Payette River Water Users' Association, Inc.
(A Non-Profit Corporation)
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June 14, 1996

Ms. Paula Saul
Office of the Attorney General
Environmental Quality Section
1410 North Holden
Boise, Idaho 83706-1255

Re: Department of Health and Welfare, Division of Environmental Quality
Proposed Rules for Water Quality Standards and Wastewater Treatment Requirements

Dear Ms. Saul:

The purpose of this correspondence is to provide comments on the proposed rule changes to the Water Quality Standards and Wastewater Treatment Requirements on behalf of the Payette River Water Users Association. The Association membership is made up of the majority of irrigation companies and districts, as well as many private irrigators, served by the Payette River watershed.

In reviewing these proposed rule changes, I have noted several areas of concern. Section 053, *Beneficial Use Support Status,* states that in determining whether beneficial uses are being supported, "...the Department may utilize applicable analytical procedures set forth in Section 090 to determine whether all of the applicable water quality standards are being achieved, including any site-specific criteria developed pursuant to these rules, and whether a healthy, balanced biological community is present..." (emphasis added). There is no reference as to who is responsible for determining "site-specific criteria", leaving this determination subject to interpretation. Determining whether a "healthy, balanced biological community" is present could be quite subjective as well. We are limited to dealing with the standards set forth in the federal clean water act, and a "healthy, balanced biological community" might be a result of quality waters, not a standard to be determined by the Department. Section 053.01 and .02 then explain the proposed biological and habitat parameters the Department shall evaluate in determining whether the water body fully supports both the designated and existing beneficial uses. These proposed parameters do not deal with the standards set forth in the federal clean water act, which the Idaho Legislature specifically refers to meeting, not exceeding. Habitat is not a physical property of water, and is thus not considered a pollutant by the federal clean water act. It is the physical properties of water which can be measured by current approved scientific methods that the standards are imposed upon, and habitat, as well as the biological parameters proposed, are not included in those physical properties.

References in Section 053.01 to "...stream width, stream depth, stream shade, measurements of sedi[redacted]t impacts, bank stability, water flows[redacted]d other physical characteristics of the stream that affect habitat..." are not consistent with the federal or state water quality standards we are attempting to meet. We believe Section 053 should be completely rewritten to simply discuss the physical water quality standards set forth in the federal clean water act and the state water quality plan, striking any references to biological or habitat standards or a subjective determination of balanced or healthy biological communities.

Section 054.05, *Medium and Low Priority Provisions,* states that "...the Department shall require interim changes in permitted discharges from point sources and best management practices for nonpoint sources deemed necessary to prohibit further impairment of the designated or existing beneficial uses." (emphasis added). The Association believes that best management practices are important to the health of the river, but to require, or mandate, that these practices be implemented undermines the existence of Watershed Advisory Groups (WAG's) and the community and industry involvement they promote. I see irrigators on a daily basis who are voluntarily spending more money every year on water quality BMP's, and who promote these practices with their neighbors and fellow farmers. Mandating these practices will not bring about meaningful and long-lasting change for water quality improvements, and may actually impair the promotion of these BMP's in the future. Watershed Advisory Groups appointed within the watersheds they represent should be the promoters of these practices, using current practitioners as examples of the cost effectiveness and importance of BMP's to water quality. My suggestion is to reword this passage to read that "...the Department shall require interim changes in permitted discharges from point sources and promote, through the designated Watershed Advisory Group within the watershed, best management practices for nonpoint sources deemed necessary to prohibit further impairment of the designated or existing beneficial uses."

Within the same section, 054.05(a), the "...citizen advisory group..." is not defined in the proposed rules. In our view, this should refer to the Watershed Advisory Group, which is defined in the proposed rules. The same reference to an undefined group was also noted in Sections 054.01 and 054.01(c), and, again, should be changed to refer to the WAG. Watershed Advisory Groups are crucial components in the process of addressing water quality concerns on stream segments throughout Idaho, and will effect real and lasting improvements to water quality within those watersheds. The local involvement promoted through the WAG is the key to true water quality improvements.

Section 054.05(c) in the proposed rules raises a problem for irrigation interests on the Payette River, in that the statement "Where appropriate, the Department shall emphasize cost-effective mitigation of past activities to ensure no further impairment..." (emphasis added) is vague and could be interpreted in many different ways which could be financially devastating to our agricultural community. Again, the WAG, in conjunction with the Department, should be referenced as a means of evaluating what is cost-effective for the individual watershed, and whether or not mitigating past activities is, in fact, practical. This "...mitigation of past activities..." wording is also used in Section 054.01(d), and should be changed as well. Again, meaningful and lasting

improvements to the quality of our rivers and streams depend on the involvement of the communities affected by those improvements, and the WAG is a tool provided for this purpose by the Idaho Legislature.

In conclusion, the Payette River Water Users Association's concerns with the proposed changes to the Water Quality Standards outlined above reflect the need to involve the local people who are affected by water quality legislation. Mandates and costly regulations imposed on industries which, for years, have depended on our water resources may cause financial hardship within the communities affected and actually impede water quality improvements sought by the implementation of these rules. The process developed by the Idaho Legislature, forming the Basin Advisory Groups and the Watershed Advisory Groups, suggests that the intent of water quality legislation was to involve all interests in making decisions and effecting change for the good of our rivers and streams while meeting the federal clean water act requirements. This theme should be threaded through these proposed changes to reflect this intent. We appreciate the opportunity to comment on these proposed changes.

Sincerely,

Mark Limbaugh, Executive Director
Payette River Water Users Association