Done am 4/2/03

SKAGIT COUNTY CATTLEMEN'S ASSN

Skagit County Cattlemen's Association
27589 Minkler Rd.
Sedro Woolley, WA.98284
360-856-1199

Department of Ecology
Water Quality Program

FEB 26 2003

Feb. 22, 2003

Susan Braley
Washington State Dept. of Ecology

RE: Proposed revisions to the Surface Water Quality Standards

1. Proposal lacks a definition of science.
2. Proposal does not adequately address the natural and background thermal conditions consistent to individual streams. Proposal only considers one size fits all. This is unrealistic for Washington State.
3. Draft references are dependent on assumptions and opinions and completely fails to meet science criteria listed in WAC. 365.195.900-925 for Best Available Science.
4. Proposal puts fish before people requiring farmers to change natural stream conditions into unattainable modeling conditions which could cause major harm to the environment.
5. Temperature Criteria- Proposal failed to even consider Temperature BAS that was concluded in a DOE Grant study (Sherman Creek Implementation Plan, Ferry County WA.) where DOE was one of advisors along with other government agencies that verifies the surrounding air temperature is the major determining factor of that creek or rivers water temperature. Studies in Skagit County Washington replicate this conclusion.
6. Proposed new temperature standards are naturally unattainable. Note- (see Larson, Larry and Pat Larson. 2001).
7. Dissolved Oxygen- DOE standards are not field tested. Example - A creek in Skagit County fails badly DOE standards for dissolved oxygen but yet this very creek is one of the highest fish producing creeks in Washington State. New standards will not benefit fish or Agriculture.
8. Proposal fails to provide cost of implementation of these questionable regulations.
9. This proposal must not be adopted. Failure to consider and use replicated field tested science that meets criteria in WAC which is readily available, will only cause irrevocable harm to our Washington environment.

Sincerely,

Norman Mitchell

Norm Mitchell, President
Skagit County Cattlemen's Association

Note: Larson, Larry and Pat Larson. 2001. The Natural Heating and Cooling of Water.

— Done am 4/2/03 —

DAVID STUECKLE

Department of Ecology
Water Quality Program

MAR 06 2003

1512 Green Spot Road
LaCrosse, WA 99143
March 2, 2003

Susan Braley
Dept. of Ecology
PO Box 47600
Olympia, WA 98504-7600

Dear Susan Braley,

The proposed water quality rules would require standards that cannot be met under natural conditions. I oppose the DOE making rules that even Mother Nature cannot abide by. The water quality standards being proposed by the Department of Ecology are not based upon best available science. There is no way that farmers can improve streams to an unattainable laboratory-defined optimal condition. Some of the temperature standards are not even reachable under natural conditions. I oppose the proposed standards. The Department of Ecology and Governor should pay attention to the Competitiveness Council's report that recommends streamlining government regulations rather than passing new ones that are unattainable. How can business survive in Washington?

Sincerely Yours,

David J. Stueckle

David J. Stueckle

Done

cm 4/1/03

RANDY GOOD

Department of Ecology
Water Quality Program

MAR 05 2003

Susan Braley
Dept. Of Ecology
P.O. Box 47600
Olympia WA. 98504-7000

February 3, 2003

RE: Comments regarding Revising of State Surface Water Quality Standards.

The Washington State Senate Land Use and Planning Committee just last week took an enormous amount of comments from county officials and others addressing the inadequacies of government agency science. Most of the listed references in these documents do not meet the requirements of Best Available Science listed in WAC. 365. 195.900-925. There is no definition of science listed in the documents.

Temperature criteria: The Dept of Ecology was on the advisory group that supervised the Sherman Creek Implementation Project Study in Ferry County, Washington. The study concluded that high stream temperatures are closely related to surrounding air temperatures concluding shade does not cool water. Science entered into this record for the EIS supports the Sherman Creek report. This contradicts the requirements proposed in this document.

In Skagit County DOE spent thousands on a helicopter flyover using infrared to collect water temperature data. At a public meeting DOE employees stated they could only fly over on hot sunny days. What a waste as infrared, records only the temperature reflection of top molecules not the true temperature of the water body.

The documents themselves make statements addressing inadequate science data leaving us all wondering how do you make regulations. The DOE is using assumptions and opinions from models without sound science which could cause adverse affect on the environment.

Dissolved oxygen: Manser Creek in Skagit County is one of largest fish producing creeks in Washington State, but the creek fails DOE Dissolved oxygen standards miserably. So again apparently DOE failed to tell the fish what was best for them in Manser Creek.

This document is not based on field tested science. Many comments and references were previously entered into the EIS process that met the criteria for BAS in WAC 365.195.900-925. It is obvious these references were not considered for this document.

Criteria for Agriculture Water Supply: The Ecology working group opposed setting water supply criteria for Agriculture we agree.

With concerns now being expressed to the Senate and items addressed above any water quality requirements and revising of RCW's must be delayed until sound science that meets the WAC is addressed.

Randy Good

Randy Good
25512 Minkler Rd.
Sedro Woolley, WA. 98284
360-856-1199

Done cm 4/1/03 –

ROSE RANCH
[redacted]

February 25, 2003

Department of Ecology
Water Quality Program

FEB 28 2003

Robert P. & R. Jane Rose
Rose Ranch
6847 U S Hwy 101
South Bend, WA 98586

Susan Braley
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

RE: DOE's proposed Water Quality Standards

We vehemently oppose the water quality standards being proposed by the state Department of Ecology. These standards are not based on best available science; they are based on modeling of laboratory conditions. Some of the temperature standards are not even reachable under natural conditions. Farmers can not improve streams to unattainable, laboratory-defined optimal conditions that even Mother Nature can't meet. These proposed standards are based on falsehood. Burn them.

Sincerely,

Robert P. Rose
R. Jane Rose

Robert P. & R. Jane Rose

cc: The Honorable Washington State Senator Mark Doumit
The Honorable Washington State Representative Brian Hatfield
The Honorable Washington State Representative Brian Blake

Done

cm 4/1/03

WHITMAN COUNTY
W MARK STOREY

Comments By:	**W. Mark Storey, PE** Whitman County Engineer
Date:	**January 28,2003**
Regarding:	**WRIA 34 Water Quality Use-Based Criteria**

Upon researching the proposed change from a "Class-based" format to a "Use-based" format for water quality standards, I thought it would be a definite step in the right direction. However, specific criteria for determining the compliance with the proposed standards don't seem to reflect the current uses in our area (WRIA 34). Although some of the changes seem to make sense based on evolving science (ie- E. Coli vs. Fecal Coliform), others don't seem to reflect the realities of the current uses or even of the historical conditions of the streams (prior to anglo-european settlement and land management). The criteria that seems to need more scrutiny is water temperature and dissolved oxygen. Current measurements in our local streams suggest that the criteria for these variables are unattainable. Recent discussions with some of the local Washington and Idaho Fish and Wildlife biologists suggest that the proposed criteria probably would not be attainable even under natural conditions. They further indicate that the few Salmonids currently occupying the Palouse River Watershed have been introduced. To me this is fairly strong evidence that the natural temperature and dissolved oxygen of the Palouse region waters could not meet the proposed criteria. Does it really make sense to arbitrarily assign a use rating of "Salmon Spawning and Rearing" or even "Salmon Rearing Only" to any of the water within WRIA 34? A more scientific approach to specific watersheds would be to perform some minimum level of monitoring prior to arbitrarily assigning use based criteria independent of the natural watershed characteristics.

Specific requests for the proposed use-based criteria:

- Allow for future fine-tuning of beneficial uses in watersheds, including more realistic numerical criteria to match the existing uses. It seems there are a fairly limited number of use choices when considering the actual diversity of current uses in our region.
- Needs of aquatic species will **not** be met, even under natural conditions. Numeric criteria based on biological needs will not be attainable, and targets must, at a minimum, reflect natural background of the watershed. I would further suggest additional leeway for the agricultural and grazing uses.
- Monitor natural conditions of at least a sampling of the local waters to determine what realistic goals are for the watershed.

Mark Storey

Received 1/28/2003
Spokane Public Hearing
Bev Poston – Hearing Officer

Done
cm 4/1/03

ROBYN MEENACH

Robyn Meenach
12609 S. Valley Chapel
Valleyford, WA 99036
509-448-9443
rmeenach@wsfb.com

Hearing—WA State Water Quality Standards
Spokane, WA Jan. 28, 2003

I do not support the proposal for water quality standards from the state Department of Ecology. These standards are fish-centric and water quality standards are increased. It would be possible for DOE to require farmers to improve natural streams to laboratory defined optimal conditions. Specifically, my objections are:

1) **Put fish before people**
This doesn't pass the giggle test to say that these new rules are not created with fish in mind. The new use-based approach is fish-centric. The standards are designed to bring the waterbodies as close as possible to optimal conditions for fish growth and survival; conditions that were derived by studies in the laboratory, not in nature. Furthermore, these proposed rules contradict the recommendations contained in the Governor's Competitiveness Council report, which were to streamline regulations, not add more onerous environmental regulations.

2) **Not all the proposed regulations have credible data to support changes in the standards**
For example, use-based maximum temperature limits are largely without scientific support. The Ecology review of temperature cautioned on this problem stating, "Thus while serving as good general guidelines, the spawning dates used in this analysis should not be relied upon too heavily to set state-wide criteria for incubation". Yet the standards for both temperature and oxygen were set with fixed dates.

Received 1/28/2003
Spokane Public Hearing
Bev Poston - Hearing Officer

3) **<u>The use-based regulation uses optimum fish growth to set standards, whereas the class-based regulations set standards to prevent impaired fish growth.</u>**
This change in endpoints is new and represents a significant departure for previous regulatory approaches. Where more sensitive existing uses are identified in a waterbody than are designated under a class, the more protective criteria will automatically be applied (as is the case with bull trout (char)). However, standards for bull trout have not yet been fully developed.

4) **<u>Standards are extrapolated from laboratory studies</u>**
Laboratory studies can hold conditions constant in experimental tanks, but fish live in a diverse environment. In extrapolating from laboratory conditions to the natural environments, Ecology purposefully excluded the consideration of microhabitats. Therefore, the standards disregard behavior in which fish seek favorable microhabitats during periods of sub-optimal water quality.

5) **<u>Blanket rules across the state—one size fits all—West and East</u>**
Under the use-based standards, many eastside streams will violate the temperature standards in the summer, some by as much as 15 degrees C, whereas Westside streams will seldom be in violation. Air temperature mostly controls the seasonal patterns of temperature in streams and lakes, therefore streams on the westside of the Cascades have a smaller range of temperatures than occurs in eastside streams. The difference in compliance between the Westside and Eastside streams is almost wholly a result of the natural temperatures pattern.

6) **<u>Seasons are fixed</u>**
Attempting to regulate nature to comply with temperature and oxygen standards between fixed dates of September 15 to May 31 is not only inappropriate, it is ludicrous. Clearly the salmon have more sense than the regulators since studies show that fish do not spawn every year on September 15, but when necessary, will wait until temperatures lower.

7) **<u>The oxygen standard is overly restrictive and does not provide meaningful improvement in fish protection</u>**
The new criteria would result in more frequent water quality violations during summer high temperatures because warm water does not absorb as much oxygen as cold water does. Most potential violations of oxygen standards could likely occur near September 15, when the oxygen standard increases to adjust to fish spawning. This standard is overly restrictive and does not provide meaningful improvement in fish protection. Again, fish do not spawn until temperature (and thus oxygen levels) are appropriate.

8) **<u>Temperature standards become more restrictive under the new regulations, requiring lower temperatures, as much as 4 degrees more stringent for char</u>**
Standards are to be representative of the main waterbody. Isolated thermal refuges, associated with ground waters and cold-water springs, cannot be included in calculating the water temperature. This exclusion of thermal refuges ignores an important way that fish avoid high temperature. These standards are too conservative.

9) **<u>Antidegradation Policy--If a waterbody is not functioning as a laboratory defined optimal condition then human activity can be restricted</u>**
Under the new regulations (173-201A) "the water quality necessary to protect existing and designated uses of a water must be maintained and protected", but don't forget that the "fish use" is primary and most restrictive. Furthermore, the new policy also states, "human actions are not allowed to further lower the water quality" and "the department will take appropriate and definitive steps to bring the water quality back to levels which meet the water quality standards". Contrast this with language that was deleted from our current regulations, "Existing beneficial uses shall be maintained and protected…" and "Whenever the natural conditions of said waters are of a lower quality than the criteria assigned, the natural conditions shall constitute the water quality criteria". Please define "appropriate and definitive steps", and tell me how much they will cost. Farmers cannot afford hundreds of thousands of dollars to pay for a use-attainability analysis.

DOE has not yet completed the cost benefit analysis, so the public is unable to comment on it in relation to the proposed rules. The regulatory fairness act (RCW 19.85) was enacted to safeguard against the "disproportionate impact on the state's small businesses."

Done
cm 4/1/03

RHODERICK MCINTOSH [redacted]

Water Quality Standards
3/28/2003
Rhoderick McIntosh

I am here in hopes that we can work together .I feel that producers are being asked to meet standards that are not reasonable or attainable. We have not seen proof that the standards that are being required to attain have ever existed. For these reasons, I feel that our time could be better spent making improvements in all areas of the proper natural function instead of zero tolerance.

As a citizen of Whitman County and a property owner, I look forward to working with all groups to Preserve our Custom, Culture, Economy and our Private Property Rights as stated in the Constitaution and in many laws.

Rhoderick McIntosh
351 McIntosh Rd.
Pullman WA 99163

Received 1/28/2003
Spokane Public Hearing
Bill Postma - Hearing Officer

Done — cn 4/1/03 —

LAVONNE & HOWARD HUFFMAN

1206 W. 5th St
Port Angeles, Wa.
98362

Department of Ecology
Water Quality Program
FEB 19 2003

Dear Susan Braley,

We are learning about a meeting you had in Port Angeles about adding a mandatory ruling about storm water, to the Washington Administrative Code Manual. This would be an added burden to the taxpayers, schools, businesses, and city. This is not needed.

The meeting was not well publisized so that many people were not aware of it. The storm water ~~only~~ appear only a few times a year, mostly in the winter so why would that need to be made mandatory for the city of Port Angeles when 18 miles away the city of Victoria is dumping millions & millions of raw sewage into the Strait of Juan De Fuca every day polluting it beyond discription.

Your "oversight" with this storm water rule would just be too much for people here who are below poverty level now. Electricity has risen and is going up again, the landfill is closing, so that means the garbage fee is going up. Then gas, groceries, water, etc. is going up. We cannot afford these added storm water fees. Please do not add the storm water codes to your W.A.C. It is just to expensive for our City and the

taxpayers who are already in dire straits from the heavy burden of taxes. We cannot take on any more fees.

I pray you must not put these storm water codes into the state's financial woes.

Sincerely against storm water rules

Lavonne & Howard Huffman
1206 W. 5th ST
Port Angeles, Wa, 98363
Phone: 360-452-1106

FRIENDS OF THE WHITE SALMON RIVER

Phyllis I Clausen
37 Stoller Road
Trout Lake, WA 98650

E-mail: clausen@gorge.net
Phone: (509) 395-2243
Fax: (509) 395-2016

Department of Ecology
Water Quality Program

FEB 27 2003

February 24, 2003

Susan Braley
Surface Water Quality Standards
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600
Fax: (360) 407-6426

Re: Washington's water quality standards, Chapter 173-201A, Washington Administrative Code

Dear Ms Braley:

Friends of the White Salmon River (FWSR) appreciates this opportunity to comment regarding proposed amendments to Washington's water quality standards contained in Chapter 173-201A of the Washington Administrative Code.

FWSR organized in 1976 to oppose a plan for seven additional dams on the White Salmon River. We are a local group that works diligently for river protection and for restoration of the anadromous fish runs once present in this river. Removal of Condit Dam is the best biological option for accomplishing these goals. We strongly support dam removal.

The update of the state's water quality standards which DOE is undertaking is a requirement of the Clean Water Act. There are many of the state's rivers where dams will be approaching the end of their lives in the near future; so suitable language must be included in the updated regulations to enable their removal. Current regulations are inadequate to address this matter. Following are our recommendations:

1) Allow short and long-term modifications in order to allow for important river restoration projects such as dam removals. We support Ecology's current proposal that allows for short-term lowering of water quality standards to accommodate major watershed restoration projects that are in the public interest, such as dam removals (WAC 173-201A-410). However, the rule does not provide for the long-term impacts to a use of a water body that could occur in the case of a dam removal (such as impacts to a non-native fishery that has thrived in an unnatural reservoir created by a dam). Ecology should clarify that where necessary to benefit the river ecosystem and when in the public interest, long-term/permanent impacts to certain uses may be permitted.

2) Adopt an antidegradation policy that allows for important river restoration projects such as dam removals. The Clean Water Act requires states to develop an antidegradation policy to ensure that currently healthy waters are not degraded. Healthy waters protect irreplaceable ecosystems and

public health. It is also much easier and cost-effective to prevent pollution at its source than to clean it up later. Consistent with the request above to modify WAC 173-201A-410, the antidegradation policy also should allow for modifications to uses to accommodate major watershed restoration projects such as dam removals (WAC 173-201A-300). Ecology should clarify that where necessary to benefit the river ecosystem and when in the public interest, long-term impacts to certain existing beneficial uses may be permitted.

I represent FWSR on the White Salmon River Watershed Management Committee. FWSR recognizes that the changes we are recommending for the state's water quality standards will benefit our watershed. But these benefits will also apply to watersheds, and thus to the public interest, state-wide. Therefore, we urge that the Department of Ecology adopt our recommendations.

Sincerely,

Phyllis I. Clausen

Phyllis I. Clausen
River Steward

37 Stoller Road, Trout Lake, WA 98650
Fax No. 509-395-2016
Phone No. 509-395-2243
e-mail: clausen@whitesalmon.net

Phyllis and Victor Clausen

Fax

To: Susan Braley DOE
From: Phyllis Clausen, FWSR
Fax: (360) 407-6426
Pages: 3
Phone:
Date: [redacted] 2-24-03
Re:
CC:

☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Enclosed are the comments of Friends of the White Salmon River regarding proposed amendments to Washington's water quality standards, Chapter 173-201A.

FRIENDS OF THE WHITE SALMON RIVER

Phyllis I Clausen
37 Stoller Road
Trout Lake, WA 98650

E-mail: clausen@gorge.net
Phone: (509) 395-2243
Fax: (509) 395-2016

February 24, 2003

Susan Braley
Surface Water Quality Standards
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600
Fax: (360) 407-6426

Re: Washington's water quality standards, Chapter 173-201A, Washington Administrative Code

Dear Ms Braley:

Friends of the White Salmon River (FWSR) appreciates this opportunity to comment regarding proposed amendments to Washington's water quality standards contained in Chapter 173-201A of the Washington Administrative Code.

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The update of the state's water quality standards which DOE is undertaking is a requirement of the Clean Water Act. There are many of the state's rivers where dams will be approaching the end of their lives in the near future; so suitable language must be included in the updated regulations to enable their removal. Current regulations are inadequate to address this matter. Following are our recommendations:

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2) Adopt an antidegradation policy that allows for important river restoration projects such as dam removals. The Clean Water Act requires states to develop an antidegradation policy to ensure that currently healthy waters are not degraded. Healthy waters protect irreplaceable ecosystems and

public health. It is also much easier and cost-effective to prevent pollution at its source than to clean it up later. Consistent with the request above to modify WAC 173-201A-410, the antidegradation policy also should allow for modifications to uses to accommodate major watershed restoration projects such as dam removals (WAC 173-201A-300). Ecology should clarify that where necessary to benefit the river ecosystem and when in the public interest, long-term impacts to certain existing beneficial uses may be permitted.

I represent FWSR on the White Salmon River Watershed Management Committee. FWSR recognizes that the changes we are recommending for the state's water quality standards will benefit our watershed. But these benefits will also apply to watersheds, and thus to the public interest, state-wide. Therefore, we urge that the Department of Ecology adopt our recommendations.

