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**FEDERAL COURT RULES AGAINST THREE FEDERAL AGENCIES  
IN REVIEW OF OREGON TEMPERATURE STANDARDS**

A federal court in Portland yesterday sent three federal agencies back to the drawing board on their review of how Oregon regulates the temperatures of its rivers and streams to protect salmon, steelhead, and bull trout. The federal court ruled Tuesday in a case brought by the Portland, OR-based Northwest Environmental Advocates (NWEA) in 2005 that challenged numerous aspects of Oregon's water quality standards for temperature under two federal laws, the Clean Water Act (CWA) and the Endangered Species Act (ESA).

"This decision is a significant victory for salmon," said Nina Bell, NWEA Executive Director. "Federal agencies can no longer look the other way when states refuse to apply water quality standards to the very human activities that cause unsafe water temperatures. After 20 years of trying to get it right, we hope that this decision pushes Oregon and the federal government to protect cold water fish from the special interests who would prefer to do nothing while salmon and other fish edge towards extinction."

The lawsuit is the second time NWEA has successfully challenged the U.S. Environmental Protection Agency's (EPA) approval of Oregon's temperature standards. Because temperature is a widespread problem that affects reproduction, growth, and disease levels of salmon, the EPA action is also subject to review by the National Marine Fisheries Service and the U.S. Fish & Wildlife Service under the Endangered Species Act. NWEA's lawsuit challenged the actions of all three federal agencies.

The case involved numerous claims. The court found in NWEA's favor on most, but not all, of the CWA claims. Among the most important provisions the court struck down was EPA's approval of an Oregon Department of Environmental Quality (DEQ) rule that allows the agency to automatically replace its other criteria with temperatures it deems "natural," without any

subsequent federal agency review. A provision widely used by DEQ, it has generated allegedly natural temperatures as high as 32° C (90° F), compared to the 18° C (64° F) numeric criterion that the court found was, while high, acceptable for fish.

EPA had claimed that Oregon promised the superseding temperatures would represent only natural temperatures with no human influences. According to Bell, “Oregon and the federal agencies have misled the public in setting these high temperatures for salmon and calling them ‘natural’ when they are not natural at all,” said Bell. “The court saw through EPA’s arguments.”

“Not only is this case important for Oregon water quality and salmon but it has important national implications as well,” said Allison LaPlante, Staff Attorney with the Pacific Environmental Advocacy Center (PEAC) at Lewis and Clark College, one of NWEA’s lawyers on the case. “The court ruled that EPA could not allow Oregon to essentially exempt the very human activities – logging and farming – that cause water temperatures to soar. EPA cannot stand in the sidelines when a state attempts an end-run around the Clean Water Act.”

According to LaPlante, “the court also found that EPA had failed to do precisely what an earlier court had ordered in 2003, namely to make sure that Oregon had an implementation plan to protect its waters from degrading. This is an important national precedent.”

The court found in NWEA’s favor on all of its ESA claims, which will result in new reviews of EPA’s action. “The court found the federal agencies’ approvals were fundamentally flawed and specifically that they had failed to consider how Oregon’s temperature standards would affect some species more than others,” said LaPlante. “In addition, the court found the U.S. Fish & Wildlife Service may have placed political feasibility over science,” she added.

“It is well past time that Oregon entered the 21<sup>st</sup> century and put an end to cows grazing in streams, farmers plowing up to the edge of rivers, and loggers cutting down trees that provide essential shade to streams,” said Bell. “Over the last century, Oregon has moved from a haven for cold-water fish to suffering a plague of hot water across the landscape. The salmon are our canary in the coal mine and we have ignored them for too long.”

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