

Meeting Summary

Temperature Total Maximum Daily Load Replacement: Lower Columbia-Sandy Subbasin



Rule Advisory Committee Meeting #1

Feb. 22, 2023, virtual meeting (Zoom)

List of attendees

Rule advisory committee members:

April Snell	Oregon Water Resources Congress
Becky Anthony	Oregon Department of Fish and Wildlife
Rob Hibbs	Oregon Department of Agriculture (representative for Olivia Jasper)
Lauren Poor (absent)	Oregon Farm Bureau
Steve Kucas	City of Portland Water Bureau
Mark Rogers	Oregon Council for Trout Unlimited
Rich Wildman	Geosyntec for Oregon Forest & Industries Council and Oregon Farm Bureau
Roy Iwai	Multnomah County
Ryan Largura (absent)	City of Troutdale
Sharla Moffett	Oregon Business and Industry
Todd Reinwald	U.S. Forest Service, Mt Hood National Forest
Christina Davenport	Leeway Engineering Solutions for City of Sandy

DEQ staff

David Fairbairn, Ryan Michie, Evan Haas, Alex Liverman, Gene Foster, Michele Martin, Andrea Matzke

Agenda

Time	Topic
10 a.m.	Welcome
10:05 a.m.	Agenda, and introductions
10:10 a.m.	Zoom logistics, ground rules, meeting materials, and charter
10:15 a.m.	Project overview and Total Maximum Daily Load (TMDL)
11:10 a.m.	Break – 5 min.
11:15 a.m.	Water Quality Management Plan (WQMP)
11:45 a.m.	Fiscal Impact Statement and OAR language
12:25 p.m.	Next steps
12:30 p.m.	Adjourn

Meeting summary

Michele Martin started the meeting introductions and roll call of rule advisory committee members, reviewed logistics and ground rules for the meeting and discussed meeting materials that were sent on Feb. 9, 2023, in advance of the meeting. DEQ mentioned the Technical Support Document that is not going to be in the rule and was not provided to the rule advisory committee for this meeting but will plan on providing the document in time for rule advisory committee meeting #2 in April. The meeting was opened for questions and there were no questions.

Michele Martin began with a brief project history and schedule. There were no questions about the schedule.

David Fairbairn discussed the technical approach to the Lower Columbia-Sandy Subbasin TMDL and mentioned that DEQ will be holding another webinar in March for questions and answers in more detail about the technical approach to the TMDL. David provided an overview of TMDL basics starting with the TMDL elements. The TMDL elements must include: TMDL name, location, pollutant, applicable water quality standards, beneficial uses, loading capacity, excess load/load reduction, identified pollutant sources, allocations, margin of safety, identification of any seasonal variation considerations for compliance, and a water quality management plan. Point sources include individual and general permittees, including fish hatcheries (300-J). Nonpoint sources including solar radiation, land use changes and activities that modify flow rate or volume, and background sources. David provided a graphic (presentation slide 15) that explains the formula DEQ uses to calculate the TMDL including pollutant loading, loading capacity, load reduction, source identification and current conditions 303(d) list. David noted that there are different criteria used to identify capacity for different segments. The loading capacity can be updated if EPA creates new numeric criteria. Reserve capacity is kept for future sources that had not been identified in the current TMDL, that may emerge after the TMDL for future sources identified.

David described the equation for the loading capacity (presentation slide 16). Table 8.1 of the TMDL show the minimum thermal loading capacity (kcal/day) for selected Assessment Units by applicable fish use period. The loading capacity has a provision that allows the loading capacity recalculation if the numeric standard is updated and approved by EPA. Excess load/load reduction is the actual pollutant load above the loading capacity, which leads to development of the percent load reduction. David described the approach DEQ uses to develop this and discussed an alternative approach that could be used with more flow data; flow data were not available at most temperature monitoring sites, which required a surrogate approach to determine percent load reduction.

