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Delivered via e-mail to: yon.donald.r@deq.state.or.us

RE: 2014 Final Draft Oregon Nonpoint Source Management Program Plan

Thank you for accepting these comments on behalf of Rogue Riverkeeper, a non-profit organization whose mission is to protect and restore water quality and fish populations in the Rogue River Basin and adjacent coastal watersheds.

Rogue Riverkeeper, our parent organization, the Klamath-Siskiyou Wildlands Center, and our more than 3,000 members use and enjoy the Rogue River, its tributaries and the land encompassed within the Rogue basin.

We request that these comments be submitted into the record for the above draft plan. Please notify me of any decisions related to this plan.

The EPA calls nonpoint source (NPS) pollution "The Nation's Largest Water Quality Problem", and it is important that Oregon have an effective plan to protect Oregon waters and the Oregonians that depend on clean water. Oregon's draft NPS plan does not appear to be sufficient for that important task.

Plan lacks required elements

The plan currently out for public comment does not outline which waterways are specifically impaired by NPS pollution, the categories of NPS pollution, the specific BMPs needed to meet water quality standards, specific milestones for implementing these BMPs at the earliest possible date, or a monitoring strategy to evaluate effectiveness. All of these items missing are in fact required elements by section 319 of the CWA as well as EPA Section 319 Program Guidance: Key Components of an Effective State Nonpoint Source Management Program November 2012 (EPA guidance).

DEQ needs to clearly identify which waters are impaired by non-point source pollution, "those navigable waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards" CWA 319(a)(1)(A). Further, DEQ must identify "those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the navigable waters" CWA 319(a)(1)(B).

DEQ needs to clearly identify specific BMPs that will be used to not only reduce, but to restore water quality that is impaired by NPS or to prevent impairment of additional waters. A State NPS plan "describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source" CWA 319(a)(1)(C). With those BMPs selected the plan "identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters" CWA 319(a)(1)(D). BMPs must be clearly tied to the specific categories of non-point source pollution of concern and need to be sufficient for the task at hand.

DEQ needs to identify a specific annual timeline for implementing the needed BMPs identified to reduce NPS pollution, and that timeline must be implemented as quickly as possible. In other words a "schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date" CWA 319(b)(2)(C). The current plan lacks sufficient milestones for the EPA to evaluate the success or failure of Oregon's NPS plan.

The draft NPS plan contains a Table 1 that is intended to outline milestones for implementation. The table does not in fact identify specific locations or specific BMPs, instead it points frequently to plans that are hoped will identify those goals. For example Table 1 states that DEQ will "Develop Watershed Basin Status and Action Plans within identified priority watersheds that identify priority problems and waters". For this to meet the requirements laid out by the CWA, the NPS plan should have already identified the priority watersheds for NPS pollution reduction, have identified what type of NPS pollution is the issue, have identified which BMPs are appropriate to reduce that category of NPS within that watershed, and include a timeline for implementation of those BMPs. This overly broad pointing to future planning is common throughout Table 1 across a number of goals and nowhere in the NPS plan are specific basins, watersheds, waterways or BMPs identified as required.

DEQ needs to outline a monitoring and evaluation strategy that can determine the effectiveness of the BMPs and implementation strategy that the state must implement and to make changes as needed to increase effectiveness. As outlined in EPA guidance key component #8 a plan "describes a monitoring / evaluation strategy and a schedule to measure success in meeting those goals and objectives". The draft NPS plan does not outline a water quality sampling methodology to evaluate the effectiveness of either the NPS plan BMPs (as the BMPs have not been selected), nor the implementation of the

plan itself, or the even the TMDLs. While there is some discussion throughout of evaluating other agencies actions and of small components, there is no discussion of evaluating the NPS plan and its effectiveness as a whole either on the programmatic level or the real world implementation level.

The Water Quality Data and Assessments section (page 76 and 77) in fact simply lists some of DEQ's monitoring activities, and lists some potential future monitoring priorities. While we hope some of this data may be useful in measuring success for the goals and objectives of an NPS plan, DEQ does need to describe how these monitoring efforts fit into that monitoring / evaluation strategy and what the schedule is to measure success in meeting those goals and objectives. This is spelled out very clearly in EPA guidance yet ignored entirely in the draft NPS plan.

Partnerships
In large part due to the failures of ODF and ODA the EPA and NOAA have placed the state on notice Oregon's programs are insufficient to meet Oregon's obligations under the Coastal Zone Act Reauthorization Amendments. In particular ODF's inability to implement sufficient protections for stream temperature, and ODA's water quality management plans lacking specific thresholds making implementation and enforcement impossible. EPA guidance specifies that partnerships should be strengthened, not that they should be leaned on in lieu of meeting required plan elements. ODA or ODF having plans for plans, does not take away from DEQ the need to have an actual and specific plan to meet NPS plan requirements.

Use of authority
The NPS plan states "Oregon DEQ, in conjunction with the ODF and ODA, has broad authority to prevent and control water pollution from nonpoint sources within the state. Together, these agencies have the statutory authority to: prevent NPS pollution; to adopt additional rules to require implementation of measures as necessary to control discharges from nonpoint sources; to enforce prohibitions on NPS discharges; and to require restoration, as necessary." It is not clear in this document that DEQ is willing to do that and instead relies frequently on ineffective voluntary programs, as yet complete or in some cases identified future planning efforts or worse on the efforts of ODA and ODF.

We would strongly urge DEQ to use the described broad regulatory authority to implement clear and enforceable rules and to enforce them to restore and prevent further degradation of Oregon's waterways.

Required elements attached
Since a number of the elements identified by EPA guidance and outlined in section 319 of the Clean Water Act are missing, it may be helpful to review these items for consistency. Attached in the email these comments were delivered in are copies of EPA guidance from 2012 and of the Federal Water Pollution Control Act (Clean Water Act).

Conclusion
Rogue Riverkeeper sees a number of areas where the NPS plan fails to meet the requirements laid out in the CWA and EPA guidance as outlined above.

Considering the magnitude of NPS pollution issues affecting Oregon's waterways, we urge DEQ to take a more proactive approach that will fully protect the beneficial uses of the waterways that Oregonians depend on. We look forward to a future draft NPS plan that addresses the specifics required.

Sincerely,

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