

For Immediate Release

August 3, 2021

Contact:

Nina Bell (NWEA): 503/295-0490

Jamie Saul (Earthise): 608/628-2420

LAWSUIT TARGETS OREGON'S FAILURE TO CLEAN UP UNSAFE LEVELS OF WATER POLLUTION

PORTLAND, OR – The development of water pollution clean-up plans in Oregon has been at a complete standstill for over a decade, while the number of its waters with unsafe levels of pollution soars, according to a lawsuit filed today against the U.S. Environmental Protection Agency (EPA). Asserting that EPA has an obligation to step in when the Oregon Department of Environmental Quality (DEQ) has failed to carry out the Clean Water Act, an environmental organization sued over the state's failure to develop so-called "pollution diets" for impaired rivers and streams.

The case, filed by the Portland, OR-based Northwest Environmental Advocates (NWEA), points to a rapidly increasing list of overly polluted waters in Oregon that now stands at 3,741 and represents a wide range of pollutants, from temperature to toxics.

"The last time Oregon produced any new water pollution clean-up plans was over a decade ago, and those were the direct result of our having sued EPA in 1996," said NWEA Executive Director Nina Bell. "It's clear that Oregon only protects water quality in response to lawsuits, so here we are again, heading to federal court."

NWEA's lawsuit explains that the agencies' failure to develop pollution clean-up plans—called Total Maximum Daily Loads or "TMDLs"—undermines its ability to issue pollution discharge permits that protect water quality. The complaint cites the City of Medford's pollution of the Rogue River, where DEQ personnel noted that the agency did not want to require pollution controls until it completed a clean-up plan for the Rogue—a plan it has no intention of preparing. NWEA sued Medford in 2018.

"These science-based clean-up plans are absolutely essential to support Oregon DEQ's ability to issue discharge permits with sufficient pollution limits," said Bell. "Having successfully sued Oregon DEQ for its decision to simply not issue these permits at all, now we're still facing the problem that DEQ doesn't want to issue permits that actually control pollution."

The court papers also noted that TMDLs are important for addressing polluted runoff from land activities such as logging and farming. NWEA cites a 2015 finding by EPA and the National Oceanic and Atmospheric Administration that Oregon's logging practices fail to protect coastal salmon despite a 2010 commitment by DEQ to demonstrate it would use the TMDL clean-up plans to improve logging practices. The pilot demonstration, the result of NWEA litigation, was to be TMDLs for the MidCoast basin, but they have never been completed.

NWEA attorney Jamie Saul, of Lewis & Clark Law School's Earthrise Law Center, noted that this is the same program that resulted in a court's ordering EPA to complete a clean-up plan for temperature in the Columbia and Snake Rivers, a TMDL that remains in draft form.

"EPA consistently fails to step in and make these Clean Water Act programs work for Oregonians," said Saul. "The culture of these agencies is not to keep water clean, clean up dirty water, and protect salmon but, rather, to perpetuate their bureaucracies. We should not have to repeatedly go to court to enforce the most basic elements of the Clean Water Act but, sadly, we have no other choice."

NWEA first sued EPA over Oregon's failed TMDL program in 1996, resulting in a ten-year consent decree that required EPA and DEQ to complete 1,153 TMDLs by the end of 2010. In 2020, NWEA won a separate lawsuit that challenged EPA's approval of TMDLs that changed allowable water temperatures to levels highly inhospitable—and in some cases lethal—to salmon, resulting in 714 waters that are under a separate court order for replacement TMDLs.

The case was filed in the federal District Court for the District of Oregon, Portland Division.

NWEA is represented by James Saul, attorney with the Earthrise Law Center at Lewis and Clark Law School.

###