

## Paula Wilson

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**From:** nsemanko@iwua.org  
**Sent:** Tuesday, July 27, 2010 4:56 PM  
**To:** Paula Wilson  
**Cc:** Larry Pennington; Barry Burnell; Karen Edwards  
**Subject:** Negotiated Rulemaking -- Water Quality Standards/Antidegradation Implementation, Docket No. 58-0102-1001-- Comments on Revised Draft No. 6

Dear Paula,

Thank you for the opportunity to provide these comments on behalf of the Idaho Water Users Association ("IWUA").

Both myself and our Water Quality Committee Chairman, Larry Pennington of North Side Canal Company in Jerome, have participated in the negotiated rulemaking process since it began. We have the following thoughts to offer on the latest draft.

1. Overall scope. As a general matter, the draft proposed rule far exceeds what is necessary to comply with the Clean Water Act. DEQ needs to determine what is actually necessary for purposes of compliance and limit the scope of the rulemaking accordingly. 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 of Title 39. If DEQ is unable or unwilling to restrict and limit the rulemaking in this manner, the Idaho 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.

2. Scope of waters covered. Consistent with legislative intent, as expressed in I.C. Sec. 39-3601, the antidegradation program must be limited to "navigable waters"/"waters of the United States", as required by the Clean Water Act. Express language recognizing this limitation should be included in the proposed rule.

3. Impaired waters. Water bodies that are included on the State's 303(d) list should be designated as Tier 1 waters. Impaired waters, which by definition do not meet water quality standards, obviously do not exceed water quality standards and therefore should not be designated as Tier 2 waters.

4. Tier 2 designations. Consistent with I.C. Sec. 39-3603, any Tier 2 designation must be supported by a finding that the quality of the water in question actually exceeds those levels necessary to support beneficial uses. Unless and until such a finding is made, the water body in question should not be designated as a Tier 2 water. Any "presumption" of Tier 2 status without actual data to support such a designation is contrary to the statute.

5. General Permits. Individual discharges should not be subject to additional antidegradation review when those activities are covered under a general permit. The revised language in proposed Rule 51.07 is too broad and uncertain on this question.

6. Role of BAGs. I.C. Sec. 39-3613 is clear that the Basin Advisory Groups (BAGs) "shall generally advise the director on water quality objectives for each basin and work in a cooperative manner with the director to achieve these objectives". In addition, I.C. Sec. 39-3614 states that BAGs shall "provide general coordination of the water quality programs of all public agencies pertinent to each basin" and "shall employ all means of public involvement necessary. . .and shall cooperate fully with the public involvement or planning processes of other appropriate public agencies". Obviously, BAGs, and the associated public involvement processes, are to be incorporated into all of the State's "water quality programs". The antidegradation program should be no exception. Therefore, as part of any decisionmaking process associated with the antidegradation program, DEQ should incorporate the BAGs and the public, similar to what has already been done for the TMDL program.

7. SRWs. SRWs should be treated the same as any other water bodies for purposes of making Tier 1 and Tier 2 designations under the antidegradation program, consistent with the comments above. In addition, a process for removing waters from the SRW list should be expressly provided for, consistent with the process for designating SRWs.

Thank you again for the opportunity to provide these comments and also for allowing us to participate in the negotiated rulemaking process.

Sincerely,

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