The human use allowance description (presentation slide 18) was broken down by portion of the human use allowance and by source category on Table 9.1 of the TMDL. Wasteload allocations for permitted sources is on Table 9.6 of the TMDL. The calculation for this table is based on the average dry-weather design flow, except for the Oregon Department of Fish and Wildlife Sandy River Fish Hatchery that is based on reported maximum discharge data. On presentation slide 20 David reviews the TMDL Wasteload allocation equation, also in pages 15-16 of the TMDL. This equation 2 in the TMDL translates the data collected (in table 9.6 of the TMDL) into calculated Wasteload allocations. This equation is based on dry weather design flows that were obtained from permits or evaluation reports, or directly contacting the facilities.

Andrea Matzke responded in chat to Roy Iwai: Hi Roy--Priority management strategies in Table 2 do identify in-channel ponds as a potential source of warming--"remove in-channel ponds or modify pond structures to reduce temperature increases downstream" so although not modeled the table supports removal when applicable.

David continued describing the minimum duties provision noting that individual sources don't have to reduce heating of waters of the state below their natural condition, for example, flow through facilities like the ODFW fish hatchery. If the river is already warm when it enters facility, the hatchery does not need to reduce its temperature below the current river temperature. Load allocations are applied to nonpoint sources on Table 9.8 of the TMDL that shows thermal load allocations for anthropogenic nonpoint sources on the Sandy River. The equation for this is on presentation slide 23. Thermal load evaluates gaps in shade along waterways. Shade is calculated on vegetation type existing compared to what is potentially attainable. Surrogate measures,

effective shade is evaluated in section 9.1.2.1 of the TMDL and are broken out by Designated Management Agency by river and using shade curves or modelling.

David provided a conceptual diagram of effective shade (presentation slide 25). Generally, it's the percentage of solar radiation blocked by vegetation, structures, or natural geologic formations.

Michele asked the rule advisory committee if they had any questions or comments. None raised.

David continued with slide 26 with an overview of site-specific effective shade calculations and how those are used to identify load allocations for nonpoint sources and identification of potential shade gaps.

Steve Kucas: Mentioned excess load reduction values in section 8. If based on modeling year that DEQ uses, and shows from DMA that there isn't an excess load, what would that mean? (Presentation slide 17) If a DMA influences a stream and there is no value, what does that mean for DMA?

David: Quantitatively, if there isn't an excess load, we would not have identified an excess load that needs to be reduced.

Ryan Michie: Table 8.2 in the TMDL is where we have identified excess load at places where we have that data. Includes 303(d) listed segments as well as unlisted reaches. If there is a zero-excess temperature, in most cases, that means that location is meeting the temperature standard (Biologically Based criteria). DEQ's TMDL does apply to entire Lower Columbia-Sandy Subbasin and all its waters defined as waters of the state. On these streams, the expectation for DMAs would be more on a protective measure, for example, for vegetation, there would be protective measures put in place to protect the vegetation that already exists to maintain its attainment status.

Steve Kucas: Good for me for now.

David continued with surrogate measures (presentation slide 27), regarding effective shade targets for high-density conifer dominated streams as an examples of vegetation types (chart) and Table 9.12 in the TMDL that shows vegetation height, density, overhang, and horizontal distance buffer widths used to derive generalized effective shade curve targets. Where DEQ does not have data these types of values would be used for the shade assessment. Flow surrogates are used to identify a target maximum percent flow rate reduction relative to median natural flow at the reference site. Looked at where flow reductions can occur, but still meet standard. DEQ identified that the maximum flow reduction for this Sandy River site is 2% based on modeling.

Reserve Capacity (presentation slide 29)

Note – *the presentation slide title was wrong and fixed by DEQ for posting online.* A value is reserved as a margin of safety to still allow for any additional modeling. As a reminder, DEQ will hold a technical informational webinar on Tuesday, March 14, 2023, at 10 p.m.

Michele Martin: Noted that DEQ would send out a GovDelivery notification on the technical webinar.

