

Date: Nov. 6, 2024
To: Environmental Quality Commission
From: Leah Feldon, Director
Subject: Agenda item B, Action item: Petition to Change the Three Basin Rule
Nov. 21-22, 2024, EQC meeting

**DEQ
recommendation
to the
commission**

DEQ recommends that EQC direct DEQ to initiate rulemaking proceedings to revise the Three Basin Rule in accordance with ORS 183.335, to allow NPDES permits under limited circumstances a consistent with the stated objectives of the rule.

The Oregon Department of Environmental Quality’s recommendation seeks to keep the intention of the Three Basin Rule, to preserve or improve the high-quality water of the Clackamas, McKenzie (upstream of river mile 15) and North Santiam Basins. However, DEQ recommends that the rule should be amended to acknowledge the advances made in wastewater treatment since the EQC originally adopted the Three Basin Rule in 1976 and the need to replace legacy treatment systems with improved treatment. The current rules create a barrier for communities to consider various treatment and discharge options.

Recommended motion language:

“I move that the Oregon Environmental Quality Commission direct DEQ to initiate rulemaking proceedings to revise the Three Basin Rule in accordance with ORS 183.335 to allow NPDES permits under limited circumstances consistent with the stated objectives of the rule.”

Marion County has petitioned for rulemaking to revise the Three Basin Rule. The proposed revisions are intended to remove certain restrictions and prohibitions such that DEQ could issue National Pollution Discharge Elimination System permits as long as such a permit would preserve and improve high quality water in the three basins in line with the objectives of the Three Basin Rule.

In proceeding with rulemaking, DEQ would propose to revise the petition’s proposed rule language during the rulemaking process. Several aspects of the proposed rule language are unclear, pose challenges to implementation and need additional specificity, or are redundant with other requirements. These are discussed in the Policy Issues section that follows.

Rulemaking proceedings would include development of revised rule language, convening and holding meetings with a rule advisory committee, a public comment period including a public hearing, and presenting a final rule to EQC for adoption. This rulemaking is expected to require at least 10 months to a year to complete.

Overview

Background on rulemaking petitions

Oregon law allows any person to petition an agency to promulgate, amend or repeal a rule. Oregon Revised Statute 183.390 and administrative rules at OAR 340-011-0046 and 137-001-0070 describe the requirements for the petition and for agency review. The petition to amend a rule must clearly show the proposed rule revisions and provide facts and arguments supporting the proposal. According to the statute, the agency must either deny the petition or initiate rulemaking proceedings within 90 days of receiving the petition.

Upon review, EQC may: deny the petition, direct DEQ to initiate rulemaking proceedings, or deny the petition but direct DEQ to take some other action.

In reviewing a petition to amend or repeal a rule, EQC shall consider several questions listed in OAR 137-001-0070 and ORS 183.390. Each of these considerations is discussed in the DEQ Evaluation of the Petition section below.

Background on the Three Basin Rule

The EQC adopted the Three Basin Rule in 1976 to preserve and improve the existing high-quality water for municipal water supplies and recreational uses in the North Santiam, McKenzie and Clackamas Basins (Figure 1). There are few records regarding why these basins were provided special protection, although they provide drinking water for a large portion of the population in the Willamette Valley including Eugene/Springfield, Salem/Keizer, and many communities in the Clackamas watershed (Figure 2). The rule, which last underwent substantial revisions in 1995, among other provisions, prohibits new or increased wastewater discharges to surface waters that require an individual National Pollutant Discharge Elimination System permit.

