

# Upper Yaquina Watershed TMDLs



State of Oregon  
Department of  
Environmental  
Quality

## Summary

### Rule Advisory Committee Meeting #2

Oct. 19, 2022, 9 a.m. to 11:30 a.m.

Zoom meeting

#### List of RAC member attendees

| Name            | Affiliation  |
|-----------------|--|
| Joe Steere      | Small Woodlands Association/Lincoln County Farm      |
| Roy Kinion      | Bureau Lincoln County                                |
| Rebecca McCoun  | Oregon Department of Forestry                        |
| Mark River      | Weyerhaeuser Co.                                     |
| Cheryl Hummon   | Oregon Department of Agriculture                     |
| Russ Glascock   | Local landowner                                      |
| Daniel Redick   | Benton County  |
| Randy Hereford  | Starker Forests                                      |
| Paul Engelmeyer | Wetlands Conservancy                                 |
| Evan Hayduk     | MidCoast Watersheds Council                          |
| Glen Spain      | Pacific Coast Federation of Fishermen's Associations |

#### Watershed Management

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water.*

Not attending: Mike Kennedy (Confederated Tribes of Siletz Indians), Alan Fujishin (Lincoln Soil Water Conservation District), Frankie Gonzales or Matt Koon (Genesee & Wyoming Inc.)

#### List of DEQ team attendees

| Name           | Role                                    |
|----------------|---|
| David Waltz    | Mid Coast Basin Coordinator             |
| Alex Liverman  | Watershed Management Program Analyst    |
| Michele Martin | Facilitation/Rulemaking process support |
| Gene Foster    | Watershed Management Program Manager    |

#### List of handouts

- [Draft agenda](#)
- [Second Draft Fiscal Impact Statement](#)

Post-meeting: [DEQ Presentation Slides](#)

## Meeting Summary

DEQ staff used a PowerPoint slide presentation to convey information and guide discussion with RAC members during the meeting. Most of the information presented in the slides is not repeated in this summary. Rather, the focus of this summary is on clarifying information provided by DEQ staff and

capturing the key points of discussion associated with the materials in the presentation and other topics. The slides will be posted as an Adobe pdf file on the Upper Yaquina TMDL Rulemaking webpage as a companion to this summary of comments and discussion by the Rule Advisory Committee members.

DEQ staff asked RAC members to identify themselves in the Zoom application to include the initials AC ahead of their names to indicate RAC membership and addressed meeting logistics. Following introductions of DEQ staff and RAC members, Alex Liverman provided an overview of the meeting agenda.

David Waltz noted that this week is the Clean Water Act's 50<sup>th</sup> anniversary and that watching the documentary film "Pollution in Paradise" by journalist and former governor Tom McCall provides an interesting reference point.

David provided an update on two related topics relevant to the Upper Yaquina River watershed TMDLs that occurred since the first RAC meeting: Oregon's final 2022 Integrated Report/303d list was approved by U.S. EPA on Sep. 1, 2022, resulting in a change to Section 303d listing in the watershed and subsequent adjustments in spatial scope for effective shade allocations to address dissolved oxygen impairments. This information is summarized in the presentation slides. Discussion with the RAC members followed these updates.

Paul Engelmeyer asked about sequencing of TMDLs and why DEQ would assume the portions of the watershed without data do not meet standards and given the significant effort [to develop the DO TMDL], whether there a discussion about doing quick evaluation for the unassessed portions, or whether this will have to wait until monitoring is done in the future. He added that it would be simpler for everyone to obtain the information now rather than potentially revisit other sixth field HUCs in the future.

David responded that DEQ evaluated several model scenarios and reached the conclusion is that there is insufficient data to link effective shade conditions on the tributaries with dissolved oxygen conditions in the mainstem. Therefore, the spatial scale of the dissolved oxygen TMDL shade allocations were revised to align with the IR 2022 status and focus on the mainstem. Based on the TMDL analysis, the dissolved oxygen criteria will be met with effective shade on the mainstem and the phosphorus allocations that will be applied to the watershed as a whole. For temperature, changes to the FPA are intended to address shade deficiencies for small and medium size streams.

