



State of Oregon Department of Environmental Quality

# Written Comments

Powder River Basin TMDL  
Rulemaking Advisory Committee Meetings

This document is a compilation of written comments received related to the advisory committee meetings for the Powder River Basin TMDL Rulemaking held Nov. 9, 2022 and April 18, 2023.

## Comments

Baker County.....	2
Bureau of Land Management.....	5
Karen Riener.....	7
Baker County SWCDs.....	10
Oregon Department of Fish and Wildlife.....	12

### Translation or other formats

[Español](#) | [한국어](#) | [繁體中文](#) | [Русский](#) | [Tiếng Việt](#) | [العربية](#)

800-452-4011 | TTY: 711 | [deqinfo@deq.oregon.gov](mailto:deqinfo@deq.oregon.gov)

### Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age or sex in administration of its programs or activities. Visit DEQ's [Civil Rights and Environmental Justice page](#).



Baker County Natural Resources/Parks  
1995 3<sup>rd</sup> St.  
Baker City, OR 97814  
541-524-7480: [dbruland@bakercounty.org](mailto:dbruland@bakercounty.org)

November 28, 2022

State of Oregon Department of Environmental Quality  
Watershed Management  
700 NE Multnomah St.  
Suite 600  
Portland, OR 97232

Re: Powder River Watershed TMDL – Fiscal Impacts Comments

Baker County appreciates the opportunity to comment on the Draft Fiscal Impact Statement. It is nearly impossible to present solid numbers without specific implementation plans or quantifiable actions in place. Based on this fact, the County will broadly define fiscal impacts based on the wide brush-stroke used by the Oregon Department of Environmental Quality (ODEQ).

#### **Area Profile**

Baker County is located in Northeastern Oregon. The region is bordered by the Snake River and Idaho on the east, Malheur County to the south, Grant County to the west, and Union and Wallowa Counties to the north. Interstate 84 runs through the central to southeast portion of the region, and several smaller Oregon state highways provide connections throughout the more remote areas of the county. Baker County is generally rugged, with 30% of the county covered with forest. The county terrain generally slopes to the Snake River's canyon.

The region measures 3,088 square miles, and is home to approximately 16,668 residents. The region has an average population density of 5.4 people per square mile. Baker City has the highest population with an estimated 10,099 (US Census). There are (6) incorporated towns show populations of 1,595 and a population of 4,934 that are not within an incorporated area.

Baker County Cities	2020 Population
Baker City	10,099
Haines	373
Halfway	351
Huntington	502
Richland	165
Sumpter	204
Unity	40
Unincorporated	4,934

Baker County	16,668
--------------	--------

Sources: US Census

The poverty rate, based on the population 200% below poverty level, is between 14% and 15.3% depending on the information source. Compared to other counties nationwide, Baker County has an unusually high number of Agriculture, Forestry, Fishing and Hunting industries being 6.67 time higher than expected based on national data. (<https://datausa.io/profile/geo/baker-county-or/#economy>)

There is no question that the issuance and subsequent implementation of the proposed TMDL and WQMP will have multitudes, and massive, negative fiscal and economic impacts on current and future agricultural producers, irrigation districts, and other natural resource based users and land managers in Baker County. The negative economic effects of regulations and mandated projects will be borne disproportionately by the low-income, rural producers, whose livelihoods rely on an already thin financial thread. These are the folks that make up the population of 4,934 outside of incorporated areas; approximately 42% of the entire population of Baker County will be asked to pay for the implementation of the TMDL. This TMDL hits the heart of our customs, culture, and economic viability.

Though technically not considered “small businesses”, family ran farms/ranches are the lifeblood of the County. They support the needs of other small businesses such as fuel distributors, vehicle and equipment suppliers, grocers, restaurants, banks, and other mercantile-type vendors. A dollar spent by an agriculturist goes around the community seven times and is the base support to most small businesses and directly contributes to their success. Money that will be needed to pay for TMDL project implementation will no longer be available to keep the local economy going.

