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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

**NORTHWEST ENVIRONMENTAL
ADVOCATES**, an Oregon non-profit
corporation,

Plaintiff,

v.

**UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY**,

Defendant.

NO.

COMPLAINT

Pursuant to Clean Water Act Section
505(a)(2), 33 U.S.C. § 1365(a)(2)

NATURE OF THE CASE

1. This is a civil action brought by plaintiff Northwest Environmental Advocates (“NWEA”) challenging a failure by defendant United States Environmental Protection Agency (“EPA”) to discharge its nondiscretionary duty to establish Total Maximum Daily Loads (“TMDLs”) for several waterbodies in Washington’s Deschutes River Basin. Pursuant to Section 303(d)(2) of the federal Clean Water Act (“CWA”), 33 U.S.C. § 1313(d)(2), EPA was required to establish TMDLs for these waterbodies no later than July 29, 2018, but it has yet to do so.

1 wetlands, and wildlife habitat in the Northwest, including Washington. NWEA employs
2 advocacy with administrative agencies, community organizing, strategic partnerships, public
3 record requests, information sharing, lobbying, and litigation to ensure better implementation of
4 the laws that protect and restore the natural environment. NWEA has participated in the
5 development of CWA programs in the State of Washington for many years, including the state's
6 TMDL program by, *inter alia*, having brought suit in 1991 against EPA for its failure to establish
7 TMDLs for the State of Washington and serving on EPA's TMDL federal advisory committee
8 from 1996 to 1998.

10 7. NWEA's members regularly use and enjoy the waters of the Deschutes River
11 basin, Capitol Lake, and Budd Inlet. NWEA's members regularly use and enjoy these waters and
12 adjacent lands and have definite future plans to continue using them for recreational, scientific,
13 aesthetic, spiritual, conservation, educational, employment, and other purposes. Many of these
14 interests revolve around viewing sensitive salmonid species and other aquatic species that are
15 under threat by pollution in the waters at issue in this lawsuit. The use and enjoyment that
16 NWEA's members derive from viewing these species, and otherwise recreating on or near and
17 enjoying the waters of the Deschutes River basin, Capitol Lake, and Budd Inlet, is diminished by
18 the effects of pollution, including pollution relating to temperature, human pathogens, dissolved
19 oxygen, pH, nutrients, and fine sediment. NWEA's members would derive more benefits and
20 enjoyment from their use of these waters if these pollutants were not adversely affecting water
21 quality and aquatic and aquatic-dependent wildlife in these waters.

23 8. Some of NWEA's members derive or used to derive recreational and aesthetic
24 benefits by fishing in the Deschutes River. These members have curtailed their fishing in the
25 Deschutes River, or no longer fish in the River, due in part to concerns regarding pollutants and
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1 their effect on fisheries, including concerns relating to high water temperatures, low dissolved
2 oxygen, and high levels of fine sediment and human pathogens.

3 9. Successful completion of TMDLs to address these pollution problems is a critical
4 step in fully implementing the goals of the CWA for these waters, fully protecting salmonids and
5 other aquatic and aquatic-dependent species, and improving water quality. EPA's failure to
6 establish TMDLs for the waterbodies at issue in this lawsuit puts these species at risk and
7 threatens or negatively affects the interests of NWEA's members.

8 10. The recreational, aesthetic, conservation, employment, scientific, educational,
9 spiritual, and other interests of NWEA and its members have been, are being, and unless relief is
10 granted, will continue to be adversely affected and irreparably injured by EPA's failure to comply
11 with the CWA. NWEA's injury-in-fact is fairly traceable to EPA's conduct and would be
12 redressed by the requested relief.

13 11. Defendant UNITED STATES ENVIRONMENTAL PROTECTION AGENCY is
14 the federal agency charged with administration of the CWA, and specifically with establishing
15 TMDLs for the waterbodies at issue in this case under Section 303(d)(2) of the CWA, 33 U.S.C.
16 § 1313(d)(2).

17 **LEGAL BACKGROUND**

18 *The Clean Water Act and Water Quality Standards*

19 12. Congress adopted amendments to the CWA in 1972 in an effort "to restore and
20 maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C.
21 § 1251(a). The primary goal of the CWA is to eliminate the discharge of pollutants into navigable
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1 waters entirely; also established is “an interim goal of water quality which provides for the
2 protection and propagation of fish, shellfish, and wildlife.” *Id.* § 1251(a)(1–2).