Rich Wildman: Can DEQ speak more about reserve capacity and how it was determined to be 0.05 Celsius?

Ryan Michie: In our water quality standards, the rules specify that the 0.3 °C equivalent of the loading capacity is reserved for human sources, called the human use allowance. Reserve Capacity is the portion of the human use allowance reserved for new or future sources, both nonpoint and point sources; or sources that were not identified during the TMDL process that may have existed but were missed for some reason. The portion of the human use allowance reserved for reserve capacity represents the portion that is not taken up by any other sources or source categories.

Rich Wildman: Yes, that is what is. Two questions: 1) why would sources that might have been missed not be part of a margin of safety and 2) given the definition of reserve capacity of what you just shared, how did you come up with the number 0.05 degrees.

Ryan Michie: Margin of Safety is a safety factor, implicit or explicit and it's part of the loading capacity. We used an explicit margin of safety, which means that conservative or protective assumptions were used instead of allocating a portion of the loading capacity as a margin of safety. The reason we need reserve is that we might miss a point source, and the reserve allows us to reserve a portion as a waste load allocation for the point source that DEQ missed, I don't think we have missed a point source in this allocation. That is why it's not considered part of the margin of safety. In terms of the number, there are a lot of considerations, and they are outlined in the rules. In the case of the Sandy River, DEQ looked at the discharges as well as dams and reservoirs as well as all other sources, we felt that the 0.05 was appropriate.

Michele Martin added a link to the rule in chat: [OAR 340-42](https://secure.sos.state.or.us/oard/displayDivisionRules.action;JSESSIONID_OARD=mhiZ4z1DdKd0iBBibU9LFwUnbPFMij3WtnQwXdUvnlBogS560Q9!-1441486436?selectedDivision=1459) or https://secure.sos.state.or.us/oard/displayDivisionRules.action;JSESSIONID_OARD=mhiZ4z1DdKd0iBBibU9LFwUnbPFMij3WtnQwXdUvnlBogS560Q9!-1441486436?selectedDivision=1459

Roy Iwai: What about smaller reservoirs or inline ponds? These are common in agricultural settings in the Sandy basin. There was a Johnson Creek study on impacts of these small inline ponds have impact on water temperature. This is potential impact beyond the shade considerations. Have these been considered in the TMDL development and allocation?

David Fairbairn: They are not explicitly considered. DEQ does not feel we have enough data to make a determination one way or another on these ponds and whether they are sources for temperature.

Ryan Michie: We didn't explicitly quantify the contribution of small ponds in the Sandy subbasin. We noted the study in Johnson Creek. DEQ would like to hear feedback from the committee on about what is meant by dams and reservoirs. We consider large reservoirs, like City of Portland's Bull Run reservoir. To date, I think that is the primary reservoir. These small inline ponds would not meet our definition. If there is some concern that there are other dams and reservoirs that we should consider, we would appreciate input.

Roy Iwai: We think there might be some, on Beaver Creek in particular that would be worth considering.

Andrea Matzke in chat: Response to Roy Iwai, priority management strategies in Table 2 do identify in-channel ponds as a potential source of warming--"remove in-channel ponds or modify pond structures to reduce temperature increases downstream" so although not modeled the table supports removal when applicable.

Michele Martin: Is this an opportunity to discuss the City of Portland Bull Run surrogate? We can add a presentation slide into the PDF after this meeting and will note the slide addition when we post the presentation on the rulemaking webpages.

Ryan Michie: Speaking of dams and reservoirs, there is a surrogate measure in the TMDL that starts on page 19 for the City of Portland Bull Run project. – [Ryan asked to share his screen] The surrogate measure for the dam and reservoir is the no dam temperature downstream of the reservoir; or the most restrictive temperature criteria in the Bull Run River which is either 16.3°C June 16-Aug.14 or 13.3 from May 1 – June 15 or Aug. 15 – Nov. 15. DEQ provided an equation on page 19 of the TMDL that the City of Portland may use to estimate that no dam temperature at the lamprey barrier. The equation in the TMDL may be used to estimate that no dam temperature at the lamprey barrier. That is how the City can calculate the temperature at the dam. The equation is based on about five years of modeling model without the dam to determine the temperatures without the dam and used it in relationship to the Little Sandy River temperature gage and that is how DEQ developed a relationship that turned out to be a strong relationship in terms of the fit. The City of Portland would use this for, or the option is provided if they have an alternative approach in terms of goodness of fit they can use that as well.