It is difficult to assess the positive economic impacts, if any, that will be caused by the implementation of the TMDL. The recreation/tourist industry does not rely solely on water for its economic viability. Many tourists come into the urban area to visit the museums and historic buildings, look at the art studios, and sample some of the unique restaurants and breweries, and never venture out into nature. The true recreationists come into the county to trek the Elkhorn Crest Trail, hike into the Wilderness areas, ride ATVs through forests, ski Anthony Lakes, fish in the streams, rivers, and reservoirs, and hunt big game or game fowl. Quite simply, bacteria in the water are not really considered when partaking in any outdoor adventure.

I will give you an example of the negligible impact of poor water quality by recreationists: I am the Parks’ coordinator for the County. In my (3) years of managing Hewitt and Holcomb Parks located on the Powder River arm of the Brownlee Reservoir, I have had the unfortunate duty to post notices of high cyanotoxins in the reservoir. Poor water quality does not seem to reduce the number of fisherman or boaters that access the water during these times. People continue to camp, fish, swim, and boat on the reservoir. Rather, the event that triggers a lack of recreationists in the area is the lowering of the reservoir by Idaho Power.

Other fiscal impacts are also likely to impact the total cost of TMDL implementation are not limited to:

- The cost of transporting project components to rural areas
- The ‘match’ for grant funds that will have to come out of the producer’s pocket
- Costs to the federal land managers to implement waterway exclusions on thousands of miles of waterways
- The cost to maintain or reconstruct existing structures

Baker County has identified significant impacts, as ORS 183.333 and ORS 183.540 requires, and is requesting that ODEQ evaluate the fiscal impacts based on objective information which is information that is understood from multiple viewpoints and presents all sides of an argument. This may include reducing the number of stream miles affected to the priority sections only, including projects that are ‘outside of the box’ such as increasing water storage reservoirs which deliver water later in the year, and other solutions proposed by experts in the agriculture/forestry fields.

Since there will not be noticeable results for decades, it is critical that the Baker County economy not be destroyed by rash actions.

Baker County is requesting that ORS 183.540(1) be used to its full extent. In that light, the County is requesting that we be more involved in the drafting of the rules to include the development of the rules. It also includes reviewing the draft rules prior to their public comment period.

Once again, thank you for the opportunity to provide input into this process. Please, don’t hesitate to contact me with questions or concerns.

Sincerely,

*Doni*

Baker County Natural Resources/Parks Coord  
541-524-7480



## United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
Baker Field Office  
3100 H Street  
Baker City, Oregon 97814  
<http://www.blm.gov/or/districts/vale>



# RECEIVED

DEC 12 2022

State of Oregon  
Dept. of Environmental Quality  
Eastern Region - Pendleton

4000 (ORV050)

DEC 07 2022

Oregon Department of Environmental Quality  
Attention: Vanessa Rose  
800 SE Emigrant Street, Suite 330  
Pendleton, OR 97801

Dear Ms. Rose:

The impact of setting a TMDL for the Powder River Basin would have both monetary and non-monetary impacts to the BLM. The monetary impacts would be associated with developing a management plan to reduce bacterial levels on BLM administered lands. This plan will require an Interdisciplinary Team involvement which would include wildlife, range, fisheries, hydrology, planner, weeds, and recreational specialists. The BLM estimates that the cost of producing the plan would be \$75,000 if done internally and \$200,000 if contracted to a private company. Implementation of the plan will also result in monetary cost. It is likely that management will focus on fencing riparian areas and providing off site watering; closing grazing allotments or using supplements and riding the allotment on a periodic basis to move cattle out of the riparian area.

Fencing riparian areas would have initial cost of approximately \$12,000-15,000 per mile and a maintenance cost of 100-150 a mile/per year. Developing off site watering sites would likely range from 4,000 to 6,000 per development. The BLM would likely enter into cooperative agreement with the livestock permittee with each paying for half of the costs. At this time the BLM does not have a good estimate on number of miles of fence, if any, that would be constructed.

