



## Memorandum of Agreement:

### Oregon Department of Agriculture Oregon Department of Environmental Quality Collaboration on Achieving Water Quality Goals Relating to Agricultural Nonpoint Source Pollution

#### I. Introduction

##### 1. Purpose

The purpose of this Memorandum of Agreement (MOA) is to describe how the Oregon Department of Environmental Quality (DEQ) and Oregon Department of Agriculture (ODA) (collectively, the Agencies) will work together to protect and improve water quality in Oregon's streams flowing through agricultural lands or impacted by discharges from agricultural activities.

The Agencies each have responsibilities for protecting and restoring water quality related to agriculture in Oregon. These responsibilities originate in both state and federal law. Broadly speaking, the federal Clean Water Act (CWA) delegates implementation of water quality programs to states, with oversight by U.S. Environmental Protection Agency (EPA). In Oregon, DEQ is responsible for setting water quality standards, identifying where those standards are and are not being met and carrying out programs to improve water quality where needed. The Oregon Legislature directed ODA to carry out the Agricultural Water Quality Management Act (AWQMA) to develop plans and rules to prevent and control water pollution from agricultural activities and to achieve and maintain water quality standards. The Agencies must work together to meet their respective but related responsibilities. This MOA updates and replaces the 2012 MOA (last reviewed without update in 2018) between the Agencies relating to agricultural nonpoint source pollution; it does not alter or limit any statutory or rule requirement governing either Agency's responsibilities.

##### 2. Limitation of Scope

The Agencies also have regulatory authority and responsibilities with respect to pesticides, designated groundwater protection areas and water quality permitting for Confined Animal Feeding Operations. The Agencies entered into additional agreements related to water quality protection, some of which include additional agencies. These authorities and agreements are not addressed in this MOA.

#### II. The Agencies' Water Quality Authorities

##### 1. DEQ Authorities

DEQ is the primary agency responsible for implementing the CWA, 33 United States Code Section 1251 et. Seq., and general state water quality laws found in Oregon Revised Statutes (ORS) chapters 468 and 468B. This includes the responsibility for: establishing and revising water quality standards under CWA Section 303(c) and Oregon Administrative Rules (OAR) chapter 340, division 41; regularly assessing and reporting the status of Oregon waters under CWA Sections 303(d) and 305(b) and ORS 468B.039; developing the Nonpoint Source (NPS) Control Program required under CWA Section 319; protection of drinking water and public health under ORS 468B.015 and OAR chapter 340, division 41; and establishing and ensuring the implementation of clean water plans, called Total Maximum Daily Loads (TMDLs) under CWA Section 303(d) and OAR chapter 340, division 42, for those surface waters that fail to

meet water quality standards. The CWA requires effective public participation for all CWA programs, including those relating to standards, NPS pollution control and TMDLs.

## **2. ODA Authorities**

ODA is the agency responsible for implementing the Agricultural Water Quality Program (AgWQ Program), established in 1993 under ORS 568.900 to 568.933 and OAR chapter 603, divisions 90 and 95. In 1995, the Oregon Legislature further clarified that ODA is the lead agency for regulating farming practices with respect to water quality (ORS 561.191). The AgWQ Program applies to all agricultural activities on non-federal and non-Tribal Trust land within the state, including: farms and ranches; rural residential properties; agricultural lands that lay idle or on which management has been deferred; urban areas and agricultural lands that may otherwise also be subject to the Forest Practices Act (ORS 527.610). The AgWQ Program also implements ORS 468B.025 relevant to agricultural lands and activities and ORS 468B.035(2) Implementation of Federal Water Pollution Control Act rules relating to livestock and animal-based agricultural operations. ODA is responsible for implementing load allocations for agricultural nonpoint source pollution assigned under TMDLs issued pursuant to CWA Section 303(d) and OAR chapter 340, division 42.

## **III. Interagency Coordination**

### **1. Principles of Interagency Coordination**

The Agencies will use the following principles in working together to protect and improve water quality:

- a. A commitment to collaboration.
- b. Freely share information and expertise.
- c. Promote transparency.
- d. Adhere to all relevant state and federal laws, including those governing cultural resources.
- e. Strive toward efficiency and limit redundancy.
- f. Use available data, scientific information and accepted scientific methods, including in dealing with uncertainty.
- g. A commitment to use our respective programs, including:
  - i. Continued progress to achieve land conditions needed to improve water quality, even where uncertainty exists; and
  - ii. Adaptively manage informed by data and scientific information.