Andrea Matzke in chat: The removal of inline ponds being on the Management Strategy Table 2 as an applicable strategy to address temperature concerns.

Rich Wildman: We know this is a TMDL replacement project. Can we hear more about the differences between this TMDL and the one it is replacing?

David Fairbairn: Many components of the older TMDL have been evaluated and monitoring data collected was considered. The updated TMDL includes additional data to reflect changes in the region since the first TMDL. We now have more refined spatial detail on vegetation based on LIDAR data and USGS tools to estimate flow in ungauged areas.

Ryan Michie: For the required TMDL elements, the primary difference is that the standard has changed. We have to recalculate both the loading capacity and the allocations based on the different standard. In the previous TMDL, the natural conditions criteria applied and notably the allocations utilized the natural conditions criteria. The natural conditions criteria were litigated and disapproved. DEQ is using the numeric biological based criteria instead. The Marmot Dam was removed, and that changed some things in the river. DEQ also updated the current loading from some sources.

Rich Wildman: I would like to go back to the maximum flow rate reduction. It was shown as 2 percent. What is the relationship between flow rate reductions and wasteload allocations and load allocations? Especially with respect to nonpoint source dischargers or point source dischargers are supposed to manage their thermal loading based on the load allocations and wasteload allocations - are they supposed to manage flow rate as well? Or was it that if the flow rate changes then something else happens?

David Fairbairn: Not defined as something that a result of allocations. DEQ modeled the flow conditions that included removal of dams and other and other anthropogenic changes in the waterways. This scenario is not just like restoring vegetation, the outcome is different, but the purpose for restored flow scenario was to predict what the temperature would be like under this altered flow scenario, not changing other vegetation or anything else, how much flow could be reduced and still meet the temperature standard.

Ryan Michie: Human use allowance presentation slide 18, on Sandy River, DEQ is proposing to provide a human use allowance for water management activities and water withdrawals (consumptive use). The previous TMDL allocated 0 to this. We recognized that these activities occur. Presentation slide 28 for the surrogate measure – DEQ did modeling to evaluate how much reduction in flow would occur at the Sandy River below Bull Run to result in no more than a .05 increase at this same location. Our initial draft modeling found this is approximately a 1.75 flow rate reduction monitored at this gauge at this location.

Michele Martin: five min. break

Evan Haas: Provided an overview of the Water Quality Management Plan (WQMP) components, and the Implementation Plan requirements. An implementation plan will be developed by responsible persons, Designated Management Agencies (DMAs). The plan should identify management strategies the DMA will use to achieve load allocations; timeline for strategy implementation and schedule for completing milestones; and a monitoring plan. DEQ's proposed list of DMAs is in the WQMP section 5.1, page 8. This is a proposed draft list of entities that may need to develop implementation plans. DEQ is still evaluating the list and is looking for input from committee members on the list. The list was developed from a DMA mapping exercise, looking at jurisdiction within the Lower Columbia-Sandy subbasin, as well as within 150 feet of streams (riparian buffer zones). Some DMAs may not need to develop an Implementation Plan due to small or no ownership in riparian area, or identification of some issue where they can't implement a strategy for specific reasons.

Question for RAC: What additional evaluation criteria that DEQ should consider to determine/identify DMAs or responsible persons named in the Lower Columbia-Sandy Subbasin?

Roy Iwai: Reservoir on or near the Mt. Hood Community College – is that part of this TMDL area?

