-BEST PRACTICES FOR WATER QUALITY TRADING

JOINT REGIONAL AGREEMENT

Draft Best Practice, May 9, 2013

This *Draft Best Practice* document was derived based on discussion at the April 9th and 10th workshop and feedback received on the circulated *Discussion Draft* and *Meeting Draft*. It is intended to represent points of consensus among the group. When acceptable to all parties, the Draft Best Practice will be posted on the web. Come November, or other agreed upon consensus point, Draft Best Practice documents may be changed to Pilot Best Practices.

Guiding Principles for Water Quality Trading

Water links us in ways that underpin healthy communities, economies, and ecosystems. When Congress passed the Clean Water Act[1] (CWA) in 1972, it aimed to protect those links in ways that would restore the nation's waters to levels that would support fishing, swimming, and the other beneficial uses we rely on. Water quality trading is just one tool of many to help achieve the goals of the ~~Clean Water Act (~~CWA~~)~~ and other public objectives. Trading is not ~~an~~ appropriate ~~tool~~ for many water quality challenges, and its efficacy must be evaluated in every watershed. When designed well and combined with other tools, however, trading programs can help achieve water quality goals in a way that is beneficial for landowners, communities, and the environment.

One of the primary goals of trading, as identified in USEPA's 2003 Water Quality Trading Policy[2] ~~identifies as one of its primary goals encouraging~~(2003 Policy), is to encourage "voluntary trading programs that facilitate implementation of [total maximum daily loads (TMDLs~~,~~)], reduce the costs of compliance with CWA regulations, establish incentives for voluntary reductions and promote watershed-based initiatives." The 2003 Policy describes how water quality trading can comply with different requirements of the CWA and its implementing regulations. ~~Yet, because it did not contemplate water quality trading, the CWA has no unique authorizing provisions to provide complete certainty that trading will satisfy all regulatory aspects. Therefore~~Recognizing that the CWA and its implementing regulations do not directly address water quality trading, the design of water quality trading programs should focus on how they can best support achievement of particular CWA goals ~~and at less cost.~~. Implementing ~~Total Maximum Daily Loads (~~TMDLs~~),~~ with greater efficiency and timeliness, while at the same time recognizing that flexibility is the key to innovative solutions, is where water quality trading shows its greatest potential.

~~Because each state and watershed will be unique, trading programs must be built with some flexibility to adapt to local environmental conditions. However, there are some elements that required to be the same~~

[1] Federal Water Pollution Control Act, 33 U.S.C. § 1251, et. seq. (2006).

[2] ~~http://water.epa.gov/type/watersheds/trading/tradingpolicy.cfm~~ EPA, Water Trading Policy, 68 Fed. Reg. 1608 (Jan. 13, 2003)

DRAFT

~~across all trading programs to comply with the CWA. There are also opportunities to realize the full potential of water quality trading, along with achieving significant cost savings, by deliberately designing consistent approaches and mechanisms for implementing trading, so that investments in the necessary trading infrastructure may be shared regionally and beyond.~~

~~Nonetheless, the aspiration to design and build innovative water quality trading programs should be tempered with a set of guiding principles, are the foundation of which provide a solid foundation from which successful trading programs can be developed. Such principles are useful in setting the direction for designing a water quality trading program and ensuring its core design elements remain true to those goals. The following guiding principles are derived from USEPA's 2003 Water Quality Trading~~The following guiding principles are derived from the 2003 Policy, USEPA's 2007 Water Quality Trading Toolkit for Permit Writers, existing state agency trading documents, and Willamette Partnership's General Crediting Protocol~~ version 1.96.~~. Individual trading programs will inevitably face many unique situations and issues, these guiding principles are meant to anchor agencies and other stakeholders where best practices are not clearly defined or there is a need for a case-by-case decision.

Water quality trading is generally supported when it~~.~~ is consistent with the 2003 Policy and where it:

~~**II. Promotes a better environmental outcome**~~

I. Allows sources to comply with their allocations and permit effluent limits in a way that is directly linked to improving the beneficial uses that the TMDL and permit are based on.

II. Achieves pollution reductions and progress towards water quality standards more quickly than would have occurred without trading.

a. Addresses causes of pollutant of concern~~ and does~~, while not negatively ~~affect~~affecting other parts of the environment;
b. Achieves more pollution reduction than would have occurred without trading over a comparable period of time;
c. ~~Produces the greatest ecological benefits in the places that make the greatest difference;~~Provides auxiliary environmental benefits, such as improvements in fish and wildlife habitat, reduction of multiple pollutants, etc.; and
d. Provides for the long-term stewardship and management of practices that produce water quality benefits.

~~**III. Achieves water quality goals faster than would have otherwise occurred**~~

. Achieves pollution reductions and progress towards water quality goals more quickly than would have occurred without trading, including achievement of Waste Load Allocations and Load Allocations established by TMDLs.

VI.III. Is based on sound science

a. Bases program goals, credit quantification methods and adaptive management systems on sound science; and
b. Uses monitoring and evaluation to regularly improve and report on the progress toward water quality goals.

VII.IV. Provides for adequatesufficient accountability that promised water quality improvements are delivered

a. Fosters transparent information on program rules and processes, location and volume of transactions, and effectiveness of the program over time;
b. Fosters accountability by clearly articulating who is responsible for producing which water quality improvements, providing a mechanism for identifying and correcting problems and allowing for clear dispute resolution; and
c. Fosters credibility through inclusive and open decision-making and adaptive management.; and

VII. Reduces the cost of meeting water quality goals for parties involved in trading

d. Provides a cost-effectiveProvides sufficient information for regulatory agencies and the public to regularly determine that certified trades and individual credits comply with a permittee's waste load allocation and effluent limitations.

VIII.V. Makes wise use of agency financial resources in securing compliance alternative for point sources;

a. Achieves environmental goals with reliablepredictable and reasonable transaction costs; and
b. Uses, wherever possible, consistent credit quantification methods, processes and tools to lower the costs of program design, approval, and operation; and.

Does not use economic arguments at the expense of water quality goals.

Trading is generally NOT supported whenwhere it:

I. Produces localized water quality problems, such as

i. Thermal barriers to salmonid migration, thermal shock/lethality for salmonidssalmonids, or impairment of known salmonid spawning habitat; and
ii. Algal blooms and areas of low dissolved oxygen caused by nutrient hotspots.

Commented [BC1]: We're not sure whether we landed on wise use of agency resources or wise use of resources for all parties in trading (e.g. wastewater, others, etc.)

II. ~~Prevents~~Circumvents the installation of minimum treatment technology required by federal or state regulations at the site of a point source~~.~~;

~~IV.~~III. Is not supported by adequate science~~.~~;

IV. Relies on economic justifications instead of water quality goals as the basis for undertaking trading;

~~VI.~~V. Does not have adequate means of ensuring accountability; or

~~VIII.~~VI. Is inconsistent with the relevant provisions of ~~the Clean Water Act~~a TMDL, as described in ~~EPA's~~the 2003 ~~Trading~~ Policy.

~~Trading may currently be too complex in scenarios that:~~

~~I. Trade in pollutants such as toxics~~

~~If there are ever any ambiguities, exceptions to standards, or situations where this Joint Regional Agreement is silent, refer to these guiding principles to guide case-by-case decisions.~~