STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
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Announcement

Response to Comments for TMDL Prioritization Webinar held October 30, 2018

Lara Henderson, Webinar Facilitator
Ben Rau, Headquarters TMDL Unit Supervisor

During the revision of Policy 1-11, the public requested a more formal process to hear where Department of Ecology (Ecology) is prioritizing our total maximum daily load (TMDL) water cleanup plan work.

As a result, Policy 1-11 now states: *To ensure consistency statewide and enhance public participation in the TMDL Prioritization process, Ecology will hold an annual statewide public meeting to present its proposed list of TMDLs to start in the following two years. Ecology will seek feedback from the public and take comments on the proposed list. Ecology will then revise the list as appropriate and respond to stakeholder comments.*

Attached is a summary of the webinar, comments received and our responses.

Attachment A: Summary of Total Maximum Daily Load Webinar, Comments received and Ecology's response

Washington State Department of Ecology (Ecology) held a total maximum daily load (TMDL) prioritization webinar on October 30, 2018 to meet the revised Policy 1-11 commitment and presented our current TMDL work. We did not propose any new TMDLs to be started during the upcoming state fiscal year 2020 (beginning July 1, 2019). Only one new watershed project was proposed to start in 2020-Lacamas River Scoping Proposal (a TMDL Alternative).

To provide the public with a more complete picture of our TMDL work, we presented information on water cleanup work that is currently underway. We also invited Laurie Mann from EPA Region 10 (R10) to present on TMDL work EPA is doing in Washington State. The webinar opened with background information, then each of our regions and EPA R10 presented their priority water cleanup work.

The water cleanup projects presented by each region are included in Table 1:

Table 1: Water Quality Improvement Projects Presented at 2018 Webinar

REGION	PROJECT NAME	PARAMETERS
Northwest Regional Office (NWRO)	Pilchuck River Temperature and Dissolved Oxygen (DO) TMDL	Temperature, Dissolved Oxygen
NWRO	Soos Creek Multiparameter TMDL	Temperature, Dissolved Oxygen, Bioassessment
NWRO	Padilla Bay Fecal Coliform TMDL	Fecal Coliform Bacteria
NWRO	French Creek Temperature and DO Alternative Restoration Plan	Temperature, Dissolved Oxygen
NWRO	Sammamish River Temperature and DO Alternative Restoration Plan	Temperature, Dissolved Oxygen
NWRO	Green/Duwamish Watershed Toxic Pollutants Alternative Restoration Plan	Toxics
Bellingham Field Office (BFO)	South Fork Nooksack Temperature TMDL	Temperature
BFO	Whatcom Creek Fecal Coliform TMDL	Fecal Coliform Bacteria
BFO	Drayton Harbor Fecal Coliform TMDL	Fecal Coliform Bacteria
Southwest Regional Office (SWRO)	Lower White River pH TMDL	pH
SWRO	Budd Inlet DO TMDL	Dissolved Oxygen

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REGION	PROJECT NAME	PARAMETERS
SWRO	East Fork Lewis TMDL Alternative	Temperature, Bacteria
SWRO	Burnt Bridge Creek TMDL Alternative	Bacteria, Dissolved Oxygen, Temperature
SWRO	Lacamas River Scoping Proposal (TMDL Alternative)	Dissolved Oxygen, Bacteria, pH, Temperature
Eastern Regional Office (ERO)	Little Spokane DO and pH TMDL	Dissolved Oxygen, pH
ERO	South Fork Palouse Multiparameter TMDL	Temperature, Dissolved Oxygen, pH
ERO	Pend Oreille Temperature TMDL	Temperature
ERO	Spokane River Toxics Task Force	Toxics
ERO	Hangman Creek DO and pH TMDL Alternative	Dissolved Oxygen, pH
Central Regional Office (CRO)	Lower Yakima Basin Temperature TMDL	Temperature
CRO	Wide Hollow Creek Multiparameter TMDL	Dissolved Oxygen, pH
CRO	Lower Yakima Watershed Toxics Reduction Project	Toxics
U.S. EPA Region 10	Deschutes River Multiparameter TMDL (replacement TMDL for disapproved water body segments)	Sediment, Bacteria, Temperature, Dissolved Oxygen, pH
U.S. EPA Region 10	Columbia and Snake River Temperature TMDL	Temperature
NWRO/SWRO/Headquarters	Puget Sound Nutrient Source Reduction Project	Dissolved Oxygen

