



BRICKLIN & NEWMAN LLP  
lawyers working for the environment

Reply to: Seattle Office

August 27, 2018

*VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED*

Andrew Wheeler, Acting Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Jefferson Beauregard Sessions III, Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

**Re: Notice of Intent to Sue for Failure to Establish Replacement TMDLs for Washington's Deschutes River Basin**

Dear Mr. Wheeler and Mr. Sessions:

This letter provides notice that Northwest Environmental Advocates (“NWEA”) intends to sue the U.S. Environmental Protection Agency (“EPA”) under Section 505(a)(2) of the Clean Water Act (“CWA”) for failure to establish replacement TMDLs for several waterbodies in Washington’s Deschutes River Basin. Washington proposed TMDLs for those waterbodies in December of 2015, when it submitted its Deschutes River, Percival Creek, and Budd Inlet Tributaries Multi-parameter TMDL (“Deschutes TMDL”) for EPA’s review pursuant to Section 303(d)(2) of the CWA.<sup>1</sup> On June 29, 2018, EPA issued a letter disapproving 37 individual TMDLs within the Deschutes TMDL for temperature, DO, pH, fine sediment, and bacteria. Specifically, as noted in the letter, EPA disapproved the following individual TMDLs:

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<sup>1</sup> See Deschutes River, Percival Creek, and Budd Inlet Tributaries Temperature, Fecal Coliform, Bacteria, Dissolved Oxygen, pH, and Fine Sediment Total Maximum Daily Load (Washington Department of Ecology Publication No. 15-10-012, available at <https://fortress.wa.gov/ecy/publications/documents/1510012.pdf>).

<b>Waterbody</b>	<b>Parameter</b>	<b>1996 Listing ID</b>	<b>2010 Listing ID</b>
Huckleberry Creek	Temperature	WA-13-1024	3757
Reichel Creek	Temperature	WA-13-1022	48666
Tempo Lake Outlet	Temperature	---	48696
Ayer (Elwanger) Creek	Temperature	WA-13-1015	(73229)
Unnamed Spring to Deschutes River	Temperature	---	48923
Adams Creek	pH	---	50965
Ayer (Elwanger Creek)	pH	WA-13-1015	5850
Black Lake Ditch	pH	---	50990
Deschutes River	Fine Sediment	WA-13-1020	6232
Ayer (Elwanger) Creek	Dissolved Oxygen	WA-13-1015	5851
Deschutes River	Dissolved Oxygen	WA-13-1010; WA-13-1020	10894; 47753; 47754; 47756
Lake Lawrence Creek	Dissolved Oxygen	---	47696
Reichel Creek	Dissolved Oxygen	WA-13-1022	47714
Black Lake Ditch	Dissolved Oxygen	---	47761; 47762
Percival Creek	Dissolved Oxygen	WA-13-1012	48085; 48086
Adams Creek	Bacteria	--	45462; 45695
Ellis Creek	Bacteria	WA-13-0020	45480
Indian Creek	Bacteria	WA-13-1300	3578; 45213; 46410; (74218)
Mission Creek	Bacteria	WA-13-1380	45212; 46102
Moxlie Creek	Bacteria	WA-13-1350	3759; 3761; 45252; 46432
Schneider Creek	Bacteria	---	45559
Reichel Creek	Bacteria	WA-13-1022	3763; 45566

<b>Waterbody</b>	<b>Parameter</b>	<b>1996 Listing ID</b>	<b>2010 Listing ID</b>
Spurgeon Creek	Bacteria	WA-13-1010	46061

A copy of the June 29 letter is included herewith.

Under Section 303(d)(2) of the CWA, 33 U.S.C. § 1313(d)(2), EPA must establish replacement TMDLs within 30 days of disapproval. It has now been more than 30 days since EPA disapproved the 37 TMDLs identified its letter of June 29, 2018. To our knowledge, EPA has yet to establish replacement TMDLs for those waterbodies.

Section 505 of the CWA provides that any citizen may sue EPA in federal court “where there is alleged a failure of the Administrator to perform any act or duty under [the CWA] which is nondiscretionary with the Administrator.” 33 U.S.C. § 1313(a)(2). In such a case, the District Court has jurisdiction to order the EPA Administrator “to perform such act or duty.” *Id.*

Because EPA has failed to establish replacement TMDLs for the 37 TMDLs it disapproved on June 29, 2018, NWEA intends to sue EPA in federal court to enforce the requirements of Section 303(d)(2) of the CWA, and to require EPA to act in a timely fashion.

As required by 40 C.F.R. § 135.3(b), the following are the name, address, and telephone number of the party providing this notice:

Northwest Environmental Advocates  
P.O. Box 12187  
Portland, OR 97212-0187  
(503) 295-0490

As required by 40 C.F.R. § 135.3(c), the following are the name, address, and telephone number of NWEA’s legal counsel in this matter:

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NWEA is open to engaging in a constructive dialogue to obtain a workable solution in this matter. If EPA has a similar interest it should contact me as NWEA's counsel. Please expect NWEA to file suit upon the expiration of 60 days from the date of this notice.

Very truly yours,

BRICKLIN & NEWMAN, LLP



Bryan Telegin

cc: Client

Chris Hladick, Regional Administrator  
EPA Region 10  
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Seattle, WA 98101