

Rulemaking Petition to Amend the Three Basin Rule

DEQ Water Quality Program

November 21-22 EQC Meeting
Hillsboro, OR

Outline

- Petition request and context
- Three Basin Rule history
- Petition process
- Petition evaluation
- Public comment
- Recommendation

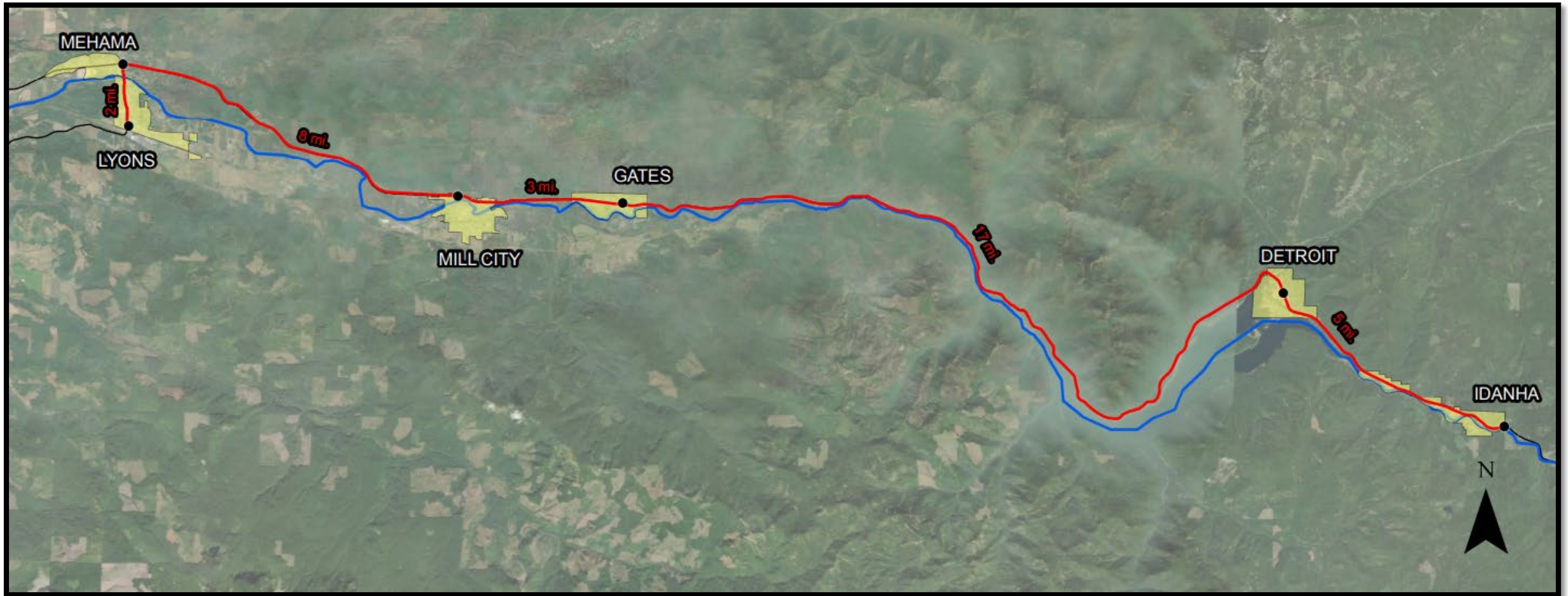


North Santiam River

Marion County's Rulemaking Petition

- Proposes revising Three Basin Rule (OAR 340-041-0350) to allow DEQ to issue NPDES permits for new sewage treatment plants discharging to groundwater
- Discharge requirements:
 - Preserve or improve water quality
 - Minimum 500 feet from surface water
 - “Functional equivalent” to direct discharge

