

State/EPA Discussion on WQ Trading

March 21, 2012

Attendees:

Cyndi Grafe, EPA/Facilitator

**EPA:**

Mike Bussell, OWW

Claire Schary, OEA

Jenny Wu, OWW/TMDL

Dave Croxton, OWW/TMDL

David Allnut, ORC

Christine Psyk, OWW

Kathleen Collins, OWW/NPDES

John Palmer, OWW

Mark Ryan, ORC

Kim Ogle, OCE/Water

Paula vanHaagen, OWW

Susan Poulosom, OWW/NPDES

Mike Lidgard, OWW/NPDES

Allyn Stern, ORC

Allen Henning, OWW/TMDL  
(phone)

**WA Dept. of Ecology:**

Josh Baldi, Director's Office

Eli Leavitt, NPS Program

Melissa Gildersleeve, Manager,  
Watershed Management Section

Helen Bressler, Water  
Quality/NPS Program

**ID DEQ:**

Barry Burnell, Water Div. Director

Mike MacIntyre, Surface Water  
Program Manager

Marti Bridges, TMDL Program  
Manager

**OR DEQ:**

Greg Aldrich, Water Div. Director

Ranei Nomura, Trading  
Coordinator (phone)

Judy Jondahl, CWSRF Program

**Opening remarks:**

Christine P: Need to collaborate in interim, one message to stakeholders.

Mike B: Would like a way to vet project requests from sources meeting a new limit. We have to be strategic, in light of longer term interests. Collaborate on that, pick and invest in right ones. Also, when and where we have to say no, collectively get in front of that.

**SRF Funding**

Greg: CWSRF funding – are credits' monitoring and verification costs for years 4-20 eligible for funding?

Paula vH: Credits are not eligible; NPS is, above what is required by permit.

Greg/Judy: Believe the Freshwater Trust will elevate this since SRF funding for credits is important to them.

Action: – item for follow-up

### **Legal Vulnerability**

Mark R.: He supports water quality trading, but CWA doesn't support it. If we get sued, we lose.

Christine: Important to have projects that meet water quality standards. Legal vulnerabilities shouldn't be on short-changing the environment,

Mike L: Need to minimize the risk of being sued.

Dave A. No plaintiff rule is the best approach.

Marti: CWA doesn't prohibit trading either. Need to sell it terms of environmental benefits, positive outcomes.

### **Interim Collaboration**

Claire: The context of collaboration is what is described in the recently submitted proposal to NRCS. Need to identify areas where common approach among OR, ID & WA is important, and where state differences can remain. That will still be important work to do even if grant is not awarded (which may be announced May/June). If it is awarded, then series of intense meetings begin in Sep. but outcomes won't ready for at least another year. Stakeholders are asking now, so an interim approach is needed to coordinate and collaborate on common issues, approaches.

Barry: Each state has own trading guidance, but that is not enough. Three-way conversations already happening in Idaho with EPA, permittee, DEQ. Sees the market's interests directing where those conversations are happening. Understand that there might be different conditions for pre-TMDL and post-TMDL. We need to have the same message on those two situations.

Ranei: Agrees with ID's comments. Need to make program more accessible to permittees, especially smaller sources – the market is the best way to do that. When there a lot of players, more rules and requirements to make sure all play well together. The structure of Willamette Partnership (WP) and The Freshwater Trust (TFT) really help. The grant's structure useful to have us on the same page.

### **Pre-TMDL trading**

Christine: How do we respond when proposals come in before there is a TMDL? We struggle with proposals that come before a TMDL, since we rely on TMDL analysis to know about targets and needed reduction, credits available.

Barry: A TFT wannabe exists in ID. Barry been trying to tell them their proposed project is not likely to happen until there is a TMDL, to put it in context of an NPDES Permit.

