



# Idaho DEQ Water Quality Standards Triennial Review

June 25, 2014

# Objectives

- ▶ Describe triennial review process and goals
- ▶ Describe Idaho's water quality standards
- ▶ Describe Idaho's rulemaking process
- ▶ Discuss list of potential items



# Triennial Review

- ▶ Process mandated in 40CFR 131.20
- ▶ Requires states, from time to time but at least every three years, to hold public hearings for the purpose of reviewing applicable water quality standards
- ▶ An opportunity for the public to advise on priorities
- ▶ An opportunity for DEQ to incorporate current science and other changes based on experience



# Triennial Review Objectives

- ▶ Elicit public comments regarding water quality standards
- ▶ Prepare summary report of comments received
- ▶ Use public input to help prioritize changes to water quality standards



# Where we were

- ▶ Identified priority topic areas during public scoping 2005–2008
  - Temperature
  - Arsenic
  - Low flow and application of standards
  - Mixing zones
  - Miscellaneous



# Where we've gone

- ▶ Since last public scoping effort
  - Antidegradation implementation
  - Arsenic HHC, Cadmium hardness cap
  - Site specific salmonid spawning criteria – Snake River–Hell's Canyon, Lower Boise River
- ▶ Current rulemakings
  - Human Health Toxics update
  - Mixing Zones
  - Antidegradation insignificant discharge

