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Director

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MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Environment, Energy & Technology Committee

FROM: Katharine A. Gerrity, Principal Legislative Research Analyst, LSO

DATE: June 30, 2011

SUBJECT: Department of Environmental Quality

IDAPA 58.01.02 - Water Quality Standards (Docket No. 58-0102-1103)

The Department of Environmental Quality submits notice of proposed rule at 58.01.02 - Water Quality Standards. According to the Department, during the 2011 legislative session, certain portions of the Department's antidegradation procedures were rejected and certain portions were approved. The Department states that the legislature also adopted House Bill 153 that revised state law to include sections addressing antidegradation, including sections regarding the definition of degradation, the treatment of general permits, the identification of Tier II waters and insignificant discharges or activities. The Department notes that the new sections added to state law by HB 153 correspond to the portions of the rule that were rejected. The Department states that the rulemaking is necessary to make the language on implementation of antidegradation procedures in Idaho's water quality standards complete and consistent with changes in state law brought about by passage of HB 153. According to the Department, the rule changes specifically include the following: Defining "degradation or lower water quality" and "general permit," revising provisions regarding outstanding resource waters for consistency with HB 153, inserting language regarding application of antidegradation to general permits, identification of Tier II waters, and insignificant activity or discharge, and deleting reference to special resource waters and the designation of waters determined to be special resource waters.

The Department states that the rule also includes a housekeeping revision that is necessary due to the EPA's disapproval of a prior rule docket from 2001. That rule docket changed the aquatic life use designations for eight Boise River tributaries. The Department notes that in late 2004, the EPA disapproved all eight changes for those waterbodies. This rulemaking proposes to reinstate the use designations for the eight Boise River tributaries that were in place prior to 2001.

Negotiated rulemaking was not conducted. The Department confirms that the standards included in this proposed rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity not regulated by the federal government. The rulemaking appears to be authorized by sections 39-105 and 39-107, Idaho Code, as well as Chapter 36, Title 39, Idaho Code, and appears to be consistent with HB 153 from the 2011 legislative session.

cc: Department of Environmental Quality
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