

# News from WEST COAST ENVIRONMENTAL LAW



Public Interest Environmental Law for British Columbia

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## SPECIAL EDITION

Once in awhile, trends, events, and needs converge to create an opportunity. We've all seen examples of it, maybe been astute enough to take advantage of it. It is such a moment right now in British Columbia (and Canada) for meaningful environmental protection.

We are fortunate in BC to have had a government that realized in 2007 – unlike many of its neighbours and the federal government – that global warming was real, that it is largely caused by human activity, and, most importantly, that it was necessary to act.

Today, BC leads the nation in advancing effective climate change policies. However, these policies do not enjoy solid public support. And many of Victoria's other policies and priorities fly in the face of the good work the climate change file hopes to achieve.

One of the biggest potential influencers is the world's first green leader – the new US administration – which understands how inextricably tied the economy is to the environment, and how a green economy is a win-win for business prosperity, enhanced quality of life, and a sustainable world for our children. It is too early to say what influence it will have on Canada's policies, but there is no doubt that it has cracked open a window to allow fresh thinking into the room.

The third vector in this confluence is the economy, and the impact the downturn has had on some of the most environmentally damaging and largest greenhouse gas emitting projects in the country. Across the nation, large scale resource extractors like the

Alberta Tarsands are laying off thousands of workers, as they drastically decrease production in the face of plummeting oil prices.

Mass layoffs are a human tragedy. But the slowed production and demand also create much-needed space to really listen to the project's critics and to join with them in developing new ways of thinking. It is an opportunity too for government to think through logically to the dry dead-end of pursuing this manic path, and to the wisdom of its blind addiction to fossil fuels.

Taken altogether, the moment is ripe to advance sound policies. In this time of political and economic uncertainty and change, the opportunity for citizens to have a say on policy is perhaps unprecedented—and presents itself to British Columbians in the form of the upcoming provincial elections in May.

West Coast is BC's advocate for sound legal protections. Staunchly non-partisan, this organization has had a hand in virtually every significant piece of environmental legislation in this province over the last 35 years. In this special issue, we have departed from our usual format to bring you summaries of some of the most critical impacts to our province's water, forests, and communities. In each summary, we have posed key questions that readers can ask their candidates. Our hope is that all candidates—some of whom will go on to become policy-makers—will seek to become as well-informed as our readers, and as concerned about safeguarding BC's spectacular beauty and ecological diversity.

*Patricia Chew  
Executive Director*

**INSIDE** • *Questions for Candidates*  
West Coast poses questions that you can ask your candidates for the upcoming election.



# Climate Change



A year ago, announcing the 2008 Budget, then BC Finance Minister Carole Taylor said, “This budget marks a turning point. It overturns the notion that you have to choose between either a healthy environment or a strong economy”.

There is no doubt that much has changed since those halcyon days of surpluses and public debates about what to do with all that money. While the 2009 Budget did hold firm to the government’s commitment to the carbon tax, there was little by way of stimulus to generate a green, low carbon economy.

Meanwhile, elsewhere, US President Obama has committed to invest US\$150 billion in clean energy solutions over the next decade. More than \$73 billion of that was recently announced as an investment into renewable energy and energy efficiency, a key element of his administration’s plans for economic renewal.

Back home, there are no such bold moves, only vague mutterings about common targets and needing to look into the details. If this province (and country) are waiting for success stories, they don’t have far to look. European countries have been leading the way for decades.

Denmark, for example, put in place policies in the 1970s—thirty years ago—that have resulted in a thriving renewable energy sector. In the 90s, it introduced a carbon tax to promote energy efficiency. Today, Denmark enjoys a booming solar and wind export industry. And although its economy has grown 70 percent since the early 1980s, its energy consumption has risen almost not at all.

Sweden and Norway have also seen enormously successful economic offshoots since introducing carbon taxes in the early 90s. Cleaner technologies such as green heating systems for apartment blocks have phased out much of the reliance on oil for heating. At the same time, the carbon tax led the way to a reduced reliance on fossil fuels, it has also been credited with innovating lucrative and popular low-carbon technologies.

Indeed, the former chief economist of the World Bank, Sir Nicholas Stern, projects the global market for low-carbon energy technologies will be worth at least US\$500 billion annually by 2050.<sup>1</sup>

The debate over whether the economy should trump the environment during hard times is a false one. There is ample

evidence to show that the two are interdependent and that, together, they can create huge opportunities for economic growth and prudent stewardship of our natural resources. In each of the examples named here, economic growth increased at annual rates comparable to that of Canada’s.