### **2. DEQ-Led Processes**

#### **a. Establishing and Revising Water Quality Standards**

DEQ, acting through the Environmental Quality Commission (EQC), must establish water quality standards to protect designated and existing beneficial uses. DEQ must review and revise the standards periodically. Water quality standards must be adopted as rules by the EQC and approved by the EPA.

In developing or revising water quality standards, DEQ will advise ODA and agricultural stakeholders of the water quality standards revision process and invite them to attend and

participate in advisory committee meetings, where the planned revisions have a nexus with agriculture-related activities.

**b. Developing and Reporting on Nonpoint Source Control Program**

The Oregon Nonpoint Source Management Program Plan (NPS Plan) describes the state's goals, priorities, objectives and strategies for preventing, controlling and eliminating pollution from nonpoint sources, including agricultural activities and source water protection for drinking water sources. The NPS Plan includes measures needed to meet water quality standards and established allocations for nonpoint source pollution set by TMDLs.

EPA requires the NPS Plan to be updated every five years and submitted to EPA for approval. The NPS Plan and NPS annual report approvals are required by the CWA. DEQ is the lead agency for developing and annually reporting on the NPS Plan. When revising Oregon's NPS Plan and developing annual reports, DEQ will seek input from ODA on elements that relate to agricultural land uses.

**c. Regularly Assessing and Reporting on Water Quality Status**

Every two years, DEQ prepares a statewide assessment of water quality as required by Sections 305(b) and 303(d) of the CWA. The Integrated Report identifies segments of rivers, streams, estuaries and other waterbodies where water quality standards are not being met; where programs are needed to improve water quality and priorities for developing TMDLs. The Integrated Report is submitted to EPA for review and approval.

DEQ also regularly prepares Status and Trends Reports that compile and graphically represent current water quality data, where available, on temperature, dissolved oxygen, pH, total suspended solids, total phosphorus and other parameters as additional data evaluation procedures are developed. The Status and Trends Reports are geographically based with results affected by land uses and watershed characteristics upstream of the station.

DEQ will consult with ODA in advance of actions seeking input on priorities and data for the Integrated Report, including the data solicitation window and opportunity to comment. DEQ will regularly provide water quality status and trends information to ODA in support of ODA-led processes and collaborative evaluation of effectiveness in achieving the Agencies' joint water quality goals, as described in subsequent sections of this MOA.

**d. Establishing and Implementing Total Maximum Daily Loads**

For waterbodies that do not meet water quality standards and that are prioritized for further planning and programmatic actions to improve water quality, DEQ develops a TMDL and a Water Quality Management Plan (WQMP), in accordance with OAR chapter 340, division 42. TMDLs include analysis and conclusions on how much pollution must be reduced from both point sources, such as wastewater treatment plants, and from nonpoint sources, such as agricultural lands and operations. WQMPs establish the framework of TMDL implementation and include pollutant management strategies designed to meet load allocations (which may be represented by surrogate measures), timelines for attainment of water quality criteria and a plan to monitor and evaluate progress toward achieving TMDL goals.

Additional measures may be needed to meet water quality standards where TMDLs have been established. Depending on the geographic scale of the TMDL and other factors, ODA will either adapt the Area Plans or Area Rules to act as the TMDL implementation plan or develop separate TMDL implementation plans. The additional measures would subsequently be incorporated into Area Plans or Area Rules affected by the TMDL. Which approach to take will

be decided as part of the TMDL process. DEQ will assist ODA in developing approvable TMDL implementation plans that include appropriate measurable objectives and timelines to address identified water quality priorities and allocations (or surrogate measures).

When developing or revising a TMDL, DEQ forms a TMDL local advisory group or a rulemaking advisory committee that includes individuals and representatives from sectors and communities likely to be affected by the TMDL.