Sincerely,

Phyllis I. Clausen

Phyllis I. Clausen
River Steward

Public Comm
Proposed Revisions to the Surf
Public comment period

AM 4/3/03

ALISON MIELKE [redacted]

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

☒ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Alison Mielke

Address: 180 Nickerson St #202
Seattle, WA 98109

E-mail Address: alison-mielke@sierraclub.org

Comments:

The main concerns with the proposed standards are the absence of fish migration as a designated use and the many loopholes which give the Dept of Ecology a disturbing level of discretion in applying the regulations. Considering the court-established connection between water quality and water quantity, the omission of migration as a use ignores the impact that water quantity, a factor in water quality, plays in migration, a key segment of the fish life cycle. Throughout the proposed rule, Ecology is given too much discretion, particularly in relation to variances and exemptions. Examples given of "overriding public interest" are inadequate. How can the precedence of either water quality or affordable housing or social services be decided? It's apples and oranges, for other important causes. Adopting EPA standards lower than current Ecology standards is not warranted, just because the EPA allows such lowering. When the Bush administration is already weakening the Federal Clean Water Act, this is

Received 2/4/2003
Seattle Public Hearing
Bev Poston – Hearing Officer

Susan Ianniello
PO Box 1456
Tonasket, WA 98855

Susan Braley
WA D.O.E.
PO Box 47600
Olympia, WA 98504-7600

SUSAN IANNIELLO

2/3/03

Department of Ecology
Water Quality Program
FEB 28 2003

Dear Ms Braley,

I am writing concerning the DOE's proposes to amend WA. State's quality standards, Chapter 173-201A of the WA. Administrative Code. These standards are the foundation of water quality protection for our states rivers, wetlands & marine waters. They provide baseline criteria for water quality permits & clean up plans. The proposed amendments would significantly lessen these protections. If a water quality problem falls outside the numeric criteria, it would not be covered under the proposed regulations. The general narrative requirement that water quality be adequate to support each classification would be eliminated.

Our water is directly related to our quality of life as human beings, on this planet at this time. Being from Okanogan County, I witness <u>many</u> people, each year, traveling to this area, to experience the clean, pristine wonders of nature. It provides a sense of well being to thousands & <u>sustainable income</u> to alot of people. The proposed amendments involve elimination of 2 specifically protected categories: salmon migration & recreational use. This would aid

in elimination of the state's duty to protect instream flows. Recreational use is often dependent on adequate flows.

Lessening water quality protections is not an intelligent move. Our natural resources, which are our source of life, are far to often put on the back burner for the sake of private profits. More attention to the greater balance of nature + therefore benefit to all is needed.

I strongly disagree with these proposed amendments, + any other amendments the would lessen our water quality. Abundant, clean water is a foundation of healthy human existence. Please dont compromise this.

Thank you for your time + efforts,

Susan Danniello

MICHAEL MAZZETTI 4/3/03

Michael "Buffalo" Mazzetti
P.O. Box 433
Tonasket, WA 98855
(509) 485-3912 office
(425) 785-9559 mobile
e-mail: mbuffalo@televar.com

Susan Braley
Surface Water Quality Standards
Washington State Dept. of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

March 7, 2003

Department of Ecology
Water Quality Program
MAR 07 2003

RE: Public Comments on Department of Ecology amending Washington's water quality standards, which are set forth in Chapter 173-201A of the Washington Administrative Code.

Dear Ms Braley,

Since these standards are the foundation of water quality protection for Washington's rivers, wetlands and marine waters, providing baseline criteria for water quality permits and cleanup plans, I feel it is imperative to comment on your proposed changes. In my opinion, the proposed amendments will significantly lessen the protections afforded to Washington's rivers and streams by current law. Changing these protections would constitute a violation of our basic rights afforded by the Washington State Constitution, Washington State Law and the SEPA statutes to clean water. This would cause irreparable harm to the citizens of Washington State and our waters.

The rivers and streams of Washington State are special to me. I love and use them regularly in my daily life for swimming, boating, rafting and by hiking and picnicking next to them. Included amongst these rivers are the Okanogan, Methow, Similkameen, Columbia, Wenatchee, Icicle, Twisp and Chewach. Many streams that I often frequent are the Sinlahekin, Tunk, Antoine, Meyers, Toroda, Beaver and Nespelum Creeks. I care deeply about these waters and regret you are going to cause them to be degraded, and reduce my ability to enjoy them in the condition in which they are presently protected. The Proposed Change from a Class-Based to Use-Based System Must Continue to Protect All Uses.

In going from a classification system to a use-based system, the proposed standards limit general protections for rivers and streams. The new standards must be written in a way that fully protects all uses as they were protected under the original standards. This is very important or we will degrade the water quality as we now enjoy and know it.

First, the new standards eliminate general, qualitative protections for different kinds of uses of water bodies (for example, fish and wildlife, water supply) and replaces them with much narrower quantitative factors (for example, temperature requirements, toxic metal concentrations). Those qualitative protections must remain in place. The standards should state in no uncertain terms that fish and wildlife, water supply and other uses of our state rivers are

protected. The anti-degradation standard (discussed below) is not enough. There must be general protection for all uses, even if they are not attainable right now due to existing pollution problems.

Adding injury to insult, the new standards also completely eliminate protection for the specific categories of RECREATION and SALMON MIGRATION. (This seems incredible, but it's true.) Ecology must reincorporate these uses into the amendments.

The Anti-Degradation Standard Must Be Strengthened not diluted. The new standards would alter the anti-degradation standard, the single strongest protection of Washington's waters. Ecology should amend the new anti-degradation standard to:

(1) State clearly that ALL general water uses are protected (not just the numeric criteria), as discussed above.

(2) Tighten the "overriding public interest" requirement, and specifically eliminate the proposal to allow our rivers to be degraded on the basis of economic factors. Economics should be viewed in the long term, and on a basis of what is best for water quality for future generations. We cannot allow the water to be degraded because of the promise of short term jobs or for the economic interests of a few people.

Eliminate the requirements for "public support" to designate "Outstanding Resource Waters" (ORW)). These are pristine waters that should easily qualify for protection. But, under Ecology's proposal it will be very easy for would-be water polluters to politicize the process and block ORW designation.

4. Exemptions for the timber and agricultural industry must be eliminated. The worst polluters in Washington right now are "non-point" source polluters - especially the timber industry and the agricultural industry. While these activities are exempt from water quality permits, there is no reason they should be exempt from water quality standards. Ecology must explicitly require non-point source polluters to meet the requirements of the water quality standards..

5. Loopholes Must Be Eliminated or Tightened. The proposed amendments set forth a whole suite of new methods by which a polluter may obtain exemptions from the water quality standards. These loopholes should be eliminated or tightened up. They include the "overriding public interest" exemption, short-term modifications, variances, site-specific criteria, use attainability analysis, and water quality offsets. With regard to the "overriding public interest" exemption, I have seen a case in point here in Okanogan County over the last 12 years. Battle Mountain Gold Company, in its attempt to start the first large scale, cyanide leach open pit gold mine in Washington State, admittedly spent Millions of dollars to convince this community that pollution of water was acceptable if we could have the 80 "local" jobs they were offering. I feel the "overriding public interest" would be sold to the highest bidder, the one who was able to purchase the biggest ad campaign promulgating their position. That would be unfortunate. By creating these loopholes, the focus of the standards shifts from compliance with the goal of protecting water quality to figuring out how to get around that goal.

6. Transboundary Pollution is a serious issue. We have special problems in eastern Washington with water pollution crossing the border from other states and Canada. Ecology should specifically require that surface waters entering Washington state from other jurisdictions must comply with our water quality standards. Many of the rivers, streams and creeks I use are in fact Transboundry waters. They need to be protected and maintained at their highest purity and quality...

Our community here in the Okanogan depends on tourism dollars more and more. Fishing, generates one of the biggest income flows in the community during summer months. Recreation, including boating, rafting, and swimming bring in substantial amounts of capital for us. The Methow river supports many families including my own, with white water rafting and similar activities. We cannot discount these activities, nor jeopardize them for the sake of "progress" and industrialization. Water quality is too precious, and Water is more precious than Gold!

Respectfully Submitted,

Michael "Buffalo" Mazzetti

Michael "Buffalo" Mazzetti
Tonasket, WA 98855

P.S. It is interesting to note, that while I attended a presentation on these changes in Wenatchee last month, one of the DOE representatives made the following comment. When I asked how the DOE could have given a "permit to pollute" to Battle Mountain Gold Company a few years back and then have this permit rescinded by the Pollution Control Hearings Board. The DOE rep stated to me that "politics were at play", and there was a "lot of pressure on DOE" to grant the permit to BMG. That gave me pause as to why I bothered to drive over 125 miles (one way) to Wenatchee to attend this hearing or why bother to even submit comments if the DOE would be ultimately making decisions based on "pressure" instead of science. As an American citizen, I would hope that your final decisions will be indeed based on what is best for the future generations of our children and the quality of life here in Washington state, not the pressure you receive from various industrial interests.

LYNN BERGERON ATK

Department of Ecology
Water Quality Program

MAR 11 2003

To: Susan Braley
Surface Water Quality Standards
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

From: Lynn Bergeron
983 Snowden Rd.
White Salmon, WA 98672
lynnb@gorge.net
509-493-3453

RE: PROPOSED WATER QUALITY STANDARDS

I expect the Department of Ecology to uphold the Clean Water Act; to enact and modify water quality standards to protect public health, keep our waters clean, and preserve wildlife and natural ecosystems. I do NOT want you to lower water quality standards anywhere, anytime, under any circumstances - especially to suit the desires of industries taking advantage of an economic climate where people are yelling, "jobs, jobs, jobs!"

My income is well below the poverty level. For many of us, it is difficult to earn a living wage. More, and better paying jobs would be nice, but I'm not dumb enough to sacrifice my health to have that. Clean air, clean water and food free from contaminates are basic to health and more important than money.

The economic crisis that the states and nation are facing is not the result of regulations to protect water quality. Lowering water quality standards isn't going to fix anything. What it will do is increase corporate profits and degrade our health and our environment.

ANY NEW WATER QUALITY STANDARDS YOU PROPOSE SHOULD ONLY BE STRONGER WATER QUALITY STANDARDS. WE CAN'T GO BACKWARDS IN THIS -- THAT WOULD BE INSANE! Please, be courageous and do the right thing.

Sincerely,

LBergeron

Lynn Bergeron

PAT ARNOLD

AJK

FAX

To: Susan Braley
Washington State Department of Ecology
FAX: 360-407-6426

From: Pat Arnold
Phone: 509-395-2233

Date: Tuesday, March 04, 2003

Cover + two

Subject: Comment on proposed water quality standards

472 Sunnyside Road
Trout Lake, Washington 98650

Susan Braley
Surface Water Quality Standards
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Fax: (360) 407-6426

Dear Ms. Braley:

I am writing to comment on the proposed changes to the water quality standards, Chapter 173-201A, Washington Administrative Code. I support your efforts to update this WAC. I generally support the change from a "class-based" system to a "used-based" system. I agree that the "use-based" approach is more practical and workable.

In our area there is the possibility of dam removal on the White Salmon River. This causes me to look with some interest at the proposed language on antidegredation, short term modifications, and WRIA 29. I don't think the proposed language will be workable.

It is likely that dam removal will in some cases cause changes in use which will not be reversible. For example, you list the White Salmon in WRIA 29 with primary use "Char". If the dam is removed, the assumption is that salmon would begin once again to use the river, which would presumably result in a change of Aquatic Life Uses. In most cases the standards are the same, but the Aquatic Life Temperature Criteria are different (Table 200(1)(c), and others may be as well.

Other uses will also change irreversibly, such as recreational use on the pool behind the dam, for example, which will disappear forever and be replaced by other recreational uses, which might change the Water Contact Use from Primary to Secondary.

I would suggest then, that Part III, Antidegredation, be amended to allow for a change of use. WAC 173-201A-310 says that the existing uses of a water must be protected and maintained. If this is to be taken literally, no change of use would be permitted, which might rule out all major restoration activity.

Perhaps an addition could be made that allows for a change of use with conditions such as appropriate permitting and consistency with SEPA requirements. I don't know enough about this process the suggest exact words, but I believe you must leave room for the possibility of a change of use following a monumental event, either natural or manmade.

Furthermore, under 173-201A-410, you allow for "major watershed restoration activity" which might have "short-term" significant impacts. Again, major watershed restoration would very likely cause impacts to habitats and designated uses of indeterminate duration. "Short-term" is not a very clear concept in this context.

To summarize:

One issue is that use may change as a result of major watershed restoration activities. This needs to be allowed. This would apply to Part III.

A second issue is the effect resulting from the activity itself. The term of these effects is somewhat unpredictable, and may or may not be "short-term" Allowance should be made for irreversible effects resulting from major watershed restoration activities. This would apply to Section 410.

I understand and agree that these standards must be consistent with the Clean Water Act. I would oppose any language that would permit the lowering of water quality standards. All water quality standards applicable to the new use should be applied at the highest level possible. I'm not trying to find a way to lower water quality standards, just to allow major watershed restoration activities.

Thank you for your attention.

Very truly yours,

Patricia L. Arnold

Public Comme
Proposed Revisions to the Surfa
Public comment period ends March 7, 2003

PAMELA C BAKER

ATK

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

Department of Ecology
Water Quality Program

FEB 19 2003

☒ **Draft Rule** ☒ **Draft Environmental Impact Statement**

Name: Pamela C. Baker

Address: 1736 Country Club Drive
East Wenatchee, Wa. 98802

E-mail Address:

Comments:

I was not able to stay for the meeting.

We have a cabin at Lake Chelan. The quality of the lake is not what it used to be or should be. There is a lot of milfoil in the lake in many areas and that can be a sign of unhealthy water.

I am opposed to any lessening of strict guidelines for Lake Chelan or the Columbia River.

I believe our waters are already "in trouble" and that water quality guidelines should be stricter, not eased.

Thank you.
Pamela Baker

CHARLES M BAGLEY JR. ATK

Charles M. Bagley Jr.
1235 8th Avenue West
Seattle, WA 98119

February 13, 2003

Department of Ecology
Water Quality Program
FEB 18 2003

Susan Braley, Department of Ecology
P.O. Box 47600
Olympia, WA 98504

RE: Public Comment
Revisions Surface Water Quality Standards

Dear Ms. Braley:

My wife and I, both in our 60's, greatly enjoy white water canoeing on the numerous excellent white water rivers of western Washington and the eastern Cascades. It is a lot of fun, but safety is always a high priority. I know that there are several thousand other citizens who enjoy white water as well, whether canoeing, kayaking, or rafting.

There is a frequent problem with low water. We are aware that large water users sometimes claim most or all of the stream water on certain days. On other days, within a short period, they are releasing extra water. They should be required to maintain in-stream flows adequate for white water recreation by balancing this out. The currently proposed regulations don't adequately protect this use.

Sincerely,

Charles M. Bagley Jr.

CHEHALIS RIVER COUNCIL
ROB SCHANZ
[redacted]

ATK

Department of Ecology
Water Quality Program

MAR 06 2003

Rob Schanz

Chehalis River Council
417 North Pearl Street
Centralia, WA 98531
phone (360) 807-0764
fax (360) 807-0765
email crc@crcwater.org

Susan Braley
Surface Water Quality Standards
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Re: Proposed Changes to Washington's Water Quality Standards, WAC 173-201A

Dear Ms. Braley,

The Chehalis River Council is a volunteer citizen group dedicated to the protection of natural resources in the Chehalis basin. We have over 70 members who live throughout the watershed (from Aberdeen to Pe Ell). The Chehalis River has suffered from a number of problems related to both point and nonpoint source pollution, and water quality is one of our areas of focus.

We have reviewed the proposed changes to Washington's water quality standards, and have the following comments:

1. We believe that changing from a class-based to use-based system will provide the ability to develop standards that more closely reflect local conditions. However, we are concerned salmon migration and recreational use have been eliminated as protected uses. Both of these uses are closely tied to the protection of instream flows, and provide a critical linkage between water quantity and water quality.

2. We are also concerned that the new standards have dropped the narrative protections provided under the existing rules. These narrative protections are needed to cover water quality problems that are not captured by the relatively narrow set of numeric criteria defined in the standards.

3. The revision to the Anti-Degradation Standard has created a significant loophole, in which degradation is allowed if it is "necessary and in the overriding public interest". The proposed revision does not provide sufficient sideboards on the definition of "overriding public interest", and is therefore open to abuse by the political process. Too often we have seen Ecology back off of enforcing water quality regulations under pressure from local politicians and power brokers. This loophole opens the door for further abuses of the process, which was originally intended to protect water quality in Washington's rivers, lakes, and estuaries.

Board of trustees: Paul Holm, Karen Knutsen, Margaret Rader, Rob Schanz, Janet Strong

LOWER ELWHA KLALLAM TRIBE
DENNIS R SULLIVAN

ATK

LOWER ELWHA KLALLAM TRIBE

ʔəʔɬx̣ʷə nəxʷsƛ̓ay̓əm "Strong People"

2851 Lower Elwha Road
Port Angeles WA 98363

(360) 452-8471
Fax: (360) 452-3428

RECEIVED
MAR 11 2003
DEPARTMENT OF ECOLOGY
OFFICE OF DIRECTOR

March 6, 2003

Susan Braley
Surface Water Quality Standards
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Re: Conflict between Antidegradation and Short-term Modification provisions in the State's proposed changes to surface water quality standards.

Dear Ms. Braley:

The following comments from the Lower Elwha Klallam Tribe are intended to supplement those submitted by the Northwest Indian Fisheries Commission (7 August 2002) and any other tribes since that time. As you know, the Federal Government, our Tribe, and the State are engaged in restoring Elwha River fisheries, implementing the settlement enacted into law by the Elwha River Ecosystem and Fisheries Restoration Act. One element of restoration will be the release of sediments trapped in two hydropower reservoirs. This release, while restoring more diverse substrate in the lower river and estuary, will cause high turbidity for a period of time, requiring that indigenous fish populations be temporarily relocated to state and tribe facilities.

The proposed WAC 173-201A-410 (3), "Short-term modifications," addresses our situation, but apparently requires that we first develop a restoration plan pursuant to State administrative procedures. This additional procedural requirement causes us some concern, imposing a redundant decision-making process, with attendant cost and delay. We trust that the State will not subordinate our ongoing process to new and unnecessary requirements.

But our greater concern is an apparent conflict between Section 410 and 173-201A-310, the Tier 1 antidegradation provision. The latter does not appear to allow modifications in order to meet restoration goals; language that reconciled the two sections appears to have been removed. Section 310, as written, may prevent us from restoring our reservation's treaty fisheries.

To prevent an unintended conflict between our respective governments, we strongly suggest that we engage in government-to-government consultation before the State's proposed standards are made final. We also have concerns regarding other parameters addressed in the proposed standards, but look forward to discussing these further in consultations.

Sincerely,

Frances S. Charles
Sec./Treasurer

for → Dennis R. Sullivan
Tribal Chair

Cc. Tom Fitzsimmons, WA Department of Ecology

TROUT UNLIMITED – CLARK CO ATK

Public Comme[redacted]

Proposed Revisions to the Surface Water Quality Standards

Public comment period ends March 7, 2003

Department of Ecology
Water Quality Program

MAR 06 2003

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

☒ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Clark County Trout Unlimited

Address: PO Box 1134
Washougal, WA 98671

E-mail Address: cctroutunlimited@yahoo.com

Comments:

Clark County chapter of Trout Unlimited believes the draft rules will better protect our cold water fisheries. We commend the Department of Ecology for suggesting the changes and showing a real desire to conserve and protect critical cold water habitat.

Respectfully
Tammy Mackey
Clark County Trout Unlimited

OYSTER GROWERS ASSN
[redacted]

These local adjacent rivers and streams are the Elk, Johns, Hoquiam, Wishkah rivers and Grayland Cranberry Ditch #1, Winter Creek at Westport, Redmond Creek at Ocosta and various others that contribute fecals associated with the Chehalis Basin fecal TMDL. Some of these rivers and streams do not meet fecal criteria as TMDL data demonstrate. Department of Health monitors these fecal sources to regulate the shellfish industry.

The growers see the proposed changes as a serious problem in that when three different bacteria parameters are used in an entire drainage, that is under a fecal TMDL, conflicts are sure to arise. New rules could be interpreted to mean that in a river or stream segment that is now TMDL fecal compromised would be ruled as meeting state standards using E.-coli standards. Then when this now legal water enters the estuary where marine water resides it is again legal using Enterococci standards but would not meet standards set for shellfish growing waters under fecal regulations as administered by DOH in the interest of public health standards. As an example - the growers would like to cite what happened recently in Portage Bay where a fecal TMDL was instituted. It was found that fecal contamination was really coming from the Nooksack River and not Portage Bay as first suspected. Ecology had to then back fit water quality regulations to the Nooksack River to meet shellfish requirements in the marine waters of Portage Bay.

Taking it another step. It is well documented that political subdivisions do not welcome TMDL's as they require time, money and energy to implement. This holds true especially for fecal coliform bacteria reduction as it is not high on constituents list of needed government services. With three separate ways to look at water quality standards it would be a natural thing for an entity to adopt the regulatory standard that best fits their own local needs in order to cut regulatory costs. As an example, an entity with a now fecal compromised stream within their boundaries, under a fecal TMDL, could test and if found safe under an E.-coli determination declare that they no longer must meet the fecal standard therefore not abide by a fecal TMDL that is in force. This would certainly help the entity out with their required responsibilities but the net result would be that fecal contamination would still be impacting their shellfish neighbors downstream.

