

Date: Nov. 7, 2022
To: Environmental Quality Commission
From: Leah Feldon, Interim Director
Subject: Item G: ODA/DEQ Water Quality Memorandum of Agreement on Agricultural Nonpoint Source Pollution (Informational)
Nov. 17-18, 2022, EQC meeting

Purpose of item DEQ and Oregon Department of Agriculture are engaged in an interagency collaborative effort to align implementation of the two agencies’ water quality programs and requirements and to document that alignment in a revised interagency Memorandum of Agreement. This item will provide the commission with the final MOA, a summary of public input, the agencies’ responses and resultant revisions to the draft MOA.

Background DEQ and ODA presented an informational item to the commission in May 2022 on the plan for updating the Memorandum of Agreement between ODA and DEQ by the end of 2022. This MOA addresses nonpoint source pollution control implementation, including implementation of the Agriculture Water Quality Program and TMDLs. Since then, ODA and DEQ revised the 2012 MOA to reflect the agencies’ current water quality programs and associated requirements. The revised MOA also reflects ODA and DEQ’s ongoing commitment to regular interactions to continuously improve interagency collaboration with the objective of aligned water quality efforts and processes to achieve water quality goals. The agencies jointly issued a 30-day notice seeking public input on the revised draft MOA, made further revisions in consideration of input received and prepared responses to all comments.

Key issues DEQ and ODA each have responsibilities for protecting and improving water quality in Oregon’s streams where effects are associated with agriculture. The 2012 MOA focused on the agencies’ cooperative roles implementing Total Maximum Daily Loads, monitoring and evaluating effectiveness of the Agricultural Water Quality Program, as well as

reviewing and updating Agricultural Water Quality Management Area Plans. The MOA was renewed without changes in 2018.

The updated MOA reflects current programs, rules and policies in guiding the agencies' interactions on nonpoint source pollution from agricultural lands and activities. The updated MOA:

- Reflects current roles and responsibilities related to TMDL development and implementation under state and federal law;
- Describes the agencies' work together, within their respective authorities, to protect and improve water quality associated with agricultural lands and agricultural activities;
- Adds information on compliance and enforcement, Strategic Implementation Areas, evaluating progress and adaptively managing toward water quality standards and related goals;
- Introduces a process, where existing measures are not adequate to meet water quality standards, for ODA to adapt Area Plans and Rules and/or develop TMDL implementation plans;
- Commits to continue to build methods and capacity for monitoring and evaluation of nonpoint source program implementation; and,
- Increases accountability and transparency through periodic reporting on MOA implementation progress to EQC and the Board of Agriculture.

The agencies received 299 comments, 12 of which were unique. These comments ranged from one to four pages. Most of the unique comments were from agricultural interests, with one comment letter being from a coalition of seven organizations. Three comments came from environmental organizations and the agencies received one letter from the Confederated Tribes of the Umatilla Indian Reservation.

The agencies reviewed all comments received and considered whether revisions to the draft MOA were warranted. The agencies made revisions to clarify terms and concepts, use active voice to clarify roles and tasks and more closely align language with statutory or rule requirements.

Concepts clarified included:

- Regulatory and incentive-based voluntary processes;
- Limits and uncertainty of existing data and reporting; and
- Agency intentions and commitments.

The agencies determined that revisions were not warranted for most comments, including:

- Those that generally expressed support for the MOA;
- When concepts or processes were already included in the MOA; or
- Elements that were outside the MOA's scope, such as:
 - Confined animal feeding operation permits and groundwater management areas that are addressed in other agreements;
 - Roles of Soil Water Conservation Districts and agricultural area Local Advisory Committees that are addressed in cited statute and rule;
 - Air quality regulation; and
 - Intricate details of specific agency processes.

A full list of the requested revisions, arranged by topic, and the agencies' responses is attached, along with the revised, final MOA. The agencies intend to have Agency Directors sign the agreement by the end of 2022.

**EQC
involvement**

DEQ and ODA are providing this overview of the final proposed MOA for EQC and the Board of Agriculture to review and discuss the interagency agreement before it is finalized and signed by the agencies. DEQ and ODA will provide EQC and the Board of Agriculture periodic updates on the agencies' progress in implementing the MOA.

Attachments

- A. Final Proposed ODA-DEQ MOA
- B. Summary of public input and agencies' responses

Report compiled by Alex Liverman
Watershed Management Program



Memorandum of Agreement:

Oregon Department of Agriculture Oregon Department of Environmental Quality Collaboration on Achieving Water Quality Goals Relating to Agricultural Nonpoint Source Pollution



I. Introduction

1. Purpose

The purpose of this Memorandum of Agreement (MOA) is to describe how the Oregon Department of Environmental Quality (DEQ) and Oregon Department of Agriculture (ODA) (collectively, the Agencies) will work together to protect and improve water quality in Oregon's streams flowing through agricultural lands or impacted by discharges from agricultural activities.

The Agencies each have responsibilities for protecting and restoring water quality related to agriculture in Oregon. These responsibilities originate in both state and federal law. Broadly speaking, the federal Clean Water Act (CWA) delegates implementation of water quality programs to states, with oversight by U.S. Environmental Protection Agency (EPA). In Oregon, DEQ is responsible for setting water quality standards, identifying where those standards are and are not being met and carrying out programs to improve water quality where needed. The Oregon Legislature directed ODA to carry out the Agricultural Water Quality Management Act (AWQMA) to develop plans and rules to prevent and control water pollution from agricultural activities and to achieve and maintain water quality standards. The Agencies must work together to meet their respective but related responsibilities. This MOA updates and replaces the 2012 MOA (last reviewed without update in 2018) between the Agencies relating to agricultural nonpoint source pollution; it does not alter or limit any statutory or rule requirement governing either Agency's responsibilities.

2. Limitation of Scope

The Agencies also have regulatory authority and responsibilities with respect to pesticides, designated groundwater protection areas and water quality permitting for Confined Animal Feeding Operations. The Agencies entered into additional agreements related to water quality protection, some of which include additional agencies. These authorities and agreements are not addressed in this MOA.

II. The Agencies' Water Quality Authorities

1. DEQ Authorities

DEQ is the primary agency responsible for implementing the CWA, 33 United States Code Section 1251 et. Seq., and general state water quality laws found in Oregon Revised Statutes (ORS) chapters 468 and 468B. This includes the responsibility for: establishing and revising water quality standards under CWA Section 303(c) and Oregon Administrative Rules (OAR) chapter 340, division 41; regularly assessing and reporting the status of Oregon waters under CWA Sections 303(d) and 305(b) and ORS 468B.039; developing the Nonpoint Source (NPS) Control Program required under CWA Section 319; protection of drinking water and public health under ORS 468B.015 and OAR chapter 340, division 41; and establishing and ensuring the implementation of clean water plans, called Total Maximum Daily Loads (TMDLs) under CWA Section 303(d) and OAR chapter 340, division 42, for those surface waters that fail to

meet water quality standards. The CWA requires effective public participation for all CWA programs, including those relating to standards, NPS pollution control and TMDLs.

2. ODA Authorities

ODA is the agency responsible for implementing the Agricultural Water Quality Program (AgWQ Program), established in 1993 under ORS 568.900 to 568.933 and OAR chapter 603, divisions 90 and 95. In 1995, the Oregon Legislature further clarified that ODA is the lead agency for regulating farming practices with respect to water quality (ORS 561.191). The AgWQ Program applies to all agricultural activities on non-federal and non-Tribal Trust land within the state, including: farms and ranches; rural residential properties; agricultural lands that lay idle or on which management has been deferred; urban areas and agricultural lands that may otherwise also be subject to the Forest Practices Act (ORS 527.610). The AgWQ Program also implements ORS 468B.025 relevant to agricultural lands and activities and ORS 468B.035(2) Implementation of Federal Water Pollution Control Act rules relating to livestock and animal-based agricultural operations. ODA is responsible for implementing load allocations for agricultural nonpoint source pollution assigned under TMDLs issued pursuant to CWA Section 303(d) and OAR chapter 340, division 42.

III. Interagency Coordination

1. Principles of Interagency Coordination

The Agencies will use the following principles in working together to protect and improve water quality:

- a. A commitment to collaboration.
- b. Freely share information and expertise.
- c. Promote transparency.
- d. Adhere to all relevant state and federal laws, including those governing cultural resources.
- e. Strive toward efficiency and limit redundancy.
- f. Use available data, scientific information and accepted scientific methods, including in dealing with uncertainty.
- g. A commitment to use our respective programs, including:
 - i. Continued progress to achieve land conditions needed to improve water quality, even where uncertainty exists; and
 - ii. Adaptively manage informed by data and scientific information.

2. DEQ-Led Processes

a. Establishing and Revising Water Quality Standards

DEQ, acting through the Environmental Quality Commission (EQC), must establish water quality standards to protect designated and existing beneficial uses. DEQ must review and revise the standards periodically. Water quality standards must be adopted as rules by the EQC and approved by the EPA.

In developing or revising water quality standards, DEQ will advise ODA and agricultural stakeholders of the water quality standards revision process and invite them to attend and

participate in advisory committee meetings, where the planned revisions have a nexus with agriculture-related activities.

b. Developing and Reporting on Nonpoint Source Control Program

The Oregon Nonpoint Source Management Program Plan (NPS Plan) describes the state's goals, priorities, objectives and strategies for preventing, controlling and eliminating pollution from nonpoint sources, including agricultural activities and source water protection for drinking water sources. The NPS Plan includes measures needed to meet water quality standards and established allocations for nonpoint source pollution set by TMDLs.

EPA requires the NPS Plan to be updated every five years and submitted to EPA for approval. The NPS Plan and NPS annual report approvals are required by the CWA. DEQ is the lead agency for developing and annually reporting on the NPS Plan. When revising Oregon's NPS Plan and developing annual reports, DEQ will seek input from ODA on elements that relate to agricultural land uses.

c. Regularly Assessing and Reporting on Water Quality Status

Every two years, DEQ prepares a statewide assessment of water quality as required by Sections 305(b) and 303(d) of the CWA. The Integrated Report identifies segments of rivers, streams, estuaries and other waterbodies where water quality standards are not being met; where programs are needed to improve water quality and priorities for developing TMDLs. The Integrated Report is submitted to EPA for review and approval.

DEQ also regularly prepares Status and Trends Reports that compile and graphically represent current water quality data, where available, on temperature, dissolved oxygen, pH, total suspended solids, total phosphorus and other parameters as additional data evaluation procedures are developed. The Status and Trends Reports are geographically based with results affected by land uses and watershed characteristics upstream of the station.

DEQ will consult with ODA in advance of actions seeking input on priorities and data for the Integrated Report, including the data solicitation window and opportunity to comment. DEQ will regularly provide water quality status and trends information to ODA in support of ODA-led processes and collaborative evaluation of effectiveness in achieving the Agencies' joint water quality goals, as described in subsequent sections of this MOA.

d. Establishing and Implementing Total Maximum Daily Loads

For waterbodies that do not meet water quality standards and that are prioritized for further planning and programmatic actions to improve water quality, DEQ develops a TMDL and a Water Quality Management Plan (WQMP), in accordance with OAR chapter 340, division 42. TMDLs include analysis and conclusions on how much pollution must be reduced from both point sources, such as wastewater treatment plants, and from nonpoint sources, such as agricultural lands and operations. WQMPs establish the framework of TMDL implementation and include pollutant management strategies designed to meet load allocations (which may be represented by surrogate measures), timelines for attainment of water quality criteria and a plan to monitor and evaluate progress toward achieving TMDL goals.

Additional measures may be needed to meet water quality standards where TMDLs have been established. Depending on the geographic scale of the TMDL and other factors, ODA will either adapt the Area Plans or Area Rules to act as the TMDL implementation plan or develop separate TMDL implementation plans. The additional measures would subsequently be incorporated into Area Plans or Area Rules affected by the TMDL. Which approach to take will

be decided as part of the TMDL process. DEQ will assist ODA in developing approvable TMDL implementation plans that include appropriate measurable objectives and timelines to address identified water quality priorities and allocations (or surrogate measures).

When developing or revising a TMDL, DEQ forms a TMDL local advisory group or a rulemaking advisory committee that includes individuals and representatives from sectors and communities likely to be affected by the TMDL.

DEQ will request ODA and local agricultural community participation in TMDL advisory groups or committees, when the TMDL includes agricultural lands and/or activities, to ensure that appropriate load allocations for agricultural-related nonpoint sources are established and agriculture-related information is considered in development and implementation planning. In addition, DEQ and ODA will meet at least once every two years to discuss upcoming priorities for TMDL development, which will allow for early and regular collaboration.

