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## Idaho Conservation League

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August 19, 2015

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

Submitted via email: [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

**Re: Docket No. 58-0102-1501- Proposed Rule re WQS Revisions and Attainability of Beneficial Uses**

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.

Our attached comments are presented in the order in which these topics are covered in DEQ's draft #3 language.

Please contact me if you have any questions at 208-345-6933 x 24 or [jhayes@idahoconservation.org](mailto:jhayes@idahoconservation.org)

Sincerely,

Justin Hayes  
Program Director

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

An important component of the Clean Water Act provisions that allow a state to remove the fishable and swimmable uses is the requirement that this decision be periodically reviewed. Indeed, the Clean Water Act specifically directs that this decision shall be revisited every three years. See 40 CFR Part 131.20 (a), below:

Any water body segment with water quality standards that do not include the uses specified in section 101(a)(2) of the Act shall be re-examined every three years to determine if any new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly. Procedures States establish for identifying and reviewing water bodies for review should be incorporated into their Continuing Planning Process.

Pursuant to this, Idaho needs to include additional language into this proposed rule. We ask that DEQ include the language provided below:

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.