

# NORTHWEST ENVIRONMENTAL ADVOCATES



December 2019

Winter 2019 Newsletter

Dear Friends:

As one of our attorneys once said in a moment of utter frankness, “I like to win!” We do too and I’m happy to report that it’s been another winning year, whether measured by successful court orders or getting new lawsuits filed. Hand-in-hand with our superb legal team—and with the support of our members—we take the actions to bring the change you want—cleaning up unsafe levels of pollution, restoring salmon habitat, reducing toxics, and protecting human health.

One of NWEA’s hallmarks is our persistence. And that’s a good thing because some of these lawsuits take many years. And during those long years, we continue to evaluate agency actions, write public comments, and work with the agencies to seek good outcomes. But we are always there to take agencies to court to enforce the law with our very winning legal team.

What we need from you is your continuing support, which is both essential to our work and truly appreciated! When we go into court, we are representing your interests, our members, and we can’t do that if you don’t join NWEA today. Please consider taking advantage of Patagonia’s generous offer to match all donations made by December 31<sup>st</sup>. (See last page for instructions.)

## **NWEA: PROTECTING COLUMBIA RIVER SALMON FROM KILLER TEMPERATURES**

**O**f the 44 percent of Oregon’s streams miles that have unsafe levels of pollution, the most widespread pollutant is temperature. NWEA has been working to address this problem through multiple lawsuits since 2001. Frankly, cooling Oregon’s streams does not require rocket science; it requires agencies’ controlling logging and farming.

**OREGON’S RIVER TEMPERATURE CLEAN UP PLANS.** After seven years of litigation, this year a federal court ordered Oregon and the U.S. Environmental Protection Agency (EPA) to replace temperature clean-up plans for most of Oregon’s major river basins, including the Willamette, Rogue, Umpqua, and John Day. The existing plans, written by the Oregon Department of Environmental Quality (DEQ) and approved by EPA, allowed the state to replace temperatures safe for salmon with temperatures high enough to kill salmon within seconds.

In deciding which rivers would get new clean-up plans first, Oregon DEQ argued that rivers with the most dischargers, such as the Willamette River, should go last. NWEA argued that since DEQ only controls pollution from such dischargers and refuses to regulate farming and logging, the rivers with the most dischargers should have the highest priority. The court held in our favor. Oregon then tried to pretend that the court had not already ruled on this issue, prompting the judge to tell DEQ: “The Order was clear and I meant what I said in June.”

*NWEA is represented in this case by Bryan Telegin at Bricklin & Newman, LLC, and Allison LaPlante at the Earthrise Law Center at Lewis & Clark Law School.*

**COLD WATER REFUGES FOR SALMON IN THE HOT COLUMBIA RIVER.** In 2015, massive numbers of sockeye died from high temperatures in the Columbia River. Although sockeye have not learned to depend on patches of cold water called “refuges” to get through the hot waters of the Columbia, other salmon species that migrate during the very hottest times do. After multiple lawsuits, NWEA forced the National Marine Fisheries Service (NMFS) to admit that Oregon DEQ does nothing to protect those cold water refuges. In turn, NMFS ordered EPA to issue a plan to protect those cold water refuges. And, finally, EPA has issued a draft plan that identifies 12 cold water refuges in Oregon and Washington along the Columbia River.

That’s the upside. There is always a downside, especially in the Trump era. In this case, EPA has issued a report that has a lot of very interesting science about how fish depend upon these cold water refuges. As NWEA made clear in comments, the report does not include anything that resembles a “plan” that Oregon DEQ could follow to actually provide protection to salmon.

**CLEANING UP MEDFORD’S SLIME IN THE ROGUE RIVER.** In May 2018, we sued the City of Medford for discharging nutrient pollution that is triggering algal growth and changing the Rogue River’s natural composition of aquatic bugs. While Medford has long known that it is violating its discharge permit and done nothing, Oregon DEQ has also been well aware of the violation and also done nothing. Earlier this year, we filed a joint motion to the court with Medford to put the case on ice through April 2020, while we work cooperatively on the water quality monitoring, data analysis, and technological assessments necessary to resolve our claims.

*NWEA is represented in this case by James Saul and Lia Comerford, both at the Earthrise Law Center. We thank John and Julie MacDiarmid, the Rogue Fly Fishers, and The Healy Foundation for supporting this litigation.*

## **NWEA: TACKLING PUGET SOUND’S POLLUTION**

**P**uget Sound is dying: orcas are starving, salmon are dwindling, jellyfish are swarming, algal blooms are advancing. The reasons are many. But one single action—improving sewage treatment—can have the dramatic effect of reducing two kinds of pollution: nutrient pollution and toxics. NWEA will continue to advocate that the federal Clean Water Act requires better sewage treatment. But NWEA has brought another weapon to the fight: a 1945 Washington State law.

**FORCING MODERN SEWAGE TREATMENT TECHNOLOGY FOR PUGET SOUND.** Early this year, the Washington Department of Ecology denied an NWEA petition that it comply with a 1945 Washington State law—known as “AKART”—that requires sewage treatment plants to use modern sewage treatment technology. NWEA appealed to Governor Jay Inslee, who denied the appeal. Now, NWEA’s lawsuit demanding enforcement of this law is set for a court argument in January 2020.

Although eight years ago, Ecology identified sewage treatment plants as the largest human source of nutrient pollution in Puget Sound, it has taken no action to control this pollution.