The Willapa and GH shellfish growers understand that Ecology has developed a plan to protect fecal TMDL's to preserve our resource. We respectfully request written documentation that a plan is in place to protect shellfish resources of Willapa and GH. Going farther- we desire that Ecology will keep fecal as the bacterial indicator in the Chehalis River(since it is the primary source of fecal coliforms to the harbor) and in other streams as well.

Thank you for the opportunity to comment on this very important matter.

Sincerely,

Brady Engvall Water Quality Specialist -Willapa/ GH Oyster Growers Association

Brady Engvall 03-07-03

Feb. 3, 2003

RUTH EDWARDS [redacted] 9/7/03

Susan Braley
Dept. of Ecology
Box 47600
Olympia, WA 98504-7600

Department of Ecology
Water Quality Program
FEB 07 2003

Dear Susan,

I have lived in the State of Washington for 25 years. I have enjoyed the beauty, the abundance and the purity of our lakes, streams & oceans. I understand that our waters are clean and healthy because of protections implemented to clean up waters that were practically dead due to human pollution. We cannot let that happen again!

Please -

1) Retain protection for recreational uses and salmon migration
2) Retain the classification system that provides general protection for Washington waters
3) Strengthen the links between water quantity and water quality
4) Minimize loopholes - only allow exemptions for public health emergencies

Sincerely,

Ruth Edwards
13703 N.E. 10th Pl apt. 306
Bellevue, WA 98005

BLUE RIBBON ENVIRO PRODUCTS
LARRY SNYDER
4/2/03

Public Comment For
Proposed Revisions to the Surface Wa[redacted]

Public comment period ends March 7, 2003

Department of Ecology
Water Quality Program

FEB 04 2003

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

☒ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Larry Snyder -

Address: 6310 N. Pittsburg
Spokane, WA.

E-mail Address: info@bre-products.com

Comments:

SEE page 2

Blue Ribbon
ENVIRONMENTAL PRODUCTS, INC.
Larry L. Snyder Marketing Mgr.
6310 N. Pittsburg
Spokane, WA 99217
(509) 489-1704 • Fax (509) 489-1785
1-800-436-1050
E-Mail: info@bre-products.com Web: www.bre-products.com
Protecting Our Environment

Dear Susan - It was nice to meet you in Spokane - I'm looking forward to the Final Draft of Washington's Water Quality Management Plan to Control Nonpoint Source Pollution - DOE publication Number 99-26 - One more favor - Does the state of Washington have a "CLEAM MARINA PLAN" - if so where can I get a copy - Thanks

[signature]

Department of Ecology
Water Quality Program
FEB 04 2003

To whom it may concern

Any changes will be a welcome addition to much needed revisions to the Washington State Water Quality Standards. The changes discussed in the Spokane forum were not of the earth-shaking attitude. Obviously they were well thought out over the Ten Year formulation period.

These changes are DOE operational needs and are centered on procedurals problems.

When you talk Water Quality Improvements I had hoped to hear new rules and regulation and ENFORCEMENT on Major contributors to the demise of Water Quality...New rules or ideas on NSP (Nonpoint Source Pollution) CONTAMINATION and how and when do we initiate programs to BEGIN to address the problem...

Decreases in DISCHARGE PERMITS of pollutants, municipal wastewater, industrial waste and any hydrocarbon pollutants casually penetrating underground sources. You are anal about siltation from Forestry, or fertilizers, herbicides, pesticides, -etc- run-off from agriculture yet you allow populations centers to use our fresh water bodies as the earth's kidneys – I don't understand... If you want to be really confused – phone in a report to your local DOE on a trucking company – power washing the truck's engines and flushing the waste water down a dry well that sits probably 40 feet over the aquifer. Then wait for any action –THAT NEVER COMES. If you want to become really discouraged, try dealing with local businesses that reject anything Environmentally PRO-ACTIVE or BMP's that deal with the prevention of the contamination of our clean water. Their answer is the DOE doesn't enforce or wait till they catch me!!!! It has been my experience only the small independent business owner needs to be concerned. I find it a bit concerning that your people in attendance were not knowledgeable about the 2002 EPA's "National Management Measures Guidance to Control Nonpoint Source Pollution for Marinas and Recreational Boating". – 841-B-01-005..

It is my hope that soon you will form an active enforcement arm of your agency. Violations and violators will be addressed and PUBLIZISED.

I will never understand upstream discharge credits if site A is in violation. Why is the remedy to go up stream and do an environmental act to earn credit? Why not bring site A into compliance????

If the DOE is looking for positive horizons, Please establish new standards for water clarification prior to exhaust or purification. Establish new and better methods of water clarification that will lead to more recycle systems and more useable amounts of water.... Water clarification is a process that should be encouraged and rewarded...

Thank you for your time and energies. Your energies are always appreciated – we ALL need to remember "We all live downstream from someone."

Respectfully submitted

Larry Snyder – BRE Marketing Dir.

YAKIMA
CONFEDERATED TRIBES & BANDS
CARROLL PALMER [redacted]

#4/7/03

YAKAMA INDIAN NATION

TFW
P.O. Box 151
TOPPENISH, WA. 98948

FAX

To:	From:	
Susan Braley Water Quality standards Coordinator	Carroll Palmer	Date: 3-7-03 Number of Pages: 9 including FAX Sheet Phone: 1-509-865-6262 Fax: 1-509-865-4110 tfw@yakama.com

Remarks:

Letter concerning WDOE proposed changes to water quality standards. Original letter will be mailed ASAP.

Confederated Tribes and Bands
of the Yakama Indian Nation

Established by the
Treaty of June 9, 1855

March 6, 2003

Carroll Palmer

Mr. Tom Fitzsimmons, Director
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

RE: Comments to the Department's Proposed Changes to Water Quality Standards

Dear Mr. Fitzsimmons,

The Yakama Nation recently received notice of the Department of Ecology's latest proposal to modify the State's Water Quality Standards. We appreciate the opportunity to comment on this latest proposal. Water quality is fundamentally important to the Yakama Nation. Clean, abundant water is crucial to the culture, religion and spiritual well-being of the Yakama Nation throughout its Traditional Use Area that covers over one third of Washington State. The Yakama Nation also has reserved treaty rights that are dependent on quality water and habitat conditions. Additionally, the Yakama Nation is a co-manager of the fisheries resource as recognized under legal ruling (US vs Washington). Properly developed and enforced water quality standards can be a key component for maintaining and protecting these waters. Water quality standards therefore need to be set at a level that provides assurance that the streams, lakes and groundwater will have favorable conditions that will perpetuate the fish, other aquatic biota, wildlife, plants and other cultural resources important to the Yakama Nation.

It should come as no surprise to you that the lower Yakima River is so heavily polluted that salmon are jeopardized as they migrate through this zone, warnings have been issued for eating fish from this river reach, and even swimming in these waters is not recommended due to the various hazardous chemicals present in the river. Without proper water quality standards and clean up work, these heavily degraded conditions will persist. Additionally, the considerable effort underway to recover salmon and other listed fish will also be wasted if their natal and migratory waters have marginal water quality and quantity. It is therefore incumbent upon the Department to set water quality standards that will adequately protect and promote clean water conditions.

The Triennial review process of the state water quality standards has been going on for many years now. Early on, the Yakama Nation technical staff actively participated on the work group that was established to review any changes needed for the water quality standards. The early drafts were not perfect, but covered many of our concerns. Due to the lengthy review process however, we were not able to actively engage in the formulation of this latest draft proposal.

Post Office Box 151, Fort Road, Toppenish, WA 98948 (509) 865-5121

After review of this latest draft, we were disheartened to see that several of the proposed water quality standards have been substantially weakened from past drafts. Some aspects of the proposed standards also have weaker provisions than the existing standards. Moreover, the proposed new water quality standards in our examination are unlikely to promote proper water quality and stream conditions necessary to perpetuate and protect the cultural values of the Yakama Nation. These latest proposed standards are also unlikely to achieve water quality conditions favorable to the recover threatened and endangered species.

We have only had limited time to review these proposed language changes to the water quality standards. Therefore our comments are limited to individual sections of the document. We reserve the right to provide further and more extensive comments. Yakama Nation technical staff have reviewed the draft for its merits to adequately protect tribal resources and have compiled the following comments and recommendations:

WAC 173-201A-200 (1) Aquatic life uses (a) The categories for aquatic life uses are:

Comment: The aquatic life uses are differentiated by fish categories and further segregated by life history. It is unclear how this will be determined or applied on the ground. We question whether the Department can accurately determine these different categories for aquatic life uses, as outlined in the draft. Fish experts in the field frequently do not know the exact extent and location of various life histories of fish. If the fish experts do not have all of the necessary information, then how does the Department intend to be able to make accurate and true designations? As an example, the category of char states, "...protection of spawning, or tributary rearing for the first years of life, by any species of native char...". What definition is used for "first years of life"? Are streams considered in the char category if the stream has age one, two, three, four, five, or older native char? Once this has been better defined, is there sufficient information and data to be able to clearly delineate this on maps and in the field? Furthermore, the proposed categories make a distinction between salmon, steelhead, and trout spawning and rearing, versus rearing-only. How will this be determined on maps and in the field? Past stream degradation has substantially reduced the distribution of spawning areas. Does the planned aquatic life use designation account for past stream impacts and currently degraded conditions that limit spawning activity? Otherwise, many streams are likely to receive a "rearing-only" designation due to past land management activities. The proposed water quality standards would then continue to promote this degraded condition unless historic or natural conditions are reflected in the aquatic life use designation. Finally, the latest draft has dropped the category of cutthroat trout. It is well documented that cutthroat trout are more sensitive to some water quality conditions (e.g. temperature), compared to other salmonids, with the exception of native char. We recommend the inclusion of a category for cutthroat trout. In summary, it is unlikely that specific life histories, and in some cases complete species distribution, is available. Therefore, aquatic life use categories should be designated that will capture the most sensitive life history stage or species use; across its historical and potential range.

Recommended changes to the proposed language:

(i) Native Char- This category applies to waterbodies used or naturally suitable as habitat for spawning or rearing of native char (bull trout and Dolly Varden). Native char spawning and rearing areas include their current and historical extent.

(ii) Cutthroat Trout- This category applies to waterbodies used or naturally suitable as habitat for spawning or rearing of cutthroat trout. This category includes the current and historical area used by these species.

(iii) Salmon, Steelhead, and other trout spawning or rearing. This category applies to waterbodies used or naturally suitable as habitat for spawning or rearing by species of salmon, steelhead, and other trout. This category includes the current and historical area used by these species.

(iv) Salmonid and Char Migration only. This category applies to waterbodies used exclusively as a migration corridor under natural conditions for anadromous salmon, trout, and char.

(v) Indigenous warm water species. This category applies to waterbodies where under natural conditions the habitat would be heavily used by temperature tolerant indigenous non-salmonid species such as dace, redside shiner, chiselmouth, sucker, and northern pikeminnow

Where multiple aquatic life uses are encountered, the most sensitive aquatic life use category will be applied.

WAC 173-201A-200 (1) Aquatic life uses (c) Aquatic life temperature criteria.

Comment: The proposed language designates the criteria, except where noted, as the "7-day average of the daily maximum temperature". This would be a substantial change from the current criteria of a single daily maximum temperature. How does WDOE propose to evaluate and address the waterbodies that were out of compliance under the old criteria? Dozens or hundreds of streams were out of compliance under the old criteria. Will these waterbodies now be dismissed because a new and different criteria is being proposed? **We would therefore recommend that the old criteria of a single maximum daily maximum temperature continue to be included. Additionally, past streams that were not in compliance need to be kept on the 303(d) list of impaired waterbodies until monitoring demonstrates that conditions have improved and the waterbody is in compliance.**

Table 200(1)(c) Aquatic Life Temperature Criteria in Fresh Water

Comment: The proposed criteria for temperature is substantially weaker than past drafts.

The earlier drafts of proposed changes to the water quality standards were fairly well supported by research and literature (especially on temperature) (Hicks 1996). Conversely, the latest document does not have good rationale or justification for its proposed criteria. Most scientific literature on temperature and its effects on aquatic biota indicates that productive conditions are substantially less than outlined in this latest proposal. **As such, we would recommend the following changes to the proposed temperature criteria, and which has a better scientific foundation:**

> **Native Char- The 7-day average of the daily maximum temperatures shall not exceed:**
> **8°C from August 20 to October 14; with no single daily maximum over 10°C**
> **6°C from October 15 to April 14; with no single daily maximum over 8°C**
> **11°C from April 15 to August 15; with no single daily maximum over 13°C**
>
> **Cutthroat Trout- The 7-day average of the daily maximum temperatures is not to exceed:**
> **12°C year-round; with no single daily maximum over 14°C**
>
> **Salmon, Steelhead and other trout spawning and rearing- The 7-day average of the daily maximum is not to exceed:**
> **14°C from May 1 to September 30; with no single daily maximum over 16°C**
> **11°C from October 1 to April 30; with no single daily maximum over 13°C**
>
> **Salmon and Char migration only- The 7-day average of the daily maximum is not to exceed:**
> **15°C year-round; with no single daily maximum over 18°C**
>
> **Indigenous warm water species- The 7-day average of the daily maximum is not to exceed:**
> **18°C year-round; with no single daily maximum over 21°C**

WAC 173-201A-200 (1) Aquatic life uses (c) Aquatic life temperature criteria(ii).

Comment: This section would allow substantial temperature increases to waterbodies if natural conditions are cooler than the criteria in the table. In our opinion this approach is counter to the antidegradation requirements of the Cleanwater Act. Allowable and substantial increases in water temperatures can degrade relatively high quality water conditions. This can have profound effects on the biota in these waterbodies. Additionally, ramping up the temperatures in waterbodies (even when they are under the temperature criteria) can cause a multitude of deleterious effects including such things as upsurges in algal blooms, increased respiration and metabolic rates, elevated parasite and disease occurrence, rapid egg and alevin development, and premature smoltification. **We would therefore recommend that this section be stricken and only include an allowance for small increases in temperature as outlined in section (i).**

In closing on the temperature section, we find it curious that the WDOE has proposed the 7-day average of the daily maximum as a metric for freshwater, but has proposed a single daily maximum temperature for marine waters. Are freshwater biota somehow more resilient, and a 7-day average of the daily maximum better describes their requirements, than their marine counterparts? It would appear that the proposed change to only a 7-day average of the daily maximum for freshwater criteria is a way to discount all of the streams out of compliance in the past. We hope this is not the reason for promoting only a 7-day maximum. Aquatic biota can be effected by single maximum as well as longer term average temperatures. For that reason, we believe both metrics need to be included in water quality standards.

WAC 173-201A-200 (1) Aquatic life uses (d) Aquatic life dissolved oxygen (D.O.) criteria.

Comment: Again this criteria has been substantially reduced from previous drafts. The draft in 1999 provided substantial rationale and justification for setting proposed D.O. criteria (Hicks 1999). This earlier criteria had several components that could be supported by our own technical information and expertise. From our review of the new proposed standards, the D.O. criteria has little reasoning and is not supported by much of the scientific literature. The latest proposed criteria also will not adequately protect the aquatic biota. The proposed criteria in many respects is at the lower limit for salmonids, and especially detrimental for native char. Another concern is the new 90-day average daily minimum criteria. Such a long time frame average metric is unlikely to capture effects on aquatic biota. Over the course of 90 days, dissolved oxygen levels can be at lethal levels for a few days, yet the average could easily meet the proposed criteria. In such cases, fish could be decimated, but the criteria would be attained. **We would therefore recommend the following changes to the criteria to properly protect and maintain fish and other aquatic organisms:**

> **Salmonid spawning and incubation- From August 15 to May 31, the minimum dissolved oxygen concentration shall exceed 10 mg/l as a daily minimum.**
>
> **Salmonid rearing and migration- From June 1 to August 14, dissolved oxygen levels shall exceed 8.5 mg/l as a daily minimum.**
>
> **Indigenous Warm Water Species- Year-round, dissolved oxygen levels shall exceed 7.0 mg/l as a daily minimum.**

In addition, we recommend that the 90-day average minimum criteria for dissolved oxygen be stricken. As pointed out above, this criteria has little relevance and can mask impacts to waterbodies through long-term averaging.

Other considerations and omissions from the proposed water quality standards:

Nutrients

Comment: With our cursory review of the document, we found little discussion concerning nutrients (e.g. nitrates, nitrites, phosphorus). A brief section is devoted to establishing lake nutrient criteria, but no mention is made concerning nutrients in streams. While nutrients can be beneficial to streams at low to moderate levels, excessive nutrient loading can cause considerable impacts to aquatic biota such as heavy algal blooms, high biological oxygen demand, excessive emergent vegetation, decreased light penetration, etc. Eutrophication of waters often is associated with intensive agriculture use and livestock production, although other activities can also contribute to the problem. **We would therefore recommend that standards be developed for nutrients in streams, and which will provide sufficient protection to aquatic resources.**

In-stream flows

Comment: We did not find much discussion or criteria concerning in-stream flows in the proposed water quality standards. Water quantity can play a significant role in the effects of water quality impairments. Water diversions/withdrawals can substantially reduce flows and thereby greatly pronounce water quality problems. As an example, streams are much more prone to thermal heating and temperature exceedances when their flows are reduced. Additionally, inadequate in-stream flows by themselves can cause significant impacts on fish and other aquatic biota. **We would therefore recommend that standards be developed for in-stream flows, and which will provide sufficient protection to aquatic resources.**

Natural and irreversible human conditions

Comment: This new section in the proposed language seems to give exemptions for "human structural changes that cannot be effectively remedied". How does the WDOE plan to make these determinations? This would seem to be a very large loop hole that could allow alternative and less restrictive water quality standards on many waterbodies. We are quite uncomfortable that this section gives the WDOE a carte blanche avenue for relaxing water quality standards on a site-by-site basis. **Until this section can be clearly explained and is determined to properly protect aquatic resources, we would recommend that this section be removed.**

As an example, we take issue with the assumption on page 83 that 21.0 degrees C. is or was a natural condition on the lower Yakima River("WAC-173-201A-602, Table 602, **Notes for WRIA 37**) . The former presence of large runs of Summer Chinook Salmon and Sockeye Salmon in the Yakima River prior to development indicates that either the main body of flow was cold enough to support this fishery or sufficient cold water refugia existed to allow the runs to persist in large numbers. Recent scientific research performed by the Yakima Reaches Project out of Central Washington University, and the Flathead Lake Biological Research Station

in Montana indicates that a major contributing habitat factor to maintain these large runs was related to the connectivity of the Yakima River with its respective flood plain. Connectivity provided sufficient cold water refugia or sufficient mainstem cold water to provide for the needs of the salmon species. To allow this temperature to be used as a standard , particularly at a 7DAD maximum as proposed, would allow a potentially lethal or sub-lethal condition for salmonids to be accepted as a standard in a stream where Salmon Spawning and Rearing is listed as a primary designated beneficial use.

Furthermore, it is common knowledge that Summer Chinook Salmon were extirpated in the Yakima River because of warm water and low flows in the lower river. This past year. Summer Chinook in small numbers were observed in the Yakima River Basin. This effort by a species to re-colonize former habitats should be protected. To allow this temperature standard to be adopted will continue the degradation that led to their demise originally.

Tribal Authority

The Yakima River and both the South Fork and main stem Ahtanum Creek , were included in the Yakama Reservation as boundary waters in the "Treaty of 1855". The Yakama Reservation pre-dates the existence of Washington as a state. Therefore, the Yakama Nation does not recognize the full jurisdiction of the State of Washington to regulate water quality within the boundaries of the Reservation. The Clean Water Act, Section 518, also recognizes the authority of Indian Tribes to regulate water quality within their respective reservations. The Yakama Nation is moving forward to develop and implement applicable water quality standards, which will include standards for these boundary water bodies. Although we appreciate the effort by the State to avoid the appearance of a regulatory void, the Yakama Nation clearly has the jurisdiction to regulate the water quality of our own waters. We look forward to working with you to address mutual water quality concerns as they arise.

Antidegradation

Comment: The document speaks about antidegradation, but then goes on to describe allowances for further degradation. Many waters have already been substantially altered and degraded. Allowing further degradation is unacceptable, even if some waterbodies currently meet or exceed standards. This section goes on to mention for Tier II surface waters that, "...the department determines that a lowering of water quality is necessary and in the overriding public interest.". Again this seems to give the WDOE considerable discretion to weaken standards on surface waters, particularly if there is some overriding public interest. This new section goes on to state, "The resulting quality of the water will fully protect **existing** uses." (emphasis added). As already mentioned, many waterbodies are currently degraded and their existing uses have in some cases been dramatically altered. In order to achieve recovery for salmon and other listed species, criteria should be set that is likely to attain water quality conditions of the natural potential for a waterbody. We would therefore recommend rewording the Antidegradation Section so that further degradation of waterbodies is not allowed and standards be applied that will attain water quality conditions that favor the natural potential of the waterbody.

