duke Point Power Ltd. even before the appeal was heard. "Under the terms



of the contract, BC Hydro or the government can now cancel the Duke Point Power agreement with no liability," said Tom Hackney, the then president of the GSXCCC. "They should do so now, so BC Hydro can get on with more cost-effective and environmentally appropriate projects."

Three days later, BC Hydro, in the face of public pressure and concerns about completing the power plant on time, announced that it was doing just that – canceling the purchase agreement. The GSXCCC had achieved its goal of preventing more gas-fired electricity generation on Vancouver Island. "With the EDRF's assistance, the GSXCCC and its allies achieved a major victory in the campaign for action on climate change," said William (Bill) Andrews, the GSXCCC's lawyer. "The Duke Point Power Plant proposal was the last vestige of the government's natural gas strategy for Vancouver Island."

Today, there are no gas-fired power generation plants on Vancouver Island. Instead, the Island receives the majority of its power from three hydro generating stations on the Campbell River system, and diversion dams on Quinsam River, Salmon River and Heber Creek.



An energy conference organized by the GSXCCC and the Council of Canadians helped to identify strategies to oppose the Georgia Strait pipeline.

Toxins and Pesticides

West Coast and the EDRF have played a lead role in protecting British Columbians from toxic substances.

EDRF-funded appeals of pesticide permits to the EAB helped establish the legitimacy of appeals by concerned members of the public. The EDRF has also supported organic farmers who refused to use pesticides and communities that were pressing for strong anti-pesticide bylaws.

After West Coast helped BC enact its contaminated sites legislation, the EDRF helped communities and individuals suffering from groundwater and soil contamination. An EDRF lawyer was active in pressing for the clean up of the Britannia Mine – one of the province’s most contaminated sites.

As science uncovers more about the risks of toxins, and their effects on cancer, human growth and development, and on the environment, the EDRF continues to help communities keep themselves and their environment safe.

Timeline of EDRF supported victories against toxic substances

2006-2008 – Mine Tailings in the Fraser – The Xats’ull (Soda Creek) First Nation near Williams Lake successfully appealed a permit allowing Gibraltar Mines to dump its tailings into the Fraser River, with the appeal board noting that the First Nation had not been adequately consulted.



2004-2005 – Granby grizzlies protected – A court challenge by the Granby Wilderness Society stopped Ministry of Forests’ plans to spray pesticides in the Granby region near Grand Forks without considering the impacts on grizzlies.

2003-2004 – Saying “NO” to Pesticides – The Nuxalk First Nation in Bella Cooola convinced forest giant, Interfor, to drop its plans to spray pesticides in its traditional territory.

2002-2003 – No pesticides on sacred sites – After forest giant Timberwest objected to government imposed limits on spraying pesticides near the sacred sites of the Cowichan Tribes, the Tribes successfully convince the EAB that any use of pesticides in their sacred spaces rendered such spaces “unclean”.

2001-2003 – Britannia Mine clean up – The Environmental Mining Council of BC played an active role in getting the provincial government to clean up the

contamination at the abandoned Britannia Mine near Squamish.

1998-1999 – Forest pesticides in Morice Forest District – The EAB agreed with the Northwest BC Coalition for Alternatives to Pesticides that Canadian Forest Products’ Pest Management Plan for the Morice Forest District near Houston does not adequately protect the environment, forcing several changes to the plan.

1992-1995 – Pesticides on Malcolm Island – Through negotiation with logging companies and the Ministry of Environment, and through appeals to the EAB, the Malcolm Island Environmental Protection Society successfully blocked plans to use pesticides in environmentally sensitive areas on Malcolm Island.

1989-1990 – Organic potatoes saved – A lawyer for Quigley Organic Farm, in Pemberton, negotiated successfully on their behalf after the local potato control board initially ordered the farm’s potatoes destroyed unless they are treated with chemicals.



MetroVancouver abandons landfills, plans for zero waste

With the Cache Creek landfill originally scheduled to close in 2008, MetroVancouver (in 2003) unveiled plans to build a new landfill, the biggest in BC, on a ranch near Ashcroft, about 350 kilometers away from Vancouver.

