

# NORTHWEST ENVIRONMENTAL ADVOCATES



December 2016

Winter 2016 Newsletter

Dear Friends:

These are very dark times. Despite having a successful year behind us and big plans for the end of this year, it's also fair to say that we do not know what is coming. Still, we remain optimistic, going into 2017 with a action plan that includes cutting edge legal actions, a strong social media presence, and completes a long-overdue overhaul of our website. What is clear is that, during the next four years, we *all* will need to work harder, contribute more, and volunteer more.

For our part, we intend to persist. For, if there is anything that characterizes NWEA it's our persistence. Established in 1969—the outset of the Nixon administration—when 20 nuclear power plants were planned for the Northwest, we worked hard to defeat them and today only one reactor operates. Now, NWEA works to ensure the integrity of the Clean Water Act, signed by President Nixon in 1972. Without NWEA, the state programs that implement this law would be riddled with loopholes, created for the benefit of polluters.

That is, even in the best of times, it's difficult to make laws work to control pollution. As you read on, you'll see that sometimes NWEA has had to bring two or three lawsuits just to get the basics in place. Going forward, we will continue to push agencies hard and to sometimes sue them. Bottom line: We'll continue applying our expertise to bring about the change you want—keeping water clean, protecting salmon habitat, reducing toxics, and protecting human health.

What we need from you is your continuing support, which is both essential to our work and truly appreciated!

## **NWEA Wins More Toxic Protection for Fish in Oregon Waters**

Copper has long been known for its toxic effects on salmon. Copper causes salmon to lose their sense of smell, which is key to their ability to return to spawning habitats. It also causes salmon to lose their instinctive response—of ceasing all movement—to avoid predators. Copper is widely present in sewage discharges, stormwater, and agricultural chemicals. All the more reason, apparently, for foot-dragging agencies to refuse to update water quality standards for copper that are the basis for pollution controls.

This year, NWEA settled the last of three lawsuits on Oregon's toxics standards, obtaining U.S. EPA's agreement to establish criteria for Oregon for copper, cadmium, and aluminum. These toxic chemicals, plus ammonia, were all identified by the National Marine Fisheries Service (NMFS) as jeopardizing the survival of salmon and steelhead, findings that were the result of an NWEA lawsuit. An additional benefit of NWEA's case: this effort caused EPA to update the national science that it recommends to states across the country when they set standards.

*NWEA was represented in these cases by Allison LaPlante and Jamie Saul at Earthrise Law Center at Lewis & Clark Law School.*

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— [www.NorthwestEnvironmentalAdvocates.org](http://www.NorthwestEnvironmentalAdvocates.org) —

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## Tackling Polluted Runoff in Washington State and Puget Sound

Two months ago, NWEA informed U.S. EPA and the National Oceanic and Atmospheric Administration (NOAA) that we would sue them over Washington State's failure to control polluted runoff in coastal watersheds, including Puget Sound. The letter was the opening salvo in a case seeking to force the federal agencies to pressure the state for more pollution controls on sources such as farming and logging, dairy operations, urban runoff, on-site septic systems, and pesticides. These pollution sources create a host of problems: closed shellfish beds, loss of salmon habitat, poisoned fish and wildlife, and generally poor water quality.

The lawsuit is being filed under three federal laws. First, although the Clean Water Act does not directly regulate these nonpoint sources of pollution, such as logging and farming, it does provide federal funds to states to induce good behavior. Of course, such "carrots and sticks" don't work if EPA is unwilling to hold states accountable to legal requirements.

Second, the case seeks to make the federal agencies levy funding cuts on Washington for failing to comply with a law that requires the state to protect coastal water quality, including Puget Sound and its watersheds. The law—the federal Coastal Zone Act Reauthorization Amendments ("CZARA")—requires states to have polluted runoff programs in place by 1996 or to face sanctions. The federal agencies have never approved Washington's program but neither have they withheld any of the federal grant funding that the law requires failing states to lose. In recent years, the Washington Department of Ecology has received an average of \$3 million each year from EPA to support its nonpoint source program and \$2 million annually from NOAA for its coastal zone management program. Both programs are subject to the cuts.

Finally, NWEA's warning letter pertained to the federal agencies' failure to seek consultation with expert fish and wildlife agencies under the Endangered Species Act on their decisions to provide full funding to Washington despite the legal prohibitions against it.

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

## NWEA's Persistence on Oregon's Temperatures Pays Off

NWEA's last lawsuit on Oregon's temperature standards knocked out a huge loophole. In 2012, a federal court threw out EPA's approval of an Oregon rule that allowed the state to erase the EPA-approved temperatures and replace them with what Oregon claimed were "natural" temperatures. As a result of this rule, Oregon had wiped away the carefully chosen allowable temperatures for cold-water salmon—16° to 18° C—and replaced them with temperatures as high as 32° C (90° F), a temperature lethal to salmon within seconds. Because the entire scheme was intended to cheat the Clean Water Act, EPA never reviewed these high temperatures before they went into place as Oregon's new water quality goals.