Implementing market-based policies such as a carbon tax and a cap and trade system are the essential first step to a green economy. In the leadup to the elections, we propose that you ask your candidates the following:

- Do you endorse the carbon tax?
- What steps do you think BC can take to build a green economy?
- Do you think economic stimulus packages should promote green initiatives?

*Patricia Chew*

<sup>1</sup> UK HM Treasury (2006) The Stern Review on the Economics of Climate Change

West Coast Environmental Law has been BC’s legal champion for the environment since 1974. Our mandate is to empower citizens and organizations to use the law to protect our environment and to advocate for the innovative solutions that will build a just and sustainable world. We:

- Have helped establish mechanisms for public participation in decision-making and to champion key legal reforms.
- Act as a watchdog; alerting British Columbians to the weaknesses in existing and new laws, and the potential impacts of change.
- Make environmental law accessible to citizens through community legal education.
- Help thousands of British Columbians resolve critical environmental issues by providing legal advice and access to legal and technical representation.



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## 2

# Minimizing the Cumulative Impacts of IPP Development

In the lead up to the provincial election, we encourage you to ask your candidates where their parties stand on a fundamental public policy problem associated with clean energy development in BC: the lack of a provincial or regional decision-making process that would ensure that projects are sited in a way that minimizes their cumulative environmental impacts.

This glaring gap in energy governance is leading to bitter “river-by-river” conflicts over each proposed “run-of-river” hydroelectric project. The public outcry reached its zenith last year over a proposal to install run-of-river projects on eight tributaries of the Upper Pitt River, with the associated transmission lines to snake through Pinecone Burke Provincial Park.

Vociferous opposition to poorly planned wind projects, which are now being developed, and ocean projects, which will soon be developed, will surely follow.

Until now, this gap in energy governance has been overshadowed by other controversies surrounding the development of renewable energy in BC, most notably the opposition to the BC Liberal government’s policy decision to rely solely on private “independent power projects” (IPPs) to harness BC’s rivers, ocean and wind resources

going forward. The shortcomings of this project-by-project approach are twofold: 1) unnecessary environmental degradation, and 2) unnecessary roadblocks to the development of a robust clean energy economy in BC.

While there are existing natural resource planning and assessment policies and programs in BC, they do not offer a solution when it comes to energy development. For example, BC’s Strategic Land and Resource Plans, initiated in the 1990s, primarily to quell forest use conflicts, do not address energy issues. Furthermore, the provincial government has shown little appetite to reopen the plans, which were completed after years of intense negotiations with stakeholders.

Many new IPP projects are subject to federal and provincial environmental assessment processes. However, these processes are by definition site-specific, and so do not adequately address the cumulative effects of multiple projects in a given area.

The provincial government has, however, recently announced a new integrated electricity planning initiative that could inch this aspect of the IPP debate forward in a constructive manner. Specifically, it has ordered the Province’s energy regulator, the BC Utilities

Commission (BCUC), to conduct an “inquiry related to British Columbia’s electricity transmission infrastructure and capacity needs for the next 30 years.”

The inquiry process will commence later this year and the BCUC has been told to invite and consider submissions from a broad range of stakeholders. The stated focus of this initiative—commonly known as the “Section 5 Inquiry”—is on power transmission infrastructure and capacity, not power generation. However, the inquiry’s Terms of Reference may be broad enough to allow for an in-depth assessment of what type of IPPs should be built in BC, and in what regions.

If you want to make a difference on this issue, you should ask your political candidates if they support a broadly scoped Section 5 Inquiry that takes an in-depth look at how the cumulative environmental impacts of IPPs can be minimized.

*\*This article is excerpted from a recent editorial written by Greg Gowe and UBC Professor George Hoberg.*

*Greg Gowe*

## Transitions

West Coast welcomes our new Aboriginal and Resource lawyer, Josh Paterson. Josh graduated from the University of Toronto with a law degree and masters in political science in 2004. His passion for social justice found an outlet as legal and policy director at the Canadian Civil Liberties Association in Toronto before he relocated to Vancouver in 2006. Josh has spent the last two years practicing union-side labour and human rights law at Fiorillo Glavin Gordon. However, his free time has been devoted for a number of years to the protection of public spaces in Toronto and Vancouver, where he is a director and project coordinator with the Vancouver Public Space Network. Josh has been interested in working with First Nations on issues related to their lands and waters since law school.

