

Willamette Subbasins Total Maximum Daily Load Advisory Committee Charter

Temperature TMDL Replacement Project

January 2023

**Water Quality
Total Maximum Daily
Load program**

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DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.



State of Oregon
Department of
Environmental
Quality

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.oregon.gov.

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2. Objectives and scope

2.1. Committee purpose and objectives

This Rulemaking Advisory Committee's purpose is to provide input to the Oregon Department of Environmental Quality on a proposed rulemaking to meet the criteria of the U.S. District Court. The court found that U.S. Environmental Protection Agency's approval of an element of Oregon's water quality standard for temperature, the Natural Conditions Criterion, was unlawful. The Natural Conditions Criterion stated that where the natural thermal potential of all or a portion of a water body exceeds the biologically based numeric temperature criteria in OAR 340-041-0028(4), the natural thermal potential temperatures supersede the biologically based criteria and are deemed to be the applicable temperature criteria for that water body. This portion of the temperature water quality standard was effective from 2003 until EPA disapproved it in response to the court decision in 2013. Many temperature TMDLs were based on these criteria, and this became the subject of a second lawsuit brought by the Northwest Environmental Advocates against EPA asserting the EPA unlawfully approved Total Maximum Daily Loads (TMDLs) that were based on the now disapproved Natural Conditions Criterion.

On Oct. 4, 2019, the Court issued a judgment for NWEA v. EPA, No. 3:12-cv-01751-HZ (D. Or., Oct. 4, 2019) and required DEQ and USEPA to replace 15 Oregon temperature TMDLs that were based on the Natural Conditions Criterion and to reissue the temperature TMDLs based on the remaining elements of the temperature water quality standard. Project TMDLs including the Willamette Subbasins are listed on the project webpage: <https://www.oregon.gov/deq/wq/tmdls/Pages/tmdlreplacement.aspx>.

DEQ plans to hold two rulemaking advisory committee meetings for the Willamette Subbasins. The role of the rulemaking advisory committee is to advise DEQ on the following:

- Economic and fiscal impacts of the proposed rules for entities impacted by the proposed TMDL
- Revision of required TMDL elements with a focus on the TMDL allocations to be updated based on the current temperature criteria for the Willamette Subbasins project area
- Revisions to the Water Quality Management Plan

The committee fulfills the requirement in Oregon Revised Statutes 183.333 to obtain input from an advisory committee on the fiscal and economic impact of the proposed rule. DEQ is not requesting the committee to make decisions or recommendations as a group. Neither does DEQ expect that the committee will reach consensus on their views or their input to DEQ.

This TMDL project includes the following: Coast Fork Willamette, McKenzie, Middle Fork Willamette, Upper Willamette, Middle Willamette, Molalla-Pudding, North Santiam, South Santiam, Lower Willamette, and Clackamas Subbasins.

This project does not include water bodies in the Tualatin Subbasin, Yamhill Subbasin, the Willamette River mainstem, and most of the major tributaries to the Willamette River. The temperature TMDLs for the Willamette River mainstem and major tributaries (exact extent summarized below) will be developed as a separate project with rule advisory meetings expected to begin in 2023 and scheduled for EPA approval or disapproval by Feb. 28, 2025.

Water bodies in the Willamette mainstem and major tributaries project area include:

- Willamette River including all side channels and sloughs from the confluence of the Columbia River to the confluence of Coast Fork of the Willamette and Middle Fork of the Willamette Rivers (approximately river mile 187);
- Multnomah Channel:
- Clackamas River up to River Mill Dam/Estacada Lake (approximately river mile 26);
- Santiam River (all 12 miles)
- North Santiam River up to Detroit Dam (approximately river mile 49)
- South Santiam River up to Foster Dam (approximately river mile 38)
- Long Tom River to Fern Ridge Dam (approximately river mile 26)
- McKenzie River to confluence with the South Fork McKenzie River (approximately river mile 56)
- South Fork McKenzie River to Cougar Dam (approximately river mile 4)
- Blue River to Blue River Dam (approximately river mile 1.9)
- Middle Fork Willamette to Dexter Dam (approximately river 17)
- Fall Creek to Fall Creek Dam (approximately river mile 7)
- Coast Fork Willamette to Cottage Grove Dam (approximately river mile 30)
- Row River to Dorena Dam (approximately river mile 7.5)