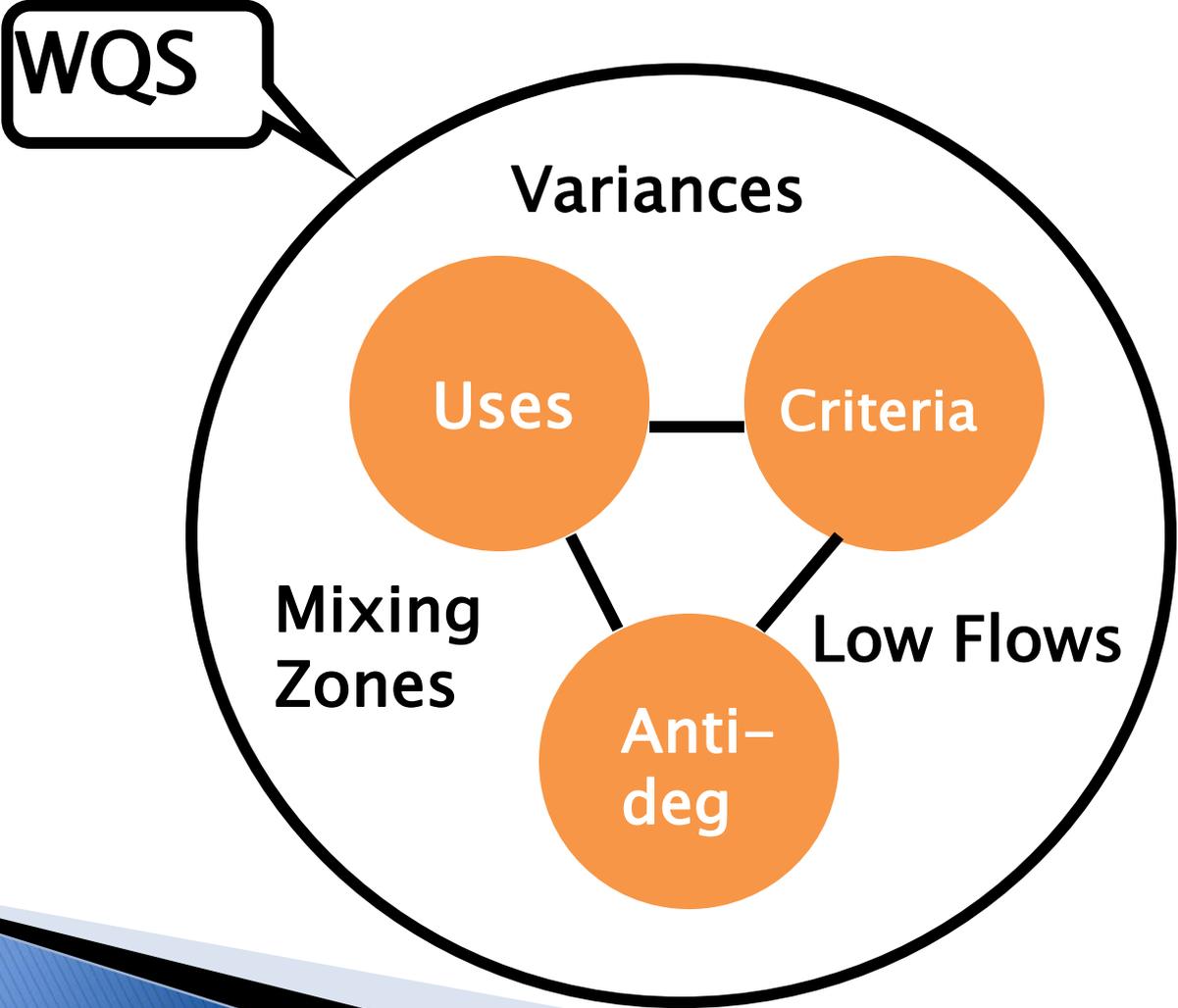


# What are water quality standards

- ▶ Set of rules that outline and describe how surface water in Idaho is to be protected
- ▶ Mandated in section 303 of the Clean Water Act
- ▶ Comprised of 3 required elements and some optional elements



# WQS Elements per the CWA



# Beneficial Uses

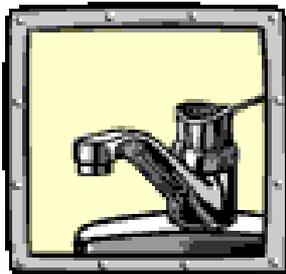
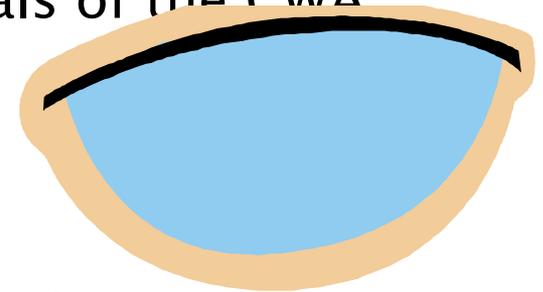
## ► Categories of Uses

- Federally required:

- Addresses the fishable/swimmable goals of the CWA
- Set the goals for the water body

- State discretion:

- Other beneficial uses include water supply, navigation, and wildlife and aesthetics



# Beneficial Uses in Idaho



- Cold water aquatic life (salmonid spawning)
- Seasonal cold water aquatic life
- Warm water aquatic life
- Modified aquatic life
- Primary contact recreation
- Secondary contact recreation
- Domestic water supply
- Industrial water supply
- Agricultural water supply
- Wildlife and aesthetics