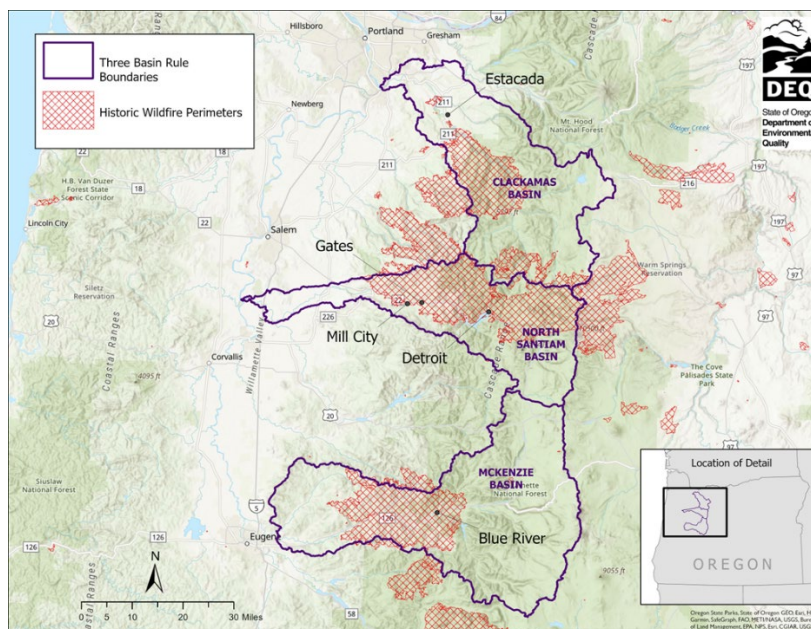


Figure 1: North Santiam River, McKenzie River and the Clackamas River Basins

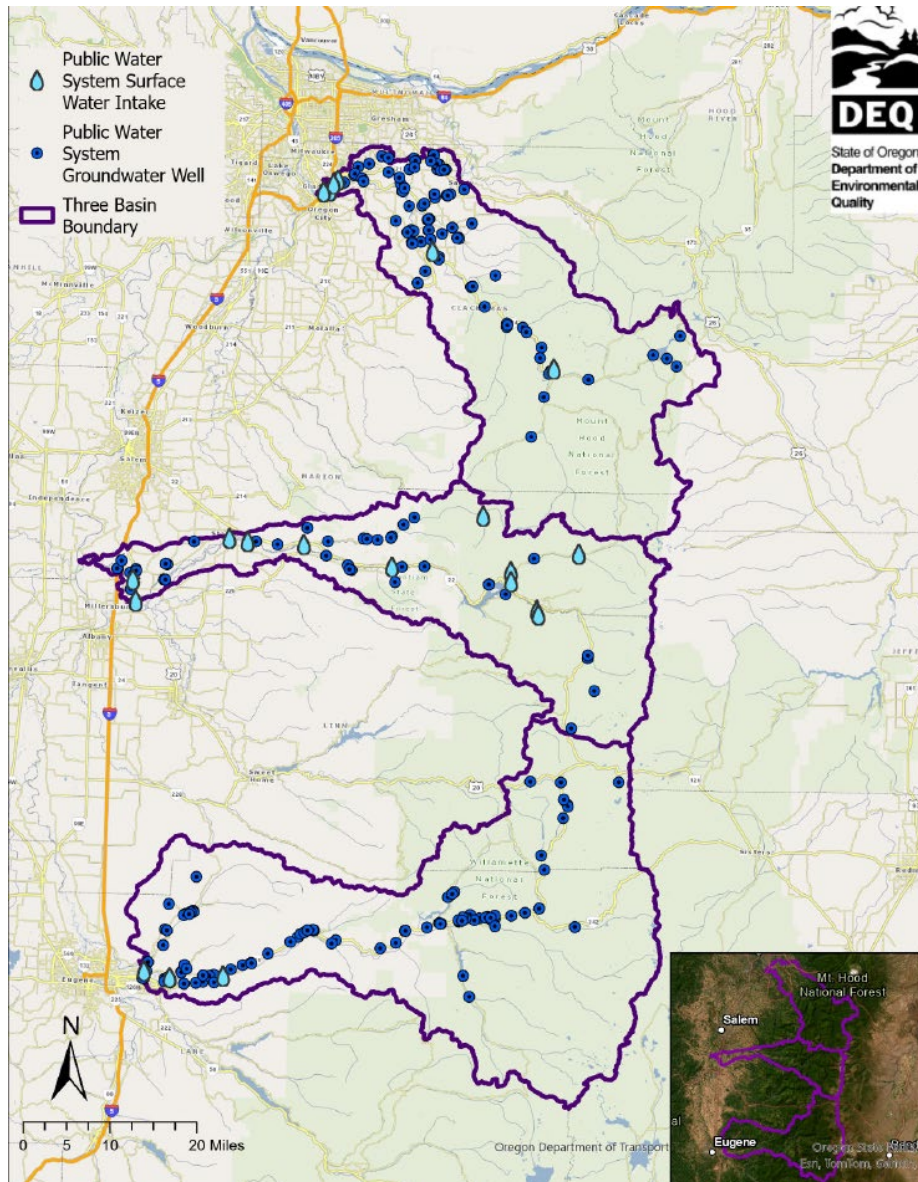


Figure 2: Drinking water intakes in the Three Basin Rule area.

