

# JOINT REGIONAL AGREEMENT ON WATER QUALITY TRADING

## Reviewers Guide for Guiding Principles for Water Quality Trading

Following is a discussion draft on the guiding principles for water quality trading. Comments, questions, edits and additions will be incorporated and used to shape our discussion during the first Interagency Workshop, April 9<sup>th</sup> and 10<sup>th</sup>, 2013 in Union, WA. This document was derived from principles stated in USEPA's 2003 Water Quality Trading 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.

Please review this discussion draft, and consider the following questions:

- What are the overarching goals that trading is intended to accomplish? Does this document accurately represent your agencies intentions for trading as a tool to improve water quality?
- What would you add, remove or replace?
- Are there additional conditions or outcomes under which trading should NOT be allowed? Remember that specifics – like provisions stipulating compliance with specific laws (e.g. anti-degradation, anti-backsliding) and designating appropriate regulatory situations (e.g. TMDL, 401 certification etc) – are covered in the Outline of Tier 2 Components.

Written comments and/or tracked changes, as appropriate, are requested by **Friday, 3/22/2013**. Please direct feedback, questions, and comments to:

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## Joint Regional Agreement

### DISCUSSION DRAFT: Guiding Principles for Water Quality Trading

March 7, 2013

Water links us in ways that underpin healthy communities, economies, and ecosystems. When Congress passed the Clean Water Act<sup>1</sup> 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 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.

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USEPA's 2003 Water Quality Trading Policy<sup>2</sup> identifies as one of its primary goals encouraging "voluntary trading programs that facilitate implementation of TMDLs, reduce the costs of compliance with CWA regulations, establish incentives for voluntary reductions and promote watershed-based initiatives." The 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, 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 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 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.

**Comment [Schary1]:** I added this because there should be some mention of EPA's trading policy and what it covers, without offering any certainty for those trying to design trading programs that they are protected from legal issues – unless they work on staying consistent with CWA as outlined in the policy and support other important CWA goals rather than establishing their own. However, I am not happy with my wording so feel free to edit heavily.

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Nonetheless, the aspiration to design and build innovative water quality trading programs should be tempered with a set of guiding principles, 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 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. Water quality trading is generally supported where trading:

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<sup>1</sup> Federal Water Pollution Control Act, 33 U.S.C. § 1251, et. seq. (2006).

<sup>2</sup> <http://water.epa.gov/type/watersheds/trading/tradingpolicy.cfm>

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## I. Promotes a better environmental outcome

- a. Addresses causes of pollutant of concern and does not negatively affect 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; and
- d. Provides for the long-term stewardship and management of practices that produce water quality benefits.

**Comment [Schary2]:** My intent here is to signal that TMDLs lay out all the reductions that need to take place but trading can help speed up the time it takes to implement the steps to achieve the reductions.

## II. Achieves water quality goals faster than would have otherwise occurred

- a. Achieves 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.

**Comment [Schary3]:** I hope this isn't too heavy-handed by directly mentioning WLA and LA but I don't see a better place to make this point.

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## 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.

## IV. Provides for adequate 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.

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

- a. Provides a cost-effective compliance alternative for point sources
- b. Achieves environmental goals with reliable and reasonable transaction costs
- c. Uses, wherever possible, consistent credit quantification methods, processes and tools to lower the costs of program design and operation
- d. Does not use economic arguments at the expense of water quality goals

Trading is generally NOT supported where trading:

## I. Produces significant, localized water quality problems

- a. Toxics;
- b. Thermal barriers to fish migration, thermal shock/lethality for aquatic species, or impairment of known spawning habitat; and

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- c. Nutrient hotspots.
- II. Prevents installation of technology at the site of a point source that would provide greater environmental improvements than the trading option.
- III. Is not supported by adequate science
- IV. Is supported by adequate means of ensuring accountability**
- V. Is inconsistent with the relevant provisions of the Clean Water Act, as described in EPA's 2003 Trading Policy.

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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.