UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
WATER AND WATERSHEDS

DEC 21 2016

Ms. Wendy Wiles, Administrator
Environmental Solutions Division
Department of Environmental Quality
700 NE Multnomah Street, Suite #600
Portland, Oregon 97232

Re: Partial Approval/Partial Disapproval of Oregon's Final 2012 303(d) List

Dear Ms. Wiles:

The U.S. Environmental Protection Agency has reviewed the Section 303(d) List for 2012 that was submitted by the Oregon Department of Environmental Quality (ODEQ) as part of the State's Integrated Report, on November 5, 2014, including ODEQ's assessment methodology and other supporting documentation and information provided by ODEQ or made available on ODEQ's website.

For the reasons discussed below, the Environmental Protection Agency (EPA) partially approves and partially disapproves Oregon's 2012 303(d) list consistent with the requirements of Clean Water Act (CWA) Section 303(d) and 40 CFR 130.7. Further explanation of these decisions is provided in the attached "Review of Oregon's 2012 Integrated Report." *See* Enclosure 1.

As a result of this review, the EPA has determined that Oregon's 2012 Section 303(d) listing of 131 water quality limited segments (WQLSs) still requiring TMDLs meets the requirements of CWA Section 303(d) and EPA's implementing regulations. In addition, the EPA has determined that the removal of 60 water quality limited segments due to standards attainment was also consistent with CWA Section 303(d) and the federal regulations. An additional 17 WQLSs were also placed appropriately in Category 4a and 4b, consistent with CWA Section 303(d) and the federal regulations.

However, the EPA found that 11 other additions were proposed in error, and at the request of ODEQ has removed these WQLSs from the list. The EPA determined that the proposed delisting of 8 additional WQLSs from the 303(d) list was inappropriate, and is disapproving these delistings and proposing the addition of these WQLSs to Category 5.

The EPA has also determined that ODEQ failed to assemble and evaluate all readily available data and information for water bodies of the state when developing Oregon's 2012 Section 303(d) list. Specifically, based on EPA's review of data ODEQ solicited and collected for the 2012 303(d) list development that was entered into the Laboratory Analytical Storage and Retrieval (LASAR) database, ODEQ failed to evaluate readily available data and information for the following pollutants: alkalinity; ammonia; aquatic weeds; bacteria; biocriteria; chloride; chlorine; chlorophyll a; dissolved oxygen outside the Willamette and Umatilla Basins; marine waters; metals; nitrates; pH; phosphorus; temperature; tissue of fish and soft shell clams; total dissolved gas; and toxics outside the Willamette

and Umatilla Basins.[1] Therefore, EPA is disapproving ODEQ's failure to list 332 WQLSs, as required by CWA Section 303(d) and 40 CFR 130.7(b)(5).

The EPA also evaluated waters in Category 4A being challenged in Northwest Environmental Advocates (NWEA) v. United States EPA (Civil No.: 3:12-cv-01751-AC.) The EPA is now proposing to add these waters subject to litigation to Category 5 to emphasize the need to replace these TMDLs. *See* Enclosure 7 for a detailed list of the 714 waters included in this action.

As required by EPA regulations at 40 CFR § 130.7(d)(2), if EPA disapproves listings EPA must identify waters not meeting the state's water quality standards and accept public comment on the proposed additions. The EPA will be accepting comments on our proposed additions from December 22, 2016 to February 6, 2017. Comments can be sent to Jill Fullagar at Fullagar.jill@epa.gov and should include the subject line "OR 2012 comment period." All decision documents and supporting information pertaining to this action are available on EPA's website at: https://www.epa.gov/tmdl/partial-approvalpartial-disapproval-oregon-2012-303d-list . After considering comments received from the public, the EPA will make a final decision regarding the addition of water quality limited segments to the final 2012 303(d) list.

Separate from the comment period on the EPA's proposed additions, the EPA is also seeking data, information and comments on potential aquatic life impairments in Oregon coastal marine waters. Please see Enclosure 2 for details regarding the specific nature of the information being sought, and submit any comments by the close of the comment period, which is also open from December 22, 2016 to February 6, 2017. Comments can be sent to Jill Fullagar at Fullagar.jill@epa.gov and should include the subject line "OR 2012 comment period." All decision documents and supporting information pertaining to this action are available on EPA's website at: https://www.epa.gov/tmdl/partial-approvalpartial-disapproval-oregon-2012-303d-list .

The EPA has received Oregon's long-term schedule for TMDL development for all waters on the State's 2012 Section 303(d) list. As a policy matter, the EPA has requested that States provide such schedules. The EPA is not taking any action to approve or disapprove this schedule pursuant to Section 303(d).

The EPA's partial approval/partial disapproval of the state of Oregon's 2012 303(d) list does not apply to any waters, or portions thereof, that are within Indian Country. The EPA is taking no action to approve or disapprove the State's list with respect to any waters within Indian Country.

We recognize and appreciate the work of staff and managers at Oregon Department of Environmental Quality in developing the final 2012 303(d) List. We look forward to continuing to work with you on this process to address the water quality issues in the State.

[1] 40 CFR 130.7(b)(5) requires that "Each State shall assemble and evaluate all existing and readily available water quality related data and information to develop the list."

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If you have any questions please contact Jill Fullagar, Impaired Waters Program Staff at (206) 553-2582, or Dave Croxton, Manager, Watershed Unit at (206) 553-6694.

Sincerely,

Christine Psyk for

Daniel D. Opalski, Director
Office of Water and Watersheds

Enclosures

cc: Ms. Jennifer Wigal, ODEQ

Ms. Karla Urbanowicz, ODEQ

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