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# Nonpoint Source-only TMDLs



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Using the right tool to get to clean water



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# Key messages

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- Our purpose is to get to clean water.
- We need to use whatever tool is most likely to get us there.
- One way is to make nonpoint TMDLs as effective and enforceable as possible.
- Another way is to use alternative strategies when you believe they will be more effective.

# Legal context

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## State laws:

- Water Pollution Control Act
- Water Quality Standards

## Federal law:

- Clean Water Act, specifically Section 303



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# The Timeline

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249 TMDLs by 2003

801 TMDLs by 2008

1566 TMDLs by 2013

We have completed 620  
TMDLs.

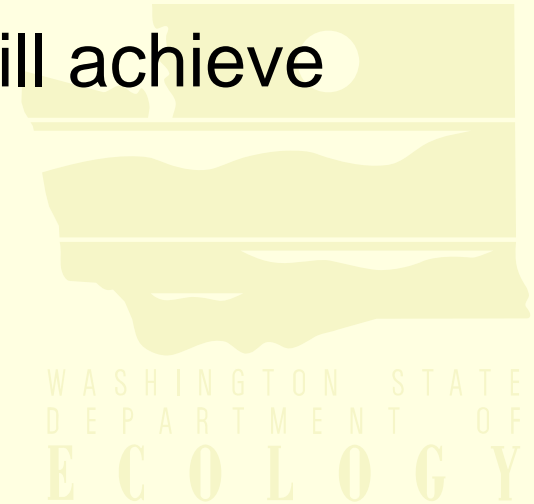


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# How are we doing so far?

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- In addition to settlement agreement, list of TMDLs to do keeps growing.
- Not enough resources to both produce and implement TMDLs.
- No clear regulatory path identified to deal with nonpoint pollution.
- Losing faith that our TMDL work will achieve clean water.



# An example—temperature TMDLs

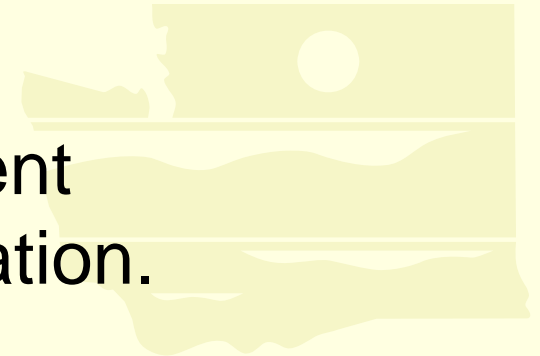
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- Washington does a lot of temperature TMDLs.
- We always come up with the same implementation strategy—full riparian shade.
- The average temperature TMDL costs \$400,000.
- We get into dueling science every time, even though we've proven what we need over and over.
- This is a bad use of public money.

# What do we need to get to clean water?

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- Stop arguing about the science when we know what we need to do.
- Move focus from planning to action.
- Back up implementation with enforcement and \$.
- Establish laws that would define AKART for nonpoint.
- See if we can renegotiate settlement agreement to focus on implementation.



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- The measure for cleaning up water should be clean water, not # of TMDLs done.



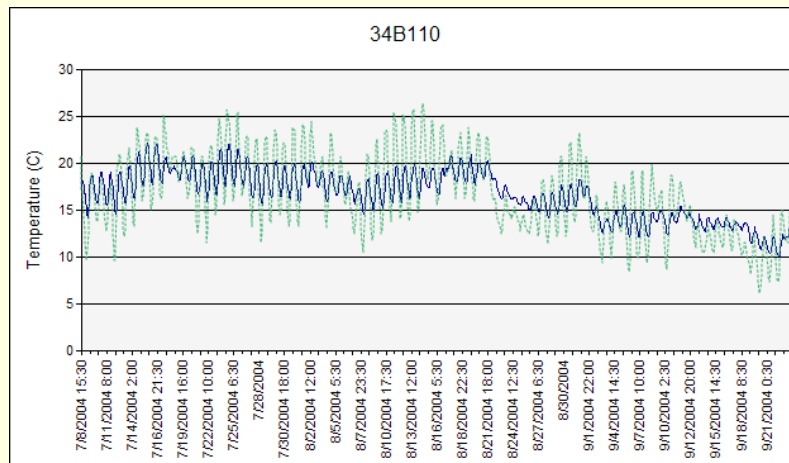


# The new strategy

- We will use the tool most likely to get us to clean water in a specific watershed.
- We will make our TMDLs the most effective tool possible.
- We will work toward requiring AKART for nonpoint before we do a nonpoint TMDL.



# Advantages of doing nonpoint TMDLs



- EPA likes TMDLs— settlement agreement mandates TMDLs.
- Listings can get off Category 5.
- Everybody understands the process.
- You get lots of science about a specific place.

# Disadvantages of doing nonpoint TMDLs



- We bear the burden of proof in each TMDL, even though similar TMDLs have shown the same thing over and over.
- We fight the dueling science fight in every TMDL.
- TMDLs can take a long time to do and can be very expensive.
- Doing a TMDL doesn't necessarily result in implementation.

# When is a TMDL the right strategy?

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- You really don't know what the problem is
- You really don't know where the sources are
- You believe the TMDL science will persuade people to implement, for instance, if you need a local government to implement the TMDL, it will likely need good and specific science



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# Making nonpoint TMDLs stronger

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## Make messages clear.

- Everybody contributes, everybody has to implement.
- TMDL implementation is **NOT** voluntary.

## Link to other regulatory processes.

- Require consideration of TMDLs in SEPA review.
- Define TMDLS as “best available science”, which requires them to be considered in Growth Management Act decisions
- Use TMDL as evidence in enforcement actions.



# When to choose an alternative approach

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- You already know what the problems are and how to fix them.
- You have a constituency motivated to do good work, **OR** a constituency more motivated by possible enforcement than by a TMDL.
- You are willing to take enforcement action.



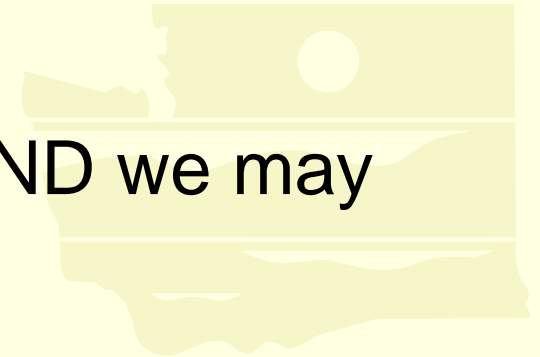
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# Implications of alternatives

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- Don't get TMDL beans, so won't meet settlement agreement.
- Listings stay in Category 5 until we achieve compliance with standards.
- State has to use its regulatory authority to get compliance.

BUT, we get to clean water faster, AND we may even spend less money doing it.



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# Addressing the disadvantages

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- We are talking directly with the TMDL litigants.
- For the 2008 list, we are listing one of our “straight to implementation” programs in Category 4b.



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# What would help in the future?

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- Federal regulatory backstop for nonpoint pollution
- No cuts to 319 program
- Get water quality money out of the Farm Bill and into 319



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# Washington's strategy

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- Use the right tool
- Goal is enforceable nonpoint TMDLs **AND**
- AKART for nonpoint