This new landfill would destroy endangered grassland ecosystems, as well as threatening water and air pollution. The plan met with fierce criticism from local community and environmental groups. The EDRF funded both the Cornwall Watershed Coalition (CWC) and Nlaka'pamux Nation Tribal Council (NNTC) to participate in the environmental assessment of the proposed landfill. In June of 2005, in large part due to the NNTC's concern about the impacts of the landfill on their adjacent reserves, then Minister of Sustainable Resource Management, George Abbott, suspended the environmental assessment of the Ashcroft landfill, stating that MetroVancouver must "look at all

possible alternatives, alternative sites, alternative approaches to waste reduction."

Minister Abbott's decision opened up space for an important discussion about other ways of dealing with waste and whether Ashcroft Ranch was the appropriate location for a landfill. CWC's lawyer, Joyce Thayer, continued to press MetroVancouver to meet its commitments to reduce waste, rather than looking for a new landfill. "The region's waste management plan itself ... favoured recycling and waste reduction ahead of a new landfill," recalled Joyce. "I called on MetroVancouver to take up the challenge to reduce the waste stream."

On January 22, 2008, in a surprise reversal, the MetroVancouver Board



The ranch site, near Ashcroft, BC.

of Directors voted to abandon plans for the Ashcroft Landfill, and instead work towards zero waste – a dramatic shift in the region's approach to waste management. "Obviously we were ecstatic," said Margot Landels of the CWC. "This victory would not have been possible without West Coast Environmental Law's funding for and support of Joyce's work."

"Dispute Resolution"

Sometimes, people assume that the reference to "Dispute Resolution" in the EDRF's name means that the EDRF only funds mediation, negotiation and other alternative dispute resolution (ADR). These tools have always been an important part of the EDRF's mandate – with at least 25% of our funding each year going to files that use ADR. We are grounded in our belief that these soft-legal approaches have a critical role to play in protecting the environment.

However, appearing before the courts, making submissions to government, and administrative tribunals, are also effective ways to resolve disputes: as such, the EDRF supports these "non-alternative" approaches to dispute resolution as well. While these approaches tend to be more costly, sometimes taxing the EDRF's capacity, court battles or administrative appeals are generally higher profile and often result in decisive victories and important precedents.]

Protecting Parks and Natural Heritage

Although BC no longer advertises itself as “Super Natural BC”, the province has a natural heritage well worth protecting – from an ecologically abundant but also sensitive coastline, to ancient forests, to spectacular river, lakes and waterfalls, to majestic mountains. Each of these ecosystems and many others are unique and home to countless indigenous animals and plants.

BC’s parks and other protected areas were created to protect BC’s unique ecosystems.

They also provide recreational opportunities for British Columbians to connect with nature and learn about our unique ecosystems. Not surprisingly, British Columbians are fiercely protective of their parks.

The EDRF is frequently asked by communities and groups large and small to help protect parks, protected areas, critical wildlife habitat and other ecologically valuable lands. Most significantly, in the 1990s, the EDRF helped groups involved in the Commission on Resources and the Environment (CORE), resulting in the creation of hundreds of new parks and hundreds of thousands of hectares of protected area (see page 13). But through its history, the EDRF has been instrumental in protecting parks and environmentally sensitive lands around the province.

Timeline of EDRF supported victories protecting parks and natural heritage

2007-2008 – Robson Bight clean up – A legal opinion helped the Living Oceans Society and other environmental groups successfully press for the clean up of a sunken barge in the Robson Bight Ecological

Reserve, a sanctuary for killer whales near Telegraph Cove in Johnstone Strait.

2004-2009 – Mountain caribou protected – The EDRF provided legal support to the campaign by several environmental groups to protect mountain caribou from extinction, resulting in the protection of 2 million hectares of mountain caribou habitat from logging.

2002-2006 – Wetlands on Denman Island – After a development company failed in its promises to protect the environmentally sensitive Komass Bluff and Railway Marsh, a lawsuit and sharp negotiating resulted in conservation covenants over both areas and the donation of a further 156 acres of environmentally significant land to the Denman Island Conservancy.

