

December 1, 2009

VIA CERTIFIED MAIL, RETURN RECEIPT
REQUESTED, #7007 0710 0003 6271 0199

Internal Revenue Service – EO Classification
4910 DAL
1100 Commerce Street
Dallas, TX 75242-1198

Re: Prohibited Political Activity by 501(c)(3) Charitable Organization
Columbia Riverkeeper
Employer Identification Number: 91-1583492

To Whom It May Concern:

Columbia Riverkeeper (“CRK”) is an Oregon public benefit nonprofit corporation exempt from state and federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. As you know, organizations exempt from taxation pursuant to Section 501(c)(3) are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. As set forth in this letter, and as evidenced by the attached documentation, CRK has violated, and continues to violate, this absolute prohibition against political activity, by engaging both directly and indirectly in political campaigns supporting the recall of Clatsop County, Oregon Commissioners who have voted on various land use issues relating to the development and construction of a liquefied natural gas (“LNG”) facility on the Columbia River. Therefore, we respectfully request that the Internal Revenue Service immediately commence an investigation into CRK’s political activities to determine whether CRK may continue to operate as a tax-exempt organization.

1. **CRK’s mission and general opposition to the development and construction of a liquefied natural gas facility in Clatsop County, Oregon.**

CRK’s mission, as stated on its website, is as follows:

Columbia Riverkeeper’s (CRK) mission is to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. To achieve our ambitious goals for the Columbia River watershed and estuary we use an integrated strategy of community-based grassroots organizing, public education, legal enforcement, and hands-on citizen involvement in tangible river protection projects. This multi-faceted model of advocacy is key to addressing the myriad of immediate threats facing the Columbia River. One of the perceived “immediate threats facing the Columbia River” is the development and construction of an LNG facility on the Columbia River.

The Job Keepers.

CRK devotes a substantial portion of its website, www.columbiariverkeeper.org, toward generating opposition to an LNG facility along the Columbia River in Oregon. Two of the three proposed sites for an LNG facility on the Columbia River are located in Clatsop County. Four of the five duly elected Clatsop County Commissioners have voted on land use issues relating to the development of an LNG facility in Clatsop County in a manner opposed by CRK.¹ Therefore, opponents of an LNG facility, including CRK, have actively engaged in election campaigns to recall those Clatsop County Commissioners who have voted in a manner required by Oregon's land use system.

CRK's mission and the background of CRK's opposition to the development and construction of an LNG facility are important to understanding the underlying motivation for CRK's pervasive and ongoing participation in the political campaigns against certain Clatsop County Commissioners. Specifically, as will be further discussed below, CRK, through its paid staff and volunteers, has both directly and indirectly participated and intervened in the political campaigns against each of these Commissioners in direct violation of the prohibitions against this type of activity pursuant to Section 501(c)(3) of the Internal Revenue Code.

2. CRK's political participation and intervention in the political campaigns supporting the recall of elected Clatsop County Commissioners.

Attached for your review are various documents, including published news articles and emails, which provide conclusive evidence of CRK's participation and intervention in the political campaigns supporting the recall of elected Clatsop County Commissioners Jeff Hazen, Ann Samuelson, Patricia Roberts and Richard Lee. Together, these documents reveal ongoing and pervasive involvement by persons employed by, and affiliated with, CRK in the political campaigns supporting the recall of elected Clatsop County Commissioners.

a. CRK's participation and intervention in the October 27, 2009, recall election campaign

Attached as Exhibit 1 to this letter is an article dated November 13, 2009, published in NorthCoast Oregon (the "Nov. 13 Article"). Among other inappropriate campaign-related issues, the Nov. 13 Article details the involvement of CRK representatives, Olivia Schmidt, Dan Serres and CRK's Executive Director Brett VandenHeuvel, in the political campaigns supporting the recall of Clatsop County Commissioners, Jeff Hazen and Ann Samuelson, which election occurred on October 27, 2009. The Nov. 13 Article cites to two specific email chains which confirm CRK

