

Subject: Activity in Case 3:12-cv-01751-HZ Northwest Environmental Advocates v. United States Environmental Protection Agency Order

U.S. District Court

District of Oregon

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Case Name: Northwest Environmental Advocates v. United States Environmental Protection Agency

Case Number: [3:12-cv-01751-HZ](#)

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Docket Text:

ORDER: The Court has reviewed the parties' Joint Status Report [ECF 198]. The Court finds the proposed timeline submitted by the State and EPA, in which they propose to issue the replacement TMDLs consistent with the Court's Opinion and Order [ECF 190] on a rolling schedule between 2023 and 2027, to be reasonable because of the substantial work that must precede the issuance and approval of new TMDLs. In light of EPAs assurance that it will, at minimum, assist the State with full-time staff assistance in the formulation of the new TMDLs, the Court declines at this stage of the proceedings to mandate whether the State, EPA, or both should take the primary role in writing the new TMDLs. Nonetheless, the Court agrees with Plaintiff that the issuance of new TMDLs for river basins and subbasins in which a greater number of NPDES permits have been issued should take priority over the TMDLs for basins in which fewer NPDES permits have been issued. Accordingly, the Court directs the State and EPA, after meaningful conferral with Plaintiff, to reformulate their proposed timeline to prioritize the issuance of TMDLs in such basins and subbasins. The Court further directs the parties to confer and to submit to the Court no later than July 2, 2019, a proposed form of final order consistent with this Order and Opinion and Order [ECF 190] that (1) sets out the schedule by which the State will complete the replacement TMDLs and EPA will undertake the final agency action to approve each of the replacement TMDLs; (2) grants a stay of the vacatur of each relevant current TMDL until the deadline for the final agency action approving the corresponding replacement TMDL; (3) directs the State and EPA to file a status report every 120 days that advises the Court and Plaintiff whether the State and EPAs work continues on-schedule, and, if not, informs the Court and Plaintiff of the nature and cause of the delay(s) or anticipated delay(s) and of the State and EPAs plan to remedy or minimize the delay(s); and (4) provides for the Courts continued jurisdiction over any disputes that arise between the parties during the reformulation and approval of the new TMDLs, including any motion to extend the duration of any stay, to extend the deadline for the issuance and/or approval of any new TMDL, or for additional direction from the Court to ensure the reformulation of the TMDLs is completed on time. Ordered by Judge Marco A. Hernandez. (jp)