



Summer 2022 Newsletter



Rogue River, Oregon

Note from the desk of Executive Director Nina Bell

Dear Friends,

Welcome to our first electronic-only mid-year newsletter. It's a good time to tell you about some significant legal victories in the last six months—with more color commentary than usual—and about how we've been ramping up our work against new nuclear reactors in the region.

A lot goes on behind the scenes of the dozen or so lawsuits that we have underway seeking protection of fish, wildlife, and human health from pollution. Confidentiality prevents us from talking about most of that work, so often we just report that we filed a case and we won. But rest assured, there is a lot going on behind the scenes as we represent your interests—our members.

Please check out [our website](#). There, you can [join as a NWEA member](#)—paid or free of charge—or just sign up for email updates. And check out my [Director's Blog](#) for a more personal take on how our government agencies are doing (or not doing).

NWEA WINS LAWSUIT TO PROTECT WASHINGTON WATERS FROM TOXIC POLLUTION

One of the many ways Washington fails to protect fish and wildlife from toxics is by not updating its water quality standards. While standards don't stop pollution on their own, they are the foundation of all regulatory actions under the Clean Water Act.

Because states postpone the work of making sure standards reflect the latest science on how toxics harm fish and people, the Clean Water Act requires updates. Even so, neither the Washington Department of Ecology nor the U.S. Environmental Protection Agency (EPA) has met this legal requirement. So, a decade ago, NWEA petitioned EPA to take responsibility for the situation. EPA not only did not fix the standards in Washington; it also did not respond to the petition. NWEA sued EPA in 2017 to get a response to the petition at which point EPA denied the petition. The basis for the denial was that EPA preferred to continue to work with Ecology even though past "encouragement" has failed to obtain any results.



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EPA's Waiting-for-Godot approach . . . cannot be justified with the framework or purpose of the [Clean Water Act]

In late December 2021, a federal court ruled decidedly in NWEA's favor. Writing that "EPA's Waiting-for-Godot approach . . . cannot be justified with the framework or purpose of the [Clean Water Act]," federal district court Judge Marcia J. Pechman gave EPA 180 days to issue a formal determination on whether it needs to take action to fix Washington's outdated toxic criteria.

The judge pointed to Washington's long-standing failure to protect aquatic species, citing EPA's having "acknowledg[ed] Washington's feeble efforts to timely comply with the [Clean Water Act]" while the federal agency itself "has unreasonably abandoned its role for years."

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Judge Pechman cited the plight of “unique species in Washington, such as Puget Sound’s Southern Resident Orcas who are some of the most contaminated marine mammals in the world due to bioaccumulation through the food stock, particularly through Chinook salmon.”

The lawsuit identified many toxics that have been implicated in the deteriorating status of fish and wildlife in Pacific Northwest states.

NWEA is represented in the Washington toxic criteria case by Lia Comerford at Earthrise Law Center and Bryan Telegin at Bricklin & Newman LLC. Thanks to NWEA members Greg Wingard, Jerry White, and Harry Branch for providing standing declarations.



NUCLEAR POWER THREATENS A RESURGENCE IN THE PACIFIC NORTHWEST

Since its inception in 1969, NWEA has worked for a future free of nuclear power and radioactive pollution. Unfortunately, despite that Washington and Oregon are littered with abandoned nuclear plants, some of which are still finding their way into your electric bill, some Pacific Northwest utilities are falsely claiming that nuclear power is necessary to combat climate change.

Cloaking themselves with slogans of “clean energy” and “carbon-free” power, nuclear industry promoters are repeating the false promises of the past and ignoring that it has proven to be unsafe, unhealthy, expensive, unreliable, and a barrier to a renewable, equitable, and resilient energy future. NWEA is working with experts to uncover the truth about nuclear costs, including filing numerous public records requests with public utilities. Currently in the region, Grant, Clark, and Cowlitz public utility districts are contemplating nuclear investments along with the private utility, Pacific Power.

We have created a [special section](#) on our website where we lay out why nuclear energy is not a viable solution to climate change. We are also collaborating with other organizations to build a united voice in favor of climate actions that have immediate impacts given the current climate emergency.

NWEA is represented in wrangling public records from Grant County PUD by Paul Kampmeier at Kampmeier & Knutsen, PLLC.