Alex reiterated that DEQ is currently developing DO and bacteria TMDLs, but temperature impairment will be addressed in a future TMDL.

David provided a table clarifying that the distance used in the riparian effective shade model was approx. 100-feet from each bank, rather than 120-feet shown in the presentation for RAC meeting #1. These distances were based on the approximate riparian zone width that results from using the stream centerline as the starting point for the assessment. Since the stream width varies over the modeled portion of the mainstem, the modeled width also varies somewhat.

Glen Spain asked whether the revised 100-foot will meet the 87% effective shade (loading capacity) target shown in the slide. David responded that a 100-foot riparian zone of overstory vegetation will meet the 87% effective shade target.

David briefly recapped the overall TMDL implementation steps to clarify roles of DEQ and designated management agencies and responsible persons (DMAs/RPs) in developing the WQMP, implementation plans and performing site specific assessment needed to identify where additional management strategies, BMPs or protection strategies are needed to meet load allocations.

Cheryl Hummon asked about the site-specific assessment for DMAs and when additional information (tools and analysis) for implementation planning will be made available. David indicated that several subsequent presentation slides show the status of development of the tools at a high level.

Russ Glascock summarized riparian planting projects completed on his property that are now providing shade on the river in the last 20 years. David responded that type of information supports the need for site-specific assessment before investing significant resources.

David showed the draft outputs of the shade gap analysis, figures with DMA/RP responsibility within the riparian zone and the average shade gap over the modeled segment. David summarized the results, including the acres or stream miles and the effective shade gap in percent (difference between analyzed current shade and modeled effective shade) that is aggregated into bins or ranges.

Cheryl indicated she was uncertain from the figure where the highest shade gap. She asked for the averaging distance of the shade gap. David indicated that he believed it is over 500-meter segments but would check with Analysts to identify the appropriate scales and get back to Cheryl and others. Cheryl's follow-up question was whether the GIS layers will have the shade gap bins or actual shade gap. David responded this layer will contain the bins.

David explained DEQ wants to provide information at a scale that is useful to Designated Management Agencies, other responsible persons and local restoration partners. One approach is to provide GIS layers to DMAs. At one extreme, the raw Light Detection and Ranging (Lidar) data is publicly available for use by DMAs and others. DEQ is trying to find a balance between DEQ evaluation and DMA site specific assessments. David reiterated that the TMDL scale is based on cumulative reductions at the watershed or segment-scale load allocations, rather than site-specific allocations.

Rebecca McCoun noted that the amendments to the Forest Practices Act will mandate 110-foot riparian buffers for the Yaquina River and Little Elk Creek starting in January 2024, if the Board of Forestry adopts them in November 2022.

Joe Steere asked whether DEQ looked at smaller buffers, such as 30-feet. David responded that DEQ did look at a 35-foot conservation buffer and showed a figure with that distance within the larger buffer. David expressed that DEQ would not discourage a strategy starting with a conservation buffer as part of phased implementation approach to achieve the shade allocations. David reiterated that a 100-foot riparian zone of overstory native vegetation would meet the effective shade targets (or once it reaches maturity), but that the site-specific assessment is needed to determine topographic shade and other factors.

David presented the shade gap analysis tables by jurisdictional acres or stream miles of vegetation height  $\leq 3$  feet. Shows current condition and relative responsibility and deficit for streamside shade.

Joe requested confirmation that the shade allocations only address mainstem. DEQ confirmed the modeled segment is Clem Rd to Trapp Ck Rd and shade allocations also apply to Little Elk Creek.

Rebecca asked whether the riparian zone includes "channel migration zone" and stated that the revised Forest Practices Act rules will require identification of this feature. David responded that this feature was not directly considered in modeling and DEQ performed no separate analysis of channel morphology. For effective shade, a set distance from the stream centerline was used (131 feet), recognizing that there are relations between channel stability and ability to support vegetation needed to provide shade.

Russ asked whether DEQ has mapped logs placed in tributaries for shade (and clarified this question applies to large wood directly providing shade or to improve channel condition).

