

NORTHWEST ENVIRONMENTAL ADVOCATES



December 2012

Winter 2012 Newsletter

Dear Friends:

With your help and support, in 2012 we continued our strong and effective advocacy for the environment and public health!

While a lot of our work is focused on enforcement of federal laws such as the Clean Water Act, NWEA is also a resource for groups in the region and across the country. We offer a place where concerned citizens can get answers, advice, and help. And we're often the "go-to" group for regional and national media on Clean Water Act issues.

So much of our work is focused on protecting salmon and steelhead – the proverbial canaries in the coal mine – but this year much of our advocacy has focused on protecting other cold-water species such as the dwindling numbers of frogs, salamanders, and turtles. These species are rapidly being decimated but don't yet have the protection of the Endangered Species Act.

Knowing your concern about keeping water clean, protecting salmon habitat, reducing toxics in fish and drinking water, and protecting human health, I will highlight some of our recent success stories – made possible by you, our members. Your continuing support is both essential to our work and truly appreciated!

NWEA Wins Major Lawsuit Over River Temperatures Essential to Survival of Salmon, Steelhead, and Bull Trout

Salmon, steelhead, and bull trout are all highly dependent on cold water and are all either threatened or endangered under the Endangered Species Act. In Oregon, more waters are identified as impaired for temperature than any other pollutant. These high river temperatures mirror the amount of logging, farming, ranching, development, and water removals that have fundamentally altered the water on which these cold-water species depend.

NWEA has been working on Oregon's water quality standards for temperature – in advisory committees and through court actions – for 20 years. Earlier this year, **we won our second lawsuit challenging Oregon's temperature standards**. Key among the court's findings were

- EPA's approval of a provision to automatically delete and replace its temperature standards was illegal, and
- Endangered Species Act reviews by federal fish and wildlife agencies were wholly inadequate.

NWEA is represented in the Temperature Standards case by Allison LaPlante, Dan Mensher, and Dan Rohlf of the EarthRise Law Center at Lewis & Clark Law School.

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NWEA Challenges Oregon's Cynical Use of Clean-Up Plans to Allow Higher River Temperatures

Following the court's ruling in our Temperature Standards lawsuit that Oregon could not automatically change its standards without federal agency approval, NWEA filed a challenge to the results of Oregon's use of that provision. It turns out that every one of Oregon's temperature clean-up plans (called Total Maximum Daily Loads or "TMDLs") has changed Oregon's temperature standards without any federal agency review to make sure those temperatures are safe for salmon.

Oregon's standards call for temperatures of 16°C, 18°C, and, rarely, 20°C. **In contrast, Oregon's TMDLs change those standards to up to 30°C – that's 90°F!** While that's not quite hot enough to poach a fish, it's certainly too hot for their survival. Since Oregon doesn't use its TMDLs to actually reduce stream temperatures, it's particularly galling that Oregon uses the TMDLs to change the standards that are supposed to protect fish.

NWEA is represented in the Oregon TMDLs case by Bryan Telegin of Bricklin & Newman, and Allison LaPlante, and Dan Mensher of Earthrise Law Center at Lewis & Clark Law School.

Standards for Toxics Found Inadequate to Protect Oregon Species . . . Now NWEA Seeks Completion of Idaho Review

Eight years after Oregon established new water quality standards for toxics and three years after NWEA sued the federal fish and wildlife agencies for failing to complete their review under the Endangered Species Act, the agencies finally produced what are called Biological Opinions. In its opinion, the **National Marine Fisheries Service concluded that Oregon's water quality standards for copper, ammonia, cadmium, and aluminum are not protective of threatened and endangered species in Oregon.** This finding puts the ball back into the hands of the Environmental Protection Agency (EPA) to make sure species are protected.

Meanwhile Idaho presents a much more egregious case of federal agency foot-dragging. In 1994 – 18 years ago – Idaho submitted new standards for toxics to EPA for approval. EPA approved them but the federal fish and wildlife agencies never completed their analysis of whether Idaho's standards protect threatened and endangered species. NWEA recently informed the National Marine Fisheries Service and U.S. Fish and Wildlife Service of a **new lawsuit to ensure this process is finally completed to ensure that Idaho species are protected.**

NWEA is represented in the Oregon and Idaho Toxics Standards cases by Allison LaPlante and Kevin Cassidy of the Earthrise Law Center at Lewis & Clark Law School.

NWEA Seeks Significant Improvements in Logging Practices

In 2009, NWEA sued the EPA and National Oceanic and Atmospheric Administration (NOAA) to force Oregon to significantly improve its forest practices in coastal watersheds. The case was the first ever lawsuit filed under the Coastal Zone Act Reauthorization Amendments (CZARA). To settle the case, Oregon agreed to demonstrate that the Department of Environmental Quality (DEQ) could override the inadequate logging practices of the Department of Forestry (ODF). The demonstration project is termed the MidCoast "Implementation Ready" TMDL. If DEQ follows through on its promises, it will be the first time ever that a TMDL has been used to achieve enforceable widespread pollution controls.

That may be a big "if." As soon as the settlement ink was dry, DEQ began back peddling from its commitments. NWEA has prepared numerous lengthy letters to the federal and state agencies

explaining how things are going wrong, covering issues from logging to agriculture. Since the punishment under CZARA is loss of federal grant funds, if DEQ fails to demonstrate it can vastly improve Oregon's coastal logging practices, it will lose millions of federal dollars. Nobody will be able to say that NWEA didn't try to warn the state it was failing to carry out its promises.