In summary, we have found that several of the proposed water quality criteria are inadequate for protecting tribal and public aquatic resources. We have not had time to thoroughly review this new draft, so we may have additional concerns. We reserve the right to provide further comments on this document, but wanted to convey our initial thoughts. We would request that the above outlined recommendations be seriously considered and incorporated into the development of any new water quality standards. If the Department chooses not to fully utilize our comments and recommendations, we would respectfully request a government-to-government meeting with you and your staff to discuss this matter.

We thank you for your time and interest in this matter.

Sincerely,

Carroll Palmer, Deputy Director
Natural Resources Division

C: (files)
Tribal Council Fish, Wildlife and Law and Order Committee
Tribal Council Timber, Fish and Wildlife Committee
Tom Zielman, Office of Legal Counsel
Harry Smiskin, Programs Administrator
Lynn Hatcher, Fisheries Program
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March 6, 2003

Department of Ecology
Water Quality Program

MAR 07 2003

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RE: Comments of National Wildlife Federation on Draft Washington Water Quality Standards/Draft Environmental Impact Statement

Dear Ms. Braley:

I am submitting these comments on behalf of the National Wildlife Federation ("NWF"), the nation's largest conservation and advocacy organization. With over one million members nationwide, NWF is known for promoting credible, science-based solutions to complex environmental problems. NWF appreciates the opportunity to comment on the Department of Ecology's ("DOE" or "Ecology") latest draft water quality standard ("WQS") proposal. The revision of existing rules is long overdue and we urge Ecology to devote all necessary resources to complete the process adequately on the schedule proposed.

A number of conservation, fishing and tribal groups have submitted substantive comments on many aspects of this proposal over its various iterations during the last several years. Many of them identify serious inadequacies in the ability of the proposed standards to protect water quality and satisfy the Clean Water Act's ("CWA") obligation to protect and restore the nation's waters. Moreover, several elements of earlier proposals, including temperature standards, have been weakened from earlier drafts, a serious flaw that should be remedied. While NWF's comments address a separate single issue in the draft WQS, we share these concerns and urge DOE to follow the mandate of the CWA and other federal and state obligations.

These comments address one critical omission in the draft WQS. Despite the urging of several entities over time, including the federal EPA, DOE has failed to propose any kind of biological criteria, for example the benthic index of biotic integrity ("B-IBI"), in its WQS. The omission is a serious one, as biological indicators like B-IBI are able to detect the full range of processes by which human activities degrade water quality. Chemical criteria, in contrast, have not been shown to be reliable predictors of all human-induced degradation of water quality. NWF believes that in the absence of a biological indicator like B-IBI in its water quality criteria, the proposed criteria are inadequate to protect the designated uses in many instances. This omission leaves the entire proposal unable to achieve its chief purpose.

LEGAL OVERVIEW

Congress enacted the Federal Water Pollution Control Act in 1972 to "restore and maintain the chemical, physical and *biological* integrity of the Nation's waters." 33 U.S.C. § 1251(a) (emphasis added). "Biological integrity" has been defined as the capacity to support and maintain a balanced, integrated, and adaptive biological system having the full range of elements and processes expected in a region's natural habitat. Karr, 1998; EPA, 1990. The Act seeks to eliminate discharges of pollutants into navigable waters, to protect and propagate fish, shellfish and wildlife, and to control nonpoint sources of pollution to meet these goals expeditiously.[1] Id. Regrettably, in most instances the Act's command to protect and restore *biological* integrity has been ignored, as water quality standards and planners focus narrowly on chemical contaminants that have proven inadequate to fulfill all of the Act's goals.

Promulgation of WQS is meant to be one of the chief means by which the CWA purports to address the nonpoint pollution that play a significant role in degrading biological integrity, particularly in urban or urbanizing areas. WQS must include designated uses for specified waters, water quality criteria that are sufficient to protect those uses, and an anti-degradation policy. 33 U.S.C. § 1313(c)(2)(A) (water quality standards must "enhance the quality of the water and serve the purposes of this chapter" i.e., restoration of the biological integrity of the nation's waters); 40 C.F.R. § 131.6 (minimum requirements for WQS submission to EPA).

Importantly, the law is abundantly clear that water quality criteria must be sufficient to protect the designated uses. Id. § 131.6(c) (WQS must include "water quality criteria sufficient to protect the designated uses"); § 131.11 ("States must adopt those water quality criteria that protect the designated use. Such criteria . . . must contain sufficient parameters or constituents to protect the designated use."); § 131.2 (purpose of WQS is to protect uses by "setting criteria necessary to protect the uses"); § 131.3(b) (definition of criteria as standards "representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.") Moreover, in its review of state WQS, EPA is required under the Act to ensure that the proposal satisfies the purpose of the act and that criteria are adequate to protect designated uses. Id. § 131.5 ("EPA review involves a determination of . . . (2) whether the State has adopted criteria that protect the designated water uses"). EPA must disapprove the standards if they are not consistent with this and other requirements. See Natural Resources Defense Council v. U.S. EPA, 17 F.3d 1396, 1402 (4th Cir. 1992).

As discussed below, Washington's draft WQS fail to satisfy this central mandate. The proposed criteria are wholly insufficient to protect the designated uses, for example salmon spawning and rearing. In other words, many water bodies designated for salmon spawning

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[1] The CWA distinguishes between "pollutants" – which refers to affirmative discharges of polluting substances – and the much broader concept of "pollution" – defined as "the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of the water." 33 U.S.C. § 502(19). Most water quality managers, including Ecology, have traditionally focused narrowly on "pollutants" while ignoring the many factors that result in pollution. These comments focus in large measure on the Act's mandate to control "pollution" in the broad sense.

and/or rearing could comply with proposed criteria, but still be unable to support those uses because of degraded water quality. As such, the proposed criteria appear to violate the CWA and put into question whether EPA can lawfully approve of them.[2] Fortunately, there is a well-known solution to this problem: adoption of a biological indicator such as B-IBI as a supplemental criteria.

BIOLOGICAL INDICATORS AND THE INDEX OF BIOTIC INTEGRITY

"Biological criteria are narrative expressions or numeric values that describe the biological integrity of aquatic communities inhabiting waters of a given designated aquatic life use." EPA, 1990. Biological indicators have been available for decades, and are gaining increasing currency nationwide as a superior regulatory and assessment mechanism to evaluate water quality and to protect the full range of physical, chemical and biological attributes that constitute water quality. They come in a variety of forms, from simple narrative statements regarding species diversity to complex multi-parameter metrics.

Indices of Biotic Integrity ("IBI") integrate multiple biological indicators to measure and communicate the biological condition, and thereby the ecological health, of a watershed. Karr, 2000. A locally appropriate IBI is sensitive to almost all of the different ways in which human activities degrade water resources: alteration of chemical quality, habitat structure, flow regime, energy source, or biotic interactions. Karr & Chu, 1999. IBI consistently has been shown to be more sensitive to human impacts to water quality than most conventional measures. Karr, 2000; Karr, 2002 ("IBI's multiple biological metrics reveal a much more refined picture of river health than the single parameter of biochemical oxygen demand.")

In the Pacific Northwest, scientists have developed a regionally appropriate index called the benthic index of biotic integrity ("B-IBI"). B-IBI is based on ten metrics of invertebrate taxa diversity, presence and dominance. Karr, 1998. Research consistently reveals that B-IBI provides a superior description of the diverse influences of human activity on watershed health than other measures. Morley, 2002. B-IBI offers a significant advantage over other criteria in its ability to detect impacts to water quality across the spectrum of different causes and sources. Karr, 1998. For example, research specific to Puget Sound shows a very close negative correlation between urbanization of watersheds and watershed health as measured by B-IBI. Karr, 2000 ("What studies of B-IBI in urban areas has revealed is that an index like IBI better reflects the cumulative influence of human activity on a biota than conventional measures . . .") As discussed below, B-IBI captures impacts to watershed integrity that are missed by traditional water quality parameters that focus narrowly on chemical pollutants.

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[2] Moreover, approval of these standards by EPA is a federal action subject to the strict procedural and substantive requirements of the federal Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531-1544. EPA cannot approve of the standards absent a comprehensive consultation process with the National Marine Fisheries Service ("NMFS") and a scientifically rigorous explanation of the impacts of the regulation. Whether or not Ecology's proposal could satisfy these standards is in question.

INADEQUACY OF CHEMICAL CRITERIA TO ASSESS AND PROTECT WATER QUALITY

The literature is replete with conclusions that traditional chemical water quality criteria are in large measure unable to detect significant degradation in the biological health of rivers and streams. Karr 2002 ("Through much of the twentieth century, however, efforts to track the health of water bodies focused instead on the presence of chemical contaminants: the assumption was that chemically clean water was sufficient to protect river health. This assumption proved wrong.") (emphasis added); Booth, 2003; Karr, 2000 ("[A] focus on water chemistry . . . do[es] not guarantee the well-being of aquatic life, the integrity of water and watersheds, or the continuity of the water cycle."); Karr, 1998; EPA, 1990 ("A primary strength of biological criteria is the detection of water quality problems that other methods may miss or underestimate.") Nor is this information new to Ecology: a 1997 report commissioned by Ecology itself on the impacts of urbanization on watershed health concluded that chemical constituents "rarely exceeded such criteria/standards in the [Puget Sound Lowlands] streams although numerous results elsewhere have documented adverse effects of stormwater on stream quality." May 1997b.

One recent Puget Sound study found that about half of the streams sampled in Puget Sound were in poor or very poor biological health, as measured by B-IBI. Morely, 2002. Remarkably, few of them are listed as water quality limited on the state's 303(d) list that is intended to identify stream segments that are unable to support designated uses. For example, one study noted that the three most degraded streams evaluated in Puget Sound all had B-IBI scores below 15 out of 50 possible. B-IBI scores of 35 or below indicate water quality so impaired that the stream is unable to support salmonids, and thus a B-IBI score of 15 reflects truly significant impairment. Remarkably, however, this extreme level of stream degradation is not reflected in the 303(d) list, because chemical criteria have not been violated. For example Juanita Creek, Des Moines Creek, and Thornton Creek are listed only for fecal coliform but no other parameters, despite their high degree of degradation and inability to support more than remnant salmonid populations. See also Kleindl, 1995 (B-IBI scores at 31 Puget Sound stream sites include several with very low scores that are not water quality limited on state's 303(d) list); Morley, 2000 (measurements of B-IBI at 45 Puget Sound stream sites). In a recent study, federal researchers found water quality in Longfellow Creek to be so poor that adult migrating salmon were dying before they were able to spawn, the result of profoundly impaired stream conditions not reflected in standard water quality criteria. Stiffler & McClure, 2003. Remarkably, the state's 303(d) list reflects that Longfellow Creek complies with all water quality criteria except fecal coliform, which is not a significant aspect of water quality for salmonids. May 1997b p.161.

The inability of traditional water quality criteria to assess degradation of stream integrity has been shown to be particularly true at relatively lower levels of degradation. See, e.g., May, 1997a ("water quality criteria were rarely violated except in the most highly urbanized watersheds . . . . these findings indicate that chemical water quality of urban streams is not generally significantly degraded at the low impervious levels. . . .") In a landmark 1997 study,

Puget Sound researchers found that urbanization caused significant degradation of the biological integrity of waters, but that traditional water quality parameters failed to capture these impacts until the degradation reached a critical stage. May, 1997a. The reports authors' concluded:

> Results of the PSL stream study have shown that physical, chemical, and biological characteristics of streams change with increasing urbanization in a continuous rather than threshold fashion. Although the patterns of change differed among the attributes studied and were more strongly evident for some than for others, physical and biological measures generally changed most rapidly during the initial phase of the urbanization process as % TIA [total impervious area] exceeded the five to 10% range. As urbanization progressed, the rate of degradation of habitat and biologic integrity usually became more constant. There was also direct evidence that altered watershed hydrologic regime was the leading cause for the overall changes observed in instream physical habitat conditions. Water quality constituents and metal sediment concentrations did not follow this pattern. These variables changed little over the urbanization gradient until imperviousness (%TIA) approached 40%.

May, 1997a (emphasis added); see also May & Horner, 2000 ("Until TIA exceeded 40% biological decline was more strongly associated with hydrologic fluctuation than with chemical water and sediment quality.") Similarly, EPA guidance issued in 1990 mandating adoption of biological criteria in state WQS stated that chemical criteria were unable to detect significant impairment of stream biology, and that biological criteria would fill this gap. EPA, 1990. EPA noted that "chemical and physical integrity are necessary, but not sufficient conditions to attain biological integrity . . ." These conclusions are consistent with the readily observed data noted above that streams with significantly compromised biological health as measured by B-IBI are not significantly in violation of existing criteria. In other words, the science shows that existing water quality criteria are functionally "blind" to impacts that undermine the biological integrity of watersheds and their designated uses until the damage has become very severe.[3] This information is well-known to Ecology. May, 1997b (report commissioned by Ecology).

As indicated in some of the citations above, the issue is particularly important in the context of urban development and land use conversion – perhaps the greatest single threat to Washington's water quality, aquatic ecosystems and imperiled aquatic species. Booth, 2003 ("Urbanization affects populated watersheds more than any other human disturbance due to its spatial extent and intensity.'); Karr, 1998 ("Urbanization . . . compromises the biological integrity of streams by severing the connections among segments of a watershed and by altering hydrology, water quality, energy sources, habitat structure, and biotic interactions.") Importantly, chemical water quality is only one of the impacts that urbanization has on water quality, and chemical criteria are blind to extensive changes in basin hydrologic regime and

[3] Scientists agree that perhaps the highest priority management for recovering salmon populations and water quality in Puget Sound is to protect the few places that are still healthy, particularly those that are under the greatest threat of development urbanization. Trust for Public Land, 2001; Morely & Karr, 2002; May, 1997. Accordingly, a regulatory regime that is unable to detect degradation until its too late poorly serves this requirement.

channel morphology. May & Horner, 2000.[4] State and federal regulatory regimes have failed to keep pace with these major advances in water resource science over the past few decades. Karr & Yoder, 2003.

FEDERAL GUIDANCE ON BIOLOGICAL INDICATORS

The U.S. Environmental Protection Agency ("EPA") over thirteen years ago began urging states to adopt biological-based indicators like IBI in their water quality criteria. EPA, 1990; Karr, 1991 (outlining steps EPA had taken in late 1980s and early 1990s to encourage states to adopt biologically based criteria). EPA guidance issued in 1990 stated flatly that "to meet the objectives of the Act and to comply with statutory requirements under Sections 303 and 304, States are to adopt biological criteria in State standards." EPA, 1990 (emphasis added); EPA, 1991b ("It is also EPA's policy that States should designate aquatic life uses that address biological integrity and adopt biological criteria necessary to protect those uses.") (emphasis added). In a 1988 national symposium, "[a] workgroup of State and Federal representatives unanimously recommended the development of a national bioassessment policy that encouraged the expanded use of the new biological tools and directed their implementation across the water quality program. . . . [T]he adoption of biological criteria should be strongly encouraged." EPA 1991b. As described below, while many states have answered EPA's call, Washington is not significantly among them. Ecology is far behind the majority of states in working towards adoption of biological criteria in its WQS.

EPA noted that biological criteria provide numerous important benefits in assuring proper implementation of the Act's goals. As noted above, EPA concurred with the well-established conclusion that chemically-based criteria are unable to detect many kinds of degradation that undermine designated uses. Moreover, biological criteria provide: a) the basis for characterizing high quality waters requiring special protection under anti-degradation rules; b) a framework for deciding 319 actions for best control of non-point sources; c) evaluation of surface water impairments; d) improvements in standards through refinement of use classifications; e) a process for demonstrating improvements after implementation of pollution controls; f) additional diagnostic tools. The guidance further catalogues how biological criteria would help states meet other requirements of the CWA.

EPA urged a phased implementation whereby states first adopted narrative biological criteria, and then undertook the necessary assessments and research to determine stream-specific numeric criteria. EPA, 1990. Importantly, EPA noted that "narrative biological criteria can be developed for all five surface water classifications with little or no data collection." In other words, there is no significant research obstacle in adopting first phase biological criteria. It is a matter of political will, not data collection or lack of scientific knowledge. In another analysis, EPA pointed out that this approach has already proven effective. "Ohio's experience with

[4] Hydrologic changes also include temporal pattern of stream flows. Booth, 2002; May, 2001; Morley & Karr, 2002. Indexes have been developed to assess this relationship which focus more on chronic high and low flows rather than extreme events. Importantly, they capture impacts of human interaction with a watershed's physical and biological integrity that traditional water quality criteria fail to acknowledge. Id.

biological criteria has demonstrated that an effective program can be cost effective, compared with traditional approaches . . . . In Ohio and North Carolina, biological assessments have uncovered previously unidentified water quality impairments or revealed problems before they became severe." EPA, 1991a.

Accordingly, it has been EPA's position for some time that "EPA expects States to fully integrate chemical specific techniques, toxicity testing, biological surveys, and biological criteria into their water quality programs. . . . To better protect the integrity of aquatic communities, it is EPA's policy that States should develop and implement biological criteria in their water quality standards." EPA 1991b (emphasis added). In Washington, the call has fallen on deaf ears.

STATES THAT USE IBI IN WATER QUALITY CRITERIA

At the state level, the use of biological indicators like IBI in CWA water quality standards is neither novel nor untested. In 1990, EPA counted fifteen states that were in the process of developing biological criteria. EPA, 1990. Today, a number of states throughout the nation use biological indicators in diverse ways under their water quality standards. Karr & Chu, 1999; Davis, 1996. A few use specific numeric limits as part of their criteria to protect designated uses, which is the approach NWF believes is both advisable and required in Washington to ensure the protection of designated uses and the protection of the biological integrity of Washington's waters.

The Ohio Environmental Protection Agency has promulgated biological criteria as part of its water quality standards, which supplements (not replaces) traditional criteria involving chemical water quality and toxics. See Ohio Admin. Code § 3745-1-07. Importantly, the rules provide for specific IBI scores for various water types (as well as another biological indicator, the "modified index of well-being"). See Table 7-15. Similarly, the state of Florida has adopted specific criteria for biological integrity, focusing on percentage reductions from background levels. Florida Admin. Code § 62-302-.530 (table). Other states incorporate biological indicators in monitoring or to ensure that designated uses are protected. See, e.g., Maine Admin. Code §06.096.586, 07.105 App. C ("aquatic life . . .shall be as naturally occurs"); Arkansas Admin. Code § 014.04.02 (narrative biological indicator listing presence of specific fish species); Connecticut DEP Water Quality Standards[5] (narrative standard listing presence of invertebrate species that should be well represented); Idaho Admin. Code. § 59.01.02.053 (authorizing Department to use biological indicators to ensure beneficial uses are being supported); Vermont Admin. Code § 12.004.052.3-01(C) (authorizing promulgation of numeric biological indices to ensure protection of biological integrity).

[5] http://dep.state.ct.us/wtr/wq/wqs.pdf

INADEQUACY OF ECOLOGY'S PROPOSED CRITERIA

Under the proposed standards, Ecology establishes criteria in the following categories to protect the designated use of salmonid spawning and rearing: temperature, dissolved oxygen; turbidity, total dissolved gas, and pH. As outlined above, the science is indisputable that human actions have significant and diverse impacts on watershed biological health, to the point where many watersheds are unable to sustain salmonids, and that the proposed criteria are unable to detect those impacts and thus protect the uses. For this reason, we believe that the criteria are fundamentally inadequate to meet the requirements of the law.

The proposal includes narrative criteria regarding nonpoint sources that are not sufficient to protect designated uses and/or make up for the inadequacies of the proposed numeric criteria. WAC 173-201A-260 (proposed). The nonpoint source criteria reads as follows:

> Runoff from nonpoint sources (such as from animal and human wastes or soil erosion from land-use activities) are not allowed to drain or be discharged into surface waterbodies of the state, except when controlled with best management practices or treated with waste management technology, as approved by the department.

The scientific record is clear that this narrative condition is by itself insufficient to protect designated uses. First, the "draining" and "discharging" of nonpoint pollutants is only one of several mechanisms by which human activities, particularly urbanization, undermine watershed biological integrity. As noted above, alteration of the hydrologic regime is one of the chief ways by which land use activities undermine water quality. It is not a discharge in the traditional sense ("pollutant") but rather an alteration in the timing, frequency, and extent of high and low flows over time that undermines the physical and biological integrity of the water ("pollution"). We do not believe that this narrative criteria captures the impacts to biological integrity imposed by urbanization.

Second, the regulation permits non-point discharges provided that they are treated with "best management practices," defined under the proposal as "physical, structural and/or managerial practices approved by the department that, when used singularly or in combination, prevent or reduce pollutant discharges." There are a host of problems with this approach. Ecology has not "approved" BMPs for many activities – the regulation suggests that in the absence of formal approval by Ecology, BMPs are whatever a project proponent thinks they are. In many instances, there simply are no BMPs that "prevent or reduce" discharges. At best, BMPs can help reduce the worst impacts or provide some kind of mitigation that may or may not help lessen potential impacts.

