REPORT OF THE
AGRICULTURAL CHANNEL MAINTENANCE SUB-WORK GROUP

Recommendations for Action

SUB-WORK GROUP CHARGE AND OBJECTIVES

The Agricultural Channel Maintenance Sub-Work Group was **charged** with developing a legislative package for the 2019 session to address the agricultural maintenance concerns identified in the August 28, 2018 Wetland Regulation Work Group meeting.

Topics of concern included: lack of farmer knowledge of removal-fill law, onerous individual permit mechanism for farmers in terms of cost and time investment, landowner knowledge of their property not always acknowledged by agencies, 50 cubic yard volume insufficient for maintenance needs, side-cast timeline and requirements, maintenance timing requirements, revegetation and monitoring requirements, sideboards when fish are present, outreach and education regarding jurisdictional waters and permit process, stream and ditch definitions, and Essential Salmonid Habitat maps.

The Sub-Work Group identified the following **objectives** to guide its work:

- Allow sufficient maintenance of channels used for drainage while ensuring resource protection
- Simplify permit process for farmers to a degree that dramatically increases compliance
- Create process that acknowledges maintenance is routine, normal, and necessary
- Ensure widespread understanding and support from regulated community
- Increase outreach and education to farming community
- Help farmers feel heard and supported by state agencies
- Increase knowledge of fish and wildlife species presence and varying life history needs
- Value farming, fishing, and habitat needs
- Invest in and increase data on effectiveness of best management practices
- Ensure sufficient resources for implementation
- Increase collaboration among state agencies and the farming community
- Increase clarity, predictability, and understanding of permit process and outcomes for all stakeholders

SUB-WORK GROUP MEMBERSHIP

Ten individuals were selected by Co-Chairs Susan McLain and David Brock Smith to serve on the Sub-Work Group:

- Chandra Ferrari, Trout Unlimited
- Dave Hunnicutt, Oregonians in Action
- Eric Metz, Department of State Lands
- George Pugh, Farmer, Pugh Seed Farm
- John Scharf, Farmer, Scharf Farms
- Joy Vaughan, Oregon Department of Fish and Wildlife
- Kahreen Tebeau, The Nature Conservancy
- Lauren Smith, Oregon Water Resources Congress
- Mary Anne Cooper, Oregon Farm Bureau
- Mike Powers, Oregon Department of Agriculture

Additional individuals played resource or substitute roles: Brenda and Matt Frketich (Kirsch Family Farms), and Stephanie Page (ODA)

Staff: Laura Kentnesse, LPRO Analyst

RECOMMENDATIONS FOR LEGISLATIVE ACTION

The following strawman language reflects the Sub-Work Group's recommendations for 2019 legislation.

SECTION 1. Legislative findings.

[Insert language that acknowledges both agriculture and habitat values, and the need for a simple, function-based channel maintenance program for agricultural drainage]

SECTION 2. Maintenance of Agricultural Channels during Dry Conditions.

(1) Authorization. Authorize maintenance of dry _____, which have been maintained to facilitate drainage of agricultural lands to protect property, support agricultural operations, and maintain continuity of water flow, and which have been maintained/serviceable for agricultural drainage within the last 5 years. Existing exemptions for agricultural ditches continue to apply.

Remaining Decision Point #1: Waterway Scope

- Include all agricultural channels
- Include jurisdictional ditches and intermittent streams; exclude tidally influenced waterways, perennial streams, and/or ESH streams

(2) Definitions:

a. "Dry" means channel conditions that consist of no moving _____ at the start of the maintenance activity.

Remaining Decision Point #2: How to Describe "Dry"

- "or standing water" (bone dry)
- "or standing water, where only small quantities of water may be incidentally retained in low areas"
- "water and 5% or less of ponded water as estimated for any channel length"
- "water, or standing water where removal is occurring,"
- Note: If tidally influenced waterways are included, must be dry at high tide.

(3) Conditions. Maintenance authorization for dry agricultural channels is subject to the following conditions (including, but not limited to):

a. Timing requirements:

- Maintenance activities must occur during dry channel conditions

Remaining Decision Point #3: Timing of Work

- Maintenance activities must occur during in-water work windows established by ODFW to support fish and wildlife life cycles (farmer can contact ODA/ODFW to assist for first notice submittal)
- Regional dry maintenance windows (e.g., Coastal, Valley)
- Statewide dry maintenance window (e.g., July 1 – September 30)
- No dry maintenance work window
- Note: if time window required and farmer finds that work needs to occur outside the required time window, farmer must contact ODA/ODFW to obtain a variance.

b. Erosion control requirements:

- Equipment used to remove material must be operated from the bank
- Maintenance activities must be completed in a way that minimizes new erosion into the channel

c. Vegetation requirements:
   - Removal of woody vegetation must be limited to the minimum amount needed to complete the activity
   - Revegetation of the riparian buffer must occur, whether by natural or re-seeding methods
   - Work must only occur on one side of the channel and must occur on the north or east sides of the channel when practicable to minimize impact to the ecological system; consult with the Oregon Department of Agriculture for alternatives when necessary
   - Work must start upstream and progress downstream

d. Side-cast requirements:
   - All dredged material placed in wetland or converted wetland is allowed to dry out, but must be spread in a thin layer outside the riparian buffer, or moved to uplands, within one year of when the maintenance activity occurred

e. Wetland & stream impact avoidance requirements:
   - Wetland may not be converted to upland
   - Wetland impacts must be limited to accessing the removal site, the removal of material, and the disposal of material
   - Wetland impacts must be minimal and temporary
   - The channel may not be enlarged beyond historic width and depth
   - Existing inlet and outlet connections with the main stream channel must be maintained

f. Compliance:
   - Maintenance activities must be in compliance with water quality, fish passage, and other rules
   - Above conditions are in addition to existing Department of Agriculture water quality rules

g. Removal volume:

Remaining Decision Point #4: Removal Volume

- Removal volume limited to _____ (e.g., 5,000 or 200) cubic yards per linear mile of agricultural channel for the five-year notice period
- For volume needs that exceed a set threshold, farmer must contact ODA to discuss options. ODA must consult with DSL/ODFW on site specifics. As long as dry conditions, higher volumes could remain a notice-based process
- The Department of Agriculture, in consultation with ODFW and DSL, shall determine a volume limit following a pilot period of working with a limited number of farmers for the first season of the program. The Department of Fish and Wildlife shall supply fish biologists participate in pilot site visits, and to provide feedback on appropriate volume limits
- Establish smaller volume limit for program to proceed immediately; concurrently study impact of larger volume limits and create language flexibility such that higher volume limits could be established following study completion
- Any 'and/or' combination of the above
- Note: must be simple for farmers and ODA to visualize and determine 'volume' in the field; ensure functions and desired impacts are achieved

(4) Notice requirement for maintenance of dry agricultural channels.

a. Requires farmers file a notice with the Department of Agriculture prior to initiating maintenance of dry agricultural channels

b. Farmers must wait 14 days from filing date to start maintenance to give Department of Agriculture an opportunity to respond. If the farmer does not hear from the Department of Agriculture within 14 days, they may proceed with maintenance provided that they meet the conditions for maintenance authorization

c. Notice required every 5 years

(5) Role for State Department of Agriculture.

a. Require Department of State Lands and State Department of Agriculture to enter into a memorandum of understanding providing for the State Department of Agriculture to operate the program for dry agricultural channel maintenance.
   - ODA shall educate farming community about agricultural channel maintenance requirements
   - ODA shall, in consultation with ODFW, conduct random checks/audits of properties where farmers have submitted dry maintenance notice.
   - ODA shall work with farmers to support them in achieving compliance
   - Authorizes ODA to issue minor violations, and at the agency's discretion allows agency to continue working with farmer to achieve compliance
   - Requires ODA to refer cases where voluntary compliance is not achieved back to the Department of State Lands for enforcement action. Enforcement action should be pursued only when reasonable attempts at voluntary solutions have failed.

b. Provides new enforcement authority for Oregon Department of Agriculture related to notice requirements and violation issuance.

c. Authorizes ODA to modify program, including conditions for maintenance, in consultation with DSL and ODFW, so that the program is in alignment with new information as it becomes available.

d. Funding to ODA for 1.0 FTE/NRS-3 to manage this program.

(6) Biennial Review requirement.

a. Directs ODA in consultation with DSL and ODFW to biennially review program, newly available information, and adaptive management needs.

SECTION 3. Maintenance of Agricultural Channels during Wet Conditions.

(1) Directs Department of State Lands to develop a general permit that allows maintenance activities in wet agricultural channels.

a. General Permit to be developed in consultation with the Oregon Department of Fish and Wildlife and Oregon Department of Agriculture.

b. General Permit to be developed and operative by December 15, 2020.

SECTION 4. Study and Appropriation.

(1) Provide direct grant of $500,000 to Oregon State University to study ways to meet agricultural channel maintenance needs while minimizing negative impact to, or improving, habitat complexity and water quality.

(2) Directs Oregon State University to consult with key stakeholders including agriculture, conservation groups, and public agencies on study questions, design, and alignment with program needs.

(3) Study should be completed by January 1, 2025.

SECTION 5. Report Requirement.

(1) Requires Department of State Lands, Department of Agriculture, and Department of Fish and Wildlife jointly submit a report to the legislative committees related to agriculture and natural resources regarding the status of ditch maintenance activities, compliance and program outcomes, and recommendations on modifications to conditions based on scientific study and agency program data.

(2) Report should be submitted biennially on February 1, of 2021, 2023, 2025, and 2027.