3 13. To meet these statutory goals, the CWA requires states to develop water quality
4 standards that establish, and then protect, the desired conditions of each waterway within the
5 state’s regulatory jurisdiction. 33 U.S.C. § 1313(a). Water quality standards must be sufficient to
6 “protect the public health or welfare, enhance the quality of water, and serve the purposes of [the
7 CWA].” *Id.* § 1313(c)(2)(a). Water quality standards establish the water quality goals for a
8 waterbody. 40 C.F.R. §§ 131.2, 131.10(d). EPA is charged with approving or disapproving a
9 state’s water quality standards. *See* 33 U.S.C. §§ (c)(2)(a), (3).

10 14. Among other things, water quality standards serve as the regulatory basis for
11 establishing water quality-based controls over point sources, as required by sections 301 and 306
12 of the CWA, 33 U.S.C. §§ 1311 & 1316. A point source is a “discernable, confined and discrete
13 conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well . . . from
14 which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). Point source discharges are
15 regulated under National Pollutant Discharge Elimination System (“NPDES”) permits, which
16 require point sources to meet both technology-based effluent limitations and “any more stringent
17 limitation . . . necessary to meet water quality standards.” 33 U.S.C. § 1311(b)(1)(C). Water
18 quality standards are thus integral to the regulation of point source pollution.

19 20 21 22 23 24 25 26 15. Water quality standards also are used to establish measures to control nonpoint
sources pollution. Unlike point source pollution, nonpoint source pollution is generally
considered to be any pollution that cannot be traced to a single discrete conveyance. Examples
include runoff from agricultural or forestry lands and increased solar radiation caused by the loss
of riparian vegetation. Congress did not establish a federal permitting scheme for nonpoint

1 sources of pollution, such as pollution from timber harvesting and agriculture. Instead, Congress
2 assigned states the task of implementing water quality standards for nonpoint sources, with
3 oversight, guidance, and funding from EPA. *See, e.g.*, 33 U.S.C. §§ 1288, 1313, 1329. Even so,
4 water quality standards apply to all pollution sources, point and nonpoint alike. “[S]tates are
5 required to set water quality standards for *all* waters within their boundaries regardless of the
6 sources of the pollution entering waters.” *Pronsolino v. Nastri*, 291 F.3d 1123, 1127 (9th Cir.
7 2002) (emphasis in original).

9 *Total Maximum Daily Loads*

10 16. In addition to serving as the regulatory basis for NPDES permits and non-point
11 source controls, water quality standards are the benchmarks by which the quality of a waterbody
12 is measured. In particular, water bodies that do not meet applicable water quality standards, or
13 cannot meet applicable standards after the imposition of technology-based effluent limitations on
14 point sources, are deemed to be “water quality limited” or “impaired” and placed on a list of such
15 waters compiled under Section 303(d)(1)(a) of the CWA (known colloquially as the “303(d)
16 list”). *See* 33 U.S.C. § 1313(d)(1)(A); 40 C.F.R. § 130.2(j). States must then develop TMDLs for
17 all 303(d)-listed waters in order to establish the scientific basis for cleaning up water pollution
18 that exceeds water quality standards.
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20 17. A TMDL is the total daily loading of pollutants for a particular waterbody or
21 segment. *See* 40 C.F.R. §130.2(i). A TMDL “shall be established at a level necessary to
22 implement the applicable water quality standards with seasonal variation and a margin of safety
23 which takes into account any lack of knowledge concerning the relationship between effluent
24 limitations and water quality.” 33 U.S.C. § 1313(d)(1)(C). The total amount of pollutants that
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1 may enter a waterbody while still meeting water quality standards is called “loading capacity.” 40
2 C.F.R. § 130.2(f). TMDLs for individual water bodies or segments are often bundled together by
3 basin, subbasin, or watershed in the same analytical document.