# Designation of Uses

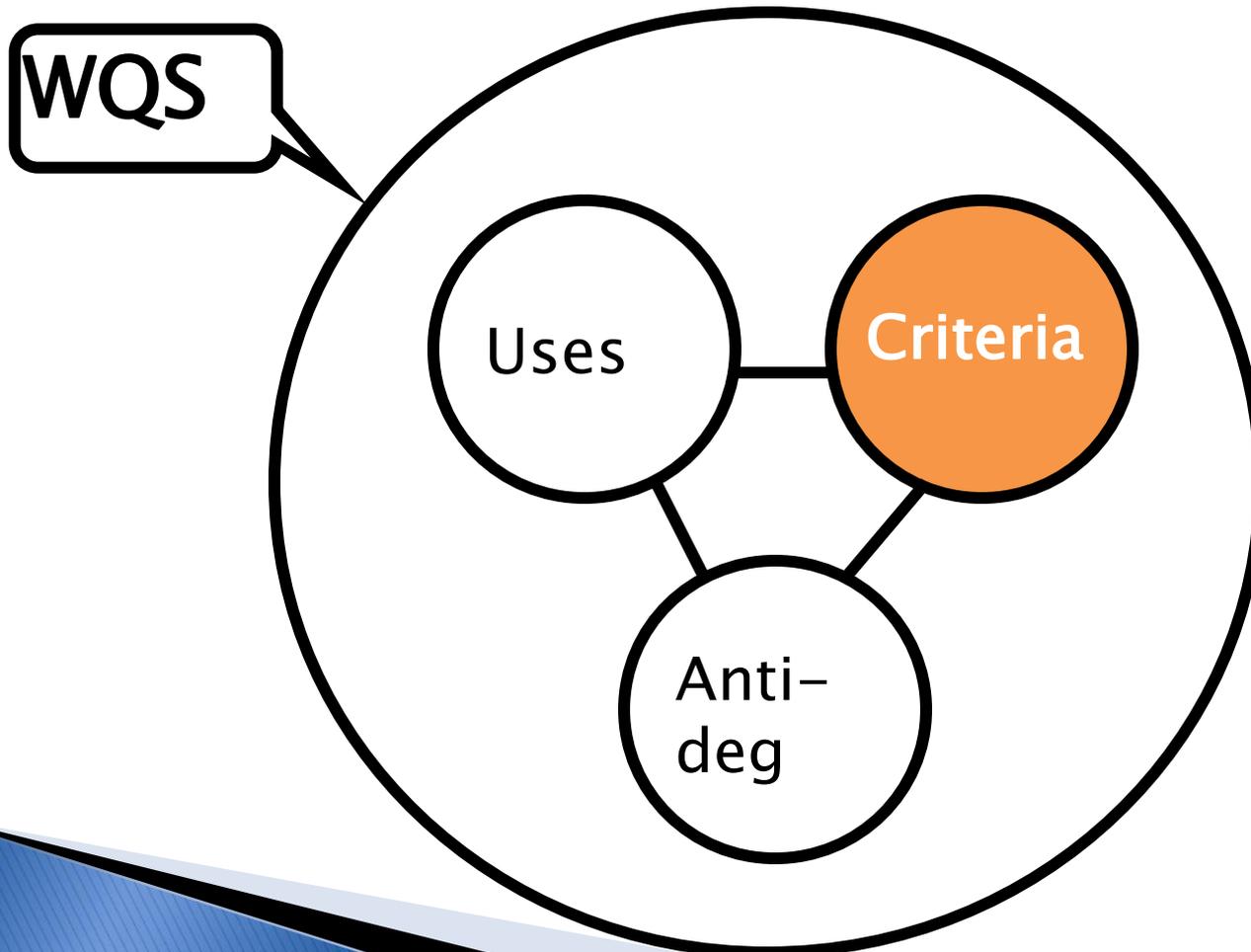
- ▶ Aquatic life, recreation and domestic water supply are specifically designated
- ▶ Industrial and agricultural water supply apply to all waters
- ▶ Specific designation requires rulemaking



# Undesignated Waters

- ▶ About 70% of stream length in Idaho is not specifically designated
- ▶ Undesignated surface waters are presumed to support cold water aquatic life and recreation
- ▶ Undesignated surface waters are protected for these “presumed” uses

# WQS Required Elements



# We Protect Designated Uses through Criteria

- ▶ States must adopt criteria that protect the designated use
  - Must be based on sound science
  - Must have sufficient parameters or constituents to protect the designated use



# General Water Quality Criteria

## Section 200

- ▶ Apply to all surface water regardless of use
- ▶ Typically narrative, “free from” statements except for natural background
- ▶ Require interpretation on a case-by-case basis (e.g. WBAG II for nutrients and sediments)
- ▶ Important backstop to numeric criteria



# General Water Quality Criteria

## Section 200

### “Free from”

- ▶ Hazardous Materials
- ▶ Toxic Substances
- ▶ Deleterious Materials
- ▶ Radioactive Materials
- ▶ Floating, Suspended or Submerged Matter

### Alternate Wording

- ▶ Excess Nutrients
- ▶ Oxygen–Demanding Materials
- ▶ Sediment
- ▶ Natural Background Conditions



# Use-Specific Numeric Criteria

## Section 250

- ▶ Aquatic life – Ammonia, dissolved oxygen, temperature, pH, turbidity, toxic substances
- ▶ Recreation – Bacteria, toxic substances
- ▶ Domestic Water Supply – turbidity, toxic substances

