



Notes: Oregon Environmental Quality Commission

Special Meeting, Aug. 6, 2024

Welcome and Meeting Open

At approximately 9 a.m., Chair Matt Donegan opened the meeting, reviewed DEQ's mission and the day's agenda.

Attendees: Chair Matt Donegan, Vice-Chair Sam Baraso, Commissioner Karen Moynahan, Commissioner Amy Schlusser, and Commissioner Mark Webb.

The meeting was held via Zoom.

Item A: Lower Columbia-Sandy Subbasin Temperature TMDL and Willamette Subbasins Temperature TMDL (Action)

At 9:04 a.m., Jennifer Wigal, DEQ Water Quality Division Administrator, introduced the item, provided background, and referred to previous informational updates on temperature TMDLs DEQ staff presented at EQC meetings in April 2022, May 2022, March 2023, and July 2023.

This item was a two-part presentation about developing DEQ's revised temperature Total Maximum Daily Loads for the Willamette Subbasins and Lower Columbia Sandy Subbasins in Oregon. Staff presented proposed motion language for each TMDL, which is a numerical value representing the highest amount of a pollutant a surface water body can receive and still meets the standards. The presentation covered the project area, the process of developing TMDLs, and the implementation plans for reducing temperature pollution in these water bodies.

These projects aim to address water temperature impairments for fish and aquatic life. The TMDLs are based on data and models from the early 2000s due to time and resource constraints, with climate change impacts acknowledged but not quantified in the modeling process. Point sources and non-point sources are identified as contributors to impaired water bodies, with specific allocations assigned based on these sources of warming. Effective shade is used as an important metric for load allocations for non-point sources. Each TMDL is accompanied by a water quality management plan that outlines strategies for implementation, monitoring, reporting, and adaptive management over time. Public engagement was conducted through meetings, webinars, comment periods, and response documents. Monitoring strategies will be developed in collaboration with government agencies and stakeholders responsible for implementation.

DEQ staff addressed commissioners' questions about data collection, climate change impacts, other pollutant parameters, monitoring strategies, and fiscal impacts. They also discussed how waste load allocations are determined and how dischargers are expected to comply with their allocations. The timeline for implementation plans gives Designated Management Agencies flexibility to conduct streamside evaluations within three years.

Translation or other formats

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Wigal elaborated on why TMDLs must be updated noting the Natural Conditions Criterion, a section of the temperature standard that was subject to litigation and has since been disapproved by EPA. She said the following two TMDLs are only two of 15 projects that must be updated. Wigal said these two TMDLs were issued by DEQ and approved by EPA between 2004 and 2010. She referred to a court order to update and replace these temperature TMDLs to make them consistent with the current temperature standards.

Willamette Subbasins Temperature TMDL (Action)

Wigal provided an overview of the purpose of DEQ's request of the commission to adopt the Willamette Subbasins temperature Total Maximum Daily Loads, or TMDLs, by reference, into rule. Steve Mrazik, DEQ Watershed Management Section Manager, informed the commission of the fiscal impacts of the Willamette Subbasins TMDL and incorporated public input. He also informed commissioners of the environmental justice analysis DEQ conducted and shared with the Rulemaking Advisory Committee. At 9:22 a.m., Erin Costello, DEQ TMDL Analyst, provided additional details about the Willamette Subbasins temperature TMDL replacement. At 9:30 a.m., Grace Goldrich-Middaugh, DEQ Basin Coordinator, highlighted the work underway on the Willamette Subbasins temperature TMDL's water quality management plan, components of the plan, public comments received and addressed, as well as implementation and tracking plans.

Chair Donnegan invited comments from commissioners. Commissioner Schlusser asked for clarification on the source and timing of the TMDL data for both subbasins and how it interplays with DEQ's report on climate change impacts as temperatures continue to increase. Costello responded and said DEQ primarily used the existing models and data.

Commissioner Webb commented on the importance of monitoring and expressed interest in seeing what a monitoring strategy looks like. He also asked for clarification about other impairments that DEQ could address. Wigal's response covered information on existing pollutant parameters and the goal of addressing multiple parameters at the same time. She said the court order did not allow time for that in these projects. Wigal said staff will provide more information about pollutant parameters at the November 2024 EQC meeting. Costello responded to a question from Commissioner Webb about allowable warming for TMDLs. Commissioners asked for information on shade restraints and changes in vegetation from a restoration perspective. Commissioners expressed interest in understanding how the modeling works and the opportunities it provides, given the focus on shade, to allow treatments that remove shade to address other treatments.

Commissioner Moynahan asked Costello about the approach to considering fiscal elements as they relate to compliance. Costello said DEQ did not consider economic impacts in analysis and instead obtained more data and performed additional analysis. Vice-Chair Baraso acknowledged the work that went into the TMDLs and asked about the implementation timeline. Wigal noted that DEQ has had temperature TMDLs on the Willamette for six years and said DEQ has already been engaging in implementation and reviews. Costello added that DEQ will continue to track the progress of the TMDLs and conduct outreach to ensure continued implementation under previous plans and prepare for future plans. Director Feldon added that DEQ has routinely had conversations with the EQC about implementation and future TMDLs. She said DEQ will continue to provide updates.

