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Citizen Suit Action/Clean Water Act: Environmental Group Alleges Failure by U.S. Environmental Protection Agency to Address State of Washington Proposed TMDL

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Northwest Environmental Advocates (“NEA”) filed a November 6th Clean Water Act Citizen Suit Action in U.S. District Court in Washington alleging that the United States Environmental Protection Agency (“EPA”) had failed to:

... discharge its nondiscretionary duty to review and either approve or disapprove a proposed Total Maximum Daily Load (“TMDL”) submitted by the State of Washington for the Deschutes River, Percival Creek, and tributaries to Budd Inlet (“Deschutes”).

The Washington Department of Ecology (“Ecology”) is alleged to have submitted the Deschutes TMDL to EPA in December of 2015, triggering the federal agency’s nondiscretionary duty to either approve or disapprove the TMDL within 30 days under Section 303(d)(2) of the Clean Water Act.

Section 303 of the Clean Water Act requires that each state develop water quality standards (“WQS”) for jurisdictional waters of the United States within their borders. WQS establish water quality goals for a specific body of water and also serve as the regulatory basis for the development of water-quality based effluent limits and strategies for individual point source discharges.

The WQS consist of three parts:

1. The designated uses of a waterbody
2. The water quality criteria that are necessary to protect existing uses and to attain the beneficial uses designated by the state
3. An anti-degradation statement or policy to protect existing uses in high quality water

Section 303(c) specifies that the adopting of WQS is primarily the responsibility of the states. However, EPA is required to ensure that the state WQS, along with any changes, meet the minimum requirements of the Clean Water Act.

Section 303 of the Clean Water Act requires that the state identify those waters within its boundaries for which the technology-based effluent limitations required by the Clean Water Act and defined by EPA are not stringent enough to attain the applicable WQS. Waters so designated are known as “water quality

limited segments” or “impaired waters.” A pollution loading limit for a waterbody is referred to as the Total Maximum Daily Load (“TMDL”) a waterbody can assimilate. EPA defines a TMDL in part as “a written, quantitative plan analysis for attaining or maintaining a water quality standard in all seasons for a specific waterbody and pollutant. . .”.

The NEA action alleges that rivers and streams in the Deschutes watershed violate Washington WQS for temperature, dissolved oxygen, pH, fine sediment, fecal coliform, and bacteria.

NEA alleges that Ecology initiated work on a TMDL for the waterbody in 2002. It was not completed and submitted to EPA for approval until 2015. The organization further states that Budd Inlet was eliminated from the final TMDL because Ecology indicated an inability to account for nitrogen pollution coming into Budd Inlet from sewage treatment plants throughout Puget Sound that contributed to dissolved oxygen deficiencies.

[A copy of the Complaint can be downloaded here.](#)