Perhaps most critically, extensive scientific research specific to the Puget Sound region reveals that existing structurally-based BMPs have largely failed to provide a significant check on watershed degradation associated with urbanization. This research consistently concludes that <u>protection</u> is the only management practice that is able to limit the effects of land conversion, new impervious surface and the other harms associated with human activity. May,

2001; May & Horner, 2002 ("BMPs mitigate very small percentages of the hydrologic and water quality changes accompanying urbanization. . . . Continuing deficiencies in design standards largely explain why, even when they are present, the facilities mitigate so little of the impact."); Booth, 2000; Horner, 2002 ("small beneficial impact" of BMPs). Thus, the science is quite clear that reliance on existing BMPs is insufficient to protect the integrity of streams in urbanizing areas.

Finally, Ecology's reservation for itself of the right to establish additional site-specific water quality criteria to protect uses, see proposed WAC 173-201A-260(3), is not sufficient to resolve the lack of meaningful criteria. While this authority could be used to establish site specific biological criteria, the critical test is whether the existing proposed criteria are sufficient to protect beneficial uses and ensure the biological integrity of the state's waters. Until such site-specific criteria are developed, the proposal fails to meet the requirements of the Act.

CONCLUSION

Ecology's proposed water quality standards fail to fulfill the CWA's requirements because the proposed criteria are insufficient to protect designated uses and fail to satisfy the Act's mandate to protect the biological integrity of the state's waters. Preliminary adoption of narrative biological criteria is possible on the schedule proposed, and the state should commit to a process for designating specific numeric B-IBI-based criteria on a rapid schedule.

Sincerely,

Jan Hasselman, Counsel
National Wildlife Federation

attachments

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BONNIE MILLER

6057 Ann Arbor Ave. NE
Seattle, WA 98115-7618
January 24, 2003

Susan Braley
Dept of Ecology
Box 47600
Olympia, WA 98504-7600

Department of Ecology
Water Quality Program

JAN 28 2003

RE: New water quality standards

Dear Ms. Braley:

I firmly believe that the health of our nation is based upon two factors, the quality of our air and the quality of our waters. Since there appears to be a threat to the quality of Washington's water in that some of your proposed changes would weaken protections while eliminating existing protections for recreation use of rivers. I respectfully request that you:

- Retain protection for recreational uses and salmon migration.
- Retain the classification system that provides general protection for Washington waters.
- Strengthen, not destroy the links between water quantity and water quality. We need more water in our rivers, not less.
- Minimize loopholes and only allow exemptions for public health emergencies.

Thank you for considering my comments.

Sincerely,

Bonnie E. Miller

Bonnie E. Miller

Public Comm
Proposed Revisions to the Surfa
Public comment period ends March 7, 2003

STAN PARKER [redacted]

MA 7/7/03

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

☐ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Stan Parker

Address: 2520 Jefferson St.
Bellingham WA. 98225

E-mail Address:

Comments:

I feel that the new regulations are more a reversal than a revision of water quality standards. Too much is left to a subjective decision on the part of the government. You have a poor track record when final decisions are in your hands.

I have never seen a body of water in washington that kids don't play in and around.

Received 2/3/2003 Bev Poston - Hearing Officer
Bellingham Public Hearing

SOLOMON PECH
[redacted]

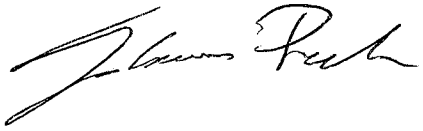
MH 4/1/03

nent of Ecology
uality Program
FEB 19 2003

To the Ecology Department of Washington State:

It has come to my attention that there are some changes slated to made, which would change the current policies on Washington waters within your department. As a concerned citizen of Washington State I would like to voice my opinion on this matter. Personally I would prefer it if protection was retained for recreational uses and salmon migration. I also feel that the current classification system that provides general protection for Washington waters. I also think that the connection between water quantity and water quality should be strengthened not weakened. We need more water in our rivers, not less! Lastly I am concerned that loopholes are not being minimized and that they should be minimized so that exemptions are only allowed for public health emergencies.

Thank You,
Solomon Pech



PADDLE TRAILS CANOE CLUB
[redacted]

4/7/03

Public Comment Form
Proposed Revisions to the Surface Water Quality Standards
Public comment period ends March 7, 2003

Department of Ecology
Water Quality Program

FEB 21 2003

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

Draft rule **Draft Environmental Impact Statement**

Name: Donald G. Bottles, Conservation Chair, Paddle Trails Canoe Club
Address: 326 South 10th Street
Mount Vernon, Washington
Don Bottles
E-mail Address: d_bottles@hotmail.com

Comments: Please include these comments about the Proposed Revisions to the Surface Water Quality Standards in the Public Record.

As Conservation Chairman for the Paddle Trails Canoe Club I am responding as the Club's representative. The Club's mailing address is PO Box 24932, Seattle, WA., 98124. We are a Club with a little over 200 memberships, both family and individual. We schedule over 100 trips each year on the lakes, rivers and marine waters of our State.

The Quality and Quantity of our State's waters is very important to all our members. We encourage the maintenance of high standards to ensure against the degradation of our waters. It appears that the proposed standards goes too far in an attempt to comply with the DOE's Code of Conduct that provides for promotion of economic development. **The proposed standards provide too many areas where DOE Staff is not protected from politicians and regulated industries and will feel too much pressure to lower the standards for our waters.**

Being realistic, we know that once the Standards get this far along in the process that it would take a great uproar to make any major changes and this is not likely to happen. So, perhaps you would consider fine tuning a few areas.

Please add specific language that boating and aesthetic enjoyment, in addition to water contact recreation, is a beneficial use. We feel this is very important. It will give a little more weight to those of us who use the rivers for boating recreation and protect the aesthetic aspects of some of our State's most beautiful rivers of which we all are so proud.

Being a family organization, the protection of our children is very important to us. **Please eliminate text that permits a lower quality of water for wading streams than swimming water.** Young children play and swim in shallow waters. They are much safer for them.

Protection of in stream flows is not adequate in the proposed regulations. Large water users through political pressure could be permitted to drain streams dry. Recreational use of waters is important and should be a consideration in determining in stream flow. **Please strengthen the text to protect minimum flows in our streams and rivers and reduce affects of politics.**

MA

Public Comment Form
Proposed Revisions to the Surface Water Quality Standards
Public comment period ends March 7, 2003

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

Department of Ecology
Water Quality Program
FEB 21 2003

This public comment pertains to (please check one):

☒ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Roger & Eleanor Marquardt

Address: 14517 N.E. 3RD ST
Bellevue, WA 98007

E-mail Address: dizro@sprintmail.com

Comments:

Please include in the Public Record these comments about the Proposed Revisions to the Surface Water Quality Standards.

I use the lakes, rivers and marine waters on a regular basis for boating recreation and I am concerned that the proposed regulations do not specifically recognize boating (canoeing and kayaking) as a beneficial use. **Please add specific language that boating and aesthetic enjoyment, in addition to water contact recreation, is a beneficial use.**

Protection for in stream flows is not adequate in the proposed regulations. Large water users should not be permitted to drain streams dry. **Please add text to address the relationship between quantity and quality of water. Please establish and protect minimum flows in our streams.**

Many children use wading streams for swimming and play. **These children should have the same protection and quality of water as those people using swimming waters. Please eliminate the text that permits a lower quality of water for wading streams than swimming water.**

The State of Washington is proud of its clean flowing streams, rivers, lakes and marine water. Our water quality standards must protect these waters.

Roger & Eleanor Marquardt

p4

Public Comment Form
Proposed Revisions to the Surface Water Quality Standards
Public comment period ends March 7, 2003

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

Department of Ecology
Water Quality Program
FEB 21 2003

This public comment pertains to (please check one):

☒ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Susan Holt

Address: 11304 Riviera Pl NE
Seattle, WA 98125

E-mail Address:

Comments:

Please include in the Public Record these comments about the Proposed Revisions to the Surface Water Quality Standards.

I use the lakes, rivers and marine waters on a regular basis for boating recreation and I am concerned that the proposed regulations do not specifically recognize boating (canoeing and kayaking) as a beneficial use. **Please add specific language that boating and aesthetic enjoyment, in addition to water contact recreation, is a beneficial use.**

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Susan L. Holt

14

Public Comment Form
Proposed Revisions to the Surface Water Quality Standards
Public comment period ends March 7, 2003

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

Department of Ecology
Water Quality Program
FEB 21 2003

This public comment pertains to (please check one):

☑ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Linda Newman

Address: 12747 4th Ave. NW
Seattle, WA 98177

E-mail Address:

Comments:

Please include in the Public Record these comments about the Proposed Revisions to the Surface Water Quality Standards.

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Linda Newman

Public Comment Form
Proposed Revisions to the Surface Water Quality Standards
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Department of Ecology
Water Quality Program
FEB 21 2003

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

☒ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Brad & Suzan Grimm

Address: 744 222nd PL NE
Sammamish WA 98074

E-mail Address: sbgrimm@attbi.com

Comments:

Please include in the Public Record these comments about the Proposed Revisions to the Surface Water Quality Standards.

I use the lakes, rivers and marine waters on a regular basis for boating recreation and I am concerned that the proposed regulations do not specifically recognize boating (canoeing and kayaking) as a beneficial use. **Please add specific language that boating and aesthetic enjoyment, in addition to water contact recreation, is a beneficial use.**

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Public Comment Form
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Department of Ecology
Water Quality Program
FEB 21 2003

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Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

☒ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Robert B. Turner

Address: 15124 SE 20th Street
Bellevue WA 98007

E-mail Address:

Comments:

Please include in the Public Record these comments about the Proposed Revisions to the Surface Water Quality Standards.

I use the lakes, rivers and marine waters on a regular basis for boating recreation and I am concerned that the proposed regulations do not specifically recognize boating (canoeing and kayaking) as a beneficial use. **Please add specific language that boating and aesthetic enjoyment, in addition to water contact recreation, is a beneficial use.**

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Robert B. Turner

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Department of Ecology
Water Quality Program
FEB 21 2003

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Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

☑ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Ollie Royer

Address: 508 NW 43rd
Seattle WA 98107

E-mail Address: ollie_orca@yahoo.com

Comments:

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I use the lakes, rivers and marine waters on a regular basis for boating recreation and I am concerned that the proposed regulations do not specifically recognize boating (canoeing and kayaking) as a beneficial use. **Please add specific language that boating and aesthetic enjoyment, in addition to water contact recreation, is a beneficial use.**

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Department of Ecology
Water Quality Program

Public comment period ends March 7, 2003

FEB 21 2003

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Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

☒ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: JAMES LAWTON James Lawton

Address: 2013 29th Av So
SEATTLE WA 98144

E-mail Address:

Comments:

Please include in the Public Record these comments about the Proposed Revisions to the Surface Water Quality Standards.

I use the lakes, rivers and marine waters on a regular basis for boating recreation and I am concerned that the proposed regulations do not specifically recognize boating (canoeing and kayaking) as a beneficial use. **Please add specific language that boating and aesthetic enjoyment, in addition to water contact recreation, is a beneficial use.**

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Public comment period ends March 7, 2003

Department of Ecology
Water Quality Programs
FEB 21 2003

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

☑ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: CHRIS KERMAN

Address: 6848 23 AV. NE
SEATTLE, 98115

E-mail Address:

Comments: QUANTITY IS QUALITY WHEN IT COMES TO RIVERS. DON'T SELL OUR RIVERS TO CORPORATIONS!

Please include in the Public Record these comments about the Proposed Revisions to the Surface Water Quality Standards.

I use the lakes, rivers and marine waters on a regular basis for boating recreation and I am concerned that the proposed regulations do not specifically recognize boating (canoeing and kayaking) as a beneficial use. **Please add specific language that boating and aesthetic enjoyment, in addition to water contact recreation, is a beneficial use.**

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Department of Ecology
Water Quality Program

FEB 21 2003

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

☒ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Noreen Johnson-LaTour

Address: 14008 Military Rd. S.
Tukwila WA 98168
Noreen Johnson-LaTour

E-mail Address: latour@seanet.com

Comments:

Please include in the Public Record these comments about the Proposed Revisions to the Surface Water Quality Standards.

I use the lakes, rivers and marine waters on a regular basis for boating recreation and I am concerned that the proposed regulations do not specifically recognize boating (canoeing and kayaking) as a beneficial use. **Please add specific language that boating and aesthetic enjoyment, in addition to water contact recreation, is a beneficial use.**

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Department of Ecology
Water Quality Program

FEB 21 2003

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

☑ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Helen Buttemer

Address: 2013 29th Ave S; Seattle WA 98144

E-mail Address: HelenJimLawton@aol.com

Comments:

Please include in the Public Record these comments about the Proposed Revisions to the Surface Water Quality Standards.

I use the lakes, rivers and marine waters on a regular basis for boating recreation and I am concerned that the proposed regulations do not specifically recognize boating (canoeing and kayaking) as a beneficial use. **Please add specific language that boating and aesthetic enjoyment, in addition to water contact recreation, is a beneficial use.**

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Helen A Buttemer

Public Comment Form
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Public comment period ends March 7, 2003

Department of Ecology
Water Quality Program
FEB 21 2003

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

☒ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Lori Lodzinski

Address: 16548 5th Ave NE
Shoreline, WA 98155

E-mail Address:

Comments:

Please include in the Public Record these comments about the Proposed Revisions to the Surface Water Quality Standards.

I use the lakes, rivers and marine waters on a regular basis for boating recreation and I am concerned that the proposed regulations do not specifically recognize boating (canoeing and kayaking) as a beneficial use. **Please add specific language that boating and aesthetic enjoyment, in addition to water contact recreation, is a beneficial use.**

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Lori Lodzinski

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Department of Ecology
Water Quality Program

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

FEB 21 2003

This public comment pertains to (please check one):

☑ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: MEL VANDERGRIFF

Address: 12747 4TH AVE NW
SEATTLE WA 98177

E-mail Address: Mgryphon@hotmail.com

Comments:

Please include in the Public Record these comments about the Proposed Revisions to the Surface Water Quality Standards.

I use the lakes, rivers and marine waters on a regular basis for boating recreation and I am concerned that the proposed regulations do not specifically recognize boating (canoeing and kayaking) as a beneficial use. **Please add specific language that boating and aesthetic enjoyment, in addition to water contact recreation, is a beneficial use.**

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CANNOT EMPHASIZE ENOUGH THE IMPORTANCE OF THESE COMMENTS

M Vandergriff

Public Comment Form
Proposed Revisions to the Surface Water Quality Standards
Public comment period ends March 7, 2003

Department of Ecology
Water Quality Program

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

FEB 21 2003

This public comment pertains to (please check one):

☑ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Gerald Eller

Address: 9305 NE 191st
Bothell WA 98011

E-mail Address: eller.adams@verizon.net

Comments:

Please include in the Public Record these comments about the Proposed Revisions to the Surface Water Quality Standards.

I use the lakes, rivers and marine waters on a regular basis for boating recreation and I am concerned that the proposed regulations do not specifically recognize boating (canoeing and kayaking) as a beneficial use. **Please add specific language that boating and aesthetic enjoyment, in addition to water contact recreation, is a beneficial use.**

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G Eller

M4

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Proposed Revisions to the Surface Water Quality Standards
Public comment period ends March 7, 2003

Department of Ecology
Water Quality Program
FEB 21 2003

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

☒ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Joanne Ostlund

Address: 16589 Peterson Road
Burlington Wa 98233

E-mail Address: joanneo@co.skagit.wa.us

Comments:

Please include in the Public Record these comments about the Proposed Revisions to the Surface Water Quality Standards.

I use the lakes, rivers and marine waters on a regular basis for boating recreation and I am concerned that the proposed regulations do not specifically recognize boating (canoeing and kayaking) as a beneficial use. **Please add specific language that boating and aesthetic enjoyment, in addition to water contact recreation, is a beneficial use.**

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Joanne Ostlund

RICHARD E RAISLER
[redacted]

Susan Braley
Surface Water Quality Standards
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Department of Ecology
Water Quality Program
FEB 21 2003

Susan Braley

As a citizen who cares about Washington's water quality, I am submitting my comments regarding the inadequacy of the proposed water quality standards for surface waters in the State of Washington.

Washington is blessed with incredibly diverse waterways that support numerous plant and animal species. Healthy waters are critical to protecting public health and our quality of life. Water quality standards are the foundation for water quality protection for Washington's rivers, wetlands, and marine waters. The standards help to preserve our healthy drinking water sources, protect recreational areas, clean up polluted waters, and recover endangered species.

However, the Department's proposed standards are inadequate to protect Washington's water resources and unique ecosystems as mandated by the Clean Water and Endangered Species Acts. I am deeply concerned that the Department is abandoning water quality protection and salmon recovery and putting the public's health at risk.

I urge the Department of Ecology to adopt water quality standards that will protect our rivers and the human and fish and wildlife communities that depend on them. Specifically, it is critical that our water quality standards:

1. Include stricter temperature and dissolved oxygen standards that will fully protect endangered salmon and other fish and wildlife species;
2. Contain an antidegradation policy that ensures that all our state's waters are protected from further degradation, provides the public with meaningful opportunity to protect Washington's waters, and avoids unnecessary political hurdles;

3. Eliminate exemptions and loopholes through which polluters, including dam owners, can avoid compliance with the standards;
4. Do not allow discharges of toxic substances into waterways, which includes phasing out "mixing zones" for extremely hazardous toxics;
5. Allow short and long-term modifications to water quality standards and uses in order to allow for important river restoration projects that are in the public interest, such as dam removals;
6. Retain recreation and salmon migration as protected uses of a water body.

I am submitting the following incident as an example for the necessity of strict water guality laws and enforcement.

April 3, 2002 Puget Sound Energy was having a water leak in the Lower Baker River Dam repaired by a contractor. The material of choice was Scotch-Seal Chemical Grout. It contains two chemicals of concern, acetone and toluene-di-iso-cyannate. The MSDS states, "Do not flush to waterways or sewers". Approximately forty gallons were used to repair the defect in the concrete dam. During application two gallons of material were spilled into Shannon Lake below the dam. The Department of Ecology was not notified in a timely manner and no explanation was given as to why a toxic product was used. No fine was levied for the actions.

Thank you for considering my comments.

Respectfully,

Richard E. Raisler
14954 channel Lane
La Conner, Wa 98257

cc. American Rivers

SAVE LAKE SAMMAMISH
1420 N.W. Gilman Blvd., # 2565
Issaquah, Washington 98027

David Johnson
NA 4/7/03

Ms. Susan Braley
Surface Water Quality Standards
Washington State Department of Ecology
P. O. Box 47600
Olympia, WA 98504-7600

SAVE LAKE SAMMAMISH
[redacted]

Department of Ecology
Water Quality Program
MAR 11 2003

Dear Ms. Braley,

Re: Comments on proposed revisions to the state Surface Water Quality Standards:

Save Lake Sammamish (SLS) is a non-profit Washington corporation dedicated to the preservation of good water quality in Lake Sammamish. Through publication of a quarterly newsletter, sponsorship of workshops, and presentations to community, educational and government groups, SLS attempts to heighten awareness of the threats to the health of the Lake and provide information on ways to lessen the adverse impacts of human activities on water quality.

SLS has concerns about the above referenced rules as follows:

1) Anti-degradation policy changes

The existing anti-degradation policy defined in WAC 173-201-070 is proposed to be replaced with new language in new section WAC 173-201A-300. The new language provides three tiers of protection, Tier I, Tier II, and Tier III.

Part (3) of the proposed Tier I protection states: Where water quality criteria are not met due to natural conditions, human actions are not allowed to further lower the water quality, except where explicitly allowed in this chapter." There is no definition of what constitutes these "human actions." The phrase human actions should be replaced with human activities which have effects on water quality .

The new Tier II protection states "Where a water is demonstrated to be of a higher quality than a criterion assigned to that water, the water quality must be protected at the higher level unless the department determines that a lowering of water quality is necessary and in the overriding public interest."

This language appears to require that a demonstration of higher water quality be made before the water can begin to enjoy the Tier II protection. It is not determined who will make the demonstration that a water is of a higher quality than the criterion assigned to that water. This appears to place the burden of determining that a higher quality exists on members of the public, which is an unreasonable burden to add. The existing rule states "Whenever waters are of a higher quality than the criteria assigned for said waters, the existing water quality shall be

protected." The existing language does not require a demonstration of water quality to be made before the water quality will be protected. Change the proposed language to read "Where a water is of a higher quality than a criterion assigned to that water..."

In proposed section WAC 173-201-320(1)(a), Ecology is authorized to make the determination that a lowering of water quality is necessary providing that "the resulting quality of the water will fully protect existing uses." However, the existing rule states that any lower water quality must "still be of high enough quality to support all existing beneficial uses." The proposed new language fails to be inclusive of "all" beneficial uses" rather than just "existing uses." WAC 173-201A-320 (1) (a) should be reworded to read "The resulting quality of the water must still be of sufficiently high quality to support all existing beneficial uses."