The Three Basin Rule places limits on pollution discharges for domestic wastewater treatment systems in the North Santiam, McKenzie and Clackamas basins. Specifically, no new or increased wastewater discharges are allowed that would require a NPDES permit for direct or indirect discharges to surface water. There are exceptions for certain operations, such as construction stormwater runoff. New domestic sewage treatment systems are allowed under a Water Pollution Control Facility (subsurface discharge) permit under certain conditions.

Background on petition

The North Santiam Canyon communities of Mill City, Gates, Detroit, and Idanha were heavily affected by the Beachie Creek and Lionhead wildfires in 2020. In May 2020, these communities recognized their shared interests in the long-term economic

vitality of the canyon and health of the North Santiam River watershed and formed the North Santiam Sewer Authority, or NSSA, to address the collective need for a canyon wastewater solution. Marion County has supported NSSA by staffing and contracting for a wastewater master plan. The plan recommended two wastewater projects: one serving the Mill City and Gates basin, and one serving the Detroit and Idanha basin. Mill City currently operates a wastewater treatment system that is permitted under a Water Pollution Control Facility permit.

Marion County received \$50 million in funding under the American Recovery Planning Act to construct a new wastewater treatment plant in Mill City (Figure 3). The proposed location of the new wastewater treatment plant is near the location of Mill City’s current plant, about a ¼ mile from the North Santiam River. The proposed design includes treatment using a sequencing batch reactor system that then discharges into the groundwater through rapid infiltration galleries. Homes outside of Mill City currently rely on onsite septic systems, many of which are old and were damaged by the 2020 wildfires. The proposed system would serve about 2900 people. Marion County states that they must use the ARPA funding before the end of 2026 according to federal guidelines.



Figure 3: Proposed location for Marion County’s wastewater treatment plant

Due to the location of the proposed wastewater treatment plant and the engineering to date, evaluations indicate that the proposed groundwater discharge is likely to travel to the nearby surface water, i.e., the North Santiam River. Due to a recent U.S. Supreme Court ruling (*Hawaii v. Hawaii Wildlife Fund et al.*, also referred to as the *Maui Decision*), any groundwater discharge that is “functionally equivalent” to a surface water discharge must be issued an NPDES permit. Because the Three Basin Rule does not currently allow new NPDES permitted facilities, the petitioners are concerned that the proposed wastewater treatment plant would not be permissible.

Due to these concerns, Marion County submitted a [rulemaking petition](#) to EQC and DEQ on Aug. 30, 2024 requesting amendments to the Three Basin Rule ([OAR 340-041-0350](#)). Marion County's proposed petition would amend the Three Basin Rule to allow a narrow exception to the prohibitions in the Three Basin Rule. The amendments include allowing DEQ to issue a new NPDES permit only for a new publicly owned treatment works utilizing groundwater discharge. According to the petition's proposed revisions, DEQ would only be able to issue a new NPDES permit if it made certain findings, including that the discharge is or is likely to be a "functional equivalent" and after concluding that the discharge will preserve or improve the existing high-quality water for municipal water supplies, recreation and preservation of aquatic life in the three basins. The petition also adds a definition for "groundwater discharge" into the Three Basin Rule.

On behalf of EQC, DEQ requested public comment on the petition. In accordance with ORS 183.390(2), DEQ specifically requested comment on whether options exist to achieve the rules' substantive goals in a way that reduces potential negative economic impact on businesses.

If EQC directs DEQ to initiate rulemaking proceedings, DEQ recommends revising certain aspects of Marion County's petition's proposed rule, as noted in the following Evaluation of Rule Amendments Proposed by the Petition section to ensure that the rule is clear and implementable. DEQ will form a rule advisory committee to review the proposed language and a fiscal impact statement before opening a public comment period and bringing a final proposed rule back to EQC for action.

Evaluation of rule amendments proposed by the petition

Marion County's petition proposes adding a definition for the term "Groundwater Discharge" to OAR 340-041-0350(3). The proposed definition states:

"Groundwater discharge" means the disposal, deposit, or placement of treated wastewater effluent or other fluid below the ground surface or the disposal, deposit, or placement of treated wastewater effluent or other fluid to the ground surface in a manner and location where it is reasonably assumed the treated wastewater effluent or other fluid will infiltrate the ground surface and impact the groundwater resources of the state."

