

Total Maximum Daily Load 2022 Rulemaking

Water Quality Program

Advisory Committee virtual meeting

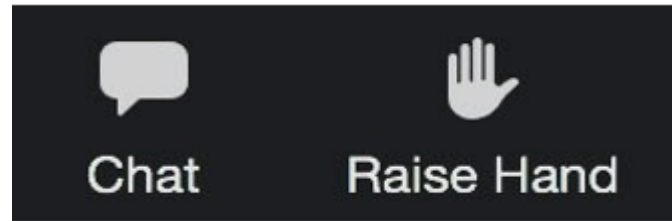
Sept. 2, 2021

Portland, OR

Meeting logistics

This meeting is being recorded.

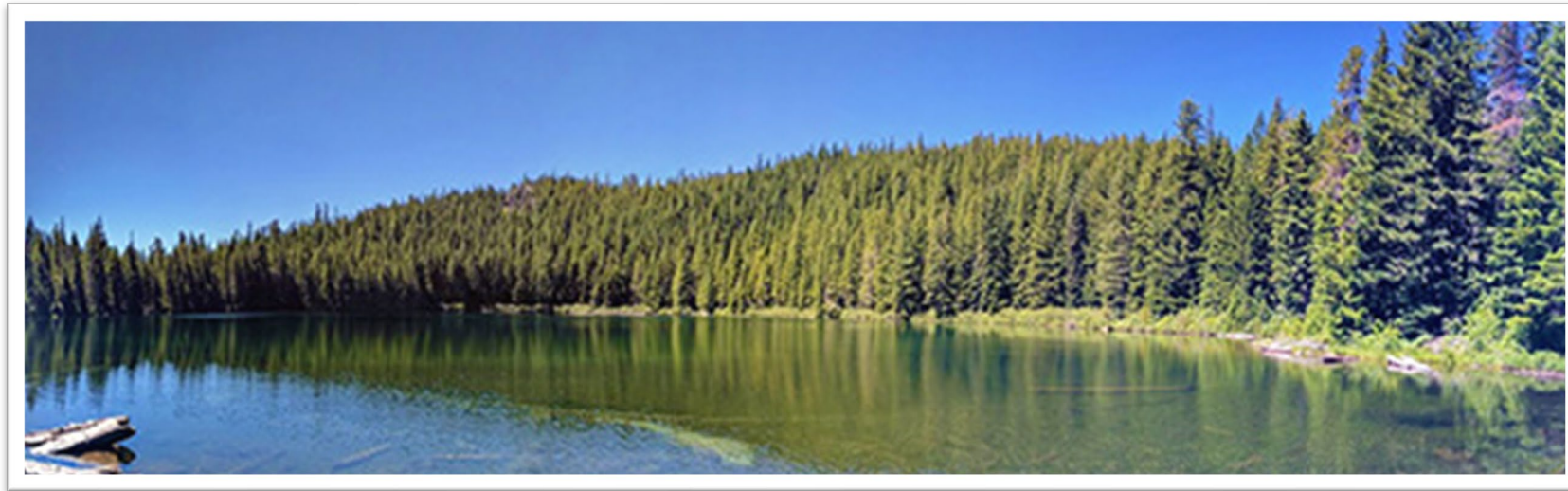
You should see the following along the bottom of your screen.



Please raise your hand to participate and wait to be called upon.
Advisory Committee members can use the mute on your phone or *6 to mute and unmute your phone

Please use chat if you're having technical difficulties.