3. ODA-Led Processes

a. Implementing the Agricultural Water Quality Program

Between 1997 and 2004, ODA worked with Local Advisory Committees and other local partners to develop AgWQ Management Area Plans (Area Plans) and Area Rules (Area Rules) for 38 watershed-based AgWQ Management Areas across Oregon (OAR chapter 603, divisions 90 and 95). All Area Rules include reference to ORS 468B.025 as the standard for the protection of surface and groundwater. In addition, all Area Rules include protection of riparian or streamside areas. The riparian or streamside rules are outcome-based and require streambank stability and filtration of runoff on all streams and shade on perennial streams. The AgWQ Program relies on a combination of voluntary, incentive-based and regulatory measures to prevent and control water pollution from agricultural activities and soil erosion. Area Plans are voluntary and incentive-based and the Area Rules are regulations.

i. Biennial Review of Area Plans and Area Rules

ODA reviews Area Plans and Area Rules every two years to consider progress of implementation and modifications that may be necessary to prevent and control water pollution from agricultural activities and soil erosion. Area Plans and Rules will be revised as appropriate to meet water quality standards or TMDL requirements. Area Plan and Rule review includes consultation with Local Advisory Committees (LAC), as described in OAR 603-090-0020.

ODA will provide the biennial review schedule to DEQ, coordinate regularly on evaluation of effectiveness of Area Plans and Rules and TMDL implementation plans, and invite DEQ to participate in LAC meetings. Prior to and during biennial review periods, ODA and DEQ will share and confer on all relevant data, information and materials. DEQ will provide written comments for Area Plan and Rule revisions, including identifying TMDL and nonpoint source priorities for water quality improvement. In collaboration with DEQ, ODA will ensure measurable objectives and timelines are included in each Area Plan (consistent with any TMDL implementation plans that apply within the Management Area) to achieve the goals of the Area Plan. DEQ review is not limited to biennial reviews, such that DEQ may provide comments to ODA at any time on any Area Plan and Area Rules.

ii. Strategic Implementation Areas (SIAs)

An SIA is a watershed(s) selected by ODA to concentrate efforts and to ensure compliance with local area rules. Where possible, partners are working to measure effectiveness and improvement of water quality. ODA leads regulatory compliance activities. Local SIA project

partners, usually the Soil and Water Conservation District and/or Watershed Council, lead efforts to implement voluntary conservation actions that address priority concerns and work to protect and restore water quality.

The SIA process includes a pre-evaluation, outreach, technical assistance, project development and implementation, monitoring, enforcement (if necessary) and a post-evaluation. The SIA process assists landowners with achieving compliance and meeting the goals of Area Plans by concentrating technical and financial resources into specific geographic areas to address water quality concerns.

DEQ will participate in SIA selection and implementation processes by providing water quality information, participating in SIA field observations and providing expertise in study design and monitoring for SIA monitoring plans.

IV. Compliance and Enforcement

ODA takes the lead on compliance and enforcement for protecting water quality related to agricultural lands and activities. Enforcement of Area Rules is under the jurisdiction of ODA and all landowners must comply. If ODA receives a water quality complaint that is not caused by agricultural activities or farming practices or is not within an exclusive farm use zone or other agricultural lands, ODA will notify DEQ or another agency with jurisdiction. If DEQ receives an agricultural water quality complaint, DEQ will notify ODA and provide complaint information. ODA will confirm DEQ referral of agricultural water quality complaints. ODA will review complaints or notifications for completeness and validity. ODA and DEQ will coordinate site inspections where there is joint jurisdiction.

Per ORS 468B.110(1) on establishing and enforcing instream water quality standards, DEQ may impose and enforce limitations or other controls, which may include TMDLs and load allocations for nonpoint sources. Per OAR 340-012, DEQ can take enforcement action in response to water quality violations, such as causing pollution of or reducing the water quality of waters of the state, causing waste to be placed where it may be carried into waters of the state or failing to timely submit plans or reports required by DEQ rules or orders. As stated in ORS 468B.010, in instances where authority over water pollution granted by ORS and OAR to the EQC is inconsistent with any law or authority granted to any other state agency, the authority of the EQC shall be controlling.

V. Evaluating Effectiveness in Achieving Water Quality Goals

The Agencies will collaboratively evaluate implementation of the AgWQ Program, TMDLs and activities to demonstrate progress toward protecting and improving water quality in Oregon's streams flowing through agricultural lands or impacted by discharges from agricultural activities. This evaluation will be accomplished by regularly reviewing available data and information (during biennial reviews and TMDL progress reviews), improving assessment methods and evaluative criteria and adaptively managing implementation approaches.

The approach involves watershed-scale (Ag Management Area or TMDL area) consideration of the status and trends of land conditions associated with water quality and instream data. Where possible, these will be evaluated in relation to specific actions implemented. This approach should leverage existing processes, be designed to inform adaptive management decisions to

improve or better focus implementation and continue to build methods and capacity, as needed.

1. Monitoring and Reporting

ODA will monitor land condition and instream condition in accordance with the 2017 or more current version of the ODA Monitoring Strategy and TMDL-specific monitoring and evaluation strategies. Existing sources from which instream and land condition monitoring data and reporting efforts can be leveraged include:

- Relevant Monitoring Plans and Reports (land condition and instream)
- Water Quality Status and Trends Reports for relevant parameters (instream)
- Integrated Reports (instream pollutant impairments)
- Nonpoint Source Annual Reports (actions implemented, land condition)
- Willamette Basin TMDLs Five Year Review and other TMDLs periodic reports (actions implemented, land condition and instream)
- ODA and other entity TMDL implementation plans and annual reports (management actions implemented, land condition)
- ODA Area Plans and Rules biennial reviews and revisions (actions implemented, land condition, instream)

The Agencies will work together to build capacity for additional land condition methods to quantify status and trends in relation to erosion, shade and other processes or pollutants.

2. Evaluating Implementation and Adaptive Management

Evaluation of TMDL implementation and water quality status is a basin-scale endeavor, undertaken in consideration of cumulative effects of actions and conditions often influenced by multiple sources and source sectors. Assessment of effectiveness of specific actions is challenging because sources and actions to control them are frequently interactive.

The Agencies will evaluate implementation and water quality status and trends for instream water quality and land conditions by comparing:

- Instream water quality data to water quality criteria, TMDL load allocations (or surrogate measures) and TMDL loading capacities
- TMDL management actions and measurable objectives, such as:
 - Riparian shade to TMDL allocations (or surrogate measures)
 - Upland cover and bare ground percentages to TMDL implementation plan measurable objectives for cover and erosion prevention
- Land condition or instream water quality data to measurable objectives established in Area Plans

DEQ leads periodic evaluation of TMDL project areas, in coordination with watershed partners, to assess progress on attainment of water quality standards and to apply adaptive management approaches to improve or refine implementation. ODA will participate in these reviews and the adaptive management process by: compiling and submitting reporting information; evaluating status and trends of ODA-led programs and revising, as needed, TMDL implementation plans and Area Plans and Rules.

VI. MOA Mechanics

1. MOA Implementation

The Agencies will carry out the commitments and processes described in this MOA. The Agencies will convene regular coordination meetings at both the staff and manager level. Staff will compile a list of TMDLs to be developed and the associated Ag WQ Areas and SIAs and use the list to track and update each other on schedules for TMDL development and implementation, Area Plan and Area Rule reviews, SIA activities, etc. Staff will also share schedules and updates on other DEQ-led and ODA-led processes. Staff coordination will occur as needed at any time and staff-level meetings will be convened at varying frequencies, depending on focus and timing of work.

2. MOA Amendment and Review Process

The Agencies will periodically evaluate progress on implementation of this MOA and report on it to the Agencies' directors as well as to the Board of Agriculture and EQC, the meetings of which provide a public forum for increased transparency. The Agencies will review the MOA every seven years, or sooner if agreed upon by the Agencies. No amendments may be made to this MOA without the express written agreement of both Agencies. Such agreement will be signed by the Director of each agency.

3. Dispute Resolution

In the event of a dispute regarding aspects of this MOA, the Agencies agree to quickly and efficiently resolve disputes, first through staff-level dialogue. If a dispute cannot be effectively resolved at the staff and manager levels, managers will raise the dispute to the Agencies' Directors. Then the Directors will meet to provide direction to reach resolution before invoking options laid out in statute.

For the specific circumstance where DEQ determines that an Area Plan and Rules are not adequate and the Agencies cannot agree upon a resolution to achieve the load allocation, DEQ will initiate the petition process set forth in statute by requesting the EQC to petition ODA for a review of part or all of the Area Plan and Area Rules. This process is outlined in ORS 568.930 and OAR 340-042-0080(3).

VII. Collaborative Flowchart

(attached)

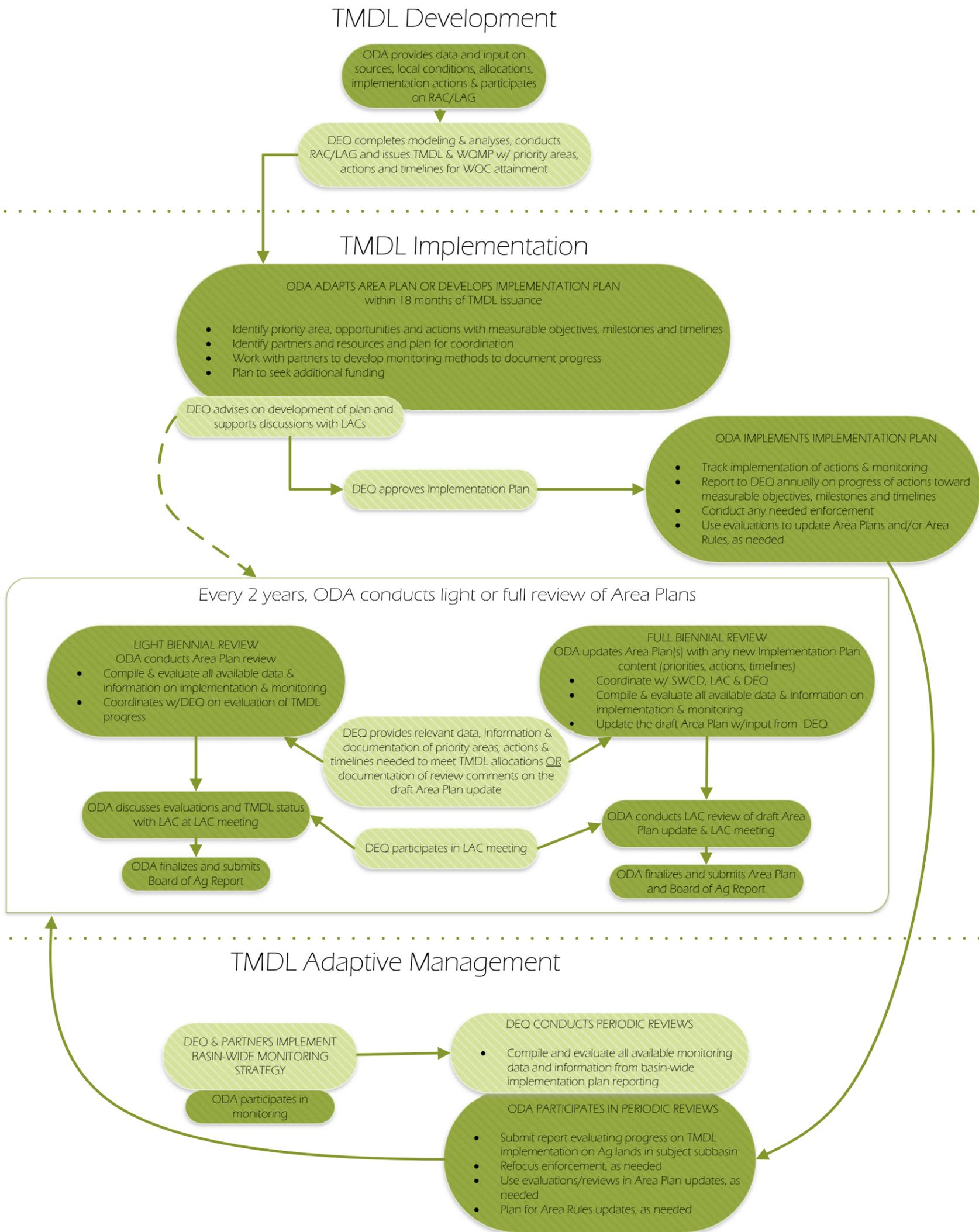
Lauren Henderson, Acting Director
Oregon Department of Agriculture

Date

Leah Feldon, Interim Director
Oregon Department of Environmental Quality

Date

ODA-DEQ Collaboration Points Within the TMDL Process



Summary of public input received

- 299 commenters
- Provided 12 unique comment letters/emails (indicated in parentheses on commenter list)
 - That requested 40 specific changes to the MOA
 - And provided 7 statements that did not request a change

Commenters
Hayes Oyster Company (1)
Oregon Association of Conservation Districts (1)
Grant Soil and Water Conservation District (1)
Oregon Association of Clean Water Agencies (1)
OR Farm Bureau, OR Assoc of Nurseries, OR Dairy Farmers Assoc, Oregonians for Food and Shelter, OR Seed Council, OR Cattleman's Assoc and OR Business Council (1)
Trout Unlimited Oregon (1)
Rogue RiverKeeper (1)
Wild Salmon Center (1)
Confederated Tribes of the Umatilla Indian Reservation (1)
Citizens (288), (1), (1)