The proposed rule also adds a new section OAR 340-041-0350(7). The new section would allow DEQ to issue a new NPDES permit for a new publicly owned treatment work, or POTW, utilizing a groundwater discharge. DEQ would be required to make certain findings before issuing such a permit. These findings include the following:

1. The groundwater discharge is or is likely to be the functional equivalent to a direct discharge from a point source into navigable waters;
2. The new POTW results in the best practicable treatment or control of the discharge necessary to maintain or improve water quality consistent with the beneficial uses for the receiving water;
3. The new publicly owned treatment works treats the wastewater discharge to equivalent to secondary treatment standards or higher;

4. All relevant statutory and regulatory requirements for all new point source discharges and all reasonable best management practices for nonpoint source control are achieved;
5. The groundwater discharge will preserve or improve the existing high quality water for municipal water supplies, recreation, and preservation of aquatic life in the Clackamas, McKenzie, and North Santiam basins. This provision also notes that DEQ may consider emerging contaminants in making this finding.
6. Any bypass or upset from the publicly owned treatment works that results in untreated wastewater effluent shall be contained, transported offsite, or directed to the groundwater discharge location. Untreated wastewater shall not be directly discharged to any surface water body; and
7. The groundwater discharge is located a sufficient distance from the rivers in order to provide reasonable additional protection above and beyond that required by the NPDES Permit.

This last finding notes that the factors to be considered in locating the discharge include increased travel time, groundwater dilution, and attenuation of the discharge. It also states that in no event shall the groundwater discharge be located closer than 500 feet from the nearest ordinary high-water mark.

Sections 7, 8 and 9 of the existing rule were renumbered in the proposed rule language due to the addition of new Section 7.

DEQ has identified a number of concerns with the proposed rule language. For example, proposed rule provisions in OAR 340-041-0350(7)(b)-(d) are unnecessary, as they are redundant with other existing requirements for POTWs. In addition, the rule is vague as to how DEQ would determine that a discharge will preserve or improve existing high-quality water or how DEQ should consider emerging contaminants. DEQ would propose additional specificity for this requirement.

Policy issues

Limitation of applicability to “functionally equivalent” discharges

As noted above, the proposed rule limits its applicability only to public-owned treatment works and only to groundwater discharges that are functionally equivalent to direct discharges due to the *Maui* decision. As noted above, there may be circumstances in which a direct discharge is preferable; for example, it may be better in some situations to have a POTW directly discharge if an indirect discharge would impact groundwater quality in general or because of the location of a drinking water intake. Given this, preferential treatment for functional equivalent discharges may not make sense as a policy matter.

Finding of preserving or improving the existing high-quality water

The proposed rule language requires DEQ to make a finding that a new POTW would preserve or improve the existing high-quality water for municipal water supplies. DEQ would require data collection and a detailed study in order to make that finding for any particular instance. As noted above, DEQ recommends adding detail to this proposed provision to provide clarity regarding what this requirement would entail.

Groundwater Discharges

Marion County’s proposed rules have several provisions related to groundwater discharge. Some of these provisions may be in conflict with the Groundwater Quality Protection Rules under OAR 340-40. These rules state that “all groundwaters of the state shall be protected from pollution that could impair existing or potential beneficial uses for which the natural water quality is adequate” (340-40-0200(3)) and “the EQC shall employ an anti-degradation policy to emphasize the prevention of groundwater pollution, and to control waste discharges to groundwater so that the highest possible water quality is maintained” (340-40-0020(2)). Therefore, any expected discharges of wastewater to the ground should be protective of both groundwater and surface waters. Modification to the proposed rules in the petition are necessary to align with the state’s groundwater protection rules.

Timing

As noted in the recommendation section, any revision to the Three Basin Rule will require an administrative rulemaking process. For revisions to water quality standards and related policies, rulemaking procedures generally consist of the following steps:

1. Initial project planning
2. Research and development of proposed rule language
3. Convening an advisory committee
4. Development of a fiscal impact statement
5. Advisory committee meetings
6. Public comment period and public hearing (45 days)
7. Review of public comments, preparing responses to comments, and revising the rule based on public comments
8. EQC presentation and action

In DEQ’s experience, the rulemaking process takes a minimum of 10 months to a year and frequently longer depending on the complexity of the issue.