ADDITIONAL 'BIG PICTURE' OPTIONS FOR CONSIDERATION

Remaining Decision Point #5: Pilot Program

- Establish a pilot program with 5 – 20 volunteer farmers to test different volume levels, in different channel types, across different geographic sites for a three-year period. Direct DSL to adopt rules at the conclusion of pilot, with no need for additional legislation.
- A pilot program could focus solely on volume limits, or on the whole program including other conditions of interest.
- Program implementation could include a first-season pilot farmer group to establish or confirm appropriateness of volume limits (see flowchart at end of report). ODA has authority
- Note: ODA has the authority to modify the program, including conditions for maintenance, in consultation with DSL and ODFW, so that the program is in alignment with new information as it becomes available.

Remaining Decision Point #6: Separation of dry and wet conditions

- Direct DSL to develop a single General Permit for dry/wet conditions and streamline the application
- Separate regulatory processes for maintenance under dry versus wet conditions (as the above proposal does)

RECOMMENDATIONS FOR NON-LEGISLATIVE ACTION

The Sub-Work Group identified three recommendations for non-legislative action to further the identified objectives.

(1) DSL should engage the U.S. Army Corps of Engineers and National Marine Fisheries Service in a conversation about opportunities to reduce duplicative permit processes, particularly for wet agricultural channel maintenance activities. Potential solutions include state programmatic general permits (SPGP) or regional general permits.

(2) DSL should bring forward a 2021 legislative package for a wet agricultural channel maintenance program that includes the newly-developed general permit.

(3) Sub-Work Group members should continue to work together to identify opportunities for ecological uplift on:
   a. Channel bank vegetation
   b. Experimentation with channel shape flexibility such as grassed waterways, which may provide bank stabilization and other increased ecological functions

   Sub-Work Group members should also continue to work together to identify uplift incentivization funding streams, such as:
   a. Utilization of existing ODFW, ODA, and OWEB tax incentive programs

RECORD OF LEGISLATIVE INTENT

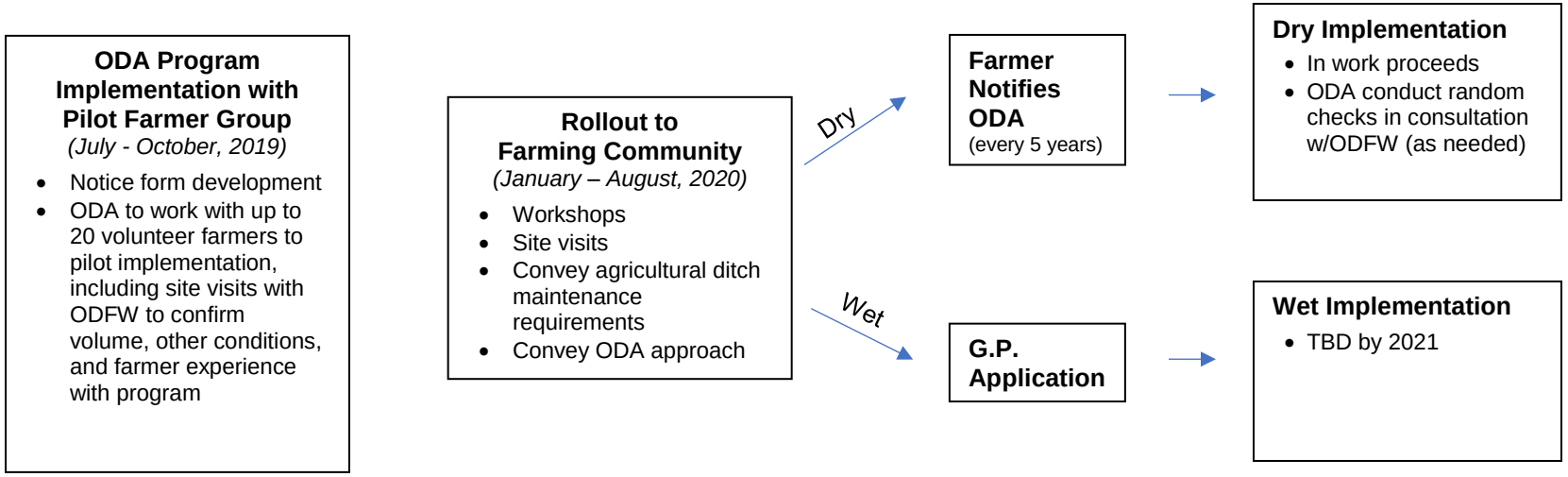
The following notes intend to capture Sub-Work Group discussion that may be helpful in the program implementation process.

(1) Dry maintenance notice should be a simple, clear, and short form.

   a. Form should require that farmers, at a minimum, provide the following information:
      - Address
      - Identification of agricultural channels to be maintained
      - Volume anticipated to be removed
      - If renewal notice, identification of the agricultural channels where work was done and an estimated volume removed in previous five-year period
      - Farmer signature (attesting they'll abide by conditions)

   b. Form should, at a minimum, provide the following information:
      - Conditions for dry maintenance activities
      - Statement that maintenance activities are "subject to ODA site visit if needed"

(2) Process Vision:



ADDENDUM TO THE SUB-WORK GROUP REPORT

Recommendations for Action

ADDENDUM

The following recommendations and comments reflect feedback pertaining to the Report of the Agricultural Channel Maintenance Sub-Work Group.

Feedback was solicited at the work group meeting on November 8, 2018. Feedback was also solicited via electronic submission. The following individuals emailed comments: Brian McLachlan (Northwest Steelheaders), Chandra Ferrari (Trout Unlimited), Eric Metz (DSL), Mary Anne Cooper (Oregon Farm Bureau), Mike Powers and Stephanie Page (ODA), and Peggy Lynch (League of Women Voters of Oregon).

SECTION 1. Legislative findings.

Recommendations

11/8 Meeting	• Need acknowledgement that habitat complexity exists: different types, levels, conditions • Need to articulate wetland values related to clean water and flooding • On first "Objectives" bullet, add "while ensuring resource protection and state recovery objectives." • Need acknowledgement that landowners are often faced with competing, and sometimes contradictory, state policies, goals, and/or requirements. There's a need for increased alignment and clarity.
Sub-Work Group Appendix	**ODA & Farm Bureau language** Whereas: (1) Maintenance of channels used for agricultural drainage is critical to the operational and economic viability of Oregon's farm and ranch lands; (2) Maintenance needs to occur in a way that also protects, maintains, or improves ecological function of these channels; (3) The current channel maintenance permitting process through the Department of State Lands is complex for the agricultural community and the State, and has not achieved desired drainage and habitat protection goals; (4) Many farmers and ranchers are unaware of channel maintenance requirements; (5) The State needs to clearly communicate agricultural drainage maintenance requirements to farmers and ranchers to achieve a higher rate of compliance; (6) A simpler and more function-based channel maintenance program for agricultural drainage is desirable to improve needed drainage and protect habitat functions. The Legislative Assembly finds: (1) It is in the interest of the State to create an alternative regulatory program for maintenance of channels used for agricultural drainage; (2) This program is designed to allow for maintenance of agricultural drainage channels to protect the economic viability of Oregon's farmers and ranchers, while ensuring that such maintenance occurs in a way that protects, maintains, or improves the ecological functions of these channels. (3) The program will be adaptively managed over time as implementation occurs, with the goal of remaining workable for farmers and ranchers, and protective of the ecological function.
Sub-Work Group Appendix	**ODFW & Trout Unlimited language** Whereas: • The protection, conservation and best use of the water resources of this state are matters of the utmost public concern. The long-term protection of agricultural lands

	and water resources of this state are an essential component of Oregon's environmental and economic stability and growth; • Maintaining agricultural drainage is necessary to protect the operational and economic viability of Oregon's farm and ranch lands; • Maintaining ecological functions in waters of this state is necessary to protect habitat that supports essential life-history functions of Oregon's fish and wildlife; • Some agricultural maintenance activities are conducted in areas that are essential for supporting ecological and life-history functions of Oregon's fish and wildlife and it is critical that maintenance occur in a way that protects, maintains or improves those functions; The Legislative Assembly finds that: • In order to achieve a higher rate of compliance for agricultural maintenance activities in waters of this state and protect ecological and life-history functions of Oregon's fish and wildlife, it is in the interest of the State to improve awareness of the regulatory process and develop a more functions-based program for maintaining agricultural drainage that includes outcomes to maintain, protect or improve habitat to support Oregon's fish and wildlife; • The development of a functions-based program that accurately reflects a scientific understanding of the physical and biological constraints can help to address the agricultural maintenance needs and sustainability of ecological functions of interrelated natural resources. • The program will be adaptively managed over time as implementation occurs, with the dual purpose of creating a workable process for the agricultural community, and improving the ecological and life-history functions of Oregon's fish and wildlife in waters of this state. • The development of voluntary programs and collaborative processes are necessary to achieve the long-term protection of agricultural land and waters of this state and are critical to support the ecological and life-history functions of Oregon's fish and wildlife, and are therefore, a high priority of the State and should be encouraged.
Emailed	Brian McLachlan, Northwest Steelheaders We generally support the objectives outlined in the Report, including the overarching objective to develop regulations that allow for maintenance of agricultural waterways used for drainage, while ensuring protection of natural resources consistent with State of Oregon conservation and recovery policies, plans, and commitments.
Emailed	Eric Metz, DSL DSL supports the concept of providing Legislative Findings and will be interested in providing comments once the specific language has been drafted.

