

NORTHWEST ENVIRONMENTAL ADVOCATES



December 2022

Winter 2022 Newsletter

Dear Friends:

People often comment that persistence is a defining characteristic of NWEA, which is good considering how difficult it is to get regulatory agencies to do their jobs. Much of our persistence goes on behind the scenes—in confidential settlement negotiations, unglamorous agency processes, or developing creative new legal strategies. Whether it's behind closed doors, or in the public eye, with the help of our superb legal team we are bringing the change you want—decreasing pollution, restoring salmon habitat, reducing toxics, protecting human health, and seeking to reduce the effects of climate change.

This last year reflects NWEA's persistence and success! We have taken significant new steps towards cleaning up Puget Sound and polluted waters across Oregon, and continued our effort to reduce pollution to the Rogue River. We also won victories for control of toxic discharges in Washington and Idaho. And we're seeing the fruits of earlier legal victories such as the progress being made on controlling polluted runoff from farming in Washington.

When we go into court, we are representing your interests—our members—a job we do best with your support, whether that's writing a declaration to support NWEA's standing in court or making a financial contribution.

NWEA PROTECTING PUGET SOUND

Puget Sound continues to suffer from nutrient and toxic pollution from sewage treatment plants, industries, and polluted runoff from logging and farming. Meanwhile, government agencies sit on their hands, refusing to control pollution and save orcas and salmon.

NWEA SUES OVER THE ABANDONED CLEAN-UP PLAN FOR PUGET SOUND. With only one exception, the Washington Department of Ecology has never regulated the discharge of nitrogen to Puget Sound. This failure is all the more remarkable because Ecology has built a sophisticated model of Puget Sound that demonstrates the importance of significantly reducing nitrogen from over 100 sewage treatment plants. This model was supposed to be the heart of a Total Maximum Daily Load ("TMDL") clean-up plan—often referred to as a "pollution diet"—that would force pollution reductions. But Ecology has abandoned the TMDL so NWEA has sued EPA for approving this state decision to not complete the Puget Sound TMDL.

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

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WORKING TO IMPROVE WASHINGTON PERMITS. When NWEA uncovered Washington Department of Ecology’s massive failure to regulate nitrogen discharges to Puget Sound from sewage treatment plants, we petitioned EPA to improve its oversight of the state’s discharge permits program. Eventually NWEA sought an extraordinary court order from the Ninth Circuit Court of Appeals, after which EPA rushed to deny our petition and moot the case. NWEA has now appealed EPA’s denial of a petition that seeks to make EPA do its job.

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

A WIN FOR THE ROGUE RIVER

The City of Medford’s foul-smelling discharge of poorly-treated sewage to the Rogue River triggers the growth of algae and weeds and is killing off pollution-sensitive aquatic bugs downstream— an indication of overall river health. NWEA is putting an end to this mess.

CLEANING UP MEDFORD’S SEWAGE IN THE ROGUE RIVER. Nothing is ever easy (or quick) and cleaning up Medford’s pollution of the Rogue River proves the point. In 2021, NWEA won the first part of its lawsuit against Medford. However, the case continues, as part two before the court is what Medford must do to clean up its sewage discharge. This federal lawsuit is now on hold while we challenge Oregon DEQ’s new—and weak—permit. The good news is that NWEA’s lawsuit forced the state to issue a permit requiring significant reductions in nutrient pollution—both nitrogen and phosphorus— discharged to the Rogue. The bad news is that DEQ’s proposed reductions are too little, too late, according to NWEA’s panel of experts, led by the renown nutrient expert Dr. JoAnn Burkholder. DEQ is giving Medford a whopping 14 years in which to comply with the new permit, contrary to federal rules that require compliance “as soon as possible.” The Medford permit appeal trial begins in early December.

NWEA is represented in this case by James Saul and Fellows Alex Houston and Haley Nicholson at Earthrise Law Center.

FIXING OREGON’S FAILURE TO CLEAN UP POLLUTED RIVERS

Oregon DEQ’s failure to protect the Rogue River is an excellent example of why Oregon’s rivers and streams need the “TMDL” clean-up plans mandated by the Clean Water Act that establish pollution limits for all pollution sources. Had DEQ developed a TMDL for nutrient pollution in the Rogue, Medford and other cities would be properly regulated today.

