

## **Biennial Review Request for Comments From DEQ (revised 8-28-12)**

*"The State Department of Agriculture and the State Board of Agriculture shall consult with the Department of Environmental Quality or the Environmental Quality Commission in the adoption and review of water quality management plans and in the adoption of rules to implement the plans." ORS 568.930(2)*

Survey Checklist for (basin description): **Tualatin**

DEQ Basin Coordinator: **Avis Newell**

Date: **April 9, 2014**

(If answered "no", please provide information and/or example language)

### **I. Area Plan Content**

#### **A. Issue identification**

1. Does the Area Plan include all water quality limited water bodies, including 303(d) listed and with approved TMDLs?

DEQ Comment: The 303d listings for each stream segment have not been included in this document; however, the parameters have been identified, including approved TMDLs, new listings and proposed listings (see Sections 2.3.2 and 2.3.3). The Ag Water Quality Management Program actions apply to all streams in the basin, and the potential pollutant sources and respective management actions are well described.

2. Does the Area Plan adequately reflect current TMDL status?

DEQ Comment: Yes. There is a long history of TMDL actions in the Tualatin Basin, and these are adequately summarized in the Plan. (See Section 2.3)

3. Does the Area Plan sufficiently present the TMDL load allocation that it is intended to address?

DEQ Comment: Yes, applicable TMDL allocations are included in tables in the Ag Plan. (See Section 2.3.3)

4. Does the Area Plan adequately include items from applicable Groundwater Management Area Action Plans?

DEQ Comment: Yes the Plan is adequate; there are no groundwater management areas in the Tualatin Basin at this time so there is no detail.

5. Does the Area Plan present the requirements of Coastal Zone Management Act applicable to agriculture?

DEQ Comment: Yes, the Tualatin Plan is adequate; the basin is not located in the Coastal Zone, and is not subject to CZARA.

6. Does the Area Plan include sufficient items from the State of Oregon; Pesticide Management Plan for Water Quality Protection?

DEQ Comment: Yes, the Plan includes actions, programs, and identifies partnerships with other agencies to address pesticides in the Tualatin Basin. The Tualatin Basin is not a designated pesticide management area at this time. DEQ suggests that ODA consult the WQ Pesticide Management Team to evaluate land use and activities in order to determine if monitoring for pesticides is a priority for the basin. In addition, we recommend capturing local projects related to toxics reduction in the Area Plan and associated reports. For example, ODA and local agricultural groups have participated in recent pesticide collection events. In addition, the Joint Water Commission (JWC) will be undertaking a 3-year pesticide monitoring program in the upper basin. The Tualatin SWCD is already coordinating with the JWC. DEQ recommends that the LAC review the JWC monitoring results and work with them to identify recommended practices for the agricultural sector.

ODA Response: The Oregon Water Quality Pesticide Management Team (WQPMT) selects sites to monitor based on statewide priorities and the influence of multiple land uses (e.g., urban, forestry, agriculture). ODA works closely with the WQPMT to initiate and help implement Pesticide Stewardship Partnerships (PSPs). ODA will work closely with the WQPMT if it selects the Tualatin area as a PSP. ODA looks forward to reviewing the JWC data with DEQ, the LAC, and the TSWCD to discuss appropriate next steps.

7. Does the Area Plan sufficiently address the needs in drinking water source areas related to agricultural pollution sources within the geographic area of the plan?

DEQ Comment: Yes, the Plan addresses drinking water protection. Management actions identified in the Plan provide source water protection, and the Tualatin SWCD works in partnership with other agencies in the basin to enhance drinking water protection.

B. Goals and Objectives:

1. Do the goals and objectives of the Area Plan clearly state that the purpose of the Area Plan is to prevent and control water pollution and to meet water quality standards?

DEQ Comment: Yes, these are clearly identified in several places.

2. Does the Area Plan include clear and measurable objectives that are designed to meet water quality standards and TMDL load allocations?

DEQ Comment: For the most part, yes, clear and measurable goals have been identified in Section 3.1. However, the most important next step in measuring and making progress in the basin is to estimate the rate of compliance with the

area agricultural water quality rules. This measure was proposed by DEQ and the LAC, but ODA has indicated that will not be included in the 2014 Plan.

ODA Response: ODA continues work to determine the most efficient and effective way to estimate the rate of compliance given human, technical, and financial resources. This estimate may be determined at the state or programmatic level, rather than at the Area Plan level. The inclusion of measurable objectives, timelines, and associated milestones will enable ODA and the LAC to measure progress and adjust as needed. ODA continues on-going discussions with DEQ about how to measure compliance and to build technical tools to help measure progress.