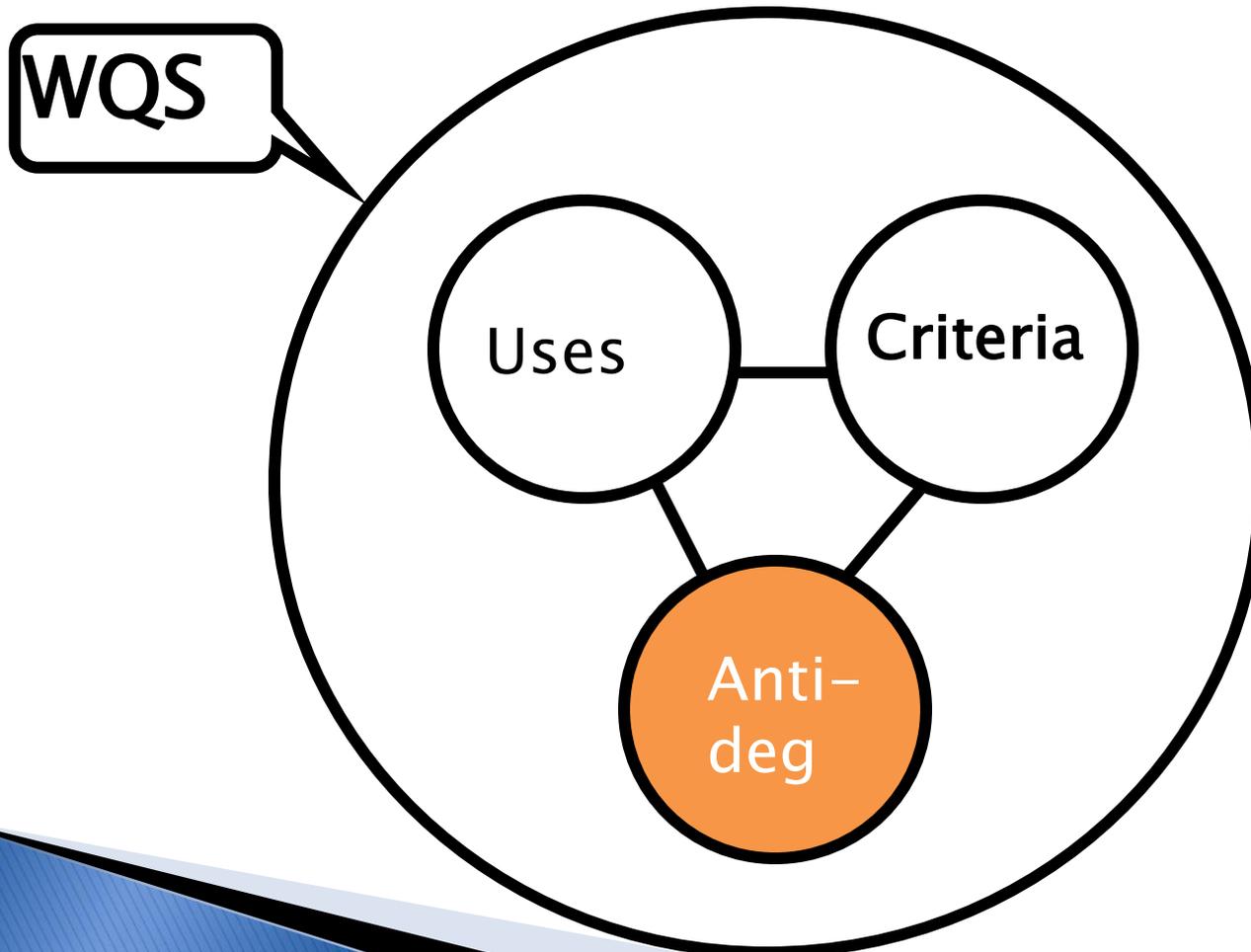


# Criteria Development

- ▶ EPA recommended criteria (304a)
- ▶ State adopts or modifies
- ▶ Idaho law limits DEQ's ability to be more stringent than required by CWA
- ▶ Adopted criteria subject to EPA approval and, if approved, ESA consultation