North Santiam Canyon Communities



2020 Wildfire Impacts

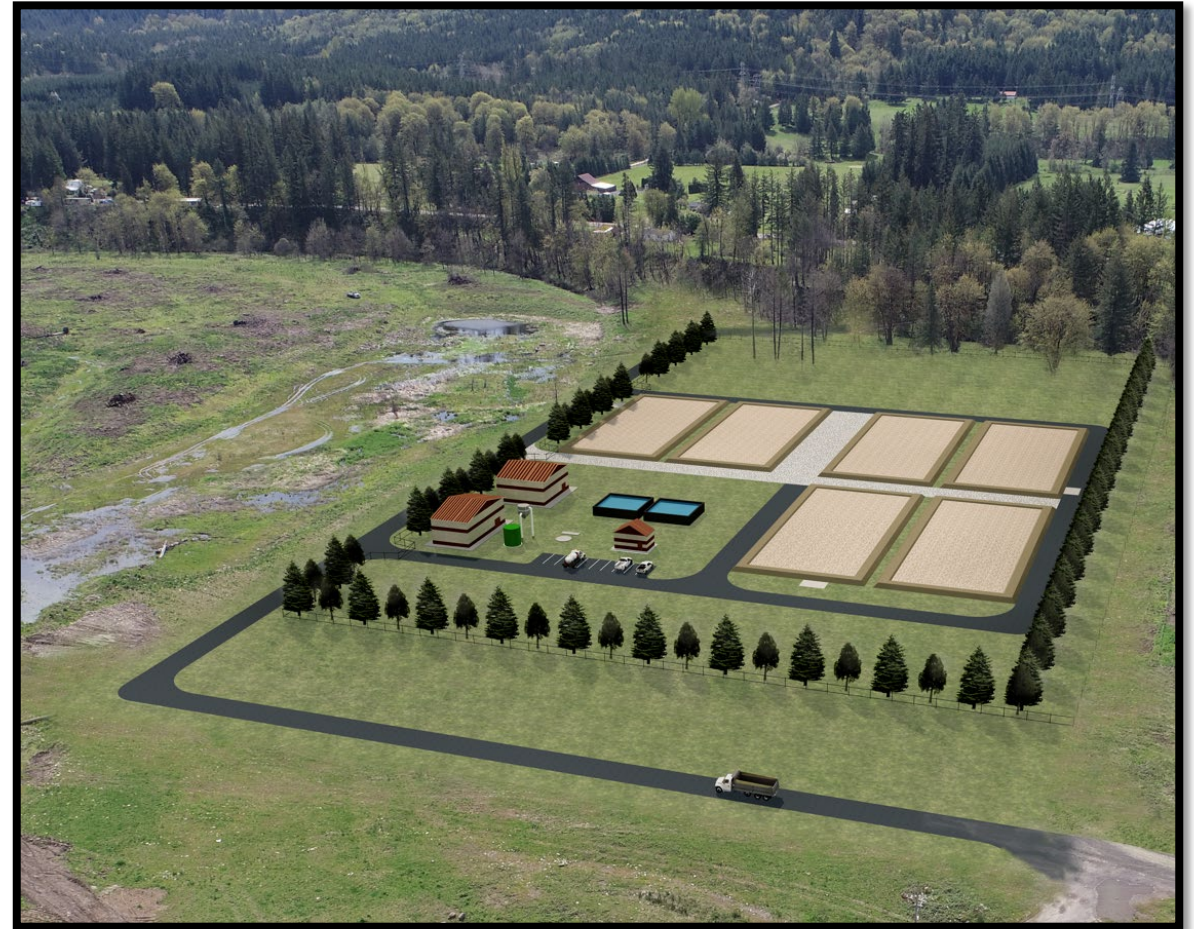
- Catastrophic wildfires primarily across western Oregon
- Federal emergency declared Sept. 15, 2020
- Over 4,000 properties damaged statewide
- Within Three Basin Rule area, ~1,400 properties with onsite systems impacted
- Ongoing rebuilding efforts still occurring