¹ Notably, Oregon's land use system, comprised of a complex web of local ordinances and state law, allows very little discretion by local officials when making decisions on land use issues. The system is intended to keep local public officials from allowing personal bias to interfere with their publicly mandated duties. In fact, CRK appealed land-use decisions made by the Clatsop County Commission relating to LNG to the Oregon Land Use Board of Appeals (a State agency) ("LUBA"). In January 2009, LUBA issued a decision that rejected 21 of 23 arguments raised by CRK and project opponents. In March 2009, the Oregon Court of Appeals dismissed an appeal by CRK and opponents to LUBA's January decision. In July 2009, Clatsop County adopted revised filings for two remanded items. In September, CRK filed its challenge to the revised findings; a decision from LUBA on the matter is pending.

involvement in these political campaigns. The first is an email dated July 27, 2009, authored by Olivia Schmidt (the “July 27 Email”), attached hereto as Exhibit 2, which not only expresses open support for the recall of Commissioners Hazen and Samuelson, but also expressly solicits financial contributions for the political action committees advocating the recall of these two Commissioners. Olivia Schmidt then concludes the email by indicating that she was sending this email in a representative capacity² on behalf of “Columbia Riverkeeper, Oregon Sierra Club & Oregon Citizens Against the Pipelines.” Notably, this email was sent by Olivia Schmidt on the same day that CRK Executive Director Brett VandenHeuvel sent a letter to Commissioner Samuelson denying CRK’s involvement in the political campaigns supporting the recall of Commissioners Samuelson and Hazen. The letter is attached as Exhibit 3.

The second email chain referenced in the Nov. 13, 2009 Article is a series of emails dated October 29, 2009, between Olivia Schmidt, Brett VandenHeuvel, Dan Serres, and an email distribution list presumably comprised of persons supporting the recall of Commissioners Hazen and Samuelson (the “Oct. 29 Email”), attached hereto as Exhibit 4. As detailed in the Nov. 13 Article, the Oct. 29 Email reveals CRK’s direct involvement in political campaigns through at least two additional paid CRK staff persons, Brett VandenHeuvel and Dan Serres. In the email chain, Olivia Schmidt solicited authorization to send the email from Mr. VandenHeuvel and Mr. Serres, as well as editorial input on an email update relating to the recall campaigns against Commissioners Hazen and Samuelson. Not only does the Oct. 29 Email evidence a substantial revision to the content of the email that was ultimately sent to Olivia Schmidt’s email distribution list, the content of that email expressly threatens retaliatory action against future Commissioners by declaring that “[l]eaders who vote to approve LNG are not representing the people and risk losing their office.” Moreover, this email, once again, was signed by Olivia Schmidt in a representative capacity on behalf of “Columbia Riverkeeper & Oregon Sierra Club,” and Olivia Schmidt also indicates that CRK will continue to be involved in future political campaigns of this nature by concluding “[t]he fight continues!”

Finally, the Nov. 13 article references campaign participation by CRK representative Jesse White. Mr. White, who listed his employer as CRK in at least one campaign finance report, made calls on behalf of the political campaign against Commissioner Samuelson, including at least one telephone call directly to Commissioner Samuelson, evidencing direct intervention in the political campaign on behalf of CRK.

b CRK’s participation and intervention in the December 8, 2009, recall election campaign.

As of the drafting of this letter, two recent political campaigns to recall Clatsop County Commissioners have concluded, and a third political campaign to recall Commissioner Patricia Roberts is underway.³ Election day is December 8, 2009. Attached as Exhibit 5 is an article dated November 17, 2009, published in North Coast Oregon (the “Nov. 17 Article”) reporting on efforts by recall supporters to staff a phone bank urging voters to vote in favor of recalling Commissioner Roberts. A prominent participant in that effort is Laurie Caplan, who is reported to have been actively involved in the recall campaign against Commissioner Hazen. As mentioned in the article, on

² Also attached to this letter as Exhibit 14 is a press release from CRK dated August 16, 2008, which expressly references Olivia Schmidt as a CRK representative.