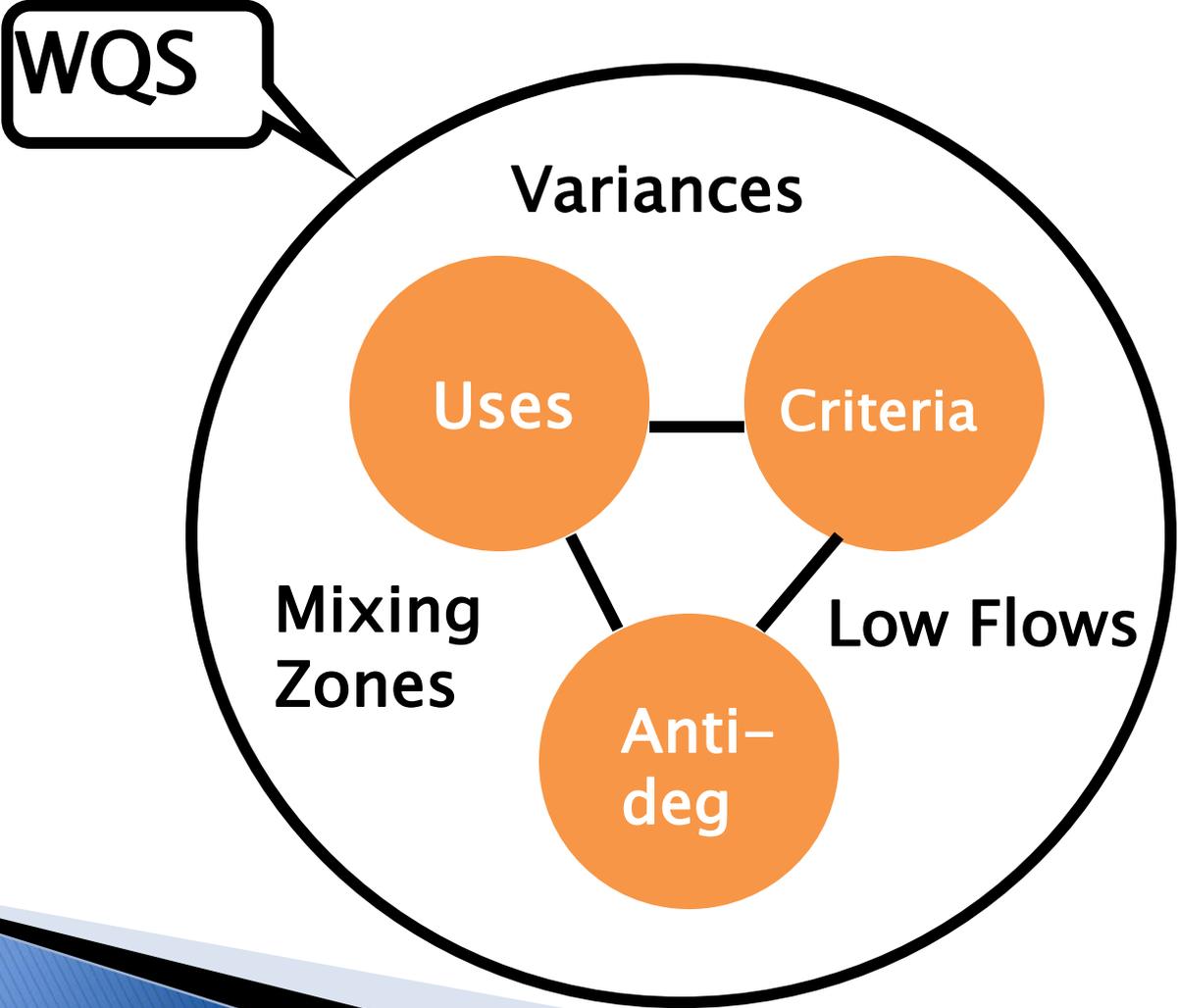
# WQS Required Elements



# Antidegradation

- ▶ Protects existing beneficial uses
- ▶ Allows water quality that exceeds “fishable/swimmable” to be lower by regulated activities only under certain prescribed conditions and after some type of public review
- ▶ Protects waters of outstanding significance