Ryan Michie: For mapping, DEQ mapped ownership, zoning, and other factors. Mapping for DMAs didn't consider the reservoir. I think that the campus is included in the City of Troutdale or Gresham city limits, and so Lower Columbia-Sandy Subbasin Temperature TMDL Rule Advisory Committee meeting #1 page 5

the management of those lands including this reservoir would fall to City in terms of the management plan. DEQ did not consider the impact of this reservoir in the technical analysis.

Rebecca McCoun: There was mention that for percentages of shade reduction for DMAs, you used a 150-foot buffer. Was that land touching the river, or could you have a portion the 150 ft. that is ag and another portion is forestry?

Ryan Michie: Mapping was at the tax lot level. For ODF or ODA, DEQ assigned the DMA based on which had the greatest majority. In terms of the stream, the purpose of the mapping was to get a sense of the DMAs in proximity to the streams and did not consider the specific width of the stream. The distance was 150 feet from center line of the stream.

Todd Reinwald in chat: Would agencies who regulate activities along rivers be potential DMAs? For example, ACOE, County. There have been a number of projects on the upper Sandy to protect residences, likewise, homeowners that have or adjacent riverfront properties that are regulated by the county. Are some of those agencies that regulate on non-public land – would they be included?

Evan Haas: The initial list is based on jurisdiction and ownership. This is the type of question we would want to consider. We can look into it.

Andrea Matzke: To further clarify, a DMA is an entity that has jurisdiction over a pollutant source. If the county or city or U.S. Army Corp of Engineers had jurisdiction along the waterway, then they would be responsible for implementing management strategies. We may have missed some potential DMAs, and welcome comments to include additional parties for consideration. Noted that there is a date for comments to be provided.

Michele Martin: Confirmed the date for feedback by the committee members is Mar. 3, 2023.

Evan Haas: Provided overview of management strategies in the WQMP table 2 page 2. Eventually, DMAs will need to develop and submit implementation plans with strategies they will take to address pollutants. The implementation plan can include strategies identified in table 2 or others that are appropriate.

Riparian vegetation strategies are in the WQMP table 2, page 2.

Other strategies may address water withdraws (see presentation slide 40). Evan provided an overview of channel modification issues (see presentation slide 41).

Question: Are there additional specific management strategies that should be added to the WQMP in table 2?

Rich Wildman: Do you have a sense of which management strategies were in effect when the calculations were done for the TMDL? Where and whether land management strategies were accounted for in the TMDL? Or if implementing planned strategies that are already on the books might be useful for a management strategy? Also interested in understanding how to account for Private Forest accord actions and stream buffer widths on the Salmon that are part of that.

Ryan Michie: I think what you are asking is what was considered as part of the TMDL in terms of existing management strategies? The analysis modeled temperatures for the Sandy River, Salmon River, Little Sandy, Zig Zag, and with help from City of Portland, the Bull Run, and the reservoirs. Those models incorporate the existing landscape conditions, types of riparian vegetation, how large it is, density, and the buffer width, and incorporate the flows at the time of the model period. Consider how these things are operated when we develop the models. Shade results, e.g., include what is the assessed shade at the time of the modeling and the conditions at the time of the modeling and incorporate those management strategies that are already on the ground in terms of that shade. For the Bull Run assessed the current impact of that dam and the operations and looked at various model scenarios of water withdraws and things like that. Did our best to quantify the impacts of those strategies and incorporate them into our models.

Rich Wildman: That was very helpful. I heard you say that you did what was on the ground for the time was modeled; we will look at the technical support document to see how that exactly was done.

Ryan Michie: You can see detail and the setup of the models are in the Quality Assurance Project Plan that is online and in that document.

Alex Liverman: Section 5.2 in the WQMP talks about amendments to forest practices act once those begin to be implemented and we can see changes on the ground. It will take some time to account for tree growth and other actions to take effect. We can look at revisiting modeling down the road as part of our adaptive management approach.