4 18. After calculating a waterbody’s loading capacity, a TMDL then distributes
5 portions of the total loading capacity to individual sources of pollution or sectors of pollution
6 sources. These allocations include both “load allocations” and “wasteload allocations,” for point
7 and nonpoint sources of pollution respectively. 40 C.F.R. § 130.2(i). A wasteload allocation is
8 “[t]he portion of a receiving water’s loading capacity that is allocated to one of its existing or
9 future point sources of pollution.” *Id.* at § 130.20(h). A load allocation is “[t]he portion of a
10 receiving water’s loading capacity that is attributed either to one of its existing or future nonpoint
11 sources of pollution or to natural background sources.” *Id.* at § 130.20(f). In essence, the purpose
12 of load and wasteload allocations is to allocate the total amount of pollution that may enter a
13 waterbody between all the sources of pollution, including both point and nonpoint sources of
14 pollution, thereby restricting pollution inputs sufficiently to attain and maintain water quality
15 standards.
16

17 19. As with water quality standards, states must submit TMDLs to EPA for approval
18 or disapproval under section 303(d) of the CWA. *See* 33 U.S.C. § 1313(d)(2). Section 303(d)
19 requires that within 30 days after submission EPA either approve the TMDLs or disapprove
20 them. *Id.*
21

22 20. If EPA disapproves a state-submitted TMDL, it must then establish a replacement
23 TMDL within 30 days. *Id.*
24

25 21. Upon EPA approval or promulgation of a TMDL, all future NPDES permits must
26 be consistent with the TMDL’s wasteload allocations for point sources. 40 C.F.R. § 130.2. The

1 approved load allocations serve as the basis for state and local programs for controlling nonpoint
2 source pollution, including state programs that receive federal funds under section 319 of the
3 CWA, 33 U.S.C. § 1329. Once EPA approves a TMDL, the state must also incorporate the
4 TMDL into its “continuing planning process” under section 303(e) of the CWA. 33 U.S.C. §
5 1313(e)(3)(C).
6

7 ***The CWA Citizen Suit Provision***

8 22. Section 505 of the CWA provides a private cause of action for citizens to enforce
9 the procedural and substantive mandates and prohibitions of the CWA. *See* 33 U.S.C. § 1365.
10 Among other things, this provision provides that “any citizen may commence a civil action on his
11 own behalf . . . against the Administrator [of EPA] where there is alleged a failure of the
12 Administrator to perform any act or duty under [the CWA] which is nondiscretionary with the
13 administrator.” 33 U.S.C. § 1365(a)(2). In such an action, “[t]he district courts shall have
14 jurisdiction . . . to order the Administrator to perform such act or duty.” 33 U.S.C. § 1365(a).
15

16 23. Under Section 303(d)(2) of the CWA, EPA has a nondiscretionary duty to
17 establish a replacement TMDL within 30 days after it disapproves a state-submitted TMDL. *See*
18 33 U.S.C. § 1313(d)(2) (“[EPA] shall not later than thirty days after the date of such disapproval .
19 . . establish such loads for such waters as he determines necessary to implement the water quality
20 standards applicable to such waters . . .”).
21

22 **FACTUAL BACKGROUND**

23 ***The Deschutes TMDL***

24 24. Washington’s Deschutes River begins in the Bald Hills of the Gifford Pinchot
25 National Forest (west of Mt. Rainier), travels down through foothills and the cities of Tumwater
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1 and Olympia, passes a dam that converted the former estuary into Capitol Lake, and ultimately
2 discharges to the marine waters of Budd Inlet and the Puget Sound. The Deschutes River and
3 other tributaries to Budd Inlet are protected, *inter alia*, by Washington water quality standards
4 that include numeric and narrative criteria for temperature, bacteria, dissolved oxygen, pH, and
5 fine sediment. Some of these water quality standards are intended to protect human use of the
6 covered waters (*e.g.*, bacteria). Others are intended to protect sensitive aquatic life uses such as
7 rearing, migration, and spawning of salmon, steelhead, trout, and other aquatic life uses (*e.g.*,
8 temperature, pH, dissolved oxygen, and fine sediment), which also support human uses, such as
9 recreation.
10

11 25. Exceedances of some of these water quality standards can be harmful to human
12 health. For example, excess fecal coliform can indicate the presence of water-borne human
13 illnesses and pathogens (*e.g.*, hepatitis) associated with human waste and waste from other warm-
14 blooded animals. Exceedances of other water quality parameters can harm important fish and
15 shellfish populations that depend on the Deschutes River watershed and downstream waters for
16 survival. Such exceedances result in a failure to attain the Clean Water Act's goal of achieving
17 water quality that provides for protection and propagation of fish, shellfish, and wildlife and
18 recreation in and on the water.
19