Notes

11/8 Meeting	• Rep. McLain: Type of habitat, condition of habitat. Different levels of habitat. Don't see acknowledgement. We know all habitat is not the same. Different types of streams, channels, waterways. There are different types and conditions. Where's the acknowledgement – we know not all habitat is the same – habitat complexity. • Shannon Hurn: Example of John Day basin and dry streams. Sit there dry all year. When rain comes, steelhead comes. Spawning grounds. • Chandra Ferrari: We were trying to figure out level of habitat complexity provided. We don't have all information to really understand how these actions in different sorts of channels and geographies affect habitat complexity. • Rep. McLain: Habitat complexity is referenced later in report. We need it on the first page if we're going to talk about it later. • Peggy Lynch: Missing – wetlands value related to clean water and flooding values. I don't see that part acknowledged in the objectives. • Mary Anne Cooper: Don't know what you mean by flood values. For farmers, flood value is making sure drainage is maintained so water can get off the property. • Peggy Lynch: Either way. It's a neutral comment.

	• Rep. McLain: What she's acknowledging is - why are we cleaning ditches? moving floodwater? That's a neutral comment. • Mary Anne Cooper: I'm good with that. Clean water – I'm also good with that. When they flood out, it causes a lot of sedimentation because they're not maintained as wetlands, they're maintained as farmland. When they flood out, they cause water quality issues. • Brian McLachlan: I think this is encompassed by first objective, but just to clarify, this process needs to be consistent with state policies regarding recovery objectives for salmonid species. Not sure that comes out clearly. • Rep. McLain: I think it does. If you need an adjective, come up with one. • Joy Vaughan: We've identified the Oregon Plan to assist with recovery for these species. It did come up. If we could specifically identify it here, that would be great. But we did discuss it. • Chandra Ferrari: we're working out a lot of this language in legislative findings section. • Dennis Albert: Increasing knowledge of fish and wildlife species. Very important bullet. Simplifying process – gets farmer buy-in to allow researchers to more easily do research on their lands to evaluate effects. • Peggy Lynch: "while ensuring resource protection *and state recovery objectives*." • Brian McLachlan: Yes, excellent suggestion. • Chuck Knoll: There's drainage code for all the different drainage districts. Farmers don't maintain the drainage, they're in violation of the codes subject to fines. So you have this conflict going on. In Linn-Benton County, SWCD, they have a really proactive program. Reconstruct the farm ditches so they maintain themselves. There's a lot of knowledge and practice in that. Somehow have to incorporate the knowledge of that drainage code. • Rep. McLain: I like that because I hate it when citizens and farmers and people who are supposed to be getting permits have two different goals that the state gives them, that look like they're contradictory. So you're going to make me do my puzzle, and make me do it without 5 pieces? Sure. I want to make sure we incorporate that acknowledgement at least. All state goals for the use of that land or ditch, coded responsibility, that we make sure they're in sync. That's important. You can't tell them them have 2 jobs to do, but you have to do two opposite things to get them done. You can't do it.

SECTION 2. Maintenance of Agricultural Channels during Dry Conditions.

(1) Authorization **Remaining Decision Point #1: Waterway Scope**

Recommendations

11/8 Meeting	• Farm Bureau: include all traditionally maintained agricultural waterways • Various groups with different opinions on: "exclude tidally influenced waterways, perennial streams, and/or ESH streams" • ODA: most successful in achieving compliance if we can communicate simple and clear expectations • Need to make choice about terminology: creating definition for "agricultural channels" v. "traditionally maintained waterways" v. referencing existing definitions • Need to decide statute v. rule for definition and waterway scope • Northwest Steelheaders: need a definition of maintenance • Consensus: need to clarify "*portions* of the channel to be maintained" (see Farm Bureau comment below)
Emailed	Mary Anne Cooper, Oregon Farm Bureau We prefer "serviceable" - farmers don't always have to maintain their ditches every five years, some need it every 10 or 20. We don't want to force farmers to clean them more often than needed just to maintain their exemption. We also think somewhere it needs to be made clear that this can be used on portions of ditches, so if part is wet or is a non-maintained waterway, you can still maintain the portions that are dry and that you've always maintained. Would suggest adding to Section 2(1) something to the effect of "This authorization may be used on portions of waterways that meet the scope of the authorization; the entire waterway need not be dry or serviceable for drainage in the last five years to clean the portions which meet the scope of the authorization." (I'm sure Maureen will have a better way to say that!)
Emailed	Chandra Ferrari, Trout Unlimited TU recommends proceeding with the Report's "dry" channel notice authorization process. To minimize risk to resources, Essential Salmon Habitat (ESH) areas should be excluded as well as tidal waters. It is my understanding that ESH areas are easy to identify via the ODFW website (by inputting an address) and therefore this exclusion should not be hard to administer from a practical standpoint.
Emailed	Eric Metz, DSL DSL generally supports the recommendation to include jurisdictional ditches and intermittent streams, and to exclude tidally influenced waterways, perennial streams, and/or ESH streams. At the time of this writing, we have conducted a limited GIS analysis of how often ESH streams may be used as agricultural drainage channels. Our preliminary impression in the Willamette Valley is that there is little correlation between ESH and likely agricultural drainage channels. Excluding ESH will not likely be a burden to farmers because most drainage channels are not ESH and the location of ESH designated waterways is readily obtained using the map viewer on DSL's website. This sideboard protects waterway functions because ESH waterways tend to be larger, less disturbed, and higher functioning streams.
Emailed	Joy Vaughan, ODFW Intermittent streams should be further defined as those streams identified as intermittent on OWRD basin maps.
Emailed	Brian McLachlan, Northwest Steelheaders At this time we cannot support changing the current permit-based regulatory framework to a notice-based "one-size-fits-all" approach, with a significant increase in the volume of materials that may be excavated from fish-bearing waterways, and without a science-based evaluation of maintenance practices and their potential impacts to fish habitat. We feel that reducing regulatory protection for habitat used by salmonids (including ESA-listed

	populations) without a rigorous scientific evaluation is inconsistent with State of Oregon policies and conservation plans, as well as federal ESA recovery plans. Simply put, it is not good public policy.

Notes

11/8 Meeting	• Mary Anne Cooper: Background from farmers perspective. We're certainly willing – give them a process and some positive agency interaction on this, and they'll be much more willing to do the studies and find more information. As we start excluding waterways that these folks have to maintain for drainage and have for 100 years, you're leaving them no avenue for compliance and putting them back in the position that they are now. For us, **we'd like all traditionally maintained waterways to be included** and one of the reasons for not wanting to exclude **perennial** is that if it's a true perennial water then it should be wet year-round. We've had a number of times through the 1010 program, where it's labeled as a perennial, but it turns out it's dry every single summer. This is mislabeled. Excluding those, there's no avenue for addressing the mislabeling bc it still will be in a database that way. We did a lot of looking at maps – I think there are some ditches that traditionally maintained waterways that are on **ESH** maps. Not a lot. I think that's a well-placed discussion. I don't think we should assume people are digging in all ESH waterways, I think in most of them they are not. If we want a path for compliance that's easy for farmers, we feel we need to include all traditionally maintained waterways. The fact that someone has been maintaining for a hundred years is a little bit of a limitation on.. We're not talking about a pristine stream that's never been touched. We're talking about something that – to the extent that it is habitat – it's been maintained for 100+ years at this point. It became habitat, or is habitat, with that maintenance happening. That's background for why we think it should include all ag channels. • Stephanie Page: Our goal in participating in this process has been to support the improvement of the status quo that was described in the objectives. In our experience doing the regulatory work we do, we're the most successful in achieving compliance if we can communicate very simple and clear expectations. So **the more clear and simple we can make this item**, and convey it in a very clear way, we are most likely to be successful. • Rep. McLain: I had this image in my mind of my father in his boots walking out in the field trying to do his job as a farmer. We put up wood duck boxes every year. We maintained a 3-acre pond for the migrating waterfowl. He loved them. But every time I thought about you guys coming out and saying, well -we're going to do a study over here, and a study over there. You've gotta complicated system, we want you to do x, y through z. We want it to be **simple for the person doing the job, but also the person who's gotta try to enforce it**. When you say simple, you mean specific. Clear. • Peggy Lynch: What I heard was two different things. Include all agricultural channels. What I really heard from Mary Anne was, include all traditionally maintained waterways. That's a little different **verbiage**. I'm not sure whether I support either of the two choices, it should say traditional maintained waterways. • Rep. McLain: I want to know the difference between. Traditional. • Mary Anne Cooper: whatever definition we create we want to define. We went back and forth about **channels** is a term used in their OARs. **Intermittent and perennial waterways** are. **Ditches** are, but ditches are more limited than the kind of waterways we're talking about here. That's been the issue – ditches versus channelized streams. Weirdly, **channelized streams is not defined.** So, are we coming up with a new definition or are we teeing back to definitions already found in the OARs. There were concerns associated with either direction in the work group. We didn't really settle. Traditionally-maintained is what we're trying to get at in the sentence that follows the blank. This is what we mean by – making sure it's not a brand new digging of ditch, or brand new stream that's never been maintained. It's been serviceable in the last 5 years. Something you've always done there. • Rep. McLain: 5-year reference seems helpful, but I think we need an **asterisk here to continue talking about terminology** that's the easiest for us to have agreement on. And one of those that has some statute and/or rulemaking to help us with actually enforcing. • Eric Metz: Want to raise a basic question here. how much in **statute v rule.** If it's going in statute, we want to be very precise right now in this conversation. if it's not, then we don't need to be. Our preference would be to have a separate rulemaking. I know Mary Anne is nervous about that because she doesn't know what the outcome's going to be. But the reality is that trying to word-smith this for statute, something this controversial and nuanced, is why we spent 7 meetings on it. • Rep. McLain: I'm just going to put down those two words – statute and rule. Understanding they're both adequate, successful, traditional processes. We need more people around the table – my peers – to talk about that. There's going to be some desire to do both. We have to make sure we have in statute everything we need to do good rulemaking. I get so tired of reading rules, and have people call me about where they were adequately done, neutrally done, and where they were a big fat problem. It's one of those situations where we need to look at it. What do we need in statute to make sure we have reasonable decent and fair rulemaking. I appreciate your comment. I appreciate your nervousness Mary Anne.