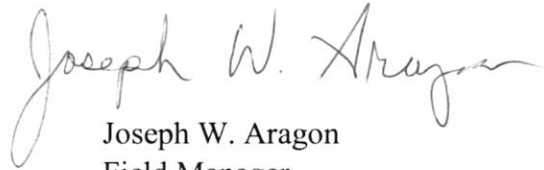
Closing allotments would likely require the BLM to hire seasonal employees to maintain the allotment boundary fences which will reduce the likelihood of unauthorized livestock grazing. Costs associated with hiring seasonal employees to maintain fences is expected to range between \$25,000 and \$50,000.

Cost associated with mineral supplement placement and/or riding the allotment would be the responsibility of the livestock permittee.

Non-monetary impacts would be associated with improved water quality and riparian health. These impacts would likely result in beneficial impacts to wildlife, fisheries, and recreation.

If you have any questions please contact John Rademacher, Natural Resource Supervisor, by email at [jrademac@blm.gov](mailto:jrademac@blm.gov) or by phone at (541) 523-1417.

Sincerely,

A handwritten signature in cursive script that reads "Joseph W. Aragon". The signature is written in dark ink and is positioned above the printed name and title.

Joseph W. Aragon  
Field Manager

RE: DEQ/TMDL Karen Riener input to meeting #1, November 9, 2022

Dear Vanessa,

I found the Nov. 9<sup>th</sup> meeting helpful and informative. Thank you and the others for the presentation, and posted slides on the website.

My initial thoughts on the request to think about TMDL from a fiscal impact perspective has me turning to what my personal experience has been here in the area where I live. It occurs to me we are assessing costs from the after-the-fact TMDL numbers have been analyzed and the pollution problems have already been monitored.

What I observe in my area of Eagle Creek and with a lesser degree of observation, in Pine Valley, is that some land owners which have creek, ditch, or wetland proximity are being ignorant of their management impacts on the water bodies. These impacts can be small but cumulative over time and or space and potentially affect the water body's TMDL. So I see a need to educate the landowner who lives with these water bodies, about the effects of management actions on TMDL. This education costs money, administrative money I believe. I'm not sure if this would be considered a cost of TMDLs, and if it is, it would fall within the category of Administrative costs, I think.

Examples are landowners who periodically burn, or rip-up the riparian zone along the creek. I believe there is a need to educate these landowners on the value of riparian vegetation, and on how to manage riparian vegetation to obtain a compromise between what nature would do if left to evolve through its associations until reaching a climax riparian state for that area, and what the landowner holds in mind as the preferred condition of creek frontage. I think many of these landowners purchase the creek frontage without much biological knowledge but with a lot of desire to make over the creek/beach landscape for a completely human purpose for that interface. Eagle Valley and Pine Valley are getting new landowners who are buying creek frontage with the purpose of enjoying it as recreational and not for agricultural production, and I've seen them destroy the riparian zone because they want it bare.

Another example does have to do with the existing ranchers and agricultural producers. This is the practice of driving their bulldozers and excavators into the creek to make the creek channel conform to the ditch intake or to lower the creek bed to make the subsurface water level become the surface so that the surface

water will then make its way into a ditch, and to make the creek flow in a preferred direction. Besides the havoc this creates on surface and groundwater flow and availability, this also stirs up quite a bit of sediment/fines which then move downstream and settle, coating the creek bed, which is damaging to the micro and macro fauna which live on the stones of the creek bed, negatively impacting the ecology of the creek.

I think this is quantifiable because a one-off survey for macro-fauna was done by the Powder Basin Watershed Council (Anna Morgan Hays) on Eagle creek in an area where agriculture was not in production and a healthy riparian zone was intact. The disturbing pollution source is a head-gate of a sizeable ditch which has a bulldozer crossing the creek at least twice a year and moving boulders and rocks to augment a boulder/rock berm to channel the water towards the headgate. I've observed this operation and the silt and sand stirred into the water column made the water significantly opaque. This survey for macro-fauna found a surprisingly lower amount of macro-fauna downstream of this headgate in comparison to what was usually found in a comparable reach which had no bulldozer activity. I think most of the ranchers and agricultural producers, and the heavy equipment operators know this is damaging but I believe there could be more effort in educating them all about how negative the effect is of this activity.