Steve Kucas: If the TMDL is finalized, if a DMA is asked to create an implementation plan, if there is future management strategies that seem appropriate, can they be included then?

Evan Haas: Yes, that is the approach. DEQ wants table 2 in the WQMP to be inclusive, and as part of the implementation plan we can include something in there – I don't think that is an issue.

Rebecca McCoun: Data management – as DMAs are ground truthing and getting areas that may have flood plain migration zones that are challenging to reestablish plants or vegetation will DMAs be responsible to track those area over time, or will DEQ be responsible for tracking? Is it on DMAs for hard-to-plant areas over time?

Evan Haas: Combination of DEQ and specific DMAs that may have to do some of the monitoring and reporting.

Alex Liverman: Generally, once DMAs develop their implementation plan, part of that is doing annual reporting on effectiveness after determining where to plant and ground truth that ongoing; looking for an annual report and then round those up in the fifth year for an overall look to adaptively manage implementation and, as Evan spoke about, the joint effort to monitor going forward.

Rebecca McCoun: Thinking if DEQ is going to be housing data that can inform out-years and I know that is dynamic and that can be hard.

Evan Haas: Prioritizing areas for restoration and protection in the WQMP section 5.3.2, page 12 suggests that DMAs use Shade Gap or current condition/restored condition comparisons to help identify lands to prioritize lands for restoration or protection. The goal is to have some type of prioritization plan and ensure DMAs have thought about it and identified how to prioritize.

Proposed shade assessment tools are included in the draft WQMP, section 5.3.2, page 12 (see presentation slide 44).

DEQ would prefer that DMAs do analysis and assessment but could default to the 120 ft. buffer zone if they wanted to.

Questions: What additional prioritization methods should DEQ consider? What other location-specific assessment methods should DEQ consider?

No comments.

Evan Haas: Question about DMA monitoring and reporting regarding should DMAs be required to enter restoration data into the Oregon Watershed Restoration Inventory (OWRI)?

Rich Wildman: Is OWRI a public database?

Evan Haas: Yes

Rich Wildman: What is the advantage for DMAs to use this?

Evan Haas: A holistic look at projects that other folks have listed in an area over a certain amount of time.

Rebecca McCoun: I've used OWRI a lot, and it can be troublesome sometimes and you can't figure out where you are missing data. It would be more helpful if there was a more user-friendly interface. It would be super helpful for everybody if that information did get into OWRI, but if there was an easier way for small landowners and others to use it.

Todd Reinwald: Some U.S. Forest Service restoration activities need to get reported to USACE or National Marine Fisheries. Do these inform OWRI? There are other recording databases at least for federal lands where this information is reported.

Evan Haas: DMA required monitoring. DEQ needs to monitor progress in meeting Water Quality Standards over time. DEQ will do some monitoring and assessment as part of its work. We want to develop a temperature monitoring plan with DMAs to assess progress.

Some DMAs will be required to undertake monitoring actions to help track water quality status. DEQ is still evaluating which Responsible Persons and DMAs would be required to collect monitoring data. The WQMP will identify those DMAs that will need to conduct monitoring. The actual development of the monitoring plan will not occur as part of this rulemaking. DEQ will work the identified DMAs to come up with the monitoring strategy.

The schedule for Implementation plan development and submittal.

The implementation plan won't be required until 18 months after EPA's approval of Willamette mainstem TMDL for EPA action to approve or disapprove the TMDL by Feb. 28, 2025. The implementation plans would be required sometime in 2026. There are many entities named in both basins and given overlap it makes sense to delay plan development until the mainstem has been developed. Implementation plans will need to include goals, timelines, schedules, monitoring plans and any other info identified in the WQMP.

Bacteria

Five entities will be affected by DEQ's goal as part of this temperature replacement project to take existing bacteria information from the 2005 WQMP for the Lower Columbia-Sandy Subbasin and add it to this temperature WQMP to have one WQMP with both parameters. No new entities will be named for bacteria management actions. If achieved, the WQMP with bacteria information will be prepared for rule advisory committee meeting #2.