Introductions



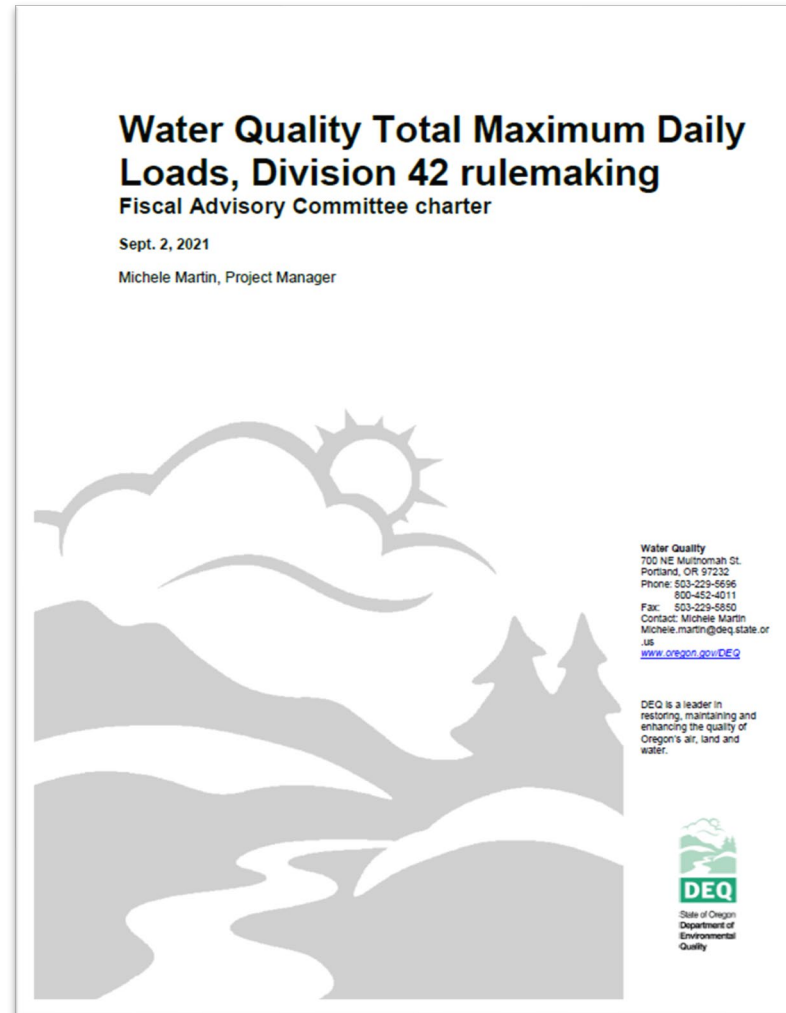
Waldo Lake, Oregon

Agenda

Time	Topic
1 p.m.	Welcome, Jennifer Wigal
1:10 p.m.	Introductions, all
1:20 p.m.	Charter and general Total Maximum Daily Loads background, DEQ staff <i>DEQ meeting presentation and Charter</i>
1:40 p.m.	Draft rules, OAR 340-042 Total Maximum Daily Loads, Gene Foster <i>DEQ meeting presentation and proposed draft rules</i>
2:40 p.m.	Fiscal Impact Statement, Michele Martin <i>DEQ meeting presentation and draft fiscal impact statement</i>
3:10 p.m.	Public comment opportunity
3:25 p.m.	Next steps, Jennifer Wigal
3:30 p.m.	Adjourn meeting

Rulemaking website: <https://www.oregon.gov/deq/Regulations/rulemaking/Pages/tmdl2022.aspx>

Advisory committee charter



Total Maximum Daily Loads (TMDLs)

TMDLs are science based clean water plans used for cleaning up polluted water to meet water quality standards.

TMDLs are developed for each water body on the state polluted waters list known as the 303(d) list; the Clean Water Act section for listing impaired and threatened waters.

Division 42 TMDL proposed rule changes

Reasons for this rulemaking:

- Predictable and transparent administrative procedures associated with rulemakings
- Policy considerations will result in those issues being considered by the EQC, DEQ's policy-making body
- Align the administrative rules with the statute to allow TMDLs by rule and order.