The proposed WAC 173-201A-320 (2) states in part: "To determine than a lowering of water quality is necessary and in the overriding public interest, an analysis will be conducted for new or expanded actions when the resulting discharge is expected to cause a measurable change in the physical, chemical, or biological change quality of a waterbody. Measurable changes will be determined based on a predicted change in water quality at a point outside the source area, after allowing for mixing consistent with WAC 173-201A-400(7). In the context of this regulation, a measurable change refers to..." This section is inadequate for its intended purpose, is poorly defined, and applies the wrong action in the wrong sequence. The "source area" referred to is not defined but appears to, by implication, be the mixing zone. Replace the entire Section (2) with:

"If a potential exists for a new or expanded action to lower the quality of a water, Ecology shall require the responsible parties to prepare an analysis which can be used by Ecology to determine if the activity will cause a measurable change to the quality of a water. The analysis shall identify any measurable changes to the quality of a water outside of any proposed mixing zone including:

(a) Temperature change of 0.3C;
(b) Dissolved oxygen change of 0.2 mg/L
(c) Bacteria level change of 2 cfu/100 mL;
(d) pH change of 0.1 units;
(e) Turbidity change of 0.5 NTU; or
(f) Any detectable change in the concentration of a toxic or radioactive substance.

The proposed WAC 173-201A-320 (4) states in part: "Once an activity has been determined to cause a measurable lowering in water quality, then an analysis must be conducted to..." This should be reworded to read: "Once a new or expanded action has been determined by Ecology to cause a measurable change in the quality of a water, then an analysis must be conducted to..."

2) Toxic Substances Criteria for Ammonia

Changes are proposed for establishing the acute and chronic maximum permissible levels of un-ionized ammonia in surface waters. For example, the existing WAC 173-201A-040 acute concentration limit for un-ionized ammonia (the toxic form) in salmonid-bearing fresh water

with a pH of 7 at 15C is .066 mg/l and the chronic limit is 0.0069 mg/l. Under the limits proposed in the revised WAC 173-201A-240, the acute concentration limit for total ammonia would be 24.1 mg/l (un-ionized would then be 0.065 mg/l) and the chronic limit would remain at 0.0069 mg/l un-ionized ammonia.

However, under the existing rule, if Salmonids are absent from this water, the acute and chromic limits would not change since the example temperature is below the TCAP. With the proposed revisions, however, the acute concentration limit for total ammonia would be 35.96 mg/l (0.097 mg/l un-ionized) and the chronic concentration limit for total ammonia would be to 5.71 mg/l (0.0154 mg/l un-ionized). This would result in a 46 percent increase in the acute limit for toxic ammonia and a 123 percent increase in the chronic concentration limit. Past studies have found clear significant adverse effects on salmonids from low concentrations of un-ionized ammonia. Burrows (1964) found progressive gill hyperplasia in fingerling chinook salmon during a six-week exposure to a total un-ionized ammonia concentration of only 0.002 mg/l.

The existing documentation provided by Ecology to support increasing these limits is insufficient to make the case that such an increase is justified. The number of studies cited is very small, the data is admittedly inconclusive for salmonids, no economic benefits or other societal benefits are identified for the increase, and such an increase has the potential to make existing non-salmonid waters inhospitable for any future salmonids, thereby countering efforts by various public groups to establish viable salmonid populations in formerly-barren waters. Our state provides a unique environment for salmonids with its extensive inland marine shoreline, temperate climate, and normally-heavy rainfall. We have an obligation and a duty to preserve this habitat for future generations by retaining existing protections unless and until scientifically-sound benefits are identified for doing otherwise.

3) Implementation of Standards

Proposed WAC 173-201A-510(1) states: "No waste discharge permit can be issued which results in a violation of established water quality criteria, except as provided for in this chapter." The phrase "established water quality criteria" is undefined but is apparently intended to refer to the state water quality standards. There are no reasons to issue a waste discharge permit which results in a violation of the state water quality standards. Revise this sentence to read "No waste discharge permit can be issued which would permit discharges of water that violate the state water quality standards for the applicable receiving water."

Proposed WAC 173-201A-510(1)(a) states: "Persons discharging wastes in compliance with the terms and conditions of permits are not subject to civil and criminal penalties on the basis that the discharge violates water quality standards." This sentence unlawfully relieves the discharger from responsibility for compliance with the state water quality standards. Revise this sentence to read "Persons discharging wastes in compliance with the terms and conditions of permits are still subject to civil and criminal penalties if they knowingly and intentionally discharge wastes which violate state water quality standards. Persons writing and issuing permits are subject to civil and criminal penalties if they knowingly issue permits which authorize discharges of wastes which violate the applicable state water quality standards."

Thank you for the opportunity to provide these comments.

Sincerely yours,

David Johnson
Board Member

cc: Joanna A. Buehler

References
Burrows, R.E., 1964. "Effects of accumulated excretory products on hatchery-reared salmonids." Bureau of Sport Fisheries and Wildlife Research Report 66. Government Printing Office, Washington, D. C.

CAROLE WOODS 4/7/03

PO Box 308
Belfair, WA 98528
Feb. 28, 2003

Department of Ecology
Water Quality Program
MAR 04 2003

Susan Braley
Surface Water Quality Standards
Washington State Dept. of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Dear Ms. Braley:

I am concerned about the Department of Ecology's proposed amendments to our state's water quality standards. I understand that these laws protect our rivers and wetlands as well as our coastal waters.

Now is the time of our greatest need of protection for our waters. Please don't respond to pressure by relaxing the laws that protect our endangered and threatened wildlife. If we respond to pressure from special interests by selling out, then our beautiful state will be diminished.

We must protect our water quality so that the wild salmon and other species will continue to survive in Washington State and make this one of the most wonderful and beautiful places in the world.

Sincerely,

Carole Woods

Carole Woods

December 23, 2002

Susan Braley
Dept. of Ecology
P.O. Box 47600
Olympia, WA 98599-7600

MARGARET YEOMAN [redacted] 4/7/03

JAN 03 2003

Madam:

I am limited in both mobility and knowledge - but very concerned on new dabbling on quality standards of our water.

Most particularly, an exploration on criteria to "protect" agricultural water supplies.

Both this state and Idaho are neglecting to recognize that agriculture is to must move into this present age of dwindling water supplies and melting glaciers and become well versed in conserving in water usage. This should include both changes in types of crops grown in semi-desert areas and methods of water delivery. Even a good hard look at the new methods of animal concentration and profligate use of water must be done NOW, not later.

Our so-called environmental bureaus must quit trying to be "friendly" with dedicated foes of doing the right thing - it would be easier for lamb and lion to co-habit!

Sincerely,

Margaret Yeoman
1620 11th St
Anacortes, WA 98221

CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for
Environmental Law & Policy

CENTER FOR ENVIRO LAW & POLICY ATK
KAREN ALLSTON [redacted]

Department of Ecology
Water Quality Program

MAR 11 2003

March 6, 2003

Susan Braley
Surface Water Quality Standards
Washington State Dept. of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

BY FACSIMILE AND US MAIL

RE: Comments regarding proposed revisions to Washington Surface Water Quality Standards, Ch. 173-201A WAC

Dear Ms. Braley:

The Center for Environmental Law & Policy (CELP) works to protect and restore the natural integrity and enjoyment of Washington's waters. Through agency oversight, policy research and advocacy, litigation and education, we serve as a voice for the public interest. Our mission is to leave a legacy of clean, flowing waters—a sustainable supply of water that future generations can rely upon and enjoy.

The waters of Washington belong to all of us. We all have a stake in insuring sustainable water resources upon which our social and economic way of life depends. CELP represents the citizens of Washington to ensure that instream flows are maintained at levels that support their recreational opportunities, ability to harvest fish, and aesthetic enjoyment. CELP has over 400 members who rely on us for protecting Washington's water resources, including flyfishers, conservationists, environmental activists, scholars, scientists, boaters, and outdoor recreationists.

Despite Washington State's image as a rainfall mecca, our rivers and streams suffer from water shortages, especially during late summer and early autumn. As you know, the Department of Ecology's (Ecology's) basin assessments conclude that in many watersheds, regulatory minimum instream flows are not met all of the time, low flows conditions are worsening over time, and many basins are closed to further appropriations because they are overapprorpriated (more water rights have been allocated than for which water is available). Additionally, the state has identified 16 watersheds in which instream flows are inadequate to recover fish species listed as threatened or endangered under the federal Endangered Species Act.

Given the dire status of instream flows in many rivers and streams in Washington, we are extremely troubled by the lack of protection for flows in Ecology's proposed water quality standards. The proposed standards do not include recreation or anadromous fish migration as present or proposed uses for which water quality criteria are delineated. Recreational use of rivers is often dependent upon adequate flows. Similarly, salmon need adequate flow to facilitate adult migration to spawning grounds and out-migration of juvenile fish to the ocean. The elimination of these two specific use categories would erode the state's duty and ability to protect instream flows.

2400 N 45th Street, Suite 101 | Seattle WA 98103 | 206.223.8454 | fax 206.223.8464 | www.celp.org

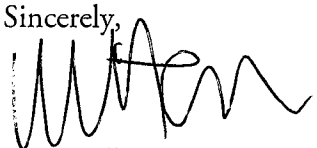
BOARD OF DIRECTORS: Melissa S. Arias, Joan Foley, Craighton Goeppele, Barry Goldstein, Kyle Kovalik, Nancy Rust, Tim Stearns, Roger van Gelder, Sims Weymuller, Francis Wood

Ecology has repeatedly, publicly acknowledged that water quality and quantity are connected and that "water quality and water quantity need to be managed together, since actions affecting one will affect the other." In the last decade, state and federal courts have held that the narrative classification-based system affords strong environmental protections to Washington's rivers. Of particular importance, the courts have held that water quantity and water quality are linked, and that the water quality standards require that enough water be flowing in our rivers to support the general uses set forth in the classification system. Most recently, in the Sullivan Creek decision, the Washington Supreme Court found that Ecology holds far-reaching authority to protect the quality of our public waterways. The Court's decision upheld state conditions requiring a dam operator to leave enough water instream to protect fish, even though this requirement impacted the use of the dam's water rights. Washington State can take all action necessary to regulate against pollution - even if such action affects the use of water under existing water rights. The Sullivan Creek decision recognizes and solidifies the importance we place on clean, flowing waters and our quality of life in Washington. This critical protection would be severely undermined by the proposed rules.

Rivers throughout Washington are suffering because they do not have enough water in them. This harms the ability of Washington's citizens and visitors to use public waters for recreational purposes. It also affects the ability of our rivers to support migrating salmon. Thus, the protections afforded by the general narrative criteria, and the recreation and salmon migration classifications in particular, are important for overall water quality protection.

It is unconscionable that by changing from a class-based to use-based system of designating beneficial uses, and then eliminating recreation and fish migration as uses, Ecology voluntarily forgoes an important tool in protecting water quality. **CELP urges Ecology to add recreation and fish migration as surface water uses recognized in Ch. 173-201A WAC and develop water quality criteria to adequately support these uses.** Ecology should be working to strengthen, not destroy, the link between water quality and quantity.

Sincerely,



Karen Allston
Executive Director

SIERRA CLUB
FOUNDED 1892

SIERRA CLUB – UPPER COLUMBIA RIVER
[redacted]
Seattle, WA 98109-1631
Phone: (206) 523-2147
www.cascade.sierraclub.org

Upper Columbia River Group
P.O. Box 413
Spokane, WA 99210
Phone: (509) 456-3376
www.idaho.sierraclub.org/uppercol/

March 6, 2003

Via Facsimile and Mail

Susan Braley
Surface Water Quality Standards
Washington State Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600
(360) 407-6426 fax

Department of Ecology
Water Quality Program
MAR 07 2003

re: Proposed Changes To Washington's Water Quality Standards

Dear Ms. Braley:

While the members of the Sierra Club would like to convey their sincere appreciation of the time and effort that went into the drafting of the Department of Ecology's proposed changes to the state's water quality standards ("Proposed Rules"), we have grave concerns that as drafted the Proposed Rules could undermine the goals of the state and federal clean water laws.

The Sierra Club is the oldest national conservation organization in the United States. In western and central Washington, the Cascade Chapter has over 25,000 members; in eastern Washington, the Upper Columbia River Group has 1,700 members. Sierra Club members use and enjoy all of the rivers in Washington state for fishing, recreation and aesthetic enjoyment. Amendments to the state water quality standards will directly affect the interests of Sierra Club members throughout Washington.

The Proposed Rules Do Not Acknowledge The Link Between Water Quantity And Water Quality

The state Supreme Court has twice held that reduced stream flow can constitute pollution and degradation of water quality under the federal and state Clean Water Acts and that the Department of Ecology may therefore require water to be left in a stream or river in order to assure compliance with applicable water quality standards. Despite this repeated recognition of the link between water quality and quantity, the Proposed Rules make no mention of the fact that reduced water quantity can be a form of pollution and degradation. The Sierra Club recommends that at the very least the Department include the maintenance of sufficient water quantity as a narrative or general water quality criterion in Proposed Sections 173-201A-200(1), 173-201A-210(1)and 173-201A-260(1).

To Proposed Rules Do Not Include Salmon Migration And Recreation As Protected Uses

The Sierra Club is also very concerned that the proposed change from a "classification" system to a "use" system may reduce the amount of overall protection our state's waters enjoy. However, if the Department does make the change to a use system, it should specifically include salmon migration and recreation as uses to be protected in Proposed Section 173-201A-200.

The Proposed Antidegradation Rule Should Be Strengthened

The proposed change to the antidegradation standard is truly alarming because the Proposed Rule appears to actually encourage degradation. Proposed Section 173-201A-320(4), for example, explicitly lays out what information is needed "to justify that the lowering of water quality." Then upon reviewing what will justify a reduction in water quality, it becomes clear that the Department proposes to lower applicable water quality standards for Tier II waters whenever there may be economic pressure to do so. This turns the concept of antidegradation on its head. Instead of a bright line rule protecting water quality, the rule becomes a road map for how to degrade it.

The Tier II standard also effectively exempts all nonpoint source pollutants by applying its requirements only in conjunction with NPDES, state discharge and § 401 permits, and other pollution control programs. Pollution emanating from agricultural and timber harvest activities, however, are not generally regulated under water quality permits and programs, and those activities could (and likely will) degrade waters of a higher quality than the assigned criteria. This is an unsupportable result. The Tier II definition should be re-written to require all citizens and businesses in Washington to avoid degradation of high quality waters of the state.

Finally, while making it relatively easy to justify the degradation of Tier II waters, the Proposed Section 173-201-330 seems to go out of its way to make the designation of Tier III waters more difficult. Indeed, Section 173-201-330 provides that outstanding resource waters should not be designated when the economic pressure to degrade water quality is too great or when there is not "overwhelming" public support for designation. Again this seems totally at odds with the underlying purpose of the state and federal clean water laws, which is to protect such outstanding waters.

The Proposed Rules Create Loopholes For Dams That Do Not Meet Water Quality Standards

The Department is proposing to allow dams up to ten years to come into compliance with water quality standards. Many of these dams have been operating for over 50 years and have had plenty of time to get into compliance already. Ecology should not issue § 401 certifications (which certify that dams meet water quality standards) until the applicant has submitted evidence, data, and modeling that its proposed measures will provide a reasonable assurance that water quality standards will be met.

The Proposed Rules Abandon The Phase Out Of PBT Mixing Zones

The Department has also abandoned its earlier proposal to eliminate mixing zones for persistent bioaccumulative toxics (PBTs), which are extremely hazardous to humans and fish and wildlife. Mixing zones are areas in a water body where industries are permitted to discharge toxic chemicals and other pollutants into waterways in amounts that violate water quality standards. Ecology should adopt its earlier proposal so that polluters are no longer permitted to discharge PBTs in amounts that violate water quality standards.

Department of Ecology
Water Quality Program

MAR 07 2003

The Proposed Rules Encourage An Abuse Of Use Attainability Analyses

Under the Clean Water Act, Use Attainability Analyses were intended for naturally occurring situations where standards could not be met. The Department's proposal would go beyond this and allow polluters to use these analyses to eliminate uses based on economics because the polluter does not want to clean up its effluent. The UAA process should be much more limited in accordance with the intent of the Clean Water Act.

The Proposed Rules Create Several Large Loopholes That Must Be Eliminated Or Tightened

The Proposed Rules set forth a whole suite of new methods by which a polluter may obtain exemptions from the water quality standards. These loopholes should be eliminated or tightened up. They include the "overriding public interest" exemption, short-term modifications, variances, site-specific criteria, use attainability analysis, and water quality offsets. By creating these loopholes, the focus of the Proposed Rules shifts from ensuring water quality standards are met to figuring out how to get around that goal. While at least some of these mechanisms are authorized under federal law, Washington has the power to require more stringent standards. These various exemptions should be eliminated or defined to allow their use only in extreme circumstances.

The New Rules Should Include a Provision to Protect Interstate Waters from Out-of-State Pollution

Several rivers entering Washington state from other states, the Spokane River in particular, do not meet state water quality standards. This is a significant problem that has not been adequately addressed by Washington to date. As both a statement of policy and administrative directive, the amended water quality standards should contain a provision requiring compliance with state standards at the borders and directing the Department of Ecology to take action to enforce that requirement.

Thank you very much for the opportunity to comment on the Proposed Rules. Once finalized, they will surely have a profound impact on the future of our state's waters.

Sincerely,

John Osborn
Upper Columbia River Group

Sincerely,

Brad Axel
Cascade Chapter

Public Com[redacted]
Proposed Revisions to the Su[redacted]
Public comment period [redacted]

SIERRA CLUB – CASCADE CHAPTER

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

☒ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Bradford Axel Cascade Chapter of the Sierra Club

Address: 6541 28th Ave NE
Seattle, WA 98115

E-mail Address: bradford.axel@stokeslaw.com

Comments:

The proposed revisions fail to specifically include salmon migration as a protectable use. They also seem to ~~relent from~~ abdicate the authority confirmed by the U.S. and Washington Supreme Courts in the Jefferson Cty and Pend Oreille Cty cases to regulate water quantity issues to the extent they affect water quality. Those cases unambiguously hold that Ecology has the authority in certain circumstances to require that water be left in a river or stream. The proposed revisions, however, do not clarify that this nexus exists. Water quantity should be a narrative standard.

The proposed revision to the antidegradation provision is also troubling. It represents a drastic departure from the ~~previous~~ existing rule, which requires that water quality not be diminished by opening the door for reductions in water quality across the state. Ecology appears to have abandoned the lofty goals of the CWA.

Similarly, the loopholes created by the proposed revisions are much too large. Under proposed sections dealing with short term modifications and variances, water quality standards can be effectively eliminated whenever the Department deems necessary. for 5 years or longer

Received 2/4/2003
Seattle Public Hearing
Bev Porton – Hearing Officer

SKAGIT SYSTEM COOPERATIVE

Skagit System Cooperative

P.O. Box 368 • 11426 Moorage Way • LaConner, WA 98257-0368 • Ph. (360) 466-7228
Fax: Fisheries/Biology/Environmental Svcs.: (360) 466-4047

March 7, 2003

Department of Ecology
Water Quality Program
MAR 11 2003

Ms Susan Braley
Surface Water Quality Standards
Washington State Dept. of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
FAX (360) 407-6426

Dear Ms. Braley,

Thank you for this opportunity to provide comments on the Department of Ecology's proposed water quality standard revisions. The Skagit System Cooperative (SSC) provides these comments on behalf of the Sauk-Suiattle Indian Tribe and the Swinomish Indian Tribal Community. These tribes possess rights reserved by treaty to take a fair share of the fish that are destined to pass their usual and accustomed fishing places. Among the fish of greatest interest to these tribes are bull trout, salmon, and shellfish.

On March 6th, you and your staff traveled to the offices of the the Sauk-Suiattle Indian Tribe to meet with representatives of the Tribe and SSC to discuss the Department's proposed water quality standards revisions. We greatly appreciate your time and effort in coming to meet with us, hear our comments and questions, and explain the Department's views.

General Comments

Taken as a whole, the Department's proposed water quality standards represent a clear weakening of protection for water quality and beneficial uses in Washington. In addition, the new standards greatly complicate determinations of whether beneficial uses are protected, thereby necessitating more expensive management and monitoring processes. The Department weakens its standards and complicates its procedures at a time when increased water quality protection and better more efficient enforcement are needed to protect ESA-listed salmon subject to treaty obligations.