Permit issuance

If DEQ were to move forward with a rulemaking, as recommended, the timeline for any issuance of an NPDES permit for the proposed wastewater treatment facility in Mill City will also be dependent on the need for and evaluation of relevant information. At this point in the process, DEQ does not have sufficient information to forecast a specific permit issuance timeline. While permit development work and a rulemaking could process on parallel tracks, a NPDES permit cannot be issued until after rule revisions are adopted and only if Marion County meets the requirements included in the final rule adopted by EQC.

DEQ evaluation of the petition

Petition requirements

DEQ evaluated whether the petition met the requirements contained in Attorney General rules for petitions found at OAR 137-001-0070. The following is a summary of DEQ’s evaluation.

- 1. The petition meets the requirements in OAR 137-001-0070 (1) and (1) (a).**

As required, the petition provides information about the petitioner. (Attachment A, page 1). As required, the proposed rule amendments are correctly placed within the OAR 340-041 and clearly indicate all additions in bold and underlined type. There are no proposed deletions of rule language. (Attachment A, pages 5-10)

2. The petition meets the requirements in OAR 137-001-0070 (1) (b) and (c).

The petition includes facts and arguments in support of the proposed rule amendments (Attachment A, pages 1-3).

- The petitioners' reasons for and assessment of the effects of the proposed rule amendments are included in the Petition (Attachment A, pages 1-3) and summarized in the section below titled "Reasons for and effects of the proposed rule amendments."
- The petition does not explicitly contain a statement of the propositions of law in the petition but cites the federal Clean Water Act and the Supreme Court's *Maui* decision as reasons why it is proposing rule amendments.
- The commission's statutory basis for regulating water quality in Oregon and adopting the proposed rule amendments comes from ORS 468B.010, 468.015 and 468B.035.

3. The petition addresses each of the requirements of OAR 137-001-0070 (2) (Attachment A, pages 3-5). DEQ finds that the petition addresses these factors, as described below.

(a) Options for achieving the existing rules' goals while reducing the negative economic impact on businesses:

The petition notes that the tourism economy in Marion County relies heavily on the North Santiam Basin and that the proposed rule would allow the economies of these communities, which were impacted by the 2020 wildfire, to rebuild, resulting in a positive economic impact.

(b) The continued need for the existing rule:

The information contained in the petition meets this requirement. The petition supports the continued need for this rule to protect high quality water of the Three Basins.

(c) The complexity of the existing rule:

The petition comments on the complexity of the rules by asserting that they conflict with Supreme Court precedent due to the *Maui* decision.

DEQ disagrees with the statement made by the petitioners that the Three Basin Rule conflicts with Supreme Court precedent. The petitioners view the *Maui* decision as problematic because the rule generally prohibits new NPDES permits, while in some cases allowing WPCF permits. Based on this, the Three Basin Rule distinguishes between surface and groundwater discharges and generally prohibits new surface discharges with the goal of preserving the surface water quality. The *Maui* decision determined that in certain scenarios—for example where there is limited distance for pollutants to travel—there may be no practical difference between a discharge to

surface water when compared to a discharge to nearby groundwater in the way that the pollutants ultimately impact the water body. As a goal of the Three Basin Rule was to preserve the quality of surface water, and correspondingly drinking water, it seems that limiting discharges to groundwater that are functionally the same as a discharge to surface water would be consistent with the Three Basin Rule and the Clean Water Act.

(d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations:

The petition states that the existing Three Basin Rule conflicts with Supreme Court precedent and could prevent certain communities from complying with state and federal regulations by prohibiting the issuance of new NPDES permits. The petition also states that the ambiguity of defining the “functional equivalent of a direct discharge” under the *Maui* decision creates substantial risk for communities operating with any form of groundwater discharge without an NPDES permit. As noted in the section above, DEQ disagrees with the statement that the existing rule conflicts with Supreme Court precedent. DEQ agrees that there may be risks for certain communities within the three basins operating groundwater discharges that may be the functional equivalent of a direct discharge, but depending on site-specific conditions and needs, there may be options for addressing these in a manner consistent with the Three Basin Rule.

(e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule:

The petition comments on this requirement, discussing improvements in wastewater treatment since the Three Basin Rule was originally adopted nearly 50 years ago and the pressures created by wildfire recovery and population growth in the Three Basins that necessitate the need for the proposed rule.

4. As required by OAR 137-001-0070(3), DEQ invited public comment on the rule amendments proposed by the petition and requested comment on whether options exist for achieving the substantive goals of the rule in a way that reduces the negative economic impact on businesses. DEQ received 40 comments. The comments received are summarized in the section titled “Summary of public comments” below.