- Bruce Dugger: I'm going to make this comment 10x today probably. I have technical expertise in some of these areas. Most of these issues you're discussing aren't predicated on actual data so I'm not participating. There's essentially no data that informs what you're talking about today, so I would just preface most of my comments with that. I sympathize with the desire to simplify the regulatory process but what I would caution you with, is that there are complexities associated with the system. Ultimately, in vastly simplifying the process, you run the risk of eliminating those complexities. In the face of uncertainty, there's a process whereby we think about the risk. When you start looking at the options here in **waterway scope, if you include all agricultural channels, I guarantee you that you're influencing habitats important to fish**. I think we know enough about that to conclude that. I think **if you limit it** to intermittent streams and you exclude tidally-influenced waterways, **you're minimizing the risk** of significant known effects. I would want to highlight that. I don't want to come across suggesting you should give OSU a bunch of money I'm not a fish bio. It's important to point it out. There are certain classification categories of streams predicated on the understanding of the important to fish habitat. To step back form that implies you might want to demonstrate that relaxing it doesn't have an unintended consequence.
- Shannon Hurn: before we really dig in, we neither support or oppose. We're not negotiating to a place of support or opposition. We're here to provide technical advice. It would be **good to go through the definitions that already exist.** We did that and found that they were kind of lacking a fit. So that was going to be my one recommendation on definitions.
- Joy Vaughan: Even though it can be complex to understand ditch v. stream. **Right now statute and rule acknowledges the tiered approach – true ditch, stream, ESH stream**. Different levels of protection to minimize risk, but they're there for a reason.
- Eric Metz: We've built in an adaptive management component with a substantial resource component so we can actually study and look at the effects in a systematic way. Science isn't ready to give policy definitive answers. **Worst thing that can happen is going back to status quo.** What we're talking about here may be an imperfect match, status quo is least perfect. There's very little scrutiny. We're talking about a lot of scrutiny by ODA, and systematic studying, and careful consideration by multiple agencies. I don't want to fall on our sword bc we don't know everything. It's part of the way we learn and grow.
- Rep. McLain: When will science ever be done?
- Eric Metz: ODA is the one group of scientists that has to make policy calls and it's hard. We have to take that and then run with it.
- Bruce Dugger: I have no problem with that. I'm a firm believer that no decision can be a bad decision. We don't learn anything by doing nothing. But- how you talk about your scope of waterways, dollar value to learn something. Not predicated on any real understanding on that.
- Mary Anne Cooper: the other thing to keep in mind on **scope issue – these are activities that have been occurring in these waterways for 100 years. We're not talking about new places**. anything that's the status quo of science, is the status quo of this activity occurring. So we'll look at ways to make it better and have more site-specific data and do adaptive management. It has to be simple for the farmers to understand, too. Going to find maps on state websites and parsing out – am I there or am I not – as Eric said, even DSL doesn't always quite know where ESH begins and ends. It's a real challenge. Any of those things that we add in here will lower compliance, and I will say, we may hit a tipping point and say – there's too much weighing this down, and it's not better than the status quo. It's not likely to increase compliance. So there's not a reason for any of us to put energy into doing it if it's not going to increase compliance. We're only going to do it if it helps us increase compliance and let's us say finally – hey! We're meeting that check mark. We're finally checking that box of doing it in the right way and having people know about it and do it. I've been worried for awhile that as this gets more weighed down, it may reach the point where we think – it's not going to increase compliance. We shouldn't bother.
- Chandra Ferrari: Understanding the risk and how we minimize it and keep things workable. I thought actually **ESH** – where we had landed – **was that that might actually be somewhat workable** bc it's down to a point of a website, you put in an address, you know if you're there or not. And ODA can quickly -a phone call can get you that. Seemed like it was something we could work with as being relatively simple that wouldn't bog down the whole thing.
- Dennis Albert: Fact that we've been managing the land for 100 years. I think we have a **lot of cases where we change our management because we discover that last 100 years of management caused some problems**. Not always. We end up having to change our management. The second point: we need it to be simple for farmers. Some of the farmers I've worked with in MI and OR are extremely sophisticated. They design their own equipment. I don't necessarily think it needs to be simple for farmers, but efficient for farmers.
- Rep. McLain: We need it to be clear. Concise. We have a good scope conversation on the table. We're going to look at definitions and make sure it's a scope of things we can actually take on and do in a clear way for all parties in this conversation.
- Brian McLachlan: I have been reviewing this as fast as I can. I have a lot of questions. There's a lot of differences in my mind from the ecological – intermittent streams v jurisdictional ditches. I'm a little uncomfortable with that. Think we **need a definition of maintenance**. In my understanding – this was about cleaning up sediments and aquatic RCG. Also says, maintain to facilitate

	drainage from ag lands. I want to know what the – there's a lot of maintenance activities that could have been put in. Riprap, rocks in channel to prevent it from meandering. Does all of that count as historical maintenance in terms of allowing a farmer to go in and dredge the length of the channel. Does it only apply to the whole length of the channel. I could imagine a scenario where maintenance occurs only in part of the channel. How does it allow the farmer to maintain only what has been maintained. • Rep. McLain: we captured this in our commitment to look at all definitions. We also captured it in my comment about needing to sync all maintenance. • Mary Anne Cooper: We did bring this up at various points and didn't settle. I think his point is well taken about what **parts to be maintained and which parts haven't**. We looked at examples where something is clearly a stream, and the water flow slows and it clearly turns ditched. The intention is that you're only maintaining portions that have been maintained for, and that you can take portions. If it's wet in one part, and then hits a bridge or culverts and become dry here, you could maintain the dry part but not the wet. Need to be clear we're talking about the portions that have been maintained before, or the portions dry. To be clear, we're in no way intending this applies to a stream that's never been dug out before. • Rep. McLain: also relates to rule v. statute conversation.

(2) Definitions: **Remaining Decision Point #2: How to Describe "Dry"**

Recommendations

11/8 Meeting	See 11/8 notes below; bullet #2 discussed.
Emailed	Eric Metz, DSL DSL supports the inserted phrase "or standing water, where only small quantities of water may be incidentally retained in low areas." DSL does not support the inclusion of any tidally-influenced areas but the coast should be included in the study identified under Section 4.
Emailed	Mary Anne Cooper, Oregon Farm Bureau We prefer the "or standing water, where only small quantities of water may be incidentally retained in low areas" definition. We think it will be easy for farmers to identify (especially if ODA can provide some examples and guidance of what's meant in their educational materials).

Notes

11/8 Meeting	• Mary Anne Cooper: I think we all agreed to toddler test idea, not enough to cause harm to someone that falls into it. Could figure out something there. Closest / our preference would be 2nd bullet – small quantities incidentally retained. But I think we need to acknowledge it's not deep enough that it would have a salmon in it. Small quantities means it's not supporting… not a fish pond. • Rep. McLain: I think 2nd bullet is reasonable language. • Brian McLachlan: I agree with your comment, not enough water to support salmon. Want to point out in these intermittent streams, you have salmon and steelhead using them for spawning, and then their juveniles (fry) may occupy it for a time before migrating out of the area. My concern is that small quantities of water… it better be pretty dang small. Sometimes those fry will use very shallow habitats.

(3) Conditions. Maintenance authorization for dry agricultural channels is subject to the following conditions (including, but not limited to):

a. Timing requirements: **Remaining Decision Point #3: Timing of Work**

Recommendations

11/8 Meeting	ODFW will do the work of simplifying in water work periods to regional dry maintenance windows
Emailed	Chandra Ferrari, Trout Unlimited The Report's recommended conditions should be included along with regional time windows established by ODFW. ODFW leadership indicated that it would be able to develop this deliverable in the near term. Again, once developed, this should be easy to use.
Emailed	Mary Anne Cooper, Oregon Farm Bureau • While we think that being dry is sufficiently protective of fish life stage needs, as no fish will be present when work is being completed, we would prefer some either statewide or regional in water work windows if they are necessary. • For our folks, the most important time to do this work on the coast is June 15-August 15, and in the Valley it's more like August 1 to October 15. Those time frames are pretty close to ODFW's in water work windows, but not an exact match. • And I think it's important that if a farmer needs to do work outside the window, they have a clear process for calling ODFW (or ODA) and notifying them of the authorization. However, note that the more restrictions are on the authorization, the more cumbersome the process becomes for farmers...especially when there was not a really cogent reason why work in dry waterways would pose any risk for fish.
Emailed	Eric Metz, DSL DSL supports requiring that maintenance activities occur during in-water work windows established by ODFW. These windows are readily available on ODFW's website. If a farmer finds that work needs to occur outside the required time window, the farmer should contact ODA/ODFW to obtain a variance.