The starkest example of Oregon's weak logging practices is demonstrated by the massive clear-cuts in coastal watersheds. Unlike other states, **Oregon does not require trees to shade and protect the many small streams in upper watersheds** because salmon and steelhead don't live there. This vast network of non-salmon streams are home, however, to amphibians such as frogs and salamanders that are entitled to legal protection. The Mid-Coast Implementation Ready TMDL will be a test of whether DEQ will require protection of these streams.

NWEA Petitions for Pesticide Controls to Protect Oregon Fish and Wildlife . . . PETITION DENIED

The law can work in mysterious ways. Take, for example, pesticides. A decade of pesticide litigation has resulted in determinations by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service that certain pesticides jeopardize the continued existence of threatened and endangered species. EPA, however, refuses to establish new restrictions on pesticide use recommended by fish and wildlife agencies. Oregon DEQ also refuses to recognize that these restrictions should be incorporated into its brand spanking new pesticide discharge permit.

NWEA sought to address this huge gap in Oregon's pesticide discharge permit by petitioning Oregon's Environmental Quality Commission (EQC) to adopt the new restrictions. Several months later, the Commission denied NWEA's petition on several bases including that pesticides are a federal issue, that pesticides are not a priority for Oregon, and that voluntary programs are the best approach. While the denial was expected, it's always shocking to see agencies cobble together excuses when what they should say is "we just don't have the guts to stand up to special interests."

NWEA gratefully thanks the Northwest Center for Alternatives to Pesticides and the Center for Biological Diversity for sending action alerts on the Pesticide Petition, and Steve Mashuda of Earthjustice for advice.

NWEA Successfully Challenges Pesticide Permit

Did we mention that the law works in mysterious ways . . . especially for pesticides? Thanks to a decade of litigation by environmental groups, pesticide spraying into water now requires a Clean Water Act permit. However, unlike a regular permit where the public gets advance notice and a chance to submit comments, these are called general permits. Put another way, it's all a big secret between the pesticide sprayers and the state. But if you happen to find out someone has applied for permit coverage, you can try to stop pesticide spraying. NWEA did just that when homeowners alerted us to a proposal to dump herbicides in Fairview Lake. We wrote comments even though the DEQ was not accepting comments. We wrote more comments. **We petitioned for the permit coverage to be withdrawn and – shockingly – it was.**

With all of the attention on salmon in our region, little attention is given to other species of fish, reptiles, and amphibians. Fairview Lake, it turns out, is home to the Western pond turtle, a species in the Willamette Valley that has declined to one percent of its historic levels. DEQ issued coverage under the permit before a survey on the turtles in Fairview Lake was even completed. These kinds of agency actions demonstrate why there is an ever increasing list of species that are listed as threatened with extinction. Until the Endangered Species Act provides legal protection, agencies ignore dwindling populations of fish and wildlife.

Some Short Updates

- NWEA filed an amicus – “friend of the court” – brief before the U.S. Supreme Court in the lawsuit (*NEDC v. Decker*) concerning the need for Clean Water Act discharge permits for industrial logging roads. Our brief details the history of Oregon’s failed logging practices. Joining us on the brief were the Native Fish Society and Center for Biological Diversity. *Jim Coon of Swanson, Thomas, Coon & Newton generously represented the amici.*
- NWEA is participating in efforts to craft legislation to keep manure out of Washington’s waters. The legislation is in response to Governor Gregoire’s calls for action on what has been a persistent problem.
- NWEA’s continuing efforts to stop the spreading of Roseburg sewage sludge on the Hayden Ranch met with success. **Oregon DEQ withdrew its illegal authorization letter in response to NWEA’s petition.** *Bryan Telegin of Bricklin & Newman has generously represented NWEA in this matter.*
- NWEA is participating in Washington Department of Ecology’s process to develop new human health criteria for its water quality standards. While the process is intended to update the fish consumption levels that are used in calculating the standards for toxic chemicals, pressure from industry threatens to use this process to set back Washington’s regulation of toxic discharges.
- It’s not all hard work! NWEA volunteers Paul Englemeyer, Mary Scully-Engelmeyer, Bill Carpenter, Aaron Carpenter, Flori Hall, Catherine Paglin, and Vern Luce helped staff information tables at concerts by Bonnie Raitt and Crosby, Stills, & Nash.

From Lawsuits to Advisory Committees, NWEA is Working for You!

As always, please feel free to e-mail me with questions about NWEA’s work on your behalf at nbell@advocates-nwea.org. I am happy to explain any of the projects we’re working on or send you original documents. And our website will give you timely and helpful access to information about our activities: www.NorthwestEnvironmentalAdvocates.org.

Please remember that Northwest Environmental Advocates does a lot with very few resources so we count on you for financial support. Contributions are tax deductible and much appreciated!

Sincerely,

Nina Bell
Executive Director

P.S. In seeking to enforce the law, **NWEA guarantees you an old-fashioned lean operation – giving you highly credible and energetic advocacy** without fancy slogans and glossy magazines. That means that your financial contribution supports getting what you want done. I hope that you will consider making a tax-deductible contribution to NWEA. We can guarantee you that your contribution will be put to good use!