DEQ will request ODA and local agricultural community participation in TMDL advisory groups or committees, when the TMDL includes agricultural lands and/or activities, to ensure that appropriate load allocations for agricultural-related nonpoint sources are established and agriculture-related information is considered in development and implementation planning. DEQ will share draft TMDL documents with ODA for substantive discussion prior to release for public participation. In addition, DEQ and ODA will meet at least once every two years to discuss upcoming priorities for TMDL development, which will allow for early and regular collaboration.

### **3. ODA-Led Processes**

#### **a. Implementing the Agricultural Water Quality Program**

Between 1997 and 2004, ODA worked with Local Advisory Committees and other local partners to develop AgWQ Management Area Plans (Area Plans) and Area Rules (Area Rules) for 38 watershed-based AgWQ Management Areas across Oregon (OAR chapter 603, divisions 90 and 95). All Area Rules include reference to ORS 468B.025 as the standard for the protection of surface and groundwater. In addition, all Area Rules include protection of riparian or streamside areas. The riparian or streamside rules are outcome-based and require streambank stability and filtration of runoff on all streams and shade on perennial streams. The AgWQ Program relies on a combination of voluntary, incentive-based and regulatory measures to prevent and control water pollution from agricultural activities and soil erosion. Area Plans are voluntary and incentive-based and the Area Rules are regulations.

#### **i. Biennial Review of Area Plans and Area Rules**

ODA reviews Area Plans and Area Rules every two years to consider progress of implementation and modifications that may be necessary to prevent and control water pollution from agricultural activities and soil erosion. Area Plans and Rules will be revised as appropriate to meet water quality standards or TMDL requirements. Area Plan and Rule review includes consultation with Local Advisory Committees (LAC), as described in OAR 603-090-0020.

ODA will provide the biennial review schedule to DEQ, coordinate regularly on evaluation of effectiveness of Area Plans and Rules and TMDL implementation plans, and invite DEQ to participate in LAC meetings. Prior to and during biennial review periods, ODA and DEQ will share and confer on all relevant data, information and materials. DEQ will provide written comments for Area Plan and Rule revisions, including identifying TMDL and nonpoint source priorities for water quality improvement. In collaboration with DEQ, ODA will ensure measurable objectives and timelines are included in each Area Plan (consistent with any TMDL implementation plans that apply within the Management Area) to achieve the goals of the Area Plan. DEQ review is not limited to biennial reviews, such that DEQ may provide comments to ODA at any time on any Area Plan and Area Rules.

#### **ii. Strategic Implementation Areas (SIAs)**

An SIA is a watershed(s) selected by ODA to concentrate efforts and to ensure compliance with local area rules. Where possible, partners are working to measure effectiveness and

improvement of water quality. ODA leads regulatory compliance activities. Local SIA project partners, usually the Soil and Water Conservation District and/or Watershed Council, lead efforts to implement voluntary conservation actions that address priority concerns and work to protect and restore water quality.

The SIA process includes a pre-evaluation, outreach, technical assistance, project development and implementation, monitoring, enforcement (if necessary) and a post-evaluation. The SIA process assists landowners with achieving compliance and meeting the goals of Area Plans by concentrating technical and financial resources into specific geographic areas to address water quality concerns.

DEQ will participate in SIA selection and implementation processes by providing water quality information, participating in SIA field observations and providing expertise in study design and monitoring for SIA monitoring plans.

#### **IV. Compliance and Enforcement**

ODA takes the lead on compliance and enforcement for protecting water quality related to agricultural lands and activities. Enforcement of Area Rules is under the jurisdiction of ODA and all landowners must comply. If ODA receives a water quality complaint that is not caused by agricultural activities or farming practices or is not within an exclusive farm use zone or other agricultural lands, ODA will notify DEQ or another agency with jurisdiction. If DEQ receives an agricultural water quality complaint, DEQ will notify ODA and provide complaint information. ODA will confirm DEQ referral of agricultural water quality complaints. ODA will review complaints or notifications for completeness and validity. ODA and DEQ will coordinate site inspections where there is joint jurisdiction.