When some people actually break the requirement to abide by the TMDL Rules to limit water pollution, is it not an administrative cost to enforce cooperation or then the cost of penalization? How much would education and reminders change the behavior to better protect the ecology of the water body I don't know nor do I know how would the costs be figured. It's a hidden cost, as many TMDL sources are.

As new people move into the area or old-timers muck around with their equipment in the creek, I have often wished I could contact DEQ and ask them to send an informational/educational brochure to the landowner or resident so they can at least know what best practices are, or remind them that there are rules to not stir up the creek.

I know you are aware, at least on the lower stretches of Eagle creek, that ditch users have dug down into the groundwater level to get the water into their ditch. This is common and acceptable practice since the surface water is over-allocated and the watermaster's office does not have the political might to scale water use back so that the practice would not have to occur. But nevertheless it is a TMDL and hydrologic cost that society is paying and I'm under the assumption that this effort of assessing direct costs for TMDL pollution sources is to correct this very



problem of society and the land paying for the degradation occurring and so it's trying to be halted with corrective land/water management.

So I'll reiterate, education costs to stop the TMDL pollution before it starts is probably not what you had in mind for us looking at this fiscally, but I think these TMDL pollution sources that I see, are falling below the radar because they are too subtle to show a spike on monitoring equipment, but it's cumulative and local and occurring.

If more thoughts come to me I'll write again.

Sincerely, Karen

Hello Vanessa,

I believe you wanted comments from members of the RAC before Wednesday, so here goes.

1.) The DEQ has been working on this TMDL process since before my time working for the SWCDS (13 years) and possibly before I even moved to Oregon, now I understand these things take time, however I do think that only giving the RAC just a few weeks to reply with comment is a bit of a push. Most of the members of the RAC are representing a larger group of interested and invested people/landowners. In my case the 4 SWCDS and the 2 LACs, therefore I would like to ask for an extension until the 1st of the year for feedback. In order to provide intelligent and meaningful feedback I personally feel it is essential to involve the folks that I represent in order to capture a wider view. What I would not like to see during this process is anyone setting arbitrary deadlines that aren't required by a statute or rule that wouldn't allow for members to seek comment from the various groups they represent and having the history, knowledge and wisdom be lost in this process.

2.) I see the map that shows the various monitoring stations, and I see the trend data. However what I don't see is a list of the sites and a list of what each site is monitoring for. Can you please provide that?

3.) I notice a large portion of irrigated ground in the maps, and the reflecting E COLI data. As we know Phosphorus can cause a spike in E COLI numbers, has there been data collected that can show us the natural Phos our environment puts out vs added Phos? My concern here is that agriculture may be getting the "blame" for adding E COLI in the systems that may be attributed to natural causes.

4.) On the same E COLI issue, I know you have taken into consideration the feeding stations ect for wildlife inputs, but is anyone testing for E COLI that is coming from wildlife vs cattle?

5.) I understand that all agencies will be required to come up with their own plan to implement these rules however I think a key thing to keep in mind is the cost to smaller entities, like mine on the writing and implementing of said plan. Regardless of what we all come up with in a plan document, the ultimate responsibility sits solely with the landowners. The landowners in this county are proud stewards of the land, our lives depend on it. I think consideration needs to be taken when any agency is talking about affecting anyones bottom dollar. Lets not forget agriculture keeps the state of Oregon and the world fed and when you are going to enforce something that takes money from a producer for feed, equipment, fuel, seed, fertilizer ect and require them to spend it on something that we haven't proven is effective to "check a box" it directly will affect not only their lives but their output. I can work with landowners to provide some funding, but as we all know that is not guaranteed.

