

Facts & Fiction

Breaking Down Oregon DEQ's Deception

On August 3, 2021, Northwest Environmental Advocates sued the U.S. Environmental Protection Agency (EPA) alleging that neither EPA nor the Oregon Department of Environmental Quality (DEQ) have developed any new “pollution diets” since 2010, when NWEA’s last court order expired. Known as Total Maximum Daily Loads, TMDL clean-up plans are needed to set pollution limits in permits and establish practices to control polluted runoff.

In response, Oregon DEQ issued the following misleading statement:

Fiction: “[DEQ and EPA] issued four significant TMDLs in the last two years: two in the Klamath Basin for temperature and nutrients[.]”

FACT: Oregon DEQ first issued the Klamath Basin TMDLs for temperature and nutrient pollution in December 2010. EPA declined to approve or disapprove the Klamath Temperature TMDL and, after NWEA sued, EPA sought a do-over (voluntary remand) from the court, which in 2016 ordered the Klamath Temperature TMDL to be completed in two years.

EPA approved the 2010 Klamath Nutrient TMDL but DEQ subsequently granted a petition for reconsideration filed by pollution sources in 2011, responded to those petitions in 2017, and issued a revised Klamath Nutrient TMDL in 2019.

Fiction: “[One TMDL] for the entire Willamette River basin, for mercury[.]”

FACT: Oregon first issued the Willamette River Basin Mercury TMDL in 2006, which EPA approved. After NWEA challenged the approval, EPA sought and was granted a voluntary remand by the court in 2016, which ordered EPA and DEQ to complete the Mercury TMDL in two years.

Fiction: “[One TMDL] for the Columbia River, for temperature.”

FACT: EPA began working on a Columbia & Snake Rivers Temperature TMDL in 2000. After Columbia Riverkeeper successfully sued the agency in 2017, EPA issued a draft TMDL in 2020. The Columbia & Snake Rivers Temperature TMDLs are still in draft form.

Fiction: “DEQ is working on TMDLs for two coastal rivers[.]”

FACT: In 2009, NWEA sued two federal agencies under a federal law that requires the state to control polluted runoff from nonpoint source pollution, such as logging and farming, in coastal watersheds. In a 2010

non-binding settlement, Oregon DEQ agreed to issue TMDLs for the MidCoast Basin to demonstrate that the agency could and would use TMDLs to improve logging practices that are known to harm salmon. By 2013, it was clear that Oregon was not going to complete the MidCoast TMDLs or demonstrate how they would control pollution. To date, DEQ has still not completed MidCoast TMDLs—11 years after they committed to do so. Oregon’s coastal program was disapproved and paid over \$7 million in penalties because its logging practices harm salmon.

Fiction: “[DEQ] is in the early stages of work on 14 temperature TMDLs across much of the state.”

FACT: In 2004, EPA approved an Oregon DEQ rule that allowed the state to supersede the allowable temperatures (generally 16° or 18°C) if it found that “natural” temperatures would have been higher. DEQ then used TMDLs across the state to jack up the allowable temperatures—to temperatures that are lethal to salmon—claiming they were “natural.” In 2005, NWEA successfully challenged EPA’s approval of this rule. In 2012, NWEA then challenged the 14 temperature TMDLs that used this rule to set new unsafe-for-salmon temperatures standards, and won a court order requiring the TMDL to be replaced between 2024 to 2028. (All of these TMDLs were developed pursuant to a court order issued in 2000.)

Fiction: “DEQ also is working to issue a permit for the City of Medford’s wastewater permit that will add more protections for the Rogue River.”

FACT: A discharge permit is not a TMDL. DEQ issued a (now-expired) permit to Medford in 2011 without any limits on the nutrient pollution harming the Rogue River. In 2012, the Rogue Flyfishers commissioned a report it sent to DEQ requesting action. In 2013 and 2014, Oregon DEQ and Medford issued their own reports, respectively, that confirmed Medford’s harm to the Rogue River. DEQ took no action. In 2018, NWEA sued Medford, and in 2019, Medford conceded that it was harming the Rogue and agreed to collect further data and to issue engineering reports.

DEQ’s new draft permit for Medford is the direct result of NWEA’s lawsuit against Medford, as well as a court order in a 2017 NWEA lawsuit that requires DEQ to issue permits for the next ten years to remove DEQ’s massive permit backlog,

CONCLUSION: Since the 2010 expiration of the last court order requiring the completion of TMDLs, neither Oregon DEQ nor EPA has completed a single new TMDL for Oregon waters. All of the work that DEQ points to is the result of other litigation by NWEA or others.