

NORTHWEST ENVIRONMENTAL ADVOCATES



December 2017

Winter 2017 Newsletter

Dear Friends:

Times are very grim at the federal government. We wish we could report that the states were filling the void, stepping up to do the right thing, as federal agencies like the Environmental Protection Agency (EPA) go down the tubes. Unfortunately, we cannot. Instead, Oregon and Washington continue to ignore the fundamentals of carrying out the Clean Water Act.

On the bright side, we can report that NWEA has redoubled its efforts to bring failing agencies and polluters into the federal and state courts. Over the last year, we have stepped up our cutting-edge legal actions, launched ourselves onto social media, and now have a completely revamped website. This next year promises even better.

Our work remains a witness to NWEA's persistence in the face of adversity. It's always been difficult to make our nation's environmental laws work to the public's benefit. And we are grateful that Congress gave citizens wide access to the courtroom to enforce laws such as the Clean Water Act. Going forward, we will continue to advocate *with* agencies for the best outcomes but we will continue to bring lawsuits *against* agencies to enforce the law. 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 IS TACKLING PUGET SOUND'S MASSIVE POLLUTION PROBLEMS

Just the other day, the Puget Sound Partnership announced that it wasn't going to make its goal of a healthy Puget Sound by the year 2020 after all. Geez, no kidding.

It's hard to imagine how anybody could have thought otherwise. The Partnership's endless meetings and publications say not a peep about one very large elephant in the room: the Washington Department of Ecology's failure to regulate pollution entering Puget Sound.

That's why NWEA has turned to the federal courts to make the Clean Water Act work for Puget Sound. In the last year, NWEA filed three lawsuits and two formal petitions related to cleaning up the Sound. And this is just the beginning.

FORCING PUGET SOUND CLEAN-UP. The Clean Water Act is pretty clear. If waters are polluted or even threatened with being polluted, the state is required to develop a clean-up plan. These plans automatically require reductions in pollution from permitted sources such as municipal sewage treatment plants.

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Pollution reductions are anathema to the Department of Ecology, which doesn't want the political headache of actually cleaning up Puget Sound or the rest of Washington's waterways. So, NWEA submitted a formal petition for rulemaking to Ecology in October, requesting that the state develop the required clean-up plan and pollution caps for each sewage discharge to the Sound. State law provides Ecology with a 60-day window in which to respond.

STOPPING POLLUTED RUNOFF TO THE SOUND. In December 2016, NWEA sued EPA and the National Oceanic and Atmospheric Administration (NOAA) over Washington State's failure to control polluted runoff in coastal watersheds, including Puget Sound. Polluted runoff includes sources such as farming and logging, dairy operations, urban runoff, on-site septic systems, and pesticides—all polluting public waters without permits.

The Trump Administration moved aggressively to get our lawsuit thrown out of court. Instead, the court issued three strong decisions in our favor.

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.

JUMP-STARTING THE DESCHUTES RIVER CLEAN-UP. Washington's Deschutes River enters Puget Sound at Budd Inlet after flowing through a destroyed estuary now called Capitol Lake. Budd Inlet has been a mess for decades. After working on a science-based clean-up plan for the Deschutes and Budd Inlet since 2002, the Department of Ecology managed to submit the plan to EPA for approval in 2015. Despite the fact that the Clean Water Act gives EPA 30 days in which to approve or disapprove such plans, EPA has managed to achieve nearly two years of inaction. EPA's delays are at the heart of NWEA's lawsuit, just filed this November.

NWEA is represented in the Deschutes River TMDL litigation by Bryan Telegin of Bricklin & Newman LLC and Lia Comerford of the Earthrise Law Center at Lewis & Clark Law School.

REFORMING WASHINGTON'S ILLEGAL PERMITTING. In February, NWEA petitioned EPA to remove Washington's legal authority to issue discharge permits to polluters. Based on our review of 103 permits that allow the discharge of treated sewage to Puget Sound, NWEA concluded that not a single permit was issued in compliance with the Clean Water Act. The primary obvious problem: a failure to restrict discharges of nitrogen.

Yes, nitrogen is a fertilizer for vegetables. But in Puget Sound it's helping to grow an ever-increasing crop of algae. The combination of the algae and the discharge of nitrogen itself is pulling dissolved oxygen out of the water. Oxygen is as essential to aquatic life as it is to people. But Ecology refuses to put permit limits on the discharges that are putting the food web of Puget Sound in jeopardy. That's why NWEA is working to reform Ecology's permit program.

UPDATING WASHINGTON'S TOXIC CRITERIA. Copper has long been known for its toxic effects on salmon. It causes salmon to lose their sense of smell, which is key to their ability to return to spawning habitats. It 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. These facts would suggest that the Washington Department of Ecology would update its water quality standards for copper that are the basis for pollution controls but, no, Ecology cannot be bothered. The same is true for other toxics that affect fish and animals.