Per ORS 468B.110(1) on establishing and enforcing instream water quality standards, DEQ may impose and enforce limitations or other controls, which may include TMDLs and load allocations for nonpoint sources. Per OAR 340-012, DEQ can take enforcement action in response to water quality violations, such as causing pollution of or reducing the water quality of waters of the state, causing waste to be placed where it may be carried into waters of the state or failing to timely submit plans or reports required by DEQ rules or orders. As stated in ORS 468B.010, in instances where authority over water pollution granted by ORS and OAR to the EQC is inconsistent with any law or authority granted to any other state agency, the authority of the EQC shall be controlling.

#### **V. Evaluating Effectiveness in Achieving Water Quality Goals**

The Agencies will collaboratively evaluate implementation of the AgWQ Program, TMDLs and activities to demonstrate progress toward protecting and improving water quality in Oregon's streams flowing through agricultural lands or impacted by discharges from agricultural activities. This evaluation will be accomplished by regularly reviewing available data and information (during biennial reviews and TMDL progress reviews), improving assessment methods and evaluative criteria and adaptively managing implementation approaches.

The approach involves watershed-scale (Ag Management Area or TMDL area) consideration of the status and trends of land conditions associated with water quality and instream data. Where possible, these will be evaluated in relation to specific actions implemented. This approach

should leverage existing processes, be designed to inform adaptive management decisions to improve or better focus implementation and continue to build methods and capacity, as needed.

### **1. Monitoring and Reporting**

ODA will monitor land condition and instream condition in accordance with the 2017 or more current version of the ODA Monitoring Strategy and TMDL-specific monitoring and evaluation strategies. Existing sources from which instream and land condition monitoring data and reporting efforts can be leveraged include:

- Relevant Monitoring Plans and Reports (land condition and instream)
- Water Quality Status and Trends Reports for relevant parameters (instream)
- Integrated Reports (instream pollutant impairments)
- Nonpoint Source Annual Reports (actions implemented, land condition)
- Willamette Basin TMDLs Five Year Review and other TMDLs periodic reports (actions implemented, land condition and instream)
- ODA and other entity TMDL implementation plans and annual reports (management actions implemented, land condition)
- ODA Area Plans and Rules biennial reviews and revisions (actions implemented, land condition, instream)

The Agencies will work together to build capacity for additional land condition methods to quantify status and trends in relation to erosion, shade and other processes or pollutants.

### **2. Evaluating Implementation and Adaptive Management**

Evaluation of TMDL implementation and water quality status is a basin-scale endeavor, undertaken in consideration of cumulative effects of actions and conditions often influenced by multiple sources and source sectors. Assessment of effectiveness of specific actions is challenging because sources and actions to control them are frequently interactive.

The Agencies will evaluate implementation and water quality status and trends for instream water quality and land conditions by comparing:

- Instream water quality data to water quality criteria, TMDL load allocations (or surrogate measures) and TMDL loading capacities
- TMDL management actions and measurable objectives, such as:
  - Riparian shade to TMDL allocations (or surrogate measures)
  - Upland cover and bare ground percentages to TMDL implementation plan measurable objectives for cover and erosion prevention
- Land condition or instream water quality data to measurable objectives established in Area Plans

DEQ leads periodic evaluation of TMDL project areas, in coordination with watershed partners, to assess progress on attainment of water quality standards and to apply adaptive management approaches to improve or refine implementation. ODA will participate in these reviews and the adaptive management process by: compiling and submitting reporting information; evaluating status and trends of ODA-led programs and revising, as needed, TMDL implementation plans and Area Plans and Rules.

## VI. MOA Mechanics

### 1. MOA Implementation

The Agencies will carry out the commitments and processes described in this MOA. The Agencies will convene regular coordination meetings at both the staff and manager level. Staff will compile a list of TMDLs to be developed and the associated Ag WQ Areas and SIAs and use the list to track and update each other on schedules for TMDL development and implementation, Area Plan and Area Rule reviews, SIA activities, etc. Staff will also share schedules and updates on other DEQ-led and ODA-led processes. Staff coordination will occur as needed at any time and staff-level meetings will be convened at varying frequencies, depending on focus and timing of work.