Summary of public comment

Public notice

DEQ requested public comment on the petition and proposed rules. DEQ asked for comment by:

- Sending a GovDelivery email on Sept. 6, 2024, to the water quality standards rulemaking list.
- Posting information about the petition on DEQ’s [Three Basin Petition rulemaking petition website](#).

Request for other options

During the public comment period, DEQ requested public comment on whether options exist for achieving the rules' substantive goals in a way that reduces the negative economic impact on businesses as required by OAR 137-001-0070(3).

Comments

This report summarizes comments received by the close of the comment period at 5 p.m. on Oct. 6, 2024. DEQ received 40 comments. The comments were sorted into four categories: 1) support for the petition with 26 responses, 2) qualified support for the petition with 5 responses, 3) comments supporting denial for the petition with 7 responses, and 4) neutral position for the petition with 2 responses.

DEQ is not required to write a response to comments on the petition, and given the expedited nature of this process has prepared the following summary of comments for the commission's reference.

Key themes from each category of comments

Support for the petition

Comments related to need and urgency of adopting the proposed rule

- Marion County was awarded \$50 million in American Rescue Plan Act funding. There is an urgency to make this rule change due to ARPA funding deadlines in December 2026.
- The Three Basin Rule prohibits an NPDES permit which would be required under the *Maui* Decision.
- Marion County stated they can't design a system to avoid a *functionally equivalent* indirect discharge as established under the *Maui* Decision.
- An operator of wastewater system could be challenged in court for a functionally equivalent indirect discharge without an NPDES permit.
- The commission should consider an emergency rulemaking process under ORS 183.335(5) to immediately adopt the petition as proposed.
- There is friction between federal and state laws that prohibits communities from rebuilding their sewer and wastewater infrastructures.
- The Marion County planned wastewater project is in limbo due to regulatory burdens, to jeopardize future funding allocations, and to watch the recovery of these communities' lag because of it.
- Three Basin Rule prevents the construction of any new community water collection systems in the North Santiam Canyon, where such facilities should be required instead of relying on widespread use of septic systems.
- Because of the Three Basin Rule's prohibition on new NPDES permits in the North Santiam Subbasin, the Supreme Court's decision in Maui created a predicament that will prevent the permitting of North Santiam Sewer Authority's Mill City Expansion Project and other projects that were considered in compliance with the Three Basin Rule when it was first adopted.
- Given engineering, topography and land use restraints, it is likely impossible for North Santiam Sewer Authority to identify and procure land that is suitable for rapid infiltration given the combined restraints of Maui and the current Three Basin Rule.

- A WPCF permit does not have the same level of oversight or the range of remedies and thus offers a less robust protection than an NPDES permit.
- There has to be some exceptions in laws and rules when warranted! This is the time and place for an exception.

Comments related to economic development

- Rebuilding is at a virtual standstill especially in Detroit because of the lack of a viable sewer system.
- The changes to the rule will allow local communities more flexibility in how they manage and treat wastewater in these areas.
- This rule change would be a huge incentive for business owners and prospective new businesses to want to build in Detroit.
- Allow rural communities to rebuild back from the 2020 wildfires and chart a sustainable future.
- We recognize that smart economic development must go hand-in-hand with environmental stewardship.

Comments related to improved treatment and environmental protection

- These rule changes come with protections to keep water quality high in our rivers and streams.
- These changes represent modest but necessary changes that will leave most of the Rule's main provisions intact.
- Petition would provide higher levels treatment standards under an NPDES permit than a state permit (e.g. WPCF).
- The outdated, inadequate and failing wastewater treatment systems currently employed in the North Santiam Basin are more likely to contribute to the degradation of these ecosystems than a permitted wastewater collection and treatment system.

Qualified support for the petition

Comments related to involvement in the rulemaking process

- The Clackamas River Water Providers would like a seat at the table during a rulemaking process to ensure more specific/protective language is included in the modified rule to protect source water.
- The City of Sandy urges a broader reconsideration of the Three Basin Rule to allow their discharge to be expanded while protecting water quality, fisheries and aquatic life ecosystems, drinking water sources, agricultural usage, and recreational benefits of the Clackamas River drainage. (The City of Sandy has an NPDES permit issued prior to the revision of the 3-Basin Rule. However, the city cannot expand per the rule.)
- The Grand Ronde Tribe requests consultation on draft NPDES permits or other amendments to the Three Basin Rule.