This year, NWEA sued EPA to force a response to a 3-year old petition from NWEA that sought EPA's action to update Washington toxics standards. EPA failed to respond to the petition, NWEA sued, and now we have obtained EPA's formal denial of our petition. Stay tuned!

NWEA was represented in the Washington Toxic Criteria case by Lia Comerford and Jamie Saul at Earthrise Law Center at Lewis & Clark Law School.

NWEA IS CLEANING UP AFTER OREGON DEQ'S FAILED POLLUTION DISCHARGE PROGRAM

In recent years, the Oregon Department of Environmental Quality (DEQ) has, quite simply, been falling apart. With each passing year, the evidence becomes more stark. One piece of evidence is the discharge permits issued to polluters under the Clean Water Act. Oregon's permit program is mostly characterized by its failures: right now, the permit program is at a standstill without any permits' being revised to reflect new pollution reduction requirements. That leaves discharge permits in place that weren't legal to begin with.

DOING AWAY WITH OREGON'S ZOMBIE PERMITS. The Clean Water Act requires discharge permits to be revised every five years to reflect changed understanding of health impacts of pollution and improved treatment technologies. Oregon DEQ has just stopped issuing permits. We call the permits left in place "zombies." In March, NWEA filed a lawsuit in state court to force Oregon DEQ to issue permits as the law requires. If the state can't get the job done, it should turn the program back over to the federal government.

NWEA is represented in the Oregon Zombie Permit case by Lia Comerford, Allison LaPlante, and Doug DeRoy of the Earthrise Law Center and Karl Anuta of Law Office of Karl G. Anuta.

CLEANING UP MEDFORD'S IMPACTS TO THE ROGUE RIVER. In October, NWEA told the City of Medford that we intend to sue to enforce the city's Clean Water Act discharge permit. Medford's discharge can be experienced as a foul-smelling foamy mess. But worse, the discharge contains nutrients that fundamentally change life in the river. Measured as a decrease in pollution-sensitive bugs and an increase in pollution-tolerant bugs and algae, Medford's discharge violates its permit.

NWEA is represented in the Medford Permit Enforcement case by Jamie Saul and Lia Comerford, of Earthrise Law Center.

OREGON'S RIVER TEMPERATURES

NWEA won a major lawsuit in April in which we challenged Oregon's replacement of carefully chosen allowable temperatures for cold-water salmon— 16° to 18° C—with temperatures as high as 32° C (90° F), a temperature lethal to salmon within seconds. Oregon DEQ and EPA claimed these temperatures were "natural." Ironically, this illegal replacement scheme took place each time the Oregon DEQ issued a pollution clean-up plan called a Total Maximum Daily Load (TMDL). We continue to brief the court on the appropriate remedy for waters across Oregon. *A big THANK YOU! to retired fisheries biologist Dale McCullough, who prepared a declaration to the court for NWEA.*

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.

OREGON'S BEAVERS

NWEA has teamed up with the Center for Biological Diversity and Western Environmental Law Center to protect Oregon's beavers from being killed by Wildlife Services, a federal agricultural agency. Beavers' landscaping skills make them essential to recovery of threatened and endangered species such as salmon, steelhead, and the Oregon spotted frog. Notice of the impending case under the Endangered Species Act was filed in November.

NWEA is represented by Andrew Hawley of the Western Environmental Law Center.

PROTECTING MIGRATING SALMON IN THE COLUMBIA RIVER

Ninety percent of endangered Snake River sockeye died in the Columbia River in 2015 from hot water. Now—thanks to NWEA’s litigation—EPA is evaluating whether the river has enough cold water rest stops for adult salmon swimming home to spawn. EPA’s action was forced by a National Marine Fisheries Service (NMFS) finding that Oregon DEQ perpetrated a hoax when it supposedly protected salmon migration in the Columbia and Willamette rivers.

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

SOME SHORT UPDATES

- NWEA has sued two federal agencies for failing to release documents under the Freedom of Information Act (FOIA). *NWEA is represented by Paul Kampmeier of Kampmeier & Knutsen, Dave Bahr of Bahr Law Offices, and Nina Robertson of Earthrise Law Center.*
- In July, state rules that require loggers to leave stream-side trees were modestly improved for parts of Western Oregon in order to meet water quality standards for temperature.
- Connect through Facebook, Linked-In, and Twitter if you want to get the fastest updates on our work. Get the full details on our website: NorthwestEnvironmentalAdvocates.org.

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, NWEA IS WORKING FOR YOU!

We encourage you to stay current on NWEA’s activities through our website: www.NorthwestEnvironmentalAdvocates.org. The updated website has a lot of basic information and updates as well as 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 your financial support. Contributions are tax deductible and greatly 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. 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. We can guarantee you that your contribution will be put to good use!