These treated sewage discharges, which Ecology predicts will continue to grow with population increases, are sucking the dissolved oxygen out of the water. Oxygen is as essential to fish and other aquatic animals as it is to people. And controlling nutrient pollution removes toxics too.

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

### **NWEA REJECTS ECOLOGY'S PATHETIC EFFORTS TO PROTECT PUGET SOUND.**

When Ecology denied NWEA's "AKART" petition (see above), the agency promised to start taking certain actions when it issued permits starting in mid-2019. Mid-2019 rolled around and we found that Ecology had disregarded the promises. Instead, it is now asserting that it is going to issue a blanket general permit that would cover all or most of the sewage treatment plants' discharging of nutrient pollution to Puget Sound. While that sounds like progress, it's really just another Ecology dodge because the agency has made clear that this new permit would not comply with the Clean Water Act or state law. In a public meeting, Ecology even acknowledged that it wouldn't. If people wonder, why NWEA goes to court so often it is because the agencies repeatedly take actions they know are not legal and are not the best outcome for the environment and public health.

## **NWEA: IT'S WELL PAST TIME TO CLEAN UP WASHINGTON'S POLLUTED WATERS**

**RESTARTING A 1991 LAWSUIT.** In 1991, NWEA first sued EPA to force Washington to develop Total Maximum Daily Load (TMDL) clean-up plans for waters across the state with unsafe pollution levels. In 1998, NWEA signed an agreement that called for Ecology to develop TMDLs for all the waters that were found to have unsafe pollution levels in 1996, a total of 1,566 waterbody segments over a 15-year period. If Ecology failed, EPA agreed to step in. Fast forward to today and neither Ecology nor EPA has completed the job. In September, NWEA went back to court asking a federal judge to reopen this 1991 case to develop clean-up plans for 545 remaining waters.

**2019 MARKS A NEW LAWSUIT.** The same week in which we sought to restart our 28-year old case, we filed a new related case. This 2019 lawsuit challenges two types of EPA's failure. First, EPA has failed to make sure that all the waters in Washington with unsafe levels of pollution have been identified. Required every other year, Ecology's last list of impaired waters was issued in 2012! Second, TMDL clean-up plans are required for each of those impaired waters. For that reason, NWEA also asks the court to order EPA to complete all the remaining TMDLs needed in Washington, a list that stands currently at over 4,500 waters across the state.

*NWEA is represented in the Washington TMDL litigation by Andrew Hawley at the Western Environmental Law Center and James Saul at the Earthrise Law Center.*

## **NWEA: FORCING STATES TO REDUCE TOXIC POLLUTION**

## **OREGON PERPETUATES UNSAFE MERCURY LEVELS IN THE WILLAMETTE.**

As the result of a 2012 NWEA lawsuit, Oregon DEQ was forced to rework its clean-up plan for mercury pollution in the Willamette River basin, which it just sent to EPA for approval. The TMDL found 95 percent of the mercury is coming from logging and farming. Given that DEQ has refused to use TMDLs to control pollution from logging and farming (as proved by an earlier NWEA lawsuit), you know DEQ is not telling the truth when it says that its goal is to “lower mercury levels . . . allowing for the safe eating of fish and shellfish.” But it gets worse.

NWEA also recently wrote comments on a proposed 20-year variance for mercury in the Willamette. A variance would give mercury dischargers to the Willamette a free pass to not meet mercury standards. In exchange, federal regulations require that Oregon DEQ make clear what loggers and farmers need to do to prevent mercury from running off the land and into the Willamette. Those would be the very sources that DEQ’s Willamette Mercury TMDL says are by far the largest source of mercury. Instead, Oregon DEQ is counting on the Trump EPA to give them a pass and not control any source of mercury to the Willamette.

*NWEA is represented in the Willamette Mercury TMDL case by Allison LaPlante at the Earthrise Law Center and Bryan Telegin at Bricklin & Newman, LLC.*

## **NWEA: TAKING ON THE TRUMP ADMINISTRATION**

It goes without saying the Trump Administration poses an enormous threat to the environment, especially as it attempts to undermine the regulation of pollution. We’re fighting back.

**TRANSPARENCY THROUGH FOIA.** NWEA continues to sue federal agencies that refuse to release documents under the Freedom of Information Act (FOIA). For example, this year, NWEA obtained federal court orders for EPA to release documents concerning:

- \$ nutrient pollution in Puget Sound
- \$ fire retardant (PBDE) pollution in Puget Sound and elsewhere
- \$ EPA’s funding of Oregon’s nonpoint source pollution control program
- \$ water quality standards for toxic pollutants in Washington

*NWEA is represented in FOIA lawsuits by Paul Kampmeier at Kampmeier & Knutsen, PLLC, and Lia Comerford at the Earthrise Law Center.*

**WATER POLLUTION TRADING SCAM.** NWEA was one of a small handful of environmental groups to push back on the Trump EPA’s latest scam that would allow dischargers to engage in water pollution trading in clear violation of the Clean Water Act.

**WHERE YOU — OUR MEMBERS — COME IN**

When you become a membership in NWEA—whether you pay or join for free—you give us the opportunity to represent your interests in federal and state court. We rely on our 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](http://www.NorthwestEnvironmentalAdvocates.org). You can sign up to be a member there.

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 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 where your contribution will be put to good use!