Notes

11/8 Meeting	• Shannon Hurn: if you look at remaining decision points, there's a couple around our in-water work. Guidance document is very hard to understand. We're very willing to simplify that down. Once you do that, most of these fall out into these regional categories anyway. If you want us to take that on, absolutely we could do that for you. • Rep. McLain: great. The sooner the better. • Peggy: you can do that under your current capacity? (yes)

b. Erosion control requirements:

Recommendations

11/8 Meeting	None.
Emailed	Mike Powers, ODA Add to first bullet point: "Equipment used to remove material must be operated from the bank; motorized equipment shall not be placed or operated in the channel." Response from Mary Anne Cooper, Oregon Farm Bureau I saw a suggestion from someone that we say no motorized equipment in the channel. While we can agree with motor won't be in the channel, note that an excavator has a motor, and will be operated with the bucket in the channel and the rest of the equipment on the bank...it may be worth clarifying this distinction so everyone knows we mean no bodies of equipment in the channel, but the bucket will obviously be there.
Emailed	Joy Vaughan, ODFW Recommend including the following regarding a sediment plug: start work upstream and work downstream. Remove downstream plug/sediment control in a manner that does not increase downstream turbidity and does not create a fish passage barrier or fish stranding situation as future water levels rise and fall.

Notes

11/8 Meeting	• Sara Christensen: Want to mention we have state water quality standards. We get concerned about 10% turbidity over background. Statewide standard. Can modify: emergency situation, 401 water quality certification. My program is tied to USACE. We do look at TMDLs. I do believe ODA is a deputy management agency • Stephanie Page: I think we can address through our existing program. • Rep. McLain: Important Laura include this in the notes that we're acknowledging the point and doing something about it. • Mary Anne Cooper: One of the reasons that it's not in there is that it's dry work. We do anticipate in the wet permit that there'll be specific turbidity conditions. • Rep. McLain: Great to make people aware because we're integrating, and that's the whole idea. • Brian McLachlan: One question for agencies. Is there concern with respect to sediment release? Work in dry condition, then take out vegetation. Is there concern about sediment release after a rain event? • Joy Vaughan: Yes, we could address that through the timing condition. That if the work occurs in the dry in that window, hopefully whatever sensitive life histories were adjacent, the effect would be minimized. That's just one example of why the timing would be important.

c. Vegetation requirements:

Recommendations

11/8 Meeting	None.
Emailed	Mike Powers, ODA Recommend add to the 3rd bullet: "; consult with ODA for alternatives when necessary."

Notes

11/8 Meeting	• Sara Christensen: Revegetation. Timeframe after dredging occurs? • Dennis Albert: Removal of woody vegetation, can you cut woody veg? A lot of woodys re-sprout, so if you cut them to the ground they regrow. • Rep. McLain: want to go back to Sarah's comment first. • Mary Anne Cooper: Don't know that we spent a lot of time of this, but the group saw it fully revegetated and it had been about 3 weeks. I think ODA can clarify in education materials, but it's the anticipation that it would occur before the rains hit, and before moving water occurs. • Bruce Dugger: Removal of woody veg, are we talking about for access to stream? Or removal in the ditch that needs to be removed? • Rep. McLain: There are different reasons for when, how, why you remove woody vegetation. Again, drainage codes and all kinds of things that make that look different. • John Scharf: How many people have dug a ditch? Many times beaver come through with nutria, knock a tree down and brush starts piling up against it. I don't want to be in violation if I'm taking a tree out of a ditch bc it's dead. When you prune a tree, like pulling blackberries, when we pull RCG out of a ditch, it probably doesn't start to revegetate for a couple of hours. If there's anything left in the ditch below below the tile lines, we're not doing our job. When it rains, it's going to flow pretty fast. County comes to us – all that brush is against our bridge, why didn't you clean it out? • Mike Powers: We talked about removal of woody veg in terms of equipment access to the channel and that's it. We limit it by access only from one side of the stream. Depending on where we're going to get the most shade. We're going to get the strongest shade side protected. We only want the amount of veg impacted as needed for access. We assume re-sprouting will largely take care of it for the size of the channels we're talking about. We can look at other solutions on a site-by-site basis. • Dennis Albert: Removal sometimes you're removing a tree bc you need to get it out of there. Sometimes you're not talking about removing, but pruning to get equipment in and out.

d. Side-cast requirements:

Recommendations

11/8 Meeting	None.
Emailed	None.

Notes

11/8 Meeting	• Sara Christensen: placing dredge materials in wetlands will often kick in a USACE 404. Want people to be aware of that.

e. Wetland & stream impact avoidance requirements:

Recommendations

11/8 Meeting	None.
Emailed	Joy Vaughan, ODFW • Recommend adding the following bullet: "Removal of sediment is limited to within the existing channel alignment. Ditch and stream channels may not be realigned or relocated." • Recommend clarification of "historic width and depth"

Notes

11/8 Meeting	None.

f. Compliance:

None.

g. Removal volume: **Remaining Decision Point #4: Removal Volume**

Recommendations

11/8 Meeting	Mixed opinions, but there's a trend away from setting an arbitrary volume threshold in statute.
Emailed	Mary Anne Cooper, Oregon Farm Bureau We think that there does not need to be a volume limitation presently. If one is required, we think it's worth giving the authority to ODA to consult with DSL and ODFW after the first two years of the program to determine whether a volume is necessary to meet habitat needs and still allow farmers to meet their ditch cleaning needs. In our experience, there is a bigger ecological impact in not maintaining waterways that need it than in completing maintain to the width and depth the channel has always been.
Emailed	Eric Metz, DSL DSL recommends that removal volume be limited to 5,000 cubic yards per linear mile of agricultural channel for the period of the pilot. If additional volume is needed, the farmer should contact the Department of Agriculture to discuss options. This exemption would allow for a corresponding maximum volume of 5,000 cubic yards per linear mile of agricultural channel for thin spreading of the fill on adjacent agricultural wetlands.
Emailed	Chandra Ferrari, Trout Unlimited TU recommends a conservative volume limit tied to linear miles of agricultural channel on the producer's property to start the program pending the completion of the concurrent study. This is admittedly difficult to set as any limit is somewhat arbitrary until relevant information is developed. The "notice" based process could still be used for higher volumes however a check-in with ODFW (with opportunity for site visit) should be required in those cases.

Notes

11/8 Meeting	• George Pugh: on our farm operation, we have ditches that start narrow and work all the way down to sloughs that are wider. We don't tend to work in the wide areas. But there's **such variation in the shape, depth, to measure volume as you go along would be exceeding difficult.** We take out some RCG as we go, some just removing sediment. Putting a volume number on that is difficult. We'll need help coming up with something. At times we remove 0.3 cubic yards per lineal foot. 1800 cubic yards per mile. It varies. We're only doing what's necessary to maintain the flow. But it's hard to measure. • Eric Metz: 50 cubic yards – DSL regulation? Yes, blanket exemption with some applicability. • Rep. McLain: the shape, the type of material, the purpose and what you're trying to achieve in terms of the outcome. Important to acknowledge all three elements of it. One way of looking at it, many not fit all needs. Need to be flexible and nimble in the definition. • John Scharf: when we dig, we dig about 100 yards an hour. We only dig down so we're below where the tile lines dump into the ditches. • Peggy Lynch: this is the area when I was listening to the farmers' first presentation that I was most intrigued by. I believe we **need to do it per linear mile, rather than per permit or property. Everyone's property is different**. Seems unfair property A gets 50 yards, and property B that has tons of acreage gets the same. • Brian McLachlan: I've struggled a lot with this. Hearing the farmers need to take out substantial amounts and make it efficient and cost effective to do so. **In some instances, taking out 200 cubic yards may do more damage than taking out 5000 cubic yards from a different spot**. I've struggled with how you can get to consistency and have it work for different habitats. Question: instead of focusing on a specific volume per linear mile, would it make sense rather than a volume limit, have a **% of habitat limit?** You're disturbing a habitat. Disturbance in one spot, and there are other areas fish and wildlife could use while that disturbed areas is recovering and regaining complexity. Instead of focusing on volume, focus on % habitat • Chandra Ferrari: This is the crux of our challenge. We recognize we don't have a lot of information. It's an imperfect tool to have a volume limit like this. I can't justify necessarily with any precise information that 400 will be less impactful than 500 than 200 than 1000. We know what the farmers need is quite a bit more than 50 cubic yards. So we've struggled with this. A big piece of any solution – whether information gathering on the front end or back end – is the information gathering piece. **What we're trying to do is minimize risk initially.** We need more information to understand where we should be more concerned about habitat complexity, and where we should be less concerned. And whether there is a threshold. **Information gathering is essential to TU moving forward.** The question is – do we need that information before we do the program? I think we were getting more comfortable with the idea of an **enhanced limit right now to get a program going, ODA on the ground to explain things to farmers, and have a pilot going at the same time with a really tight loop** back to potentially modify the volume limits moving forward. • Mary Anne Cooper: To Brian's point, it's a fair conversation, but I don't see it as something the farmers could do on their own. We know this activity is occurring. If we set it at 200 and site visits with ODA if greater volume, what happens when ODA gets 1000 applications bc it really doesn't meet the need? It wouldn't work. I don't mind the idea of a **volume that meets most needs, with the ability to go to the agency if need a higher volume,** but I think it actually has to be a volume that meets most needs (2,000 – 5,000 range rather than 200 range). If we set the volume too low (we have a GP that gives 100 which no one uses because 100 doesn't get you anything in terms of answering the need). If we set the volume too low or the threshold too complex, then people just won't use the program, just like today. I think everyone's acknowledging it doesn't really meet anyone's needs at the table. I understand the lack of information, but think of the practical realities of all these scenarios. Pilot idea – I think it's going to be tough to get people in a pilot if there's not a good faith concept that it's going to meet their needs. Hey – come fill out this IP to let us on your farm to do this study, and you may or may not get what you need at the end. Would have to fill out full IP to participate in the study. • Chuck Knoll: Might be kind of 'out there' idea. Annual permits, every 5 years, someone wants to get a permit. Goes through the process. Erosion, sediment field depends on slope and soil type. Once grandfathered, you're done. **Goes with the property forever like water right**. Would make it a little easier to do. Multiple agency – have it coordinated through ODA. • Rep. McLain: it's a concept there, that I think has been missing in this report. You're okaying through permit process a plan that **agrees to certain standards and needs of the actual system.** That's what Peggy is getting to. You have different sizes of systems, purposes of systems, 26 different goals for that system. When you make a plan with that specific system owner – we know water moves, habitat changes. You could address it as a plan for the system, you're dealing with **outcomes and functions v. arbitrary percentage or mile amount.** • Chuck Knoll: Might be easier to implement in Linn County. Very similar, flat terrain. One farmer step up to the plate and gets in done. You realize it's a matrix and you could go through and get the whole valley done. You start to realize it goes with the property like a water right. One time. • Rep. McLain: Good idea.