2.2. Project scope

The scope of this rulemaking is for the temperature TMDLs for the Willamette Subbasins to be developed to address temperature listings for waterbodies upstream of the U.S. Army Corps of Engineers dams, as well as Portland General Electric’s River Mill dam on the Clackamas River. The exact extents are described in the Quality Assurance Projects Plans. The TMDL phasing considers the extent of the water quality models being used to support the TMDLs, requirements of the court order, and DEQ’s available resources. Quality Assurance Project Plans and other information is on the project webpage: <https://www.oregon.gov/deq/wq/tmdls/Pages/tmdlRwillamette.aspx>.

2.3. Fiscal and Economic Impact

ORS 183.333 requires that DEQ ask the advisory committee to consider the fiscal and economic impact of the proposed rules including:

- Whether the rules will have a fiscal impact, and if so, what the extent of that impact will be.
- Whether the rules will have a significant adverse impact on small businesses, and if so, how DEQ can reduce the negative fiscal impact of the rules on small businesses.

The statement of fiscal and economic impact will be written by DEQ based on available information and the input of the advisory committee. It will be available to the public during the formal public comment period on the proposed rule amendments.

2.4. Rulemaking Timeline

The table below shows the major milestones and dates for this rulemaking process.

Milestone	Date
Advisory committees (two meetings)	Feb. 23, 2023, and Apr. 6, 2023
Public notice and comment period	May – Jun. 2023
Public hearings	Jun. 2023
Presentation to EQC for adoption	Nov. 2023
EPA approval or disapproval due	Jan. 15, 2024

3. Roles and responsibilities

3.1. DEQ facilitator

The facilitator:

- Encourages open, candid and robust dialogue.
- Starts and ends the meetings and agenda items on time.
- Encourages innovation by listening to all ideas.
- Captures ideas.
- Recognizes when the discussion is outside the scope of the meeting and steers the discussion back to the focus of the meeting.

3.2. Committee members

Advisory committee members must attend each meeting to ensure continuity throughout the process. If a member’s absence is unavoidable, please notify the DEQ project manager. In this case, an alternate may be assigned. However, it is each committee member’s responsibility to fully brief their alternate on all relevant issues and prior committee discussions to meet the meeting objectives and keep the project on schedule. The primary and alternate members of the committee cannot participate in the same meeting.

The committee member:

- Replies promptly to scheduling emails or polls and sets aside time for the meetings.
- Prepares for the meetings by reviewing any materials provided.
- Provides DEQ staff with copies of relevant research and documentation cited or suggested by the member.
- Stays focused on the specific agenda topics for each meeting.
- Comments constructively and in good faith.
- Consults with constituencies in a timely manner to inform them about the process and gather their input.

- Treats everyone and their opinions with respect.
- Allows one person to speak at a time.
- Is courteous by not engaging in sidebar discussions or engaging in other distracting behaviors during the meeting.
- Avoids representing to any outside party, including the public and the media, the views of any other committee member or the committee as a whole.

3.3. Non-committee member attendees

DEQ has invited the public who DEQ expects are interested to observe the committee meetings using DEQ's opt-in email notification service for TMDLs. Non-members from the public may attend the committee meetings to observe, but not to actively participate in committee discussions. If non-committee members are present at a meeting, DEQ will try to provide time during the meeting for their comments and questions. However, this will be discretionary and as time allows.

3.4 DEQ staff

DEQ is committed to making the most effective use of committee members' time by:

- Establishing clear committee goals, meeting objectives and agendas.
- Giving committee members reasonable access to staff.
- Encouraging all members to take part in discussions.
- Providing a clear description of member roles, the committee timeline, the level of support or agreement perceived on specific proposals, and feedback on how committee member input will be used.
- Prepare for meetings and document reviews as described further below.

3.5 DEQ support and website

DEQ will post agenda and meeting materials on the advisory committee website at least one week in advance of the meeting. DEQ staff will provide meeting summaries of committee discussions that highlight the different perspectives and input of individual committee members. DEQ will send draft meeting summaries to the advisory committee for review and input. Final meeting summaries will be posted to the advisory committee website and will be part of the public record. A summary of the advisory committee process and input will be included in the EQC staff report for the rulemaking.

