

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

NORTHWEST ENVIRONMENTAL
ADVOCATES, a non-profit corporation,

Case No: 3:05-cv-1876-AC

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, a United States
Government Agency, NATIONAL
MARINE FISHERIES SERVICE, a part of
the National Oceanic and Atmospheric
Administration, a part of the United States
Department of Commerce, and UNITED
STATES FISH AND WILDLIFE
SERVICE, a part of the United States
Department of the Interior,

**STIPULATED ORDER ON
NARRATIVE WATER QUALITY
CRITERIA AND
ANTIDEGRADATION INTERNAL
MANAGEMENT DIRECTIVE**

Defendants, and

THE STATE OF OREGON, and
NORTHWEST PULP AND PAPER
ASSOCIATION,

Intervenor-Defendants.

ACOSTA, Magistrate Judge:

On February 28, 2012, this Court issued an Opinion and Order granting in part and denying in part the parties' cross motions for summary judgment. Docket No. 290.

On January 7, 2013, the Court entered a Stipulated Order, on the motion of all the parties, that established remedies for the Endangered Species Act and Clean Water Act Nonpoint Source issues in the case. Docket No. 351. Plaintiff Northwest Environmental Advocates

("NWEA") and Defendant United States Environmental Protection Agency ("EPA") have reached agreement on the remedies for all remaining claims in this case. NWEA and EPA believe, and the Court agrees, that the agreement will avoid additional prolonged litigation and that the agreement is fair, reasonable and in the public interest. The Court enters the following Order adopting the agreement NWEA and EPA have reached, as set forth below:

A. Narrative Water Quality Criteria

1. EPA's approval of Oregon's Natural Conditions Criterion at OAR 340-041-0028(8) ("NCC") is set aside and remanded to EPA. Within 120 days of entry of this Order, EPA shall, consistent with this Court's Order on Summary Judgment and the requirements of the Clean Water Act and EPA's implementing regulations, take action pursuant to 33 U.S.C. § 1313(c)(3) on the NCC.

2. EPA's approval of Oregon's Statewide Narrative Criterion at OAR 340-041-0007(2) ("SNC") is set aside and remanded to EPA. Within 120 days of entry of this Order, EPA shall, consistent with this Court's Order on Summary Judgment and the requirements of the Clean Water Act and EPA's implementing regulations, take action pursuant to 33 U.S.C. § 1313(c)(3) on the SNC.

B. Antidegradation Implementation

EPA shall review those portions of the Oregon's Internal Management Directive for antidegradation implementation ("IMD") that were not incorporated into Oregon's water quality standards to ensure that the IMD describes the required elements and complies with federal antidegradation regulations such that it does not circumvent the purpose of Oregon's antidegradation policy. Within 120 days of entry of this Order, EPA

will set forth its conclusions from this review in a letter to the State of Oregon, which shall not constitute a formal approval or disapproval decision pursuant to 33 U.S.C. § 1313(c)(3).

C. Preclusion

Nothing in this order shall preclude NWEA from challenging any final agency actions taken pursuant to this Order. Should NWEA choose to challenge any final agency actions taken pursuant to this order, it shall file any such challenges in a separate action.

D. Final Agreement, Scope and Effect of Order, and Subsequent Remedies

1. This Stipulated Order constitutes the final, complete, and exclusive agreement and understanding between EPA and NWEA regarding the settlement embodied in this Order.

2. Except as expressly provided in this Stipulated Order, none of the parties waives or relinquishes any legal rights, claims, or defenses it may have. Nothing in the terms of this Stipulated Order shall be construed to limit or modify the discretion accorded EPA under the Clean Water Act, or by general principles of administrative law.

3. No provision in this Stipulated Order shall be interpreted as or constitute a commitment or requirement that EPA take action in contravention of the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706, the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, or any other federal law or regulation, either substantive or procedural. No provision of this Order shall be interpreted to constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable law or regulation.

4. In the event that EPA fails to meet a deadline set forth in section A or B above, NWEA's first remedy shall be a motion to enforce the terms of this Stipulated Order. This Stipulated Order shall not, in the first instance, be enforceable through a proceeding for contempt of court.

IT IS SO ORDERED.

DATED this 10th day of April, 2013.



John V. Acosta
United States Magistrate Judge