# WQS Elements per the CWA



# Optional Elements

- ▶ Low Flows – for application of numeric criteria
- ▶ Variances
  - Short-term, pollutant & discharge specific
  - Provide an alternative to permanent downgrade of use or criteria
  - Subject to public review
- ▶ Mixing zones
  - Restricts areas where numeric criteria may be exceeded to known and controlled locations
  - Reduces need for excessive wastewater treatment



# Idaho's Rulemaking Process

- ▶ Negotiated rulemaking
  - Process that may lead to a proposed rule
  - Initiated with a notice of negotiated rulemaking and invitation for public participation
- ▶ Proposed
  - Requires notice and public comment
  - Comes after negotiated rulemaking most often
- ▶ Pending
  - A rule that has been adopted by DEQ board and is pending legislative review before it becomes final and effective
  - If adopted, agency publishes notice of pending rule
  - Must be rejected by both houses of state legislature to fail



# Idaho's Rulemaking Process

## ▶ Temporary

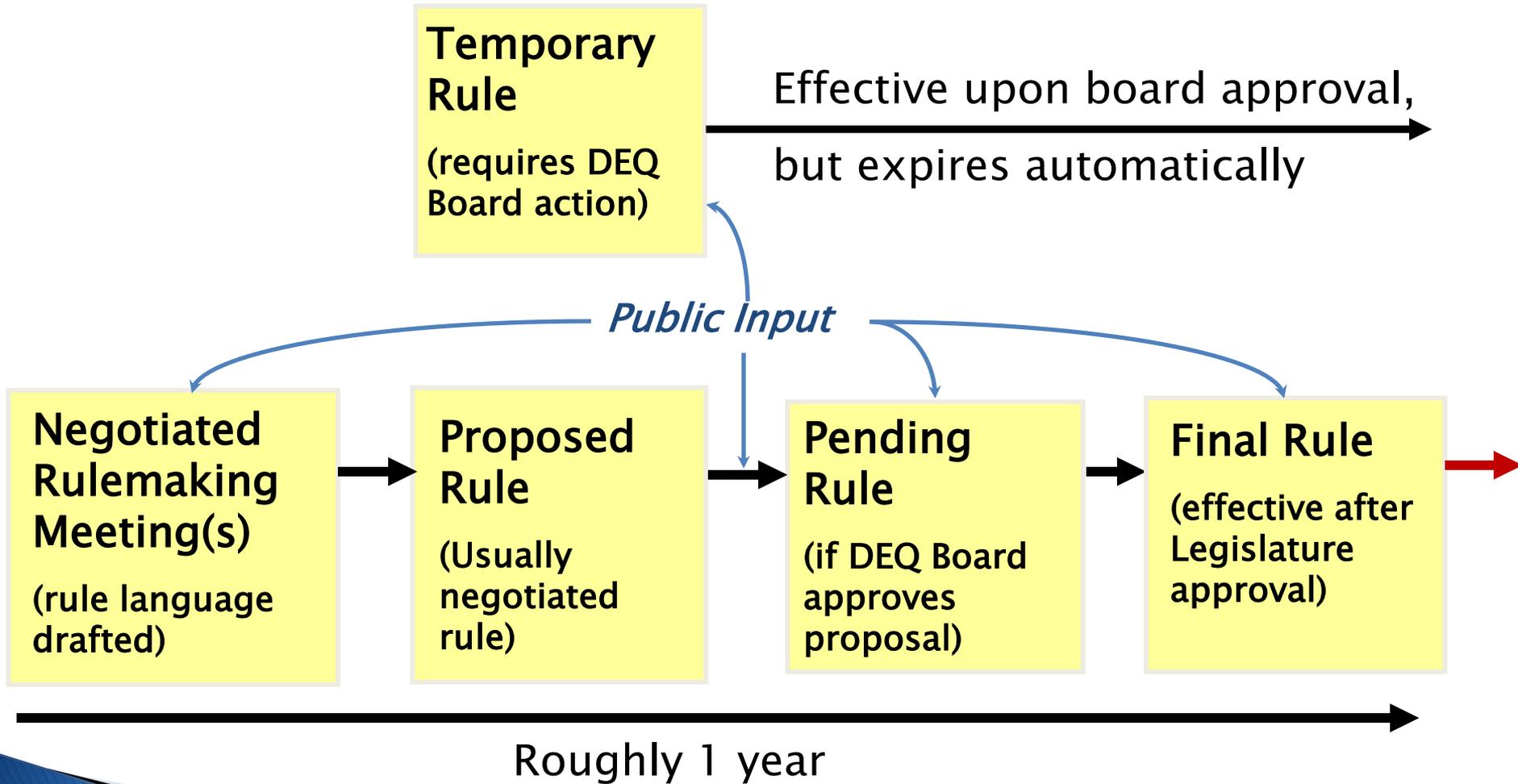
- If Governor finds a need to protect public health, safety or welfare, comply with deadlines in amendments to governing law or federal programs or confers a benefit
- Effective upon adoption by DEQ Board
- Expires at conclusion of next succeeding regular legislative session

