

## Meeting Summary

# Powder River Basin TMDL

## Rule advisory committee meeting #2

April 18, 2023, virtual meeting (Zoom)



### List of attendees

#### List of RAC member attendees

Name	Affiliation
Doni Bruland	Baker County
Jana Peterson	Oregon Department of Forestry
Curtis Martin	Powder Basin Watershed Council
Rebecca Anthony	Oregon Department of Fish and Wildlife
Karen Reiner	Local landowner
Shawn Klaus	Burnt River Irrigation District
Rob Hibbs	Oregon Department of Agriculture
Whitney Collins	Baker Soil and Water Conservation District

\* John Rademacher and Joe Aragon (both of BLM Baker field office) did not attend

#### List of DEQ team attendees

Name	Role
Vanessa Rose	Powder Basin Coordinator
Alex Liverman	Watershed Management Program Analyst
Dan Sobota	Water Quality Analyst
Laura Gleim	Public Affairs Specialist
Sara Slater	Eastern Region Watershed Manager
Eugene Foster	Manager, Watershed Management

#### List of EPA attendees

Name	Role
Brian Nickel	Manager, Watershed Section, Region 10
Sydney Clark	Physical Scientist, Region 10

### List of handouts

- [Oregon Administrative Rule language](#)
- [Revised Draft Fiscal Impact Statement](#)
- [Powder River Basin Bacteria TMDL Rule](#)
- [Water Quality Management Plan](#)
- [TMDL Technical Support Document](#)

### Agenda

Time	Topic
9 a.m.	Welcome, introductions, agenda review and meeting logistics

- 9:15 a.m. Updates since 1<sup>st</sup> RAC meeting
- 9:20 a.m. Orientation to draft TMDL documents
- 10 a.m. Overview of revised draft statements on fiscal impacts, environmental justice and racial equity, and draft rule language
- 10:30 a.m. Break
- 10:45 a.m. Discussion
- 11:45 a.m. Rulemaking schedule review and next steps
- 12 p.m. Adjourn

## Meeting Summary

DEQ staff used a PowerPoint slide presentation to convey information and guide discussion with RAC members during the meeting. Most of the information presented in the slides is not repeated in this summary. Rather, the focus of this summary is on capturing the key points of discussion associated with the materials in the presentation and other topics. The slides will be posted as an Adobe pdf file on the Powder River Basin TMDL Rulemaking webpage as a companion to this summary of comments and discussion by the Rule Advisory Committee members.

The virtual meeting room was opened at 9:00am. Participants were notified that the meeting would be recorded for note taking purposes and that the recording would not be posted on DEQ's website, but would be released to anyone requesting it. The recording was started and Vanessa Rose began a round of introductions of all participants.

Vanessa provided an overview of the meeting agenda and explained updates on or directly related to the project since the first RAC meeting on Nov. 9, 2022. Based on comments and feedback received, DEQ extended the RAC meeting timeline and TMDL schedule, to allow DMAs and committee members time to review the draft TMDL documents. Vanessa explained that DEQ also sought EPA initial review of the documents. DEQ revised the documents in consideration of comments received and posted them to the rulemaking website for the RAC to review prior to the 2<sup>nd</sup> meeting.

Alex Liverman provided an orientation to the five draft documents provided prior to the meeting to assist RAC members in their review to provide input over the next four weeks, or by May 16, 2023. Alex noted that past TMDL document format varied and that DEQ is moving to more standardized TMDL documents that make it easier for implementers and the public to understand the TMDL requirements and expectations.

Curtis Martin noted that water quantity is often a factor in water quality and asked whether flow and date/time were correlated with bacteria sampling in DEQ's analyses. Dan Sobota explained that times of samples are always recorded and daily flow from gages is a component of the EPA load duration curve analysis methodology that DEQ used and that the unique hydrology of the basin was considered in analyses during irrigation season and non-irrigation season. Alex pointed Curtis to the Technical Support Document for additional information on the data and analyses.

Vanessa presented an overview of the key elements in the Powder River Basin bacteria TMDL – loading capacities, excess loads, allocations, source assessment and implementation requirements, sharing figures and tables as a refresher. This was a summary from the more detailed presentation for the first RAC meeting. Vanessa offered to meet with members in a smaller setting to further orient them to the documents.

Doni Bruland asked how the priority beneficial use was determined. Vanessa explained that the water quality standards support beneficial uses and that DEQ is required to identify the most sensitive beneficial use – in this case, water contact recreation. Alex added that DEQ's water quality standards are designed to ensure all beneficial uses are addressed when the most sensitive use is addressed and that reasoning is documented in the Technical Support Document.

Curtis commented that the documents provided prior to the meeting were voluminous and overwhelming. He noted that flows are discussed in five categories (high to low) and asked if a calendar of time of year could be added to correspond with flow categories. Vanessa explained that although DEQ broke the data into the flow categories for the analyses, the load duration curve methodology is intended to capture the variability of flows across the year for each reach. Dan reiterated the irrigation/non-irrigation seasonal focus DEQ used in considering timing and how time stamps from the nearest gaging station is tied to sampling. Dan offered to provide the data. Curtis clarified that it would be helpful to people in the basin to see information chronologically and by flow rates. Doni asked if the data could be provided to the RAC and DEQ agreed to do that.

At 10:10 am, Vanessa paused the meeting for a ten-minute break.

At 10:20 am, Vanessa reconvened the meeting. Rob Hibbs asked about updates to the rulemaking schedule and Vanessa indicated that we would be presenting that information toward the end of the meeting.