Chair Donnegan asked about the fiscal impact in rural communities, of the rule. Wigal addressed the Chair's questions with information about the analysis and the anticipated incremental impacts.

Action: Adopt the proposed rules as seen in Attachment A as part of Chapter 340, Division 42 of the Oregon Administrative Rules and to incorporate, by reference, the Total Maximum Daily Loads Willamette Subbasins, Temperature (Attachment B) and Water Quality Management Plan (Attachment C) for temperature.

Move: Commissioner Mark Webb

Second: Vice-Chair Sam Baraso

The commission approved the motion unanimously.

Lower Columbia-Sandy Subbasin Temperature TMDL (Action)

At approximately 10:18 a.m., David Fairbairn, DEQ Water Quality Analyst, presented the proposed rule to adopt the Lower Columbia-Sandy Subbasin Temperature TMDL, by reference, into rule. He provided a high-level overview of the development of the proposed rule.

The presentation included information on sources of heat, shade gap analysis and shade target assignments, as well as wasteload allocation for NPDES general permittee, ODFW fish hatchery and enhanced models and results

Staff also presented information on WQMP requirements and timelines to submit TMDL implementation plans the same as the Willamette Subbasins WQMP. Changes to the proposed rules based on public input include clearer requirements and more time to complete the streamside evaluation, clarification that shade targets are regulatory and can be used to assess implementation progress, and acknowledgment of Water Quality Trading as a compliance tool.

Commissioner Webb asked clarifying questions about the shade gap analysis. Fairbairn responded with information about the modeling conducted which included the restoration of many types of human-altered landscapes and other assessments. Commissioner Webb asked additional clarifying questions about the impacts to public versus private parties. Wigal noted that Commissioner Webb's questions cover important elements that require DEQ's continued commitment to work with the Department of Agriculture to bring certain considerations into the implementation process.

Action: Adopt the proposed rules as seen in Attachment A as part of Chapter 340, Division 42 of the Oregon Administrative Rules and to incorporate, by reference, the Total Maximum Daily Loads for the Lower Columbia-Sandy Subbasin, Temperature (Attachment B) and Water Quality Management Plan (Attachment C) for temperature.

Move: Vice-Chair Sam Baraso

Second: Commissioner Mark Webb

The commission approved the motion unanimously.

Break

At approximately 10:45 a.m., the commission took a short break. Chair Donegan reconvened the meeting at approximately 10:56 a.m.

Item B: 2025-27 Agency Request Budget Certification (Action)

Matt Davis, DEQ Policy and External Affairs Manager, presented a summary of DEQ's 2025-27 Agency Request Budget for the commission's final review and requested approval for Chair Donegan to certify the budget submittal. Davis provided information to the commissioners on the biennial budget cycle, DEQ's ARB development process, key considerations and a summary of the request. Vice-Chair Baraso asked clarifying questions about trends.

Action: Authorize Chair Donegan to sign the DEQ 2025-27 Agency Request Budget certification form on behalf of the commission as part of the agency's Sept. 1, 2024, budget submittal to the Governor.

Move: Commissioner Karen Moynahan

Second: Commissioner Mark Webb

The commission approved the motion unanimously.

Item C: Contested Cases Overview (Informational)

Director Feldon introduced this item and highlighted the process DEQ must follow when responding to contested cases and discussed the commission's role in decision making in an adversarial process. She also informed the commissioners of the types of materials that will come before them in general as well as materials pertaining to the three contested cases DEQ will bring to the commission in the fall of 2024.

Becka Puskas, DEQ Interim Manager of the Office of Compliance and Enforcement, provided an overview of a contested case process and the partnership between DEQ's compliance and enforcement work and the Department of Justice. Puskas outlined the procedural rules and authorities that govern aspects of DEQ's administrative procedures that are unique to DEQ, as well as the civil penalty rules to assess penalties. Commissioner Webb asked a clarifying question about the burden of proof to which Puskas responded.

Gary Vrooman, EQC Counsel with the Department of Justice, provided the commissioners with an overview of the Administrative Law Judge's conclusion of the law and the briefing process. Commissioner Webb asked clarifying questions about ex-parte communication to which Vrooman discussed the best practices for responding to ex-parte communications from the perspective of fairness and openness of the process. Commissioner Moynahan asked about the determination of a finding of fact and exceptions and access to the record to which Vrooman confirmed commissioners will have access to the full record.

Commissioner Schlusser asked clarifying questions about deliberations to which Vrooman confirmed both the oral argument, or hearing, and deliberations are public. Commissioner Webb asked clarifying questions about historical facts and the relevance of the different standards.

Adjourn Meeting

Prior to adjournment, Chair Donegan and Director Feldon expressed appreciation to Vice-Chair for staying on after his second term ended in June. He ensured a smooth transition during the appointments of three new commissioners. Vice-Chair Baraso said it's been his privilege to serve on the commission.

Chair Donegan adjourned the meeting at approximately 12:11 p.m.

Other Resources

- [Zoom recording](#) – passcode: 3t89.rh!
- [August 2024 EQC webpage](#)

Non-discrimination statement

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