Have we looked at the potential for unpermitted CAFOs? Has there been any consideration for additional water storage facilities? Both are worth looking into if we would like to see the concentration of inputs decrease.

Thank you,

- Please note my new cell number below as well as my new email [swcdwhitney@gmail.com](mailto:swcdwhitney@gmail.com)

*Whitney M Collins*

*Districts Manager*

*Baker County SWCD's*

*Baker Valley SWCD*

*Eagle Valley SWCD*

*Keating SWCD*

*Burnt River SWCD*



# Oregon

Kate Brown, Governor

## Department of Fish and Wildlife

East Region  
107 20<sup>th</sup> Street  
La Grande, OR 97850  
(541) 963-2138  
FAX (541) 963-6670  
[www.dfw.state.or.us/](http://www.dfw.state.or.us/)



TO:  
Vanessa Rose  
Oregon Department of Environmental Quality  
TMDL Basin Coordinator  
800 SE Emigrant Street, Suite 330, Pendleton, OR 97801

RE: Comments on Draft Fiscal Impact Statement for Powder Basin Bacteria TMDL rule making process

The Oregon Department of Fish and Wildlife (ODFW) appreciates the opportunity to provide comments on the Draft Fiscal Impact Statement (FIS) for the Powder River basin bacteria TMDL. ORS 183.333 requires that ODEQ ask the Rule Advisory Committee to consider the fiscal and economic impact of the proposed rules including: (1) whether the rules will have a fiscal impact, and if so, what the extent of that impact will be, and (2) whether the rules will have a significant adverse impact on small businesses, and if so, how DEQ can reduce the rules' negative fiscal impact on small businesses. ODFW feels that the draft FIS does not adequately capture or clarify the fiscal impact of TMDL implementation. Instead, the draft FIS is centered on justifying that implementation costs would be the same whether the TMDL was issued as an order rather than a rule. Without a clear identification of the numbers of entities responsible for implementation, types and extent of management activities that will be required, and projected costs associated with implementation, ODFW cannot adequately evaluate the economic impact of implementing the Powder River TMDL.

### **Draft Fiscal Impact**

ODFW feels that DEQ has not provided adequate time to review or sufficient information in the draft FIS for reviewers to provide reasonable estimates of economic impacts to identified Designated Management Agencies. Without a more developed description/definition of what a "significant economic impact" is or how this might relate to the "value" (economically or socially) of clean water, makes commenting on potential economic impact(s) very difficult and leaves much up for interpretation. In the example provided at the November 9th RAC meeting, there are 37 small businesses identified as potentially impacted by the TMDL in the Powder Basin, as well as an unquantified number of non-registered agricultural businesses. It is unclear as to whether "significant impact" should be considered for each of the 37 small agricultural businesses individually, or to the small agriculture business sector as a whole, and whether this evaluation should take into consideration that some small businesses may be contributing to the water quality issues less/more than others. DEQ does not provide enough detail in their draft FIS to determine how many individuals/businesses would be required to implement the TMDL. Although ODEQ may not have exhaustive information to determine all potential sources or what actions are currently occurring that could be modified or enhanced to prevent exceedances of

water quality standards, the draft FIS could provide examples of types of activities and associated cost estimates of management activities based on acreages of waterbody considered impaired to provide some basis for evaluating fiscal impact.

### **ODFW DMA Status**

ODFW manages the Elkhorn Wildlife Area (EWA) and operates ten ungulate feeding stations along the foothills of the Elkhorn Mountains, with two of the stations located adjacent to perennial waterways (i.e., Anthony Creek and North Powder River). Both feeding sites are located on a contiguous tract of property owned by ODFW. The feeding sites on this property are located along Anthony Creek (Anthony Creek Site) on the north side of the tract and the North Powder River (North Powder Site) on the south end of the tract. Riparian vegetation cover along the streams is good throughout most of the sites, and fencing has been installed to exclude livestock from the stream/riparian zone. However, there is one water gap for livestock watering at each waterway. Elk feeding typically occurs at the feed sites from December 1 of each year through mid-late March, although in some years continues to mid-April, and the actual feed sites comprise relatively small areas. In addition to the elk feeding sites, both areas have irrigated pastures adjacent to the stream where livestock grazing occurs typically May 1 through October 1. ODFW leases grazing rights on these pastures, and the pastures are grazed on a rotational basis through the season, depending on abundance of forage. The Elkhorn Wildlife Area is managed primarily to minimize or alleviate conflicts caused by elk and deer to privately owned lands and agricultural crops. All management activities on the EWA are undertaken within the context of this goal.