Jenny: Defining what amount of information is needed or what the criteria are to do a pre-TMDL trade proposal would be really worthwhile. Recent experience of City of Boise and Dixie Drain offset – it took a huge amount of resources and staff time for EPA, City, and IDEQ. We can't afford to keep doing that. Also, the City of Boise is still vulnerable to a lawsuit with the offset.

Melissa: Ecology is saying to PS, NPS trading proposals "go do it, but know you are taking legal risks." Also there is no certainty the trade will be continued if there is a TMDL. People say if the market is there, trading will happen, but that is not true. Dairy, ag. PS grants folks are pushing it as well, so Ecology is arguing with them too. We need to be on same page.

Helen: Need to focus on managing our scarce resources. Pre-TMDL proposals don't usually have a buyer identified, so they don't really know what they are selling.

Melissa: Quells the fervor by saying come when you have a market.

Mike M: Maybe one of the criteria is an investment by the PS buyer to do the analysis for the project. Also distinguish between an offset (an in-house project) versus a credit (involving a third party and a TMDL). If you do something beneficial at your cost, we're interested. Then we'll have 3 way discussions, state, EPA and entity.

Marti: Need more collaboration about managing expectations re communicating with the public in all the states. Concerned about creating false expectation about something available to trade (e.g., experience with the Spokane Basin). The message should be about the right circumstance, right place, but that is not getting across to the public.

### **Inter-state Trading**

Mark R: States, have you worked on inter-state watershed trades?

Marti: yes, w Helen, in the Spokane Basin. They are still looking at BMPs (with the U of I study in Hangman Creek). Is there anything that can be traded?

Helen: Analysis showed ID BMPs had no effect on point of compliance.

Alan H: Klamath Basin will have interstate trading with CA. The Klamath Basin Tracking & Accounting Program (K-TAP) is an ecosystem services trading program (focused on temperature and nutrients) that is being developed by representatives from OR, CA, R10, R9 and others. Started by implementing TMDLs in K Basin, and are in the process of developing trading ratios. Many of the components of the program have been adopted from the Water Quality Trading Program developed by the Willamette Partnership, who is also a key player on the team. They developed a draft protocol handbook for establishing the credits to be traded. Now they are in a pilot phase for applying trading framework to OR pilot projects funded by OWEB, to quantify the benefits but without trading the credits.

### **Priorities for Collaboration**

Ranei: Pre-TMDL offsets may be an issue for ODEQ. Can do trades if they have sufficient modeling, but they also do their own permitting. This is a challenge because resources are limited, TMDLs are too

slow. How to calculate credits in a transparent way would be good to develop is another issue, along with what are the appropriate oversight and enforcement steps. Need EPA and states to speak with one voice.

Paula: To rephrase, what is the minimum analysis for a pre-TMDL offset that needs to be done. (Group concurred.)

Barry: Another issue is how to build a WQT framework. We have our state guidance, but need resources to implement trading. We tell stakeholders they have to build the framework (meaning the analysis and mechanics of a proposed trade or multiple trades in a specific watershed). IDEQ can't seek grants for this. Go bring us a draft workplan and we'll look at it and say if it's suitable. They also need the stakeholders to provide the information at a detailed level, e.g., to determine what are the environmental benefits, the attenuation of the pollutant between the locations, in order to be able to develop trade ratios, etc.

Marti: With a pre-TMDL trade, the cart is before the horse. Don't know enough to establish trade ratios or location ratios.

Barry: Need a process to get ideas developed in an open, collaborative way and that is not handed to IDEQ & EPA as a nearly final plan.

Christine: EPA's policy is broad, aspirational. IDEQ has state guidance, but not at project level. That needs to drill down to the watershed level to guide the actual trades. IDEQ needs to rely on others doing heavy analytic work, but needs to review, be involved.

Ranei: OR is a little ahead, but they too need help from 3<sup>rd</sup> parties like TFT and WP. They do a lot of leg work for permittees - e.g., to figure out if there is enough reduction to establish a credit. DEQ could not have done that, nor permittee. The nonprofits' motivation is they want to increase pace of restoration.

