C.L. "Butch" Otter
Governor

December 4, 2017

The Honorable Scott Pruitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Dear Administrator Pruitt,

The Idaho Department of Environmental Quality (IDEQ) undertook rulemaking in 2010 for a site-specific temperature standard for salmonid spawning below Hells Canyon Dam on the Snake River. The rulemaking was based on a temperature standard of 14.5° Celsius for a two-week period at the beginning of the spawning season being protective of Snake River fall Chinook. At the end of the two-week period, the temperature standard is reduced to 13° C.

The rulemaking was supported by peer reviewers who found the standard fully supportive of Snake River fall Chinook. NOAA Fisheries encouraged adoption of the proposed rule and advised that it would not hurt Snake River fall Chinook or their habitat.

The IDEQ proposed rule adopting the 14.5° C site-specific standard was presented to the Idaho Board of Environmental Quality on November 10, 2011, and adopted with no changes. The rule subsequently was approved by the Idaho Legislature and became effective under Idaho law on March 29, 2012.

IDEQ submitted the 14.5° C site-specific standard to the Environmental Protection Agency (EPA) Region 10 for approval on June 8, 2012. In March 2014, EPA Region 10 asked IDEQ for additional information. That information was supplied shortly thereafter. To date – more than three years later – EPA Region 10 has taken no further action on the proposed rule.

The Clean Water Act (CWA) authorizes site specific standards, and EPA's Temperature Guidance encourages such standards.[1] EPA's sole responsibility is to determine whether the Idaho standard is scientifically defensible and meets the goals of the CWA to protect the designated use. EPA has no discretion to turn down a standard that protects the designated use. In this case, the record shows that the Idaho approved standard protects that use – Snake River

[1] 40 C.F.R. §131.11 (b)(1)(ii); EPA Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards, at 34.

ED_004427_00018233-00001

fall Chinook salmon continue to spawn in high numbers below Hells Canyon Dam in temperature conditions that are warmer than those adopted in the site-specific standard. EPA is required within 60 days of submission to advise the State that its standards comply with the CWA, or within 90 days of submission provide the State with an explanation of what changes are necessary to comply with the CWA.

Under the statutorily prescribed timeframe, EPA Region 10 was required to either approve the site-specific standard by August 7, 2012 or provide an explanation of necessary changes to Idaho by September 6, 2012. In the nearly 2,000 days that have passed since submittal, EPA Region 10 has done neither. Idaho requests that EPA advise the State that the site-specific standards comply with the requirements of the CWA so that it can become effective immediately.

Thank you for your timely consideration.

As Always – Idaho, "Esto Perpetua"

C.L. "Butch" Otter
Governor of Idaho

cc: Chris Hladick, EPA Region 10 Administrator
Senator James E. Risch
Senator Mike Crapo
Congressman Mike Simpson
Congressman Raul Labrador