	• Eric Metz: I like the idea too. We know permitting flat doesn't work. We'll be lucky if notices work. Setting some sort of **sideboards for what we think are realistic outcomes and functions**, that'd be ODA's job with ODFW consulting. We can set all the standards we want, all the thresholds and permits we want. But there have been 21 ag permits issued in 23 years. That's how well thresholds work. They just don't. Has to be outcome based. Sideboard based. Carefully scrutinized. Systematically. Everyone has to be bought in in doing it. That's a tall bar. • Peggy Lynch: 2 places – volume. ODA must consult with ODFW on site-specifics. Back here on next page there's the FTE connected to that. Next is ODA bullet, **ODFW shall provide fish bios to participate in site visits. I don't see FTE for that**. I know they already have a POP for 4 fish biologists in their program bc they don't have them to do fish biologist work. ODA has package for $1.7 million to expand their work on water quality goals in small watersheds around the state. People need to be aware. • Brian McLachlan: Respect **to 3rd bullet** and theme throughout document there'll be adaptive management, authority vested in ODA. I have concerns with that and want to put it on the record. **What standards would apply?** I think standards need to be articulated about how to establish volume limit. Standard should be consistent with recovery goals. Also concerned I'd **like to see greater role, responsibility and authority for ODFW in this entire process**. They are the expert agency in fish and wildlife. I understand farmers may be more comfortable working with ODA, but ODFW should be key. • Rep. McLain: Are you going to give us a role for this group you want added? • Brian McLachlan: I'd like to see greater role for ODFW in setting the standards. Right now, ODA just consults. I don't know what ODA does with consult information that ODFW gives. I'd also like in notice provisions that ODFW gets notices and can inspect if they so choose. • Mike Powers: In a consultation process, since it hasn't been developed yet, it's hard to speak to how that would go. However, we do have a really good consult process set up with DEQ and the water quality program as a model. DEQ has overall responsibility for the state for water quality, we had the ag activity regulation part. Every step of the way, we consult with DEQ. We incorporate many of their comments. Some we address over time through an adaptive management process. **I'm confident that we'd be able to have an effective and responsible consultation process with both ODFW and DSL.** • Stephanie Page: **maybe in pilot period, we could determine whether a qualitative limit** could be mutually agreeable and clearly communicated. A limit that achieves the functions without being an actual number. • Eric Metz: Not overload ODFW with a big glut of requests, same with ODA, and qualitative limit with some sideboards. They've been very modest about their ability to get this done. We talked with ODA and ODFW before this started, we assumed there'd be an ODFW liaison to coordinate with ODA. Fish bios are great and very responsive, I'll let them speak to their capacity. • Shannon Hurn: **volume** is definitely the crux. A limit is needed to manage the workload. Our comments have been – it **depends are you working in the dry or the wet, ESH or tidal**. At the end of the day, you'd have to set something, right? In place, we already have district biologists whose role this is. They already work with DSL. Not being habitat managers or regulators, we work very closely with our partners and we'd keep doing that. Notices – works very similar to permitting process here. Those folks would look at this and based on habitat and scope, have comments and conditions they'd provide to ODA. Hope is that the agency would provide that in the feedback back to landowner. It's worked well to this point, have no reason to be concerned it wouldn't continue to work well. I'll say to pilot program – we're going to want a range of landowners who have this need and an assessment. Have to be somewhat similar. Tie in for landowners is that they wouldn't have to go through full permit process to participate. I share some of Peggy's concern -are we going to have the staff to focus wholly on that pilot project? That's where budget underlining would help. But these are things we do now, I wouldn't anticipate that changing a lot. • Rep. McLain: only **pitfalls I see is falling back into today's status quo**. Only 23 permits. Balance that with budget needed and goal we're trying to achieve.

(4) Notice requirement for maintenance of dry agricultural channels.

Recommendations

11/8 Meeting	Notice required every 5 years, add: "or upon acquisition of new property."
Emailed	Joy Vaughan, ODFW Recommend that the form ODA develops require a site location map showing property boundaries, streams, and ditches to be maintained.
Emailed	Mary Anne Cooper, Oregon Farm Bureau This was new to me. What's the purpose of the waiting period? Is it just to give ODA time to disagree that they meet the threshold for being able to use the authorization? I don't have a huge issue, but I doubt ODA will be able to do much in the 14 day period, and it seems easier to maybe just have them file the notice and do the work, and ODA can check compliance with program authorizations on the back end and revoke if necessary.

Notes

11/8 Meeting	• Brian McLachlan: I'm curious – there's a need for a standard to be developed. 14-day waiting period. Opportunity for ODA to respond. Doesn't say why they would respond. Are they looking for certain things? And what happens when they do? This is just a notice program… do they still get to go ahead?

(5) Role for State Department of Agriculture.

Recommendations

11/8 Meeting	• For education and outreach bullet, add: in coordination with SWCDs • ODFW request to be recognized in MOU, and DEQ's request to be added to 5(c) • ODA doesn't want notice enforcement authority
Emailed	Peggy Lynch, League of Women Voters of Oregon Any implementation and enforcement policies adopted require adequate funding to the agencies involved. Without funding the policies sit in statute and all the parties continue to be unhappy because the actual solutions don't happen.
Emailed	Chandra Ferrari, Trout Unlimited Ensure that ODFW's role in the process is clear. TU believes the program will be utilized at a higher rate if the Oregon Department of Agriculture is the primary implementer. However, as envisioned in the Report, DSL retains the ultimate enforcement authority and has a co-equal role with ODFW and ODA in articulating any adaptive management changes. Additionally, ODFW has a consultation role with ODA reviewing notices and accompanying ODA on site visits when needed.
Emailed	Mary Anne Cooper, Oregon Farm Bureau It seems like they should be able to modify "conditions for maintenance" only - everything else is the fundamental sideboards of the program that they shouldn't be able to change. I thought the adaptive management was just around the conditions and potentially the volume if we go that route.

Notes

11/8 Meeting	• Eric Metz: The broader policy goal – **assisting the transition of ag into the environmental era.** Many farmers for generations did not build their business model on needing to interact with environmental scientists. I think this could benefit industry and environment in many ways other than ditch cleaning. If we can work out a model that works for ditch cleaning, this model could be viable in a lot of other areas too. Has great potential for better partnerships between ODFW and agriculture. • Peggy Lynch: That's exactly really important. One of the reasons ODA's POP includes 4 positions for ag water quality, is that people have felt that the **fox is guarding the hen house**. ODA works for farmers. If we can begin to address the issue Eric brought forward. That's the issue you'll hear from the environmental community – that ODA is the guiding entity in this. If we can get to Eric's goal, that's a good one. • Rep. McLain: Have to make a comment as a farmer's daughter. There is a situation here you're making a lot of assumptions about what those business plans look like and what they're for. Again, I acknowledge that you have agencies that work closer with certain practitioners. There are a wide variety of reasons these ditches are being cleaned. The majority of the reasons have to do with things we have put on the farmer as far as responsibilities and outcomes that we want. It's going to be important for us to acknowledge where these come from. **There isn't a farmer** worth their salt that I've ever met **that doesn't understand those goals and don't want to do them too.** Because there's reasons for them to do it and for their business plan. It has nothing to do with money sometimes. There are other goals the farmer has for themselves as well. • Chuck Knoll: I'm going to give you some examples – ODF, they coordinate programs for environmental permits. Road standard review. DOGAMI, they have their own permit programs for air, water, solid waste, stream protection, fish and wildlife. They implement DEQ discharge program. Watching the hen in the house. DSL coordinate some of us. You have ODA overseeing ag stuff. **Makes sense it'd be coordinated through ODA** bc I think they do it now. It makes sense to have an organization more attuned with the community needs. • Chandra Ferrari: Want to acknowledge this was a big point of discussion – ODA v. ODFW's role. Want to recognize we're trying to build trust in the community, we're **trying for ODA to be more of the face on the ground. However, it didn't mean ODFW shouldn't have a role.** They should have a strong role in the condition setting, and also ODA feeling comfortable to bring them into site visits when necessary. So we made sure that language was still in there. I want to be clear – if we need more specific language around some of the changes to the program, I think that might be necessary. However, if you look on the report, the idea was that we were going to be doing information gathering. If at the end of the day we were going to have all the agencies compile a report collectively, and jointly compile recommendations for what to do with this program. To the extent we were going to look at big structural changes, we were really intending for all the agencies to have a collaborative voice together that they would jointly put forward. I don't know if that helps with Brian's concerns. • Mary Anne Cooper: From our end, it has to be a workable program. We as an organization, and the farmers sitting on our group, are quite frankly **going to catch a lot of flack for doing this**, and bringing it forward. Because people don't know there's a program. They're going to say – why did you create this new program for us? **We're willing to do that bc we think it's an important issue that needs to be resolved and there needs to be a path for education, compliance**, and for us to stand up and say hey – we know the best way of doing this and we're doing it. But to that same end, **if it's not workable, we're not going to be able to support it**. Because it's going to feel like a new thing, a new regulation. They'll say – it's a ditch, and I've been told it's exempt. We've even had attorneys that read ditch exemption and say – you're fine, it's a ditch. So people are getting legal advice that underscores differently than DSL is enforcing. I appreciate where everyone's coming on this. Has to be something that people buy-into and do. If it's an ODFW program or DSL program, it's a much heavier lift than if it fits into the ag water quality program that they're already familiar with. **They already understand ODA's role**. This seems kind of like a new piece of that. We don't expect that this will feel like a big win. We know you don't have an interpretation of the law that aligns with what our folks are doing on the ground. They learn it through expensive enforcement actions. • George Pugh: I had great fortune to serve on the State Board of Agriculture for 8 years, during the rollout of SB 1010, the ag water quality program. It was the **relationship that ag has with ODA** that allowed me to go out and promote that program with farmers in my area and across the state. These are people familiar to them. They interact on a regular basis. That said, ODA is not without teeth. If you look at the enforcement of ag chemical applications, CAFOs, any number of areas… **ODA has enforcement opportunity and does enforce.** Don't think they're not capable of fulfilling their obligation. • Peggy Lynch: Does **ODA already have a brochure for farmers to help them understand all this**? I don't see it as part of the work plan. Or SWCDs? It's obvious that to make it easy for the farming community to follow the rules, there needs to be simple guidance. Also, I know there's talk later on about training. I'm wondering if ODA/DSL already has this? Is it simple/easy to use for the average farmer.