West Coast also welcomes our new Donor Relations Officer, Anna Beard. Anna moved from New Zealand to Canada in 2004 where she fell into fundraising and discovered her calling. Previous to joining West Coast, she managed the Vancouver office of Public Outreach. There she worked on face-to-face and phone fundraising campaigns for Amnesty International, The Land Conservancy of BC, Dogwood Initiative, and Pivot Legal Society to name just a few! Anna is thrilled to be part of the West Coast team as, she says, working for an environmental organisation has been a life-long dream.

# 3 Nature Conservation

## Incorporating nature conservation into BC's climate action strategies

BC's vast natural legacy of wildlife and ecosystems is under threat from climate change, including the clean water and other "life support services" they provide for us. Conservative scientific predictions are that, in this century, climate change will place 20 to 30 percent of animal species at high risk of extinction. BC thus needs strong laws that both dramatically reduce our emissions of greenhouse gas (GHG) pollution and help native species of plants and animals better withstand the effects of climate change.

We know that healthy, functioning ecosystems are better able to accommodate and adapt to climate change than areas that have been fragmented and degraded by human activities. Looking after these ecosystems is thus essential to giving species a fighting chance in the face of global warming.

We also know scientifically that natural forests store more carbon than managed forests (e.g., than forests that have been logged and replanted). Our forests in BC have some of the highest carbon stores in Canada, averaging 311 tonnes per hectare, with some coastal forests holding 600 to 1,300 tonnes per hectare. However, when these natural ecosystems are converted to other uses or degraded by human activities, much of this stored carbon is released back into the atmosphere as carbon dioxide, where it contributes to global warming. According to estimates from the Canadian Forest Service, carbon losses are greatest in the first decades after a natural forest is 'converted' to a managed forest, meaning that logging now will have the biggest impacts during a critical period in which we need to make deep GHG reductions in order to keep warming under 2°C above pre-industrial levels.

BC has taken some initial steps in the right direction, but more is required. The BC Climate Action Team recommended that the government involve stakeholders in a full assessment of mitigation options (in terms of greenhouse gas benefits, biodiversity values and other co-benefits) related to forests and land use, the forest-product sector, bioenergy and other renewable wood-derived products, and include the outcomes in the government's climate action strategy. It's time to act on this recommendation.

In addition, the Ministry of Forests and Range released a report in 2006 recommending BC's forest management framework (i.e., legislation, policy, planning, and guidance that govern forest management) be adapted to manage for ecological resilience in the face of climate change. However, this "Future Forest Ecosystems" initiative recommended doing so without disrupting the achievement of current social/economic objectives or timber productivity, limiting its scope and impact.

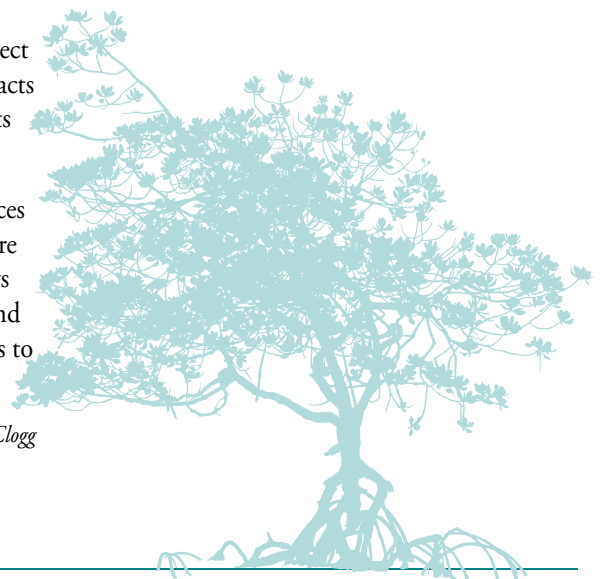
In the lead up to this spring's election, consider asking your candidates:

- How will they integrate nature conservation into BC's climate action plans?
- Do they support new laws to protect ecosystems and species from the impacts of climate change and human impacts such as development and logging?
- How will they ensure that the voices of citizens and conservation groups are heard in the development of new laws and policies on forests and carbon, and that the Crown's constitutional duties to First Nations are met?