NWEA SUES TO CLEAN UP OREGON’S RIVERS. In fact, Oregon DEQ has not issued a single new TMDL clean-up plan since 2010. That is the year in which the court order in NWEA’s earlier lawsuit expired, an order that required the completion of over 1,500 TMDLs in a 10-year period. Oregon’s colossal failure to carry out the Clean Water Act is the reason NWEA brought a new lawsuit this year, seeking the development of TMDL clean-up plans for the thousands of rivers and streams across Oregon with unsafe levels of pollution, many of which have been on the list of impaired waters for decades.

NWEA is represented in this case by Jamie Saul at Earthrise Law Center.

PROTECTING SALMON FROM A HOT COLUMBIA RIVER

Three decades ago, regulators began talking about protecting salmon and steelhead migrating through unsafe water temperatures in the Columbia River with “cold water refuges” where they could seek relief from the heat. Today, they are still just talking.

HELPING MIGRATING SALMON THROUGH HOT WATERS. In earlier lawsuits, NWEA pushed agencies to address the need for cold water refuges, resulting in EPA’s Cold Water Refuge plan for the Columbia River. But this plan does nothing to help fish. So, we have returned to court seeking more action and less talk about protecting salmon and steelhead migrating through the unsafe temperatures of the Columbia River.

NWEA is represented by Allison LaPlante and Fellow Alex Houston at Earthrise Law Center.

CLEANING UP WASHINGTON WATERS

There is also a lot of talk in Washington about saving salmon and steelhead in Puget Sound and the Columbia River. For all that talk, there is strikingly little regulatory action—using the tools of the Clean Water Act—to prevent these species from extinction.

COURT ORDERS EPA TO PROTECT FISH FROM TOXICS. In 2013, NWEA petitioned EPA to update Washington’s water quality standards for toxics to protect salmon and orcas. We sued EPA to get a response, resulting in EPA’s denial of our petition and then we challenged the petition denial in a new lawsuit. In late December 2021, a federal court ruled 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].” After much wrangling, we agreed to a court order in which EPA will take actions now with regard to acrolein, aluminum, arsenic, cadmium, copper, cyanide, mercury, selenium, and nickel, and in three years will address chromium III, DDT, endrin, endosulfan, lead, nonylphenol, tributyltin, and zinc.

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

VICTORY OVER 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.

COURT ORDERS EPA TO ISSUE IDAHO MERCURY STANDARDS. It’s been a very long haul but we won. In 2021, a federal court ordered EPA to promulgate new mercury standards to protect fish in Idaho—over our 2013 lawsuit challenging an EPA action from 2008! After the court held EPA’s 13 years of failure was contrary to law, NWEA and EPA spent a year hammering out an agreement that EPA will establish new mercury criteria with levels that are measured in fish tissue. However, because fish tissue levels are very unlikely to ever result in

mercury restrictions in discharge permits, EPA also has agreed to promulgate protective levels of mercury in water if it determines there are enough data to make that possible.

NWEA is represented in this case by Allison LaPlante & Kevin Cassidy at Earthrise Law Center.

SOME SHORT UPDATES

- Under a court order from an NWEA lawsuit, Washington Ecology is working to identify the practices that farmers need to adopt to protect water quality.
- NWEA has informed the U.S. EPA that it will sue over Washington's failure to meet the Clean Water Act in a failed 22-year old deal that was supposed to improve logging practices in Washington.
- NWEA has been using the Washington Public Records Act to uncover the activities of public electric utility districts that are considering investing in new nuclear power reactors at Hanford (WA) and Idaho Falls (ID).

FROM LAWSUITS TO POLICY, NWEA IS WORKING FOR YOU

Please check out our new look 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 are supporting the enforcement of the nation's environmental laws in Oregon, Washington, and Idaho. But NWEA does a lot more. 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 for our expertise.

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. To explain our role, I often say, "NWEA's job is to make EPA and the states do their jobs." 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!