



Idaho Water Users Association, Inc.

1010 W. Jefferson St., Suite 101 • BOISE, IDAHO 83702

OFFICE - 208-344-6690 • FAX - 208-344-2744

E-MAIL - iwua@iwua.org

WEBSITE - www.iwua.org

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LYNN KEETCH
1st Vice President
DAN DARRINGTON
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NORMAN M. SEMANKO
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October 1, 2010

Via Email: paula.wilson@deq.idaho.gov

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706-1255

Re: Docket No. 58-0102-1001 – Antidegradation Implementation –
Comments on Proposed Rule

Dear Paula:

These comments are submitted on behalf of the Idaho Water Users Association (IWUA) regarding the above-referenced proposed rule. We appreciate DEQ's efforts to arrive at a workable rule.

IWUA is a non-profit corporation representing more than 300 canal companies, irrigation districts, water districts, ground water districts, municipal suppliers, hydropower companies, aquaculture businesses, professional firms and individuals, all dedicated to the wise and efficient use of our water resources.

IWUA maintains an active water quality committee and participated in the negotiated rulemaking sessions regarding the proposed rule earlier this year. Specifically, we provided written comments on Revised Draft No. 6 on July 27, 2010.

While some of our concerns with the draft negotiated rule have been addressed in the proposed rule, many of them have not. Our suggestions are discussed below. In addition, IWUA supports the comments on the proposed rule that have been submitted on or before today by the Idaho Association of Commerce and Industry (IACI), of which IWUA is a long-standing member.

Paula J. Wilson
October 1, 2010
Page 2

1. Overall Scope. The proposed rule far exceeds what is necessary to comply with the Clean Water Act. The scope of the rulemaking should be limited to what is necessary for purposes of compliance with the antidegradation requirements of the Clean Water Act. In addition, the antidegradation program needs to be consistent with the provisions and intent of Senate Bill 1284, enacted in 1995, and codified at Chapter 36, Title 39.
2. Impaired Waters. Water bodies that are included on the State's 303(d) list of impaired waters should be given Tier 1 protection only. Impaired waters, which by definition do not meet water quality standards, do not exceed water quality standards and therefore should not receive Tier 2 protection. This is true for all covered water bodies, including so-called "Special Resource Waters" (SRWs). We continue to believe that a process should be expressly provided for to remove waters from the SRW list.
3. General Permits. Individual discharges should not be subject to additional antidegradation review when those activities are covered under a general permit. In addition, a general permit should be presumed to have provided for adequate antidegradation protection absent a showing to the contrary.

If DEQ does not restrict the rulemaking to what is required under the Clean Water Act, or make the other changes suggested here, we believe that the Idaho State Legislature may have no choice but to reject the proposed rule and instead consider additional legislation to modify the existing statutory provisions as necessary to comply with the Clean Water Act, similar to what was done by the legislature in 1995 to bring Idaho's TMDL program into compliance.

We appreciate the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman M. Semanko". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Norman M. Semanko
Executive Director & General Counsel