

NORTHWEST ENVIRONMENTAL ADVOCATES



December 2023

Winter 2023 Newsletter

Dear Friends:

It's been another busy year with both high points . . . and the inevitable frustrations.

For example, I was recently explaining to a federal court how Oregon has completely botched a program to clean up its growing list of polluted waters. Through the magic of a computer, I traveled the rivers, streams, lakes, and estuaries of Oregon, from the Columbia River to the Klamath, the coastal watersheds to the eastside. Sad to say, there is no place in Oregon where the Department of Environmental Quality (DEQ) is doing its job. The result is that—wherever you live, work, and play—water pollution is getting worse.

It got me to wondering why NWEA has to bring so many lawsuits—when the agencies could just commit to doing what the Clean Water Act requires. That puzzling question applies to a number of NWEA cases against EPA, most of which are roaring into high litigation mode.

These frustrations are offset by knowing that in strengthening the Clean Water Act, we are providing valuable assistance to other organizations—in the Pacific Northwest, nationally, and to Northwest tribes. High points are when one of our successful lawsuits changes national policy or a federal oversight agency confirms our assessment of the pollution situation in Puget Sound. Most of all, a high point is the support we receive from you.

So, whether it's behind closed doors, or in the public eye, with the help of our superb legal team we are bringing the change you want—decreasing pollution, restoring salmon habitat, reducing toxics, protecting human health, and seeking to reduce the effects of climate change.

When we go into court, we are representing your interests—our members—a job we do best with your support, whether that's writing a declaration to support NWEA's standing in court or making a financial contribution.

NWEA SUES TO CLEAN UP OREGON'S POLLUTED RIVERS

The root cause of Oregon's worsening water pollution is Oregon DEQ's culture of failing to control the sources of pollution—whether it's massive clear-cuts in coastal forests, industrial discharges, or inadequately treated sewage from cities and towns. DEQ's resistance to following the law is legion, making lawsuits both inevitable and necessary.

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The Clean Water Act requires that states and EPA prepare science-based clean-up plans called TMDLs. Since the expiration of a court order in our last lawsuit over Oregon’s TMDL program 13 years ago, DEQ has developed zero new TMDLs, a remarkably poor achievement. This includes languishing TMDLs for the Deschutes River basin that have been under development for 20 years and that DEQ does not propose to complete until 2030—a 30-year failure to control pollution! Oregon coastal basin TMDLs that were supposed to regulate logging to protect drinking water in coastal communities as well as salmon, underway since 2005, have simply been abandoned. Waters identified with unsafe pollution levels in the Willamette River basin—where the majority of Oregon’s sewage and industrial sources discharge—have never even been scheduled for TMDLs at all. We filed our opening brief in this lawsuit on December 1st.

NWEA is represented in this case by Jamie Saul at Earthrise Law Center. Special thanks go to our members who provided declarations to support NWEA’s standing: Karl Anuta, David Moskowitz, Bill Marlett, and Paul Englemeyer.

NWEA SETTLES TO PROTECT WASHINGTON’S WATERS

After an extraordinarily long process, NWEA has finally signed a settlement with EPA and the Washington Department of Ecology over its failed statewide TMDL program. The settlement primarily calls for EPA to fund a consultant to identify ways in which Ecology can complete these clean-up plans for Washington’s growing number of waters with levels of pollution unsafe for people, fish, and wildlife. This lawsuit originally began in 1991—over 30 years ago—and while it did produce results, in recent years Ecology has shown itself incapable of completing these essential plans to control pollution.

NWEA is represented in this case by Jamie Saul at Earthrise Law Center and Andrew Hawley at Western Environmental Law Center.

NWEA SEEKS NATIONWIDE REGULATION OF OVER 1,000 “FOREVER” CHEMICALS

By now you’ve no doubt heard of the toxic PFAS that is often called a “forever” chemical. If you’re a member of NWEA, you are helping to protect water quality from such contaminants —across the United States. This summer, we completed a massive petition to EPA seeking regulation of over 1,000 so-called “forever” chemicals under the Clean Water Act. Yes, this tiny organization has taken on EPA’s 47-year failure to update its list of toxic chemicals that require regulation. It’s not just a list; being placed on the list triggers a range of mandatory regulatory restrictions on a chemical. This petition stands on the shoulders of hundreds of scientific papers that underscore the urgency of EPA’s taking action now.

We have been joined in this effort by the Center for Biological Diversity as a co-petitioner. I invite you to visit our website to read the fact sheets and learn about how—despite Congress’s exhortations to EPA to control toxics—the agency has simply failed.

NWEA was assisted on this project by Lia Comerford at Earthrise Law Center.

