MEMORANDUM OF AGREEMENT
KLAMATH RIVER/LOST RIVER TMDL DEVELOPMENT
(Revised January 2005 and April 2008)[1]

I. Parties to the Agreement

The parties to this agreement are: the Oregon Department of Environmental Quality (ODEQ); the North Coast Regional Water Quality Control Board (NCRWQCB); and Region 9 and Region 10 of the U.S. Environmental Protection Agency (USEPA).

II. Stipulations

Whereas,

A. Portions of the Klamath River and Lost River are located in both California and Oregon, and

B. The Klamath River below Upper Klamath Lake to the Pacific Ocean and the Lost River are listed on both the Oregon and California Clean Water Act Section 303(d) lists for various water quality parameters; and

C. The federal Clean Water Act requires the establishment of total maximum daily loads (TMDLs) for water bodies that are listed on the states' Section 303(d) lists; and

D. The U.S. Environmental Protection Agency is under a court order to ensure completion of TMDLs for the California portions of the Lower Lost River and for the Klamath River mainstem by December 31, 2008 and December 31, 2010, respectively, and is required to establish these TMDLs if the State fails to do so by the court-ordered deadlines; and

E. The U.S. Environmental Protection Agency is obligated under a Consent Decree to meet a defined schedule for establishing TMDLs in Oregon; and

F. ODEQ and NCRWQCB agree that the timely availability of water quality models developed by PacifiCorp could be a key factor in meeting the consent decree deadlines, given the time and resources currently available for the project; and

G. The Parties to this Memorandum agree that Oregon Department of Environmental Quality and the North Coast Regional Water Quality Control

[1] The four agencies signed the original Memorandum of Agreement in November 2003. The MOA was revised in January 2005 and April 2008 to incorporate schedule and other changes.

Board are governmental entities designated to adopt TMDLs within their respective jurisdictions.

H. The NCRWQCB believes that the development of an effective implementation plan to achieve the Lost River TMDLs is a crucial piece in the development of a comprehensive recovery plan for the Klamath River Basin. NCRWQCB will develop an implementation plan for the Lost River TMDLs when resources (funding authority and funds) become available.

The parties to this Memorandum agree to the following:

III. Roles and Responsibilities

A. ODEQ and NCRWQCB are the lead agencies for adopting TMDLs in their respective jurisdictions (except for the Lower Lost River in California); and are jointly responsible for:

1. Resolving potential conflicts between Oregon water quality standards and California water quality objectives associated with cross boundary water bodies;

2. Establishing appropriate water quality targets for each TMDL that ensure attainment of Oregon water quality standards and California water quality objectives, as appropriate;

3. Identifying appropriate model scenarios as needed to determine loading capacities;

4. Establishing loading capacities, TMDLs, load allocations, and waste load allocations, as appropriate;

5. Including in the TMDLs a reasonable margin of safety (safety factor);

6. Preparing necessary TMDL documents for submittal to USEPA for approval (Note: Unless otherwise agreed to, it is expected that NCRWQCB and ODEQ will prepare individual TMDL documents. Technical analyses for loading capacities, allocations, etc. will likely be joint documents that will be appended to the individual documents.);

7. Conducting public awareness or outreach programs as necessary to inform and educate affected stake holders concerning TMDL development;

8. Directing field staff to assist in data collection for the TMDL as feasible; and

9. For ODEQ, determining those sources that will be established as nonpoint source designated management agencies in the TMDLs.

B. Except as otherwise noted, USEPA Regions 9 and 10 are jointly responsible for:

1. Providing technical assistance through review of draft products;

2. Consulting with affected Indian tribes as necessary under Executive Order 13175;

3. Fulfilling federal responsibilities under the Endangered Species Act;

4. Providing contract management services for technical support through the USEPA nationwide watershed and regional contract vehicles. Region 9 shall manage the contract, in accordance with federal procedures.

C. All parties will coordinate in dealing with other agencies active in water quality or water quality-related activities in the Klamath Basin.