Action	Topic	Comment	Response Text
Changes made to clarify terms and concepts, use active voice, more closely align language with statutory or rule requirements	Achieving water quality standards	<p>The second paragraph of Section I.1. Purpose, includes the statement "The Oregon Legislature directed ODA to carry out the Agricultural Water Quality Management Act (AWQMA) to develop plans and rules to prevent and control water pollution from agricultural activities and to achieve water quality standards." Change "to achieve water quality standards." to "to work toward achieving water quality standards."</p> <p>Section V. Evaluating Effectiveness in Achieving Water Quality Goals - We (Farm Bureau, et al) have always been promised that DEQ understands where its standards are not achievable, and will be looking for ag to have done what's possible, but if standards aren't achieved then it will be understood that the standards are unattainable and a UAA may be appropriate. That should be spelled out here, because this section reads like achieving the WQ standards will be possible in all instances, which we know is false.</p>	<p>For Section I.1., the agencies reviewed ORS 561.191(2), which states, "Any program or rules adopted by the State Department of Agriculture under subsection (1) of this section shall be designed to assure achievement and maintenance of water quality standards adopted by the Environmental Quality Commission." Based on ORS 561.191 the agencies retained "achieve" and added "maintain" to the statement.</p> <p>For Section V., the agencies disagree that this section requires the impossible. As specified in ORS 561.191(2) and OAR 340-042-0025(1) and (2), achievement and maintenance of water quality standards is the overarching goal of the agencies' programs and work together described in this MOA. The opening sentence of Section V. realistically focuses the agencies' collaborative work to "evaluate implementation of the AgWQ Program, TMDLs and activities to demonstrate progress toward protecting and improving water quality in Oregon's streams flowing through agricultural lands or impacted by discharges from agricultural activities." The agencies understand that processes for demonstrating achievement of water quality standards rely on multiple programs and efforts on multiple sources, including agricultural lands and activities, over long time periods to realize this ultimate goal. In many waterbodies and basins there are often many efforts that need to be implemented across different sources to achieve progress toward achieving standards. Implementation of management actions to address the various sources is needed before considering attainability of a water quality standard. If data and information indicate that water quality standards can't ultimately be achieved in a particular waterbody, a use attainability analysis is one process that can be used, which also requires an analysis of what water quality standards can be achieved. These processes require iterative analyses, are location specific, broader in scope and are not appropriate to describe in this MOA. This section is appropriately tailored to agricultural water quality efforts and the agencies did not further revise it in response to this comment.</p>
	strengthen language on the MOA not limiting any statutory or rule requirements	<p>We (WSC) support the inclusion of language in the Introduction, Section I(1), that clearly states that the MOA "does not alter any statutory or rule requirement governing either Agency's responsibilities." This language is an important addition to set the framework for an effective MOA, and we would recommend further strengthening this language by adding that the MOA "does not alter or limit" any statutory or rule requirement.</p> <p>TU agrees that the new MOA has no authority to "alter" any legal requirement governing either agency's responsibility, and we appreciate that statement in the MOA because it puts third party readers and interested parties on notice of the new MOA's legal authority. However, we recommend making a related but different clarification that it also does not limit any such existing responsibilities (i.e., the MOA does not serve to place restraint on any agency legal authorities), by revising the language as follows: "... it does not alter or limit any statutory or rule requirement governing either Agency's responsibilities."</p>	<p>The agencies made the suggested change to the MOA.</p>
	Status and Trends	<p>The discussion of status and trends should include a sentence indicating that this document is for a basin or subbasin, and does not specifically evaluate outcomes directly tied to agricultural lands.</p>	<p>The agencies acknowledge these additional limitations of the status and trends data and added the following sentence at the end of paragraph 2 under Regularly Assessing and Reporting on Water Quality Status: "The Status and Trends reports are geographically based and are not specific to agricultural lands or sources."</p>
	Incentives	<p>Section III.3.a. Implementing the Agricultural Water Quality Program - "The AgWQ Program relies on a combination of voluntary and regulatory measures to prevent and control water pollution from agricultural activities and soil erosion. Area Plans are voluntary and the Area Rules are regulations." Incentives are a critical part of the Area Plan. Add incentives to these statements as follows: The AgWQ Program relies on a combination of voluntary, incentive based and regulatory measures to prevent and control water pollution from agricultural activities and soil erosion. Area Plans are voluntary and incentive based, and the Area Rules are regulations.</p>	<p>The agencies acknowledge that incentives play a role in voluntary measures and added this clarification to the final sentences in this section of the MOA.</p>
	SIA purpose	<p>Section III.3.a.ii. first sentence - This is an inaccurate description from what stakeholders were told, and even more so given limited monitoring resources. It should say "to ensure compliance with local area rules."</p>	<p>The agencies agree that the core purpose of SIAs is to ensure compliance with local area rules. But currently there are monitoring funds included with each SIA that are intended to allow local partners to develop and implement monitoring of project implementation and where possible water quality improvements. The agencies changed first sentence of SIA section to read, "An SIA is a watershed(s) selected by ODA to concentrate efforts and to ensure compliance with local area rules. Where possible, partners are working to measure effectiveness and improvement of water quality."</p>

Action	Topic	Comment	Response Text
Changes made to clarify terms and concepts, use active voice, more closely align language with statutory or rule requirements (cont.)	Evaluating Implementation	<p>TU - Section V(2), list of bullet points: The purpose of this list is not clear. The list appears to be a summary of how evaluations can work generally, rather than a productive assignment of responsibilities to certain parties. TU recommends re-stating the sentence preceding the list in active voice so it's clear which agency is responsible for various tasks, as follows: "The Agencies will evaluate implementation and water quality status and trends for instream water quality and land conditions by comparing: . . ."</p> <p>OFB - Section V.2. "Evaluations of implementation and water quality status and trends can be made for instream water quality and land conditions by comparing: impacts from livestock accessing waterbodies to TMDL implementation plan measurable objectives for livestock exclusion, off channel watering, etc." - This is an overly narrow description. It has never been a strategy that livestock must be excluded - they must be managed, but fencing is not required. This example should be removed or revised.</p>	<p>The agencies agree that the last sentence of the paragraph preceding the list would be more directive in active voice and changed it to read: "The Agencies will evaluate implementation and water quality status and trends for instream water quality and land conditions by comparing:"</p> <p>The agencies agree that these bullets are more prescriptive than other sections of the MOA. The agencies reworded the bullets to comport better with the higher level nature of the MOA.</p>
	active voice for monitoring commitments	<p>Section V.1. - TU supports the Draft MOA's detail on monitoring procedures, but we respectfully recommend that the drafters re-state this (first sentence) in the active voice to place an affirmative obligation to monitor on a specific party. We suggest the following: "ODA will monitor land condition and instream condition in accordance with the ODA 2017 Monitoring Strategy and TMDL-specific monitoring and evaluation strategies." TU appreciates this statement of shared interest, but the (last) sentence does not require anything from the agencies, and therefore provides little meaning or purpose in this document. We suggest revising as follows: "The Agencies will work together to build capacity for additional land condition methods to quantify status and trends in relation to erosion, shade and other processes or pollutants."</p>	<p>The agencies appreciate the commitment that comes with using active voice and reworded the subject sentences as suggested.</p>
	Adaptive management and models need specification	<p>(Will Forney) The program(s) for adaptive management (AM) needs to be specified. Too often, AM is a means for agencies to "kick the can down the road," and needs to be avoided here by both Agencies.</p> <p>III.1 AM requires the collection of new and additional data in both space and time to reduce observational and model uncertainties. These data often require the installation of gauges in new locations (e.g. upslope and downslope of project sites), or to enhance existing gauging locations. Remote sensing data has great utility in AM, however, these data are not mentioned. The MOA does not specify the collection of new data of any kind, and needs to be addressed.</p> <p>There is no mention of modeling in the MOA. The management and implementation required by both Agencies and their local partners require the use of models. The methods for projecting and forecasting NPS sources, sinks, and dynamics for management and implementation need to be explained. The models currently used by Agencies and their partners ought to be specified, and what agency or partner is responsible for their use, calibration, and validation.</p> <p>Section III.1.g.ii. We (Farm Bureau, et al) have seen an increasing number of complaints of feeling like the agency is playing "bring me another rock" instead of setting goals and moving toward those. Adaptive management must be balanced with the need for landowners of certainty that what they are doing is enough before they make major investments.</p>	<p>The agencies appreciate the various meanings and concerns that the commenters expressed about "adaptive management" as a process that can result in either uninformed delay or uncertain direction. As noted in the MOA, DEQ leads the periodic evaluation of progress in TMDL areas, in coordination with watershed-specific partners, which extends to sources and sectors beyond agriculture. ODA reviews progress on agricultural water quality area plans relative to water quality goals on a biennial basis. ODA's role in the MOA adaptive management process is focused on "compiling and submitting reporting information; evaluating status and trends of ODA-led programs and revising, as needed, TMDL implementation plans and Area Plans and Rules" in collaboration with DEQ. Any modeling conducted for the adaptive management or other TMDL processes is a DEQ activity that would be shared and discussed with ODA. Because the monitoring and evaluation strategy is under development, the agencies are not able to provide additional detail at this time. Instead, the agencies described the goal to efficiently use existing processes to inform the strategy and to continuously refine, clarify, and improve its implementation and made minor, clarifying revisions to Section V.1. in the MOA in response to these comments.</p>

Action	Topic	Comment	Response Text
<p>Changes made to clarify terms and concepts, use active voice, more closely align language with statutory or rule requirements (cont.)</p>	<p>Enforcement section</p>	<p>(Grant SWCD) It is important to note the word "enforcement" is not referenced a single time in the 2012 document; it is mentioned four times in the new agreement. Based on the executive summary accompanying the MOA, Section IV. Compliance and Enforcement is new to the updated agreement. Frankly, the District finds the need for this section a bit baffling. Information provided by ODA in March, 2020 demonstrates an exceptionally high rate of agricultural properties in compliance with Area Rules; between 2014 and 2019, the Department evaluated 11,713 agricultural taxlots and found a compliance rate of 99.4%. A 2020 Compliance Program Report issued by ODA stated out of the 1,446 compliance actions undertaken by the department since 1998, only just over 4% resulted in "enforcement" actions. When sole consideration is given to just the data, it appears a section devoted to enforcement is unnecessary. However, when considering the overall tone of the agreement as previously mentioned with respect to ODA and the LACs, it seems to support the District's concerns that the grass roots approach to addressing agricultural water quality envisioned by the 1993 legislature has become inverted. Out of all the language presented in this agreement, the District is gravely concerned about the following sentence: "ODA and DEQ will coordinate site inspections with joint jurisdiction." We sincerely hope we are misinterpreting this sentence and the jurisdiction of site inspections regarding Area Rules compliance issues on agricultural properties remains solely with ODA. The District strongly feels the inclusion of DEQ staff during site visits is a gross departure from the intentions of SB-1010 as they were told to us over 24 years ago. All of these observations regarding the underlying tone of this agreement are further substantiated by the invocation of ORS 468B.010, a statute at the time of the 2012 agreement, but not included. To us the message is clear: DEQ has authority over these matters and everyone, including ODA, needs to fall in line.</p> <p>(Farm Bureau, et al) This section needs significant clarification. Right now, it reads that DEQ has jurisdiction despite ODA's rules applying and ODA having jurisdiction. This is not how the program functions now, nor has it ever been a stated intent of either agency. If this is DEQ's position, significantly more stakeholder engagement is necessary before putting this into an MOU. If this is not the intent, DEQ must appropriately narrow this section to clarify that it may have independent jurisdiction where ODA's program does not apply (i.e. solid waste violations, etc).</p> <p>Where would be an example of joint jurisdiction? It might be appropriate to list those instances, because we (Farm Bureau, et al) do not want them to expand.</p>	<p>The agencies added sections on compliance, Strategic Implementation Areas and evaluating progress/adaptive management because these are areas where coordination has been occurring over the decade since the inception of the MOA, but were not included or accurately described. The addition of a brief (two paragraph) section describing enforcement coordination and referencing specific authorities is commensurate with the existing levels of effort between the agencies and in keeping with the goals of the MOA.</p> <p>The metrics cited by Grant SWCD that demonstrate high levels of compliance with agricultural Area Rules are specifically related to Strategic Implementation Areas. The Compliance and Enforcement section is needed in the MOA to document the existing process and Agency relationships related to Compliance and Enforcement.</p> <p>The intent of the section is to document the existing enforcement process coordination, where ODA takes the lead on compliance and enforcement for protecting water quality related to agricultural lands and activities and then describes DEQs broader authorities beyond agriculture. The agencies did not intend to imply that all site inspections will now be handled jointly by the agencies. With complex agricultural operations or where they are co-located with other activities, ODA regularly coordinates with DEQ and other agencies that may also have jurisdiction. In response, the closing sentence of the first paragraph was changed to "ODA and DEQ will coordinate site inspections when there is joint jurisdiction."</p> <p>Regarding ORS 468B.010, although not included in the 2012 agreement, ORS 468B.010 continues to be an existing statute. The agencies understand and recognize the concern, but ultimately the EQC and DEQ have authority over water quality in the state of Oregon, where ODA's water quality jurisdiction is limited to agricultural lands and activities.</p>
	<p>ODA standing degraded in MOA</p>	<p>The new agreement also degrades the standing of ODA. The new agreement depicts a hierarchical structure as pertaining to the relationship between ODA and DEQ, dramatically different from the 2012 version which portrayed the relationship consisting of partners in pursuing a common goal. In many respects, the MOA reads as though the primary authorship was DEQ with limited input by ODA. The requirement of DEQ that ODA, in addition to it's primary responsibilities for the Area Plan and Area Rules, take on the development of "TMDL Implementation Plans" to include additional measures "needed to meet water quality standards where TMDLs have been established" seems to suggest ODA is acting as a subsidiary to DEQ rather than their own sovereign entity entrusted by the agricultural community to implement SB-1010.</p>	<p>The MOA reflects the existing authorities of both agencies, which does have some hierarchical structure due to the fact that both state and federal requirements must be addressed. ODA leads implementation the state Agricultural Water Quality Management Act, which applies to agricultural lands and activities throughout the state. But DEQ is the agency responsible for implementing the federal Clean Water Act, under US Environmental Protection Agency oversight. When DEQ issues Total Maximum Daily Loads, which are required by the federal Clean Water Act, ODA is identified as the Designated Management Agency responsible for implementing agricultural sector TMDL requirements. For some TMDLs, the Area Plans and Area Rules may not have the level of detail or be ideally suited to the geographic scale of the TMDL area. In these instances, an implementation plan may provide that needed level of detail and create a template for consistent content to be included across Area Plans and Area Rules to achieve the allocations. In other cases, the Area Plans and Area Rules biennial review process may be ideally suited as the means to develop the TMDL implementation plan. A decision will be made for each TMDL about the how the development of the implementation plan will be approached. The agencies revised the MOA to clarify and better explain the agencies' relationship, in response to this comment.</p>