	• Stephanie Page: That brochure reflects the current regulatory program. We'd need to create something new. It **could include a brochure**, but it **would be a communications strategy** we'd develop in collaboration with others. A lot of the grow groups have their meetings in the winter, there'd be dialogue there. • Peggy Lynch: Does ODA has capacity to do that? (Stephanie: FTE in report package…) But that's for you going out to do inspections, right? Not for this work? • Rep. McLain: You just said it's for current regulations. If we change the regulation or statute, your education materials would have to reflect that. And replace what we have now. • Stephanie Page: Yes. Looking at p. 4 (5) describes a variety of activities for ODA including education. • Rep. McLain: We all have to look at the budget. We're really committing to is any work that comes out of the recommendations of this subcommittee is not returning to status quo, thus we have to look at it as a budgeted item that is replacing current needs we have. Replacing printing work. Don't want to act like it's duplication. It's replacing the status quo work. Peggy will bring it up again. Important to do it again. We're committing to doing the work that has to be done. • Peggy Lynch: But **this is new work**. It is a change in the structure. • Stephanie Page: Certainly the **audits would be new work for ODA**. When we launched the water quality rules, we did outreach and education. I see this as another lift – the outreach and education for this program. I would see this responsibility as well as audits/checks rolled into that one position. I see that as fair. I see a difference between audit and education on current rules. • Chuck Knoll: p. 3. When road department does a project involving wetlands and ditches, we have to comply with DEQ storm water planning and 401 certification, DEQ TMDL, DEQ turbidity programs, NMFS, slopes, Corps wetlands, ODSL wetlands, ODFW requirements, county drainage code, flood code, ODA, then ESA protections, then follow BMPs. **Whole list of things every time you turn in a permit**. We're intelligent and seasoned, but if you have another person… It's such a … There should be some better coordination of agencies and better training for people in the agencies. It's really burdensome. How does a farmer do all that? How does anyone do that? • Peggy Lynch: I'd find it very helpful if Chuck would provide **a list of multiple agencies, requirements and responsibilities**, to see if there are ways to address the multiple regulations. • Sara Christensen: Helpful to take an example project and walk through what state agencies are engaged • Mary Anne Cooper: New thing that occurred to me on 5(c) – ODA can modify the program. Do **need to clarify that they're not modifying the jurisdiction requirements of the program, just conditions, volume, practical amount**. Not – when this does and doesn't apply. They're not expanding into wet waterways, or excluding ditches that were included. • Rep. McLain: That's statute level thoughts there. • Peggy Lynch: 2 things**. Role of SWCDs** – should it be mentioned at all in terms of their assistance helping with education. They're not under ODA so would have to be a separate bullet. Might be important. • Rep. McLain: Let's list them as **coordination**. Is that acceptable? • Peggy Lynch: To fund any of this, is there discussion of fees to figure out how to fund? • Stephanie Page: We're not pursuing authority to charge permit fees. We're just talking about receiving a notice and then... • Peggy Lynch: So is there a permit attached to this program? • Notification. It hasn't gone beyond notification. • Peggy Lynch: I don't understand how – if a farmer wants to do this, they just send a notice? They don't go to DSL for a permit, which is what they usually do? And which they've never done? This would be a change. • It's an exemption with notice. • Joy Vaughan: Our **recommendation to be part of the MOA**. Our technical expertise. How we can assist with broader outreach and education. I think would be beneficial. • Stephanie Page: I'm just thinking back to the **difficulty of how to have a 3-way MOU** with agencies and legal review issues, with past 3-way MOUs. But I'm sure we could figure out something logistically. • Rep. McLain: I like Stephanie's thought on that. It just sounds like a mog-pog. Let's try to think – clear. Clear process. A process someone would actually do. • Sara Christensen: can we **add DEQ to 5(c),** just as in consultation. Because we do have water quality listings change – come off, come on. TMDLs. It'd be nice to be consulted with on that. • Mary Anne Cooper: I don't necessarily object to that. But we've had trouble in the past having DEQ getting muddled in between what's within ODA's jurisdiction, jurisdiction they have over drainage districts. Other folks. I worry about muddying the waters. • Rep. McLain: I think this goes back to Peggy's comment, and that was really the list of all things, and responsibilities. I agree with Mary Anne, we're trying to clarify – and make the process doable and usable. We should know what we're doing and changing and working on.

	• Stephanie Page: Currently ODA doesn't have authority to take enforcement action if someone merely doesn't notify us of the work. There are a couple options identified here. **My preference** is **that if we repeatedly warn someone they should have noticed when the didn't, that we refer that to DSL for further enforcement action**. I want to maximize the amount of time our staff are out in the field. My second choice would be for us to get that authority, which we currently do not have. As part of our goal in participating in this is to have our staff out in the field, communicating with growers. Because we do a lot of enforcement work, which takes time, I think we have a good sense of what that work load is. We'd prefer to have that dual role. • Rep. McLain: Mary Anne's shaking her head yes. Others? • Chuck Knoll: Can you coordinate any of that work through the **SWCDs**? Can you use them as an arm? • Stephanie Page: In terms of **outreach and education, yes**. But they are not regulatory. Don't want to be thought of as regulatory at all. • Peggy Lynch: Another issue – it's my understanding DSL is interested perhaps in a change in funding for its removal-fill or have the program be someplace else. I'm concerned about the conversation about moving the enforcement part from ODA to DSL. Yes – they have the authority right now. Might need to have that conversation later on. • Stephanie Page: Clarify the piece I'm talking about is enforcement of notice, bc that's what we don't have authority for. We have authority to take action against water quality violations, but we don't have the authority if someone merely fails to notify us of ag ditch maintenance, to take enforcement action about that. • Eric Metz: we haven't discussed that yet.

(6) Biennial Review requirement.

None.

SECTION 3. Maintenance of Agricultural Channels during Wet Conditions.

Recommendations

11/8 Meeting	Likely need statutory clarity that DSL can pursue a general permit that allows more than 100 cubic yards removal.
Emailed	Eric Metz, DSL DSL agrees that dry and wet channels need to have separate regulatory schemes. DSL advises that it has tried many different permit processes to authorize agricultural channel maintenance for dry and wet channels, tidal and nontidal, inland and coastal and none have been accepted by the farming community, to date. The sub-group did not focus on wet channel regulation. Additional analysis and special legislation may also be needed to create a workable solution *(Response copied in Decision Point #6, dry/wet separation)*

Notes

11/8 Meeting	• Peggy Lynch: section 3(a) talks about a GP being developed. Is there a cost related to that? • Eric Metz: We really didn't get to this topic yet. Didn't talk in detail about how wet ditch cleaning would work. • Mary Anne Cooper: We know there may be a lot more conditions for work in wet waterways and that makes to retain with DSL. Authorization – bc there's currently a 100 yard permit on the books, DSL doesn't think they have the authority to create a bigger one for ag. Clarifying they have the authority. Timeline came from comments from TNC worried about hey -if this activity is occurring, we want a timeline for bringing this into compliance, knowing there's an option, and a permit that people will go get. Must be done by x date. Let's make sure there's a timeframe of when it's going to be done in the way it's going to be done. Wet should still be addressed even though it has less figured out. Needs clarification that DSL can pursue the permit. • Eric Metz: I haven't talked to counsel. I'll get back to Laura on that. • Peggy Lynch: In yesterday's assumption meeting, you'd no longer have 50 cubic yard exemption. I'm just flagging that we've been having two conversations about that

SECTION 4. Study and Appropriation.

