

NORTHWEST ENVIRONMENTAL ADVOCATES



December, 2014

Winter 2014 Newsletter

Dear Friends:

As 2014 comes to a close, we can report that it's been quite a year for NWEA! As we have over these many years, we continue to use our expertise to bring about the change you want—keeping water clean, protecting salmon habitat, reducing toxics in fish and drinking water, and protecting human health. We also continue to provide assistance to citizens—at the local level, where government inaction drives people to seek our help—to stop clear-cuts and pesticide spraying, to prevent sewage sludge disposal, to help protect wild salmon spawning grounds and freshwater mussels.

As NWEA supporters know, we work to enforce every aspect of the Clean Water Act, from rules establishing supposedly acceptable levels of water pollution to the pollution limits set in discharge permits. The Clean Water Act connects all the pieces together. But when I think back over our work of the last year, frankly what's so shocking is how little of the process is working the way Congress intended.

Your continuing support is both essential to our work and truly appreciated!

NWEA Challenges the “Fruits of the Poisonous Tree”

What tree is that? Well, it's like this. A couple of years ago we won a lawsuit. A federal court said that the Clean Water Act prohibited Oregon from changing its water quality standards for temperature without the approval of the Environmental Protection Agency (EPA). Oregon was replacing temperatures known to protect cold water salmon and steelhead—around 18° C (64.4° F)—with temperatures as high as 32° C (90° F)! Instead of going through the legally required process, it was making the changes in clean-up plans called Total Maximum Daily Loads (TMDLs). Although EPA has concluded temperatures over 20°C are fatal in weeks to months, and over 23°C are fatal in hours to days, EPA was routinely approving TMDLs with these temperatures. While NWEA successfully convinced the court to throw out the provision that allowed the changes, the changes remained in place in the TMDLs.

The only solution: go back to federal court. Our lawsuit challenges the TMDLs for the Willamette, Rogue, Umpqua, John Day, Lower Grande Ronde, Sandy, and other basins.

We're also challenging Oregon's adoption of a mercury TMDL for the Willamette River basin that, among other stunning failures, does not address the need to protect fish-eating birds and mammals from mercury. Their smaller bodies and large amount of fish consumption make birds such as the bald eagle and kingfisher particularly vulnerable to toxics that concentrate as they go up the food chain.

NWEA is represented in the Oregon TMDL case by Bryan Telegin of Bricklin & Newman, and Allison LaPlante of Earthrise Law Center at Lewis & Clark Law School.

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Challenging Pollution from the WPPSS No. 2 Nuclear Reactor

The WPPSS No. 2 nuclear power plant—now with the updated name of Columbia Generating Station—discharges water contaminated with toxic chemicals into the Columbia River at the Hanford Reach, a 51-mile free-flowing stretch of the river. The Hanford Reach is home to some of the most productive spawning areas in the Northwest, including the largest remaining stock of wild fall Chinook salmon in the Columbia. The reactor also sucks in 20 million gallons of water a day, through a system the National Marine Fisheries Service (NMFS) worries kills or maims threatened species. NMFS was so concerned about the intake system that it asked the EPA to veto the permit if nothing was done to fix the problem.

NWEA wrote extensive comments on the problems with the draft discharge permit. Not surprisingly, Washington issued the permit without fixing the problems. NWEA, along with the Northwest Environmental Defense Center and Columbia Riverkeeper, scrambled to file a lawsuit in state court within the required 30 days.

NWEA is represented in the challenge to the Columbia Generating Station discharge permit by David Mann, of Gendler & Mann, and Karl Anuta, of the Law Office of Karl G. Anuta.

Protecting Freshwater Mussels from Extinction

Salmon and steelhead are always in the limelight but behind the curtain is the freshwater mussel. Little known, and very important to aquatic ecosystems, the freshwater mussel is besieged by pollution and habitat damage. Some mussels depend upon salmon for their complicated life cycle, further putting them in jeopardy. As a group, freshwater mussels are one of the most endangered animals on the planet, with many already extinct and others listed under the Endangered Species Act. Some mussel species in the Northwest live up to 100 years!

NWEA has been raising concerns about the need to protect freshwater mussels in increasingly more regulatory matters. For example, in Washington, we recently pointed out the impact on Columbia River mussels from the Hanford Nuclear Reservation. In Oregon, we raised concerns about water pollution affecting mussels in comments on Oregon's proposed list of impaired waters. We also pointed to the need to protect freshwater mussels from the effects of ammonia pollution in setting Oregon's new ammonia standards.

Freshwater mussels are coming out of the shadows because they are a very sensitive species and populations are plummeting. The question for the Northwest is whether water quality agencies will act sufficiently to prevent these mussels from coming so close to extinction that they become listed as threatened or endangered or they go over the edge altogether before agencies can act.

NWEA is grateful to the Xerces Society for their scientific publications on freshwater mussels.

Reforming Logging Practices in Oregon: The Struggle Continues

Government lawyers are fond of telling NWEA that we should trust the agencies to comply with federal laws even without court orders. Needless to say, we insist on enforceable court orders. One such court order included a May 2014 date by which the EPA and the National Oceanic and Atmospheric Administration (NOAA) were to make a final decision—either approving or disapproving Oregon's coastal nonpoint pollution program. This decision regarding Oregon's wholly inadequate logging practices, was required to have been made in 1996. After we settled our lawsuit, the agencies had roughly 18 years to complete the job.