Source: North Santiam Watershed Council

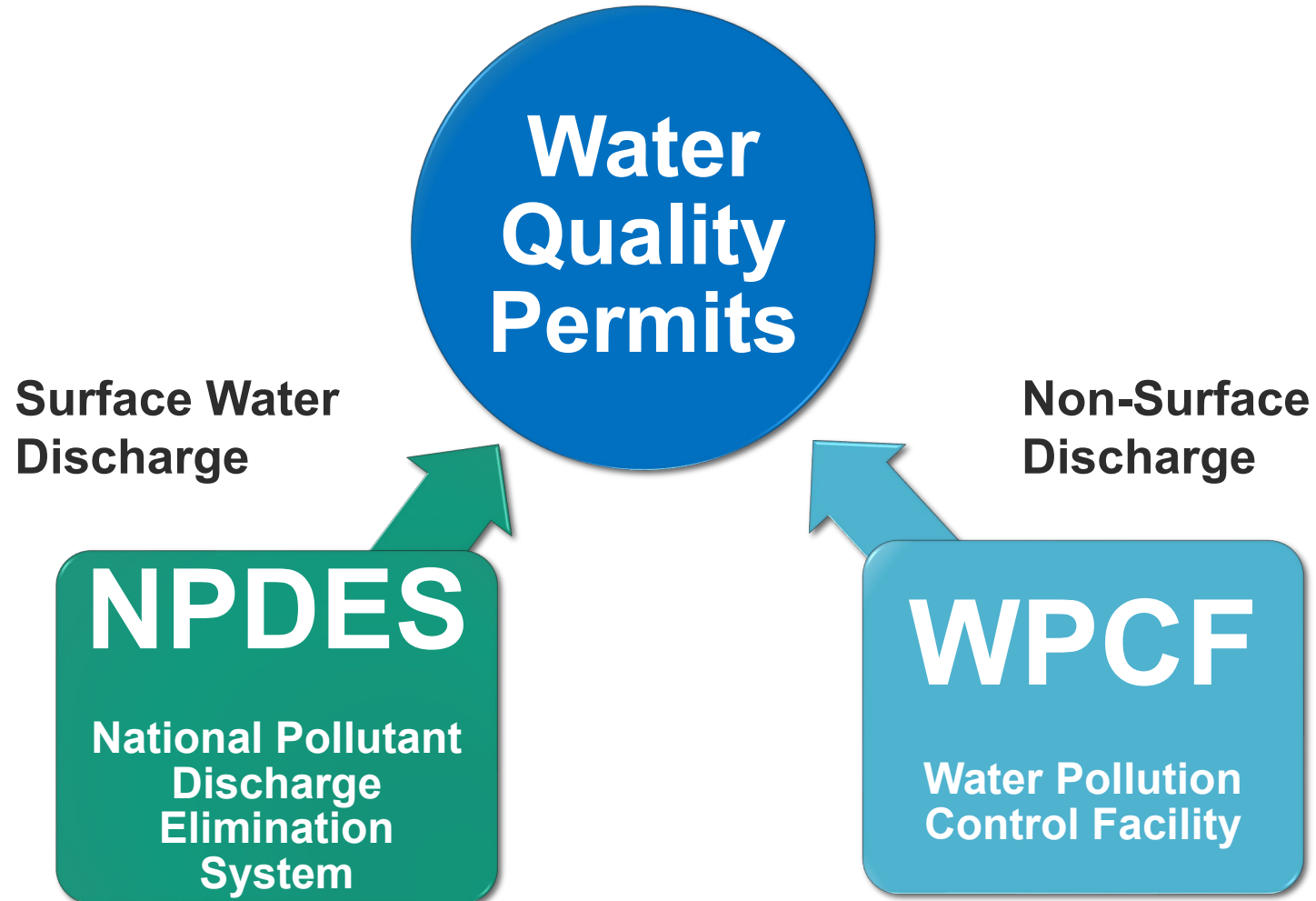
Context for Marion County's Petition

- Desire for economic development
- American Rescue Plan Act funding deadlines for a new treatment plant
- Functional equivalent discharge to the river



Proposed Treatment System - Source: Marion County

Types of Wastewater Discharge Permits



Maui Decision and Functional Equivalent Discharges

- Supreme Court:
Pollutant discharge to groundwater is 'functional equivalent' to direct surface water discharge.
- Requires NPDES permit
- Current Three Basin Rule, “functional equivalent” discharge NOT allowed