*"Thank you for advocating for people, animals and nature – we are all interconnected. 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*

*Jessica Clogg*



# Adapting to Climate Impacts

As stated by Sir Nicholas Stern in his 2006 seminal report on climate change and the economy, “Adaptation is the only response available for the impacts that will occur over the next several decades before mitigation measures can have an effect.”<sup>1</sup>

Climate changes and their impacts are already upon British Columbia. What we have had a taste of to date—and what we may expect more of in the future—includes:

- Increased incidence of extreme weather (rain/drought/wind/temperature) events;
- Increased risk of pest outbreaks such as pine beetle;
- Increased risk of forest fires;
- Rising sea levels; and
- Shrinkage of glaciers, changes in the water supply and the possibility of water shortages.

All of these changes and impacts have particular relevance for communities, since what we build generally lasts for 50 years or more and since effects are felt locally. Significant changes in our climate are expected to affect the integrity of our infrastructure or buildings, making it extremely important for local governments to adopt an informed perspective on the design and building of our communities. We need to be sure that we have integrated consideration

<sup>1</sup> Stern Review Report on the Economics of Climate Change, Executive Summary at p. xxi. Available online at [http://www.hm-treasury.gov.uk/stern\\_review\\_report.htm](http://www.hm-treasury.gov.uk/stern_review_report.htm)

of climate change impacts into our decisions about where, how and when we will build, and what programs we will institute to address things like extreme temperatures, which may harm our most vulnerable populations.

Because the decision-making powers (and to some extent, responsibilities) of local governments are delegated by the province, it is important for the province to lead in this area. Climate change action is hindered by being seen as a “long-term” (i.e., non-urgent) issue. Added to this, the 3-year political cycle of local governments (as compared to the provincial 4-year cycle) makes it even more challenging to remember the importance of taking the long view when planning short-term actions.

Experts say that action on adaptation is needed now. Appropriate regulatory and market signals for adaptation action need to be instituted as soon as possible. We recommend our readers talk to their candidates about the following:

1. In 2008, the *Local Government Act* was amended to set requirements for local governments to establish targets, policies and actions for climate change mitigation, starting in 2010. Does your candidate support making parallel amendments, to require local governments to institute similar targets, policies and actions for adaptation?
2. Does the candidate support a system whereby local governments would have to report and be compared with other local governments as to their progress on climate change action?

3. The government’s Living Water Smart Plan lists several goals for adaptation under “Preparing Communities for Change”, including references to watershed planning, water conservation and the use of incentives and lifecycle accounting to prompt new decision paradigms. What will your candidate do to see these goals implemented as soon as possible?

*Susan Rutherford*

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

*- EDRF Client*



# 5 Oil & Gas

## Addressing the Gaps in BC's Oil and Gas Regulatory Regime

The residents of Northeast BC were concerned about the environmental and health risks associated with oil and gas development long before a still unknown perpetrator decided to plant bombs underneath area pipelines.

While these bombings—which started in October 2008 and which now number four—are in no way to be condoned, they have shone a national spotlight on what was previously strictly a local issue: gaps in BC's oil and gas regulatory regime. The provisions that have received the most attention in the wake of the bombings are the minimum “setback” distance requirements. These requirements, which are as small as 80 metres in some cases, establish how far oil and gas wells, pipelines and other facilities can be from homes, schools and other places people gather.

At the same time that people in Northeast BC have been calling for greater setback distances, residents in several other regions—the Kootenays, Princeton, Campbell River, the Klappan Valley and Telkwa—have been calling for a total prohibition on coalbed methane development (CBM) close to their communities.

CBM is a natural gas that forms in coal and exists in “seams” throughout the province. The provincial government has been aggressively promoting it as a new source of energy since the early

2000s. However, CBM represents a unique threat to the environment. For example, it typically requires the drilling of many shallow wells in close proximity—connected by an infrastructure of roads, power lines, pipelines and compressor stations—and its extraction process can have significant negative impacts on underground water supplies.

In December 2008, the provincial government responded to concerns expressed by residents of Northwest BC by placing a two-year moratorium on CBM development in the Klappan Valley (also known as the

Sacred Headwaters). However, despite community opposition, CBM development is being allowed to proceed in other regions.

