



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101

WATER
DIVISION

September 7, 2021

Dr. Mary Anne Nelson
Water Quality Division Administrator
Idaho Department of Environmental Quality
1410 North Hilton
Boise, Idaho 83706-1255

Re: EPA's Clean Water Act Action on the 1998 and 2003 Submittal of Revisions to Idaho's Surface Water Quality Standards for Bull Trout Spawning and Rearing Temperature Criteria (Idaho Dockets 16-0102-9701 and 58-0102-0002)

Dear Dr. Nelson:

The U.S. Environmental Protection Agency has completed the review of the new and revised water quality standards (WQS) at 58.01.02.250.02.g. and 58.01.02.250.02.g.i of the Idaho Administrative Code, submitted to EPA by the Idaho Department of Environmental Quality by letters dated December 16, 1998 and May 29, 2003. Under the Clean Water Act (CWA) section 303(c), 33 U.S.C. § 1313(c), states and authorized tribes must submit new and revised WQS to EPA for review and action, and EPA must ensure that those WQS are consistent with the CWA and EPA's implementing regulations. The details of EPA's action are outlined below and are further described in the enclosed technical support document.

EPA's action applies only to waters in the state of Idaho and does not apply to waters that are within Indian Country, as defined in 18 U.S.C. § 1151. Nothing in this action shall constitute an approval or disapproval of a WQS that applies to waters within Indian Country. EPA, or authorized Indian Tribes, as appropriate, retain the authority to establish WQS for waters within Indian Country.

I. Summary of EPA's Action

Pursuant to EPA's authority under CWA section 303(c) and the implementing regulations at 40 CFR Part 131, EPA is approving the new and revised WQS at IDAPA 58.01.02.250.02.g. and 58.01.02.250.02.g.i., with one exception, which EPA has determined is not a new or revised WQS subject to EPA CWA 303(c) review (see Section III, below).

II. Criteria in Effect for Clean Water Act Purposes

Although EPA's action approves the new and revised Idaho bull trout spawning and rearing criteria, the federal rule promulgated by EPA on July 31, 1997 (See 62 FR 4116) remains in effect until EPA withdraws the federal rule. We anticipate initiating the process to propose withdrawal of the federal rule in the 2023 timeframe and will keep you posted as we firm up our plans.

The EPA federal temperature criterion may still apply for CWA purposes depending on the specific waterbody. The more stringent criteria for a specific waterbody/time of year combination applies if both rules protect the same waterbody. A brief summary is presented in the table below and additional details are provided in the enclosed technical support document.

EPA Federal Rule 40 CFR 131.33	Idaho Rule (IDAPA 58.01.02.250.02.g. and g.i.)
Spawning and Juvenile Rearing: 10°C MWMT (June - September)	Spawning: 9°C MDAT (September – October) Juvenile Rearing: 13°C MWMT (June – August)

III. Provision that is Not Subject to EPA 303(c) Review

EPA is taking no action on the following rule language at IDAPA 58.01.02.250.02.g., second sentence, because EPA has determined it is not a new or revised water quality standard that EPA has the authority to review and approve or disapprove pursuant to its CWA section 303(c) authority, 33 U.S.C. § 1313(c)(3): “For the purposes of measuring these criteria, the values shall be generated from a recording device with a minimum of six (6) evenly spaced measurements in a twenty-four (24) hour period.”

EPA appreciates the efforts your staff have dedicated to providing new protections for Idaho waters and looks forward to continuing close collaborations with Idaho. If you have any questions regarding this letter, please contact me at (206) 553-1855 or Cyndi Grafe, EPA staff lead, at (208) 378-5771 or grafe.cyndi@epa.gov.

Sincerely,

**DANIEL
OPALSKI**

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Daniel D. Opalski
Director

Enclosure: Technical Support Document

cc (e-copy): Jason Pappani, Surface Water Bureau Chief, DEQ