



**OREGON
DEPARTMENT OF
AGRICULTURE**

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Proposed Rulemaking -

To: Jonathan Sandau, Deputy Director, Oregon Department of Agriculture
Subject: Hearing Officer's Report
Date: September 9, 2025

Rule Summary – This report covers four different, but related, agricultural water quality rules. The proposed rules involve the management areas listed below:

- Upper Grande Ronde Management Area
- Lower Willamette Management Area
- Umpqua Management Area
- Clackamas Management Area

Public Hearing – ODA held separate virtual public hearings for each area on August 21, 2025. No public comments were submitted at any of the hearings.

SUMMARY OF COMMENTS - ODA accepted written testimony from the public through 5:00 p.m. on August 29, 2025. One commenter submitted comments on all four areas. These comments are attached.

Dated this 9th day of September 2025.

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Comments

Commenter	Comment	Response
Brian P. – WaterWatch of Oregon	<p>WaterWatch of Oregon (WaterWatch) submits the following comments on proposed amendments to the water quality rules for the above management areas.</p> <p><u>General Comments</u></p> <p>The Oregon Department of Agriculture’s (ODA’s) water quality management rules are helpful to water quality in the state. However, they generally have not been effective at reducing agricultural-related water quality impairment to levels that meet state water quality standards. Load allocations for nonpoint source pollution in total maximum daily loads are generally exceeded, and little to no progress is being made to meet them, in large part due to water quality impairment caused by agricultural activities. This is especially true with respect to water temperatures that exceed water quality standards due to agricultural runoff and loss of riparian shade. ODA should engage in a broader rule revision process to address these problems. All affected stakeholders should be included in that process such that there is equal representation of agricultural interests and public interests in protecting water quality.</p> <p>According to the rulemaking notices for the proposed rule amendments identified above, ODA consulted with a “local advisory committee” of “local landowners and agricultural interests” but did not convene a rules advisory committee that included representatives of public interests in protecting and improving water quality. We recognize this may be customary practice. However, in adopting rules and amendments to rules, ODA should seek advice from all perspectives, including non-regulated parties who care about improving water quality in the state, not just the regulated parties. Decisions by ODA, a state agency, should reflect the interests of all Oregonians, not just the interests of agricultural producers.</p> <p><u>Specific Comments on Umpqua Management Area Rules</u></p> <p>The proposed amendments should not strike provisions that identify excess sediment runoff, phosphorous runoff, bacteria runoff and irrigation runoff as unacceptable. To the extent these provisions are inconsistent with other area rules (a stated purpose of the amendments), the other rules should be revised to include provisions that also restrict these contributions to water quality impairment.</p>	<p>Given that this is a general comment and does not relate to the specific rules being amended no change to the planned rules is being made. The comment is noted and ODA understands that WaterWatch of Oregon is asking for a more comprehensive review of rules with respect to water temperatures, agricultural runoff, and loss of riparian shade.</p> <p>Regarding the rulemaking, ODA used the local advisory committees as rules advisory committees and public interests were sought as part of the public comment process.</p> <p>The Umpqua Management Area Rules also include ORS 468B.025 which does not allow waste to be placed into waters of the state or where it can enter waters of the state. This covers sediment, phosphorous, bacteria, and irrigation runoff. The purpose of amending these rules is to remove the ambiguous term of “excess.”</p>



	<p><u>Specific Comments on Lower Willamette Management Area Rules</u></p> <p>The proposed amendments would affect requirements for riparian shading, which is critical in the lower Willamette because the river gets too warm to meet water quality standards (hence the TMDL) in large part due to loss of shade potential from agricultural activities. The addition of specific language to require restoration of disturbed areas appears to be a positive change but the addition of specific language to limit obligations for shading to “site capability” is too limiting. Rules should require active restoration to historic shade potential where agricultural practices have reduced shade below such potential. The rules should also retain language that recognizes the value of riparian areas for water storage and protection from flashy flows, as well as language that promotes active restoration in addition to passively allowing growth of vegetation that will not provide shade sufficient to meet shade potential.</p>	<p>ODA uses “site capability” as opposed to “shade potential,” but both can be very similar. In addition, the AgWQ rules do not require active restoration unless there has been an agricultural activity disturbance.</p> <p>Site-Capable Vegetation The Ag Water Quality Program uses “site-capable vegetation” to describe the streamside vegetation that can be expected to grow at a particular site, given natural site factors (e.g., elevation, soils, climate, hydrology, wildlife, fire, floods) and historical and current human influences that are beyond the program’s statutory authority (e.g., channelization, roads, modified flows, previous land management). Site-capable vegetation can be determined for a specific site based on current streamside vegetation at the site, streamside vegetation at nearby reference sites with similar natural characteristics, Natural Resources Conservation Service (NRCS) soil surveys and ecological site descriptions, and/or local or regional scientific research. The goal for Oregon’s agricultural landowners is to provide the water quality functions (e.g., shade, streambank stability, and filtration of pollutants) produced by site-capable vegetation along streams on agricultural lands.</p>
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	<p><u>Specific Comments on Upper Clackamas Area Rules</u></p> <p>ODA should provide more explanation for why Voluntary Water Quality Farm Plans are not used.</p> <p>WaterWatch appreciates specific language allowing any person to file a complaint regarding water quality violations.</p> <p>The rules should not exclude local, state and federal agencies from the definition of a “person” who may file a complaint. These agencies may sometimes be in the best position to know if a violation is occurring and should be able to seek corrective action if a violation is occurring.</p> <p>Thank you for considering these comments.</p>	<p>The process for development and approval of Voluntary Water Quality Farm Plans in cooperation with ODA and the local SWCD was not developed.</p> <p>In OAR 603-095-1260(1), it states when the department receives notice..., or through notification by another agency... This allows local, state, and federal agencies to provide notice directly to the department of an apparent occurrence of agricultura water pollution and not file a complaint.</p>
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