While setback distances and continued CBM development are of great concern to the communities directly impacted by the oil and gas sector, all British Columbians should be concerned about the ever increasing provincial government subsidies to oil and gas companies. The 2009 provincial budget includes a breathtaking \$1.5 billion handout over the next three years, an increase of 57 percent, exceeding last year's 24 percent increase over the previous fiscal year. The oil and gas companies receiving these subsidies are part of the same sector that is responsible for emitting about 20 percent of BC's greenhouse gases (GHG).

So while the provincial government has shown strong climate change leadership by establishing legislated GHG reduction targets and rolling out a detailed Climate Action Plan, the escalating subsidies to the oil and gas sector have left many British Columbians questioning how sincere the government is in its climate change mitigation efforts.

If you are concerned about the impact of oil and gas development on BC's environment and communities, we encourage you to ask your political candidates what their party's positions is on these three key issues:

1. setback distances;
2. the expansion of CBM development; and
3. the escalation of subsidies.

*Greg Gowe*



Legacies are for us to create now! They give us energy and focus. West Coast Environmental Law has been BC's legal champion for the environment for 35 years, and will continue to be well into the future. By leaving a gift to West Coast Environmental Law in your will, you are making a significant contribution to the future sustainability of an organization working to protect what you value most. It will put a smile on your face knowing what you leave behind will affect others and make the world a better place for generations to come. Please call 604-601-2509 for more information.

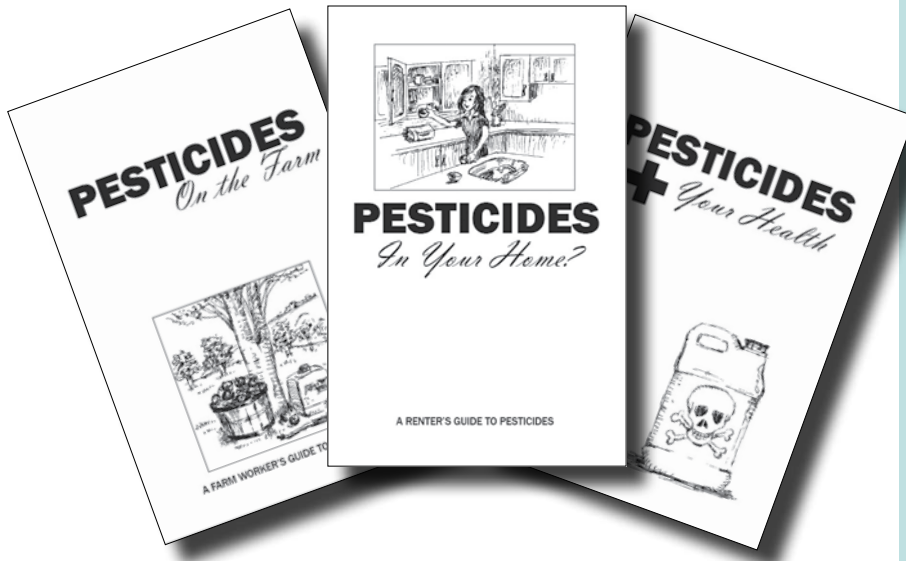


LEAVE A LEGACY™  
*Make a Difference in the Lives that Follow*

# Pesticide Fact Booklets

Pesticides and You booklets give pesticide facts to farm workers and tenants.

Most of us take it for granted that we won't be directly exposed to toxic pesticides without our permission. West Coast's new Pesticides and You booklets are resources for two groups that may not feel that they can complain about being exposed to pesticides: farm workers and tenants.



There are three booklets in the series (the first two are available in English, Spanish and Punjabi):

- **Pesticides and your Health** – Intended to be read alongside one or both of the other booklets, this booklet introduces the reader to the human health risks of pesticide exposure and basic precautions that can be taken to avoid pesticide-related health problems;
- **Pesticides on the Farm** – This booklet outlines both legal and non-legal options available to farm workers to ensure that they are protected from pesticide exposure through their work; and
- **Pesticides in your Home** – This booklet gives practical and legal options for a tenant whose landlord is (or may be) applying pesticides in or near the tenant's home.

All three booklets emphasize practical solutions that tenants and farm workers can carry out on their own, as well as discussing the legal options and the challenges that they pose. West Coast hopes these booklets will be an important resource for farm workers, tenants and people working with those groups.

All three booklets are available for download from [www.wcel.org](http://www.wcel.org)

Thank you to CNC Repair & Sales and The Notary Foundation.