20 26. Likewise, excess temperature can lead to depressed survival rates among
21 salmonids due to adverse physiological and behavioral changes such as increased metabolic rates,
22 reduced swimming performance, impairment of predator avoidance, and increased incidence of
23 disease. Temperature often has a synergistic or additive effect by increasing the toxicity of other
24 pollutants. Temperature also contributes to lower levels of dissolved oxygen in streams and
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1 concurrently causes greater stress to aquatic life under conditions of low dissolved oxygen. Low
2 dissolved oxygen, in turn, can have a number of deleterious effects on salmonids and other
3 aquatic organisms, including decreased growth rates, decreased swimming ability, increased
4 susceptibility to disease, and increased sensitivity to other environmental stressors and pollutants.
5 Adverse changes to the pH of a waterbody can increase the harmful effects of water-borne toxics,
6 particularly metals common in discharges of stormwater runoff as well as cause lethal and
7 sublethal effects to aquatic organisms. And too much fine sediment can lead to depressed fish
8 stocks by, *inter alia*, smothering fish redds and lowering intergravel dissolved oxygen levels. For
9 all of these reasons, achieving Washington's water quality standards for these parameters is a
10 critical component of the CWA's goal of achieving water quality that allows for human
11 recreation and provides for the protection and propagation of fish, shellfish, and wildlife. *See* 33
12 U.S.C. § 1251.
13

14
15 27. Since at least the late 1980s, pollution in the Deschutes River basin and Budd Inlet
16 has attracted the attention of federal, state, and local governments.¹ Many of the waters at issue in
17 this lawsuit, including the Deschutes River, were added to Washington's 303(d) list of impaired
18 waters as early as 1996 for impairments relating to excess temperature, fecal coliform, dissolved
19 oxygen, and pH, and on later lists for fine sediment. By at least 2002, Ecology began work on a
20 TMDL package to address these impairments, as well as related impairments in Capitol Lake and
21 the marine waters of Budd Inlet. Over the next several years, Ecology published detailed studies
22 on the sources and severity of the impairments and the sources of the pollutants, and plans to
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25 ¹ *See* U.S. Env'tl. Prot. Agency, *Budd Inlet Bay Action Program: 1991 Action Plan* (July
26 1991) (reporting, *inter alia*, that EPA had identified eutrophication in southern Budd Inlet as a
high priority as early as 1988).

1 remedy them through the TMDL process.² These studies confirmed that the impairments are
2 caused, in large part, by anthropogenic impacts throughout the basin, including municipal
3 discharges of treated wastewater; decreased riparian vegetation due to logging and development;
4 deteriorating sewer infrastructure; improperly maintained, poorly located, or failing on-site septic
5 systems; domestic animals; fertilizers and manure; stormwater runoff; and road building.
6

7 28. Finally, 13 years after it started, in September 2015, Ecology completed a draft
8 TMDL package, one that covered the fresh and marine waters of the basin including Budd Inlet.
9 See Ecology, *Deschutes River, Capitol Lake, and Budd Inlet Total Maximum Daily Load Study*
10 *Supplemental Modeling Scenarios* (Sept. 2015). Rather than submit the TMDL package to EPA,
11 however, by December of that year, Ecology decided to split the Deschutes basin from Capitol
12 Lake and Budd Inlet, claiming that it would prepare a TMDL for the downstream portion of the
13 watershed later.
14

15 29. In December of 2015, after removing Budd Inlet and Capitol Lake from the
16 TMDL package, Ecology finally submitted the TMDL to EPA for review under Section 303(d)(2)