ROUND ONE WIN OVER EPA'S FAILURE TO CLEAN UP OREGON RIVERS

A federal court held in April that NWEA can pursue its effort to force agencies to clean up Oregon's over polluted waters. After a decade of inaction by the Oregon Department of Environmental Quality (DEQ) and the U.S. Environmental Protection Agency (EPA), NWEA filed a lawsuit against EPA for failing to carry out the Clean Water Act's mandate to write pollution clean-up plans. Called Total Maximum Daily Loads (TMDL), these clean-up plans are often referred to as "pollution diets" as they assign pollution reductions to multiple pollution sources.

Rather than carry out the Clean Water Act, EPA sought to convince the U.S. District Court to toss three of NWEA's four claims in the suit through a motion to dismiss. The court ruled against EPA in a solid win for NWEA.

First, the court held that EPA's 2020 approval of Oregon's ever growing list of impaired waters—standing at 3,741 waterbodies in the state with unsafe levels of pollution—was a final agency action that can be reviewed by the court in the future because it represents EPA's finding that Oregon had submitted a priority ranking and schedule.

Second, the court held that EPA may not ignore its own regulations that require the EPA Regional Administrator to determine a schedule for submission of TMDLs for all waters on Oregon list of impaired waters. EPA attempted to convince the court that it could not be bound by its own regulations, an effort the court rejected.

In fact, Oregon DEQ has not issued a single new TMDL clean-up plan since 2010, which is the year that NWEA's consent decree mandating the completion of TMDLs expired. That court order required the completion of over 1,500 TMDLs in a 10-year period.

NWEA is represented in this case by Jamie Saul at Earthrise Law Center. Thanks to Earthrise law students Benjamin Nach and Caitlin Stiltner for their work on this case.



Bosie, Idaho

UPDATES FROM AROUND THE REGION

ROGUE RIVER AND CITY OF MEDFORD. After NWEA won the first phase of our 2018 lawsuit against Medford for discharging poorly-treated sewage to the Rogue River, the Oregon Department of Environmental Quality issued a new discharge permit to Medford. Not surprisingly, because DEQ could not ignore our lawsuit, the new permit requires that Medford limit its discharge of nitrogen and phosphorus pollution to the Rogue. Equally not surprising, DEQ came up with the least amount of pollution controls it could, and allowed Medford up to 14 years to meet these new permit limits. NWEA filed a petition for reconsideration and the case has been set for a hearing later this year.

NWEA is represented in this case by James Saul and Lia Comerford at Earthrise Law Center.

COLUMBIA RIVER AND TEMPERATURE. Agencies have been talking about protecting salmon and steelhead migrating through unsafe water temperatures in the Columbia River with “cold water refuges” for over three decades. In the latest of a series of lawsuits seeking to make cold water a reality for salmon, NWEA has returned to court seeking more action for salmon and steelhead migrating through the Columbia from unsafe water temperatures, adding the National Marine Fisheries Service to the original case against EPA.

NWEA is represented by Bridgett Buss, Alex Houston, and Allison LaPlante at Earthrise Law Center.

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Puget Sound

UPDATES (*continued*)

PUGET SOUND AND SEWAGE TREATMENT PLANTS. After NWEA uncovered Washington Department of Ecology's massive failure to regulate pollution discharges to Puget Sound from sewage treatment plants, we petitioned EPA to remove the state's legal authority to issue permits. After five years without an EPA response, NWEA sought an extraordinary court order from the Ninth Circuit Court of Appeals in 2021. EPA then raced to deny our petition, issuing a remarkably sloppy analysis. NWEA has now appealed the denial.

NWEA is represented in this case by Andrew Hawley at the Western Environmental Law Center.

WASHINGTON AND SALMON SPAWNING. As the result of an NWEA lawsuit, the Washington Department of Ecology agreed to establish water quality standards to protect the eggs of salmon and steelhead from being smothered by fine sediment. The enforceable agreement specifically stated that if Ecology were to adopt a standard that was just a narrative statement, it would also provide guidance on how that narrative would be used. Despite having been given three years in which to do the work, Ecology managed to flub this job.

NWEA is represented in the Washington standards litigation by Allison LaPlante at Earthrise Law Center and Bryan Telegin at Bricklin & Newman LLC.



Capitol Lake, Olympia WA

FROM LAWSUITS TO POLICY, NWEA IS WORKING FOR YOU

Don't forget to check out our [website](#). There, you can join as a NWEA member—paid or free of charge—or just sign up for email updates. And check out my [Director's Blog](#) for a more personal take on how our government agencies are doing (or 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!

It's easy to [donate on our website](#), where you can also read more about our work.

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!