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Department of  
Agriculture

Forest  
Service

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File Code: 2530-3

Date: September 27, 2010

Paula Wilson  
Idaho Department of Environmental Quality  
1410 N. Hilton  
Boise, ID 83706

Dear Ms. Wilson:

We wish to thank you for incorporating several of our previous comments into the Proposed Draft Idaho Antidegradation Rule (proposed rule 58-0102-1001). This once again demonstrates our excellent working relationships with IDEQ staff. Since our last comments, recent developments have created new concerns regarding this process that we would like to share.

The first is regarding the recent 9<sup>th</sup> Circuit Court of Appeals stormwater decision (*NEDC v. Brown*, No. 07-35266, 9<sup>th</sup> Cir. 2010). This legal decision may affect the Draft Antidegradation Rule review process your agency is proposing. For example, some Forest Service drainage structures that collect overland flow and which drain into jurisdictional water bodies may now be considered by some to constitute a point source of pollution. We request a discussion with IDEQ as to how this legal decision changes the scope of the draft Antidegradation Rule with regard to forest roads. Because this decision would affect all landowners we suggest that IDEQ convene a workshop for forest road managers from all ownerships to discuss this issue.

The second concern relates to comments made by the Environmental Protection Agency (EPA) in a July 28, 2010, letter on the Draft Antidegradation Rule. In section 051-06 Emergency Actions, EPA suggests changing the existing provision to “emergency actions and their impacts with regard to any degradation of water quality be addressed through enforcement discretion.” This language would expose emergency responders who need to quickly conduct activities such as unplugging culverts during flood events, building firelines, or installing debris torrent deflectors to protect structures following wildfires, with the possibility that an EPA enforcement official may make a discretionary call as to the legality of such actions. We feel this subjective standard would be unacceptable as it would expose such responder’s emergency actions, necessary to protect life and property, to “after the fact” second guessing. Accordingly, should this language be adopted it might cause responders to delay needed actions until they knew for certain whether EPA considered them appropriate. It is likely that this would reduce the ability for timely response and result in increased property damage or loss of life. We suggest keeping IDEQ’s existing language as presented in the latest Draft Rule.

Again we thank you for the opportunity to comment on the draft Idaho Antidegradation Implementation procedures. If you have any questions, please contact either Bruce Sims, Regional Hydrologist in the Northern Region, at (406) 329-3447 ([bsims@fs.fed.us](mailto:bsims@fs.fed.us)) or Rick



Hopson, Regional Hydrologist in the Intermountain Region, at (801) 625-5755  
([rhopson@fs.fed.us](mailto:rhopson@fs.fed.us)).

Sincerely,

/s/ Harv Forsgren  
HARV FORSGREN  
R4 Intermountain Regional  
Forester

/s/ Elizabeth A. Slown (for)  
LESLIE A. C. WELDON  
Regional Forester

cc: Andy Brunelle  
Rick G Hopson  
Bruce D Sims