Comments on the limitations of the Three Basin Rule

- The Three Basin Rule as it is currently structured inequitably places the financial burden of treatment solely on upstream communities and not on the downstream communities which benefit from that treatment.

- Although the specific issues faced by Marion County are different in nature than those the City of Sandy faces, and the narrow amendment Marion County has proposed will therefore not serve to alleviate the regulatory pressure on the City of Sandy, the core issue is the same: the Three Basin Rule's goals are noble, but the mechanisms by which it achieves those goals are not in alignment with current science and the needs of the State.

Comments on improvement of the petition

- Requiring NPDES permits *in certain cases* may be more stringent than the current WPCF standards as it would create regulatory standards and distances between the point of groundwater infiltration or injection and surface waters, mandate that these new facilities maintain or improve water quality and would not apply to, or allow, direct discharges to surface water.
- The Grand Ronde Tribe support is limited to amendment's narrowest application for the planned wastewater treatment system in Mill City.
- The Grand Ronde Tribe requests that the amendment only applies when best treatment practices are used, and only when water quality is preserved or improved as measured at the point where groundwater interacts with surface water.
- DEQ should monitor for impacts after construction of a wastewater treatment system. If deleterious impacts are found, then, that information should influence subsequent reviews and approvals for similar construction proposals in the Three Basins.
- Orenco STEP Systems could be cost efficient, scalable for future growth, and has a minimal environmental footprint and provide another treatment alternative.

Denial of the petition

General concerns

- We are concerned that the proposed amendment might lessen the current protections of the Three Basin Rule, and/or set precedent for further amendments.
- What was the minimum buffer of 500 feet for an indirect discharged based on?
- Amendments to the rule should not be based on fiscal impacts to compliance with existing rules.
- The amendment would authorize new groundwater discharges by treating aquifers as a pipe or conveyance to surface water.
- Evaluation the petition under ORS 183.390 conflicts with ORS 468 and other statutes to protect public health and the environment.
- This proposed rule change would create a slippery slope for other potential permittees who want to discharge to the groundwater resource, to get around the "no new or increased wastewater discharges" allowed under a NPDES permit or would like a WPCF permit for something besides disposal of treated wastewater to the land.
- The proposed change contains very vague wording; "meets certain requirements" which could be any standard.

Protection of surface water, groundwater and beneficial uses

- Amending the Three Basin Rule to allow new NPDES permits will threaten the high quality of water by increasing the pollutant load in each subbasin, which goes against the Rule's purpose and intent of preserving the subbasins' high-water quality.
- The "cost" of rebuilding should not compromise the integrity of our regulations that protect ecosystems, ecosystem benefits, and communities' water supply, as there is a palpable price tag to degrading the quality of the North Santiam, Clackamas, and McKenzie drinking water supplies.
- Long-term assurances of a safe and adequate drinking water supply also help to protect property values and preserve the local and regional economic growth potential for the area. These economic factors should be included in any assessment of a Three Basin rule change.
- Oregon rules need to project surface water and groundwater beneficial uses.
- Groundwater quality and surface water quality are related and diminishing groundwater quality has negative impacts on the surface waters which the Clean Water Act seeks to protect.
- EQC should take a precautionary approach to protecting groundwater and not have another lower Umatilla groundwater management unit that will take decades to remedy.
- EQC should consider emerging chemicals like perfluoroalkyl and polyfluoroalkyl substances (PFAS) impacting groundwater and surface water.
- All groundwaters of the state shall be protected from pollution that could impair existing or potential beneficial uses for which the natural water quality of the groundwater is adequate.
- The petition lacks a substantive antidegradation analysis for groundwater and surface water.

Recommendations for considering other alternatives that do not require amendments to the Three Basin Rule

- There are other options for disposing of wastewater - (1) treat their wastewater in a manner that does not result in any new or additional pollutant loading and/or (2) not place their wastewater treatment systems in a location that would serve as a "functional equivalent" of a discharge to a surface water body.
- Petitioner created a conflict where it does not need to exist because, so long as a new WPCF facility is not constructed in proximity to the North Santiam, McKenzie, or Clackamas Rivers that would serve as a "functional equivalent," there is no need for an NPDES permit.
- Marion County could instead help their residents and businesses by installing Alternate Treatment Technologies as a replacement for septic systems that were destroyed in the fire.
- There was no evidence of feasibility studies indicating Marion County's proposed location is the most environmentally friendly siting or what the alternatives were.
- An exception for Publicly Owned Treatment Works already exists under the

Three Basin Rule by issuing a WPCF permit.