David responded that DEQ has not mapped large wood placements or analyzed the effects on shade but understands that this activity should improve channel conditions and support vegetation needed to provide shade and improve other riparian zone function. This is a site-specific shade assessment. David added that DEQ encourages large wood placement in appropriate locations to provide stream functions.

David confirmed that DEQ is deferring to the OR Coast Coho Conservation Plan habitat targets developed by OR Department of Fish and Wildlife and the restoration community to address channel morphology.

Following a break, Alex presented an overview of the revised draft fiscal impact statement prepared to incorporate committee input and posted on the rulemaking website.

Alex reiterated the three primary questions that the FIS must address (see Slide 19)

Alex covered the questions asked in DEQ's first request for RAC input on FIS (see Slide 20)

Alex summarized the Input received during first RAC meeting (see Slide 21)

Alex summarized the written input received during a 4-week period from Russ, Cheryl, Rebecca, and Alan Fujishin (see Slide 22).

Daniel Redick noted that he had provided written input and resent that in response to Alex's request.

Alex summarized DEQ's FIS revisions thus far based on the input received from RAC members (see Slide 23).

Alex requested discussion from the RAC during this second meeting, as well as documentation or other written information to help inform DEQ's fiscal impact statement (by Nov. 2).

Paul asked whether the fiscal and economic analysis will acknowledge the ecosystem or downstream benefits of buffers and indicated that he will be providing written comment in the next round. Paul indicated that there is information on the benefits of buffers and links between cold clear water and the estuary and issues with ignoring the saltwater wedge and that he will share documentation by an author (Dr. Ernest Niemi).

Glen expressed agreement with Paul on including an assessment of economic benefits to fishers and coastal communities of restored salmon runs.

DEQ asked the RAC members to forward any information to DEQ staff for distribution to avoid communicating in numbers that would represent a quorum of the committee, as this would be considered a meeting which requires a two-week public notice in compliance with Oregon public meetings law.

Alex pointed to the inclusion of costs of ongoing impairment as a consideration in the draft fiscal impact statement and noted DEQ's lack of available information to explicitly analyze these watershed-wide and downstream costs.

The committee did not provide a finding in the meeting whether or not the rule will result in significant adverse impacts to small businesses, or how it could be changed to reduce those impacts.

Joe stated that the economics of fisheries are aggregated in the fiscal impact statement at the coastal scale instead of being specific to what the Upper Yaquina watershed supplies to fisheries (or could provide) and should be adjusted to that watershed.

Alex noted that these figures are the ones that were available and are aggregated at large scale and DEQ is seeking watershed-specific information from the committee. Joe indicated that DEQ should assess agricultural and timber economics at the same scale as the fisheries information.

Alex asked whether members had other comments on the revisions in the draft FIS and reminded that DEQ needs to summarize the RAC members' decision on whether there is or is not a significant economic impact on small business (using the definition in the revised draft FIS).

Regarding the key question whether there is or is not a significant adverse impact on small business:

Rebecca stated that it is hard to say if there are impacts to small businesses because there isn't enough information to determine the economic impacts of TMDLs requirements or evaluate cause and effect, considering the intersecting programs of Depts of Agriculture and Forestry, and changes to the forest practices rules.

Glen emphasized that if a benefit or cost cannot be quantified, or there is no data, it does not mean the external impact is zero (in economic analysis) using clean air or clean water as the example.

Alex indicated that the fiscal impact analysis indicates some impacts to some small businesses, but there is not enough information to quantify those impacts to determine that they would "significantly adversely impact small businesses."

Daniel commented that for Benton County, if the TMDLs implementation requirements do not differ much from the Upper Willamette TMDL requirements, then the cost impacts to the County is minimized.

Joe asked for clarification of spatial scope of load allocations and Alex reiterated that the shade allocations will apply to the mainstem Yaquina River and Little Elk Creek, whereas the phosphorus and bacteria load reductions will apply watershed wide.

Alex asked for input from the members on how to minimize impacts to small businesses.

Russ asked whether a distinction will be made between the livestock sources and elk. David responded that one goal of the water monitoring that will be conducted under both the ODA's Strategic Implementation Area process and the TMDL implementation is to attempt to distinguish among sources including wildlife and livestock, but that it can be difficult to accomplish.

