

Lower Boise River Water Quality Trading Program Technical Advisory Committee

Meeting #3: Foundations of Revising the Lower Boise River Water Quality Trading
Framework

Lower Boise River Technical Advisory Committee for Water Quality Trading

April 27, 2016
Meridian Water Resource Recovery Facility Conference Room
10:30-4:00pm MST

Objectives:

- Explore recommendations on March 28th Framework concepts
- Review new Framework concepts and provide direction on Framework contents
- Identify action items and responsible parties for next meeting

Time	Topic Description
10:30 – 10:40am	Introductions and review of process
10:40 – 12:00	Status update on action items <ul style="list-style-type: none">• Trading wasteload allocations• Baseline• Trading ratios• Quantification methods• Avoiding localized impacts• Public conservation dollars
12:00 – 12:45pm	Lunch
12:45 – 1:45	Credit generating project review, certification, and tracking <ul style="list-style-type: none">• Initial project review and certification• Ongoing project review• Credit issuance and tracking
1:45 – 2:45	Compliance and enforcement
2:45 – 3:00	Break
2:45 – 3:00	Improving the framework over time <ul style="list-style-type: none">• Adding new BMP and/or quantification methods• Program improvement process
3:45 – 4:00	Meeting wrap-up and action items <ul style="list-style-type: none">• Summarize key recommendations or proposals• Identify issues that require additional conversations• Identify key action items and responsible parties
4:00pm	Adjourn

LOWER BOISE RIVER TECHNICAL ADVISORY COMMITTEE ON WATER QUALITY TRADING

Foundations for Revising the Lower Boise River Water Quality Trading Framework
April 27, 2016

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Water Quality Trading Note IX: How Do We Know That Credits are Real?

Developed by Willamette Partnership. Adapted from Building a Water Quality Trading Program by the National Network on Water Quality Trading¹

One of the core functions of a trading program is to ensure and inspire confidence in observers that water quality credits exchanged in a trade represent real environmental benefit. A key to create this confidence is developing mechanisms and procedures to confirm that credit-generating projects were installed and are performing as intended over time. A trading program also needs a way to record and track projects and credits throughout their life, as well as make key information available to the public.

Project Review & Certification

Project review (often referred to as “verification”) is the process of confirming that a credit-generating project has met trading program requirements. Project review may be conducted by an agency, permittee, or third party. The process includes “initial” and “ongoing” (for the life of the project) review.

Initial project review typically occurs following project completion and includes three main components:

- Administrative review;
 - Completeness – documentation is complete
 - Correctness – documentation conforms with standards
- Technical review – quantification is complete and accurate; and
- Confirmation of project implementation and/or performance—preferably through an onsite visit, but possibly through remote sensing where applicable for a BMP type and location.

The breadth and depth of information covered in an initial review creates confidence that trading programs are achieving environmental benefit, but can also increase the cost of program operations. Development of the initial review process should therefore consider the balance of cost and accountability. The extent of technical review, documentation and requirement of on-site inspection for all projects are all variables to consider when trying to create a robust initial review that creates confidence and also considers programmatic costs.

Certification of a credit-generating project is the final administrative check (and subsequent approval) of the project, that all criteria for review have been met and all necessary documentation is in place. Once a project is formally certified, credits are issued and available for sale or use.

Ongoing review occurs over defined intervals for the duration of the project life. The timing and content of ongoing review may vary by watershed depending on preferences and capacities within state agencies, permittees, and third parties. For ongoing review there is often little need to repeat the detailed administrative review and technical review of credit calculations. Rather the focus of ongoing reviews are

¹ The National Network on Water Quality Trading is a collaborative effort that brings together the perspectives of agriculture, point sources, environmental groups, regulatory agencies, and the practitioners delivering WQT programs across the country. The purpose of the Network is to establish a national dialogue on how water quality trading can best contribute to achieving clean water goals. The National Network publication “Building a Water Quality Trading: Options and Considerations” is anticipated for release in spring 2015.

the confirmation of project function and performance relative to the criteria for implementation. The review requirements and timing of review may vary by project type and status (phase of project life).

Tracking Credits over Time

Tracking is the process of following the status and ownership of credits as they are issued, used, retired, suspended, or cancelled. A trading program may track projects, credits, and transactions in one of a few ways: central registry, a simple ledger, or a posted database. “Ledger” is used to refer to accounting summaries that cover primarily transactional information. “Registry” is used where project-specific information for credits is also included. Credit tracking systems can be kept by the agency, permittee, or other trading program administrator. In trading areas where there are multiple buyers, a centralized registry can be a useful way to ensure accurate accounting of credits.