Action	Topic	Comment	Response Text
No change to MOA or no response needed	MOA continues to support good partnering	MOA continues to support good partnering	The agencies appreciate the support for the MOA.
	request opportunity to comment on further drafts of the MOA	The document made available for comment was very "draft". Commenter would appreciate an opportunity to comment on further drafts of the MOA before signing by the Directors.	Although not required, the Agencies offered an opportunity for public input on the draft MOA to enhance transparency and public understanding of this agency to agency agreement. The Agencies do not plan to seek further public input on the agreement prior to Director signatures.
	extension of comment period	The Grant SWCD feels this agreement has moved well beyond legislation passed in 1993 and would like an opportunity to consult with our elected representatives. At this stage, the transparency, and subsequent credibility of the process would be vastly improved with honoring an extension so that a detailed review commensurate with the level of significance this agreement merits.	Because the 30-day comment period was adequate for consultation with elected representatives, the commenter did provide comments with the request for extension, and no other commenters requested extension, the agencies did not extend the comment period. ODA plans to open ongoing conversations with the Grant SWCD related to the AgWQ program and implementation.
Already included in MOA	Cultural Resources	In the Principles of Interagency Coordination Section:What cultural resource laws are relevant to enforcement of the AgWQ Program? I was not aware there was any.	Oregon state law prohibits the removal, excavation or destruction of any cultural resource sites and artifacts on public and private lands.
	MOA is not enforceable or legally defensible	The MOA is not enforceable or legally defensible. The MOA is not enforceable.	The agencies agree that the MOA itself is not an enforceable document, nor is it intended to be. Rather, it is an agreement between the agencies on collaborative processes within each agencies' enforceable authorities.
	ODA regulation of agricultural activities and livestock beyond land use	Lands are subject to either the FPA or AgWQ Program, not both. Regarding ORS 468B.035(2)...relating to livestock and animal based operations...Is this meaning the CAFO Program or more broadly.	The agencies clarify that ODA's Water Quality Program regulates agricultural activities regardless of land used. For instance, grazing on private forest land is regulated by the Water Quality Program. The regulation of livestock and animal based operations extends more broadly to more than the CAFO Program; the Ag Water Quality Program regulates all animal based operations, including those that do not need a CAFO permit. The agencies did not make changes to the MOA in response to this comment.
	citation of authorities	The MOA should cite for purposes of clarity the underlying authority or statutory mandate for the described agency action. For example, with respect to Section III. 2. b. Developing and Reporting on Nonpoint Source Control Program, the underlying statutory mandate is § 319 of the federal Clean Water Act, 33 USC§ 1329. DEQ and ODA were careful to cite such authority in earlier versions of their MOA. Whatever gains may be achieved in "accessibility" of the MOA text by dropping statutory and regulatory citations is far outweighed by loss in utility of the MOA itself.	Citations to underlying authorities are provided in Section II. The Agencies' Water Quality Authorities and need not be repeated in subsequent sections of the draft MOA.
	Agency authorities and primary missions	We (CTUIR) have concerns that some of the primary authorities are held and exercised by an agency not optimally suited to the role, and we recommend increased differentiation between departmental roles. For example, the ODA has a primary mission to promote agriculture, and not to protect water quality. The ODEQ, with a general mandate to protect resources and prevent pollution, should have a stronger role in the MOA to ensure surface and groundwater quality are protected and demonstrate improving trends where impaired.	The agencies have drafted, reviewed and revised the MOA to ensure that it accurately captures the authorities of each agency around improvement and protection of water quality. Section II.1. describes DEQ's broad role and Section II.3. describes ODA's narrower role, including the Oregon Legislature's direction that ODA is the lead agency for regulating farm practices with respect to water quality, per ORS 561.191. Additional clarity on agency's roles related to water quality is provided in Section IV. with reference to ORS 468B.010, which resolves any inconsistent authorities on water pollution by noting that EQC's authority (implemented by DEQ) shall be controlling. And Section VI.2. specifies periodic reporting on MOA progress to the EQC and Board of Agriculture and timelines for reviewing and amending the MOA. Together these sections address the concerns raised in the comment, so the agencies did not further revise the MOA in response to this comment.
	CWA nonpoint programs are incentive based, not regulatory	Section II. 1. DEQ Authorities - I (Farm Bureau, et al) think it's important to note somewhere that the CWA nonpoint programs are incentive based, not a regulatory requirement.	The agencies disagree that control of nonpoint sources of pollution do not have a regulatory component. Implementation of nonpoint source programs involves a mix of voluntary and regulatory actions. Both ODA and DEQ have regulatory programs for nonpoint sources of pollution.For example, once DEQ issues a TMDL establishing load allocations that requires DMA to ensure reductions in nonpoint sources of pollution, taking actions to meet those allocations is a requirement. Further, ODA directly regulates nonpoint agricultural activities if there are water quality concerns. In addition, Area Rules regulate nonpoint pollution. All agricultural landowners or operators are required to be in compliance with AgWQ Rules.

Action	Topic	Comment	Response Text
	Nonpoint Source Management Plan	<p>In Section III(2)(b), the MOA should provide more detail regarding how DEQ will "seek input from ODA" on the development of the Oregon Nonpoint Source Management Plan (NPS Plan). Will ODA provide data, analysis and assessment, or other information? How will the Agencies coordinate to meet the required plan components of Title 33 Section 1329(b)(2), particularly the development of a schedule of annual milestones for using program implementation methods and implementation of identified best management practices? The MOA would be improved by providing more detail around the coordination between both Agencies in the development of the NPS Plan.</p> <p>In Section III.2.b. "The NPS Plan includes 'measures needed' to meet water quality standards and established allocations for nonpoint source pollution set by TMDLs." This makes it sound like the plan is developing the measures, when historically the measures are already adopted through other processes and the plan is merely collecting and presenting them. The Plan should not create new measures because it is not developed with stakeholder review or input.</p>	<p>DEQ is the lead agency for developing and reporting on the overall Nonpoint Source Plan in 5-year and annual increments. ODA's contributions relevant to agricultural nonpoint sources are an infrequent and minor component of the overall NPS process and the coordination between DEQ and ODA which is the subject of this MOA. As such, the general statements about NPS Plan coordination in Section III(2)(b) and on general coordination in Section VI MOA Mechanics 1. MOA Implementation, are at the appropriate level for the purposes of the MOA. So no changes were made in response to this comment.</p> <p>Every five years, DEQ's development of the Nonpoint Source Plan involves significant review and input by partner agencies, stakeholders and the public. As described in the opening sentence of Section III.2.b., the plan "describes the state's goals, priorities, objectives and strategies" around nonpoint source pollution controls, which implies that the measures needed to meet those goals are already in place and being described. The agencies did not make revisions to the MOA in response to this comment.</p>
Already included in MOA (cont.)	point and nonpoint sources	<p>(Benke) Language in Section III.2.d. allows for several different interpretations depending on how the word "pollution" is construed and it inexplicably evades mention of agricultural stormwater discharge. Change that language to read: "TMDLs specify the maximum pollutant loading allowable from point and nonpoint sources as Wasteload Allocations ("WLAs") and Load Allocations ("LAs") respectively. Point sources include wastewater treatment plants and Concentrated Animal Feeding Operations ("CAFOs"). Nonpoint sources include agricultural stormwater discharge (or runoff) from the land application of manure in accordance with a CAFO's Nutrient Management Plan."</p> <p>(Farm Bureau, et al) Section III.2.d. "TMDLs include analysis and conclusions on how much pollution must be reduced from both point sources, such as wastewater treatment plants, and from nonpoint sources, such as agricultural lands and operations." I (Farm Bureau, et al) do not think the examples are needed and they unnecessarily single out two sectors.</p>	<p>As noted in the title of the MOA: Oregon Department of Agriculture and Oregon Department of Environmental Quality Collaboration on Achieving Water Quality Goals Relating to Agricultural Nonpoint Source Pollution, point sources are not addressed. As such, the general language included is adequate for the purposes of the MOA, which does address agricultural nonpoint sources. In addition, Section I.2. of the draft MOA explains the limitations to the scope of the MOA, specifically noting that CAFOs are addressed under a separate agreement and not discussed in this MOA. For these reasons, the agencies did not revise the MOA in response to these comments.</p>
	evasive language	Text in the second paragraph of Section III.2.d. is grammatically nonsensical and inexplicably evades mention of "pollution prevention and control measures" as mandated by OAR 603-090-0030(1).	The Agencies disagree that the sentence is grammatically incorrect and point out that the commenter omitted the word "additional," which is important for understanding the meaning of the sentence. Also, there is no need to call out "pollution prevention and control measures" as mandated by OAR 603-090-0030(1) specifically because the sentence leads with "implementation of the AgWQ Program," which is described in Section II.2. ODA Authorities as the whole of OAR 603, divisions 90 and 95.

Action	Topic	Comment	Response Text
	303(d) listings	<p>Agricultural management plans and Area Rules should be updated to reflect 303(d) listings, particularly listings that can be traced to excessive nutrient inputs. Waiting for the development of TMDLs to address water quality concerns is not acceptable because of the many years it will take for DEQ to develop all the TMDLs necessary in response to the current 303(d) listings. The principles and management practices that need to be implemented to reduce nutrient loadings are readily apparent and available, so actions should be undertaken now, prior to TMDL development. Relying on voluntary area plans has not been effective in protecting water quality and has resulted in continued degradation of water quality. Without additional actions taken to protect and improve water quality the state cannot expect to achieve progress in addressing the numerous water quality impairments identified in the 2022 Integrated Report. It appears that the focus of the agricultural management program is merely on correcting water quality impairments once they have reached a detrimental state. Instead, protection of existing water quality should be prioritized, and all necessary actions should be taken to meet this primary objective.</p>	<p>The agencies agree that a combination of multiple efforts at varying scales and timings is needed to realize the goals of the MOA. The agencies disagree that additional detail on coordination specific to updating agricultural management Area Plans and Rules or specifics on timing of implementation of appropriate management strategies in relation to development of specific TMDLs are needed in the MOA. Given that the MOA is intended to be a broad overview of coordination efforts within each agency's authorities across the state and over the next seven years, Section VI. MOA Mechanics, 1. MOA Implementation describes the how coordination is envisioned to go forward at the appropriate level of detail. As such, the agencies did not make further revisions to the MOA in response to this comment.</p>
Already included in MOA (cont.)	Recognize that EQC water pollution authority is controlling	<p>With respect to Section III. Interagency Coordination, the Principles of Interagency Coordination should expressly recognize in accordance with ORS 468B.010 that in matters of water pollution the authority of the Environmental Quality Commission is controlling. It is not enough that the draft MOA specifies at Section III. 3. a. i. that DEQ "may provide comments to ODA" or at Section VI. 3. Dispute Resolution that the EQC may petition ODA for a review of an A WQMAP. ODA as the "Designated Management Agency" must acknowledge EQC's authority to establish Load Allocations for agricultural stormwater discharge in TMDLs and commit to adoption and/or revision of A WQMAPs including such "pollution prevention and control measures" as necessary to achieve all applicable water quality standards.</p>	<p>The Agencies disagree that Section III.1. Principles of Interagency Coordination is the appropriate place for citation of EQC's authorities to establish TMDL load allocations and be controlling in the event of inconsistency between other agency water pollution ORS or OAR. Instead these citations are presented and explained in the second paragraph of Section IV. Compliance and Enforcement.</p>
	EQC Authority; articulate the responsibility of landowners	<p>We support language in the MOA in Section IV that more clearly establishes the controlling authority of the EQC in cases where its authority over water pollution in statute or rule is inconsistent with any law or authority granted to another state agency (See ORS 468B.010). The MOA could be further strengthened by more clearly articulating the responsibility of landowners to not only comply with water quality management plans and Area Rules, but also "all the rules and standards of the Environmental Quality Commission relating to water pollution control" (ORS 568.930(1)). The MOA should also more clearly establish the authorities of the Agencies as they relate to compliance with water quality standards for waters that are 303(d) listed for impairments but do not yet have a TMDL. For example, we support the language in Section III(3)(a)(i) that states that "Area Plans and Rules will be revised as appropriate to meet water quality standards or TMDL requirements."</p> <p>Section IV, last sentence: TU supports the clarification that EQC authority prevails when it is unclear which agency holds authority over a water pollution issue. Including this sort of default rule in the MOA provides a roadmap in times of uncertainty, and TU agrees that EQC is the entity that should have this responsibility.</p>	<p>Citations to underlying authorities (including ORS 568.930(1)) are provided in Section II. As noted by the commenter, text throughout the MOA expands on interpretation of these authorities to an appropriate level and repetition of multiple authorities in subsequent sections of the draft MOA is not needed.</p>