IV. Points of Agreement

A. While ODEQ and NCRWQCB may fulfill their responsibilities jointly or separately, the states are committed to:

1. Coordinating on data collection activities, including data collection protocols, quality assurance and quality control, and timing and locations of monitoring activities;
2. Sharing data;
3. Developing analytical tools that provide seamless and coordinated coverage across state lines;
4. Sharing draft work products;
5. Coordinating stakeholder involvement efforts to the extent feasible;
6. Meeting downstream water quality standards or water quality objectives, as appropriate;
7. Sharing drafts of communications affecting the states abilities and effectiveness in carrying out the states' responsibilities and fulfilling their commitments; and
8. Coordinating on implementation activities and revision provisions, including jointly considering new and emerging science, and accounting for significant physical changes in River conditions.

B. All parties agree to resolve any conflicts at the lowest possible level within their respective organizations and will elevate unresolved issues within their respective organizations to the signatories to this agreement as necessary to resolve conflicts. The following levels will be followed to resolve conflicts between all parties:

1. Steve Kirk, Senior Water Quality Specialist (ODEQ), Matt St. John, Lead, TMDL Development Unit (NCRWQCB), Gail Louis, Environmental Protection Specialist (EPA Region 9), Mark Filippini, TMDL Coordinator, Watershed Unit, Office of Water and Watersheds (EPA Region 10)

2. Eric Nigg, Manager, Eastern Region, Water Quality Division and Gene Foster, Manager, Watershed Management Division (ODEQ), Holly Lundborg, Senior Environmental Scientist, Watershed Management Division or Chief of Watershed Management Division (NCRWQCB), Janet Hashimoto, Chief, Monitoring and Assessment Office and Karen Schwinn, Associate Director, Water Division (EPA Region 9), David Croxton, Manager, Watershed Unit, Office of Water and Watersheds (EPA Region 10)

3. Mitch Wolgamott, Acting Administrator, Eastern Region (ODEQ), Catherine Kuhlman, Executive Officer (NCRWQCB), Alexis Strauss, Director, Water Division (EPA Region 9), Michael Gearheard, Director, Office of Water and Watersheds (EPA Region 10)

C. USEPA, ODEQ, and NCRWQCB will jointly review and agree to "Statement of Work" provisions in any and all Requests for Proposals and Contracts performed through the USEPA nationwide watershed and regional contract vehicle relative to the TMDL work associated with this Memorandum.

D. USEPA actions:

1. Obligated funding in the amount of $830,000 towards the nationwide watershed contract vehicle to acquire necessary technical resources to:
    a. Complete a water quality assessment in those water bodies that are 303d listed. The assessment will identify water quality deficiencies and potential sources of the water quality problems.
    b. Develop water quality models for the mainstem Lost and mainstem Klamath Rivers, or other technical tools as necessary, that will be suitable for determining loading capacity for appropriate water quality parameters that affect 303d listed water quality parameters.

2. Ensure that EPA contractors provide ODEQ and NCRWQCB access to and use of all water quality models and other analytical tools developed for the TMDL work covered by this Memorandum.
3. Ensure that EPA contractors provide ODEQ and NCRWQCB monthly updates of work so that information can be used in stake holder informational meetings.

E. NCRWQCB actions:

1. Through the State Water Resources Control Board, secured funding in the amount of $598,000 to assist with the completion of the TMDLs, and make all efforts to match any future contributions made by EPA Region 9.
2. Manage state contract funds and matching funds committed by other entities, if any.

F. All parties agree to make every effort to provide additional funding for calibrating, validating and applying the water quality models using scenarios requested by ODEQ and NCRWQCB to enable ODEQ and NCRWQCB to determine loading capacities and appropriate allocations.

G. All parties agree to meet quarterly with affected tribes, NOAA Fisheries, and US Fish and Wildlife Service to brief these parties on TMDL scope, workplan, timelines, methods, models, and draft products, and elicit their comments and recommendations.

H. All parties agree that, if an external expert review of the TMDLs is necessary, the parties shall work together to design and administer a review process.

V. Schedule

ODEQ, NCRWQCB, and EPA Region 9 are committed to meeting the current dates for completing TMDLs for the Lost and Klamath Rivers. EPA Region 9 may use the NCRWQCB technical TMDL analysis as a Technical Support Document to establish the Lower Lost River TMDLs, and if necessary, the Klamath River TMDLs. ODEQ, NCRWQCB, and EPA Region 9 are further committed to meeting the target dates as follows:

