



State of Oregon
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Quality

Water Quality Standards Presentation

Recent EPA Actions Related to Oregon Water Quality Standards

Presentation to the Environmental Quality Commission

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On August 8, 2013, DEQ received two letters from EPA:

1. An action letter disapproving Oregon's:
 - Temperature natural conditions criterion
 - General natural conditions criterion
(in the statewide narrative criteria)
2. A letter of review of DEQ's Antidegradation Implementation Internal Management Directive (IMD)



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Background

2003: EQC adopted the standards

2004: ESA consultation; EPA approval

2005: Lawsuit - Northwest Environmental Advocates v. EPA, National Marine Fisheries Service and US Fish & Wildlife Service

2012: Oregon Federal District Court issued opinion

2013: Court orders

- Actions August 8 (prior slide)
- Biological Opinions remanded
- Review and approve “recurring activities” provision in antidegradation rule
- Nonpoint source provisions



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EPA Disapproved the Natural Conditions Criterion in Oregon's Temperature Standard

- Natural conditions criterion is no longer effective
 - Cannot be used to implement Clean Water Act programs
- Remaining provisions continue to be effective
- EPA letter:
 - described a couple of potential options to address the disapproval
 - offered DEQ assistance



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Natural Conditions Criterion

- Key provision
- The temperature standard contains multiple provisions
 - intended to work together as an integrated whole
 - to protect native cold water aquatic species
 - to be workable in water quality programs
- Narrative provision, implemented through TMDLs and subsequent regulatory requirements
- If naturally attainable temperatures are higher than the numeric criteria, the natural temperatures are the goal for the waterbody (“supersede the numeric criteria”)



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Federal District Court's Opinion

- February 2012
- States can adopt narrative criteria
 - where numeric criteria are not possible, or
 - to **supplement** the numeric criteria.
- The judge concluded that:
 - Because the natural conditions criterion replaces numeric criteria with less stringent numeric targets,
 - it **supplants** rather than **supplements** the numeric criteria.



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Additional Concerns of the Court

- Too much uncertainty in DEQ's ability to estimate historical water temperatures
- The assumption that historically protective water temperatures would protect salmon today is flawed due to:
 - changes to river conditions such as flow and channel modification
 - changes to populations



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Will DEQ Revise the Temperature Standard?

- DEQ recommends that it conduct rulemaking to revise the temperature standard after we know more about:
 - Pending TMDL litigation
 - Remanded ESA consultation on the 2003 numeric criteria
- DEQ will consider options that meet the following objectives:
 - Protect beneficial uses
 - Are scientifically based and defensible
 - Are workable in the state's water quality programs
 - Address the concerns of the court



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Consequences of the Disapproval

- Existing wastewater discharge permits (NPDES)
 - Remain valid
 - Will be evaluated when renewed; revised if appropriate
- Existing Total Maximum Daily Loads (TMDLs)
 - TMDLs approved by EPA remain valid
 - However, DEQ cannot renew permits using wasteload allocations that were based on the natural conditions criterion
 - NWEA has challenged the TMDLs based on the natural conditions criterion
 - seeking invalidation of about 14 temperature TMDLs



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DEQ will renew permits

- Permits limits, if needed, must be based on the remaining effective temperature criteria
- DEQ will focus on:
 - Permits that can meet the numeric criteria and human use allowance
 - Permits that will result in other water quality benefits
 - Using compliance pathways where appropriate:
 - Compliance schedules
 - Variances
 - Water quality trading



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DEQ will Continue to Develop TMDLs

- DEQ will focus on:
 - TMDLs where the waterbody can attain the numeric criteria
 - TMDLs for other pollutants, such as dissolved oxygen, bacteria or toxics
- DEQ cannot issue a TMDL if its analysis shows that the TMDL will not attain the effective water quality criteria



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General Natural Conditions Criterion Disapproved

