STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502

C.L. "Butch" Otter, Governor
Curt Fransen, Director

June 8, 2012

Mr. Michael Bussell, Director
Office of Water and Watersheds, Region 10
US Environmental Protection Agency
1200 6th Avenue
Seattle, Washington 98101

Re: Submission of revised water quality standards for approval: Site-specific temperature criteria for the Snake River from Hell's Canyon Dam to the Salmon River (Idaho docket 58-0102-1102)

Dear Mr. Bussell:

Consistent with the Clean Water Act §303(c) and 40 CFR 131.20, revisions to Idaho's water quality standards (WQS) are hereby submitted for EPA approval. Rulemaking was initiated to modify the current site-specific temperature criterion to protect fall Chinook spawning below Hell's Canyon Dam by providing for a two week transition in temperatures from October 23rd through November 6th. Idaho Power Company (IPC) requested this rulemaking and provided extensive supporting information summarizing years of study they have conducted on spawning conditions in the laboratory and field.

Rulemaking was publically announced with a notice of negotiated rulemaking published in the June 1, 2011 Idaho Administrative Bulletin. The preliminary draft rule was posted on Idaho Department of Environmental Quality's (DEQ) web page May 31, 2011. One negotiated rulemaking meeting was held in Boise at the DEQ State Office building on June 21, 2011. Many individuals and interest groups participated in this public meeting, including EPA regional staff by phone. A meeting sign-in sheet is enclosed. IPC presented in detail the basis for the requested fine-tuning of the spawning temperature criterion. There were many questions and much discussion.

After the meeting DEQ revised its preliminary draft rule as a result of negotiations and review of written comments received. We clarified that a weekly maximum temperature is a lagged seven-day average, calculable each day beyond day six. It was also clarified that the site-specific transition period is from October 23 through November 6; where after the current site-specific criterion remains unchanged.

Although the revised criterion allows somewhat warmer water temperatures for the first two weeks of the spawning and incubation period, which runs from October 23 to April 15, both laboratory and field studies conducted by IPC show that this short period of warmer temperatures is protective of fall Chinook spawning below Hell's Canyon Dam.

1. The laboratory studies of effect of temperature on Chinook egg incubation show no significant effect on incubation success for eggs exposed to the proposed criterion temperatures. Unlike most previous studies of temperature on egg incubation, IPC's studies specifically looked at exposing eggs to a declining ramp in temperature more typical of field exposure.
2. Several years of field observation, work that will continue, shows that:
   a. Fall Chinook initiate spawning at temperatures even warmer than the proposed criterion, likely anticipating the normal seasonal decline and coming cooler temperatures;
   b. Under the current thermal regime below Hell's Canyon Dam, which is warmer now then the revised criterion requires, fall Chinook spawning has been improving indicating that these current temperatures are suitable for population recovery;
   c. The ramp in temperature the revised site-specific criterion allows for closely mimics the typical fall decline in water temperature as seasons change.

DEQ published the rule revised as a result of negotiations as a proposed rule in the August 3, 2011 Idaho Administrative Bulletin announcing a 30-day public comment period. No request for public hearing was received and none was held. Written comments were received from six parties. A compilation of comments and DEQ's response is attached. No revisions were made to the proposed rule.

The rule was considered by the Idaho Board of Environmental Quality on November 10, 2011. IPC gave a presentation on the rule, an update of their presentation during negotiated rulemaking. The proposed rule was adopted with no changes. The now pending rule was noticed in the December 7, 2011 Idaho Administrative Bulletin. The rule was finalized by the 2012 Idaho Legislature and became effective under Idaho law on March 29, 2012.

In addition to the published notices, DEQ created an e-mail list of participants and other likely interested parties to which DEQ sent notice of meeting dates, rule drafts, comments and response, and other documents distributed during this rulemaking. A record of the rulemaking process can be accessed online at: http://www.deq.idaho.gov/laws,-rules,-etc/deq-rulemakings/docket-no-58-0102-1102-final-rule.aspx. All materials posted at this URL are hereby incorporated by reference in this submittal.

The rule submittal package includes:

1) This cover letter, briefly describing the rule, the rulemaking process, and the contents of the package supporting the rule change being submitted for your approval;

2) June 1, 2011 Notice of Negotiated Rulemaking – Announcing DEQ's intention to revise its Water Quality Standards, IDAPA 58.01.02, to modify the existing site-specific salmonid spawning criteria for the Snake River below Hell's Canyon Dam (WQS sec 286), per IPC's request;

3) Scanned copy of sign-in sheets from June 21, 2011 rulemaking meeting;

4) *Proposal to Initiate Negotiated Rule Making for Site Specific Temperature Criteria for Fall Chinook Salmon Spawning in the Hells Canyon Reach of the Snake River*, July 2010, prepared by IPC. This document summarizes both laboratory and field studies of fall Chinook spawning as affected by water temperature conducted by IPC and provide the scientific justification for the criteria change. This proposal was provided to DEQ and then made available to the public;

5) August 3, 2011 Notice of Proposed Rule – Announcing opening of 30-day public comment period on the proposed rule language resulting from negotiations, including text of the affected portions of the water quality standards showing changes from existing rule language in legislative markup format (deletions struck out and proposed additions underlined) and availability of supporting documents;

6) Summary of public comment and DEQ's response;

7) IPC's presentation to the DEQ Board on November 10, 2011;

8) December 7, 2011 Notice of Pending Rule – Announcing rule adoption by the DEQ Board;

9) An Attorney General's certification that the rules were adopted according to state law;

10) Spring 2012 assessment of status of fall Chinook spawning, May 22, 2012 letter to DEQ from IPC;

11) Electronic copies of the above materials as well as the rulemaking record online burned onto CD for your convenience.

If you have any questions on this rulemaking and the enclosed supporting materials, please contact Don A. Essig, 208-373-0119, or Don.Essig@deq.igaho.gov.

Sincerely,

Barry N. Burnell

Barry Burnell
Water Quality Division Administrator

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Enclosures

c: Lisa Macchio, EPA (with enclosures)
Don Essig, DEQ (w/o enclosures)
Doug Conde, DEQ (w/o enclosures)
Michael McIntyre, DEQ (w/o enclosures)