17 ² See, e.g., Washington Dept. of Ecology, *Quality Assurance Project Plan – Deschutes*
18 *River, Capitol Lake, and Budd Inlet Temperature, Fecal Coliform Bacteria, Dissolved Oxygen,*
19 *pH, and Fine Sediment Total Maximum Daily Load Study* (Feb. 2004, Pub. No. 04-03-103);
20 Ecology, *Lower Deschutes and Budd Inlet tributaries Wet Weather Monitoring Plan* (April
21 2004); Ecology, *Assessment of Surface Water / Groundwater Interactions and Associated*
22 *Nutrient Fluxes in the Deschutes and Percival Creek Watersheds, Thurston County* (Jan. 2007,
23 Pub. No. 07-03-002); Ecology, *Interim Results from the Budd Inlet, Capitol Lake, and Deschutes*
24 *River Dissolved Oxygen and Nutrient Study* (April 2007); Ecology, *Final Reconnaissance Study*
25 *Plan for Deschutes River / Capitol Lake / Budd Inlet Total Maximum Daily Loads* (July 2003);
26 Ecology, *Deschutes River, Capitol Lake, and Budd Inlet Temperature, Fecal Coliform Bacteria,*
Dissolved Oxygen, pH, and Fine Sediment Total Maximum Daily Load Technical Report: Water
Quality Study Findings (June 2012, Pub No. 12-03-008); Ecology, *Deschutes River, Capitol*
Lake, and Budd Inlet Temperature, Fecal Coliform Bacteria, Dissolved Oxygen, pH, and Fine
Sediment Total Maximum Daily Load Technical Report: Water Quality Study Findings (June
2012, Pub No. 12-03-008).

1 of the CWA, 33 U.S.C. § 1313(d)(2). See Washington Department of Ecology, *Deschutes River,*
2 *Percival Creek, and Budd Inlet Tributaries Temperature, Fecal Coliform Bacteria, Dissolved*
3 *Oxygen, pH, and Fine Sediment Total Maximum Daily Load: Water Quality Improvement Report*
4 *and Implementation Plan – FINAL* (Dec. 2015, Pub. No. 15-10-012) (herein, “Deschutes
5 TMDL”). The Deschutes TMDL, while referred to here in the singular, contained individual
6 TMDLs for 73 waterbodies and waterbody segments throughout the Deschutes Basin, with each
7 individual TMDL addressing one or more of the following parameters: fine sediment, fecal
8 coliform bacteria, water temperature, dissolved oxygen (“DO”), an pH.

9
10 30. By August of 2017, however, EPA had still not acted to approve or disapprove
11 Washington’s submission of the Deschutes TMDL, in direct violation of Section 303(d)(2) of the
12 CWA, which requires EPA to either approve or disapprove a proposed TMDL within 30 days of
13 submission.

14 15 *Prior Litigation Over the Deschutes TMDL*

16 31. On August 27, 2017, NWEA gave notice to EPA under Section 505(b) of the
17 CWA of NWEA’s intent to file a lawsuit compelling EPA to either approve or disapprove the
18 Deschutes TMDL.

19 32. On November 6, 2017, NWEA filed suit against EPA in the Western District of
20 Washington to force EPA to act on the Deschutes TMDL. A copy of NWEA’s complaint in that
21 matter is attached hereto as **Exhibit 2**. The lawsuit was captioned: *Northwest Environmental*
22 *Advocates v. United States Environmental Protection Agency*, No. C17-1664RSL (W.D. Wash).
23 We refer to it here as the “First Deschutes Lawsuit.”
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1 33. On June 25, 2018, Judge Robert S. Lasnik granted NWEA's motion for summary
2 judgment in the First Deschutes Lawsuit, and ordered NWEA to either approve or disapprove the
3 Deschutes TMDL no later than June 29, 2018. A copy of Judge Lasnik's order is attached hereto
4 as **Exhibit 3**.

5
6 34. On June 26, 2018, Judge Lasnik issued judgment in favor of NWEA in the First
7 Deschutes Lawsuit. A copy of the final judgment is attached hereto as **Exhibit 4**.

8 ***EPA's Partial Disapproval of the Deschutes TMDL and Continuing Failure to***
9 ***Establish Replacement TMDLs***

10 35. On June 29, 2018, EPA issued a letter disapproving 37 individual segment-
11 parameter TMDLs within the Deschutes TMDL for temperature, DO, pH, fine sediment, and
12 bacteria. A copy of EPA's letter disapproving these TMDLs is attached to NWEA's notice letter
13 in this action (Exhibit 1 hereto).