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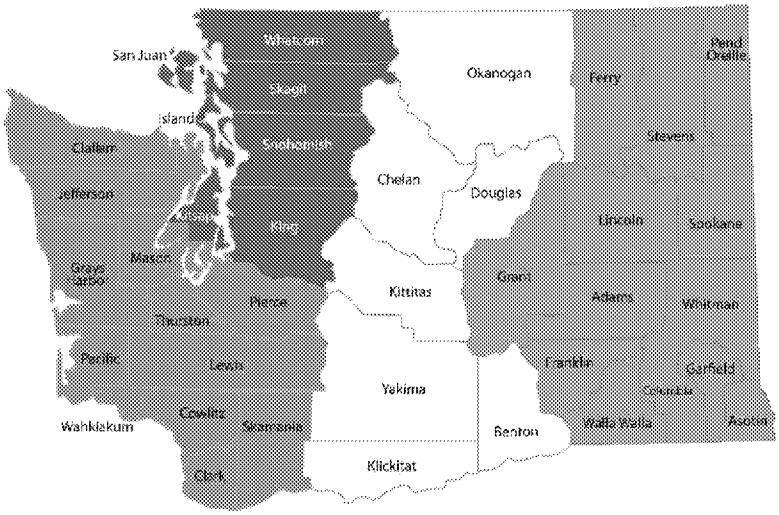

Southwest Region | Northwest Region | Central Region | Eastern Region

Region	Counties served	Mailing Address	Phone
Southwest	Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Mason, Lewis, Pacific, Pierce, Skamania, Thurston, Wahkiakum	PO Box 47775 Olympia, WA 98504	360-407-6300
Northwest	Island, King, Kitsap, San Juan, Skagit, Snohomish, Whatcom	3190 160th Ave SE Bellevue, WA 98008	425-649-7000
Central	Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, Yakima	1250 W Alder St Union Gap, WA 98903	509-575-2490
Eastern	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman	4601 N Monroe Spokane, WA 99205	509-329-3400

We asked for comments from the webinar attendees regarding where we should be prioritizing our TMDL/water cleanup work. We received four comments in total. One comment identified Moses Lake as a waterbody in need of water cleanup work. The other three comments made programmatic recommendations and did not identify additional or alternative waterbodies for us to prioritize for TMDL work. All comments are attached to this memo as attachment B.

Comment #1 (see attachment B for original comments)

The first comment we received was a geographically oriented comment and expressed a desire for our Eastern Regional Office (ERO) to address impairment concerns in Moses Lake. In November 2018, Ecology staff from ERO met with landowners concerned about water quality in Moses Lake. We wanted to hear about their observations, concerns, and their vision of the future for the lake. They shared their deep connection to the lake and the importance of a clean and healthy Moses Lake. Ecology organized a second meeting in December with local agencies that included legislators. It was a positive meeting in which we all committed to work together on improving water quality in the lake.

We committed to meet again to organize a water quality workshop in 2019. The purpose of the workshop will be to discuss the scientific and technical information we have related to Moses Lake, what has been done so far to address Moses Lake pollution issues, and steps other communities have taken to improve lake water quality. We also will want to hear community suggestions from the local citizens on what can be done to improve Moses Lake.

At this time we do not believe the best approach is to re-start the TMDL. Instead we are committed to supporting and working with the local community to see if we can make on-the-ground water quality improvements.

Staff continue to gather and review information we have regarding water quality in Moses Lake, including previous efforts to develop a phosphorus TMDL for the lake. We will continue to communicate with concerned landowners and will work with local stakeholders on the 2019 water quality workshop. Our goal is to collaborate with local agencies and concerned citizens to identify and implement actions that will improve water quality in Moses Lake.