## Alexandra Morton, EDRF overturn BC's fish farm laws

On February 9th, over 15 years of BC government regulation of the fish farming industry was ruled by BC's Supreme Court in effect unconstitutional, and Fisheries and Oceans Canada made responsible for regulating fish farms.

Mounting evidence has demonstrated that open-cage fish farms along BC's coast cause wild juvenile salmon to contract sea lice, decimating the wild population. Alexandra Morton, a marine biologist who has documented much of the connection between the fish farms and sea lice infestations, brought the challenge to BC's fish farm laws, with funding from West Coast's Environmental Dispute Resolution Fund (EDRF).

"Finally, the government agency in charge of fish farms is mandated to put wild salmon first. This has come none too soon as provincial management of fish farms is devastating many coastal communities," said a delighted Morton. "Because the province is not responsible for the oceans, the impact of fish farms on the oceans became nobody's business and this is how we got into this mess."

Fish farms have aggressively expanded into BC in recent years, with the encouragement of the BC government. The province has amended the *Farm Practices Protection Act* to protect fish farmers from nuisance lawsuits, while allowing fish farms to locate in areas that are crucial to the survival of wild salmon runs. At the same time, the federal government, which has a legal responsibility to protect wild stocks, has been leaving the regulation to the province—turning a blind eye to the impacts of the fish farms on wild salmon stocks. Justice Hinkson's decision—subject to an appeal by the province or the fish farms—will require a dramatic rethink of how the industry is regulated.

The victory is a clear opportunity for a public discussion on what laws need to be in place to protect wild stocks from fish farms.

# Lannie Lewis Keller

West Coast supporter Lannie Lewis Keller inherited her sense of adventure and appreciation for “the big wild world” from her parents.

Lannie met her husband, Ralph Keller, while hiking Cape Scott Provincial Park on Vancouver Island. They married a few years later and homesteaded on Read Island, located between Cortes and Quadra Islands. With help from family and friends, and hand-milled beach-salvaged logs, they built Coast Mountain Lodge as a doorway to a “sea kayaking paradise in a rainforest island wilderness”, which opened in 1987.

They were living their dream, but paradise was in peril. In the early 1980s, logging of Read Island’s mature second growth forest began. With ten percent of the island’s forest already lost to clear cut, Lannie galvanized a community of sixty people to save a portion that contained salmon stream headwaters. Through two years of grassroots fundraising, the community raised \$78,000—large by today’s standards, a huge sum 30 years ago—to purchase twenty acres of habitat and to protect it in perpetuity.

Having learned of West Coast Environmental Law about 15 years ago, through our newsletter on a friend’s coffee table, Lannie wishes she

*“Most of us don’t have the knowledge or skills to deal with complex legal issues. West Coast has expertise and connections that complement community activism.”*

had known of West Coast back in the 1980s. She has learned that grassroots efforts often need a legal voice to make a difference. “Most of us don’t have the knowledge or skills to deal with complex legal issues. West Coast has expertise and connections that complement community activism.” Lannie now receives her own copies of this newsletter which she displays at Coast Mountain Lodge.

Before Lannie’s father passed away, he set up a trust for his children to direct donations to charities of their choice each year. Lannie has chosen West Coast Environmental Law as a beneficiary of her dad’s legacy, a choice she believes he would be proud of.

Today, coastal wilderness near Read Island is threatened with private power projects that will bring with them unprecedented environmental impacts.

Lannie has several wishes for the upcoming BC elections. She would like the provincial government to recognize democratic community decisions, and wants a moratorium imposed on all BC river diversions until citizens and government develop comprehensive policies for sustainable energy developments that also benefit the people of BC.

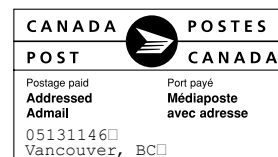


*Our wonderful donors amaze us through the variety of creative ways in which they support West Coast. From directing donations through family trusts and bequests; 3rd party fundraising activities; passing along our newsletters to friends; selling their crafts and donating the proceeds to West Coast; to making donations to West Coast in honour of birthday or Christmas gifts, our network of support has grown even stronger. Despite these times of economic uncertainty, our donors have made it a priority to continue their support to West Coast because they value the importance of protecting the environment. Thank you to all of you – West Coast is incredibly grateful.*

Lucy Pearson



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