Char Beneficial Use Designation

At the March 6 meeting, SSC and tribal staff provided the Department with a map depicting char distribution in WRIA 4. Comparison of this map with the Department's proposed char beneficial use designations demonstrates that there are significant areas where the presence

of bull trout or char have been documented, but which will not be protected by the Department's char use designation. The Department's rationale for this discrepancy is that it protected bull trout spawning and rearing areas, but not migration corridors, because there is not currently sufficient data to demonstrate the precise temperature requirements for bull trout migration. Department staff noted that bull trout have even been found in the Walla Walla River,[1] implying that rearing and spawning temperature requirements may not apply. Instead of operating from available data indicating that bull trout prefer to spawn and rear in temperatures within the range of 9 degrees and 12 degrees Celsius, respectively,[2] and conservatively applying this information to all areas known to be used by bull trout, the Department used the claimed lack of information regarding bull trout migratory temperature requirements to rationalize applying the less protective salmon spawning and rearing designation (16 degrees C.).

The Department opined that a reason why it did not apply the char beneficial use designation to some streams used by bull trout is because those streams might not be able to achieve the requisite temperature standard. In the absence of proof that it is physically impossible to achieve the temperature standard, the Department lacks adequate grounds for not applying the char standards to streams where char are found. This is particularly true where the Department has provided processes for making site specific adjustments in water quality standards or conducting use attainability analyses. This is a fundamental problem with the Department's proposed new standards – when in doubt, it errs on the side of favoring decreased protection rather than choosing a standard more likely to result in protecting the beneficial use. This approach is short-sighted. It is much more cost effective to protect good quality habitat now than it is to try to fix it later.

Antidegradation

Although the Antidegradation Policy is supposed to apply to nonpoint sources, the Department's Policy does not. The primary threat to Tier II waters in the Skagit basin stems from nonpoint source activities, yet there is no provision for assessing the propriety of nonpoint source activities that would result in lowering the water quality of those Tier II waters. There is no provision for examining forest practices occurring on private lands. There is no provision for examining national forest plans, the watershed plans adopted pursuant to those forest plans, or the timber sales or other land-disturbing activities adopted to implement those forest or watershed plans. There is no provision for examining the propriety of plans, regulations, and BMPs adopted

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[1] The relevance of extreme cases such as bull trout presence in the Walla Walla is questionable. For example, humans are found both in the Arctic and in the Kalahari Desert, but we do not set the thermostats in office buildings or hospitals on the basis of these extremes. To the contrary, we set the thermostats at temperatures likely to foster human productivity and health.

[2] *See* EPA Regiona 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards (Draft February 14, 2003) at 24 (Tables 3 and 4).

by local governments that would affect the quality of Tier II waters. [3]

Tier II waters, such as the upper Skagit, Sauk, Cascade, and Suiattle rivers and their tributaries, provide key chinook production that anchors the entire Puget Sound chinook ESU. Without the full production provided by these streams, the likelihood of chinook rebuilding will decrease dramatically. Similarly, without the full production of these streams, fulfillment of the Tribes' treaty-secured fishing rights will be an even more distant dream. The proposed Antidegradation Policy fails to provide any process for addressing these issues in the context of potential impacts from nonpoint source pollution. These waters should be protected from degradation.[4]

The Department's proposal for addressing short term modifications of water quality standards (§ 410(2)) underscores its failure to address nonpoint sources in its Antidegradation Policy. Under § 410(2), actions such as integrated pest management, noxious weed management, and watershed management plans all must go through a public process in order to be eligible for short-term modifications of water quality standards. There is no reason why such plans, along with forest practices on private, state, or federal lands (and associated management plans) should not be required to go through public processes to determine whether any proposed lowering of the quality of a Tier II water is in the over-riding public interest.

At its consultation with the Sauk-Suiattle Indian Tribe, Department staff conveyed the impression that the decision to lower the quality of a Type II water was a relatively perfunctory decision[5] that would not require broad or even significant public support.[6] In contrast, staff left

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[3] We have been told by Department staff that the Department lacks authority to regulate management of nonpoint sources by local governments. At the same time, we have been told by Department staff that designation of a Tier II stream as an Outstanding Resource Water (Tier III) would bring a halt to many local activities, such as home construction. Clearly, if the Department has the authority to bring a halt to home construction, then it certainly has the power to call for a process to determine whether nonpoint source activities should be allowed to measurably degrade the quality of a Tier II water.

[4] The Sauk-Suiattle Indian Tribe petitioned to have the Sauk River declared an outstanding resource water over two years ago. Although it meets the qualifications for designation, the Department still has not acted on the petition. Under the proposed Antidegradation Policy, the Sauk River would not even receive treatment as a Tier II water.

[5] The language of the proposed Antidegradation Policy does not compel the conclusion that the decision would be perfunctory.

[6] Based upon the proposed Antidegradation Policy, Tier II waters could be degraded even in the face of public opposition if the proponent were able to argue that economic benefit would result.

the impression that designation of a water as a Tier III water would require very strong public support. This double standard -- very strong public support needed to protect water quality vs. little or no public support necessary to approve degradation – is contrary to the intent of Antidegradation.

The Department's process for determining whether Tier II waters should be degraded focuses primarily on the economic benefits stemming from degradation rather than the economic benefits stemming from preserving water quality. The burden of demonstrating the need to degrade water quality should be placed squarely on the shoulders of the entity promoting degradation. Tribes and others should not be put in the position of having to demonstrate the need to protect water quality or to improve fish runs that are subject to treaty obligations and/or listed pursuant to the ESA. Similarly, the potential economic viability of the Tribes' fisheries must not be subordinated to the "need" for an economically viable project that would result in lowering water quality. If the proponent of an action that will result in water quality degradation is unwilling to spend the money to implement BMPs adequate to eliminate water quality degradation, then that action should not go forward.

Nonpoint Source Compliance with Water Quality Standards

In its new § 260(1) (p. 35 of the proposed standards), the Department proposes narrative criteria for toxic materials, aesthetic values, and run-off from nonpoint sources. The narrative criteria for toxic materials seeks to bar adverse impacts to water quality stemming from toxic materials. The narrative criteria for aesthetic values seeks to protect the public from offensive sights and stenches, etc. In contrast, the narrative criteria for run-off from nonpoint sources does not set criteria with respect to protecting the public or any beneficial use of water. Instead, it states that any nonpoint source run-off occurring after application of best management practices[7] is acceptable. This is inconsistent with the Department's statement in § 510(3) (p.54-55) that "[a]ctivities which generate nonpoint source pollution shall be conducted so as to comply with the water quality standards." Or, one could interpret §§ 260(1) and 510(4) to reach a circular result – since the criteria for nonpoint source run-off merely calls for application of some best management practices, then water quality standards for nonpoint sources are met any time one applies some BMPs.

We recommend that the Department modify § 260(1) to make it unmistakably clear that the obligation to address nonpoint source pollution is not met by mere application of BMPs, regardless of the consequences to water quality. Instead, nonpoint sources must comply with water quality standards.

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[7] As written, one could comply with the "criteria" without even applying all available or applicable best management practices.

Outstanding Resource Waters

As discussed at the consultation with the Sauk-Suiattle Indian Tribe, streams such as the Sauk, Suiattle, upper Skagit, and Cascade rivers are all vital salmon producers. The Tribe has nominated the Sauk River for designation as an outstanding resource water (ORW). Its value to salmon is incontrovertible. Department staff opined that it would be difficult to get the Sauk River designated due to their belief that designation would largely halt all development and would be opposed by people in the community in Darrington. The Department appears to be crafting a system that allows a small minority to successfully push through actions that degrade high quality waters, but would require an overwhelming consensus to protect them. This turns antidegradation on its head. Moreover, it's an approach that will allow this generation to squander this nation's most valuable remaining waters. We request that the Department revise its proposed rules for designating ORW's in line with the recommendations contained in the letter from Connie Kelleher, American Rivers, to Susan Braley, WDOE (March 6, 2003).

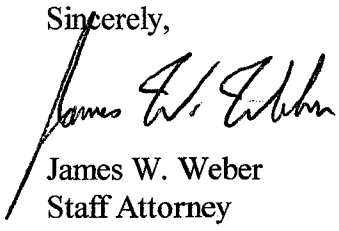
Temperature and Dissolved Oxygen

We recommend that the Department adopt the temperature standards contained in EPA's Regional Guidance.[8] The EPA Guidance does not mandate optimal temperatures, but instead reflects compromises that were made on the basis of the best available technical information available. The Department's proposed standards are less protective of fish than those provided in the Regional Guidance. As stated above, there is no justification for reducing the protection provided for salmon. These fish do not need another increment of impact – they need improvement in habitat conditions. At best, the Department's standards are hindering rebuilding – they certainly are not assisting.

The Department's dissolved oxygen standards also do not adequately protect salmon. The standards are one day minimums. Fish need to replenish their oxygen more often than that. If DO levels were to drop to lower levels during part of the day (or particularly at night), then this life-threatening problem would be masked by the standard.

Thank you for this opportunity to provide comments. If you have any questions about these comments, please feel free to contact me at (360) 466-7225.

Sincerely,



James W. Weber
Staff Attorney

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[8]EPA Regiona 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards (Draft February 14, 2003)

2028 S. Adams
Spokane, WA 99203-1238
February 3, 2003

Ms. Susan Braley
Department of Ecology
Box 47600
Olympia, WA 98504-7600

Department of Ecology
Water Quality Program

FEB 07 2003

Re: Water Quality Standards Revision

Dear Ms. Braley;

The DOE Publication 02-10-066 (revised), OVERVIEW OF THE WATER QUALITY STANDARDS REVISIONS, states in part: ". . .to reflect the latest scientific information . . . .aimed at making our waters clean and safe . . . .". Based on my incomplete reading of the proposed revisions and involvements at the Spokane Public Meeting on the proposed Water Quality Standards Revision, I have serious concerns about this revision activity. My dominant concern is that Climate Change, AKA global warming, is apparently not mentioned in the proposed revisions.

Global warming has a direct impact on water quality and quantity. Some significant climatic changes are in the location and amount of precipitation; in more droughts; in higher temperatures, especially at nighttime in the winter which diminishes mountain snowpacks; and in the increased number of extreme weather events. It is clear that water quality and quantity are definitely affected by the flooding and the reduced water availability caused by global warming.

About 180 countries have supported the draft Kyoto treaty, which would initiate the first globally-authorized mitigating actions on global warming. The reports of the Intergovernmental Panel on Climate Change (IPCC) have increasingly shown that human activities are contributing to climate change. The approximately 2,500 climatologists from about 80 countries that participate in the IPCC scientific investigations have made predictions on future climatic changes. Every such prediction has been too conservative, i.e., climate change is occurring faster than predicted.

My internet search engine lists over 550,000 sites for Global Warming and over 71,000 for the Kyoto treaty.

My belief is that your charter, an excerpt of which is in the first paragraph above, requires you to deal with global warming. I believe that you cannot do a credible job of creating the regulatory framework for future water usage without factoring in considerations of the climatic changes which are occurring now and are getting worse. I see global warming as an intractable problem and my recommendations are:
- initiate a progressively more stringent conservation program,

- obtain predictions of near-term (5 to 10 year) climatic changes from climatologists such as from the University of Washington, and then adjust your regulations appropriately ("IMPACTS OF CLIMATE CHANGE, PACIFIC NORTHWEST", November 1999, was published by the JISAO/SMA Climate Impacts Group, University of Washington for the U. S. Global Change Research Program), and
-plan on another revision in 3 to 5 years as the progress of global warming in the Northwest will be more evident and better understood by that time.

Sincerely,

Julian Powers

Julian Powers

FRIENDS OF THE COLUMBIA GORGE

FRIENDS OF THE COLUMBIA GORGE 4/7/03

Department of Ecology
Water Quality Program

MAR 03 2003

February 26, 2003

Susan Braley
Surface Water Quality Standards
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Re: Washington's water quality standards, Chapter 173-201A, Washington Administrative Code

Dear Ms. Braley:

Friends of the Columbia Gorge has reviewed and would like to comment on the above-referenced matter. Friends is a non-profit organization with members in more than 3,000 households dedicated to protecting and enhancing the resources of the Columbia River Gorge through the effective implementation of the Columbia River Gorge National Scenic Area Act. Our membership includes hundreds of citizens who reside in the six counties within the Columbia River Gorge National Scenic Area.

Congress established the Columbia River Gorge National Scenic Area (NSA) to protect the natural, scenic, cultural, and recreation resources in the Columbia River Gorge. To fulfill this goal, the Columbia River Gorge Commission and the United States Forest Service produced a Management Plan for the NSA. The Management Plan recognizes the need for habitat and watershed restoration and allows restoration projects despite short-term and long-term impacts, which otherwise would be prohibited if not in the public interest. Management Plan at I-99. To the extent that the Department of Ecology's current rules do not allow for water quality impacts related to natural resource restoration projects, the DOE's current and proposed rules might be inconsistent with the Management Plan. The proposed rules would make state law more consistent with the Management Plan.

I. The DOE's rule should provide an exception for water quality impacts resulting from bona fide natural resource restoration projects.

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The DOE's current proposal allows for short-term lowering of water quality standards to accommodate major watershed restoration projects that are in the public interest, such as dam removal projects (WAC 173-201A-410). Friends supports this provision, but it does not go far enough. The rule must allow for the long-term impacts to certain uses of a water body, which might occur in the case of a dam removal (such as impacts to a non-native fishery that has thrived in an unnatural reservoir created by a dam). The DOE's proposed rule should make it clear that long-term and permanent impacts to certain uses may be permitted when they are in the public interest and are necessary to benefit the watershed, particularly where a project would assist in the recovery of legally protected salmon.

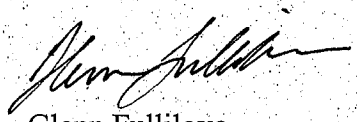
II. DOE should adopt a restoration-friendly antidegradation standard.

The Clean Water Act requires states to develop antidegradation policies to ensure that existing clean waters are not degraded. Consistent with the provisions of the Management Plan for the Columbia River Gorge that allow flexibility for restoration projects, the antidegradation policy should allow for modifications to uses to accommodate major watershed restoration projects. WAC 173-201A-300. The DOE should clarify that, under its antidegredation policy, long-term impacts to certain existing beneficial uses may be permitted, where necessary to benefit watersheds, sensitive species habitat, and the public interest.

III. Conclusion

Thank you for this opportunity to comment.

Sincerely,



Glenn Fullilove
Land Use Legal Assistant

Received 11/28/2003 Bill Poston - Hearing Officer
Spokane Public Hearing

Public Comment Form

Proposed Revisions to the Sur

Public comment perioc KAREN LINDHOLDT

4/3/03

Please place comments in comment box or mail to:
Susan Braley, Department of Ecology, P.O. Box 47600, Olympia WA 98504

This public comment pertains to (please check one):

☒ **Draft Rule** ☐ **Draft Environmental Impact Statement**

Name: Karen Lindholdt

Address: 1007 S. Primrose Ln.
Spokane, WA 99224

E-mail Address: justice @ winning.com

Comments:

The proposed water quality standards are unacceptable as they will allow for increased pollution in streams and rivers that are currently degraded.

I make the following specific comments on the unacceptable provisions of the proposed standards:

1) The proposed standards do NOT provide protection for recreational use of rivers, sportfishing + aesthetic enjoyment. The Spokane River presently has high levels of heavy metals from the Silver Valley, high levels of dissolved oxygen, and many other water quality problems. The standards must help solve these problems.

(Additional public comment)

2) The Standards MUST protect Salmon migration in all State waters. - The proposed reg's don't.

3) The proposed reg's too narrowly defines standards for physical & Chemical pollution. In contrast, the regulatory standards must be broad enough to cover any types of pollution that could adversely impact water quality and the impacts on public health + fish health

4) The proposed standard is incorrect and goes against caselaw in eliminating connections between water quality + quantity.

5) NO exemptions or variances should be allowed to polluters.

6) These proposed standards erroneously fail to protect in-stream flows. These reg's must protect in-stream flows.

LUMMI NATIONAL NATURAL RES
MERLE JEFFERSON

LUMMI INDIAN BUSINESS COUNCIL

2616 KWINA ROAD • BELLINGHAM, WASHINGTON 98226 • (360) 384-1489

DEPARTMENT_____ EXT. _____

4/2/03

March 6, 2003

Department of Ecology
Water Quality Program

MAR 07 2003

Ms. Susan Braley
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Subject: Washington's Proposed Revisions To The Surface Water Quality Standards

Dear Ms. Braley:

The Lummi Nation has serious and substantial concerns with the proposed revisions to the surface water quality standards (WQS) currently proposed by the Washington Department of Ecology (Ecology). This letter is being submitted by the March 7, 2003 public comment deadline under protest.

- The Lummi Nation is a party to *U.S. v. Washington*, which defines fisheries co-management responsibilities with the Washington Department of Fish and Wildlife. The Lummi Nation must be involved from the start in issues related to fisheries management, distribution, and periodicity within the Usual and Accustomed areas of the Lummi Nation. The approach Ecology has used to date is unacceptable.
- The Lummi Nation is not a public interest group and is not bound by the March 7, 2003 deadline. The February 20, 2003 meeting between the Tribes and Ecology was <u>not</u> a consultation as stated by Lummi Natural Resource technical staffperson Andy Ross at that meeting. The Lummi Nation will be convening a meeting with Ecology in the near future—but after March 7, 2003—to substantively discuss the proposed revisions to the WQS.
- The Lummi Nation expects full cooperation from Ecology under the paradigm of government-to-government relation as agreed to under the Centennial Accord.

Ecology has not worked with the fisheries co-managers regarding fish periodicity and distribution. Ecology needs to work with the fisheries co-managers of specific watersheds to obtain the necessary information. Ecology does not have the authority to change fish distribution and/or periodicities. The co-managers make those determinations.

- Ecology only worked with the Washington Department of Fish and Wildlife to determine Bull Trout distributions. This is unacceptable.
- Ecology appears to have unilaterally determined that salmon spawning does not occur during periods when elevated water temperatures are a problem. In WRIA 1, spring Chinook start spawning in late July and early August, when water temperatures are elevated.
- In WRIA 1, the co-managers have identified fish distributions and periodicities that should be used. This information has been previously provided to Ecology, apparently to no avail.

Below are technical problems with the proposed rule package. The technical review is limited to a cursory review of the proposed WQS, but the problems found <u>amply illustrate that the proposed WQS will not provide for recovery of fisheries stocks listed under the federal Endangered Species Act (ESA)</u>. We will not be able to recover salmon stocks to harvestable levels or recover stocks listed under the ESA with the approach proposed by Ecology.

TECHNICAL ISSUES

1. The fish harvesting use should not be relegated to narrative criteria. This use includes stocks healthy enough to be harvested, which means that the aquatic life criteria should apply. Harvesting is not solely a recreational use.

2. Fish migration appears to have been dropped entirely from the WQS for freshwater aquatic life uses. Ecology, based upon information provided by the co-managers, needs to explicitly protect migrating and holding salmon and char. Pre-spawn mortalities of ESA-listed spring Chinook have been observed in the Nooksack River system.

3. The use of 16.0°C 7-DADM for spawning and rearing of salmon, steelhead and trout is unacceptable and Ecology's rationale is not scientifically defensible because it does not protect spawning (or holding based upon Ecology's 2002 Temperature Discussion Paper and Literature Summary [Publication Number 00-10-70]). Ecology based the 16.0°C temperature threshold on the presumption that spawning does not occur when temperatures are 16.0°C, but instead reasoned that if 16.0°C is not exceeded during the hottest time of the year, the water should cool sufficiently from 16°C in time for spawning. As previously mentioned, spawning of spring Chinook in the Nooksack River basin, which are a listed stock under ESA, begins in late July and early August, well before seasonal cooling begins. A spawning and rearing criteria absolutely needs to protect spawning and rearing.

    a. This type of approach is completely contrary to the philosophy behind converting from a class-based to a use-based system.

    b. The temperature criteria in the December 2001 proposal for salmon, steelhead, and trout should be adopted, and the December 2000 proposal for char, including migration should be adopted.