Comment #2

The second comment we received expressed a desire for us to consider adaptive management provisions of the Forests and Fish Act when considering TMDL alternatives to ensure that watersheds that are dominated by forestry activities are not degrading water quality. We appreciate the feedback. Ecology worked with EPA to establish the Clean Water Act-based portion of the federal assurances that are key to the 1999 Forests and Fish Report. The Clean Water Act Assurances (as they are commonly referred to) focus on the TMDL portions of the Clean Water Act (Section 305). The Assurances establish that we will treat developing TMDLs for forest land as a low priority, and where we do develop any TMDLs we will rely on the forest practices rules (WAC 222) as tested and updated through a well-funded adaptive management program to bring forested waters into compliance with the state water quality standards and the federal Clean Water Act.

The Assurances were and remain conditional upon having an effective adaptive management program that will ensure the forestry rules will keep waters in compliance with state water quality standards. Ecology has actively supported efforts to obtain both performance and fiscal audits of the adaptive management program, and we concur that this remains important. We agree it is valuable to have outside and impartial assessments from time to time to identify improvements which can be made.

Comment #3

The third comment we received expressed a concern that our currently prioritized TMDL projects are not addressing the new human health criteria (HHC), specifically PCBs. The commenter expressed a desire for Ecology to address toxics in our water cleanup work. We have two current water cleanup projects that were presented in the webinar that address toxics: ERO's Spokane River Toxics project and NWRO's Green/Duwamish Watershed Toxic Pollutants project. Additionally, we include toxics as a key criterion in our 2018

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Policy 1-11-Chapter 1 Part 2I. We appreciate the feedback and will consider the comment information in our future prioritization process.

Comment #4

The fourth and final comment we received presented feedback on our TMDL program in general, including feedback on water cleanup project terminology and stakeholder outreach and coordination. We appreciate the feedback and we will continue to work with the commenter to address their concerns.

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Attachment B: Original Comments submitted to Ecology

Comment 1

Ty Swartout

Moses Lake and the Blue/Green/Phosphate issue was discussed during the Eastern Wa report out. The Blue/Green algae was so bad that Potholes Res was also severely affected also. The hope is that a inter agency team can be brought together to help combat these issues. Why are the phosphate levels in Rocky Ford creek and Crab creek so high? Fish hatcheries??? Runoff??? Septic systems??? Sewer plants/?? Animal waste??? Carp??

Comment 2

Ed Chadd

When considering TMDL alternatives, Ecology would do well to dovetail its responsibilities under the adaptive management provisions of the Forests and Fish Act with its more general responsibilities under the Clean Water Act, in watersheds dominated by forestry uses, to gather and use good data and adaptive management measures to assure that forestry activities are not degrading public resources, treaty rights, or other obligations of the U.S. government such as the Endangered Species Act. If the Forests and Fish Act's adaptive management provisions aren't currently adequate to achieve this goal, Ecology and/or other agencies should either revise their administrative code or work with state legislators to improve the legislation. If Ecology is too conflicted to perform such an evaluation, involve other branches of state government as needed (e.g., the State Auditor's office). Such an approach would apply economies of scale to take a more programmatic approach to water quality protection and improvement broadly across the landscape.

Comment 3

Melvin Oleson

I am concerned that the TMDL projects noted during the briefing do not address the new human health criteria. The exceptionally low HHC would most likely make nearly all streams in the State in non-compliance with at least one (if not multiple) HHC. Of particular interest is the pcb levels that have impact not only on human health but in many other species such as the endangered Orca. A study done back when the ESA listing for salmon was in progress noted that the body burden alone of the returning salmon contained enough PCBs to exceed the new HHC in many streams. This, compounded by historical use and current fish hatchery practices of using pcb containing feed would suggest that a statewide approach (TMDL) is needed. Thus, is there a plan for a statewide TMDL for pcb (and other similar HHC constituents)?