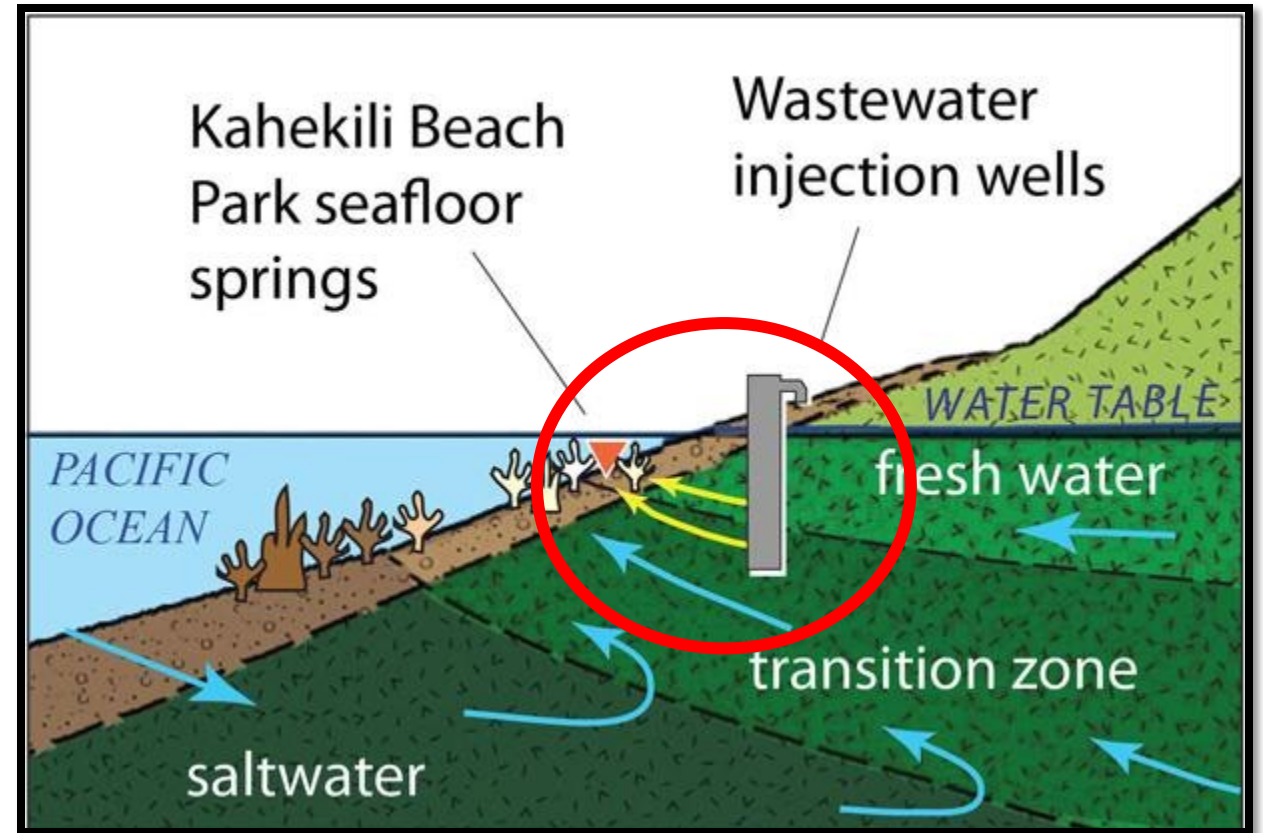
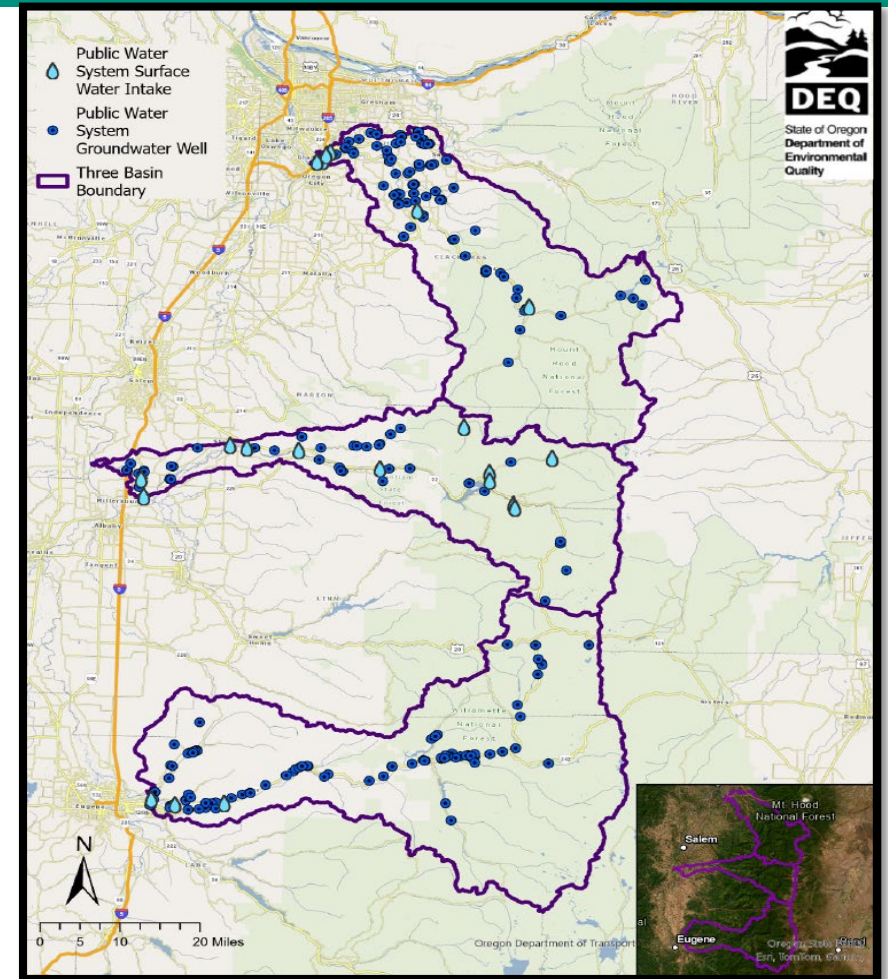


