www.idahoconservation.org

Idaho Conservation League
PO Box 844, Boise, ID 83701
208.345.6933

June 17, 2015

Paula Wilson
DEQ State Office
Attorney General's Office
1410 N. Hilton
Boise, ID 83706

Submitted via email: paula.wilson@deq.idaho.gov

Re: Docket No. 58-0102-1501- Negotiated Rulemaking re WQS Revisions and Attainability of Beneficial Uses, Comment period #2

Dear Ms. Wilson;

Since 1973, the Idaho Conservation League (ICL) has been Idaho's voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 25,000 supporters, many of whom have a deep personal interest in protecting Idaho's water quality and fisheries.

We have reviewed the most recent version of draft rule language regarding Man Made Waters, etc. We find this language to be virtually identical to the language that DEQ previously circulated. As a result, our concerns are unchanged.

Our attached comments are presented in the order in which these topics are covered in DEQ's draft #2 language.

Please contact me if you have any questions at 208-345-6933 x 24 or jhayes@idahoconservation.org

Sincerely,

Justin Hayes
Program Director

Preliminary Draft Negotiated Rule – Proposed IDAPA Language

As a general note, we do not agree with the various additions and subtractions that DEQ is proposing to this rule to the extent that these changes are intended to enshrine the notion that man-made water and private waters do not have the presumed use protections described in subsection 101.01.

101.01 – We do not support the proposed edits to this subsection.

101.02 – We do not support the proposed edits to this subsection. We believe that man-made waters *should* have the presumed protections described in subsection 101.01

In the discussion paper on Man-made Waters, DEQ reports that existing uses are protected in man-made waters. However, the rule is silent on this. We ask that the DEQ clarify this point by adding language to this subsection that clearly states that existing uses are protected in man-made waters.

While we do not support the current proposed edits, we feel that the intent of the current language found in 101.02 is not clear.

101.03 – We do not support the proposed edits to this subsection. We believe that private waters *should* have the presumed protections described in subsection 101.01

Further, at the last rulemaking meeting, I asked DEQ if 'existing uses' where protected in private waters. DEQ's response was that they were not sure if existing uses were protected in private waters. We ask that the DEQ clarify this point by adding language to this subsection that clearly states that existing uses are protected in private waters.

102.02.a.vi – This subsection uses the term "substantial and widespread economic and social impact." We wonder what this means. Could DEQ please define this term and provide some framework for how interested parties could demonstrate that the attainment of a beneficial use would be determined to cause 'substantial and widespread economic and social impact?' And could DEQ please provide the metrics that DEQ will apply when judging if 'substantial and widespread economic and social impact' has occurred or will occur?

102.02.d – A significant portion of this subsection is merely a restatement of the definition of "Use Attainability Analysis." Since this term is already defined in the definitions section, including it here seems un-necessary.

102.02.e.i – the current proposed language gives the impression that a UAA is not required whenever the department designates uses that include *any* aquatic life and recreational uses. This is not correct. A UAA is required whenever the DEQ issues

designated uses that require less stringent criteria than previously required. Please amend this subsection accordingly.

Additional subsection needed – 102.03.f.i – If a use attainability analysis has been conducted and designated uses have been removed or downgraded to uses that require less stringent criteria, the Department shall review the conclusions of the UAA at least every three years to determine if more protective uses have returned to the waterbody.
ii. If a use attainability analysis has been conducted and designated uses have been removed or downgraded to uses that require less stringent criteria, the Department shall revise this designation in the event that more protective existing uses are later observed in the waterbody.