NWEA's LAWSUIT TO CLEAN UP PUGET SOUND

Puget Sound continues to suffer from nutrient and toxic pollution from sewage treatment plants, industries, and polluted runoff from logging and farming. The Department of Ecology continues to sit on its hands, while what little effort it started to make was stymied by a lawsuit from the City of Tacoma. Meanwhile, EPA remains content to sit on the sidelines, watching the salmon and orca fail to thrive, to put it mildly. A recent report, released by the U.S. Government Accountability Office (GAO) in November, confirmed our assessment of both agencies' failures. The report highlighted EPA and Ecology's inability to carry out the Clean Water Act to protect salmon from high water temperature, dissolved oxygen depletion, excess sediment, and toxic contaminants.

NWEA is represented in this case by Andrew Hawley at Western Environmental Law Center and Allison LaPlante at Earthrise Law Center.

PROTECTING SALMON FROM A HOT COLUMBIA RIVER

You may fish or you may not, but most of us who live in the Pacific Northwest know that survival of salmon and steelhead is an indication of how well we are protecting the environment. One place where migrating salmon need help is the Columbia River, where over half the migrating sockeye in 2015 died from high temperatures—250,000 fish. Forty percent of salmon migrate up the Columbia River when temperatures are 20° C (68° F) or higher. At these temperatures, the majority of salmon species use so-called cold water refuges to gain relief from the deadly heat. These refuges are formed by tributaries' pouring somewhat cooler water into the Columbia. The problem is that these tributaries are not always *cooler*, they are often not actually *cool*, and they are getting *warmer*. There are also not enough of them.

In earlier lawsuits, NWEA pushed agencies to address cold water refuges, resulting in EPA's Cold Water Refuge Plan for the Columbia River. But this paper "plan" does nothing to help real fish, so we returned to court for more action and less talk. Settlement discussions with EPA and the National Marine Fisheries Service were unsuccessful, so we are now in full litigation mode.

NWEA is represented by Allison LaPlante, Lia Comerford, and Lydia Dexter at Earthrise Law Center, and Bryan Telegin at Telegin Law.

IDAHO WIN BENEFITS THE NATION'S WATERS

Last year's NWEA win on Idaho water quality standards for mercury has, apparently, provoked the EPA to do the right thing for the rest of the nation. After NWEA obtained EPA's agreement to identify protective mercury levels in water as well as in fish tissue—to ensure that discharge permits will have mercury restrictions where needed—EPA decided to do this on a national level too. We are always heartened when wins in the Northwest cause improvements everywhere.

NWEA is represented in this case by Allison LaPlante & Kevin Cassidy at Earthrise Law Center.

SOME SHORT UPDATES

- NWEA's efforts to control nutrient discharges from Medford's sewage treatment plant into the Rogue River continue, with an appeal of the new Oregon DEQ permit, including a provision giving Medford a whopping 14 years to come into compliance.

NWEA is represented in this case by James Saul at Earthrise Law Center.

- We are mopping up after EPA's failure to comply with the Endangered Species Act in controlling toxics in Idaho. After our lawsuit forced national fish and wildlife agencies to conclude that EPA's approval of water quality standards for toxics in Idaho waters jeopardize threatened and endangered species, EPA proceeded to blow off the deadlines to fix the problem. NWEA has petitioned EPA to update its protection of fish and snails in Idaho waters from lead, arsenic, nickel, and zinc.

NWEA was assisted on this project by Lia Comerford at Earthrise Law Center.

FROM LAWSUITS TO POLICY, NWEA IS WORKING FOR YOU

Please check out our website. There, you can join as a NWEA member—paid or entirely free—or just sign up for email updates.

When you support NWEA, you are supporting the enforcement of the nation's environmental laws in Oregon, Washington, and Idaho—and nationally. But NWEA does a lot more. Because we're often the "go-to" group on clean water issues, you are also helping the organizations, citizens, and journalists across the region and the country who rely on NWEA for our expertise.

Please remember that Northwest Environmental Advocates does a lot with very few resources so we count on your financial support. Contributions are tax deductible and greatly appreciated! It's easy to donate on our website, where you can also read more about our work.

Sincerely,



Nina Bell
Executive Director

P.S. To explain our role, I often say, "NWEA's job is to make EPA and the states do their jobs." In enforcing the nation's environmental laws, **NWEA guarantees you a no frills operation—giving you highly credible and vigorous advocacy** without fancy slogans and glossy magazines. We really put your financial contribution to work, whether we're going to court or helping citizens. I hope that you will consider making a tax-deductible contribution to NWEA where your contribution will be put to good use!