- The Three Basin Rule prohibits new or increased discharges. Accordingly, Petitioner may develop a new sewer treatment system under Mill City’s old WPCF permit as long as they do not increase the pollutant load in the subbasins.
- If the treatment facility is to be relocated, the Three Basin Rule allows for the “transfer” of an NPDES or WPCF permit.

Neutral position on the petition

- It is unclear what conflict was created between the Maui Decision and the Clean Water Act.
- The conditions added to OAR 340-041-0350 in the petition describe allowances under NPDES and are not water quality standards.
- Any amendments to OAR 340-041-0350 that would allow an exception to the Three Basin Rule for new or increased waste discharges should specify that any such discharges will be evaluated on a case-by-case basis and must meet all water quality standards including antidegradation requirements in OAR 340-041-0004 and associated methods.
- Aspects to consider include Tier 2 review for high quality waters and ensuring the protection and maintenance of existing uses and their water quality, as well as meeting designated uses and their criteria in all waters. If the petition is granted by the Environmental Quality Commission and draft rule language is provided in public notice, the EPA will provide comments at that time.
- We need a better understanding of impacts to the North Santiam River basin from the 2020 wildfire. The basin is experiencing increased cyanotoxin events.
- We need a study of groundwater and surface water interconnectivity to understand indirect and potential direct discharges and if there's potential unintentional impacts.
- A thorough understanding of the North Santiam River hydrogeology and assessment of when the river is a discharge point for groundwater and when the river recharges the groundwater is an unknown factor at this time.

Petitioner	Location or representation	Position
Brandin Hilbrandt	North Santiam Watershed	Neutral
Brian Nicholas	Marion County	Yes
Marianne Fitzgerald	General Public	No
John and Miriam Rasmussen	Detroit	Yes
Eve Goldman - Tualatin Riverkeepers, NEDC, Columbia Riverkeeper, Willamette Riverkeeper, Oregon Wild, Cascadia Wildlands, & the Conservation Angler	Various environmental groups	No

Dean O'Donnell	Detroit	Yes
Audrey Eldridge	General Public	No
Karin Hobbs	Detroit	Yes
Ken Woodward	Formerly from Detroit	Yes
Lori Chavez-DeRemer	Congressional Rep/District 5	Yes
Jamie Cate	State Rep/District 11	Yes
SEDCOR	Yamhill/Polk/Marion Economic Dev. Corp.	Yes
David Loveall	Lane County Commissioner, District 2	Yes
Ed Diehl	State Rep/District 17	Yes
Fred Girod	State Senator/District 9	Yes
Cathy Clark	Mayor of Keizer	Yes
Kevin Mannix	State Rep/District 21	Yes
Kim Thatcher	State Senator/District 11	Yes
Mary Logalbo	Clackamas River Basin Council	No
Laura Conroy, JD	NSSA Board	Yes
Linda Hansen	MVCOG Board	Yes
Michael Lynch	ORENCO Systems	Qualified yes
Rebecca Garnett, Manager	EPA, Region 10, Standards and Assessments Division	Neutral
Kim Swan	Clackamas River Water Providers	Qualified yes
Matt Wilkinson	Detroit	Yes
Chris Hoy	Mayor of Salem	Yes
Jennifer Coker, P.E.	City of Sandy, Public Works Director	Qualified yes
Ken Yutzi	Detroit	Yes
Timothy L. Kirsch	Mayor of Mill City	Yes
Mike Dahlstrom	Tigard	No
James Hobbs	Detroit	Yes
Tim Luke	Detroit	Yes
Lisa Austin	Detroit	Yes
Christine Rasmussen	Detroit	Yes
Michael Karnosh	Confederated Tribes of the Grande Ronde	Qualified yes
Janet Davis	Bull Run Community Association/Community Planning Organization	Yes
John Borden	General Public	Qualified yes

Virginia	General Public	No
Zaph Mann	The Xerces Society for Invertebrate Conservation	No
Linn County Commissioners	Linn County	Yes

Next steps

Notification

DEQ will notify the petitioner in writing of EQC’s decision and any related direction to the agency.

*Report prepared by
Aron Borok, Water Quality Permitting Variance Specialist
Mary Camarata, Regional Solutions Coordinator*

Translation or other formats

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