4. The proposed dissolved oxygen (DO) criteria are also unacceptable.

    a. A 90-day average of daily minimums (DADMin) has been proposed and is used as the justification for a low 1-day minimum dissolved oxygen value. However, Ecology acknowledges that measurement of the 90-day DADMin dissolved oxygen cannot be easily measured at this time, and acknowledged at the workshop held in Bellingham, WA on February 3, 2003 that substantial bias could be introduced into the DADMin if measurements are not made when the lowest dissolved oxygen concentrations are likely to occur, and that typically measurements of DO do not occur when they are at their lowest levels. While the rule package does contain limited guidance on how to measure dissolved oxygen, nowhere is it mentioned that daily lows need to be targeted or even addressed in the rules or the implementation guidance. The upshot is the 90-day DADMin is going to be effectively useless. This completely undermines the basis for the very low 1-day minimum value proposed by Ecology. Until such time as a 90-day DADMin can be measured, the 1-day minimum value needs to be raised to the 90-day DADMin value. In addition, specific guidance needs to be provided on when to measure the minimum dissolved oxygen value for both metrics.

        i. The dissolved oxygen criteria proposed in 2000 should be adopted by Ecology, with the exception that the 1-DADMin criteria be raised until the seasonal average can be reliably measured.

    b. Use of a 90-day averaging period is not justified by Ecology and is likely to mask depressions of dissolved oxygen that could have a deleterious effect on salmonids and char. Based upon Ecology's 2002 Dissolved Oxygen Draft Discussion Paper and Literature Summary (Publication Number 00-01-071)(DO report), an averaging period of 30 days or less is more appropriate. In the Table on page 4 of the DO report, the 90-day period only occurs once and

as the upper end of the applicable range. The remaining metrics utilize shorter time-periods. If a 30-day average is necessary for juvenile fish protection, how is a 90-day period protective? The 90-day period appears to be a statistical manipulation of the data to reduce the likelihood of non-compliance events.

c. The proposed dissolved oxygen criteria do not provide for much, if any diel variation or depression of the inter-gravel-dissolved-oxygen (IGDO). The DO report discusses a diel variation range of 0.5 to 1.0 mg/l and an IGDO depression of 1 to 3 mg/l. Diel variation will be site-specific and the lowest DO value needs to be measured to calculate minimum DO values. IGDO is also site-specific. Ecology's apparent default of 1.0 mg/l to 1.5 mg/l is extremely optimistic and unlikely to protect incubating fish. If a default approach is followed, the IGDO depression should be 3.0 mg/l, unless shown otherwise by site-specific data.

5. The antidegradation section has serious problems.

a. No new implementation guidance is provided for Tier I waters. Tier I requires that uses be protected and sets a floor for minimum water quality and use support. How will the status of a waterbody be determined to assure compliance with Tier I? The Clean Water Act 303(d) list [303(d) list] shows where waterbodies are not meeting Tier I, but is more a reflection of where water quality monitoring has occurred and not of actual use-nonattainment. Will Tier I compliance be a default assumption? That is unacceptable. Tier I is a performance-based standard and requires specific implementation guidance. Reliance on Best Management Practices (BMPs) without regard for actual use-attainment (technology-based) does not provide the needed level of protection. Actual use-support has to be determined for each waterbody. Further, use-support is not limited solely to attainment of criteria. Other factors influencing use-support, as well as the actual occurrence of the use itself need to be considered.

b. Ecology requires that for waters to be considered Tier II the water quality needs to be demonstrated to be of better quality than the criteria. How this demonstration is to be made is not defined, and for nonpoint sources of pollution and general permits this could potentially be a very large problem. The method to determine if water quality is better than the criterion needs to be better defined and explained.

i. The requirement that water quality must be demonstrated to be of better quality than the criterion implies that Ecology's default assumption is that waters will only be considered Tier I unless demonstrated to be otherwise. This means that the default is that waters are at the minimum level to provide use-attainment and therefore no further degradation can occur. Based upon the loopholes provided by Ecology elsewhere in the WQS, this appears to be inconsistent with Ecology policy. Further specific implementation measures are required.

c. For Tier II analysis, there is no accounting of cumulative effects when only "measurable" changes are regulated. When making the "measurable change" determination Ecology should require the applicant to consider cumulative effects. This could be done simply by examining the land use in the watershed, determining how widespread the activity would be, and base the "measurable change" on what the magnitude of the water quality change would be if the activity occurred at all the locations where the activity could occur. This would also provide a more equitable burden to individual applicants within a watershed.

d. It does not appear that antidegradation applies to the 2.8°C cumulative increase in water temperature allowed under proposed WAC 173-201A-200(1)(c)(ii). The 2.8°C rise in temperature needs to be explicitly subject to full antidegradation review.

e. The "measurable change" thresholds identified under proposed WAC 173-201A-320(2) also need to be explicitly subject to Tier I requirements to ensure that uses are supported.

f. The proposed application of antidegradation review is too narrow. Because antidegradation is meant to protect water quality, which is defined in the Clean Water Act (CWA) as including physical, chemical, and biological attributes, the review should apply to exiting regulatory programs that address the CWA definition of water quality. This will provide equity across the board, and if done properly, should not increase the regulatory burden.

   i. It is not clear if Ecology is limiting the application of antidegradation under the CWA Section 401 Certification process to federal projects. In some places, reference is made to 401 certifications for "Federal activities, " in other places there is no reference. Because antidegradation is one of the three fundamental components of the water quality standards (the others are criteria and beneficial uses), it is automatically included in all Section 401 certification determinations. The rule language needs to be clarified to include all Section 401 certifications.

g. Cold-water refugia has to be protected where it occurs. Limiting protection for these areas to Tier III is far too burdensome a process. Where cold-water refugia occurs, no activities which could adversely impact the refugia should be allowed, and it should be easy to implement.

6. The guidance for Total Maximum Daily Load (TMDL) implementation described in the Ecology 2002 Draft Implementation Plan (Publication Number 02-10-065) needs to be revised. As drafted, it appears that unless no fieldwork has begun, the new criteria are not likely to be applied. The Lummi Nation appreciates the complexity of TMDLs in the context of changing criteria, but this section needs to be worded much more protectively. New criteria can be easily implemented for many pollutants (e.g., temperature, dissolved oxygen) up to and beyond the determination of load and wasteload allocations. Where this is the case—new criteria easily integrated into the TMDL—use of the new criteria has to be required. Further, even if the TMDL is near final, if it is not going to result in compliance with the new criteria, the waterbody will most likely be 303(d) listed in the next cycle, resulting in another TMDL. This would be a tremendous drain on scarce resources. Exceptions to not including the new criteria in a TMDL are where the identified pollution targets are more stringent than either the existing or new criteria, or where the type of pollutant measured has changed, such as is the case with bacteria. In summary, TMDL implementation measures need to be refined and further explained.

In closing, both the process to develop the revised WQS and the proposed WQS themselves are fatally flawed. One of my staff will be contacting you in the near future to arrange a meeting to discuss these issues. Please contact Leroy Deardorff (360-384-2272) or Andy Ross (360-384-2319) of my staff if you have any questions or comments.

Sincerely,

Merle Jefferson

Merle Jefferson, Director
Lummi Nation Natural Resources Department

cc: Marcia Lagerloef, U.S. Environmental Protection Agency
Thom Hooper, NOAA Fisheries
Jim Michaels, U.S. Fish and Wildlife Service

Copy: Melissa S
~~Susan B~~
Mark H

4/2/03
Copy

SQUAXIN ISLAND TRIBE

Department of Ecology
Water Quality Program

MAR 0 6 2003

26 February 2003

Megan White, Manager
Water Quality Program
Department of Ecology
POB 47600
Olympia, WA 98504-7600

Dear Ms White,

I am writing today to clarify and elaborate on comments the Squaxin Natural Resources Director, Jim Peters, and I made at the February 20 meeting with Tribes on the proposed water quality standards.

First, I would like to remind you of the history of the Squaxin Island Tribe so that you may better understand some of the motivation for our strong feelings. The Squaxins are descended from maritime people who lived and prospered along the shores of the southernmost inlets of Puget Sound for untold centuries. Delicacies offered from the sea, such as clams, oysters, and salmon, have always been highly valued by Tribal members. The aquatic creatures that sustain us offer much more than mere physical nourishment; they are an essence of our culture and traditions making them essential to our survival as a people. This long history of association with the sea has made the Tribe a very committed steward of clean water in order to protect our heritage.

The United States first recognized the Squaxin Island Tribe in the Medicine Creek Treaty signed in 1854, ratified by the United States Senate in 1855, and thereafter signed by President Franklin Pierce. With his signature, it became the supreme law of the land and Tribal recognition and sovereignty have continued to this day.

The original reservation was established on Squaxin Island. The island sits at the head of seven inlets of southern Puget Sound—Case, Hammersley/Oakland, Totten/Little Skookum, Eld, Budd, Henderson, and Nisqually/Carr Inlets. More recently, lands on the mainland in Kamilche near Little Skookum Inlet were put into trust for the Tribe by the federal government.

The marine waters surrounding the island and all the water flowing off the land and out of the ground in the numerous watersheds surrounding the seven adjoining inlets influences the health and function of the Tribe's natural resources. These lands and waters comprise the Tribe's usual and accustomed fishing stations and grounds—our treaty fishing area.

The protection and restoration of our natural resource base is essential to the economic well

Natural Resources Department / S.E. 2952 Old Olympic hwy / Shelton, WA 98584
FAX 426-3971 / Phone (360) 426-9781

being and cultural survival of the Squaxin Island Tribe. The Squaxins reserved these rights when the treaty was signed. Without adequate protection of water quality, the Tribe cannot exercise these treaty reserved rights.

With this history in mind, I recognize that the rule making process has been long and arduous. You and your staff have made a tremendous effort to push this process through. And, I understand that Ecology is subject to many outside pressures that have made the process very difficult. Part of the underlying problem is the conflicting goals of economic well being and making Washington water clean and safe for people, fish, and wildlife.

In the last year or two, economic well being has risen above clean and safe water as a priority for developing the new rule . However, to sacrifice water quality for economic advantage is unacceptable—to the Tribes and I suspect to the majority of the citizens of the State of Washington.

Furthermore, the economic advantages of clean and safe water are not adequately addressed in your cost/benefit analyses. The economic viability of fishing deteriorated in direct proportion to the decline in water quality over the past century. The benefit of clean water to fish populations and the potential contribution of the fishing industry—both tribal and nontribal—to the state economy must be incorporated into the analyses to assess the full economic impact of the new rule.

Tribal staff reviewed the new standards and we have concluded that the proposed changes will not fully recover and protect the natural resource base of the Squaxin Island Tribe. The Tribe's goal is to provide sufficient and abundant natural resources for the ceremonial, subsistence, and commercial needs of its members. Since our treaty interests cover a much wider territory than just trust land holdings, state water quality standards are a key piece of Tribal watershed recovery efforts. As proposed, they will not achieve our goal. In some cases, protection of water quality will actually be weakened with the new standards. In other cases, the rule is so opened ended that we cannot predict the water quality impacts.

Of particular concern are five "loopholes" and the lack of definition and adequate implementation guidance that would allow us to feel confident that water quality would not be slighted for economic gain—that polluters would not find these an easy way to skirt the Clean Water Act. The loopholes include: overriding public interest, short term modifications, variances, site-specific criteria, and use attainability analysis.

The particular concern surrounding the loopholes is elevated because of the lack of recognition of the Tribes as co-managers of our natural resources. Bottom line responsibility for water quality is not just an Ecology (state) and EPA (federal) concern. As the Squaxin history I related illustrates, the Tribes form the third of three governments with vested interest and there is no overall recognition or policy in the proposed rule that incorporates that reality. It is true that Tribal consultation has been incorporated in several places, but that does not go far enough to address our concern. Tribes need to be involved from the beginning in all phases as a co-manager, not just another stakeholder—language to that effect must be added to the proposed rule.

Another major concern is the loss of the narrative classification system and thus, the ability to fully protect the state's waters. The existing narrative classification system provides a way to address issues like fine sediment and stream flow that cannot be easily encompassed in numeric criteria. Without action addressing issues such as these, watershed health and function cannot be fully restored. Streams without sufficient water or water running over fine sediment-covered salmon eggs may achieve standards, but certainly not the Clean Water Act goal of "restore and maintain the chemical, physical, and biological integrity" of the state's waters. Somehow the new rule must encompass and set standards to address all potential impairments, not just the ones easily captured by numeric criteria.

We also have technical issues with the proposed rule. Tribes collectively wrote a letter dated August 7, 2002 to Director Fitzsimmons outlining our concerns and later, we completed an analysis of how the final proposed rule addressed them. To sum it up, we were disappointed. To better understand our concerns, we urge you to fully compare our letter and cross-walk with your proposed rule.

Our concerns revolved around things like determination of fish life history stages, stream usage, and timing of entry, the anti-degradation policy, temperature, dissolved oxygen, and bacteria. They were only partially addressed at best and in many cases seemed to be ignored.

- The use based designations of water bodies does not incorporate Tribal information, all fish species and their unique life history strategies. Some species will be left struggling because they do not fit the model Ecology used to determine use. We urge Ecology to consult with each Tribe about use based designations before finalizing the rule.

- The anti-degradation policy raises the same issues as the loopholes described previously. While guidance on implementation triggers has recently been incorporated, the decision making process is wide open and does not fully integrate the Tribes as co-managers.

- The temperature standard will not meet the test of the Endangered Species Act and protect fish across the State of Washington. Neither will it allow the Squaxin Island Tribe to reach its natural resources goal outlined previously. The upper end of the optimal range was selected in an earlier rule draft, then it got even warmer in the final draft. We urge Ecology to change course and incorporate EPA's Regional Temperature Guidance into the proposed standard. This is a key action necessary to protect the Tribe's natural resource base.

- The proposed dissolved oxygen standard for fresh water is weaker than the current standard. It lowers the one day minimum and sets a 90 day average comparable to the current one day minimum—all without much implementation guidance. Ecology's own analysis admits that that the proposed standard is probably not fully protective. If nothing else, we urge Ecology to maintain the current standard in the proposed rule.

- The bacteria issue is complicated by EPA directives we do not necessarily agree with, but we have a couple of specific recommendations. Under the new rule, there is no bacteria standard for marine waters classified as "good." In our mind, "good" waters are probably equivalent to waters classified as "B" under the existing rule. "B" waters currently have a bacteria standard.

Our concern is these "good" waters border and circulate into "excellent" or "extraordinary" waters where shellfish harvest occurs. Unlimited bacteria in "good" waters may add a huge load to neighboring waters. This may make attaining the numeric bacteria criteria in neighboring waters more difficult and ultimately, shut down shellfish harvest. We urge Ecology to incorporate numeric criteria for "good" marine waters to prevent this scenario.

In fresh water, the new bacteria rule sets the standard by contact—primary or secondary. *E. coli* are limited to 100c/100ml in water designated for primary contact. This actually lowers the standard for waters currently classified as "AA" where the fecal coliform standard is 50c/100ml. Under the new rule, the higher levels of bacteria allowed to enter marine waters from current "AA" fresh water sources will make it more difficult to maintain approved shellfish harvest. We urge Ecology to incorporate a stricter standard for fresh water that feeds marine waters where shellfish harvest occurs.

In closing, I would like to remind Ecology that the road to true co-management with the Departments of Fish & Wildlife and Health has not been easy, but over time has generally evolved into workable processes. As you well know, it took a tremendous amount of litigation, in particular with Fish & Wildlife, to get to this point; some of that litigation continues to this day. I sincerely hope that Ecology and the Tribes, including the Squaxins, can build upon that past history rather than repeat it.

If you have any questions or need clarification about any of the issues we raised, please feel free to contact me anytime.

Best Regards,

John Konovsky
Biologist

CC: Marcia Lagerloef, USEPA
Thom Hooper, NOAA Fisheries
Jim Muck, USFWS
Tom Fitzsimmons, Ecology

KALISPEL TRIBE

Kalispel Tribe of Indians

WAJ 4/2/03

Department of Ecology
Water Quality Program

MAR 11 2003

March 6, 2003

Susan Braley
Surface Water Quality Standards
Washington State Dept. of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

re: Revised Water Quality Standards

Dear Ms. Braley:

Thank you for the opportunity to comment on Washington State's proposed revisions to Chapter 173-201A WAC. The Kalispel Tribe appreciates the work that has gone into the proposed revised water quality standards. We have some concerns and some reason to applaud the additional protection appropriately afforded to aquatic life.

As was discussed at the "Tribal Consultation Meeting" in Olympia on February 20, 2003, Washington's Tribes generally feel that management of surface water resources is necessarily a cooperative effort. The Kalispel Tribe has executed Memoranda of Understandings with the Washington Department of Wildlife and Washington Department of Fish and Wildlife. These documents called for shared responsibilities of fisheries resources. Both the Kalispel Tribe and the Department of Ecology are parties to an Intergovernmental Memorandum of Agreement regarding Clean Water Act Section 401 certification of Box Canyon Dam project works. This agreement promotes among Ecology, the Tribe, and EPA a "cooperative, and coordinated, government-to-government approach to (certification of Box Canyon Dam project works)."

Indian Tribes have federally reserved rights to resources, including water. The Kalispel Tribe recognizes that water is a shared resource and wishes to work cooperatively with other agencies and entities toward responsible management of such resources. We encourage Ecology to recognize Tribes and neighboring states as necessary co-managers of aquatic resources.

Two items we feel important to be added to narrative criteria applicable to all freshwater aquatic life uses [e.g. 173-201A-200 (1)(b)] are protection for instream flows necessary to support aquatic life and protection against sediment delivery to free flowing streams. Instream flow protection could be added to narrative criteria in 173-201A-260. Excess

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sediment delivery to free flowing streams comes from adjacent land uses. Oregon, for example, protects against excess sediment and embeddedness by designating criteria for intergravel dissolved oxygen.

The remainder of our comments are organized following the sections of the December 19, 2002 Proposed Chapter 173-201A WAC.

- **173-201A-200 Fresh water designated uses and criteria**

We support the additional temperature protection proposed for native salmonids over current temperature criteria. Is the incremental temperature increase and dissolved oxygen decrease allowed for point source activities subject to Tier 2 anti-degradation?

It is difficult to support the 90-DADMin assessment method for dissolved oxygen. This will be an unnecessarily difficult metric to quantify. Because the averaging period is so long, the single day minimum must be relatively low and becomes a number no longer protective of the uses for which it was designated. Finally, assessment of dissolved oxygen will become further complicated in developing a 303(d) listing policy. We suggest a protective instantaneous minimum rather than a long term average. Alternatively, a series of instantaneous minima could be averaged as coliforms are under current standards.

Neither the temperature nor the turbidity criteria sections reference 40 CFR 131.10. We request that this reference be removed from the dissolved oxygen section.

Both site specific criteria and use attainability analyses require public involvement. Does the Department of Ecology feel that sufficient public involvement was included in developing total dissolved gas exemptions for Columbia and Snake River dams?

- **173-201A-260 Other water quality criteria and applications**

This section discusses irreversible human conditions and references 40 CFR 131.10. Does application of the section "(1) Natural and irreversible human conditions" go through a currently designated process and, if so, does this process involve public participation. This section apparently should be numbered (2) rather than (1).

- **Part III ANTIDEGRADATION**

The discussion on Tier I explains that "the department will take appropriate and definitive steps to bring the water quality (of degraded waters) back to levels which meet the water quality standards." Is this a reference to 303(d) listing and TMDLs?

Given the importance of non-point source pollution, we feel that Tier II Anti-degradation should apply to activities in addition to those specified in 173-201A-320(3).

Additionally, the programs specified (NPDES, 401 certifications) have provisions for compliance schedules, mixing zones, and other provisions for addressing applicable water quality standards. It seems possible that, given these provisions, Tier II as written is redundant. Simply removing 173-201A-320(3) would provide reasonable protection to waters currently of higher quality than proposed criteria, and protect these waters from the full and real range of pollution.

- **173-201A-420 and 430 Variance and Site specific criteria**

The subsequent section on use attainability analyses calls for "public involvement and intergovernmental coordination, including tribal consultation." We request that provisions in section (3) and (4) of 173-201A-440 be applied to variance and site specific criteria as well (Sections 173-201A-420 and 430).

- **173-201A-510 (5) Compliance schedules for dams**

We support this section.

- **173-201A-602 Use designations for fresh waters**

This section applies a 20°C temperature criterion to the Columbia and Snake Rivers as occurs in the current state standards. These rivers are of great importance to salmonid migration and so should be sufficiently cool to support this use. The proposed standards, however, deem 20°C to be protective of "indigenous warm water species" (i.e. not protective of cold water species). Given the possibility that maximum temperatures in the Columbia and Snake Rivers "naturally" or historically exceeded 20°C, we feel that the natural conditions provision [173-201A-200 (1)(c)(i)] is important here. We support cooperative efforts currently underway to determine natural background temperatures of the Columbia River and provide aquatic habitats protective of native salmonids.

At least two streams listed in this section for WRIA 62 are apparently misspelled. There is no South Salmon River in WRIA 62; this is apparently a reference to the South Salmo River. The reference to Kalispell Creek flowing into Idaho is correct but the reference to the confluence of Kalispell and Small Creeks is correctly spelled Calispell; this is a different stream than Kalispell. Small is sometimes spelled Smalle.

Additionally, it should noted that critical habitat for bull trout proposed by the U.S. Fish and Wildlife Service includes waters in Slate, Cedar, Mill, Ruby, Indian, and Tacoma Creeks. These are bull trout bearing streams not included in the proposed water quality standards.

Once again, thank you for the opportunity to comment on the proposed standards. We are interested in further development of this effort as well as any additional comment period. Thank you for your time and consideration.

Sincerely,

John Gross
Kalispel Natural Resources Department

cc: Mark Hicks, Department of Ecology
Marcia Lagerloef, EPA
Fran Wilshusen, NWIFC