A. Lost River TMDLs:

1. Development of a functional model or models of the Lost River mainstem (completed);
2. Collection of any additional data needed for Lost River model calibration, validation and application during the 2004 summer field season (completed);
3. Completion of internal draft Technical TMDL analyses for the Lost River mainstem (including States' agreement on applicability of water quality standards and any applicable

numeric targets that apply both within each state and at the relevant borders, source analyses, loading capacities, wasteload and load allocations, margins of safety, critical periods, and supporting technical analyses) by April 2005 (completed);

4. NCRWQCB and ODEQ submit 'Final' package of technical elements of TMDLs to EPA Region 9 by December 2005 (completed);
5. EPA Region 9 Public Notice of California Portion of Lower Lost River TMDL by September 2008 (if necessary);
6. EPA Region 9 establishes California portion of Lower Lost River TMDL by December 31, 2008 as required by court order;
7. Contingent on completion of mathematical modeling of river mainstem for all pollutant sources by April 2008, ODEQ completion of Internal Draft TMDLs for Lost River mainstem by May 2008 (concurrent with Klamath River);
8. ODEQ releases Complete Draft TMDL package for Oregon portion of Lost River concurrent with the Klamath River (including technical elements and Water Quality Management) Plan for 60-day public review by October 2008;
9. ODEQ adoption of Lost River mainstem TMDLs (concurrent with Klamath River) by February 2009;
10. USEPA Region 10 approval action on ODEQ's Lost River TMDLs (concurrent with the Klamath) by March 2009;

B. Klamath River mainstem TMDLs:

1. Development of a functional model or models of the Klamath River mainstem by February 2005 (completed);
2. Collection of any additional data needed for Klamath River model calibration, validation and application during the 2004 summer field season (completed);
3. Completion of internal draft Technical TMDL analyses for the Klamath River mainstem (including States' agreement on applicability of water quality standards and any applicable numeric targets that apply both within each state and at the relevant borders, source analyses, loading capacities, wasteload and load allocations, margins of safety, critical periods, and supporting technical analyses) by May 2008;
4. NCRWQCB completion of Internal Draft TMDLs for Klamath River mainstem (including all components of TMDL, and implementation plan) ready for California peer review process by November 2008;
5. ODEQ release of Complete Draft TMDL packages (including technical elements and Water Quality Management Plan) for 60-day public review (concurrent with Lost River) by October 2008;
6. ODEQ adoption of Klamath River mainstem TMDLs (concurrent with Lost River) by February 2009;

7. USEPA Region 10 approval action on ODEQ's TMDLs (concurrent with Lost River) by March 2009;
8. NCRWQCB release of complete Draft TMDLs package (including technical elements and implementation plans) for 90-day public review by April 2009; concurrent EPA R9 release of technical TMDLs for 90-day public review;
9. NCRWQCB adoption of Klamath River mainstem TMDLs by November 2009; submittal of NCRWQCB-adopted TMDL and administrative record to State Water Resources Control Board follows within two months of NCRWQCB adoption (January 2010);
10. California submittal of Klamath River mainstem TMDLs, following approval by State Water Resources Control Board, to USEPA and Office of Administrative Law by July 2010; and
11. US EPA Region 9 approval action on California's Klamath River mainstem TMDLs by September 2010.

These dates may be extended to the minimum reasonable extent required to respond to comments received during the respective public notice periods. Any changes to the above schedule shall be agreed to by all parties and documented through written correspondence.

VI. Reservation of Rights

A. Nothing in this MOA is intended to restrict the authority of any party to act as provided by law, statute or regulation.

B. This MOA is not intended to, and does not create, any right, benefit or trust responsibility by any party against the United States, the State of California, the State of Oregon, its agencies, its officers, or any person.

C. This MOA is an internal agreement between the parties and does not confer any right or benefit on any third person or party, private or public.

VII. Severance

A. This document will expire on the date that USEPA approves all of the TMDLs covered by this Memorandum.

B. A party may terminate its participation 30 days after written notification to the other parties of this agreement.

VIII. Signatures of Parties

Mitch Wolgamott 11 APR 08

Mitch Wolgamott Date
Administrator
Eastern Region
Oregon Department of Environmental Quality

Catherine Kuhlman 4/4/08

Catherine Kuhlman Date
Executive Officer
California Regional Water Quality
Control Board, North Coast Region

Alexis Strauss 21 Ap.08

Alexis Strauss Date
Director,
Water Division
Region 9, US EPA

4/16/08

Michael Gearheard Date
Director,
Office of Water and Watersheds
Region 10, US EPA