³ A fourth campaign, against former Commissioner Richard Lee, occurred in 2008.

November 16, 2009 Laurie Caplan sent an email to a distribution list of persons presumably in support of recalling Commissioner Roberts notifying these persons of the time and location of a “RECALL-ATHON 2 for DISTRICT 2 (the “Nov. 16 Email), attached as Exhibit 6. The Nov. 16 Email is signed by “Laurie” in her representative capacity on behalf of “Accountability for District2,” which is a political action committee formed to support the recall of Commissioner Roberts and is registered with the Oregon Secretary of State, Elections Division. Laurie Caplan states that “[w]e’ll provide you with a brief upbeat script, a calling list, and calling guidelines...”

The Nov. 16 Email clearly indicates that Laurie Caplan is actively participating in the political campaign against Commissioner Roberts. Laurie Caplan is a known and authorized representative of CRK, who spoke on behalf of CRK at a Clatsop County Commission meeting regarding the LNG project in February 2008. Attached as Exhibit 7 are the meeting minutes from the Commission meeting held on February 27, 2008, wherein Laurie Caplan represented to the Commission that she was “. . . speaking on behalf of Columbia Riverkeeper. . . .”

Ms. Caplan is also described by CRK in its Fall 2007 newsletter, as a “key volunteer” for CRK. See “Huge Successes” section of the CRK Fall 2007, Newsletter (Exhibit 8). Attached as Exhibit 9 is a Daily Astorian news article dated April 9, 2008, describing Laurie Caplan as “an Astoria Democrat who works with the LNG opponent group Columbia Riverkeeper, . . .” As an authorized and widely known representative of CRK, Laurie Caplan’s express political advocacy in the various political campaigns in support of recalling Commissioners Hazen, Samuelson and Roberts is directly attributable to CRK.

Also attached to this letter is a North Coast Oregon news article dated November 19, 2009 (“Nov. 19 Article”) (Exhibit 10), which further details CRK’s involvement in political activity relating to CRK’s opposition to the LNG project and the political campaigns in support of the recall efforts described above.

c Additional evidence of political campaign participation and intervention by individuals and organizations affiliated with CRK.

In addition to the campaign participation and intervention in the recall campaigns described above, certain individuals and organizations warrant closer scrutiny given their ties to the recall campaigns, to a referendum campaign intended to derail the LNG project, and to CRK.

CCCCS

Clatsop County Citizens for Common Sense (“CCCCS”) was a registered political action committee formed to support Referendum 4-131 opposing a County zoning change that conditionally allowed the placement of cables and pipelines in areas designated “Open Space, Parks and Recreation” for purposes such as natural gas transport, water and sewer, as well as other possible applications. CRK was one of three organizations that formed CCCCCS and donated nearly \$10,000 to the PAC, shown in Exhibit 11. CRK was involved in the fundraising efforts, attached as Exhibit 12. Referendum 4-131 was later used to serve as a primary vehicle to generate public interest for the recall campaigns against the County Commissioners as evidenced by campaign literature.

CPCS

Cheryl Johnson has been identified in various news sources, as well as CRK's own newsletter, as CRK's "Columbia Estuary Coordinator." *See* Exhibit 8, p. 11. Ms. Johnson has lobbied Oregon Legislators and Clatsop County Commissioners in opposition to the LNG project. Recently, Ms. Johnson attended a meeting of LNG opponents, including CRK representatives, at the offices of the Columbia River Inter-Tribal Fish Commission ("CRITFC") described in the Nov. 19 Article. *See* Exhibit 10.

Ms. Johnson is a Co-Chair, along with Laurie Caplan, of CPCS, which is registered with the Oregon Secretary of State Corporation Division as an assumed business name. CPCS is not identified as a tax-exempt organization or a political action committee.) A review of CPCS's website (www.columbia-pacific.org), indicates that CPCS was formed to oppose LNG.