Russ indicated that issue is a small business impact and Alex asked him to please elaborate in written comments.

Cheryl asked for clarification of small business. Alex responded that DEQ considered potentially affected small businesses beyond the definition required for rulemaking (50 employees or fewer and registered with the state as a business) to include entities that report income on individual income tax returns. However, DEQ was not able to specifically identify or quantify the number of these entities. The question for the committee is to inform DEQ whether this represents a significant economic impact and if so, how to alleviate those impacts.

Paul indicated that list of opportunities for county-wide state and federal funding programs (including CREP) will help alleviate impacts. He referred to a California co-benefit analyses that quantifies ecological benefits beyond salmonids and that he will provide that information in written comments.

Joe commented that the draft fiscal impact statement doesn't quantify costs of loss of land taken out of agricultural production, which could include tax impacts to landowners.

Alex described the draft Racial Equity statement and environmental justice and asked whether the committee has input on these considerations.

Cheryl thanked DEQ for providing the redlined version of the draft fiscal impact statement and asked whether it will be part of the draft TMDL documents that go out for public comment and open for revision. Alex confirmed it would be part of the package and can be revised as appropriate to respond to input provided.

Cheryl noted that the revised language on ODA programs in the draft fiscal impact statement can be used as a template for fiscal impact statement in future TMDLs that go through rulemaking.

Cheryl reiterated that ODA has no authority for aquatic habitat and noted this change was not made in response to her input on the draft fiscal impact statement. David explained that the language reflects summary information from the Oregon Plan for Salmon and Watersheds and OR Coast Coho Conservation Plan documentation describing each state agency's role and that DEQ will review that source and adjust language as needed.

Cheryl appreciated clarifications around compliance costs with TMDL requirements which ODA found confusing. Alex explained that the phrase "cost of compliance" is a required section of the FIS, so DEQ clarified that compliance with TMDL requirements is being considered, not compliance with other state agency's rules.

Cheryl emphasized that Agriculture Water Quality Program rules do not require voluntary measures. Alex indicated the language aligns with the updated Memorandum of Agreement between ODA and DEQ, but it can be discussed further, if needed.

Joe suggested referring to both Schedule D and F for reporting farm income on tax returns. DEQ suggested generalizing language further to leave out mention of any schedules.

Alex reiterated that DEQ is asking for another round of comments on verbal input from the RAC now, and written input by Nov. 2.

Alex recapped the rulemaking process and schedule.

Cheryl asked for specific dates for public comment and other milestones. Alex provided additional details - public comment period: Dec. through Jan; DEQ briefing to EQC in Jan. 2023; then public hearing on the draft TMDL rule; and first opportunity for EQC to adopt TMDL by rule: March 2023 (acknowledging that certain factors could change that).

Rebecca asked whether committee members will see the water quality management plan before the public comment period. Alex pointed back to the committee charter which indicates committee input will be used to refine the TMDL and WQMP prior to public comment. But DEQ will be sharing specific sections of the WQMP with some DMAs for additional input between now and the public comment period.

DEQ will present conclusions on source assessment, load allocations, management strategies, fiscal impacts and the input considered to the EQC.

Michele Martin offered a final opportunity for committee discussion.

Joe requested a more in-depth map, focused on the Upper Yaquina watershed assessment unit removed from the 303(d) list. David asked Joe to clarify what specific scale or detail is requested, such as larger scale or specific area. DEQ agreed to evaluate the approaches to address broad range of needs. (NOTE: David emailed a link to the committee members on 10/26/22 to the Integrated Report mapping application which provides a range of features and capabilities, including zooming.)

Russ asked whether the Forest Practices Act amendments are a piggyback on the TMDL. Alex reiterated the revisions DEQ made to the fiscal impacts statement in response to ODF and ODA comments that their existing rules are already required and should not be “double-counted” as costs of the TMDL rule.

Alex thanked the committee members for participating and noted that DEQ will post the meeting presentation slides and summary on the rulemaking website as soon as possible. Please send questions and comments to both David and Alex as listed on the final slide.

DEQ adjourned the meeting at approximately 11:30 a.m.

### **Alternative formats**

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us).