Comment 4

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November 30, 2018

Ms. Lara Henderson
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504

RE: WSDOT Comments on Ecology's 2019 TMDL Prioritization Webinar

Dear Ms. Henderson:

The Washington State Department of Transportation (WSDOT) appreciates the Department of Ecology's (Ecology's) proactive efforts to engage stakeholders in the annual Total Maximum Daily Load (TMDL) Prioritization webinar and solicit feedback on 2019 priorities. Front-end stakeholder engagement could foster discussions that could identify TMDL development process efficiencies, a necessity with the ever-growing 303(d) list of impaired waters. Stakeholders often have knowledge of waterbodies and ongoing activities that would benefit Ecology's prioritization process and help ensure limited resources are spent where needed most. WSDOT encourages Ecology to consider an in-person format, rather than a webinar, for future TMDL Prioritization outreach efforts to better foster those discussions.

Ecology's TMDL prioritization and development procedures, and consistent implementation of those procedures, is very important to WSDOT as our National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge Municipal Stormwater General Permit (Permit) currently includes 28 TMDLs. We expect three more TMDLs will be added to our Permit when it is reissued in 2019. WSDOT is also attempting to track over 30 TMDLs or similar efforts currently under development statewide that include WSDOT. To help our tracking efforts, we check-in annually with Ecology's TMDL Regional Unit Supervisors and TMDL Leads for status updates. Despite our efforts to coordinate, we have a number of examples where we were not notified when draft TMDL documents went out for public comment. Tracking statewide TMDL development efforts is challenging due to our limited resources and the variability in Ecology's regional TMDL development procedures.

From WSDOT's perspective, some of the confusion and challenges that arise during TMDL prioritization and development are preventable through proactive coordination and consistent policy interpretation and implementation across the regions. As such, many of our comments speak to process improvements that could minimize challenges that distract from the list of 2019 priorities.

1. **Comment:** Inconsistent use of TMDL-related terminology leads to stakeholder confusion. For example, it is WSDOT's understanding that:
    - The "TMDL alternative" approach is used when water impairments are due to non-point source (NPS) discharges and the cleanup effort is being locally led.
        - This term is no longer defined on Ecology's website and it seems its definition has changed overtime or is interpreted differently amongst Ecology's regions.

- The 4b approach requires EPA approval action (to delist from Category 5 to 4b). The Environmental Protection Agency (EPA)[1] describes Category 4b approach as an alternative to the TMDL approach, but the "TMDL Alternatives" on Ecology's 2019 list of priorities appear to be different from the 4b approach described by the EPA.

- The "straight to implementation" (STI) approach is used when water impairments are due to both point source and NPS loading and the cleanup effort is Ecology led.
  - Ecology's website now states that the STI approach cannot be used in watersheds where there are point source discharges.
  - The STI approach does not require EPA approval action because the impaired assessment units remain in Category 5 until water quality data supports delisting.
- EPA takes approval action on the 4b approach based on a pollution control program in place. However, the terms "pollution control project" and "pollution control program" are often used interchangeably and in conjunction with other approaches, "TMDL alternative," "STI," and "Basin Plans," but the regulatory distinctions and connections are confusing.

Recommendation: Clear and consistent terminology usage as well as knowledge of all of the efforts underway will help stakeholders determine when and at what level to engage, write informed public comments, and help Ecology focus efforts on priority work. To do this, WSDOT recommends Ecology:

1) Define and clarify the regulatory connections or distinctions between, and promote the consistent use amongst Ecology regions, for the following terms: TMDL alternative, straight to implementation, Category 4b, Basin Plan, pollution control project and pollution control program.
2) Describe if and how Ecology prioritizes its various approaches to addressing water quality issues for water bodies on the 303(d) list.

2. **Comment:** Inconsistent stakeholder outreach and coordination continues to be a point of frustration for WSDOT. While many Ecology TMDL Leads proactively engage WSDOT, hold stakeholder meetings or provide helpful updates when solicited, and notify us about opportunities to provide comment, there are too many examples of the contrary. For example, during the webinar, we learned that a draft TMDL that includes WSDOT was out for public comment that we were not previously notified of. WSDOT has been excluded on a number of public comment notifications for important regulatory documents that affect WSDOT, including Water Quality Improvement Reports, Implementation Plans, and TMDL Effectiveness Monitoring Reports. Our Permit is often characterized incorrectly in these draft documents, which creates confusion. These examples have created issues that take the time of both WSDOT and Ecology staff and management to reconcile. Reconciling issues, which could be avoided, diverts Ecology and WSDOT resources away from priority work.