2004-2005 – Turtles protected in park – The BC Supreme Court agreed with the West Kootenay Community Ecosociety that BC’s Parks Minister acted illegally in relocating a park access road through the habitat of the Western Painted Turtle to accommodate a local developer.

1998-1999 – 100-year-old trust enforced in Beacon Hill Park – The Beacon Hill Park Rescue Coalition convinced the BC

Supreme Court that the trust that created the park prevents the City of Victoria from legally authorizing a commercial music festival in the park.

1996-1997 – Landfill in Burns Bog – When there was a proposal to expand a landfill into Delta’s environmentally sensitive Burns Bog, the Burns Bog Conservation Society negotiated a solution that saw the existing landfill built upwards, rather than outwards, into the Bog, paving the way for the eventual protection of the bog.

1993-1994 – Legal protection for Glencoe Cove – When Glencoe Cove became a District of Saanich Park, the Friends of Glencoe Cove ensured that a legally enforceable covenant is in place to protect the park and its natural beauty.

1993-1994 – Neck Point becomes park, not condos – The Neck Point Park Society blocked a proposed condo development on the last piece of undeveloped foreshore land in Nanaimo, leading to the City creating Neck Point Park.

Hundreds of thousands of acres added to the BC Park System

The EDRF has always been at the forefront of negotiating solutions to environmental problems, but in 1992, the government of British Columbia adopted the approach in a big way – creating the Commission on Resources and the Environment (CORE) to facilitate the negotiation of land use plans in regions with a history of resource use conflict.

Negotiation tables were established in three different regions – Vancouver Island, the Kootenays and the Cariboo-Chilcotin – with local residents representing different groups with interests in these region’s public lands. Parties with environmental and recreational interests sat down at the table with forest and mining sectors, unions and other diverse interests to try to hammer out plans for how public lands should be managed.

Although there was some government funding for participants, and international funders would subsequently take an interest in the CORE process, at the beginning, the conservation representatives were chronically underfunded (especially compared to industry representatives). The EDRF stepped into the void, funding meetings and presentations; submissions to and communications with CORE, the other sectors involved in the process, and provincial Ministers; as well as for legal fees and

expert assistance. In a two-year period, between 1992 and 1994, the EDRF granted over \$185,000 to conservation and related groups involved in the CORE processes – over 30% of the grants awarded during that period.

“Starting in 1994, the CORE processes added 100,000 acres to BC’s park system each month for 36 months,” recalled Ric Careless, who represented the Caribou Chilcotin Conservation Sector. “It was a remarkable process made possible by the solidarity between the environmental organizations.”

As well as funding individual sectors and groups in each of the CORE regions, the EDRF funded workshops to help the conservation sectors negotiate more effectively. One tri-table workshop brought together conservation representatives from all three regions to share information and develop strategies to participate more effectively. This coordination helped ensure that the tables were not working at cross purposes. “Everything we did had an impact on the other tables,” recalled Kate Brauer, negotiator for the Conservation Sector at the Vancouver Island table – the first of the tables to get underway. “We needed to coordinate with the



The CORE process resulted in hundreds of thousands of new protected areas including an expanded Carmanah-Walbran Provincial Park

conservation sectors for the other tables.”

An EDRF-funded workshop in the Cariboo-Chilcotin allowed its Conservation Sector and its allies to develop a land-use strategy to support their negotiating positions at the table. “The two-day strategy workshop was very useful because it got the environmental committee negotiating with consistency,” Ric recalls. “It built solidarity so that when we found that the [Caribou-Chilcotin] agreement at the CORE table had resulted in fragmented protected areas, we were able, as a unified sector, to negotiate with the forest industry for changes to the plan.”

Liveable Cities

It's not surprising that many EDRF grants have related to environmental problems in urban or semi-urban areas. People care about the environment where they live.

West Coast champions the smart growth approach to urban development – the idea that dense, walkable and liveable communities can meet human, environmental and economic needs better than sprawling, car-centric communities. The EDRF over the years has championed these same goals.

Many EDRF grants have been aimed at preventing sprawl and retaining greenspace in urban areas, and protecting particular rural areas from development. These grants have protected large areas of ecologically important land, and have also helped to establish the obligation of local governments to deal fairly with the public when rezoning lands to allow for development.

