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**COURT SAYS OREGON TEMPERATURE CLEAN-UP PLANS
MUST PROTECT IMPERILED SALMON**

A federal court handed an Oregon environmental organization a win today in a long-running battle over the U.S. Environmental Protection Agency's (EPA) failure to protect salmon species from temperature pollution in Oregon's streams and rivers. The lawsuit, brought by the Portland, OR-based Northwest Environmental Advocates (NWEA), challenged EPA's approval of Oregon water pollution clean-up plans that are intended to address the state's widespread temperature problems.

The clean-up plans in question, developed under the federal Clean Water Act, did more than establish temperature limits for various pollution sources as required. These plans actually changed Oregon's temperature goals from cold temperatures to hot—and sometimes even lethal—temperatures.

Oregon District Court Judge Marco A. Hernandez agreed with NWEA that EPA must comply with the Endangered Species Act in approving the pollution clean-up plans, called "Total Maximum Daily Loads" or "TMDLs." Rejecting EPA's argument that the federal agency could take no action that would help threatened and endangered salmon, steelhead, and bull trout, the court held that "EPA's approval of the TMDLs is what allowed for higher temperatures [that would harm the species]."

The Oregon temperature TMDLs were based on a rule that an earlier court decision threw out in 2012. Oregon had used the illegal rule every time it issued a temperature clean-up plan. The rule had allowed the Oregon Department of Environmental Quality (DEQ) to change state

water quality goals for temperature without any federal agency review or agreement, contrary to the requirements of the Clean Water Act. In some instances, Oregon raised allowable temperatures to levels that are lethal to salmon within seconds.

“In 2003, EPA said that temperatures of 90° F are instantaneously lethal to salmon at exposures under 10 seconds,” said NWEA Executive Director Nina Bell. “But that didn’t stop EPA from approving a DEQ clean-up plan for streams and rivers in the Umpqua Basin that changed Oregon’s water quality standards from 64° F to that same dangerously high temperature of 90° F. If EPA had consulted with the expert fish and wildlife agencies, as the court has just ruled the Endangered Species Act requires, those scientists would have told EPA that fish can’t live in lethally hot water. This is why today’s court decision is so important.”

In today’s action, the court also adopted the recommendations of a federal magistrate judge, issued last October, that EPA’s approval of the Oregon temperature TMDLs should be invalidated. A TMDL contains limits for contributions of pollution via discharge permits and polluted runoff from land activities such as logging and farming. The vast majority of waters that Oregon has identified as having unsafe levels of pollution, and which therefore require a TMDL, are impaired by high temperatures.

The court also gave EPA and Oregon DEQ two years in which to submit a new TMDL for mercury in the Willamette River basin. EPA had sought to voluntarily withdraw its approval of the Willamette Mercury TMDL.

NWEA is represented in this lawsuit by Bryan Telegin of Bricklin & Newman, LLP (Seattle) and Allison LaPlante of the Earthrise Law Center at Lewis and Clark Law School (Portland).

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