### 2. MOA Amendment and Review Process


The Agencies will periodically evaluate progress on implementation of this MOA and report on it to the Agencies' directors as well as to the Board of Agriculture and EQC, the meetings of which provide a public forum for increased transparency. The Agencies will review the MOA every seven years, or sooner if agreed upon by the Agencies. No amendments may be made to this MOA without the express written agreement of both Agencies. Such agreement will be signed by the Director of each agency.

### 3. Dispute Resolution

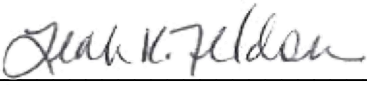
In the event of a dispute regarding aspects of this MOA, the Agencies agree to quickly and efficiently resolve disputes, first through staff-level dialogue. If a dispute cannot be effectively resolved at the staff and manager levels, managers will raise the dispute to the Agencies' Directors. Then the Directors will meet to provide direction to reach resolution before invoking options laid out in statute.

For the specific circumstance where DEQ determines that an Area Plan and Rules are not adequate and the Agencies cannot agree upon a resolution to achieve the load allocation, DEQ will initiate the petition process set forth in statute by requesting the EQC to petition ODA for a review of part or all of the Area Plan and Area Rules. This process is outlined in ORS 568.930 and OAR 340-042-0080(3).

## VII. Collaborative Flowchart (attached)

  
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Lauren Henderson, Acting Director  
Oregon Department of Agriculture

01/09/2023  
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Date

  
\_\_\_\_\_  
Leah Feldon, Interim Director  
Oregon Department of Environmental Quality

01/05/2023  
\_\_\_\_\_  
Date

# ODA-DEQ Collaboration Points Within the TMDL Process

## TMDL Development

ODA provides data and input on sources, local conditions, allocations, implementation actions & participates on RAC/LAG

DEQ completes modeling & analyses, conducts RAC/LAG and issues TMDL & WOMP w/ priority areas, actions and timelines for WQC attainment

## TMDL Implementation

ODA ADAPTS AREA PLAN OR DEVELOPS IMPLEMENTATION PLAN within 18 months of TMDL issuance

- Identify priority area, opportunities and actions with measurable objectives, milestones and timelines
- Identify partners and resources and plan for coordination
- Work with partners to develop monitoring methods to document progress
- Plan to seek additional funding

DEQ advises on development of plan and supports discussions with LACs

DEQ approves Implementation Plan

ODA IMPLEMENTS IMPLEMENTATION PLAN

- Track implementation of actions & monitoring
- Report to DEQ annually on progress of actions toward measurable objectives, milestones and timelines
- Conduct any needed enforcement
- Use evaluations to update Area Plans and/or Area Rules, as needed

Every 2 years, ODA conducts light or full review of Area Plans

### LIGHT BIENNIAL REVIEW

ODA conducts Area Plan review

- Compile & evaluate all available data & information on implementation & monitoring
- Coordinates w/DEQ on evaluation of TMDL progress

ODA discusses evaluations and TMDL status with LAC at LAC meeting

ODA finalizes and submits Board of Ag Report

### FULL BIENNIAL REVIEW

ODA updates Area Plan(s) with any new Implementation Plan content (priorities, actions, timelines)

- Coordinate w/ SWCD, LAC & DEQ
- Compile & evaluate all available data & information on implementation & monitoring
- Update the draft Area Plan w/input from DEQ

ODA conducts LAC review of draft Area Plan update & LAC meeting

ODA finalizes and submits Area Plan and Board of Ag Report

DEQ provides relevant data, information & documentation of priority areas, actions & timelines needed to meet TMDL allocations OR documentation of review comments on the draft Area Plan update

DEQ participates in LAC meeting

## TMDL Adaptive Management

DEQ & PARTNERS IMPLEMENT BASIN-WIDE MONITORING STRATEGY

ODA participates in monitoring

DEQ CONDUCTS PERIODIC REVIEWS

- Compile and evaluate all available monitoring data and information from basin-wide implementation plan reporting

ODA PARTICIPATES IN PERIODIC REVIEWS

- Submit report evaluating progress on TMDL implementation on Ag lands in subject subbasin
- Refocus enforcement, as needed
- Use evaluations/reviews in Area Plan updates, as needed
- Plan for Area Rules updates, as needed