In BC, the Agricultural Land Reserve (ALR), which guarantees that certain lands be kept available



for agricultural use only, has been a powerful tool in fighting urban sprawl. As a result, many of the EDRF's files have focused on opposing the removal of land from the ALR.

Time-line of EDRF supported victories for liveable communities

2008-2009 – Union Bay development blocked – The Baynes Sound Area Society for Sustainability challenged bylaws allowing the massive Kensington Properties development in rural Union Bay, convincing the BC Supreme Court that ever changing stories about where the water for the development would come from had denied critics of the development a fair public hearing.

2004-2005 – Marina kept out of Bird Sanctuary – Governance Action In North Saanich (GAINS), convinced the District of North Saanich not to approve the expansion of a marina into a national migratory bird sanctuary.

1998-2001 – Pitt Polder Protected – The Pitt Polder Preservation Society convinced the BC Court of Appeal to set aside City of Pitt Meadows bylaws that allow a golf course to be developed on in the ecologically sensitive Pitt Polder wetlands. (See page 15)

“The lawyer we had through West Coast kept winning in our challenges of pesticide permits. It got to the point that the logging companies would run their pesticide plans by us before they applied to the government for permission to spray.”

– Kate Brauer, Malcolm Island Environmental Protection Society

1995-1996 – Concerned Citizens of Port Moody – Port Moody resident, Dave Norman, successfully challenged a city bylaw in the BC Supreme Court that failed to protect a key wetland.

1990-1991 – Golf Courses in the ALR – The Boundary Bay Conservation Committee challenged a golf course development in Delta, initially winning in the BC Supreme Court, but losing on appeal; however, the profile of the case helped convince the provincial government to reverse rules allowing for golf courses in the ALR.

Protecting the Pitt Polder

The dyked lowlands in the north-east sector of Pitt Meadows and the lowlands of Maple Ridge are known as the Pitt Polder, a unique ecological area of wetlands, riparian habitat, bogs, fens and agriculture. Shared by over 250 bird species, it is one of the last nesting areas for the Greater Sandhill Crane in the Lower Mainland, and a major nesting and resting area for birds on the Pacific Flyway.

In 1997, the Swan-E-Set Bay Golf Resort asked the District of Pitt Meadows for permission to build residential housing and a hotel on 126 acres of the uplands of the Polder. Alarmed citizens gathered enough signatures to trigger a referendum on the proposed project; to their shock, however, the Pitt Meadows Council responded by eliminating their right to a referendum.

Opponents of the resort voiced their concerns about the project at a public hearing, but key reports on the development's environmental impacts were not made public until the first day of the hearings. After four days of public hearings, the Pitt Meadows Council approved the application and Swan-E-Set announced it would begin building its mixed-use commercial and residential development the following year. The Pitt Polder Preservation Society, with a grant from the EDRF, turned to the courts, arguing that the vital reports should have been available to the public before the hearing.

After an initial loss in the BC Supreme Court, the BC Court of Appeal, in July 2000, set aside the bylaws approving the development, agreeing that the public hearing had not been fair. Madame Justice M.A. Rowles, in ruling that the impact

reports should have been publicly available before the hearing, wrote that the “right to be heard before Council ... must encompass more than an opportunity to express approval or disapproval of the proposed bylaws.”

“[The Swan-E-Set] development would have led to housing development throughout the entire polder, an area of rich farm land and environmentally-sensitive wetlands in north east Pitt Meadows,” says Diana Williams, President of the Pitt Polder Preservation Society. “Thanks to West Coast Environmental Law and the monumental efforts of concerned citizens, we managed to stave off development in this beautiful and productive part of the province.”

As a result of the Society's efforts, 126 acres of important bird habitat and agricultural land was not rezoned to allow residential and resort development. The hard work of impassioned citizens and the support of the EDRF means the land remains a peaceful and beautiful agricultural area today, helping to support the diverse ecosystems and uses of the Pitt Polder.