Water quality trading programs developers will also need to decide what information should be tracked along with each credit. Tracking additional information adds cost and complexity, but it also creates a more robust record of activity. Program developers should consider tracking the following pieces of information:

- **Ongoing project status/project reviews (e.g., validated, under review, approved, ongoing review).** Each credit is tied to a particular project. Tracking the status of the project along with the credit makes that connection back to the action from which they were generated.
- **Trades.** Tracking the movement of credits between owners.
- **Ongoing credit status (ex ante, ex post, active, retired, suspended, cancelled).** The status of credits is fundamental information for program tracking system. For most programs it includes noting whether the credits are “active” (available for use), “retired” (meaning they cannot be used again), “after use” (for conservation benefit), “suspended,” or “cancelled.”

What Information is Available to the Public?

There is often a distinction between the information that is documented by the trading program and the information that is actively available for public review. The ability of the public to ensure consistency with the Clean Water Act is an important part of the NPDES program. The CWA requires transparency and public participation in how effluent limits are derived in NPDES permits, so all trades used to meet permit limits need to be explained in enough detail for the public to understand, review, and be able to comment on the information and assumptions used to determine compliance with the CWA.

Trading programs often seek to strike an appropriate balance between the level of transparency needed to maintain a trusted system and comply with the CWA, and providing the level of confidentiality that some businesses and individuals need in order to engage in such programs. For instance, trading programs may disclose details of the project design and stewardship assurances but withhold private business information and/or the specific project location.

Lower Boise Watershed

Idaho DEQ’s state guidance (currently out for public comment) states that all credit generating activities must be verified within one year of installation, including the following components:

- *Administrative review*—Confirm project eligibility
- *Technical review*—Confirm that credits were quantified accurately.
- *Project implementation*—Confirm that the nonpoint source project was installed (via a site visit or other means) consistent with approved design and construction criteria, and any BMPs expected

as part of baseline are in place. From DMRs, confirm the pollutant load reductions for point sources.

The draft guidance also discusses tracking trades, either through DEQ or a third party. The draft Framework states that all trade transactions must be entered into a single trade tracking database for the Lower Boise River Watershed.

Water Quality Trading Note X: Who Administers the Trading Program?

Developed by Willamette Partnership. Adapted from Building a Water Quality Trading Program by the National Network on Water Quality Trading²

The different tasks associated with administering a water quality trading program require different types of capacities, costs, and authorities, and may be performed by a single state agency or some combination of agencies, permittees, and third parties. This *Trading Note* focuses on what those administration functions are and some selection criteria to consider when designing a program.

What are the Administrative Tasks?

Site Screening: Although often voluntary, site screening before project implementation can identify issues or concerns about project eligibility before significant funding is expended. The task requires comprehensive knowledge of the relevant trading plan(s) and standards, an understanding of the proposed credit-generating action, and the protocols for applying the appropriate credit quantification method. The entity screening sites needs to have knowledge of these specific technical tasks and be able to quickly respond to requests for site screening. Where eligibility criteria are clear and specific, it may be easier for permittees to screen their own projects. Early on in trading program implementation, it can be helpful for a neutral third party or state agency to be involved. That way, the agency has time to clarify their intent, and/or differences of opinion between project developers and the entity screening sites.

Initial project review and certification: The initial project review and certification confirms key elements of the credit-generating project to ensure that it will provide the water quality benefits promised. This may include review of site and stewardship documentation (administrative review), review of a site's credit calculation amount (technical review), and confirmation of proper standards implementation and/or performance of credit-generating actions.

Initial project review and certification requires the most time, skill, and autonomy of all steps discussed here. Across the country, an array of parties have performed the initial review and certification steps, including state agencies, third parties, and permitted point source buyers.

Project reviewers need to have the same ability to understand, interpret, and make decisions about eligibility standards as the entity entrusted with site screening. Initial project review and certification requires additional familiarity with quantification methods and tools, typically similar or equal to the level required to run the credit calculation process or model. This may require technical knowledge and capacity to use GIS and other models. Initial project review and certification also requires familiarity with the specific BMPs being reviewed. Reviewers performing in-person inspections should be able to visually assess sites for proper implementation and/or performance in accordance with quality standards.