Steve Kucas (Portland) in chat: When will the stakeholders know (for this rulemaking) if as a DMA they will be required for monitoring regarding temperature?

Evan Haas: Ideally, the goal is to name those entities in advance of the second rule advisory committee meeting. DEQ is still working on that now.

Rich Wildman: Timeline is important. The timeline for implementation plans are due 18 months after EPA approves the Willamette temperature mainstem TMDL. In the timeline discussions, DEQ is speaking about EPA approval as highly likely on a certain timeline. This is not what happened with the Willamette mercury TMDL when EPA disapproved the TMDL. This seems difficult to project due to history of EPA approvals. Does DEQ expect EPA approvals to come on timeline mentioned here?

Gene Foster: We have been in communication with EPA regularly on these temperature TMDLs, but like you said, there is no guarantee.

Michele Martin: Next agenda item is about the draft fiscal impact statement and the draft Oregon Administrative Rule draft language. Michele asked about any questions regarding the draft rule language. There were none.

The fiscal impact statement was reviewed on presentation slides 52 and 53.

Rebecca McCoun: Can we get you feedback sometime before the next meeting about the fiscal impact statement?

Michele Martin: Yes, we have a schedule on the next presentation slide. Any other comments?

No comments.

Michele Martin: Next steps that includes the rule advisory committee input after meeting #1 due Mar. 3, 2023, rule advisory committee input on meeting #1 summary of meeting notes, due approximately Mar. 9, Webinar for technical information to be held on Mar. 14, 2023, and rule advisory committee meeting #2 materials posting on Mar. 22 approximately, and the next and final rule advisory committee meeting on Apr. 5, 2023. Public comment period will be May – Jun. 2023.

Rich Wildman: Can David Fairbairn go back to the idea of sometimes there can be a zero human use allowance? Could you speak to forestry if they have typically or ever received a zero human use allowance in a TMDL?

Ryan Michie: Yes, DEQ has allocated sources a zero human use allowance in past TMDLs including the previous 2005 TMDL.

Rich Wildman: This has happened before. Is this typical.

Ryan Michie: Every TMDL is different. Many have included allocations that would effectively equal zero. What that means is that there can't be an increase in temperature, doesn't mean that there can't be thermal loading.

Rob Hibbs: Thanks for taking my comment. In the previous drafts, I recall that the default was 100 ft. buffer. Has this changed to 120 ft. buffer? Or am I remembering wrong?

Ryan Michie: I think you are thinking about the draft Yaquina TMDL, I think that one has a 100 ft. buffer. The difference is that TMDL is for nutrients [DEQ correction: dissolved oxygen] – phosphorous and solar loading. The expectations about what that means to meet that allocation is different. For the temperature TMDL, the 120 ft. buffer is based on literature review that looks at the effectiveness of different buffer sizes and decreasing shade. DEQ selected the 120 ft. buffer because at 120 ft. buffer, based on the median, there would be no increase in temperature.

Rob Hibbs: Is there any more efforts statewide or DEQ-wide to utilize forest observatory type tools?

Ryan Michie: DEQ received funding from the legislature a couple of years ago and is pursuing an effort to remotely sense riparian characteristic information to determine effective shade on a regular basis.

Sharla Moffett: Would be interested in answer to Justin's question about how would DEQ incorporate the TMDL into permits for any new dischargers to the Subbasin in the future? The schedule for comments is expedited and would like a minimum of two weeks is more appropriate to work with constituents.

Michele Martin: Thank you Sharla for that input. Due to the expedited timeline, the date of Mar. 3, 2023, due date for responses from this RAC represents DEQ's ability to incorporate comments in time for the second rule advisory committee meeting materials to be sent two weeks prior to the meeting so that committee members are prepared for that meeting.