At left, members of the Pitt Polder Preservation Society erect a sign inviting the public to the Polder Swan-E-Set public hearing, 1999

Sustainable Forestry and Land Use

Logging and sustainable land use has been one of the key environmental conflicts in British Columbia, and it was in this context that the EDRF pioneered alternative dispute resolution as a way of addressing logging conflicts. The EDRF's very first grant was given to Clear Cut Alternatives, a citizen's group on Galiano Island who wanted to negotiate with forest giant, MacMillan Bloedel, to protect the company's private land holdings on the Island.

Through the years, the EDRF has continued to support the conservation community in pressing for, and participating in, multi-stakeholder negotiations to protect environmental values. In 1992, the BC government took up the approach in a big way – creating the Commission on Resources and the Environment (CORE) – and West Coast continued to fund conservation groups and their allies in participating in this process through the EDRF (see page 13). The EDRF has helped environmental groups participate on a more equal footing in just about every type of forestry land use planning process that the government has come up with in the last 20 years.

But it hasn't just been negotiation and mediation. The EDRF has funded complaints to the Forest Practices Board, as well

as court action against the Ministry of Forests, forest companies and the Association of Forest Professionals. The EDRF has played key roles in resolving critical logging disputes from Vancouver Island to the Kootenays to northern BC.

Timeline of EDRF supported victories for sustainable forestry and land-use

2004-2006 – Holding foresters accountable – The Sunshine Coast Conservation Association successfully sued the Association of BC Forest Professionals – not once but twice – to force the



A clear cut on the Sunshine Coast

“Without the assistance of West Coast Environmental Law, it would have been impossible for a layperson to navigate the complicated legal labyrinth that is federal law and regulation.”

– Ellen Zimmerman, Upper Columbia Program Manager, Wildsight



association to investigate a complaint that one of its foresters had failed to protect marbled murrelet habitat in his forest plans.

2004-2005 – Addressing environmental issues in First Nations consultation – The Gitanyow Hereditary Chiefs won their court challenge of the Ministry of Forests’ refusal to

consider environmental concerns when consulting the First Nation on forestry issues.

2001-2002 – Marbled murrelet protected from logging – The Sunshine Coast Conservation Association successfully challenged plans to clearcut in critical habitat for the endangered Marbled Murrelet in the BC Supreme Court.

1997-1998 – Forestry plans in North West BC – Friends of the Stikine participated in the province’s Cassiar Iskut – Stikine Land and Resource Management Plan process, which ultimately agreed to protect 26% of the region as parks.

1994-1995 – No logging in Victoria watershed – The Western Canada Wilderness Committee won their challenge of commercial logging in the Victoria watershed in court.

1993-1994 – Suing logging companies for harming drinking water – After logging affects the quality of water in the Casino Waterworks District in the Kootenays, the affected families successfully sued the logging company.

1990-1991 – Caves protected from logging – The Outdoor Recreation Council of BC successfully negotiated with the Ministry of Forests to establish legal protection for caves and other geologically significant karst features on Vancouver Island.



Representatives from various communities rally for clean water on the steps of the Vancouver court house.

EDRF Staff and Management Committee

The EDRF could not have got where it is today without the hard work of its staff. Thanks to Bill Andrews, Patricia Houlihan, Morgan Ashbridge, Karen Campbell, Kathy Grant, Andrew Gage, Barb Everdene, Jodi Williams, Rika Saha, and Todd Monge.

One of the hardest working committee of West Coast's board is the EDRF Management Committee, which once a month, reviews countless pages of applications, bringing their collective wisdom and insight to the difficult task of deciding which of the many worthwhile applications will receive funding. Many thanks to the board members – lawyers, scientists, environmentalists, professionals – who have played this important role over the years.

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Steven Shrybman
Cristina Soto
Mark Underhill
Darryl Walker

EDRF Lawyers

Passionate and knowledgeable lawyers representing equally passionate clients are the backbone of the 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. West Coast salutes the consummate professionals who have worked on EDRF cases between 1989 and 2009:

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Nooral Ahmed
Michael Akey
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John Alexander
Bill Andrews
Joe Arvay
David Ashton
Judy Atkins
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West Coast Environmental Law is BC's legal champion for the environment. West Coast empowers citizens and organizations to protect our environment and advocates for the innovative solutions that will build a just and sustainable world.

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