CPCS received a cash contribution from Clatsop County Citizens for Common Sense ("CCCCS"). This transfer from a registered PAC to an assumed business name is a violation of Oregon state law.

CPCS also received a cash contribution from Clatsop Citizens for Open Government ("CCFOG"). CCFOG was a registered political action committee formed to support the recall campaign against Commissioner Richard Lee.

Mark Auerbach

Marc Auerbach is an activist with longstanding ties to CRK who has been integrally involved in all of the recall campaigns, as well as Referendum 4-131. One of the three organizations involved in the formation of CCCCCS was Northwest Property Rights Coalition ("NPRC"). Mr. Auerbach serves as the Chair of NPRC. Mr. Auerbach contributed cash and in-kind contributions to various political action committees involved in the recall campaigns (including CCFOG, Democracy in District 5 and Democracy in District 5.org) and the Referendum 4-131 campaign. Review of campaign finance reports available through the Oregon Secretary of State's campaign finance reporting system known as "Orestar," indicate that Mr. Auerbach received cash amounts from these organizations in excess of the amounts he contributed to these organizations. Curiously, Mr. Auerbach formed the political action committee "Democracy in District 5" after a news article reported that he had contributed in excess of 91% of the contributions to "Democracy in District 5.org." The similarity of these two names makes it very difficult to accurately track campaign finance activity for these two organizations, both of which were formed for the singular purpose of recalling Commissioner Samuelson.

Clearly, Mr. Auerbach is heavily committed in his opposition to LNG going so far as to be quoted in Olivia Schmidt's and CRK's Oct. 29 Email as stating "[p]ro-LNG does not a prolonged political career make." Also, a press release dated August 16, 2009, issued by CRK lists Marc Auerbach as a contact person along with Brent Foster. *See* Exhibit 16.

Marc Auerbach is the Chair of the Northwest Property Rights Coalition and also served as a campaign director for Democracy in District 5 Campaign, the recall campaign against Clatsop County Commissioner Ann Samuelson.

Contrary to an assertion by Marc Auerbach posted on the North Coast Oregon website in response to the Nov. 13 Article (Exhibit 1), CPCS has played, and continues to play, a substantial role in the recall campaigns against the County Commissioners. *See* Exhibit 13 (M. Auerbach post on North Coast Oregon alleging “[t]he committee [CCCCS] was discontinued in 2009 by giving its remaining \$1,164.67 to Columbia Pacific Common Sense, a group that played no part in the recall. . .”).⁴

Groundwire (formerly ONE/Northwest)

CPCS’s active participation in the recall campaigns is further evidenced, in part, by emails sent by both Laurie Caplan and Cheryl Johnson urging email recipients to participate in various activities supporting the recall campaigns. *See* Exhibit 14. This was done through the services of Groundwire.

CRK appears to have shared some or all of its highly valuable mailing list, or provided access to CRK’s third party email list management services with CPCS for use by CPCS Co-Chairs Cheryl Johnson and Laurie Caplan for political campaign purposes for the recall efforts. Specifically, Olivia Schmidt’s July 27 Email (Exhibit 2) was sent to a list managed by Groundwire (formerly ONE/Northwest), which is a Section 501(c)(3) consulting group that, according to its website, builds websites, databases, email and social media tools for environmental organizations.⁵ Ms. Johnson and Ms. Caplan each sent emails to lists of individuals managed by Groundwire; however, only CRK appears to be a Groundwire customer according to Groundwire’s 2008 Annual Report published on its website and the absence of any reference to CPCS on Groundwire’s list of customers in the “portfolio” section of Groundwire’s website. *See* Exhibit 15 (Groundwire 2008 Annual Report). It is indisputable that the email distribution services of Groundwire were used by Ms. Caplan, Ms. Schmidt and Ms. Johnson in support of recall activities. Exhibit 14 (three emails from Laurie Caplan and Cheryl Johnson dated September 23, 2009, and two on September 28, 2009, at 2:09pm and 2:41pm). Each is addressed to a specific list, maintained by Groundwire, evidenced by the domain name contained in the address field To: <list_name>@lists.onenw.org.