Division 42 TMDL proposed changes, overview

1. Allow TMDLs to be adopted by rule by the Environmental Quality Commission, consistent to what is currently authorized in ORS 468B.110, in addition to issuing TMDLs by Department order.
2. Add companion rule language addressing circumstance when EPA establishes a TMDL for Oregon waters to specify that the EQC can issue a Water Quality Management Plan by rule to implement EPA's TMDL in addition to Director's authority to issue the WQMP by order.
3. This proposed rulemaking will also include minor changes to update the following rule language to reflect current EPA requirements established by case law:
 1. Clarifying that "daily load is required" to the TMDL definition
 2. Clarifying language to reasonable assurances of implementation

Division 42 TMDL proposed rule changes

Examples of changes to allow TMDLs to be adopted by rule by the Environmental Quality Commission

Pg. 2 Policy, Purpose and Effect 340-042-0025(2) The policy of the Environmental Quality Commission is to **establish, or** have the Department of Environmental Quality establish TMDLs, including wasteload and load allocations, and have responsible sources meet these allocations through compliance with discharge permits or other strategies developed in sector or source-specific implementation plans. These measures must achieve and maintain water quality standards and restore waters of the state that are water quality limited.

Pg. 4 Establishing Total Maximum Daily Loads (TMDLs) 340-042-0040(1) The Department **or Commission** will establish TMDLs for pollutants in waters of the state that are listed in accordance with the Federal Water Pollution Control Act Section 303(d) (33 USC Section 1313(d)).

Division 42 TMDL proposed rule changes

Clarifying that “daily load is required” to the TMDL definition

Pg. 4 **Definitions** 340-042-0030(15) “Total Maximum Daily Load (TMDL)” means a written quantitative plan and analysis for attaining and maintaining water quality standards and includes the elements described in OAR 340-042-0040. These elements include a **daily load** calculation of the maximum amount of a pollutant that a waterbody can receive and still meet state water quality standards, allocations of portions of that amount to the pollutant sources or sectors, and a Water Quality Management Plan to achieve water quality standards.

Division 42 TMDL proposed rule changes

Clarifying language to reasonable assurances of implementation

Pg. 8 **Establishing Total Maximum Daily Loads (TMDLs)**

340-042-0040(6)(g) Reasonable assurances of implementation. **To establish reasonable assurance that the TMDL's load allocations will be achieved requires determination that practices capable of reducing the specified pollutant load: (1) exist; (2) are technically feasible at a level required to meet allocations; and (3) have a high likelihood of implementation; and**
(h) Any other relevant factor.

Division 42 TMDL proposed rule changes

Replaces former (1)

Pg. 8 Public Participation 340-042-0050(1) If establishing a TMDL as an agency order, the Department will establish a local advisory group or identify an existing group or forum to assist in developing a TMDL. When the Commission establishes a TMDL through rulemaking the rulemaking process will satisfy the requirement for public participation.

Division 42 TMDL proposed rule changes

Pg. 9 **Issuing a Total Maximum Daily Load** 340-042-0060(1) The Director will issue a TMDL as an order **or the Commission by rule**. If the Environmental Protection Agency establishes a TMDL addressing waterbodies in Oregon, the Director may issue as an order **or the Commission by rule** a **WQMP** to implement that TMDL.

(2) The order will be effective and final on the date signed by the Director **or in the case of rule when the proposed TMDL is adopted by the Commission and filed with the Secretary of State.**

Division 42 TMDL rulemaking draft fiscal impact

1. Will the proposed rule changes have a fiscal impact? If yes, what is the extent of that impact?
2. Will the rule will have a significant adverse impact on small businesses?
3. What can DEQ do to reduce any adverse impact on small businesses?

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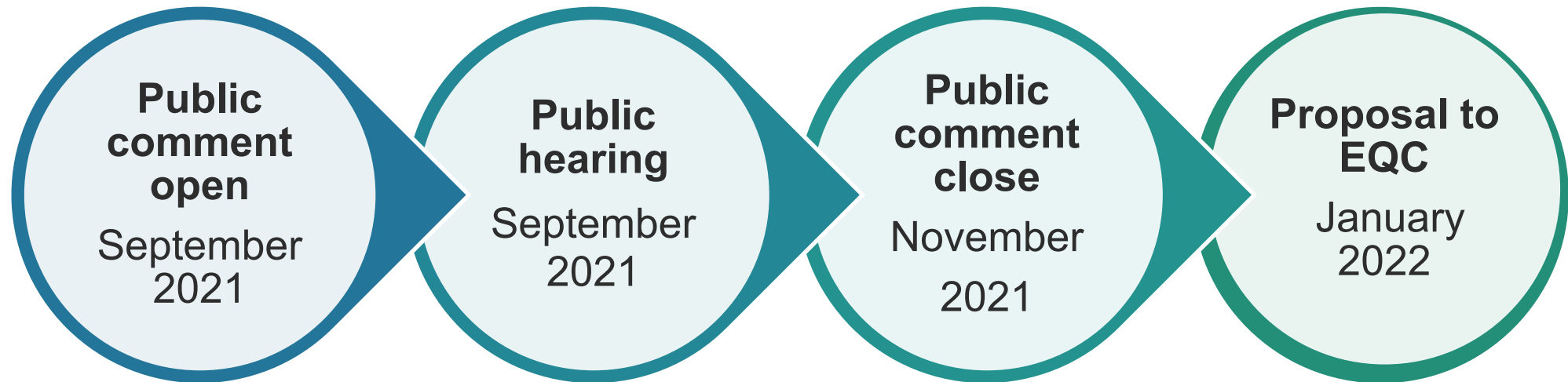
Public comment opportunity