Recommendations

11/8 Meeting	None.
Emailed	Chandra Ferrari, Trout Unlimited Allocate resources for a Pilot/Study process that would include enrolling a certain number of farms in a 3-year study process. The study would seek to understand the impacts of channel maintenance work on habitat complexity and other biological parameters at varying volumes, geographies, and channel conditions. Additionally, the study would seek to understand the effectiveness of BMPs at preserving wetland functions and values while facilitating channel maintenance work. The results of the study should be followed by a rulemaking effort to modify the program, as needed, based on the new information *(Response copied in Pilot Section)*
Emailed	Brian McLachlan, Northwest Steelheaders While we are aware of the shortcomings of the current regulatory process and the apparent lack of compliance, we recommend that prior to amending the removal-fill statute or administrative rules, the legislature authorize and fund a pilot research program of limited scope and duration designed to study the impacts of channel maintenance activities on salmonid habitat and conservation and recovery plan objectives. A primary goal of this program would be to develop a suite of Best Management Practices (BMPs) (tailored to area- and/or site-specific ecological functions and conditions) and other recommendations that meet the needs of both farmers and fish *(Response copied in Pilot Section).*
Emailed	Eric Metz, DSL The Department concurs that a study of the outcomes of the policy change should be undertaken and strongly recommends that the scope of work and budget, be carefully developed and reviewed by an expert team to assure that useable, implementable recommendations result.
Emailed	Mary Anne Cooper, Oregon Farm Bureau I wonder if this appropriation is needed or if we could get DEQ or OWEB to give dollars to the study instead? DEQ has those Section 319 funds they spent on a similar project in Sauvie.

Notes

11/8 Meeting	• Sarah Christensen: there is a pilot project occurring on Sauvie's Island. It's a drainage ditch maintenance and there's a lot of folks involved in that. Drainage folks, watershed council is involved. They got a 319 grant through DEQ. They're going to do some water quality monitoring. It fits in really well with this group, so I wanted to bring it up. Maybe we don't have to re-invent the wheel.

SECTION 5. Report Requirement.

Recommendations

Emailed	Eric Metz, DSL DSL concurs with the recommendation to prepare biannual, joint agency reports for submission to the legislative committees.

ADDITIONAL 'BIG PICTURE' OPTIONS FOR CONSIDERATION

Remaining Decision Point #5: Pilot Program

Recommendations

11/8 Meeting	Differing perspectives.
Emailed	Mary Anne Cooper, Oregon Farm Bureau We need a resolution and authorization for this program that works for everyone - we are very hesitant to direct more study when we need a solution now and there'd be no clear guarantee and workable solution would follow. Farmers have been doing this activity for hundreds of years in Oregon - it is not new. As such, the sideboards can only cause improvement in the status quo. Given that this activity is occurring and is widespread, we do not think it needs additional study before being authorized. A general permit for both wet and dry will also result in lower compliance - DSL has not made those easy to fill out or receive, and few landowners trust them to administer the program well given past negative experience.
Emailed	Chandra Ferrari, Trout Unlimited Allocate resources for a Pilot/Study process that would include enrolling a certain number of farms in a 3-year study process. The study would seek to understand the impacts of channel maintenance work on habitat complexity and other biological parameters at varying volumes, geographies, and channel conditions. Additionally, the study would seek to understand the effectiveness of BMPs at preserving wetland functions and values while facilitating channel maintenance work. The results of the study should be followed by a rulemaking effort to modify the program, as needed, based on the new information *(Response copied in Study Section)*
Emailed	Eric Metz, DSL DSL recommends treating the initial stages of the agricultural maintenance program as a 5-year pilot with a sunset clause and that the geographic area is limited to the Willamette Valley. ODA should compile annual reports and circulate their findings for review and comment. The outcomes of the monitoring and reporting process will inform adaptive management of the program. ODA should have the discretion to modify the terms of the pilot based upon field monitoring results and based on the recommendations of an appointed Pilot Work Group. If at the end of the pilot the activities have resulted in mitigating adverse effects to no more than minimal and the sideboards are working for the farmers, the pilot could be extended, enlarged, or applied statewide. If concerns and unresolved issues are noted, adjustments should be made to the program before the Pilot can continue or the exemptions would expire.
Emailed	Brian McLachlan, Northwest Steelheaders While we are aware of the shortcomings of the current regulatory process and the apparent lack of compliance, we recommend that prior to amending the removal-fill statute or administrative rules, the legislature authorize and fund a pilot research program of limited scope and duration designed to study the impacts of channel maintenance activities on salmonid habitat and conservation and recovery plan objectives. A primary goal of this program would be to develop a suite of Best Management Practices (BMPs) (tailored to area- and/or site-specific ecological functions and conditions) and other recommendations that meet the needs of both farmers and fish *(Response copied in Study Section).*

Notes

11/8 Meeting	• Bruce Dugger: It does feel like there's an opportunity to conduct something in a fairly holistic way that would move the needle in a lot of different areas. I think **engaging several farmers and creating pilot program opportunities on different farms – case histories** – would be really informative way of doing things. A big hang up for example is how many cubic yards of fill are we talking about. Reality is we don't have any idea, predicated on fish. **Rather than creating an arbitrary number in something we don't know, create an opp for select farmers to operate and maintain their ditches as they see necessary and actually measuring these things.** There was a pretty good model with the project we had in the Calapooia drainage district 10 years ago with select farmers who provided access to their property for a few of us to go in and learn some things. Have that go on at the same time as working on legislative solutions for immediate relief for people. Seems like the kind of thing ODFW, OWEB, DEQ, USFWS, NOAA – there are a lot of people interested in having actual data to contribute to this. Extreme example: money invested in marbled murrelets. Here's a big picture question we don't understand. If I can create a model system on someone's farm, they sell it for us to others. That's the way things seem to get done on the ground. • Rep. McLain: I don't think there's anything here that's mutually exclusive. **They can happen at the same time**. Can happen on the ground, and we improve when we continue to study. We need updated data that reflects changing quality of the world and climate. Pilot – we've discovered there's a pilot through DEQ, but Bruce – has to be thorough enough to take care of the conditions we care about. • Mary Anne Cooper: I don't object to the idea of a pilot or more limited rollout, but at the end of the day there has to be certainty that it meets the farmers' needs. There may be pilot – farmer needs to remove more material than is perfectly optimal for fish in the area. That's a conversation – we won't have adaptive management right away out of that. How do you build in the fact that there'll be the authorization – **there is a lot of room for incentives here** to build in ways you don't need to clean as often, or better cleaning methodologies we don't know that exist yet – but they still have to **know at the end of the day that they can clean their ditch while we're studying all these other things** that might need 5-10 years of study. • Peggy Lynch: I want to understand, I was making an assumption both things would be happening at once.

Remaining Decision Point #6: Separation of dry and wet conditions

Recommendations

11/8 Meeting	None.
Emailed	Peggy Lynch, League of Women Voters of Oregon Although it would be positive to have a policy that addresses both dry and wet seasons, adopting a dry season policy doesn't exclude having a wet season policy adopted in the future that works with the dry policy.
Emailed	Eric Metz, DSL DSL agrees that dry and wet channels need to have separate regulatory schemes. DSL advises that it has tried many different permit processes to authorize agricultural channel maintenance for dry and wet channels, tidal and nontidal, inland and coastal and none have been accepted by the farming community, to date. The sub-group did not focus on wet channel regulation. Additional analysis and special legislation may also be needed to create a workable solution *(Response copied in Section 3, Wet Maintenance)*

Notes

11/8 Meeting	• Peggy Lynch: can we just bite off one part right now? • Rep. McLain: just want to reiterate, not mutually exclusive. There were some comments made by Mary Anne talking about the hope not to have a bifurcated process that again adds layers of administration and cost and confusion and educational needs. If we can do anything here to make clear there are 2 conditions – dry and wet – but that we're not necessarily saying there couldn't be some overlap. • Mary Anne Cooper: separation of dry and wet. Dry easier to handle from a fisheries perspective. We know there may be a lot more conditions for work in wet waterways and that makes to retain with DSL.

Additional Topic: Drainage Districts

Recommendations

Emailed	Stephanie Page, ODA • Mike and I visited regarding your question about irrigation/drainage district ditch cleaning and ODA's authorities. We think a simple strategy could be for ODA and DEQ staff to cross-train so that ODA would handle ditches/streams on farms and DEQ staff would handle irrigation/drainage district ditches in the same way. This would help avoid confusion among irrigation/drainage districts about ODA's role since they are currently regulated by DEQ with respect to water quality and would also help keep ODA's workload sustainable. Response from Mary Anne Cooper, Oregon Farm Bureau • I don't think something like that would work well, and while I know ODA says districts work with DEQ, they really haven't. DEQ names them as "responsible parties" in TMDLs and I am aware of two districts out of the hundreds statewide who have worked with DEQ to create a plan as a result. Those plans have been super cursory and DEQ didn't really help with them – just mandated their creation. DEQ does not have a good reputation with landowners, and I think most of the districts would roundly oppose a program where they had to provide notice and work with DEQ. • I can talk to ODA further, but I really think the only way this works on the ground for people like Brenda is if both districts and individuals can provide notice to ODA and the statute gives ODA authority to educate and enforce to districts and individuals. Maybe there's a place where districts get kicked over to DSL more quickly than individuals if there's issues, but I really think ODA needs to be the first point of contact for both. And most drainage districts are farmer run with no staff, so they are run by landowners who are used to working with ODA and have little to no contact or experience with other agencies.
Emailed	Mary Anne Cooper, Oregon Farm Bureau "This authorization applies to drainage districts formed under ORS _____ at the election of the drainage district. To elect to use the authorization, the drainage district must submit the required notice to ODA and agree to allow ODA enforcement of the terms and conditions of the notice against the drainage district consistent with the requirements of this Section. To the extent that the conditions require direct actions of the drainage district's members, the drainage district is encouraged to submit the notice jointly with its members."

Process Vision: