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September 14, 2021

Mr. Gary Hess
Regulatory and Stewardship Program Manager
Forestry and Fire Division
Idaho Department of Lands
3284 W. Industrial Loop
Coeur d'Alene, ID 83815

Electronically submitted: rulemaking@idl.idaho.gov and GHess@idl.idaho.gov

RE: Idaho Conservation League's Final Comments Regarding Negotiated Rulemaking for IDAPA 20.02.01

Dear Mr. Hess:

Please accept the Idaho Conservation League's final comments regarding the Negotiated Rulemaking for IDAPA 20.02.01, commonly referred to as "The Shade Rule." The Idaho Conservation League (ICL) is Idaho's leading voice for conservation. Since 1973, ICL has worked to preserve Idaho's clean water, wilderness, and quality of life. As Idaho's largest state-based conservation organization, we represent over 35,000 supporters who have a deep personal interest in the science-based management of Idaho's waters which support a wide variety of fish and wildlife.

We appreciate the Idaho Department of Lands (IDL) and the Forest Practices Advisory Committee (FPAC) work that promises to simplify the implementation of the Shade Rule, and ICL supports these language changes and, for the most part, the proposed calculation method. However, we continue to harbor concerns that, despite the numerous scientifically-based comments submitted to IDL during the negotiated rule process, calculation methods focused on the inner 0-25-ft Stream Protection Zone (SPZ) do not reflect the protective standards found in the existing rule. Furthermore, the current draft of the updated rule does not allow for additional Class II stream protections. We submitted comments detailing these concerns earlier in the negotiated rulemaking process, and ICL stands by those recommendations. We provide additional comments that support our position in the following document.

Thank you for the opportunity to provide IDL with comments regarding this proposed rule change, and for hosting four negotiated rulemaking public sessions. If you have any questions regarding our comments and recommendations, please feel free to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randy Fox", is centered within a light gray rectangular box.

Randy Fox
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Idaho Conservation League's Final Comments Regarding Negotiated Rulemaking for IDAPA 20.02.01

Maintaining Inner SPZ Stocking Rates

The existing Shade Rule provides for robust stream protections in the inner 0-25-ft Stream Protection Zone (SPZ), using an RS60 base that allows for greater harvest flexibility in the outer 25-75-ft zone. IDL adopted the current rule based on the scientific study which concludes that retraining an inner zone RS60 and limiting overall shade loss to 10% represents the best method for providing adequate stream shade protection, bank stabilization, and large wood recruitment (Teply 2014). Further, Teply concludes that a minimum stocking rate of RS55 is necessary to limit significant impacts from shade loss (January 23, 2020 Memo from Mark Teply to Gary Hess, IDL).

Through the proposed rule, the Idaho Department of Lands (IDL) hopes to address situations where the inner zone is understocked and outer zone harvest resulted in a greater than 10% reduction in shade. ICL agrees with IDL and the Forest Practices Advisory Committee (FPAC) that scenarios such as these represent less than optimal management strategies and we support devising a new calculation method that accounts for understocked inner zones while allowing meaningful harvest in the outer zone. However, the proposed rule and calculation method seems to contradict previously accepted and adopted scientific standards without supporting evidence or documentation. ICL requests that IDL provide equivalent scientific documentation which supports the proposed changes to the calculation method that would lower the 0-25-ft SPZ relative stocking rate from RS60 to an averaged value. Please see the comments submitted by the Environmental Protection Agency (EPA), dated September 2, 2021, which more thoroughly document and address these concerns.