C. Strategies to Meet Water Quality Goals and Track Progress

1. Are geographic and/or water quality issue priorities listed in the Area Plan consistent with TMDL and GWMA priorities?

DEQ Comment: Yes. As noted above, there are no groundwater management areas in the basin. ODA and the Tualatin SWCD conferred with DEQ and identified a focus area that experiences some of the poorest water quality in the basin.

2. Are geographic scales and implementation actions identified in the Area Plan appropriate to track implementation, progress, and effectiveness?

DEQ Comment: Hopefully. Data is collected regarding restoration and implementation by the Tualatin SWCD, and water quality is monitored by various agencies in the basin. However, without knowledge of how large the impacts are from agricultural sources, it is impossible to know how long it will take to address impacts from agricultural sources.

ODA Response: ODA expects that the Focus Area will allow us and conservation partners to monitor and track implementation, progress, and effectiveness.

3. If applicable, is the Watershed Approach Action Plan addressed?

DEQ Comment: No watershed approach document has been completed for this basin.

4. Does the Area Plan provide sound evidence or reasons why implementation actions could lead to pollution reduction? If some of the implementation actions are not consistent with TMDL and other WQ goals, explain why those practices do not contribute toward meeting those WQ goals.

DEQ Comment: Yes, management actions identified in this Plan clearly target pollutant sources and thus will lead to pollution reduction. However, without knowing how much of the basin is in compliance with the basin rules and by

extension with the basin Plan, it is impossible to know whether the rate of improvement will be measurable in a given amount of time.

ODA Response: ODA continues work to determine the most efficient and effective way to estimate the rate of compliance given human, technical, and financial resources. This estimate may be determined at the state or programmatic level, rather than at the Area Plan level. The inclusion of measurable objectives, timelines, and associated milestones will enable ODA and the LAC to measure progress and adjust as needed. ODA continues on-going discussions with DEQ about how to measure compliance and to build technical tools to help measure progress.

5. Does the Area Plan include timelines, schedules, and measurable milestones that are consistent with the TMDL WQMP?

DEQ Comment: With one exception, the Ag Plan includes measurable timelines that are both reasonable and consistent with the TMDL Water Quality Management Plan. However, as a first step toward estimating the extent of the water quality impacts from agricultural sources, ODA needs to determine the rates of compliance with the basin rules and the basin plan. ODA has indicated that the goal requesting ODA to estimate rates of compliance with the area rules will not be included in the 2014 Tualatin LAC Plan. Without this information, the lack of estimates for the extent of water quality impacts from agricultural sources in the Tualatin Basin will continue to impede an analysis of the extent of pollution from agricultural sources. Likewise, with limited data, links between water quality improvements and agricultural pollution cannot be made.

ODA Response: ODA continues work to determine the most efficient and effective way to estimate the rate of compliance given human, technical, and financial resources. This estimate may be determined at the state or programmatic level, rather than at the Area Plan level. The inclusion of measurable objectives, timelines, and associated milestones will enable ODA and the LAC to measure progress and adjust as needed. ODA continues on-going discussions with DEQ about how to measure compliance and to build technical tools to help measure progress.

6. Is monitoring adequate to determine whether progress is being made to achieve the goals of the plan? If no, are monitoring needs identified and is there a strategy to meet those needs?

DEQ Comment: No. As a first step toward assessing on the ground conditions in the Tualatin Basin, DEQ requested and the LAC agreed that ODA would assess the rate of compliance with the Ag Rules in the Tualatin Basin by the end of 2018. ODA has indicated that it will not commit to this measurable goal for the Tualatin Basin. As such, there is no assurance that DEQ and the Tualatin LAC will be able to assess progress in the basin. While the Tualatin SWCD is measuring the rate of restoration projects in the basin and these measures will

clearly contribute to improved water quality on those streams, there is no way to assess the overall status of agriculture-related impacts in the basin if there is no estimate of compliance with the area rules. Compliance with the rules alone is not expected to be sufficient to meet water quality standards. Properties that are not in compliance with the rules will have much larger negative impacts on water quality than can be reversed by enrolling other properties in incentive based and voluntary programs. Estimating the number of properties that are not in compliance with the basin rules is the first step to documenting basin-wide improvement in the Tualatin.