The advisory committee charter, a roster of the committee, meeting agendas and minutes, and background materials will be located on the advisory committee webpage:

<https://www.oregon.gov/deq/rulemaking/Pages/willamettetempTMDL.aspx>

4. Committee meetings

All committee meetings will be:

- Open to the public for observation. DEQ will try to include time on the agenda at each meeting for non-member comments and questions if time allows.

- Advertised on the DEQ webpage calendar two weeks before the meeting at <https://www.oregon.gov/deq/get-involved/pages/calendar.aspx>
- Noticed by email to the Water Quality Standards and Water Quality Rulemaking GovDelivery lists.

The committee is expected to meet two times between February and April 2023 by virtual meeting and webinar. The meeting durations may vary depending on topics and committee progress. The agenda and meeting materials will be posted to the advisory committee webpage. When DEQ shares information with the committee, DEQ will allow a reasonable timeframe for review and feedback.

4.1. Decision making

This advisory committee will not make policy decisions. Rather, DEQ will consider the committee’s discussions and input to inform its draft proposed rules for the TMDLs. DEQ may ask individual committee members to state whether they agree with or support certain aspects of the rulemaking being considered or under discussion. DEQ retains the authority to decide the content of the final proposed rules and rulemaking documents. The proposed rules will be published for public review and public comment as part of DEQ’s rulemaking process.

5. Membership

In convening this committee, DEQ selected members that reflect the range of stakeholders the proposed rules may impact, both directly and indirectly. Representatives are able to consider and provide input to DEQ on the policy, fiscal and economic impacts and benefits of the proposed standards revisions for the stakeholders they represent.

Advisory Committee Membership	
Name	Affiliation
April Snell	Oregon Water Resources Congress
Becky Anthony	Oregon Department of Fish and Wildlife
Carrie Sanneman	Multnomah County Drainage District
Dave Gilbey	City of Corvallis
Jackie White	Northwest Pulp and Paper Association
Johan Hogervorst	U.S. Forest Service
Julia Bond	City of Portland Bureau of Environmental Services
Kathryn Tackley	U.S. Army Corps of Engineers
Lauren Poor	Oregon Farm Bureau
Mike Brown	Bureau of Land Management
Mike Eliason	Oregon Forest and Industries Council
Olivia Jasper	Oregon Department of Agriculture
Rebecca McCoun	Oregon Department of Forestry
Sharla Moffett	Oregon Business and Industry
Susie Smith	Oregon Association of Clean Water Agencies

6. Travel expenses

DEQ is able to reimburse any in state, out-of-town committee members for travel expenses to in-person meetings as required if DEQ approves the expense reimbursements in advance of travel.

7. Public records and confidentiality

Committee communications and records, such as formal documents, discussion drafts, meeting summaries and exhibits are public records and are available for public inspection and copying. DEQ does not assume responsibility for protecting proprietary or confidential business information shared during committee or subcommittee meetings. However, the private documents of individual committee members outside of DEQ generally are not considered public records if DEQ does not possess a copy.

8. Information exchange

Committee members will provide information as much in advance as possible of the meeting at which such information is used. The members will also share all relevant information with each other to the maximum extent possible. If a member believes the relevant information is proprietary in nature, the member will provide a general description of the information and the reason for not providing it.

9. Public involvement

All meetings will be open to the public. DEQ will try to set aside time for public input during a committee meeting if time allows. However, this is at DEQ's discretion.

DEQ will develop draft rules concurrent with the advisory committee process. Once this process is complete, DEQ will conduct a public rulemaking process. That process will include a specified period of time during which the public can submit comments on the proposed rules. DEQ will also hold a public hearing(s) during which any member of the public can submit written or verbal comments. Individual committee members may provide additional input as written or verbal public comments to DEQ on the proposed rule at this time. DEQ may modify the proposed rules based on public comment. DEQ intends to provide a final proposed rule to the EQC for action at its meeting in November 2023.

10. DEQ Contacts

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