Class II Stream Protections

We are concerned that the proposed rule fails to address minimum tree retention requirements for Class II streams, and we encourage IDL to reinstate the protections that were removed from the 2013-14 rule. The entire Pacific Northwest experienced heat waves or “heat domes” throughout much of the 2021 summer, drastically elevating water temperatures throughout the Columbia and Snake River Basins. Numerous news outlets documented the effects of the summer heat domes on anadromous fisheries in the Columbia and Snake Rivers, including the reporting associated with the following links: <https://www.opb.org/article/2021/07/28/heat-stress-salmon/> ; <https://www.seattletimes.com/seattle-news/environment/extreme-summer-heat-puts-enormous-strain-on-salmon-in-columbia-river/> ; and https://www.nbcrightnow.com/news/elevated-water-temperatures-in-the-columbia-river-are-hurting-sockeye-salmon/article_e1bd1f16-f63d-11eb-b469-5f1bca502c29.html. In fact, river temperatures were so unacceptably high that NOAA Fisheries authorized an emergency plan to transport sockeye salmon around Lower Granite Dam to help Snake River salmon complete the final 300 miles of their migration (<https://www.latimes.com/world-nation/story/2021-07-18/snake-river-salmon>).

While water temperatures in the Columbia and lower Snake River systems are negatively impacted by slack water associated with dams and reservoirs, water temperatures throughout the

greater watershed showed a parallel increase. Class II streams that feed Class I waterways are critical to fisheries and aquatic ecosystem health. By establishing minimum tree retention requirements in this proposed rule, IDL will make significant strides toward lowering stream temperatures throughout numerous watersheds, effectively improving water quality and fisheries habitat conditions throughout the state, and in downstream sections of our larger rivers that flow to the Pacific Ocean. Yonce et al. (2020) clearly state that riparian SPZs reduce harvest effects on water temperatures; however, the researchers anticipate that the trend of warming temperatures and climate changes will require additional strategies to help keep salmonid and trout habitats adequately supplied with cold water. Protecting contributing Class II streams *before* they merge with Class I streams goes a long way toward making this anticipated transition smoother while creating more resilient waterways.

We urge IDL and FPAC to make a proactive stance to address the serious climate change effects we witnessed throughout the summer of 2021 by establishing strong Class II protection measures. Once again, we remind IDL staff of the Department's own recommendations (with the Idaho Department of Environmental Quality) that FPAC work towards establishing a minimum tree retention requirement for Class II streams. Recently, McIntyre et al. (2018) conducted an extensive, long-term study in western Washington which determined that even a 50-foot-wide SPZ on Class II streams was insufficient to provide effective shade, resulting in increased water temperatures. With Idaho's SPZ on Class II streams being 30 feet wide on either side of the ordinary high water mark and with limited protections that focus on, "retain(ing) live trees or establish(ing) new trees within thirty (30) feet on each side of the streams' ordinary high water mark to comply with the minimum stocking standards expressed in Subsection 050.04," (Proposed Negotiated Rule IDAPA 20.02.01, Section 030.07.e.iv). The previously cited studies demonstrate that new saplings do not provide the same shade cover or benefits as the canopies associated with mature trees. Further, these studies clearly demonstrate the need for Class II stream protections that extend beyond those found in the proposed rule. ICL recommends that IDL continue working with FPAC and IDEQ to establish minimum stocking standards for class II streams that provide meaningful protections against increasing stream temperatures and as bank stabilization and erosion control measures.

References Cited

McIntyre, A.P., M.P. Hayes, W.J. Ehinger, S.M. Estrella, D. Schuett-Hames, and T. Quinn (technical coordinators). 2018. Effectiveness of Experimental Riparian Buffers on Perennial Non-fish-bearing Streams on Competent Lithologies in Western Washington. Cooperative Monitoring, Evaluation and Research Report CMER 18-100, Washington State Forest Practices Adaptive Management Program, Washington Department of Natural Resources, Olympia, WA.

Teply, M., D. McGreer, and K. Ceder. 2014. Using Simulation Models to Develop Riparian Buffer Strip Prescriptions. *J. For.* 112(3): 302-311

Yonce, H.N., S. Sarkar, J.B. Butcher, T.E. Johnson, S.H. Julius, and S.D. LeDuc. 2020. Forest riparian buffers reduce timber harvesting effects on stream temperature, but additional climate adaptation strategies are likely needed under future conditions. *Journal of Water and Climate Change*, August 07, 2020. <https://doi.org/10.2166/wcc.2020.031>