- In DEQ's statewide narrative criteria
- Applies to other pollutants or conditions of the water
 - Dissolved oxygen, pH, naturally occurring earth metals
- In rules since the 1970's
 - Minor wording change in 2003, approved by EPA in 2004
- Used less frequently
- If a standard is not attainable due to natural conditions, DEQ would likely have to conduct a use attainability analysis and adopt site specific criteria before it could complete a TMDL
 - A resource intensive process



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Antidegradation policy

- Required element of state water quality standards
- Describes states policy and methods to:
 - prevent degradation of water quality and
 - maintain existing uses and the level of water quality necessary to protect them
- For waters that meet water quality criteria (i.e. have assimilative capacity), the State may allow lowering of water quality only after certain findings are made



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Antidegradation Implementation Review

- DEQ's antidegradation rule was last revised in 2003
- Approved by EPA in 2004
 - EPA did not review certain provisions
- The court upheld EPA's approval
 - The rule remains effective
- Court ordered EPA to review Oregon's Internal Management Directive (IMD)
- EPA found many components of the IMD consistent with federal regulations and some inconsistent



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Antidegradation - Next steps:

- Consider and discuss EPA's review in order to:
 - Understand EPA's concerns
 - Better understand the federal requirements related to antidegradation implementation
 - Better understand the effect on DEQ's program
- Inform staff if EPA's review impacts work in progress
- Develop a plan for revising the IMD as needed



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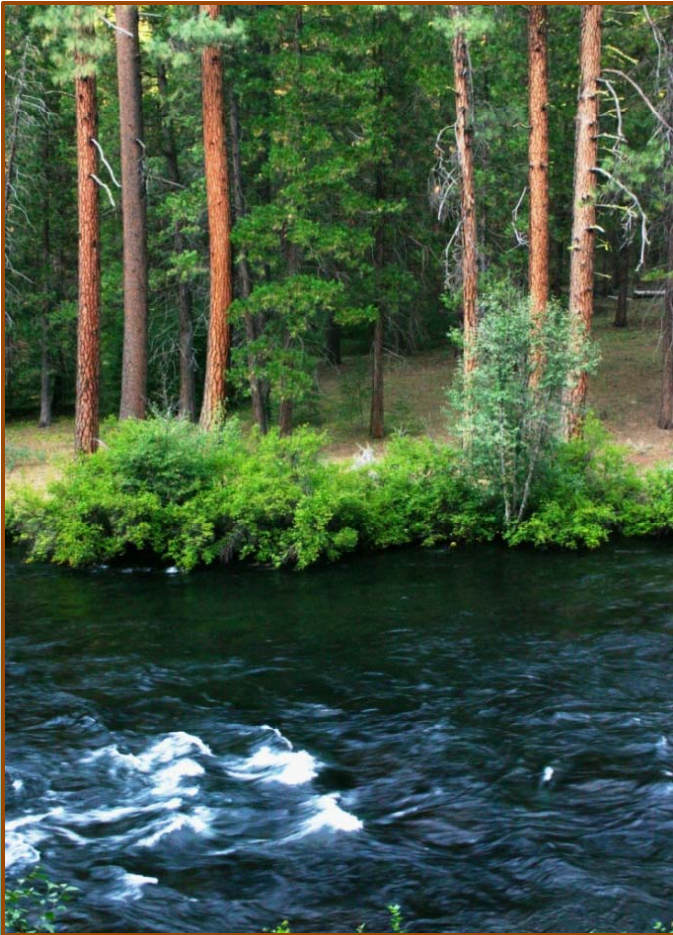
Next Steps

- Keep the EQC informed about permits and TMDLs
- Keep the EQC informed about the TMDL litigation, the ESA consultation and other pertinent information
- Consult with the EQC when DEQ develops a plan for standards development and rulemaking
- Continue to inform the public and stakeholders
- Include public and stakeholder involvement in any project plan to revise water quality standards



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The Metolius River



The Upper Rogue River