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Managing the Ledger: A ledger/registry serves three main functions: it provides a program-level accounting of credits generated, tracks credit ownership as they change hands during a trade, and provides a forum to share credit- and project-specific information for public transparency.

The tracking entity should be trusted by parties within and outside the trading program as having a solid understanding of financial procedures and quality control in data management. Distrust in credit tracking can severely undermine credibility of the trading program overall.

What to Consider when Developing Program Administration

The following are criteria that should be considered by program developers when determining who should be responsible for the various tasks of program administration.

Skills/expertise required to perform each function: Some functions are largely “administrative” (e.g., paperwork review), whereas others might require familiarity with specific ecology and land management practices (e.g., identification and evaluation of on-the-ground actions) for the watershed.

Administrative time and costs: Water quality trading is a market-based environmental program, and keeping transaction costs as low as pragmatically possible frees up capital to invest more directly in environmental benefits;

Public and stakeholder trust: State agencies may choose to partner with other agencies, contract a third party or even allow permittees and applicants to perform certain tasks and functions that are key to the day to day operations of trading, even when trading is a regulatory compliance tool. If the decision is made to allow others to perform these tasks, the agency should consider whether formal delegation, assignment, contractual agreement, or another form of written authority may or should be given and how the public and stakeholders may view delegation of responsibilities.

Access to information and privacy: Private landowners, federal and state agencies, and businesses are subject to different regulations and laws, and when federal and state agencies utilize third parties to administer trading programs, there is less information available to the public through public records requests. Trading program developers should consider the types of information that will be generated and shared among these parties and the public availability of trading-related documents.

Who Should Administer the Program and Tasks?

Agencies: The permitting agency has ultimate authority over compliance and enforcement determinations, and the agency may wish to administer the entire program in order to retain more control over their water quality program. Agency staff are also usually already familiar with BMPs and the trading program standards they set. In some instances, the various tasks associated with a trading program could be delegated across multiple agencies. However, trading program volume may vary over time, sometimes very active and sometimes very quiet. Agencies are often less flexible when it comes to staffing workloads and in collecting fees to adjust resources for those services quickly when they are needed. Landowner and agricultural groups also often express concern about having agency staff on their property, though it’s not clear if that concern would hinder participation in the program.

Permittees: Since the NPDES program is traditionally a self-reporting system and since the permittees are ultimately responsible for compliance with their permit, permittees may wish to decide for themselves whether to review, certify, and track projects internally or whether they should work with a third party to fulfill this role.

Permittees or project developers are highly familiar with individual projects, making it easier for them to evaluate, and can be held accountable through contractual liability. However, both permittees and project developers have potential conflicts of interest when screening their own projects.

However, permittee-led verification and tracking can create a conflict of interest, and may degrade the program's credibility without a high level of transparency and mechanisms that manage conflicts of interest. When permittees or project developers elect to screen their own credit-generating projects, agencies may choose to audit a portion of credit-generating projects to ensure the permittee has consistently complied with eligibility criteria.

Third Parties: Third parties may have the ability to grow and shrink more rapidly in response to larger or smaller transaction volumes. If trading participants are to be required to use a third party, there may need to be some formal assignment of responsibility from the relevant agency. Conservation district staff and other resource or agriculture professionals often work closely with landowners to understand how BMPs should be implemented to maximize water quality improvements, which helps them correctly evaluate projects and gain feedback information to improve overall program requirements. Third parties may more easily charge fees (compared with state agencies).

Combination: Different entities may be assigned to perform different portions of program administration. For example, a third party may conduct initial project review, then agency staff perform certification as a way to stay informed about project development. In this case, the third party can adapt to the staffing needs and may be a more comfortable site inspector for landowners, but agencies are still informed and involved in each project. Not that separating certification from initial project review can lead to redundant processes—perhaps doubling transaction costs, and also creating more opportunity for disputes.

Program Administration in the Lower Boise

Idaho DEQ's state guidance (currently out for public comment) states that all credit generating activities must be verified within one year of installation and discusses tracking trades. It does not, however, specify who should conduct those activities, saying that they could be done by the permittee, the agency, or a third party. Based on informal conversations, we anticipate that DEQ will issue an RFP and select a designated entity to conduct verification and track trades, while maintaining clear authority to audit and oversee the program.