Action	Topic	Comment	Response Text
<p>Already included in MOA (cont.)</p>	<p>EQC petition process</p>	<p>When the DEQ determines that an Area Plan or Area Rules are not adequate to meet water quality standards, and the agencies cannot agree on a resolution to address DEQ's concern, the DEQ should initiate a petition process by requesting the EQC to petition ODA for a review of part or all of such Area Plan or Rules, as described in ORS 568.930(3) (regarding petition process generally and not limited to TMDL context) and OAR 340-042-0080(3) (regarding petition process specific to TMDL context).</p> <p>To accurately reflect Oregon's overarching policy to prevent, control, and reduce pollution of the waters of the state, the second paragraph of Section VI(3), "Dispute Resolution," should be moved to Section V, "Evaluating Effectiveness in Achieving Water Quality Goals," or else to Section I, "Introduction." ORS 468B.020(2) requires DEQ to "take such action as is necessary for the prevention of new pollution and the abatement of existing pollution." The MOA should be modified to clarify that the petition process that EQC and DEQ have authority to pursue is not limited to or constrained by the Agencies' agreement generally to pursue dispute resolution through dialogue. The statutory authority vested in the EQC to petition for a review of Area Plans and Area Rules is a recognition of Oregon's commitment to clean water and an appropriate application of ORS 468B.010—not a last-ditch option that may only be utilized after other avenues fail. Moving this language to Section V or Section I preserves the intent of both statutes.</p> <p>TU - Section VI(3), second paragraph: TU recommends moving this paragraph out of the "MOA Mechanics" section entirely, and revising the language to remove the reference to "load allocations" because EQC petitions are not limited to the TMDL context. Dispute resolution provisions typically set forth a process by which parties resolve general disagreements, and the first paragraph in this section properly does that. The petition process is different than a dispute resolution process because it regards EQC's role in ensuring that the Program achieves compliance with state and federal water quality standards. TU respectfully recommends the following language as a new Section III(2)(f) (per our suggestion above to also add a Section III(2)(e)):</p> <p>f. EQC Petitions "When DEQ determines that an Area Plan or Area Rules are not adequate to meet water quality standards, and the Agencies cannot agree on a resolution to address DEQ's concern under the process described in Section VI(3), DEQ will initiate a petition process by requesting the EQC to petition ODA for a review of part or all of such Area Plan or Area Rules, as described in ORS 568.930(3) (regarding petition process generally and not limited to TMDL context) or OAR 340-042-0080(3) (regarding petition process specific to TMDL context)."</p>	<p>The agencies agree that the EQC petition process is an option for achieving the goals of the MOA and it is included in the closing paragraph of the MOA. Including reference to the statute and rule on the petition process in the MOA does not alter or limit them and they continue to apply outside of the MOA and TMDL context. As detailed in the structure and language of the MOA, however, the agencies' preference is to first work collaboratively through regular staff-level coordination meetings and day-to-day work, much of which would also be required to support the information necessary for a petition for rule review. Following that, any needed dispute resolution can be invoked through agency managers and leaders, and only set the EQC petition process into motion if these other options fail. This approach also represents an escalating level of effort and the agencies are committed to efficiency as a good public policy practice. As such, no revisions to the MOA are needed in response to this comment.</p>

Action	Topic	Comment	Response Text
Already included in MOA (cont.)	MOA progress reporting to EQC and BOA	<p>We (WSC) appreciate the Agencies' commitment to provide regular updates to the EQC and the Board of Agriculture on the implementation of this MOA.</p> <p>(Rogue RiverKeeper) The proposed MOA also provides clarity regarding which agency has authority over a water pollution issue. The EQC authority prevails and the agencies will periodically report on implementation of the MOA to the Board of Agriculture and Environmental Quality Commission which in the past has been infrequent.</p> <p>Section VI(2), first sentence: TU supports the requirement that ODA and DEQ will periodically report on implementation of the new MOA to the Board of Agriculture and the EQC. However, to allow the Board and Commission multiple opportunities to provide input during the 7-year term of this MOA, we recommend specifying that the agencies will report to the Board of Agriculture and EQC at least once annually, as follows: "The Agencies will periodically evaluate progress on implementation of this MOA and report on it at least once annually to the Agencies' directors as well as to the Board of Agriculture and EQC . . ."</p>	<p>The agencies appreciate the support for periodic reporting on progress of MOA implementation to the EQC and BOA, but did not include a set frequency of reporting.</p>
	Agency accountability is missing from the MOA	<p>The MOA does not outline any process for agency accountability if agencies fail to take action to protect waters of the state. With climate change and a legacy of water quality-degrading agricultural activities and management, this MOA does not indicate any change or improvements from the current situation which would increase accountability.</p> <p>A lack of actionable decision-making process between the agencies and actionable and enforcement measures leaves much to be desired in this important and influential policy defining document. An unnecessary amount of passive language throughout the MOA leaves multiple roles, responsibilities, and processes between the ODA and DEQ unclear and undefined. We urge the EQC and BOA to increase DEQ oversight of nonpoint sources of pollution as a result of agriculture activities.</p>	<p>The agencies disagree that accountability is missing from the revised MOA. The sections on Agency authorities, Compliance and Enforcement, and Dispute Resolution lay out the responsibilities of each agency. The MOA also allows for additional accountability and transparency in periodic reporting to the Environmental Quality Commission and Board of Agriculture, which include public processes. The Agencies want to keep the level of detail in the MOA broad but have worked to ensure that the roles and responsibilities are defined by existing ORS, OAR, and Agencies policies. So the agencies did not make further revisions in response tot his comment.</p>
	DEQ role in SIAs	<p>Section III.3.a.ii. Strategic Implementation Areas - We (Farm Bureau, et al) have grave concerns with this section. We do not believe it is appropriate or necessary for ODA to participate in field observations to provide expertise on study design and monitoring. SIAs are a core ODA function, and landowners will lose trust in the program if DEQ's role is expanded.</p>	<p>The agencies clarify that the purpose of the final paragraph in this section is not to expand the role of DEQ in the SIA process, but to document DEQs current role. DEQ is part of a multi-organization partnership that helps in the selection of SIAs and assists with study design and development of monitoring plans in SIAs. The intent is that DEQ provides input and is involved in the SIA selection process, but not involved in the SIA landowner interactions unless there is a need for a direct DEQ role.</p>

Action	Topic	Comment	Response Text
	DEQ input and enforcement abilities on Ag Area Plans and Rules	<p>Section III.3.a.i. Last Sentence - I (Farm Bureau, et al) think it's important to note that those comments (by DEQ on Area Plans and Rules) will not be adopted until the full biennial review process due to the requirement to engage the LAC in any revisions.</p> <p>TU supports the specification that DEQ may provide input to ODA outside of the biennial review process, but this sentence should also include a next step for what ODA will do with DEQ's input. We suggest revising the sentence as follows: "DEQ review is not limited to biennial reviews, such that DEQ may provide comments to ODA at any time on any Area Plan and Area Rules, and ODA will then revise such Area Plans or Area Rules if DEQ determines that certain revisions are necessary to meet water quality standards."</p> <p>(Various commenters) Under the existing statutes, the ODA's only regulatory and enforceable vehicle is the "Area Rules" (i.e., Division 95 rules). The draft MOA does not contain sufficient detail on the DEQ's supervision of ODA's Area Rules and the authority is left to ODA, which faces no consequence if the Area Rules are not followed. In order to be effective, the MOA must provide specific details on the enforcement responsibilities of the DEQ to ensure that the Area Rules are followed by the ODA and the standards of the Clean Water Act are met.</p> <p>(Benke) The MOA should be supplemented by a list of priority actions to be taken by DEQ and/or ODA in accordance with their respective responsibilities as summarized in the MOA (including, specifically, ODA 's biennial review of AWQMAPs as summarized at section III. 3. a. i. of the draft MOA).</p>	
Already included in MOA (cont.)	DEQ input and enforcement abilities on Ag Area Plans and Rules (cont.)	<p>(Various commenters) When water quality standards are not being met due to agricultural operations or if water quality from agricultural lands fails to improve as part of a TMDL, then the DEQ should provide input to the ODA on how its regulatory, enforceable Area Rules must be changed as it is the ultimate responsibility of the DEQ that the state water quality standards be met. It is imperative that the DEQ provide more oversight and outline enforceable actions within the MOA to ensure effective TMDL implementation. The DEQ should clearly state within the MOA a formal review process of any Area Plan or Area Rule that is not ensuring water quality standards are met and how the ODA will respond to such reviews and in what time frame.</p> <p>(Rogue RiverKeeper) The draft MOA is primarily focused on the DEQ's input about voluntary, collaboration-based Area Plans. This over-reliance on consensus decision making bogs down the process unnecessarily. There are instances where one agency or the other should be in charge of the decision. Given the established problems with water quality in the state, agencies should prioritize acting swiftly and efficiently. Instead of outlining clear processes toward bringing Oregon's waterways in compliance with water quality standards, the MOU further complicates the administrative process and will likely result in a more drawn out timeline before any action is taken, if any action is taken at all. We do not see a legitimate reason to require consensus decision making as the default. However, if water quality standards aren't being met from nonpoint sources caused by agricultural operations or if water quality from agricultural lands fails to improve as part of a TMDL, then DEQ should provide input to ODA on how its regulatory, enforceable Area Rules must be changed as it is the ultimate responsibility of the DEQ that the state water quality standards be met. When it is determined that the Area Rules no longer ensure water quality standards are being met then ODA should update these rules accordingly. Instead of "assisting" or "requesting" ODA develop approvable TMDL implementation plans, the DEQ should outline a process to establish enforceable actions within the MOA that ensure proper TMDL implementation. The current language within the MOA allows the DEQ to provide comments on any Area Plan or Area Rule. Instead of providing comments the DEQ should clearly state within the MOA a formal review process of any Area Plan or Area Rule that is not ensuring water quality standards and how the ODA will respond to such reviews and in what time frame. The MOA is a great opportunity to clarify these roles and provide more DEQ oversight of ODA's Agriculture Water Quality Program.</p>	<p>The agencies disagree that additional detail on coordination specific to updating agricultural management Area Plans and Rules is needed in the MOA and that consensus decision making is relied on in meeting the goal of the MOA. The MOA is intended to be a broad overview of coordination efforts within each agency's authorities across the state and over the next seven years. Requirements of the biennial review process are documented in OAR chapter 603, divisions 90 and 95 and involve steps and organizations outside the collaboration of ODA and DEQ, which is the topic of this MOA. Given these facts, Section VI.1. MOA Implementation describes the how coordination is envisioned to go forward at the appropriate level of detail. In addition, the agencies are preparing flow charts to help guide a consistent approach to process steps for Area Plan and Rule reviews, as well as Strategic Implementation Area coordination and TMDL implementation. As such adding the suggested additional details to the MOA is not needed and the agencies did not make revisions in response to these comments.</p>