The replacement scheme took place each time the Oregon Department of Environmental Quality (DEQ) issued a pollution clean-up plan called a Total Maximum Daily Load (TMDL). This meant that even though NWEA won its challenge to the illegal rule, the previous use of the rule was left in place. So, in 2012 NWEA sued EPA for approving Oregon's temperature TMDLs.

The case is not yet over, but in October a federal magistrate judge issued his recommendation that NWEA win on its Clean Water Act claims.

*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.*

## Providing Heat Relief to Salmon in the Columbia River

While news outlets reported that 50 percent of sockeye salmon in the Columbia River died in the summer of 2015, by the time the fish kill was over, over 90 percent of endangered Snake River sockeye had died due to hot water temperatures in the Columbia.

NWEA has been working for protective temperature water quality standards in Oregon, Washington, and the Columbia for 25 years. Late last year, as the result of one of NWEA's successful lawsuits, the National Marine Fisheries Service (NMFS) found Oregon's water quality standard for migrating salmon was based on a hoax. At 20° C (68° F), this migration criterion is Oregon's hottest allowable temperature and applies primarily to 100 miles of the Columbia River and 50 miles of the Willamette River. NMFS found that the migration standard jeopardizes the survival of nine species due to increased deaths and disease, and impairment of fish migration.

NMFS called out the Oregon Department of Environmental Quality (DEQ) for pretending that salmon would be okay in such hot water because DEQ had promised to require pockets of cold water to provide temporary relief. DEQ said that it would identify these so-called "thermal refugia" when it developed clean-up plans called Total Maximum Daily Loads (TMDLs). Of course when the time came, the TMDLs did not include the thermal refugia and EPA approved them anyway. Now, due to NWEA's litigation, many state, regional, and federal agencies are working to identify ways to increase thermal refuges along the Columbia River, where river temperatures have increased over the last 70 years and are predicted to continue getting hotter.

*NWEA was represented in this case by Allison LaPlante and Dan Rohlf of the Earthrise Law Center at Lewis & Clark Law School.*

## NWEA Wins on Idaho's Arsenic Standards

NWEA has settled its lawsuit against EPA over its approval of unsafe arsenic standards for Idaho. EPA had approved a level of 10 µg/L, which is based on the Safe Drinking Water Act and takes into consideration the cost of treatment, an illegal consideration under the Clean Water Act. Contrast that Idaho 10 µg/L with the national recommended level that EPA just left in place in Washington State: 0.14 ug/L for consumption of fish and 0.018 ug/L for consumption of both fish and water. Big difference!

After completing a settlement with NWEA earlier in 2016, EPA disapproved Idaho's arsenic criterion in September. EPA also committed to propose a federal replacement by the end of 2018, by which time the agency expects to have completed a new analysis on the human health effects of arsenic.

EPA also agreed that it would use levels lower than 10 µg/L when taking regulatory actions in Idaho, such as issuing water pollution discharge permits. And, it agreed that it would urge the State of Idaho and federal agencies to do the same. NWEA hopes that this interim solution will be an improvement over agencies' using grossly unprotective standards in a variety of regulatory processes, such as establishing discharge limits in permits and assessing the impairment status of Idaho's rivers and streams.

Since arsenic is often released during the process of mining, we expect that both the short- and long-term improvements in Idaho's arsenic standards will result in better analysis of how mining may degrade water quality, such as in Environmental Impact Statements.

*NWEA is represented in the this case by Lia Comerford and Allison LaPlante of the Earthrise Law Center at Lewis & Clark Law School*

## Some Short Updates

- NWEA submitted extensive comments to the Washington Department of Ecology on proposed permits it intends to issue to Vashon, Mt. Vernon, and Hartstene Pointe sewage treatment plants. The comments focus on Ecology's failure to include limits on nutrients, the pollutant that is causing low dissolved oxygen and algal blooms in Puget Sound.
- NWEA joined with the Northwest Environmental Defense Center (NEDC) to submit public comments on Clean Water Services' permit—which covers four sewage treatment plants discharging to Oregon's Tualatin River—and to object to issuance of the permit. So far, Oregon DEQ has accepted the objection without telling us what it did wrong.
- And, NWEA worked with NEDC to submit comments on a consultant's report on why Oregon's water pollution discharge permit program has the biggest backlog of expired permits in the country.

## 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!

**W**e encourage you to stay current on NWEA's activities through our website: [www.NorthwestEnvironmentalAdvocates.org](http://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. And, early next year, keep your eyes open for a complete upgrade. **We also have a new Facebook page**, which is kept regularly updated with news.

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 always very much appreciated!

Sincerely,



Nina Bell  
Executive Director

P.S. In enforcing the nation's environmental laws, **NWEA guarantees you an old-fashioned no frills 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!