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[1] https://www.epa.gov/sites/production/files/2015-10/documents/2009_06_04_tmdl_results_36monschein_wef07_paper7.pdf

Recommendation: Develop and implement stakeholder outreach expectations for Ecology TMDL Leads to implement consistently statewide. Create a List Serve to ensure no stakeholder or interested party is ever excluded from any TMDL related public comment notifications statewide.

3. **Comment:** Look for opportunities to improve internal coordination between Ecology's headquarters and regional units to ensure consistent interpretation and implementation of policy related to TMDL development and NPDES permitting.

   Based on WSDOT's understanding of policy guidance such as the EPA "Wayland memos,"[2] it is inappropriate for a regional TMDL Lead to assign WSDOT a Waste Load Allocation (WLA) outside of Phase I and II Municipal Stormwater Permit coverage areas (essentially expanding the geographic scope of our permit) without any data to show it is necessary or appropriate. It is WSDOT's understanding that load allocations (LAs) should be assigned to unpermitted sources of stormwater (i.e., outside Phase I and II areas) unless, "in the reasonable judgment of the permitting authority and, considering the facts and circumstances in the waterbody," expanding permit coverage is appropriate. After management level meetings with Ecology in 2013 about this topic, WSDOT believed we were on the same page with Ecology regarding policy interpretation. However, it does not appear the Ecology HQ and Ecology's regions are on the same page. We see this relating to Ecology's prioritization efforts because inconsistent policy interpretation and implementation leads to issues that divert efforts from priority work. Ecology may also want to prioritize their work differently depending on whether there are permitted sources of stormwater in a watershed, so understanding and being in agreement on where permitted sources are is important.

   Recommendation: Improve internal coordination between Ecology headquarters and regional staff with responsibilities for developing and implementing policy, developing TMDLs, and writing NPDES permits.

4. **Comment:** WSDOT has learned from several Ecology staff that "bubble allocations" are used when there is not enough data to determine the cause of a water quality impairment and assign loading allocations. This raises many concerns for WSDOT because watersheds with insufficient data should be determined a low priority until data is available. Credible data must be used to identify solutions that will work. WSDOT recommends Ecology prioritize TMDL efforts where credible data already exists, or prioritize the collection of credible data in certain watersheds to ensure impairments are being adequately characterized prior to TMDL development.

   Furthermore, as implemented in the North Fork Palouse River DO and pH TMDL, the bubble wasteload allocations (WLAs) that WSDOT shares with other dischargers, raise legal concerns about accountability because the TMDL provides no framework for which the bubble allocations function as a shared measure of compliance. WSDOT is concerned to hear that the bubble allocation approach is being pursued by Ecology for other TMDL-related efforts.

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[2] https://www.epa.gov/tmdl/establishing-total-maximum-daily-load-tmdl-wasteload-allocations-wlas-storm-water-sources-and

WSDOT understands the bubble approach has been used in other states to establish various water quality credit trading programs. However, Ecology's approach in the North Fork Palouse TMDL lacks any framework to ensure compliance. If this approach is being actively pursued in other watersheds, WSDOT asks that Ecology further clarify the strategy and compliance framework.

Recommendation:

1) Prioritize TMDL efforts where credible data already exists, or prioritize collection of credible data in priority watersheds to ensure impairments are being adequately characterized prior to TMDL development.
2) Clarify Ecology's policy of using bubble allocations, including the framework around implementation and compliance expectations.

Thank you for considering our comments, although we understand they may be outside the scope of what was expected. We provide these comments and recommendations in an attempt to find efficiencies in the process and are interested in learning how we can improve the process on our end. If you have questions or wish to discuss, please contact WSDOT's TMDL Lead, Elsa Pond, at 360-570-6654 (office) or ponde@wsdot.wa.gov

Sincerely,

Kenneth M. Stone
Resource Programs Branch Manager
Environmental Services Office

KMS:ep

Cc: Vince McGowan
Nathan Lubliner
Ben Rau