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June 24, 2020

Michelle Dale  
Idaho DEQ, State Office  
1410 N. Hilton Street  
Boise, ID 83706

Submitted via email: [michelle.dale@deq.idaho.gov](mailto:michelle.dale@deq.idaho.gov)

Dear Ms. Dale,

Thank you for the opportunity to submit comments on the Idaho Department of Environmental Quality's (IDEQ) Triennial Review issue papers.

Since 1973, the Idaho Conservation League has been Idaho's leading 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 30,000 supporters, many of whom have a deep personal interest in protecting water quality and aquatic habitat throughout Idaho.

We thank you for the opportunity to submit these topics and ask that you please send us subsequent material related to DEQ's Triennial Review. Our suggestions can be found following this letter. Please do not hesitate to contact me at 208-345-6933 ext. 23 or [awalkins@idahoconservation.org](mailto:awalkins@idahoconservation.org) if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Austin Walkins".

Austin Walkins  
Climate Campaign Coordinator

**§304(a) Recommended Criteria—Microcystins and Cylindrospermopsin**

We support DEQ adopting the EPA's §304(a) recommended criteria for microcystins and cylindrospermopsin.

**Ammonia WQS**

We support DEQ adopting the EPA's §304(a) recommended criteria for ammonia.

**Salmonid Spawning**

DEQ is asking the public whether Idaho should consider designating salmonid spawning (SS) in waters where it is an existing use. We believe the answer to this question is yes; however, we believe DEQ is obligated to do this - regardless of public opinion - based on the CWA. SS is a subcategory of 101(a)(2) uses under the CWA (i.e. - "fishable and swimmable" uses) and must be protected. If DEQ has knowledge of where SS is an existing use, then based on our understanding of the CWA, SS is a de facto designated use for that segment of water. The CWA requires that water quality standards be developed for "...a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses" (40 CFR § 131.3(i)). As such, DEQ must protect existing uses. If DEQ disagrees with this assessment, we request they provide justification supporting their rationale.

In addition, we believe DEQ should designate SS uses in all streams that have historically supported this use unless the State has completed a use attainability (UAA) for this use. This request is in line with the intent of the Clean Water Act (CWA), which allows uses to be designated in water quality standards for each water body or segment whether or not they are being attained (40 CFR § 131.3(f)).

If DEQ chose not to designate SS in waters where it is an existing use, our understanding is that they are prohibited from doing so "unless a use requiring more stringent criteria is added; or such uses will be attained by implementing effluent limits required under sections 301(b) and 306 of the [Clean Water] Act and by implementing cost-effective and reasonable best management practices for nonpoint source control" (40 CFR § 131.10(h)(1-2)).

We also note that, pursuant to the CWA's antidegradation requirements, existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected (40 CFR § 131.12(a)(1)). This provision is applicable regardless of whether or not DEQ chooses to formally recognize SS as a designated use in streams. Given this, we fail to see the value in DEQ choosing not to formally designate SS as a use where it exists in streams.

### **SS Use Designation for Lower Snake – Asotin subbasin**

We support DEQ initiating a rulemaking to designate SS for water bodies in the Lower Snake – Asotin subbasin, HUC 17060103.

### **Aquatic Life Mercury Criteria**

We believe DEQ should adopt the EPA's 304(a) aquatic life criteria for mercury. We are concerned with the extended timeline needed for DEQ to either a) develop their own scientifically-defensible criteria or b) develop a strategy to demonstrate that current human health criteria is protective of aquatic life. Both of these prolonged scenarios would needlessly delay the adoption of these criteria; whereas adoption of the EPA's 304(a) criteria would resolve this issue relatively immediately.

### **Temperature Performance Based Standards**

We ask that DEQ expand on the need to utilize performance-based standards for temperature, particularly given the fact that the CWA provides other alternatives for dischargers who are struggling to meet water quality criteria (e.g. - variances, site specific criteria).

Should DEQ choose to pursue a performance-based approach for temperature criteria, we believe that DEQ should incorporate triggers or thresholds values as an integral part to the criteria. These trigger values would be coupled with action items, and would serve to notify DEQ and the discharger when performance is trending in the wrong direction. This would ensure that the first detected performance issue is more of a notification of impending trouble, rather than signaling a discharge that will likely significantly impact aquatic species.