14 36. Specifically, EPA disapproved individual TMDLs for the waterbodies listed below
15 in Table A. For each waterbody, Table A also identifies the pollutant that is causing the
16 impairment, and the identification numbers for each waterbody on Washington's 1996 and 2010
17 303(d) lists.
18

19 **Table A**

Waterbody	Parameter	1996 Listing ID	2010 Listing ID
Huckleberry Creek	Temperature	WA-13-1024	3757
Reichel Creek	Temperature	WA-13-1022	48666
Tempo Lake Outlet	Temperature	---	48696
Ayer (Elwanger) Creek	Temperature	WA-13-1015	(73229)

	Waterbody	Parameter	1996 Listing ID	2010 Listing ID
1				
2	Unnamed Spring to	Temperature	---	48923
3	Deschutes River			
4	Adams Creek	pH	---	50965
5	Ayer (Elwanger Creek)	pH	WA-13-1015	5850
6	Black Lake Ditch	pH	---	50990
7				
8	Deschutes River	Fine Sediment	WA-13-1020	6232
9	Ayer (Elwanger) Creek	Dissolved Oxygen	WA-13-1015	5851
10	Deschutes River	Dissolved Oxygen	WA-13-1010; WA-13-1020	10894; 47753; 47754; 47756
11				
12	Lake Lawrence Creek	Dissolved Oxygen	---	47696
13	Reichel Creek	Dissolved Oxygen	WA-13-1022	47714
14	Black Lake Ditch	Dissolved Oxygen	---	47761; 47762
15	Percival Creek	Dissolved Oxygen	WA-13-1012	48085; 48086
16	Adams Creek	Bacteria	--	45462; 45695
17	Ellis Creek	Bacteria	WA-13-0020	45480
18	Indian Creek	Bacteria	WA-13-1300	3578; 45213; 46410; (74218)
19	Mission Creek	Bacteria	WA-13-1380	45212; 46102
20	Moxlie Creek	Bacteria	WA-13-1350	3759; 3761; 45252; 46432
21	Schneider Creek	Bacteria	---	45559
22	Reichel Creek	Bacteria	WA-13-1022	3763; 45566
23				
24				
25				
26				

Waterbody	Parameter	1996 Listing ID	2010 Listing ID
Spurgeon Creek	Bacteria	WA-13-1010	46061

37. It has now been over four months since EPA disapproved Washington's submittal of TMDLs for the waterbodies in Table A. EPA has yet to establish replacement TMDLs for these waterbodies as required by Section 303(a)(2) of the CWA, 33 U.S.C. § 1313(d)(2).

38. Water quality in the Deschutes River Basin continues to be degraded, and the interests of NWEA's members continue to be put at risk, due to EPA's continuing failure to discharge its mandatory duties under the CWA with respect to the Deschutes TMDL.

CLAIM FOR RELIEF

Failure to Establish Replacement TMDLs, 33 U.S.C. §1365(a)(2)

39. Plaintiff NWEA realleges all preceding paragraphs.

40. Section 303(d)(2) of the CWA requires EPA to establish replacement TMDLs within 30 days of its disapproval of a state-submitted TMDL. *See* 33 U.S.C. § 1313(d)(2). EPA's duty to establish replacement TMDLs within this timeframe is a nondiscretionary duty within the meaning of section 505 of the CWA, 33 U.S.C. § 1365(a)(2), the Act's citizen suit provision.

41. Over four months have elapsed since the EPA disapproved Washington's submission of TMDLs for the waterbodies listed above in Table A. To date, EPA has not established replacement TMDLs for those waterbodies.

42. In failing to establish timely replacement TMDLs for the waterbodies in Table A, EPA failed to perform a nondiscretionary duty within the meaning of the CWA citizen suit provision, 33 U.S.C. § 1365(a)(2).

1 43. EPA will remain in continuing violation of the CWA until it establishes the
2 replacement TMDLs.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, plaintiff Northwest Environmental Advocates respectfully requests that
5 this Court:

6
7 A. Declare that EPA has violated its nondiscretionary duty under 33 U.S.C. §
8 1313(d)(2) to timely establish replacement TMDLs for the waterbodies listed above in Table A;

9 B. Enter an order directing EPA to establish replacement TMDLs for those
10 waterbodies, as required by Section 303(d)(2) of the CWA, 33 U.S.C. § 1313(d)(2);

11 C. Award NWEA its reasonable costs and attorneys' fees under 33 U.S.C. § 1365(d);

12 and

13 D. Grant such other relief as the Court deems just and proper.

14 DATED this 8th day of November, 2018.

15 Respectfully submitted,

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