Action	Topic	Comment	Response Text
<p>Already included in MOA (cont.)</p>	<p>Continuation of current agricultural management practices and programs is inadequate to protect and improve water quality</p>	<p>As currently drafted, the MOA is a continuation of the current agricultural management practices and programs that have been in place for decades but have failed to protect or markedly improve water quality in Oregon. As such, a status quo MOA is not an acceptable approach if Oregon is to achieve total maximum daily load (TMDL) and other water quality targets. Evidence for the failure of the current agricultural management practices and programs in protecting water quality is that 37% of Oregon's assessment units in the 2022 Integrated Report are impaired, mostly for temperature, dissolved oxygen, biocriteria, aquatic weeds, harmful algal blooms and E. coli bacteria; and agricultural pollution and other nonpoint source activities are significant contributors to these impairments. The MOA should be revised to recognize the current magnitude of the water quality impairments and provide a framework to prevent and control water pollution from agricultural activities and to achieve water quality standards.</p> <p>The MOA does not make any changes to the current process to ensure waters are protected and the MOA provides no recognition of the contributions of agricultural practices and activities to rising water temperatures and other threats to water quality including increased bacteria, sediment, and turbidity.</p> <p>Past iterations of this joint agency MOA focused on the cooperative roles of both agencies on Total Maximum Daily Load ("TMDL") implementation, monitoring and evaluating effectiveness of the Agricultural Water Quality Program. There is little evidence to support the effectiveness of this collaboration as currently structured and it appears the process has failed to improve water quality. This failure to improve water quality indicates the need for a new model or process for DEQ and ODA to operate under to produce quantitative improvement. The commenters suggest that the cooperative structure be reorganized to include language that explicitly outlines the responsibilities of each agency to ensure a successful TMDL plan is implemented and improvement demonstrated.</p> <p>The draft MOA focuses on the DEQ's input on voluntary, collaboration-based Area Plans developed with the help of the Local Advisory Committees. These plans have been in existence for many years, ineffective and have not resulted in improvement to water quality. There is a need for clear processes to bring Oregon's waterways into compliance with water quality standards and the MOA does not increase the likelihood that water quality problems will be addressed in a timely manner. The draft MOA does not currently contain sufficient detail on the DEQ's supervision of ODA's regulatory, enforceable "Area Rules" (i.e., Division 95 rules). The existing 2017 MOA fails to elaborate beyond briefly describing interagency coordinators commitment to collaboration. In order to be effective, the MOA should provide additional specific details on the enforcement responsibilities of the DEQ to ensure the enforcement of the CWA and the Area Rules by the ODA. Instead, it focuses on DEQ's input on voluntary, collaboration-based Area Plans. For example, in developing or revising water quality standards, the MOA states that the DEQ will advise ODA and agricultural stakeholders of the water quality standards revision process and invite them to attend and participate in advisory committee meetings, where the planned revisions have a nexus with agriculture-related activities. This voluntary language does not ensure that effective measures will be taken during a DEQ-lead process. The language in this MOA should explicitly state how water quality standards are being met and the CWA is being enforced with respect to agricultural practices and that the ODA is enforcing these requirements.</p> <p>The 2012 iteration of this joint agency MOA focused on the cooperative roles of both agencies on TMDL implementation, monitoring and evaluating effectiveness of the Agricultural Water Quality Program. There is little evidence to support the effectiveness of this collaboration. We suggest that this cooperative structure be reorganized to include language that explicitly outlines the responsibilities of each agency and the steps each will take in working together to ensure a successful TMDL plan is implemented.</p>	<p>The agencies disagree that the revised MOA: merely reflects the status quo of solely relying on implementation of existing agricultural management practices and programs to achieve water quality protections and improvements; does not make any changes from the previous MOA; and focuses DEQ's input on voluntary, collaboration-based Area Plans developed with the help of the Local Advisory Committees.</p> <p>The MOA must describe the agencies' work within existing authorities. The centerpiece of ODA's authorities is the Agricultural Water Quality Program, which was directed by the state legislature, leverages partnerships with many agriculturally-focused organizations across the state, includes a biennial review and improvement process and will continue to be an important aspect for protecting and improving water quality related to agricultural activities. In combination with this, the revised MOA also adds information on compliance and enforcement, Strategic Implementation Areas and evaluating progress and adaptively managing toward water quality goals; and, introduces a process for developing TMDL implementation plans, where existing measures are not adequate to meet water quality standards. The agencies anticipate that these incremental process improvements in areas where data and information demonstrate the need for additional management measures will result in improvements commensurate with the location and condition-specific magnitude of water quality impairments related to agricultural practices over the duration (seven years) of the MOA. Section VI. MOA Mechanics, 1. MOA Implementation describes the how coordination is envisioned to go forward at the appropriate level of detail. For these reasons, no changes were made to the MOA to address these comments.</p>

Action	Topic	Comment	Response Text
<p>Already included in MOA (cont.)</p>	<p>Complaint-based and voluntary compliance without enforcement are unclear and ineffective to protect and improve water quality</p>	<p>ACWA) The complaint-based approach to address water quality impairments is subjective, haphazard, inequitable, and highly ineffective in protecting and improving water quality. A more proactive approach should be taken by DEQ and ODA to protect and improve water quality. ACWA recommends developing an upland and in-stream water quality monitoring program to provide a basis for taking follow-up actions with landowners in a systematic, data-driven manner. ODA and DEQ can use Soil & Water Conservation Districts and other existing resources to communicate and promote the effectiveness of current management practices and the need for additional management practices to protect and improve water quality. The Pesticide Stewardship Program (PSP), which operates outside the MOA, is an excellent model of collaborative effort between ODA, DEQ and local watershed partners. ACWA strongly urges DEQ and ODA to utilize a similar, data-driven approach to protect and improve water quality in other watersheds.</p> <p>(Various commenters) For many years, regulation of polluted water originating from agricultural lands has been designated by DEQ to the ODA which mostly relies on voluntary compliance. Voluntary compliance with no enforcement has not resulted in improvement.</p> <p>III.3.a. How are voluntary Area Plans enforced? What means does ODA have to implement a voluntary effort? How is the effectiveness of their outcomes measured? Does ODA collaborate with USDA's Conservation Programs (CRP, GRP, etc).</p> <p>(Will Forney) IV. What are the compliance and enforcement activities? How are they implemented? Who is responsible for them? What does follow up entail? If land owners do not comply, what are the Agencies' recourse?</p>	<p>The agencies disagree that agricultural water quality compliance is complaint-based or voluntary without enforcement. The level of detail provided in the compliance and enforcement section of the MOA is appropriate for the MOA's coordination purposes, so no changes were made to the MOA in response to this comment. However, the agencies offer the following information to clarify that the commenter's assumption that ODA's compliance program is complaint-based is incorrect. ODA moved beyond a complaint based approach with the launch of the Strategic Implementation Area (SIA) initiative in 2014. Since 2014, ODA has worked in 48 SIAs (including 244 subwatersheds). In each subwatershed, a Compliance Evaluation is completed for each agricultural tax lot in the SIA. The Compliance Evaluation includes a remote evaluation of aerial photos and field verification from public viewpoints. The Compliance Evaluation is for streamside vegetation, bare ground, and manure piles. If a concern is identified, ODA follows up with the landowners via the normal compliance and enforcement process. As of April of 2022, ODA has evaluated over 7,500 stream miles, 1.7 million acres, and 20,000 tax lots. Through the SIA process, ODA has contacted over 7,500 landowners. Of the evaluated tax lots, over 96% have been in compliance. ODA has proactively initiated compliance investigations with over 250 landowners through the SIA process. The SIA process has been key to ODA proactively identifying and addressing agricultural water quality issues.</p>

Action	Topic	Comment	Response Text
<p>Already included in MOA (cont.)</p>	<p>monitoring and evaluation program</p>	<p>(ACWA) Since there is no defined monitoring program to assess the effectiveness of agricultural management practices, any assessment of the effectiveness of these practices would be by happenstance. Considering that magnitude of the water quality impairments documented in the 2022 Integrated Report and the non-point source contributions to these impairments, this approach can neither be expected to successfully assess the effectiveness of management practices nor to provide information on which to base future actions to improve agricultural management practices.</p> <p>(Will Forney) V.1. This section needs to detail what data are being collected by which agency. The existing data needs to be pulled out from the ODA "2017 monitoring strategy" and the DEQ "TMDL-specific monitoring" and explained. The updating and reporting of these data need to be provided to the public, companies, consultants, and NGOs via the internet without having to request them from the Agencies. Furthermore, collection of new data is not included, only leveraging existing sources.</p> <p>V.2. To help with implementation and evaluation, a library of design and construction drawing for project-specific types of BMPs ought to be created by DEQ, ODA, and their local partners.</p> <p>V.2. Restoration projects (e.g. riparian canopy, channel morphology, upland BMPs, natural infrastructure) and specific land management activities (e.g. irrigation, tillage, fertilizer timing and types) ought to be added to land conditions for comparison.</p> <p>(ACWA) The MOA identifies existing sources from which instream and land condition monitoring data and reporting efforts would be leveraged. The relevant programs do not include a systematic, watershed-based, agriculture-specific water quality monitoring programs. The primary sources of water quality monitoring data are water quality status and trends reports (presumably from the network of DEQ monitoring stations) and Integrated Reports. The MOA also cites that "relevant monitoring plans and reports" are an existing source of data and information; the scope of this source is not readily apparent. Most of these sources of water quality data are not geared towards assessing effectiveness of agricultural management practices. As noted above, any assessment of the effectiveness of the agricultural management practices would be by happenstance. Thus, the existing sources of water quality data do not enable ODA and DEQ to assess the effectiveness of management practices and identify</p>	<p>The agencies agree that a robust monitoring strategy is needed, but not that all of the details could or should be included in the MOA. Instead, the agencies described our goal to efficiently use existing processes to inform the strategy in acknowledgment of currently limited resources and capacity. The MOA also acknowledges that the strategy will be developed through agency coordination and capacity building and focused on improving assessment methods and evaluative criteria, as well as designing it to inform adaptive management decisions. The agencies appreciate the commenters' observations confirming existing weaknesses and suggestions that should be considered as we develop the strategy. As this is intended to be an on-going process, no changes were made to the MOA in response to these comments.</p>

Action	Topic	Comment	Response Text
Already included in MOA (cont.)	monitoring and evaluation program (cont.)	<p>additional actions that are necessary to protect and improve water quality. ACWA strongly urges ODA and DEQ to establish a monitoring program that is focused on assessing the impacts of agricultural practices. This monitoring would support identification of additional controls that are necessary through an adaptive management strategy to protect and improve water quality.</p> <p>(ACWA) The Water Quality Status and Trends Report identifies the parameters that are currently monitored. These include temperature, dissolved oxygen, pH, total suspended solids and total phosphorus. With the proliferation of 303(d) listings for algal blooms, aquatic weeds, and other pollutants in the 2022 Integrated Report, ACWA recommends that the monitoring be expanded to include nitrogen species (i.e., ammonia, nitrates, and TKN).</p> <p>(ACWA) The MOA acknowledges that assessment of effectiveness of specific actions is challenging because sources and actions to control them are frequently interactive. For this very reason, ODA and DEQ should develop and implement a water quality monitoring program that is geared towards understanding the effectiveness of current management practices and identifying additional management practices that are necessary to protect and improve water quality. Relying on existing monitoring program is not an effective approach in assessing the effectiveness of management practices and implementation of an adaptive management strategy.</p> <p>We (Rogue RiverKeeper) applaud the agencies for including some improvements in the proposed 2022 MOA such as expressly requiring ODA to monitor the Water Quality Program (per Section V(1)), whereas the current MOA only requires this action “as resources allow”.</p> <p>We (WSC) applaud the Agencies setting forth their understanding of ODA’s responsibilities with respect to monitoring and evaluating the program (Section V).</p> <p>Section V.2. (Farm Bureau, et al) If (adaptive management approaches to improve or refine implementation) result in changes to landowner requirements, it must be done through the Area Plan.</p>	<p>The agencies agree that a robust monitoring strategy is needed, but not that all of the details could or should be included in the MOA. Instead, the agencies described our goal to efficiently use existing processes to inform the strategy in acknowledgment of currently limited resources and capacity. The MOA also acknowledges that the strategy will be developed through agency coordination and capacity building and focused on improving assessment methods and evaluative criteria, as well as designing it to inform adaptive management decisions. The agencies appreciate the commenters' observations confirming existing weaknesses and suggestions that should be considered as we develop the strategy. As this is intended to be an on-going process, no changes were made to the MOA in response to these comments.</p>
	Clarify leads for Evaluating Implementation and Adaptive Management section	<p>The critically important Section V(2) states: “Evaluations of implementation and water quality status and trends can be made for instream water quality and land conditions by comparing: [list of metrics and objectives].” It is not clear which agency is responsible for completing which of these evaluations, or if it will be a coordinated effort between ODA and DEQ. The MOA should be strengthened by clarifying the lead agency or expressly establishing shared responsibility between the Agencies for these activities.</p>	<p>The agencies agree that clarity of roles and responsibilities is an important piece of an MOA. Because the monitoring and evaluation strategy is under development, the agencies are not able to provide the requested detail. Instead, the agencies described our goal to efficiently use existing processes to inform the strategy in acknowledgment of currently limited resources and capacity. The MOA also acknowledges that the strategy will be developed through agency coordination and capacity building and focused on improving assessment methods and evaluative criteria, as well as designing it to inform adaptive management decisions. The agencies appreciate the need for clarity in roles and will keep this in mind as the strategy is developed.</p>