Rob Burkhart: If there is a waste load allocation for point sources, the way it would be incorporated into a waste load allocating would be incorporated into a permit in the same way as an existing facility. How would a waste load allocation be given to a discharge if the TMDL did not explicitly allocate that allocation? How would DEQ get a waste load allocation – that is a Ryan question.

Michele Martin: Opened the final minutes of the meeting to non-committee members.

Ryan Michie: The TMDL set aside a portion human use allowance as reserve capacity and it's different depending on the stream. If there is a new facility that doesn't have a waste load allocation in the TMDL and is applying to discharge into the Sandy, they would apply for a reserve allocation and DEQ would consider that, including any additional details to make that assessment and then issue a decision on that. If some portion of the reserve capacity was issued to that facility for a waste load allocation and becomes part of the final record, the permit would include that in the final permit in similar fashion as they do with other permits.

Justin Green: (non-committee member): Has DEQ allocated reserve capacity to a new discharger and is there a general timeframe when a new permittee can expect an answer from DEQ?

Ryan Michie: DEQ has done that before. A fish hatchery of ODFW, there wasn't a specific timeline.

Rob Burkhart: I don't think that would hold up a new permit as long as there is reserve capacity. There are other issues that may hold up a permit. I don't think this issue would hold up the permit for very long. There can be a streamline process for these TMDLs.

Rebecca McCoun: There was language in WQMP that listed three ways to measure shade. Confused about the 120 ft buffer width. Later it says the WQMP does not require Responsible Persons including DMAs to establish a 120 ft. buffer. Is it a goal and not a requirement?

Evan Haas: One of the three different options is the 120 ft. buffer default if no shade assessment was done. The WQMP says that you don't have to do an assessment if you use a 120 ft. buffer. DEQ understands there are many factors to determine effective shade. An assessment may provide more information and not necessarily have to default to the 120 ft. buffer.

Rebecca McCoun: With that, there would be time allowed to do the assessment?

Evan Haas: Yes. The timeline for doing that assessment would be developed as part of the implementation plan. The WQMP provides the broad overview, and the implementation plans are specific to the entity.

Rebecca McCoun: In the fiscal impact statement where it provides funding opportunities, they are not always consistent or guarantees. Is there a way to write something or note that the funding sources come and go and are not always consistent and not guaranteed. Is there some language that can be added about the limitations of those funding sources and obstacles and potential changes of those funding sources?

Michele Martin: Thank you for that comment. Do you have any thoughts on how DEQ can mitigate that issue or is it just a matter of adding that language to the fiscal impact statement?

Susie Smith (non-committee member): Came to meeting late but have a question about the 18-month timeline for submittal of the WQMP. If there are small new DMAs that are identified, some of these small communities may have a challenge meeting that timeline. It can take a year to get funds allocated, then they need to find contractors or resources to do work. My question is whether there was consideration given to the level of effort, and maybe some communities with resource constraints could have a tiered completion timeline and recognition for what small communities are under.

Alex Liverman: Clarification – in this case, the implementation plan due date proposed for the Willamette Subbasins is about 26 months [DEQ correction: 30 months] after issuance [in Jan. 2024], since we are proposing a due date 18 months after the mainstem Willamette court ordered timeline of early 2025 [due date would be in Aug 2026]. DEQ wants to make this doable regardless of community size. Most DMAs are existing in the 2006 TMDL and already have a plan, so this will be an amendment, and this extra time should assist any new DMAs starting from scratch, but if communities have issues, they should provide DEQ feedback about that.

Mark Rogers: I've spent hours reading all the stuff you've put together; thank you for your work. A couple things I've maybe missed. Presumably coming up with a plan to be approved by EPA, how long does it run into the future? Are these plans required to take into account climate change as set forth from the previous governor's administration? I have not seen anything about climate or impacts of climate change in what I have been reading.

Gene Foster: The temperature TMDLs will remain in place until they are replaced by future versions of TMDLs and that is good feedback about the climate impact aspect, and we will take that into consideration.

Michele Martin: Adjourn at 12:30 p.m.

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