

Good afternoon Mr. Chairman and members of the committee. I'm Dr. Mary Anne Nelson, the Surface and Wastewater Division Administrator with the Department of Environmental Quality. I am here this afternoon in support of HB099 Water Quality Trading.

Water quality trading (WQT) under the Clean Water Act (CWA) is an option to help facilities comply with effluent limitations in a discharge permit. Water quality trading may be between two point sources, or between a point source and nonpoint source project. For trading to occur, one entity has to remove the pollutant more than is necessary so the other may purchase the credit. Most often the pollutants being traded are phosphorus and nitrogen as they are most prevalent in nonpoint source pollution; however trading is not necessarily limited to these. A credit is typically measured in pounds equivalent and can be generated by a point source overcontrolling its discharge or by a nonpoint source installing best management practices (BMPs) that are different than or in addition to its baseline.

A trading framework is used to guide and encourage trading between point sources and non-point sources. A water quality trading framework sets up the basics of how a trading program would work in an individual watershed. The framework would address the implementation questions that need to be resolved such as what is an appropriate trading ratio, how the trading credits will be verified, how trade banks may be set up, and other concerns.

Water quality trading is most useful in instances where a water body is not meeting its beneficial use designations. For these, DEQ works with local stakeholder to draft a pollution reduction plan referred to as a total maximum daily load (TMDL). This plan characterizes the water body as it exists identifying all the various sources of the specific pollutant and then evaluates what the concentration of the pollutant in the water should be to support the beneficial uses. It then creates a set of pollutant reductions that need to be met in order for that water body to fully support the uses. If there are point sources (wastewater treatment plants, or industrial plants), the TMDL will allocate a specific load (pounds per day) of the pollutant that can be discharged by the point source. These specific load limits are then incorporated into a discharge permit as effluent concentration limits. Water quality trading allows the discharger to buy additional pounds of loading if they are unable to meet the specific limit in their permit, or if the cost of meeting those limits is higher than the cost of purchasing credits.

Water quality trading began as a concept in the mid 1990's with EPA's Draft Framework for Watershed-Based Trading. EPA has long interpreted the CWA to allow pollutant reductions from water quality trading and offsets to achieve help compliance with CWA regulatory requirements. Neither the CWA nor the EPA's implementing regulations explicitly address water quality trading. So in the absence of explicit statutory language or regulations allowing or prohibiting water quality trading, the EPA has encouraged states to develop and provided guidance for states and stakeholders to consider when developing market-based programs like water quality trading.

In 2019, EPA issued a revised policy guidance memo to update the national policy on trading. This memo promotes the adoption of market-based programs to incentivize the implementation of technologies and practices to reduce nonpoint source pollution; provides additional guidance and policy options to stakeholders for developing and implementing market-based programs; and promotes increased investment in conservation actions. Over the years DEQ has worked with

interested parties to help further water quality trading concepts and frameworks.

Trading can provide greater flexibility on the timing and level of technology a facility may need to install. It can reduce overall compliance costs and encourage voluntary participation of non-point sources within the watershed. It may also provide ancillary environmental benefits such as flood retention, riparian improvement, and habitat. Water quality trading is a tool for regulatory authorities, point source discharges, and entities wishing to improve water quality associated with non-point source pollution.

Pollutant sources in a watershed may face very different costs to control the same pollutant. Under trading programs, a facility with permitted discharges that's facing higher pollution control costs may be able to meet their regulatory obligations by purchasing environmentally equivalent pollution reductions from another source at a lower cost. Trading may produce substantial cost savings while meeting the same water quality goal. It may also offer greater flexibility on the timing and level of technology a facility might install.

DEQ has worked with the Idaho Water Users Association and others in reviewing the draft legislation. We believe this provides the affirmative authority to the agency to oversee trading programs while avoiding prescriptive measures that may hinder the development of a trading market. While water quality trading as a concept has been around for 25 years, it has not been utilized to any great degree in Idaho. This is partially due to uncertainty on the part of buyers. The capital investment involved with building or upgrading a water treatment plant is significant, in the tens to hundreds of millions of dollars. When public works, city councils, and others make decisions on how to best move forward with that capital investment, they are looking for regulatory certainty that what they choose to do will comply the permit. Without the explicit approval authorization that this legislation provides, the path towards investing in water quality trading does not have the same certainty that building or upgrading a treatment process does. So even though there may be a net benefit for water quality trading the assurance of permit compliance is not there thereby creating a hurdle to the trading market.

For these reasons, DEQ supports HB099 and respectfully requests the committee's support with a motion to approve and a do-pass recommendation. Thank you and I'm happy to stand for questions.