Alex gave an overview of the fiscal impact statement process and input DEQ requested during the first RAC meeting. Vanessa provided a summary of the revisions made to the FIS based on input received. Alex asked for input and discussion from the RAC on the FIS, racial equity statement and Environmental Justice considerations.

Karen Reiner requested a definition for “significant” regarding the finding required by the RAC as to whether the rule will have “significant, adverse impacts to small businesses.” Alex confirmed that the statute and implementing guidance from Oregon Department of Justice does not include a definition, but that one consideration DEQ will use in making this determination is a relative comparison of number of small businesses affected out of the total number of small businesses in the basin. Rob Hibbs indicated that ODA thought all 700 small agricultural businesses in the basin would be impacted in several ways, especially culturally, by changes in irrigation methods that can be costly. Rob indicated that it would be good if state and federal funding could be provided along with the TMDL rule. Alex agreed that better accessibility and coordination on funding would be great and that DEQ is committed to coordinating with funding agencies to help get funding pointed in the direction of TMDLs, once issued. Alex reminded the RAC that issuing TMDLs is required under the Clean Water Act and that the associated costs are not different if the TMDL is issued by rule or by order.

Doni asked for distribution of all the RAC input received so far to the RAC and DEQ agreed to post it to the rulemaking webpage.

Curtis requested that DEQ quantify the costs of water quality impairment and asked for definitions of “sources,” “sectors” and “environmental justice.” Alex explained that the definitions for “sources” and “sectors” were in Oregon Administrative Rule 340-042 and the definition for “environmental justice” can be found on DEQ’s webpage and DEQ will provide links for those. Alex requested the RAC to provide any analyses they were aware of or could conduct for quantifying water quality impairment costs, because DEQ does not have such an analysis or know of any agreed to methodology for quantifying water quality impairment costs. Curtis stated that unquantified costs shouldn’t be considered in the FIS. Alex reminded the RAC that DEQ has not been able to quantify most of the costs, but is required to prepare an FIS using the best available information. This includes consideration of costs that could be incurred, including many identified by the RAC members, but that are not quantified. Alex asked the RAC to provide as much quantification as possible in their input and gave an example from Bureau of Land Management comments. However, the FIS will include all input from the RAC and all info available on costs, whether they can be quantified or not.

Curtis asked if there were other basins nearby with TMDLs where costs have been quantified and that might be useful for the Powder TMDL FIS. Vanessa discussed the Malheur and Snake TMDLs, which are adjacent to the Powder, and how DEQ drew from the Malheur as to applicable management strategies and costs. Curtis

agreed that, while cropping practices are different, it could be instructive to look at a summary of information on the Malheur and asked Vanessa to provide that. Vanessa agreed to look for and send some information.

Whitney Collins confirmed that she saw her input reflected in the revised FIS and appreciated that. Whitney agreed with Curtis that a cost-benefit analysis would be helpful and offered to do one based on projects she was involved with over that past two years. Alex agreed that project-specific costs would be helpful and that DEQ would consider her analysis for the FIS.

Whitney agreed with Rob that providing guaranteed funding with the TMDL rule, which is viewed as regulatory requirements, would be helpful in getting private property owners to see benefits on their farms for the costs. She noted an example of the Keating focus area where funding helped get things lined up and that putting some thought into taking a similar approach could help implementation be successful. Alex expressed DEQ's agreement with strategizing and indicated that the implementation plan development process and RAC member comments could be useful to help identify areas where funding should be prioritized.

Karen asked about information in the WQMP Section 5 regarding ODA updating land assessments in 2018. Rob Hibbs responded that was in reference to the Strategic Implementation Area, which predated his employment with ODA. Whitney explained that the update was done using Google Earth and other imaging, rather than any on the ground work. Karen also asked about voluntary participation in the WQMP and wondered about the varying conditions of restorations detectable on the ground and how education of landowners is funded to get voluntary actions on the ground. Rob indicated that ODA's process does rely on education and ODA will continue to partner with others to keep doing that. Whitney offered that voluntary work has been successful in the county and that the SWCDs will continue to support landowners in getting project done on private properties. Karen supports that.

Karen also asked about how creativity of practices is accounted for in the TMDL/WQMP process. Alex explained that one goal is coordination among agency processes and that DEQ includes recommended practices in the WQMP. Then responsible persons develop an implementation plan specific to their own jurisdiction, in which they can propose other strategies with justification of why they will work equally as well, that DEQ can approve. So the process includes flexibility to get to the best outcomes on the ground in the most reasonable way for implementers.

Karen also asked about when reserve capacity is applied, does that mean other allocations have to be adjusted? Alex explained that when there is a reserve capacity it is figured into the total loading capacity and is set aside, so that the other allocations won't have to be refigured. But in the Powder Basin, we didn't set aside any capacity in reserve. Instead, any new permits will be required to discharge at the water quality standard, like the two permitted wastewater facilities are required to now.

Alex explained the next steps and anticipated dates for the rulemaking process and invited EPA to explain their role in the process of reviewing and approving the TMDL. Brian Nickel and Sydney Clark shared EPA's perspective on working closely with DEQ on the technical development of the load duration curves, review of the required elements of a TMDL and making a determination about reasonable assurance of implementation.

Vanessa reiterated that input is requested by May 16<sup>th</sup> and committed that DEQ would provide the additional items requested in the meetings and post the meeting summary and slides within a week or so. Vanessa provided DEQ contact information and offered to answer further questions about the documents or do additional orientation to the documents upon request.

DEQ adjourned the meeting at 11:42am.

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