ODA Response: ODA continues work to determine the most efficient and effective way to estimate the rate of compliance given human, technical, and financial resources. This estimate may be determined at the state or programmatic level, rather than at the Area Plan level. The inclusion of measurable objectives, timelines, and associated milestones will enable ODA and the LAC to measure progress and adjust as needed. The ODA, LAC and Tualatin SWCD will be able to monitor progress in each Focus Area to determine whether the proper water quality functions are being provided. As DEQ notes, compliance with the regulations alone is not expected to achieve water quality standards; determining the percentage of lands meeting needed functions and checking in at each milestone will enable ODA and the LAC to determine of adequate progress is being made to meet water quality standards.

## **II. Implementation/evaluation**

- A. Are voluntary efforts sufficient to implement the Area Plan or are additional incentives needed to increase the rate of participation?

DEQ Comment: Incentives are already in place in the Tualatin Basin. Both federal and local money sources are in use as incentives.

- B. Are milestones and timelines established for Area Plans achieving the goal of the Program?

DEQ Comment: The goals include specific milestones and timelines. However, one major goal is missing; there is no goal included for ODA to estimate rates of compliance with the Area Plan or rules.

- C. Is reasonable progress being made towards accomplishing milestones and timelines in the Area Plan?

DEQ Comment: In some ways yes and in others no. The Tualatin SWCD and local watershed council classified stream reaches as high, medium, and low priorities for riparian vegetation and restoration efforts. Since that time, roughly five stream miles have been addressed each year. There is ongoing funding to continue programs to continue restoration efforts at a similar rate through the near future. In

this sense, progress is being made and is expected to continue into the future. However, DEQ, the LAC, and others in the basin recognize that there are no measures that describe just how big (or small) the problem of agricultural pollution is in the basin. As a very first step toward solving this question, DEQ and the LAC requested that ODA determine the rate of compliance with the water quality rules by 2018. ODA will not include that goal in the 2014 Tualatin Ag Plan. Without this knowledge, we will not be able to assess the progress we are making toward improved water quality because we do not know the extent of the problem; we have no idea whether the progress will lead to significant and measurable changes in water quality.

**ODA Response:** ODA continues work to determine the most efficient and effective way to estimate the rate of compliance given human, technical, and financial resources. This estimate may be determined at the state or programmatic level, rather than at the Area Plan level. The inclusion of measurable objectives, timelines, and associated milestones will enable ODA and the LAC to measure progress and adjust as needed. The ODA, LAC, and Tualatin SWCD will be able to monitor progress in each Focus Area to determine whether the proper water quality functions are being provided. As DEQ notes, compliance with the regulations alone is not expected to achieve water quality standards; determining the percentage of lands meeting needed functions and checking in at each milestone will enable ODA and the LAC to determine if adequate progress is being made to meet water quality standards.

### **III. Area Rules**

A. Are the prohibited conditions likely to be effective in making reasonable progress towards meeting state water quality goals?

DEQ Comment: Yes, prohibited conditions should be an effective way to achieve water quality improvements if adequate enforcement is taken to discourage the occurrence of prohibited conditions, and if adequate resources are available to assist farmers to properly implement BMPs.

B. Are additional prohibited conditions or other mandatory control measures needed?

DEQ Comment: Not at this time. ODA and the LAC have drafted revised rules concerning agricultural practices and prohibited conditions for the protection of water quality in the Tualatin Basin. With adoption of the new rules and attainment of compliance with the new rules, agricultural contribution to water quality impairments in the Tualatin Basin is expected to be much lower. At that point, it will become clear how much additional work must be done through voluntary efforts to meet water quality standards. However, because there is no commitment to assess the rate of compliance with the rules, we will not know whether ongoing pollution in the basin is attributable to agricultural sources or to other sources.

**ODA Response:** ODA continues work to determine the most efficient and effective way to estimate the rate of compliance given human, technical, and financial resources. This

estimate may be determined at the state or programmatic level, rather than at the Area Plan level. The inclusion of measurable objectives, timelines, and associated milestones will enable ODA and the LAC to measure progress and adjust as needed. The ODA, LAC and Tualatin SWCD will be able to monitor progress in each Focus Area to determine whether the proper water quality functions are being provided. As DEQ notes, compliance with the regulations alone is not expected to achieve water quality standards; determining the percentage of lands meeting needed functions and checking in at each milestone will enable ODA and the LAC to determine if adequate progress is being made to meet water quality standards.