Action	Topic	Comment	Response Text
Already included in MOA (cont.)	expand attention to natural river and floodplain functions	<p>The MOA, and the agencies themselves, would benefit by expanding the focus beyond just riparian zones to include the floodplain. Greater understanding of and attention to natural river and floodplain functions and process should be promoted, such as river connectivity with its adjoining floodplain that is necessary to establish and maintain a healthy hyporheic zone. The limited focus on just riparian zones or corridors is inappropriate and not supported by either scientific literature or our experience in implementing floodplain restoration projects that have resulted in benefits to stream and salmonid spawning and rearing.</p> <p>The agencies should adopt and implement an MOA regarding water quality more informed by the principles and elements contained in the CTUIR's River Vision. These elements—hydrology, connectivity, geomorphology, riparian vegetation and native aquatic species—were developed based on a review of peer-reviewed science publications, and are transferrable to the work of agencies like the Oregon Department of Environmental Quality. The current emphasis on riparian shade is insufficient, not reflective of contemporary science, and needs to expand and include an emphasis on connectivity and the health of the floodplain. For example, a major impact of agricultural practices is increased stream temperature where floodplains are diked, leveed, and farmed. The reduced floodplain area, and reduced connectivity between the river and its floodplain, reduces hyporheic exchange processes, increases stream temperature, and actually reduces the residence time of water in our basins. These processes are vital to water quality and the agencies should update the MOA in terms of proper approaches to evaluate impacts and achieve improvements.</p>	<p>The agencies disagree that the MOA demonstrates a "limited focus on just riparian zones or corridors." But the agencies agree that an "impact of agricultural practices is increased temperature where floodplains are diked, leveed, and farmed." The AgWQ Program applies to all lands with agricultural activities. This is beyond floodplains. The MOA's stated purpose is to describe how the agencies "will work together to protect and improve water quality in Oregon's streams flowing through agricultural lands or impacted by discharges from agricultural activities." The agencies appreciate CUTIR's holistic approach to evaluating and implementing restoration actions and reference to CTUIR's River Vision. The agencies will take these into consideration in further developing and improving our approach to monitoring and evaluating progress toward our shared water quality goals. The agencies did not make changes to the MOA in response to this comment.</p>
	Uncertainty	<p>Section III.1.(f)&(g) - Principles of Interagency Coordination - "Use available data, scientific information and accepted scientific methods, including in dealing with uncertainty" and "A commitment to use our respective programs, including continued progress to achieve land conditions needed to improve water quality, even when uncertainty exists."</p> <p>This should either be elaborated or removed. If the agencies are proposing to adopt the precautionary principle as it relates to the AgWQ Program, that should be a decision that is more openly discussed, and vetted with stakeholders. There is a lack of data generally around AgWQ and we do not want the state to fail to collect data, and then proceed to strict enforcement due to employment of the precautionary principle.</p> <p>We (WSC) support the commitment from both ODA and DEQ for "continued progress to achieve land conditions needed to improve water quality, even where uncertainty exists" (Section III(1)(g)(i)).</p> <p>Section III(1)(g)(i): TU greatly appreciates the precautionary approach demonstrated in this clause, and supports this language.</p>	<p>The intention of these commitments is to recognize that uncertainty exists in data, scientific information and implementation effectiveness, but that the agencies will apply currently accepted, reasonable, scientific approaches to deal with uncertainty, so as not to unduly prevent progress in achieving our goals. The agencies did not revise the MOA in response to these comments.</p>

Action	Topic	Comment	Response Text
<p>Already included in MOA (cont.)</p>	<p>TMDL implementation plans</p>	<p>Section III.2.d. Establishing and Implementing TMDLs - "ODA will adapt the Area Plans of Area Rules or develop TMDL implementation plans that include these additional measures. DEQ will assist ODA in developing approvable implementation plans that must include appropriate measurable objectives and timelines to address identified water quality priorities and allocations (or surrogate measures)." This is new and has never been discussed with stakeholders - what do the agencies mean by this? Are you anticipating situations where the Area Plans would not be the vehicle for TMDL implementation? I (Farm Bureau, et al) suggest removing until you have additional stakeholder engagement around this issue.</p> <p>Section III.2.d. (Farm Bureau, et al) This section must note that TMDLs rely on the local area plans to provide the pollutant management strategies, and that DEQ will not itself directly prescribe ag practices through a TMDL.</p> <p>Section III(2)(d), second paragraph: TU supports the concept of addressing "additional measures" necessary to meet water quality standards. However, this paragraph is not clear which agency is responsible for identifying the "additional measures" in question. DEQ is responsible for setting water quality standards and tracking related status and trends, and therefore, is the state agency expert on what "additional measures" might be necessary to achieve water quality compliance. Accordingly, we recommend revising the second sentence in this paragraph as follows: "ODA will adapt or revise Area Plans or Area Rules or develop TMDL implementation plans that include such additional measures, and will incorporate DEQ input in doing so."</p> <p>We (WSC) applaud the Agencies setting forth their understanding of ODA's responsibilities with respect to ODA's duty to incorporate additional measures deemed necessary for achievement of TMDL goals into Area Plans, Area Rules, or TMDL implementation plans (Sections III(2)(d) and III(3)(a)(i)).</p> <hr/> <p>Section V.2. (Farm Bureau, et al) Evaluating Implementation and Adaptive Management evaluative comparisons - "Upland cover and bare ground percentages to TMDL implementation plan measurable objectives for cover and erosion prevention" and "Impacts from livestock accessing waterbodies to TMDL implementation plan measurable objectives for livestock exclusion, off channel watering, etc." The TMDL measurable objections should come from the area plan, not be treated as an independent document.</p> <p>Section V.2. final paragraph - "ODA will participate in these reviews and the adaptive management process by: compiling and submitting reporting information; evaluating status and trends of ODA-led programs and revising, as needed, TMDL implementation plans and Area Plans and Rules." The implementation plan IS the area plan. They should not be discussed as separate documents. (Farm Bureau, et al)</p>	<p>Per OAR 340-042-0080(3), "in areas where a TMDL has been approved, agricultural water quality management area plans and rules must be sufficient to meet TMDL load allocations. If the department (DEQ) determines that the plan and rules are not adequate to implement the load allocation, the department will provide ODA with comments on what would be sufficient to meet TMDL load allocations." As noted in the Executive Summary attached to the draft MOA for public notice purposes, one of the MOA changes is to "introduce a process, where existing measures are not adequate to meet water quality standards, for ODA to adapt of Area Plans and Rules or develop TMDL implementation plans." DEQ intends to efficiently use the existing processes for issuance of TMDLs and WQMPs and subsequent implementation plan development to provide the rule required determinations on sufficiency of relevant agricultural areas plans and rules and comments on what would be sufficient to meet TMDL load allocations. Contrary to the comment that this has never been discussed with stakeholders, in 2021 DEQ, ODA and stakeholders began collaboratively working on implementation plan development for the Willamette Basin Mercury TMDL (for which DEQ issued a Water Quality Management Plan in 2019). These discussions are also occurring during outreach and advisory group processes on several other TMDLs/WQMPs currently under development. OAR 340-042-0080(3) makes clear that DEQ is the determiner that additional measures are required, but the agencies are committed to collaborative input from both agencies and other partners/stakeholders in deciding what specific measures are needed in consideration of geographically and situationally specific conditions. For these reasons, the agencies did not revise the MOA in response to these comments.</p>

Action	Topic	Comment	Response Text
Already included in MOA (cont.)	additional measures for areas without TMDLs	<p>Section III(2)(e): TU recommends adding a new section that carries out the intent stated in the 4th bullet point of the Executive Summary and mirrors the concept stated in the second paragraph of Section III(2)(d). According to the “TMDL Priorities and Schedule for Oregon’s 2022 Integrated Report Submittal” (DEQ, May 2022), DEQ intends to have “Medium priority TMDL projects in development by April 2030.” Presumably, low priority TMDLs will not be developed until years later. The MOA should provide a process for the agencies to address instances where a waterbody is impaired by agricultural practices but a TMDL does not exist yet. Accordingly, we suggest the following language as a new Section III(2)(e):</p> <p>e. Additional Measures when no TMDL Exists DEQ and ODA recognize that TMDLs require significant time to develop, and that the Agencies may identify measures to proactively address water quality impairments in a waterbody before a TMDL is established. In such instances, ODA will revise Area Plans or Area Rules to include measures requested by DEQ for the period before a TMDL is established and implemented.”</p>	<p>Agricultural management area plans and rules are intended to address TMDLs, 303(d) listings and proactively protect areas that do not have listings or TMDLs. Prior to developing a TMDL, as part of area plan reviews, DEQ and ODA share available data and information (including status and trends reports) and confer on strategies to address agricultural impacts. For this reason, the agencies did not make the suggested revisions to the MOA.</p>
	update with best available information	<p>Since 2012, there have been meaningful changes to our understandings of climate variability, floodplain processes, agricultural practice alternatives, and accumulated pollutant burdens as an unintended consequence of agricultural practices. This MOA needs to be demonstrably updated to reflect our improved understanding of these issues. We recognize water quality problems are numerous, widespread, and complex. They are also often the product of long-term practices, and they may take at least as long to correct as they did to cause. But they will take even longer if the best available information and corrective actions are not used.</p>	<p>The agencies agree that better outcomes can be gained by working with the best available information. Section VI. describes the agencies approach to monitoring and evaluation of progress toward improved water quality which includes adaptively managing actions and decision making as an iterative process, based on on-going learning, informed by data, to reduce uncertainty and improve long-term outcomes. While we must acknowledge existing data constraints and resource limitations, the intention is to leverage existing processes and continue to build methods and capacity toward improved outcomes. The agencies intend to apply the best available information in both the evaluation process and scheduled review and amendment of the MOA. Because these processes are included in the MOA, the agencies did not make further revisions in response to this comment.</p>
	consideration of current conditions in regulatory decision making	<p>The MOA should encourage the agencies to collaboratively examine and consider, where there is an ongoing activity or a proposed new one, whether the affected area has already experienced significant damage or degradation (e.g., depleted and/or contaminated groundwater). The agencies should not authorize harmful practices to continue, or new ones to occur, where they would substantially add to the existing burden of pollution, damage, or degradation in that location.</p>	<p>The agencies agree with the principle expressed in the comment of considering current conditions in regulatory decision making. The agencies follow this principle in application of their regulatory authorities, though also acknowledge that their are limitations imposed by statutes and rules and additional factors that must also be weighed in decision making. The agencies did not make revisions to the MOA in response to this comment.</p>

Action	Topic	Comment	Response Text
Out of MOA scope	roles of SWCDs should be added to the MOA	<p>OACD is concerned that pressures could be placed on SWCDs in the future to take actions that are inconsistent with their own approach and abilities for natural resources conservation. SWCDs have an important, non-regulatory role in working with landowners to effectively implement conservation actions. It is difficult, but important for SWCDs to maintain a non-regulatory image. This separation between regulatory and non-regulatory roles may be more difficult in the future because the MOA now clearly links the Total Maximum Daily Load (TMDL) program, a heavy regulatory program, with SIAs. The state funding SWCDs receive to help with the Agricultural Water Quality Program is relatively small, so the level of help that can be provided by many SWCDs is significantly limited. Going forward, it is likely that more effort will be needed as DEQ develops new TMDLs for water bodies across the state with their implementation plans that specify actions needed to improve water quality.</p> <p>Add Section 3.a.iii. to the MOA as follows: iii. Role of Soil and Water Conservation Districts (SWCDs) While SWCDs may help ODA with certain aspects of the Agricultural Water Quality Program, they are not party to this MOA. To the extent that ODA or DEQ enlist the help of SWCDs the following is understood: •SWCDs should be able to maintain a non-regulatory role and image. Appropriate roles and responsibilities for SWCDs include advisor to DEQ and ODA on their regulatory programs and assistance to landowners and land managers in voluntary conservation projects. •SWCDs cannot be expected to perform work that is not fully funded. •SWCD participation in helping implement work covered by this MOA is voluntary.</p> <p>I (Farm Bureau, et al) think that the role of the SWCDs, and data and evaluations they do need to be specifically called out here (last bullet under Section V.1. Monitoring and Reporting efforts to be leveraged) - "ODA area Plans and Rules biennial reviews and revisions."</p>	<p>The agencies appreciate the position of SWCDs in the spectrum of regulatory and non-regulatory components of the Oregon process for water quality improvement related to agricultural impacts, as well as acknowledge the importance of SWCD efforts to this shared goal of the agencies, which is the focus of this MOA. As the commenter notes, however, the MOA is specific to efforts between ODA and DEQ and within their authorities. The agencies note that the MOA does not alter any of the authorities granted in the relevant ORSs, OARs or federal rules. The roles of SWCDs are delineated in ORSs and OARs relevant to the agricultural water quality program and, because these are not relevant to the MOA between ODA and DEQ, the suggested language and changes were not added to the MOA.</p>
	LACs role in MOA	<p>The 2012 agreement made several references to the LAC's and their role in working with ODA to revise the plans as well as their responsibility to "recommend strategies necessary to achieve water quality goals and objectives outlined in the agricultural water quality management plan"; however, the significance of the LACs in the 2022 MOA appears to have been greatly diminished to simply a "consultation" role regarding the Area Plans and Rules, of which the relevant revisions have been decided in advance of the meeting by ODA and DEQ. There are several opportunities cited in the MOA where the LACs should be included to discharge the responsibilities entrusted to them; however, these sections vaguely and generically reference "local agricultural community participation". The District understands we have no standing in this agreement; however, it was the intention of the original legislation that a "bottom up" method of addressing water quality was critical to both initiating and sustaining this effort; the 2022 agreement fails to value the contributions that have been made, as well as can be made, by the LACs performing the tasks they were charged with more than two decades ago.</p> <p>Section II.3.a.i. Biennial Review of Area Plans and Area Rules - "DEQ review is not limited to biennial reviews, such that DEQ may provide comments to ODA at any time on any Area Plan and Area Rules." I (Farm Bureau, et al) think it's important to note that those comments will not be adopted until the full biennial review process due to the requirement to engage the LAC in any revisions.</p>	<p>The agencies acknowledge the importance of LACs long-standing efforts and "bottom up" approach to the shared goal of the agencies in improving water quality related to agricultural activities, which is the focus of this MOA. As the commenter notes, however, the MOA is specific to efforts between ODA and DEQ and within their authorities. The LAC focus was intentionally removed from the MOA because the MOA is between ODA and DEQ and is not the appropriate location to describe the role and responsibilities of the LAC. As the 2022 MOA was developed, ODA made the decision to remove the emphasis on the role of the LAC and focus on the roles and responsibilities of the parties subject to the MOA. The role and responsibilities of the LAC are in OAR chapter 603, divisions 90 and 95 and have not changed. The relevant rules are cited in the MOA and the agencies did not revise the MOA in response to this comment.</p>

