

In defense of resource industries

Scott Horngren helps cultivate next generation of resource lawyers

By MATEUSZ PERKOWSKI
Capital Press

Work in the Northwest's rangelands and forests has been reshaped in recent decades by the environmental laws that ranchers and loggers must navigate.

The changes are often propelled by conflicts decided in federal court, an arena where attorney Scott Horngren has made his mark as a defender of natural resource industries.

Precedents matter

Important legal opinions can arise from lawsuits over relatively minor projects that affect endangered species and public lands — major subjects of litigation in the West.

For this reason, Horngren sees certain battles as worthwhile even if they don't involve enormous timber tracts or grazing allotments, since losing one fight can have a domino effect.

"That precedent is going to hurt you in the next case," he said.

The general thrust of major U.S. environmental statutes is set by Congress, and their enforcement is carried out by federal agencies, but key questions about how these laws should function are often answered by judges.

"It's up to the courts to decide what (statutes) mean in the absence of clear direction," Horngren said. "Those interpretations are a huge part of natural resource law."

In nearly three decades of legal practice, Horngren has represented private companies — often when they're caught in the middle of disputes between environmentalists and the government — and influenced federal policy as an attorney for



Mateusz Perkowski/Capital Press

Scott Horngren, an attorney with the Western Resources Legal Center, has spent decades defending against environmentalist lawsuits and is now training the next crop of attorneys to represent the natural resources industry.

the American Forest Resource Council, a nonprofit industry group.

Now he's turned his attention to educating the next crop of natural resource attorneys while continuing to litigate cases that impact agriculture, timber and mining at the Western Resources Legal Center, which is affiliated with Lewis & Clark Law School in Portland.

Unlike most nonprofit environmental law centers, WRCLC is dedicated to helping natural resource industries rather than thwarting them.

The program represents parties in select lawsuits that have the potential to set legal precedent and provide an educational experience for law students.

Horngren is a natural fit as a teacher-litigator, as he's well-versed in a variety of industries affected by environmental laws, said Caroline Lobdell, executive director of WRCLC.

"We can't let all that talent just walk out the door," she said. "He's the true definition of a natural resources lawyer."

'Wise sage'

New lawyers have long turned to Horngren for advice as a "wise sage" of natural resource law, said Tim Bernasek, chair of the agriculture, food and natural resources team at the Dunn Carney law firm.

litigation has also had a more gradual effect: Federal agencies have become more gun-shy about making decisions.

For example, because of pressure from environmentalists, the government is often persuaded to scale back watershed-scale thinning projects until they're a fraction of their original scope, Horngren said.

"The agencies continue to be scared of litigation and the environmental groups," he said.

Pendulum swings

The legal landscape facing natural resource users isn't all doom and gloom. Horngren said the 9th U.S. Circuit Court of Appeals, where many Western environmental cases end up, has grown more even-handed in recent years.

In the early days of Horngren's career, the 9th Circuit was "stacked" with judges who weren't sympathetic to federal management policies, he said. More recent 9th Circuit appointees, though, are less biased in favor of environmental plaintiffs.

A key 2008 opinion by a broad "en banc" panel of 9th Circuit judges, known as *Lands Council v. McNair*, has also helped level the playing field.

Horngren represented logging companies and local governments in that case, which pitted environmentalists against a 3,800-acre selective logging project in the Idaho Panhandle National Forests.

In its ruling resolving the dispute, the 9th Circuit overturned one of its previous decisions for misconstruing federal forest management law.

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Scott Horngren

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Family: Wife, Yona McNally, and a grown son

Education: Bachelor of science in Forestry from Oregon State University in 1977, juris doctor from Lewis & Clark Law School in 1988.



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