A review of the campaign finance reports available through the Oregon Secretary of State’s campaign finance reporting system known as “OreStar,” shows no cash expenditure or in-kind contribution reported for email list management services by the recall committees.

The ties between CRK and numerous activist organizations (CPCS, CCCC, NPRC, and the recall campaign committees described above) and individuals (including Marc Auerbach, Cheryl Johnson, Laurie Caplan, Olivia Schmidt, Brett VandenHeuvel, Dan Serres, Brent Foster, and others), further evidence prohibited participation and intervention in political campaigns by CRK. Additionally, while CRK may engage in some lobbying activities, including ballot measure campaigns, IRS regulations prohibit Section 501(c)(3) organizations from engaging in more than an “insubstantial”

⁴ Disturbingly, Marc Auerbach appears to consider misrepresentation and deceit to be mere political “tactics” to be employed when necessary to achieve his desired outcome as evidenced by his subsequent post on the North Coast Oregon website dated November 14, 2009. *See* Exhibit 13 (among other admissions, openly acknowledging making statements in support of a position on an issue that he knew to be false and justifying the same by noting that “it was up to the other side to call us out. . .”).

⁵ Review of Groundwire’s 2008 Form 990 reveals \$772,414 in program service revenue, presumably attributable to the technology services provided to Groundwire’s customers giving rise to the question of whether this organization itself is, in fact, organized and operated for exempt purposes.

amount of these types of activities. CRK's continued substantial lobbying activities would appear to exceed the level allowed under the Internal Revenue Code inasmuch as CRK's efforts in this regard are clearly more than "insubstantial."

3 Campaign Finance Reports on Orestar

As you undertake an investigation into CRK's longstanding participation and intervention in the political campaigns described above, we recommend that you also review the State of Oregon's campaign finance website, <https://secure.sos.state.or.us/eim/jsp/CEMainPage.jsp> (known as "Orestar"). Review of information relating to the various political committees involved in the recall efforts confirm disturbing ties among several CRK representatives described above and persons referenced in this letter and the attached documents. The various political committees include: District 1 for Columbia (ID 13953); Clatsop County Citizens for Common Sense (ID 13050); Democracy in District 5.org (ID 13863); Democracy in District 5 (ID 13952); Clatsop Citizens for Open Government (ID 12783); Accountability for District 2 (ID 14027 and ID 13910); and others. Persons described above acting on behalf of CRK, including Laurie Caplan, Olivia Schmidt, Marc Auerbach, Cheryl Johnson, Brett Foster and Brent VandenHeuvel are heavily involved in activities on behalf of several of the political committees formed to support recall efforts in Clatsop County and to generally oppose the LNG project. *See also* Nov. 19 Article (discussing various participants in the anti-LNG efforts).

4 Conclusion

The evidence described above and attached to this letter suggest not only prohibited participation and intervention in political campaigns by CRK, but also reveals that CRK is actively directing and leading many of these efforts. In other words, CRK is working behind the scenes in many instances but working publicly in other instances. By engaging in these activities, CRK has forfeited the right to its tax-exempt status, which is reserved to those charitable institutions devoted to serving the public good, particularly in this time of desperate need for many citizens in Oregon and around the country. Moreover, CRK's efforts, and the efforts of the various individuals describe above, have caused enormous expense to the public. Clatsop County has been forced to conduct four recall campaigns, a ballot measure campaign, and to otherwise expend precious and scarce public resources that would be far better used to support the many underfunded County programs which serve the poor, mentally ill, and other worthwhile public services.

We respectfully request that the Internal Revenue Service undertake a thorough investigation of CRK and its activities which we firmly believe will lead to the irrefutable conclusion that CRK has violated the prohibition against political participation and intervention by Section 501(c)(3) charitable organizations.

Sincerely,



Thomas J. Ivancie
Executive Director

Encs.