

NORTHWEST ENVIRONMENTAL ADVOCATES



December 2020

Winter 2020 Newsletter

Dear Friends:

Despite the numerous difficult and sad “distractions” of this year, NWEA can report significant success. Court orders have been obtained and new lawsuits have been filed, steps that more often than not are needed to prod agency action consistent with the Clean Water Act and other related laws. Hand-in-hand with our superb legal team, we continue to work to bring the change you want—cleaning up unsafe levels of pollution, restoring salmon habitat, reducing toxics, and protecting human health.

We literally cannot do this work without our fantastic members. As you read about the cases below, know that behind each one is a small group of members who not only have provided us with the legal standing to bring that lawsuit but who have taken the time to work with our lawyers to prepare declarations of their interest in the waters and species we seek to protect.

So, I’m not exaggerating when I say that your continued support is both essential to our work and truly appreciated! When we go into court, we are representing your interests—our members—and we are able to do an excellent job in preparing for those cases with your financial support.

NWEA’S EXPERTS EVALUATE MEDFORD’S TRASHING OF THE ROGUE RIVER

Although the Rogue River in southern Oregon is known for stunning water and scenery, it is marred by the City of Medford’s foul-smelling discharge of poorly-treated sewage. Due to Medford’s failure to remove nutrient pollution from its sewage, this discharge triggers the growth of algae and weeds and is killing off pollution-sensitive aquatic bugs downstream.

CLEANING UP MEDFORD’S SLIME IN THE ROGUE RIVER. Since neither Medford nor the Oregon Department of Environmental Quality (DEQ) has shown an interest in curtailing this problem, NWEA sued Medford in May 2018. We then worked out an agreement for the city to gather additional data according to specific methods. It didn’t go well. In May of this year, NWEA’s crack team of experts ripped Medford’s data collection effort and conclusions in a detailed report on the effects of the city’s nutrient discharges on the Rogue River. After demonstrating that Medford had not collected the data correctly, our expert report concluded that dramatic reductions of the nutrients nitrogen and phosphorus are needed to restore the health of the Rogue, which is a particularly nutrient-sensitive river. Despite our hope that we could settle this case by joining together with the city to collect and evaluate the data, we are now gearing up to brief the court. Meanwhile, Oregon DEQ is preparing to issue what will likely be an inadequate permit to Medford as it continues to disregard its obligations to protect the Rogue.

NWEA is represented in this case by James Saul and Lia Comerford, both at Earthrise Law Center. We thank our excellent team of experts: Dr. JoAnn M. Burkholder (North Carolina State University), Richard E. Hafele, M.Sc., and Dr. Christine Weihoefer (University of Portland).

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NWEA: TACKLING PUGET SOUND'S POLLUTION

Puget Sound is not yet a massive “dead zone,” like the Gulf of Mexico, but it’s headed in that direction. The reason is nutrient pollution, which is causing dead zones and ocean acidification around the world. Nutrient pollution in Puget Sound is causing starving orcas, dwindling Chinook salmon, increases in jellyfish, and longer, bigger blooms of algae; it’s also sucking the oxygen out of the water. One single action—updating to modern methods of sewage treatment at approximately 100 facilities—can dramatically reduce nutrient pollution. It would also remove a lot of toxics, including personal care products and pharmaceuticals that are completely unregulated despite their impact on salmon. But Washington dithers.

FORCING MODERN SEWAGE TREATMENT TECHNOLOGY. At the start of 2020, NWEA lost its lawsuit against the Washington Department of Ecology for denying our petition demanding that it comply with a 1945 Washington State law—known as “AKART”—that requires the use of modern sewage treatment technology. By March, we had appealed that loss to the state Court of Appeals where the case is now fully briefed and awaiting a decision.

NWEA is represented in the Puget Sound AKART case by Andrew Hawley at the Western Environmental Law Center and Bryan Telegin at Bricklin & Newman LLC.

NWEA REJECTS ECOLOGY'S ILLEGAL HALF EFFORTS. Meanwhile, Ecology is moving forward with a “general permit” that would apply to nutrient pollution from all of the sewage treatment plants discharging to Puget Sound. Its plan, however, does not include the pollution limits that are required by the federal Clean Water Act in such a permit. NWEA has continued to object to this unlawful approach, one that even Ecology admitted in a public meeting would be appealed and that they would lose. As part of its foot-dragging approach to protecting Puget Sound, however, Ecology is not adverse to any court action that will slow down the process of bringing sewage treatment plants into the twenty-first century.

CLEANING UP THE DESCHUTES RIVER, CAPITOL LAKE, AND BUDD INLET. Water quality near Washington’s capitol has been a problem for decades, including Capitol Lake, which was created when a dam replaced the natural estuary. Not only is the lake polluted but Ecology has identified it as the biggest source of oxygen depletion in the marine waters of Budd Inlet. Even so, Ecology just cannot manage to get the required clean-up plans completed for these waters. In addition, the clean-up plan for the Deschutes River is seriously flawed. All of these problems are the subject of an NWEA lawsuit filed late last year.

NWEA is represented in Deschutes River/Budd Inlet/Capitol Lake TMDLs case by Bryan Telegin at Bricklin & Newman LLC and Lia Comerford at Earthrise Law Center.

NWEA: WORKING TO PROTECT ALL OF WASHINGTON WATERS

There is a lot of talk in Washington about saving salmon and steelhead in Puget Sound and the Columbia River. There is strikingly little regulatory action, other than what is provoked by environmental organizations’ lawsuits even though EPA and Ecology hold the Clean Water Act tools for making the change that will keep salmon from going extinct.