Water Quality Trading Note XI: Improving the Program Over Time

Developed by Willamette Partnership. Adapted from Building a Water Quality Trading Program by the National Network on Water Quality Trading³

Trading programs operate within complex ecological, social and political systems. Over time, there is a need for programs to be adaptable to best information available, monitoring feedback, and policy changes that may impact program performance. To be effective and efficient an important element of program design is to include processes to collect new information and to be able to incorporate that information in a way that creates consistency and transparency over time.

Trading programs are most likely to evaluate and seek changes on the following elements:

- improving trading program standards,⁴ protocols,⁵ and process;⁶
- quantification methods used to model water quality improvement;
- incorporating changes in trading program protocols or credit quantification methods;
- incorporating new project types as eligible credit-generating actions; and
- evaluating whether water quality improvement actions have been effective at helping to meet overall water quality goals for the watershed, not just for NPDES permits.

These decisions can be based on an authorized, prescribed plan for managing information or may proceed on a case-by-case basis.

Using a Formal Program Improvement Plan

A deliberate approach to trading program improvement may give stakeholders the confidence to proceed with trading despite the fact that programmatic uncertainty may exist at the outset. It may also help program participants anticipate and understand when and how changes will be made, providing a needed degree of certainty to engage in the market. However, with additional systems and processes comes additional cost. Tracking and evaluating information and coordinating stakeholder feedback to update a trading framework will require personnel and administrative resources.

At the outset, it is important to identify which staff will do this work and entities will be needed to approve changes. In most cases, the funding or staff capacity to perform monitoring and program evaluation may not be initially available. Program developers should consider whether agreeing to a

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⁴ **Trading program standards** are those criteria or specifications that a project must meet to participate and generate credits. This includes eligibility criteria (see Section 3), BMP quality and performance standards (see Section 7.2), and requirements around project review, approval, credit issuance, and tracking (see Section 8).

⁵ **Protocols** are step-by-step manuals and guidelines describing the actions, sequencing, and documentation necessary to generate credits from an eligible project type or credit-generating activity.

⁶ **Administrative process** refers to the steps taken by program administrators to move projects through from site screening to credit issuance.

plan for improvements without later following through with those plans would likely erode trust with stakeholders and participants.

Ad Hoc Program Improvement

In developing a trading framework, it may be difficult to identify at the outset the program elements that are likely to require a formalized review process or the costs associated with such a review. In this case, program developers can develop a plan later once experience and a sense of the issues they are most likely to face are gained. While an ad-hoc process may allow the program to move forward and for experience to be gained, it may be more difficult to get stakeholders to support the program without a clear plan to gather and address areas of refinement and ongoing improvement.

When are Changes Incorporated?

Trading program components may change as a result of:

- newly promulgated rules or ordinances effect credit-generating practice;
- local "hot spots" emerge and the use of trading "causes or contributes" to that water quality violation;
- a new TMDL or changes to formal water quality standards may result in adjustments to the credit obligations for permittees.

In addition, program changes should be made when additional scientific information or improvements to quantification methods are made, particularly if they are incorporated into other agency policies, documents or guidelines. Trading programs that are diligent about planning for change can help limit the significance and frequency of changes.

How are Changes Incorporated?

Mechanisms for incorporating new trading program components need to balance the following considerations:

- integration of the most up-to-date information, as quickly as possible;
- consistency with regulatory process (i.e., water quality standards, TMDLs, permitting);
- providing certainty for permittees and other market participants on what requirements they need to meet to generate credits given the often-significant financial investments made through past project purchases; and
- the additional costs associated with updating existing projects to meet new requirements.

Trading program components included in an NPDES permit are likely to remain fixed for the duration of the permit cycle. New trading program components are more likely to be incorporated in subsequent permit cycles or through a later permit modification. It is generally agreed by members of the National Network on Water Quality Trading that in event new information reveals severe flaws in a credit quantification methodology, agencies should include a general reopener clause in the permit and program language to allow them to exercise the full flexibility and control that is already delegated to them.

Program Improvement in the Lower Boise

The state water quality trading draft guidance (currently out for public comment) states that, "Water quality trading frameworks and plans are expected to include adaptive management to improve the elements within them with new information over time (Section 8.6, pg.23)." The concept draft of the Lower Boise Framework includes a process for adding or updating new BMPs and/or quantification

methods. Stakeholders can consider whether other portion of the program (e.g., protocols, process, and programmatic effect on water quality) should also be considered in the adaptive management section.