Greg: Clean Water Services had the resources and size to do the first trade. Other communities don't have the resources; need someone to guide them through the process.

Helen: Ecology's priority issues for collaboration are: 1) Messaging about managing about expectations. They are getting proposals from other sectors for all kinds of trading - .e.g. WA DNR's forest-based services and WA Dairy Association's biodigester – phosphorus credit proposal. Her perspective is the forest practices regulated community wants to get paid to do what they're required to do by DNR. Dairy gets \$ for manure digesters, want \$ for WQT. We need to be able to say what is WQT and what it is not. 2) Concerned about NPS baseline. Would like to see an understanding of each state's approach, methodologies, and when credit can be awarded.

Mike B: Building on managing expectations and message, he is worried about managing projects that come in, and how much we can do with work up front- i.e., who do we pick, so we can do it well.

Christine: We are also setting expectations by saying as regulators, when proposals can come to us, “we aren’t here to make it happen for you, but that you need to come with watershed-level analysis and willing buyers and sellers identified.”

Mike B: Also need to say it to our commissioners and Regional Administrators. The NRCS proposal could be a real focusing venue for this.

Claire: It’s the messaging that’s been done that inadvertently conveys trading in too simple of terms. EPA HQ has issued a lot of lengthy documents to walk stakeholders and states through the issues and analysis that needs to happen. Region 10 led the development of one document early on – the Handbook (Is WQT the Right Tool for Your Watershed?) that she called “Trading is not for sissies.” This document is available on EPA’s website and walks people through the steps to do that early analysis about trading, showing all of its complexity. People need to be aware that is not easy, doesn’t work everywhere.

Alan: Need to acknowledge EPA’s and investment in these guidance materials and pilot programs. EPA and R10 assistance invaluable to progress in OR. However, we don’t want to push PS and NPS away – need to keep incentives for restoration in the picture. We need to take the risks, which we can manage, and work with PS and NPS to move ahead.

## **Next Steps**

Greg: what is the level of commitment?

Christine: This will be for the interim period before the proposal and its products come through. May be a monthly conference call, tackling the issues incrementally. Claire would be the one for Region 10.

Claire: She and Christine could develop an outline of a white paper per month on each identified issue. Value is in regular communication as a group discussing these issues. Can also do ad hoc conference calls when requests or trade proposals come in to one of us, to keep everyone in the loop.

Mike M.: Need a common sheet of music, to keep us consistent in telling those coming in with trade requests, that we can’t make the trade happen for them. If you want it, here is what you need. Read the “Trading is Not for Sissies: guidance, etc.

Mike B: Will need a second sheet of music. An interim sheet of music as well as long term one. That would be a good topic for the first call, to have done before Dennis’ next congressional call.

Alan: Should we ask TFT, in advance of the grant being awarded, what would help them for us to work on?

Claire: TFT may have a different opinion from us, e.g. pre-TMDL offsets. If the grant is awarded by NRCS, then, according to the schedule laid out in the proposal, September will have an intense series of meetings to start the project.

**WQT Workgroup:**

EPA: Claire

IDEQ: Marti

ODEQ: Not sure if it's Ranei (*but confirmed in a subsequent email it was Ranei*).

Ecology: Helen

**Action Items:**

Notes from today- Claire will type up, distribute

Set Up conference call: Claire

Link to Not for Sissies: Claire will send out to group

Conversation on how SRF funding can support WQ Trading: Paula and Judy will follow up on this.

**Collaboration Issues - Votes:**

Pre-TMDL offsets (how to establish them, how to convert to post-TMDL credits) – OR

How to decide when to award credits? - WA

Common approach to calculating credits in transparent way (how to establish baseline, how to quantify or estimate BMP effectiveness) - OR, WA

Minimum oversight, enforcement steps to ensure credits are real & verifiable, track reductions properly  
- OR