Temperature Total Maximum Daily Load Replacement Project: Middle Columbia-Hood (Miles Creeks) Subbasin

Advisory Committee Charter

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Rulemaking
State of Oregon
DEQ

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Objectives and scope

Policy objectives

This rulemaking is for the draft Middle Columbia-Hood (Miles Creeks) Subbasin Total Maximum Daily Load and Water Quality Management Plan for temperature.

This Rulemaking Advisory Committee's purpose is to provide input to the Oregon Department of Environmental Quality on a proposed rulemaking to meet the criteria of the U.S. District Court. The court found that U.S. Environmental Protection Agency's approval of an element of Oregon's water quality standard for temperature, the Natural Conditions Criterion, was unlawful. The Natural Conditions Criterion stated that where the natural thermal potential of all or a portion of a water body exceeds the biologically based numeric temperature criteria in OAR 340-041-0028(4), the natural thermal potential temperatures supersede the biologically based criteria and are deemed to be the applicable temperature criteria for that water body. This portion of the temperature water quality standard was effective from 2003 until EPA disapproved it in response to the court decision in 2013. Many temperature TMDLs were based on these criteria, and this became the subject of a second lawsuit brought by the Northwest Environmental Advocates against EPA asserting the EPA unlawfully approved Total Maximum Daily Loads (TMDLs) that were based on the now disapproved Natural Conditions Criterion.

On Oct. 4, 2019, the Court issued a judgment for NWEA v. EPA, No. 3:12-cv-01751-HZ (D. Or., Oct. 4, 2019) and required DEQ and USEPA to replace 15 Oregon temperature TMDLs that were based on the Natural Conditions Criterion and to reissue the temperature TMDLs based on the remaining elements of the temperature water quality standard. Project TMDLs including the Miles Creeks Subbasin are listed on the Temperature TMDL Replacement Project web page.

DEQ plans to hold two rulemaking advisory committee meetings for this proposed rule. The role of the rulemaking advisory committee is to advise DEQ on the economic and fiscal impacts of the proposed rules for entities impacted by the proposed rule.

The committee fulfills the requirement in Oregon Revised Statutes 183.333 to obtain input from an advisory committee on the fiscal and economic impact of the proposed rule. DEQ is not requesting the committee to make decisions or recommendations as a group. Neither does DEQ expect that the committee will reach consensus on their views or their input to DEQ.

This proposed rule includes the following: The Miles Creeks Subbasin TMDL replacement for temperature in the applicable areas within the Middle Columbia-Hood (Miles Creeks) Subbasin (17070105) that includes the Eightmile Creek Watershed (1707010502), Fifteenmile Creek Watershed (1707010503), and Mill Creek-Columbia River Watershed (1707010504), and four subwatersheds within the Mosier Creek-Columbia River Watershed (1707010511), including Upper Mosier Creek Subwatershed (170701051102), Lower Mosier Creek Subwatershed (170701051103), Rock Creek Subwatershed (170701051104), and Rowena Creek-Columbia River Subwatershed (170701051105).

- Rulemaking web page – General information about this rulemaking is available on the Miles Creeks Subbasin TMDL rulemaking page.
- Project web page – Additional details, supporting documents, and updates are available on the Miles Creeks Subbasin TMDL project page.

Fiscal, economic and racial equity impacts

ORS 183.333 requires that DEQ ask the committee to consider the fiscal and economic impact of the proposed rules including:

- Whether the rules will have a fiscal impact, and if so, what the extent of that impact will be
- Whether the rules will have a significant adverse impact on small businesses, and if so, how DEQ can reduce the rules' negative fiscal impact on small businesses

ORS 183.333 (a)(F) requires agencies to provide a statement identifying how adoption of the rule(s) will affect racial equity in Oregon. To aide in crafting this statement DEQ will ask the committee to provide input on this question.

Roles

DEQ facilitator

The facilitator:

- Encourages open, candid and robust dialogue
- Starts and ends the meetings and agenda items on time
- Encourages innovation by listening to all ideas
- Tries not to lose good ideas to the consensus process
- Recognizes when the discussion is outside the scope of the meeting and steers the discussion back to the focus of the meeting

Committee members

Advisory committee members must attend each meeting to ensure continuity throughout the process. An alternate may be assigned if needed. However, it is each committee member's responsibility to fully brief their alternate on all relevant issues and prior committee discussions in order to meet the meeting objectives and keep the project on schedule. The primary and alternate members of the committee cannot participate in the same meeting. If a member's absence is unavoidable, please notify the DEQ project manager.