Apparently 18 years was not enough time. EPA and NOAA not only missed the court-ordered

deadline but they unilaterally set their own new deadline—January 30, 2015—without even bothering to notify the court.

During the public comment period for the federal agencies' proposed disapproval of Oregon's program, NWEA submitted extensive comments. These included two expert declarations, one by aquatic ecologist Chris Frissell on logging issues and one by hydrologist Jon Rhodes on agricultural issues, both made possible by special contributions.

NWEA is represented in the CZARA litigation by Paul Kampmeier of the Washington Forest Law Center and Allison LaPlante of the Earthrise Law Center, Lewis & Clark Law School.

Water Quality Credit Trading in Oregon: a Hoax

Allowing dischargers to plant trees instead of install water cooling equipment to meet permit limits makes good environmental sense. But there are many ways in which this “water quality credit trading” can go badly awry. In July, NWEA wrote a lengthy letter to EPA explaining the many problems with Oregon's trading program. As a result, EPA has urged Oregon to develop rules for trading and Oregon DEQ has agreed to do so. Only time will tell if that process perpetuates the problems or improves them. Simply put, for all the controversy over “cap and trade” in the air pollution context—to address acid rain and greenhouse gases—those programs have far and away more integrity than the water quality trading done in Oregon.

Washington, Idaho, and Oregon Water Quality Standards

Improvements in Northwest states' water quality standards are beginning to trickle in due to NWEA's multiple lawsuits in the three states. In Idaho, where EPA had failed to consult with the fish and wildlife agencies over water pollution impacts to threatened and endangered species for the last 20 years, the National Marine Fisheries Service (NMFS) has determined that water quality standards for copper, mercury, arsenic, cyanide, and selenium all pose a threat to salmon and steelhead and must be revised. In Oregon, NMFS determined that copper, cadmium, ammonia, and aluminum posed a threat, resulting so far in Oregon's having proposed a new ammonia water quality standard. NWEA's litigation continues in all three states.

NWEA is represented in the Idaho and Washington Water Quality Standards cases by Allison LaPlante and Kevin Cassidy of the Earthrise Law Center at Lewis & Clark Law School, Bryan Teigin of Bricklin & Newman, and Laurie Rule of Advocates for the West.

Invasive Species in Ballast Water: the Never-Ending Saga

An amazing aspect of NWEA's 16-year fight to control discharges of ships' ballast water is the contrast between the cost of invasive species carried in that ballast—EPA calls it “staggering”—and the unwillingness of federal agencies to require pollution controls on ship discharges. One need think only of the hundreds of millions of dollars spent each year on a *single* invasive species—the zebra mussels that are colonizing the nation's infrastructure—to realize the extraordinary cost of *all* the aquatic invasive species brought by ships to this country.

NWEA started its effort to regulate ship discharges in 1999 when we filed a petition with EPA to regulate ballast water under the Clean Water Act. Now, our fourth lawsuit, challenging the adequacy of EPA's permit, is pending before the Second Circuit Court of Appeals in New York.

NWEA is represented in this case by Deborah Sivas and Matthew Sanders of the Environmental Law Clinic at Stanford Law School and Allison LaPlante at Earthrise Law Center at Lewis & Clark Law School.

Some Short Updates

- Ever since NWEA won its temperature standards lawsuit in Oregon, the state has reduced its issuance of revised water pollution discharge permits to a trickle. Permits are required to be revised every five years, but by April, only 30 percent of Oregon's permits for major sources were up-to-date. The few proposed draft permits have been of terrible quality and NWEA has prepared comments on many of them. We submitted extensive comments on the proposed revision to Oregon's concentrated animal feeding operation (CAFO) discharge permit, a permit that covers nearly all dairies and animal operations in the state.
- NWEA's 1991 lawsuit against the City of Portland over its raw sewage discharges to the Willamette River and Columbia Slough was featured as the news-story-of-the-year in *Willamette Week's* 40th anniversary edition.
- We want to thank the many indispensable law students from the environmental law clinics at the Lewis & Clark and Stanford law schools for their assistance.

Where You—Our Members—Come in

Membership in NWEA provides us with obviously needed financial support. But membership is so much more. **We rely on members to provide NWEA with legal "standing"** — that is, the right to file lawsuits on your behalf. So join today, sliding scale, from zero to infinity!

From Lawsuits to Policy Advocacy, NWEA is Working for You!

We encourage you to stay current on NWEA's activities through our website: www.NorthwestEnvironmentalAdvocates.org. (If you want to know when content is added, "follow us" on Twitter.) The website is a great place to learn about the latest news and to find original documents.

When you support NWEA, you do more than make sure that the nation's environmental laws are upheld. Because we're often the "go-to" group on clean water issues, **you are helping the citizens groups and journalists across the region and the country who rely on NWEA.**

Please remember that Northwest Environmental Advocates does a lot with very few resources so we count on you for financial support. Contributions are tax deductible and much appreciated!

Sincerely,



Nina Bell
Executive Director
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P.S. In enforcing the nation's environmental laws, **NWEA guarantees you an old-fashioned lean operation---giving you highly credible and vigorous advocacy** without fancy slogans and glossy magazines. Quite frankly that means we really put your financial contribution to work, whether we're going to court or helping citizens in their own backyard. I hope that you will consider making a tax-deductible contribution to NWEA. We can guarantee you that your contribution will be put to good use!