CONTROLLING POLLUTED RUNOFF FROM FARMS AND LOGGING. Sometimes we file a lawsuit and it goes underground while we work to settle the case. This fall, the results of confidential settlement negotiations on our 2016 lawsuit against EPA over Washington’s failed attempts to control polluted runoff from nonpoint sources—such as farming and logging—finally surfaced as part of the Trump Administration’s requirement that it be subject to public comment. The settlement, if approved, calls for Ecology to produce a detailed guide to

the practices that farmers need to use to protect public waters from pollution; to re-do state nonpoint source control plans, and to consult with expert fish and wildlife agencies on the impacts of nonpoint source pollution on imperiled species.

Meanwhile, the two federal agencies that oversee Washington's coastal nonpoint program (that includes Puget Sound) have proposed to approve the state's effort even though it does not control farm pollution, admits its logging practices are harmful, and relies on broken programs. NWEA submitted a detailed set of comments to that effect—at 150 pages and 450 attachments.

NWEA is represented in this Washington nonpoint pollution case by Paul Kampmeier at Kampmeier & Knutsen, PLLC, and Allison LaPlante at Earthrise Law Center. We are grateful for the assistance of Mary Scurlock, Oregon Stream Protection Coalition, and Dr. Christopher Frissell, Frissell & Raven Hydrobiological and Landscape Sciences LLC.

WASHINGTON FAILS TO PROTECT FISH AND WILDLIFE FROM TOXICS. This fall we sued EPA for denying our 2013 petition to update Washington's water quality standards for toxics. While much attention has been paid to toxic standards to protect human health—with the Trump EPA rescinding the standards that the Obama EPA put in place after the state botched the job—our lawsuit focuses on toxics that affect salmon and on up the food chain to orca whales. Both Ecology and EPA have refused to update these standards using the best science to protect these threatened and endangered species. But it's imperative that these standards are protective because they are the very foundation of Washington's entire clean water regulatory program.

NWEA is represented in the Washington toxic criteria case by Lia Comerford at Earthrise Law Center and Bryan Telegin at Bricklin & Newman LLC.

WASHINGTON FORCED TO PROTECT SALMON SPAWNING. As with many species, salmon are at their most vulnerable when they are starting out. Salmon lay eggs in a nest called a "redd." The eggs and emerging salmon need oxygen but redds are often smothered with fine sediment from activities such as logging that curtail the flow of oxygen. In response to our successful lawsuit, Ecology agreed to adopt new water quality standards aimed at preventing salmon eggs from being smothered. Now, Ecology has begun its rulemaking by seeking advice from a panel of scientists before it adopts new standards in 2021.

NWEA was represented in the Washington standards litigation by Allison LaPlante at Earthrise Law Center and Bryan Telegin at Bricklin & Newman LLC. Dr. Christopher Frissell serves on Ecology's science advisory panel for this rulemaking.

NWEA SEEKS PROTECTIONS FOR COLUMBIA RIVER AND KLAMATH BASIN BULL TROUT

Oregon is home to "threatened" bull trout with 3,000 miles of rivers and streams and over 30,000 acres of lakes designated for their protection but even so, many of the Oregon populations are declining. When NWEA sued the U.S. Fish and Wildlife Service (FWS) in Idaho for failing to complete its Endangered Species Act consultation with EPA over Idaho's toxic standards, the agency concluded that many toxics jeopardize the continued existence of the species, triggering the need for EPA action. Yet, oddly, after NWEA sued FWS to complete the consultation on the Oregon toxic standards, the agency concluded that no toxics pose jeopardy to bull trout in Oregon waters.

OREGON TOXIC STANDARDS DON'T PROTECT BULL TROUT. As a result of this inconsistency, NWEA sued FWS again in 2018 for failing to use the best science to protect Oregon bull trout. We are currently briefing the court challenging its failure to use the same

science for Oregon as it used for Idaho when it concluded that allowable levels of arsenic, selenium, and zinc jeopardize Idaho bull trout.

NWEA is represented in the Oregon toxic standards case against FWS by James Saul, Lia Comerford, and Allison LaPlante at Earthrise Law Center.

NWEA: MERCURY IN IDAHO WATERS

One legacy of the extensive mining in Idaho is mercury pollution that contaminates the entire food chain. Cleaning up mercury in Idaho waters and preventing further pollution requires water quality standards that protect the most sensitive species in this food chain.

PROTECTIVE MERCURY STANDARDS NEEDED IN IDAHO. NWEA's lawyers are currently briefing our case against EPA for failing to replace Idaho's mercury standards with new protective standards after its own disapproval action.

NWEA is represented in the Idaho mercury lawsuit by Allison LaPlante and Kevin Cassidy at Earthrise Law Center.

WHERE YOU — OUR MEMBERS — COME IN

When you become an NWEA member—whether you pay or join for free—you give us the opportunity to represent your interests in federal and state court. As you have read above, we rely on our members to provide NWEA with legal “standing” —that is, the right to file lawsuits on your behalf. **So please join us today with an email to me, on our website, or send a check.**

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. You can join as a NWEA member there—paid or free—or just sign up to receive email updates. Check out my Director's Blog to get a more personal take on what our government agencies are doing . . . and not doing.

When you support NWEA, you do more than support enforcement of the nation's environmental laws. 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.

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 where your contribution will be put to good use!