Image: USGS, public domain

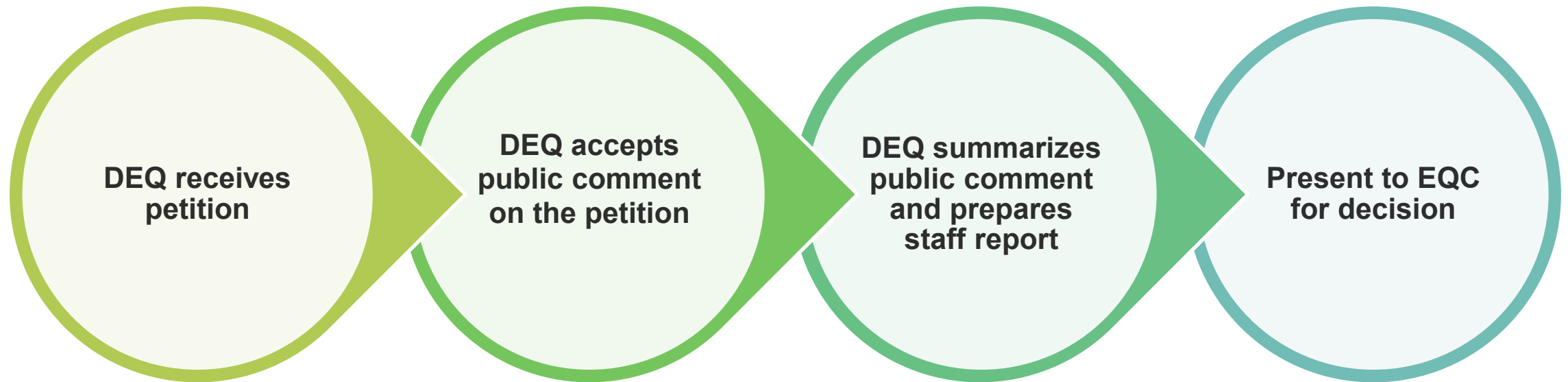
Three Basin Rule

- Adopted in 1976; and revised in 1995
- Major Drinking Water Source
- Extra protections:
 - Clackamas
 - McKenzie
 - North Santiam
- No new NPDES permits
- Permit subsurface discharge or land application for new systems



Drinking Water Intakes in The Three Basins

Petition Process



Commission Options

- Commission options on a petition:
 - Direct DEQ to initiate rulemaking proceedings
 - Deny the petition
 - Deny the petition and direct DEQ to take other action(s)

Agency Petition Evaluation

- DEQ agrees with basic premise of petition
 - Three Basin Rule may be barrier to replacing legacy systems with improved treatment
 - Maintain original intent of rule



Source: North Santiam Watershed Council

Agency Petition Evaluation (cont.)

- Marion County's proposed rule language requires modification:
 - Need more specificity regarding how to determine if discharge “improves or preserves water quality”
 - “Groundwater Discharge” definition
 - Their scope of allowable projects is very narrow

Summary of Public Comments

- Open Sept. 6 to Oct. 6
- Received 40 comments
 - 26 in support of the petition
 - 5 with qualified support of the petition
 - 7 opposing the petition
 - 2 neutral



Source: North Santiam Watershed Council

Key Comments in Support of the Petition

- Need to replace older septic systems
- Rebuilding homes and businesses after 2020 wildfires
- Continue to maintain high quality water



North Santiam River burned area

Key Comments Opposed to the Petition

- Diminish current protections
- Precedent for further petition amendments
- Emerging contaminants
- Exception already exists in current rule



Source: North Santiam Watershed Council

Other Key Comments

- Need to better understand the North Santiam River Basin
 - Groundwater/surface water dynamics
 - Nutrient baseline and nutrient impacts in Detroit Reservoir
 - Impact of wildfire



Sampling of the North Santiam River - Source: Marion County

Recommendation to the Commission

- Direct DEQ to initiate rulemaking to amend the Three Basin Rule to allow NPDES permits under limited circumstances consistent with stated objectives of the rule.
 - Rule revisions will provide permitting pathways for discharging treated wastewater.
 - Petition’s rule language requires adjustments.
 - Will require staff resources and may delay other projects.

Proposed Motion Language

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

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