Action	Topic	Comment	Response Text
Out of MOA scope (cont.)	CAFO permitting and compliance improvements	Applications from demonstrably proven “bad actors” (e.g., record of fraud, past environmental crimes or violations) should be held to stringent, high review standards, and such applicants should be required to post sufficient bonds to cover the costs of cleaning up any resources damages. If permitted projects are unable or unwilling to comply with permit conditions and requirements, then their permits should be revoked, project activities should cease, and the costs of correcting resulting harms should be provided by the responsible party. A reasonable time period to remedy non-compliance may be acceptable, but should not serve to excuse protracted, open-ended violations to occur indefinitely, year after year. If all applicable regulatory processes have been followed, as we were informed regarding the Lost Valley Farm CAFO, and we can still experience the environmental debacle that occurred there, then something is wrong, and broken, and needs fixing.	The suggested improvements to the CAFO permitting and compliance processes are outside of the scope of this MOA, so the agencies did not make revisions in response to this comment.
	Air quality and emerging contaminants	The CTUIR would also welcome greater coordination among State agencies regarding air quality considerations consistent with the language drafted in 2008 but not put into action. The effectiveness and evaluation criteria should generally be updated and informed by the most up-to-date science, include emerging issues like Per- and Polyfluoroalkyl Substances (PFAS), and improve integration of agricultural actions impacting air quality and soil health.	Because the MOA is limited to coordination on water quality goals, this comment on air and soil quality issues is outside the scope of the MOA. The agencies did not make revisions to the MOA in response to this comment.
	SIA support	The CTUIR's landscape includes examples of where the collaboration and tools available to the agencies are improving on-the-ground conditions. We are seeing improvements and fully support continuing the two Strategic Implementation Areas (SIAs) in the Umatilla Basin and the Walla Walla subbasin. We continue to assess floodplains and develop River Vision action plans, and believe that the Grande Ronde Basin may be a third potential SIA that could benefit from similarly-focused efforts.	The agencies appreciate the comments of support for the SIA process. Selection of SIAs is outside the scope of the MOA, but the agencies encourage CTUIR to provide relevant data and information regarding the Grande Ronde Basin through the SIA process. Over time, ODA plans to continue using the SIA process in all agricultural areas of the state. The agencies did not make revisions to the MOA in response to this comment.
	Lower Umatilla Basin Groundwater Management Area	Unfortunately there are examples that lead us to the conclusion that existing inter-agency arrangements could be improved. In addition to concerns related to the Lost Valley Farm CAFO mentioned above, we are also concerned about the Lower Umatilla Basin Groundwater Management Area (LUBGWMA) water quality problems, which negatively impacts the community's ability to access and trust safe drinking water. Reviewing the state's tools and varied agreements in the context of the ongoing nitrate contamination issues there would be incredibly instructive to improving water quality protection and restoration efforts and mechanisms such as MOAs. Such a review, if it is not already occurring, should be conducted and shared publicly to demonstrate the State's responsiveness to an issue that directly impacts the health and well-being of Oregonians.	Section I.2. specifically notes that CAFOs and GWMA's are not addressed in this MOA, so the agencies did not make changes in response tot his comment. However, the agencies appreciate the suggestion of evaluating lessons learned from the referenced examples and will keep this in mind during MOA development/amendment processes specific to those topics.

Action	Topic	Comment	Response Text
Out of MOA scope (cont.)	General out of MOA scope	<p>(Benke) Hayes was pleased to see recognized in the draft MOA the distinction between "establishing" and "implementing" TMDLs but disappointed by the inexact language used in section III. 2. d. of the draft MOA. For example, the draft MOA states that "TMDLs include analysis and conclusions on how much pollution must be reduced from both point sources, such as wastewater treatment plant, and from nonpoint sources such as agricultural lands and operations." That language allows for several interpretations depending on how the word "pollution" is construed and it inexplicably evades mention of agricultural stormwater discharge. Hayes recommends the following text: "TMDLs specify the maximum pollutant loading allowable from point and nonpoint sources as Wasteload Allocations ("WLAs") and Load Allocations ("LAs") respectively. Point sources include wastewater treatment plants and Concentrated Animal Feeding Operations ("CAFOs"). Nonpoint sources include agricultural stormwater discharge (or runoff) from the land application of manure in accordance with a CAFO's Nutrient Management Plan.</p> <p>(Benke) ODA should adopt as a rule an AWQMAP specifically for the Tillamook Bay Watershed or adapt the North Coast Basin AWQMAP to include "pollution prevention and control measures." Of further concern to Hayes Oyster Company is the State of Oregon's continued failure to comply with the federal mandate of 33 USC§ 1329(b)(4), that "A State shall, to the maximum extent practicable, develop and implement a management program ... on a watershed-by--watershed basis ... ". As Hayes Oyster Company has pointed out in litigation with ODA, the State of Oregon is required to develop an Agricultural Water Quality Management Area Plan for the Tillamook Bay Watershed. ODA 's reliance on the A WQMAP for the North Coast Basin is insufficient. DEQ's continued representations to USEPA that Oregon's Nonpoint Source Management Program is compliant with Section 319 of the federal Clean Water Act is therefore false. The MOA should specify that ODA will immediately initiate a rulemaking to adopt an A WQMAP for the Tillamook Bay Watershed to implement the 2001 Tillamook Bay Watershed TMDL "zero" Load Allocation for "pastures that have had manure applied to them" (e.g. for agricultural stormwater discharge/ runoff). MOA should specify that ODA will immediately initiate rulemaking to adopt an AWQMAP for the Tillamook Bay Watershed to implement the 2001 Tillamook Bay Watershed TMDL "zero" Load Allocation for "pastures that have manure applied to them."</p>	<p>Because these comments are out of scope of the MOA, no revisions to the MOA were made in response to these comments.</p>

Action	Topic	Comment	Response Text
Out of MOA scope (cont.)	General out of MOA scope (cont.)	<p>(Will Forney) Before representing a stakeholder on an advisory committee, explicit opportunities for private companies, consulting firms, and NGO to participate in the processes of DEQ and ODA do not exist. As the technical capabilities and staffing of both agencies is limited, they often require contracts with outside organizations. These opportunities need to be included. VI.1. Explicit opportunities for the public, private companies, consulting firms, and NGO to engage in the MOA implementation need to be included.</p> <p>(Will Forney) The implementation and enforcement of various implementation plans lacks detail.</p> <p>(Will Forney) "Surrogate measures" need to be specified and examples given.</p> <p>(Will Forney) The current and future extents of DEQ's TMDLs and WQMPs need to be mapped against ODA's Area Plans, Area Rules, and SIAs. For many reasons, including efficiency, it is crucial to understand both where DEQ and ODA have both intersecting and disparate oversight.</p> <p>(Melanie) We can have better water quality by having the county clear out the highway and road ditches again of vegetation.</p> <p>(Will Forney) III.3.a.ii. How do SIAs and WQMPs differ in location? How do they differ in management actions? Data collection, modeling, and analysis? How are they the same?</p> <p>(Will Forney) Budget levels and resources available to conduct the roles and responsibilities for the organizations mentioned in the MOA need to be estimated and detailed.</p> <p>(Will Forney) The document lacks any specific mention of water quantity, irrigation, or runoff and more broadly, hydrology in general. Furthermore, regardless of the existence of a separate MOA, groundwater protection areas are explicitly rejected from the scope of the MOA. None of the issues around non-point source pollution can be addressed without hydrology. This is a major gap in the MOA, and needs to be included. This should include the roles and responsibilities of the OWRD.</p>	<p>Because these comments are out of scope of the MOA, no revisions to the MOA were made in response to these comments. However, the following clarifications and explanations are offered to help commenters better understand to MOA scope and other processes the comments may refer to.</p> <p>The intent of the MOA is to describe the coordination between ODA and DEQ on achieving water quality goals relating to agricultural nonpoint source pollution within each agencies' specific authorities cited in the MOA. DEQ's broad water quality authorities and intersections with other agencies are, by necessity, narrowed to this focus. The Limitation of Scope section discusses additional authorities of ODA, DEQ and other agencies, which are not included in this MOA. In addition, DEQ conducts water quality program work and enters into agreements with local, state and federal agencies, all of which are out of scope of this MOA.</p> <p>Surrogate measures are defined in OAR 340-042-0030(14) and further discussed in OAR 340-042-0040(5)(b).</p> <p>Starting in 2014, ODA has developed and implemented the Strategic Implementation Area (SIA) Process. Since 2014, ODA has worked in 48 SIAs (including 244 12 digit HUC watersheds). The SIA process identifies a geographic areas, usually one or more 12 digit HUC watersheds. After the geographic area is identified a Compliance Evaluation is completed for each agricultural tax lot in the SIA. The Compliance Evaluation includes a remote evaluation of aerial photos and field verification from public view points. The Compliance Evaluation is for streamside vegetation, bare ground, and manure piles. If a concern is identified, ODA follows up with the landowners via the normal compliance and enforcement process. As of April of 2022, ODA has evaluated over 7,500 stream miles, 1.7 million acres, and 20,000 tax lots. Through the SIA process, ODA has contacted over 7,500 landowners. Of the evaluated tax lots, over 96% have been in compliance. ODA has proactively initiated compliance investigations with over 250 landowners through the SIA process.</p> <p>A Water Quality Management Plan is a requirement of a Total Maximum Daily Load. DEQ develops WQMPs for each TMDL issued to describe the framework for TMDL implementation. Required components of WQMPs are detailed in OAR 340-042-0040(l).</p>

Action	Topic	Comment	Response Text
Out of MOA scope (cont.)	General out of MOA scope (cont.)	<p>(CTUIR) the role of this MOA in the context of other MOAs and additional agreements referenced in the draft MOA, and how they work together, is not clear. There are gaps in water quality management that this MOA does not address. For example, this MOA focuses on “streams flowing through agricultural lands or impacted by discharges from agricultural activities” but does not speak to interactions between surface waters and shallow and deep groundwaters, or other agricultural activities, such as pesticide and fertilizer applications and Confined Animal Feeding Operations (CAFOs) that can negatively impact water quality. Without having a clear understanding of whether and how those separate MOAs and agreements fit together, it is difficult to answer the question of whether the MOA is missing critical processes or program elements. Better identification of how the agreements all work together towards improving water quality would also improve transparency and efficiency of the joint process.</p> <p>(Will Forney) The MOA lacks any mention of water quality trading and the roles and responsibilities of either agency. This is an approved means by the EPA and the CWA to achieve water quality standards, yet nowhere is it considered in the document. This is a major gap in the MOA, and needs to be addressed.</p> <p>(Melanie) Please don't allow the giant chicken farming go on in our area because it pollutes the nearby Santiam River, Thomas Creek, and all tributaries due to over water use and seepage from odors and manure and excessive chicken and poultry housing in the chicken in several concentrated poultry farm buildings. We can't be having that on our water systems.</p> <p>(Will Forney) III.2.c. (Regularly Assessing and Reporting on Water Quality Status) - Lakes, reservoirs, and impoundments need to be stated explicitly. Water quality data that also needs to be stated are total nitrogen and organic carbon, dissolved nitrogen and phosphorus, Chlorophyll a, cyanotoxins, PFAs. Data ought to include concentrations, loads, and yields. Data ought to be collected according to federal standards, included in national data repositories (e.g. NWIS), and easily downloaded by the public.</p> <p>(Will Forney) III.2.d. TMDLs and WQMPs need to consider the jurisdiction of USFS and ODF as well. In agricultural watersheds, forestry practices can be large contributors to NPS. Without including them, the DEQ and ODA would only address a portion of the issue.</p>	<p>Because these comments are out of scope of the MOA, no revisions to the MOA were made in response to these comments. The Limitation of Scope section discusses additional authorities of ODA, DEQ and other agencies, which are not included in this MOA. In addition, DEQ conducts water quality program work and enters into agreements with local, state and federal agencies, all of which are out of scope of this MOA.</p>