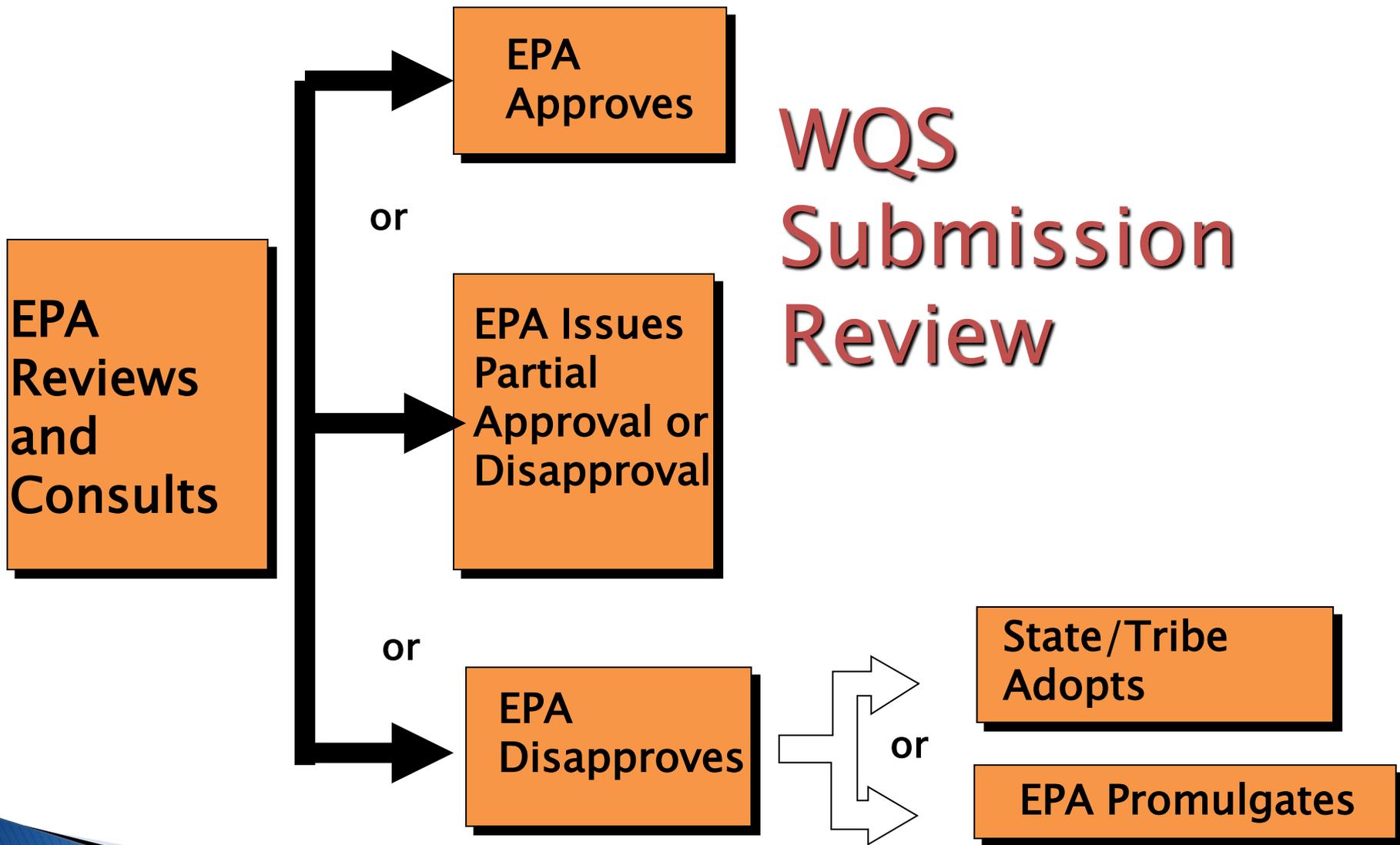
## ▶ Final

- A pending rule that has been submitted for review and is not disapproved by both houses of the legislature becomes final
- Final Rules are effective upon conclusion of that legislative session
- Final rules are codified in the Idaho Administrative Code (cited as IDAPA), published annually



# Rulemaking Oversimplified





# Key Messages – Review



- ▶ Standards are an annually changing compilation
- ▶ Collectively they are complex and multi-faceted
- ▶ It take a long time to change standards, at least a year, often much longer
- ▶ Idaho has primacy for WQS, while EPA reviews and recommends
- ▶ Parts of WQS are required, others are the State's prerogative – e.g. mixing zones, variances

# DEQ's List of Potential Items

- ▶ 5 broad categories
  - Housekeeping
  - Beneficial Uses
  - Criteria
  - Antidegradation
  - General Policies



# Housekeeping

- ▶ Remove “and Wastewater Treatment requirements” from definition of Designated Beneficial Use
- ▶ Corrections to water body identifications and use designation tables, correct numbering and typographical errors
- ▶ Correct footnotes used in toxic criteria table

# Beneficial Uses

- ▶ Add a paragraph, or maybe just a sentence to the intro paragraph mirroring federal regulations that says “in no case will waste transport or assimilation be a designated use for any water”, just to be clear. This is already in the definition of beneficial use, but may need to be added here.
- ▶ Revise definition of “seasonal cold” to better describe the use. Reference IDFG fisheries management descriptions.
- ▶ Add use categories for intermittent and man-made waters.
- ▶ Add language to clarify that most sensitive use is to be protected, and the corresponding criteria apply.