Willamette River at Tom McCall waterfront, Oregon

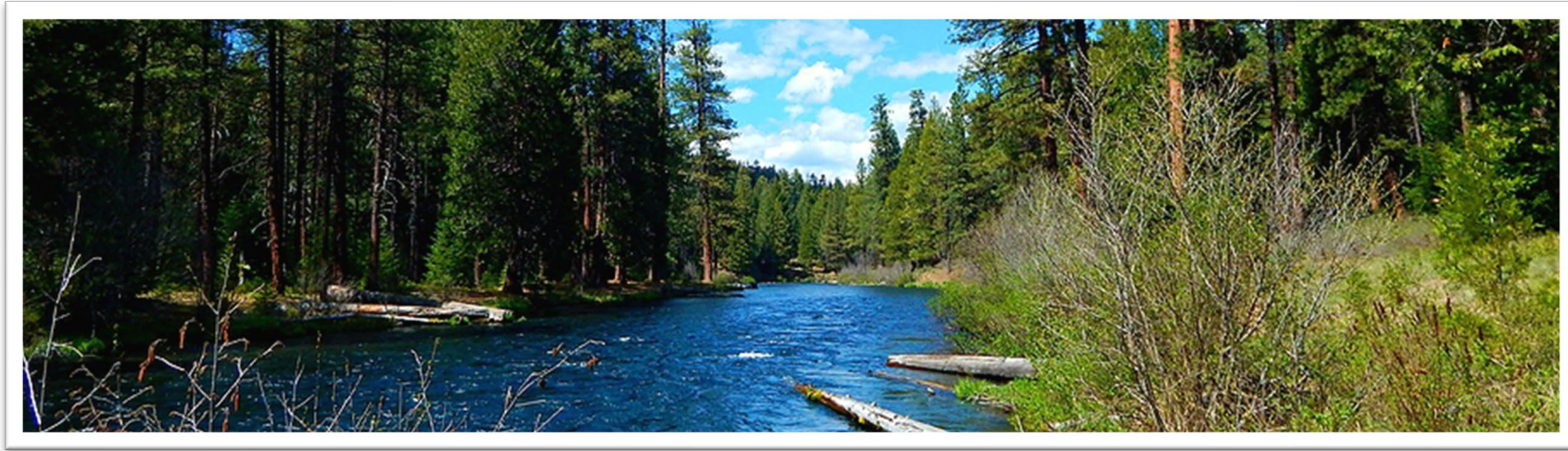
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Division 42 TMDL next steps



Rulemaking website: <https://www.oregon.gov/deq/Regulations/rulemaking/Pages/tmdl2022.aspx>

Thank you



Metolius River, Oregon

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Website: <https://www.oregon.gov/deq/Regulations/rulemaking/Pages/tmdl2022.aspx>

TMDL elements

Water quality standards

Collection of water quality data

Integrated Report: Assessment of water quality data, 303(d) list (category 5 – impaired)

TMDL development elements:

source assessment

excess load

reserve capacity

reasonable assurance

development of loading capacity

allocations (pollution targets)

margin of safety

Water Quality Management Plan

TMDL implementation for nonpoint sources and point sources