

 UI Extension Forestry Information Series

## Idaho's Water Quality Laws and TMDL's

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What are Idaho's water quality laws, and what in the world is a TMDL? Good questions! These are among the latest buzzwords, so let's start from the beginning. In early 1995, the Idaho State Legislature passed State Bill 1284 that created major changes in water quality laws. Its passage restructured water quality laws and caused confusion and concern.

To better understand the situation we need to begin before the Legislature passes SB 1284 and the reason why it was passed. The federal Clean Water Act of 1972 contains Section 303(d) requiring states to submit to the Environmental Protection Agency (EPA), every two years, a list of rivers, lakes, or reservoirs in the state for which pollution control or requirements have failed to provide for water quality. This following is a time line of how SB 1284 evolved:

- 1992 – Idaho submits 31 waters deemed to be polluted under Section 303(d).
- 1993 – The Sierra Club Legal Defense Fund, representing the Idaho Sportsmen's Coalition and the Idaho Conservation League files suit against the EPA, challenging Idaho's list as being inadequate.
- 1994 – Idaho submits a 303(d) list of 62 waters designated as polluted. The US District Court for the Western District of Washington (Judge Dwyer presiding) decides AGAINST the EPA, maintaining that it had approved "an under inclusive list of Idaho waters under Section 303(d)". The EPA identifies 788 additional waters and opens the process up for public comment. The process resulted in 962 bodies of water being placed on the 303(d) list.
- 1995 – Under pressure from the court's decision, the Idaho Legislature passes SB 1284. The new law sets for the creation of two groups: Basin

Advisory Groups (BAG's) and Watershed Advisory Groups (WAG's). The groups are to advise the Director of the Division of Environmental Quality (DEQ) on water quality objectives for each basin and provide guidance on specific pollution control actions to restore designated beneficial uses of impaired water bodies. The formulated action plan or "Total Maximum Daily Load" (TMDL) quantifies the acceptable pollutant level for each point and non-point source necessary to achieve the applicable water quality standard within a reasonable amount of time.

- 1996 – In May, DEQ submitted to the EPA the State's schedule of TMDL development. This schedule proposed development of TMDL's on 41 of the 962 listed water bodies over the next four years. It also committed to developing two TMDL's every two years for each of Idaho's six hydrologic basins, or six TMDL's per year. EPA accepted this schedule and directed Idaho to complete all TMDL's in 25 years. This schedule was submitted to Judge Dwyer who was appointed by the US District Court for the Western District of Washington to preside over this case. In September of '96, Judge Dwyer issued his decision on the schedule. The court ruled AGAINST EPA - EPA was ordered to submit (within 6 months) a schedule that would have a completion date of five years rather than the proposed 25 years.
- 1997 – In April, Judge Dwyer approved Idaho's schedule for developing TMDL's on Idaho's 962 listed 303(d) water quality limited stream segments. An eight year, rather than five year, time

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frame was accepted and agreed upon by the judge.

Confused yet? So what exactly is a TMDL? A TMDL, or total maximum daily load, is a tool used in the development of a watershed management plan that determines the amount of pollution a water body can receive from various sources in the watershed. A TMDL is defined in federal code 40 CFR 130.2(I) as “the sum of individual point source and non-point source pollutant loads expressed as mass/time, toxicity or other appropriate measures, within a margin of safety”. The margin of safety accounts for uncertainty of calculated pollutant loads and receiving water body estimates.

Still confused? What this means is the TMDL process is used to get a quantifiable measurement of how much of any given pollutant a stream can handle without becoming polluted, or reaching a defined level of pollution. The difference between point and non-point source pollution is that point source pollution can easily be detected (coming from a known source). For example, sewage coming out of a pipe would be point source pollution. Non-point source pollution may come from a variety of undetermined sources and then discovered downstream in a water body. For example, testing indicates that there is a pollutant present in the water body, but it is undetermined where that pollutant is actually coming from. Non-point source pollution is much harder to evaluate and treat without looking at the whole drainage or watershed.

Steps to developing a TMDL:

1. Selection of the pollutant to consider;
2. Estimation of the amount of pollutant the water body can receive and not become polluted;
3. Identification of the amount of polluting sources in the watershed;
4. Determination of the amount of pollution the water body may receive from each source of pollution in the watershed;
5. Margin of safety to account for any circumstances in the mathematical calculations used.

The TMDL process will provide:

1. An inventory of all sources of the pollutant of

concern;

2. An analysis of why current pollution control efforts are not effective;
3. A plan to monitor and evaluate progress toward water quality goals;
4. A list of pollution control strategies for reducing sources of pollution;
5. A prediction of the amount of time needed to restore and protect water quality.

Following development of a draft, a TMDL is published for public comment. After making any appropriate modification in response to the public comment, the TMDL is sent to the EPA for approval. Once approved, the state is required to implement the TMDL so the water body will meet Water Quality Standards. The TMDL is implemented through existing programs, such as the National Pollution Discharge Elimination System (NPDES) and permits for point source discharges and non-point source control programs to achieve the necessary pollutant reductions.

Going back to the Law (SB 1284) passed by the Idaho Senate in 1995. What makes this law different than any other law and what do TMDL's mean to private forest landowners? The law provides local people or groups with an interest in the streams on the 303(d) list the opportunity to become a part of a WAG or BAG, which will assist in the development of a management plan for a particular water body.

Many people feel water quality affects mainly agricultural operations. In reality, many non-industrial private forest (NIPF) lands are concentrated near lakes and streams, and often are closer to population centers than other forested lands. Idaho's Forest Practices Act mandates Best Management Practices (BMP's) forestry operations must adhere to. In contrast, agriculture BMP's are voluntary, which essentially means forestry is being held to a higher standard than the agricultural community. Since NIPF lands often act as buffers for lakes and streams from other uses (e.g. farming), these lands can often be more closely scrutinized when forestry practices are being imple-

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mented. Most NIPF lands are managed for multiple use, with logging as a secondary activity. However, water quality concerns are always present.

What can you do? Get involved and help decide the future. Voice your concerns. The WAG's and BAG's (made up of local folks) are writing these TMDL's and recommending them to the Idaho DEQ. Contact your local Extension Office or Natural Resource Conservation Service (NRCS) office to find out when and

where the local TMDL groups are meeting. There is a lot of information available on the subject of TMDL's and Extension has videos and publications on water quality if you want to learn more.

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