In addition to the management actions taken on the EWA and other ODFW owned properties to uphold ODFW's mission "to protect and enhance Oregon's fish and wildlife and their habitats for use and enjoyment by present and future generations," the agency also acknowledges the inextricable link between water quality and water quantity, and has worked for many years to protect instream flows as a legally recognized beneficial use to the greatest and most reasonable extent practicable through the application of instream water rights across the state. Currently, ODFW has several certificated instream water rights in the Powder Basin (one of which is on Anthony Creek), and applications for others which are currently being protested (one of which is on the North Powder).

The conclusions drawn by ODEQ regarding ODFW DMA status in the Powder River basin TMDL are not substantiated by current water quality data. *The Water Quality Monitoring of ODFW Anthony Creek and North Powder River Elk Feeding Stations Final Report* authored by the Powder Basin Watershed Council (PBWC)<sup>1</sup> concluded that the action of feeding elk at the Elkhorn Wildlife Area does not lead to significantly increased concentrations of E. coli bacteria in Anthony Creek and the North Powder River. The PBWC report suggests there is a greater potential for bacteria loading from the Elkhorn Wildlife Area during its livestock grazing rotations (May 1 – Oct 1), but this is a conclusion drawn from a single elevated sample in the North Powder River (> 406 cfu) in August 2021. Samples taken at ODFW Pond #1, 8.5 miles downstream, are more reflective of agricultural practices that occur on lands along the river

---

<sup>1</sup> The Water Quality Monitoring of ODFW Anthony Creek and North Powder River Elk Feeding Stations Final Report. Powder Basin Watershed Council. December 2021.

corridor between the Elkhorn Wildlife Area and fishing pond since livestock grazing does not occur directly around the pond.

For the reasons outlined above, ODFW believes the combination of riparian protection and enhancement efforts carried out through fencing installed in the Elkhorn Wildlife Area to exclude livestock from the stream/riparian zone and demonstrated efforts to protect instream flows for the benefit of the public's fish and wildlife resources provides sufficient protections for bacterial contamination of both the North Powder River and Anthony Creek. The draft FIS did not provide sufficient level of detail or types of additional management activities that would be expected or required of ODFW to fully implement the TMDL. Complete fencing of the riparian corridor along both waterbodies is neither practical nor reasonable. Without the actual TMDL and associated loading allocations, ODFW feels DEQ has not adequately characterized the contribution to excess bacteria loads from ODFW managed properties. Further, ODFW believes that current management of the EWA includes actions to the extent practicable to maintain a healthy riparian system and stream corridor.

ODFW appreciate DEQ's continued coordination for protection of Oregon's waterbodies and fish and wildlife habitats. While ODFW appreciates the coordination, we question the conclusions of the TMDL resulting in ODFW DMA status in the Powder River basin. ODFW is happy to answer any questions regarding our comments and look forward to continued conversations.

*Joseph R. Lemanski*

Joe Lemanski  
Oregon Department of Fish and Wildlife  
District Fish Biologist – La Grande  
Powder River Bacteria TMDL Rules Advisory Committee Member  
Phone: (541) 962-1829  
Email: [Joseph.R.Lemanski@odfw.oregon.gov](mailto:Joseph.R.Lemanski@odfw.oregon.gov)

CC:  
Chandra Ferrari; ODFW  
Rebecca Anthony; ODFW  
Dan Marvin; ODFW  
Jeff Yanke; ODFW