The committee member:

- Prepares for and sets aside time for the meetings
- Provides DEQ staff with copies of relevant research and documentation cited during the meeting
- Stays focused on the specific agenda topics for each meeting
- Comments constructively and in good faith
- Consults regularly with constituencies to inform them on the process and gather their input
- Treats everyone and his or her opinions with respect
- Allows one person to speak at a time
- Is courteous by not engaging in sidebar discussions
- Avoids representing to the public or media the views of any other committee member or the committee as a whole

Non-committee member attendees

Those who attend the committee meetings but are not members of the committee are there only to observe and not to actively participate. If non-committee members are present at a meeting, DEQ may allow time during the meeting for their comments.

DEQ staff

DEQ is committed to making the most effective use of committee member's time by:

- Establishing clear committee goals, meeting objectives and agendas
- Giving committee members reasonable access to staff
- Encouraging all members to take part in discussions
- Providing a clear description of members' roles, the committee timeline, the level of agreement expected and feedback on how members' input is used

DEQ support and website

DEQ will post agenda and meeting materials on the advisory committee website at least one week in advance. DEQ administrative staff will provide meeting summaries that highlight committee discussions, different perspectives and input of committee members. DEQ will not prepare a formal committee report. DEQ will send draft meeting summaries to the advisory committee for review and input. Final meeting minutes will be posted to the advisory committee website and will be part of the public record.

The advisory committee charter, a full roster of the committee, meeting agendas and minutes, and background materials will all be located on the advisory committee web page.

Committee meetings

1. All committee meetings will be:
    - Open to the public, although the committee can choose whether the public can actively participate in committee meetings
    - Advertised on DEQ's online Events Calendar two weeks before the meeting.
    - Noticed by email to the Water Quality Standards GovDelivery list
    - Accessible via a call-in number or webinar
2. The committee is expected to meet two times virtually.
3. Meeting materials and agenda will be posted to the advisory committee web page

Decision making

The committee's discussions will be used by DEQ in forming its draft rule, which will then be proposed for broader public review and comment as part of DEQ's rulemaking process.

When DEQ shares information with the group, DEQ will allow a reasonable timeframe for comments.

Membership

In convening this committee, DEQ selected members that reflect the range of stakeholders the proposed rules affect, both directly and indirectly. Representatives should be able to consider the policy, fiscal and economic impact of the proposed standard on the business or organization they represent.

Committee members

Name	Title	Affiliation
Todd Reinwald	U.S. Forest Service	Soil and Water Program Manager
Wes Noone	Bureau of Land Management	Regional Hydrologist
Janna Guzman	Oregon Department of Fish and Wildlife	Water Planning Coordinator
Nina Caldwell	Oregon Department of Agriculture	Water Quality Specialist
Rebecca McCoun	Oregon Department of Forestry	Riparian and Aquatic Specialist
Ivan Hartert	Oregon Parks and Recreation Department	Natural Resource Specialist
Joshua Chandler	City of The Dalles	Community Development Director
Jeremy Eiesland	City of Dufur	Public Works
Andrea Rogers	City of Mosier	City Manager
Daniel Dougherty	Wasco County	Planning Director
Scott Baker	Northern Wasco County Parks and Recreation District	Executive Director
Andrea Klaas	Port of The Dalles	Executive Director
Shilah Olson	Wasco SWCD	District Manager
Amy Kaser	Kaser Diamond K, Inc.	Landowner
Drake Gilbert	Wasco County Watershed Councils	Watershed Coordinator
Stuart Wilson	Soil Scientist/Watershed Planner	Confederated Tribes of the Warm Springs Reservation

Travel expenses

DEQ is able to reimburse any in state, out-of-town committee members for travel expenses, if DEQ approves them in advance.

Public records and confidentiality

Committee communications and records, such as formal documents, discussion drafts, meeting summaries and exhibits are public records and are available for public inspection and copying.

DEQ does not assume responsibility for protecting proprietary or confidential business information shared during committee or subcommittee meetings. However, the private documents of individual committee members generally are not considered public records if DEQ does not have copies.

Information exchange

Committee members will provide information as much in advance as possible of the meeting at which such information is used. The members will also share all relevant information with DEQ to the maximum extent possible which DEQ will then share with the rest of the committee members where appropriate. If a member believes the relevant information is proprietary in nature, the member will provide a general description of the information and the reason for not providing it. Committee members should only send emails (and other communications) to DEQ and not the committee because including all members on an email could constitute a violation of Oregon's Public Meetings Law.

Public involvement

All meetings will be open to the public. The committee can choose whether to allow public input during a committee meeting. DEQ may set aside time for the public to speak.

Once the committee process is complete, DEQ will develop draft rules and conduct a public rulemaking process. That process will include a specified period during which the public can submit comments on the proposed rules. DEQ will also hold a public hearing during which any member of the public can submit written or verbal comments. Individual committee members may provide comments to DEQ on the full draft rule at this time. DEQ may modify the final proposed rules based on public comment. DEQ intends to take a final proposed rule to the EQC for consideration at its meeting.

DEQ contacts

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