# Criteria

- ▶ In the statements about application of toxics criteria (a, b, and c) the words “waters designated for” occurs, implying these criteria do not apply to undesignated waters; should be changed to “waters protected for”.
- ▶ There is no statement about whether the human health criteria are for dissolved or total analysis of sample. While this likely only applies to metals and the practice has been to use totals, this should be explicitly stated.
- ▶ Identify in the table of criteria which of the human health criteria are carcinogens.
- ▶ Update aquatic life criteria for lindane, dieldrin, and copper.
- ▶ Adopt aquatic life water column criteria to replace 12 ng/L Hg criterion.



# Criteria

- ▶ For Aquatic Life Use Designations
  - Dissolved oxygen
  - Ammonia
  - Salmonid spawning
- ▶ For Recreational Use Designations
  - Consider adopting EPA's new 304(a) recommendations

# Antidegradation Policy & Implementation

- ▶ 4+ year effort to establish both policy (in rule) and implementation methods (guidance document)
- ▶ In progress



# General Policies

## ▶ Definitions –

- Hypolimnion
- Man-made Waterways
- Nonpoint Source Activities
- Waters and Waters of the State

## ▶ Potential Additions –

- Wetlands – define these; either within waters of the state (above), or separately.
- Define “viable aquatic life community” (used in Section 100.01.a).



# General Policies

- ▶ Application of standards to intermittent waters
- ▶ Violation of WQS
- ▶ Short term activity exemption
- ▶ Analytical procedures
- ▶ Gas supersaturation



# Moving Forward

- ▶ Written comments accepted until July 25<sup>th</sup>
- ▶ Next meeting July 30<sup>th</sup>

## Thank you

